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We would remind the profession in Ontario that the annual fees to the Law Society must be paid to the Secretary on or before the 5th of December next. Cheques not marked will not be received.

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The Court of Appeal for Ontario has given judgment in the Queen's Counsel case submitted to it by the joint action of the Dominion and Ontario Governments. The decision for the present settles the question that the Lieutenant-Governor of Ontario has the right to appoint Her Majesty's Counsel for Ontario. Mr. Justice Burton said that the right to make such appointments, so far as Provincial Courts are concerned, is exclusively in the Lieutenant-Governor, and Mr. Justice Street thought that patents of the Governor-General would regulate precedence in Dominion Courts, such as the Supreme Court and Exchequer Court.

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The Supreme Court of Minnesota has recently decided a case of some interest to that class of the community who can afford the luxury of a bank account under the following circumstances: A banker had in his hands funds of a depositor, a trader, for the purpose of paying such depositor's cheques. A cheque was presented and dishonored and returned to the payee on the supposition that there were not sufficient funds to the credit of the maker of the same wherewith to pay the same. This, it was claimed, was a slander of the depositor in his business, and that he was entitled to recover general compensatory damages in an action against the banker. The case is an unusual one, and will perhaps be a solace to those who are occasionally placed in a false position

by the carelessness of some bank clerk. The Court said: "We are of the opinion that the recovery of more than nominal damages can, on sound principle, be sustained, where the drawer of the cheque is a merchant or trader, on the ground that the wrongful act of the bank in refusing to honor the cheque imputes insolvency, dishonesty or bad faith to the drawer of the cheque, and has the effect of slandering the drawer in his business. To refuse to honor his cheque is a most effectual way of slandering him in his trade, and it is well settled that to impute insolvency to a merchant is actionable per se, and general damages may be recovered for such a slander." The following cases were cited: *Rolin* v. *Steward*, 14 C. B. 595; *Schaffner* v. *Ehrman* (Ill. Sup.), 28 N. E. Rep. 917; *Bank* v. *Goos* (Neb.), 58 N. W. Rep. 84; *Patterson* v. *Bank*, 130 Pa. St. 419; *Marzetti* v. *Williams*, 1 B. & A. 415; *Prehn* v. *Bank*, 39 L. J. Rep. Exch. 41; *Brook* v. *Bank*, 69 Hun. 202.

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Our English exchanges speak of the growing practice of citing American Reports in England, to which they take exception. Their remarks are based upon the appearance of the American Reports in the head note to *Kennedy* v. *De Trafford*, (1896) 1 Ch. 762, where "*Van Horne* v. *Fonda*, 5 Johns. Ch. N.Y. 388, not followed;" apparently because the Court did not know how far the law of the State of New York was similar to the law of England in reference to the matter in hand. The writer goes on to say: "and surely it is not their business to know. It is quite bad enough to cite foreign decisions arguendo by way of analogy, unless the foreign law is proved as a fact. The citation is even then fairly useless, but the citation of such foreign decisions as authorities in an English Court should be suppressed with severity as both dangerous and misleading." In the case of *In re Missouri Steamship Co.*, 42 Ch. Div. 321, Lord Halsbury, C., whilst remarking that the opinion of eminent American lawyers should be always treated with respect, nevertheless thought that "the practice which seems to be increasing of quoting American decisions in our own Courts is wrong." Fry, L.J.,

said, "I also have been struck by the waste of time occasioned by the growing practice of citing American authorities." The fact of the matter is, there is too much case law and too little of the arguing out of a case on principle. At the same time in this country, our circumstances being more nearly akin to those of our neighbors than they are in England, American authorities are often very useful in many branches of the law, and this is especially so in view of the fact that, owing to the multitude of citable authorities in the United States, their best judges often decide cases more on principle than on precedent.

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We had occasion recently to refer to the subject of animus furandi in reference to the case of *Wragge* v. *Ashwell*, 16 Q.B.D. 190 (see ante, pp. 52, 215), where the prisoner asked the prosecutor for the loan of a shilling, and by mistake was handed a sovereign. The prisoner received it, believing it to be a shilling, but shortly afterwards, discovering the mistake, appropriated the sovereign to his own use. Another case of a similar character (*Jones* v. *State*) has been decided by the Supreme Court of Georgia. The facts were that a child was entrusted with a twenty-dollar gold piece, for the purpose of going to the market and buying a chicken, and returning with it and the change. The owner of the coin supposed it was a silver dollar, and the child was ignorant of its real value. After the chicken was purchased at the price of twenty-five cents, the child gave the vendor the coin. He said, "Do you want me to change all this money," to which she replied, "It is a dollar." He again examined the piece, and apparently assented to her statement as to its value, knowing, however, that it was a gold, not silver piece, and he returned in change seventy-five cents. The question arose whether it was larceny, or cheating or swindling. The man was indicted for and convicted of the latter offence. The Court held that up to the time the child parted with the coin there was no dishonesty practised, and he was rightly in possession of it; and that his fraudulent conduct began when he ascertained that the

girl believed the coin to be a silver dollar. It was admitted that his equivocal words to the child's misstatement that the coin was only a dollar were none the less effectual in the accomplishment of his fraudulent design, and were, perhaps, the most effectual means he could have employed to allay suspicion. Their conclusion, however, was that the offence was not larceny, but came within the purview of the statute defining the offence as that of being a common cheat or swindler. Without having the wording of the statute before us, it is impossible to agree or otherwise with this view, but, under similar circumstances in this country, we should be inclined to think the offence would be larceny.

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## *THE BREHON LAW.*

(*Concluded*)

De minimis non curat lex, was not a maxim in vogue among the ollamhs (teachers of law) or the Brehons (judges) in ancient Erinn.

Fascinating as is this grand old book, space forbids us dwelling on it longer. A study of the criminal law is more necessary for the readers of the LAW JOURNAL, so to the Book of Aicill, the Irish Criminal Code, we will confine ourselves. It is for reasons peculiar to itself worthy of study, and exhibits, more completely than any other archaic code, the ideas of an early society as to the whole body of acts included under the names of crimes and torts. It is probably the oldest of these law books, and remained materially unaltered from the date of the earliest notices of its existence down to the final suppression of the Irish tribal system at the commencement of the seventeenth century. It is composed of the opinions, or dicta of two highly eminent men, King Cormac Mac Airt (who reigned in the second quarter of the third century), and Cennfaeladh, the Learned, (a soldier of the seventh century). Aicill was a place nigh to Tara. The origin of this work (as given in it) is singular. One Aengus Gabhuaidech, at the suggestion of a woman, went to Cormac's home to avenge the daughter of his kinsman upon Cormac's son, Cellach. Aengus

took down from its rack Cormac's own ornamented spear, and smiting Cellach therewith, killed him; the weapon then grazed one of Cormac's eyes and destroyed it. This blemish, under the law, necessitated the retirement of the king, and his son, Coirpri Lefechair, reigned in his stead. Whenever any difficult case came up for judgment the young man went and asked his father about it, and the ex-king's opinion is recorded in the book. Cennfaeladh became an author thusly: in the battle of Maghrath his head was split open and part of his brain was taken out; fortunately it was the brain of forgetfulness, so when he was recovering, and staying near a law school, whatever he heard he had by heart; "and wrote it on slates and tablets and transcribed it into a paper book." Mr. Ginnell remarks, "One may say in our present lauguage that Cennfaeladh brought out a new and revised edition of King Cormac's work."

There is inherent proof that laymen are alone responsible for this law book. After giving the table of measures in use (and which the translators employed by the Government can only give in this fashion "twelve times the full of a hen egg in a meisrin-measure, twelve meisrin-measures in an ollderbh-measure, twelve ollderbh-measures in an oilmedhach-measure, or in an olpatraic-measure, which contains two olfeine measures") the old original Brehon or one of his commentators, goes on to say: "Four and twenty clerics set down about it and twelve laymen. They (*i.e.*, both parties) get equal quantity of food, but double ale is allowed to the laymen, in order that the clerics may not be drunk, and that their canonical hours may not be set astray on them."

In meting out punishment for crimes and misdemeanors the Irish adopted the sensible idea, "noblesse oblige," generally; for instance, the clergy were punished more seriously than the laity. When a layman had paid his fine for an offence, he rested under a stigma and loss of status for a time, but after this probationary period he recovered his position in society. A convicted cleric, however, never regained his former status; there was scarcely anything for him to do but retire from the world and do penance. Loss of status meant ina-

bility to be a witness, a juror, a surety, to sue, or to inherit land. A man of high rank was always fined more than a man of low estate, in a like case. An offence against the property of a poor clansman, who could ill afford the loss, was punished with greater severity than a similar offence against a wealthy man. Yet the person of a man of rank was respected more than that of an ordinary individual, and an insult to it was more punished. The chief factors in determining the amount of penalty for any given crime were: the damage done, the status of the injured person, the status of the criminal, and the accompanying circumstances. This amount went to the person aggrieved, or to his representatives, if he was no more, and represented the revenge which probably would have been taken on the wrong-doer in a wilder state of society.

Besides the payment to the injured party, the remuneration of the judge, or arbitrator, had to be provided, and this was either a charge upon the amount of damages recovered, or an additional payment made by the unsuccessful party. The Brehon being human (even Mr. Ginnell admits this), his fee was settled by certain known rules: one-twelfth of the accused's honor price, if he was found guilty, and if the accuser failed he had to pay the Brehon as well as compensate the poor accused.

When a freeman in old Erinn was injured he did not lay an information before a justice of the peace, for there was neither magistrate nor police: he did not issue a writ to summons the wrong-doer before a judge, for legal tribunal there was none. He took the law into his own hands, and public opinion was with him if if he did this, not to revenge the wrong, but to be indemnified in damages for it. He made the offender consent to refer the whole matter to the judgment of a Brehon by distraining upon him, or if the wrong-doer was a person of high degree he was fasted upon, that is the party aggrieved went to his house and sat outside the door fasting, and if the gentleman did not quickly come to his senses when he saw the faster he was liable to be mulcted in double damages. (Strange to say the Brahmins used to work this fasting racket in India until quite recent days.) When

the Brehon was settled upon he proceeded to arrange the disputes; generally this was done by simply awarding damage for the wrong committed; but various reprisals and acts of violence might have occurred before the reference to arbitration, or the defendant might have some old complaint against the plaintiff; then the Brehon had to take a regular account between them, every injury on both sides had to be duly credited and debited at a fixed amount, and the balance struck represented the sum upon payment of which all complaints between the parties were satisfied. The skill of the lawyer Brehon lay in discerning the proper items to be introduced into this account, and the scale according to which they were to be assessed. The greater part of the Book of Aicill consists of statements of the mode in which wrongs of all imaginable kinds are to be charged, the items to be introduced in such contests, and leading cases of accounts so taken, given as precedents to be followed.

Generally the Brehon added his fee to the amount awarded. The judgment being settled the successful party had to execute it himself, as there was no sheriff nor bailiff. According to Mr. Ginnell, he seldom had any trouble in doing this, "for he was assisted by the inherent equity of the particular judgment itself, by the force of an immemorial law universally obeyed, by public opinion informed by the generally prevalent love of justice, by the defendants' knowledge that delay, evasion or resistance would be futile, would disgrace him and increase the penalty, and above all, by that self-adjusting network of duties and obligations involved in and enforced by the clan system." (The Irishman of to-day may with truth remark "O tempora! O mores!" "Nous avons change tout cela.")

As an example let us take the case of injuries done by busy little bees; four pages are devoted to them. The amount of the fines for injuries to persons is as follows: For a person stung to death two hives (coin was scarce, and when the fine was small it was usually a quantity of property of the kind involved); for a person blinded by a sting, one hive; for the drawing of blood, a full meal of honey; for an

injury leaving a lump, one-fifth of a full meal; for a white blow that leaves a sinew in pain, or green, or swollen, or red, three-fourths of a meal. If the injured person killed the bee which stung him the value of the insect was set off pro tanto against the damage payable for the sting. "If the person has killed the bee while blinding him, or inflicting a wound on him until it reaches bleeding, a proportion of the full meal of honey equal to the eric-fine for the wound shall be remitted in the case; the remainder is to be paid by the owner of the bee to the person injured. If the bee was killed while inflicting a white wound (one in which no blood is drawn) the killing and the stinging cancelled one another. If the killing was while the bee was inflicting a lump wound, four-fifths of the fine was remitted; and if while giving a white wound which left a sinew under pain, or green or swollen, or red, three-fifths of the fine was remitted." Then the rules for fixing the compensation to be paid by the owner of the bees for similar injuries to cattle are given in detail, as well as the set-off allowable under the various circumstances if the cattle killed the bee. If there is doubt as to whence the bee came, its hive is to be discovered in the way in which Achan, the son of Carmi, the son of Zabdi, was found out, "And the reason why this is done (saith the Book) is that a bad hive may not be given in place of a good hive, or that a good hive may not be given in place of a bad hive, but that the very hive from which the injury was done might go for the injury." The amount payable by the bee-keeper varied according to his social status. To kill a bee either intentionally or inadvertently when in unlawful anger was punishable by a fine of five full meals of honey; if one did it inadvertently when lawfully angry, the fine was only three meals.

The Book of Aicill contains over fifteen pages anent dogs, setting them on animals and persons, and injuries by them; dog fights alone and the law concerning them fill four pages, and exciting it is to read of the legal position of the impartial interferer in the fight, of the half interferer (the man who interferes with a bias in favor of one of the dogs), of the

accidental looker-on, of the fine for fair play, of that for foul play; it matters much, if one dog is killed, whether they engaged in the fight with the cognizance of both their masters or not, and whether the owners be present or not. It is a question of importance whether the dogs were set on by a sane adult, an infant, or an irresponsible fool. We are told who, under the varying circumstances, is to pay for things spoiled by the fighting dogs scrabbling round with their feet.

As, however, peace now reigns throughout the world, we will not speak of animals that delight to bark and bite, but will talk of cats—peaceful, quiet tabbies.

The book says: "The cat is exempt from liability for eating the food which he finds in the kitchen owing to negligence in taking care of it: but so that it was not taken from the security of a house or vessel, and if it was so taken, the case as regards the food is like that of a profitable worker with a weapon, and the case as regards the cat is like that of an idler without a weapon, and it is safe to kill the cat in the case." "The cat is exempt from liability for injuring an idler in catching mice, when mousing: and half fine is due from him for the profitable worker whom he may injure, and the excitement of his mousing takes the other half off him." All this means that if a cat has done a wrong in eating food or when mousing, the intention of the wrong doer is considered. The cat which steals food is simply a wrong doer so far as that specific act is concerned, and is to be considered as an "idler" (that is, as a person who has no excuse or justification for the act committed.) But if the food stolen has been left in its way through the negligence of the owner, this carelessness is set off against the theft, and no damages given. But if the owner of the food has not been careless, and the cat has stolen it out of a place in which it might reasonably be considered secure, then the owner of the food is to be considered as a profitable worker (that is, one whose conduct entitles him to a full amount of damage) and he can use against the cat and its owner all the rights exercised by the owner of a house against a thief who breaks into his precinct vi et armis. In the second case the cat being engaged in its legitimate busi-

ness of mousing cannot be considered a wrong doer pure and simple, the injury being incident to the zealous performance of its duty. The cat, therefore, pays to the profitable worker mitigated damages, and to the idler who was not present in the fulfilment of any duty of his own, no damage whatever. It is only right to add that one version of Aicill says that this exemption for stealing food only applies to the case of "a neighbor cat" and "not to the cat of the house, which shall be made to pay according to its wickedness, for the guarding of the kitchen had been entrusted to it."

Bees and cats must tell the story. Suffice to say that Cormac and Cennfaeladh and their commentators, endeavored to deal with all cases and all varieties of circumstances, laying down special rules for every relation of life and every detail of social and domestic economy, for injuries to every part of the human form divine, discriminating between the finger nail of a pauper and that of an ordinary person; and between shaving the false locks of poets, the lashes of a girl's eyes and the beards and whiskers of men; for man-trespass and cattle-trespass; for trespass by horses and trespass by pigs, by pigs big, by pigs middle sized, and by pigs sucking; for injuries in building, in blacksmithing, in threshing; for mistakes and malpractices of doctors, yea, even for the errors and mistakes of judgment, inadvertent or malicious, of the Brehons themselves.

There was much resemblance between the Irish laws and those of ancient Britain, particularly those of ancient Wales. All British laws were modified under Roman sway, but Ireland escaped this. The laws of the Gaels of Scotland were the Irish laws transferred thither, but early modified by the feudal system. As Ginnell says, "The Brehon laws, whether they are good or bad, creditable or otherwise to our race, are essentially, substantially and characteristically Irish."

R. V. ROGERS.

## *PROXIMATE AND REMOTE CAUSE.*

The value of the maxim of Lord Bacon, In jure non remota causa sed proxima (in law, the immediate, not the remote cause of any event is regarded), in so far as it is applicable to torts, has been considerably lessened by the judgment of the Supreme Court delivered by Mr. Justice King in *Grinsted* v. *Toronto Railway Company*, 24 S.C.R. 570.

The facts of this case are shortly as follows: A young man was ejected from one of the company's cars on a cold night in winter, took cold in consequence, and suffered from an attack of bronchitis and rheumatism. In addition to the damages recovered for the breach of contract to carry, assault and putting off the car, assessed at $200, he was held entitled to recover $300 for the sickness, etc., as the natural and probable result of the ejectment. Gwynne, J., dissenting.

The case is remarkable for the two dissenting judgments, one in the Court of Appeal by the able and brilliant Chief Justice, and the other in the Supreme Court by Mr. Justice Gwynne—one of the most capable and careful jurists that has ever graced the Supreme Court Bench—who agrees with the opinion expressed by the Chief Justice in the Court of Appeal. Mr. Justice Street, who tried the case with a jury, after instructing the jury as to the principles upon which they were to assess damages for breach of contract, assault and ejectment, said: "Now if you find that the plaintiff is entitled to damages; if you find that his illness was the natural or probable result from his having been turned out of the car on that night, then find damages upon that ground as well." This portion of the charge formed the Waterloo of the case, which was fought out through the whole gamut of appeals, Divisional Court, Court of Appeal and Supreme Court.

Sir Thomas Galt, C.J., in his judgment in the Divisional Court, (24 O.R. 686) as do all the judges in his Division, distinguished this case from *Hobbs et ux* v. *London and S. W. Railway Co.* L.R. 11 Q.B. 111, by pointing out the fact that this was an action founded in tort as well as for breach of contract, while that was an action simply for breach of contract. In the *Hobbs Case*

the plaintiff, with his wife and two children, took tickets to H. on the defendants' railway. They were set down at E. It being late at night, the plaintiff could not get a wagon or accommodation at an inn. They had therefore to walk five or six miles on a rainy night, and the wife caught cold, was laid up in bed for some time, and was unable to assist her husband. Expenses were incurred for medical attendance. The jury found £8 for inconvenience suffered by having to walk home, and £20 for the wife's illness and its consequences. The Queen's Bench held the plaintiff could recover the £8, but not the £20, which was too remote. The action was for breach of contract to carry.

Mr. Justice Rose in his judgment says: "It was argued before us that on the authority of *Hobbs Case* such damages could not be allowed. The decision in that case has been practically overruled by the Court of Appeal in England, in the case of *McMahon* v. *Field*, L.R. 7 Q.B.D. 596, and has been doubted in *Tilly* v. *Doubleday*, Ib. 510; see also *McKelvin* v. *City of London*, 22 O.R. 70, *Connell* v. *Town of Prescott*, 22 S.C.R. 147, and *York* v. *Canada Atlantic S. S Co.*, Ib. 167. "In the light of these authorities I venture to think the law is that where an act of trespass has been committed and an injury results from such act of trespass, the party suffering such injury is entitled to compensatory damages, no matter what may be the nature of the injury, if it be the natural or probable result of the wrongful act."

This statement of the general law is correct, but everything turns upon the question, Was the sickness the natural or probable result of the wrongful act, i.e., the putting the plaintiff off the car under the circumstances, and should this question be left to the jury? Mr. Justice MacMahon does not agree with the conclusion arrived at by the jury, but sustains it by saying that it was a question for them to decide, and having passed upon it he could not interfere.

Mr. Justice Burton, in the Court of Appeal, says: "I think it was proper to leave it to the jury to say whether the cold caught was the natural or probable result of the defendants' conduct, and I cannot say that their finding was unreasonable."

Mr. Justice Maclennan answers the question, Was the sickness so remotely connected with the wrongful act that in point of law it was not recoverable? by saying, "I think we cannot say it was a remote and uncertain accidental result, and not the direct and immediate consequence of the wrongful act."

Mr. Justice Osler concurred, but the Chief Justice, in one of his characteristically vigorous judgments dissents on the ground that *MacMahon* v. *Field*, supra, does not overrule the *Hobbs Case*, but in principle affirms it. He admits that there is something said in the latter case disparagingly of the former case. But the facts appear to be essentially different. They were as follows:

"The plaintiff contracted with the defendant for stabling. When the horses arrived at night and were put into their stable they were wrongfully turned out without their clothing by a third person who had also bargained for stabling for his horses, and such turning out was apparently with the sanction and assistance of the defendants. Before fresh stabling could be procured the horses had to stand there, being exposed in the night air, and some of them caught cold and depreciated in value." It was held that the plaintiff could recover for the injury to his property, besides the general damage for the breach of contract. He then points out: "The injury to chattels by exposure to wet, storm or frost, arising from a breach of contract providing for their due protection therefrom, seems to me a very clear cause of action, involving no such considerations as weighed with the Court of Queen's Bench in *Hobbs Case*."

The weakness of the learned Chief Justice's judgment is, it is submitted, in the fact that he does not discuss the difference pointed out by the judges in the Court below between actions for breach of contract and tort.

There is no question that so far at least as the judgment of Blackburn, J., in the *Hobbs Case* lays down the principle "that the question of remoteness ought never to be left to a jury, *MacMahon* v. *Field* distinctly overrules it." This proposition renders the two cases hopelessly irreconcilable.

Again the learned Chief Justice says: "As was pointed out in the *Hobbs Case*, all this injury arises from causes impossible to have been contemplated or foreseen."

This portion of the learned Chief Justice's judgment is based upon a mistaken understanding of one of the forms of the rule in *Hadley* v. *Baxendale*, viz., that such damages only can be recovered as the parties have present in mind at the time of the contract, which is founded on Lord Bacon's maxim and is not strictly applicable to the case in question.

In *Rigby* v. *Hewitt*, 5 Exch. 243, Lord Chief Baron Pollock says that every person who does a wrong is at least responsible for all the mischievous consequences that may reasonably be expected to result under ordinary circumstances from such misconduct.

In Addison on Torts, p. 5, last edition, it is said whoever does a wrongful act is answerable for all the consequences that may ensue in the ordinary course of events, though such consequences be immediately and directly brought about by intervening causes, if such intervening cause were set in motion by the original wrongdoers.

This is the principle laid down in the squib case of *Scott* v. *Shepherd*, 2 W. Bl. 892 and 898, and in Lord Raymond 38, in case of *Gibbons* v. *Pepper*, this proposition is laid down to be law: If I ride a horse and J. S. whips the horse so that he runs away and runs over any other person, he who whipped the horse is guilty, not I.

It will thus be seen that while the second proposition in *Hadley* v. *Baxendale* is sound law as applied to the facts in that case, and is applicable to all actions for breach of contract and perhaps mere nominal torts, it is wrong to apply it to a tort accompanied by violence and oppression, or where there is an invasion of a right—as in the *Grinsted Case*.

As said by a very able judge in the Court of Appeal in New York, in *Ehrgott* v. *New York*, 96 N. Y. 264, an action claiming damages for illness incurred by the plaintiff by exposure, owing to the negligence of the defendants, after commenting upon the above rule; "The true rule may be broadly stated to be that a wrongdoer is liable for all damages

which he causes by his misconduct. . . . It is submitted that the rule in relation to contracts cannot be applied to torts, as when a man commits a tort resulting in personal injury, he cannot foresee or contemplate the consequences of his tortious act. He may knock a man down, and his stroke may months after result in paralysis or death, results which no man could have foreseen."

Surely the wrongfully putting a man off a car with the thermometer registering many degrees below zero, might not unreasonably be expected to result in injury. If the plaintiff's hands or feet had been frozen while waiting for the next car, it would not be unreasonable for the jury to say that it was the natural and direct result of the defendants' servants' wrongful act, and an injury to the throat or lungs by a cold contracted, under the circumstances, is not different. See *Williams* v. *Vanderbilt*, 28 N. Y. 217, and *Drake* v. *Keely*, 93 Pa. 492.

From these authorities it is clear that in the United States the law is well settled, and it is considered, as Mr. Justice Strong, of the U.S. Supreme Court, says in *Milwaukee, etc., Railway Company* v. *Kellog*, 94 U.S. 469, at page 474: "That the true rule is that the proximate cause of an injury is ordinarily a question for the jury; it is not a question of science or legal knowledge; it is to be determined as a matter of fact in view of all the circumstances of fact attending it." Therefore the questions which perplexed the learned Chief Justice, as appears by his judgment where he says, "Whether such chill arose or had its origin in his first ten minutes wait for the car, or his subsequent twenty minutes' wait for the other car, all such conjectures leave us in perplexity"—these have been very properly held to be questions for the jury, and not for a second Appellate Court Judge—for which they may be thankful.

Mr. Justice King's judgment affirms the judgment of the Court of Appeal upon the general ground that when one, whether in the performance of a contract or not, takes charge of the person or property of another, there arises a duty of reasonable care, citing *Foulkes* v. *Metropolitan District Railway Co.*, 4 C.P.D. 267. "And if by his own act he creates cir-

cumstances of danger and subjects the person or property to risk without exercising reasonable care to guard against injury or damage, he is responsible for such injury and damage to the person or property as arises as the direct or natural and probable consequences of the wrongful act; and that according to the plaintiff's evidence he was, by the acts of the defendants' servants when put off the car, in a bodily state which predisposed him to physical injury as the result of being suddenly exposed to the very low temperature that then prevailed. . . . That the statement of the physician that the act of exposure operating upon a person in an overheated state would be sufficient to induce such an illness. . . . Then as to the connection between their act and the plaintiff's illness, it was for the jury to examine the entire circumstances in order to see if there was any intervening cause. Finding none, they were entitled to refer the illness to the only thing referred to in the evidence as a sufficing cause. There was then evidence from which they might conclude either that the act of the defendants was the direct cause, or that it was the efficient cause, the causa causaus followed by the illness as the natural and probable result, without the intervention of any independent cause."

This is satisfactory, as it harmonizes our decisions in this respect with those of the American courts, and leaves the question of remoteness in such cases to a jury. Mr. Justice Gwynne, however, finds against the plaintiff on the facts, saying "that there is nothing in the evidence which in his opinion at all warranted the submission of the case to the jury . . . or their finding upon the matter so submitted."

But the most remarkable part of his judgment is that portion in which he entirely concurs with the learned Chief Justice of the Court of Appeal to the effect "that the case is governed by the *Hobbs Case*, which is as good law now as ever it was, and is not, nor was intended to be, overruled by *McMahon* v. *Field*, and is conclusive that the damages of the nature of that for which the jury have accorded the $300 were altogether too remote to be recoverable."

It is unfortunate that none of the learned judges in the

Appellate Courts beyond the Divisional Court, discuss the clear distinction between actions for breach of contract, and tort, accompanied by violence and oppression. Most of the American decisions, as I have shown, draw a clear distinction between the principle applicable to each. Perhaps they were deterred by the statement made by Lord Esher in *The Notting Hill*, 9 P.D., at p. 113, where he says, "The rule with regard to remoteness is precisely the same whether the damages are claimed in actions of contract or tort"; also by Lord Bowen in *Cobb* v. *Great Western Ry. Co.*, (1893) 1 Q. B. 459, where he says:

"The law is the same in this respect with regard to both contracts and torts, subject to the qualification that in the case of the former the law does not consider too remote damages which may be reasonably supposed to have been in the contemplation of the parties when the contract was made. Lord Justice Cotton, in his judgment in *MacMahon* v. *Field*, in commenting on the second rule in *Hadley* v. *Baxendale*, very astutely remarks, "In my opinion the parties never contemplate a breach of contract, and the rule should be such damages as is the natural and probable result of the breach."

The only other point remaining to be noted is that made by Mr. Justice Gwynne, at p. 581, where he finds "that the illness was no more the fault of the defendants' servant than of the plaintiff's own perverse wilful and insensate conduct in electing, contrary to the advice of his own friend to leave the car in preference to parting with one of the car tickets which he had in his possession." Can the principle of avoidable consequences be invoked so as to relieve the defendants from the wrongful act of their servant? Was the defendant bound to give up the car ticket and thus minimize the damages? I think not, as it has been well decided in *Yorton* v. *Milwaukee L. S. & W. Ry. Co.*, 62 Wis. 367, that where a passenger on a railroad train has paid his fare, and for no fault of his own is obliged to leave or pay more, it is not his duty to pay the additional fare to protect the company against the consequence of their own wrong.

In view, therefore, of the decision in the *Grinsted Case*, Lord

Bacon's paraphrase of this famous maxim, in which he says, "It were infinite for the law to consider the causes of causes and their impulsions one of another; therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further cause," it can now no longer be of general application, but must be limited to cases of breach of contract and nominal tort, where there is no proof of carelessness or wrong intent.

J. MACGREGOR.

# ENGLISH CASES.

## *EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.*

(Registered in accordance with the Copyright Act.)

FIXTURES—TAPESTRY—REALTY—PERSONALTY.

*Norton* v *Dashwood*, (1896) 2 Ch. 497, was an action brought to determine the right to certain pieces of tapestry, the question being whether they had been so affixed to the realty as to pass under a devise of the house in which they were, or whether they were chattels and passed to the personal representative. The pieces of tapestry in question had been for the past hundred years in a certain room of a mansion known as the tapestry room, and had been affixed to the walls by being nailed on to battens let into the plaster, and nailed to the brick work. Chitty, J., held that they were fixtures, and passed under a devise of the mansion house.

SETTLEMENT OF SETTLOR'S OWN PROPERTY—FORFEITURE—BANKRUPTCY—BREACH OF TRUST.

*In re Brewer's Settlement, Morton* v. *Blackmore*, (1896) 2 Ch. 503, was a summary application to the Court to determine the rights of certain beneficiaries under a settlement. In 1878 the settlor had assigned certain property to trustees upon trust to pay the income to him until his death or bankruptcy, or until he should "assign, charge or incumber the said income, or do or suffer anything whereby the same or some

part thereof would, through his act or default, become payable to or vested in some other person or persons," with remainder in favor of the children of the marriage. In 1887 the settlor induced the surviving trustee in breach of trust to lend him the money, and the money thus obtained was spent by him for his own purposes. In 1891 the settlor became bankrupt. Proceedings were subsequently taken on behalf of the children of the settlor, with the result that the trust funds were replaced, and the trustee then purchased from the settlor's trustee in bankruptcy the bankrupt's interest in the fund, and the question raised was whether the settlor's interest had not been forfeited prior to the bankruptcy by the dissipation of the trust fund so as to let in the right of the children of the marriage. Chitty, J., held that the settlor's interest had not been determined prior to the bankruptcy by the dissipation of the fund; and that as the limitation until bankruptcy was void as against creditors, his life interest passed to the trustee in bankruptcy, and that the income was now payable to the purchaser from the trustee in bankruptcy, during the life of the settlor. He points out that an impounding order under the Trustee Act could not have been made effectually, as any such order would have worked a cesser of the life interest. The trustee of the settlement by his purchase from the trustee in bankruptcy had, however, as the result proved, secured himself effectually of an indemnity so far as the settlor's life interest would extend.

WILL—DEVISE OF ONEROUS AND BENEFICIAL PROPERTY TO SAME DEVISEE—TENANT FOR LIFE—MORTGAGE—INTEREST.

*Frewen* v. *Law Life Assurance Co.*, (1896) 2 Ch. 511, involves a point somewhat similar in principle to that decided in *Re Denison, Waldie* v. *Denison*, 24 O.R. 197. A testator by his will devised his English estates, some of which were incumbered and others not, to the same person, and the question was whether the devisee for life could accept the devise so far as it was beneficial and reject the rest, or whether, if he accepted of the devise at all, he was not bound out of the

income of the whole estate to keep down the interest on the charges on the whole of the estate. North, J., held that the testator, by his will, had given his English estates as an undivided whole, and that the tenant for life was, therefore, not entitled to say that he would take part of it with its benefits, free from the burdens which fall upon another part, but was bound out of the income of the whole to keep down the inetrest on all the charges existing on the estates.

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The Law Reports for October comprise: (1896) 2 Q.B., pp. 353-389; and (1896) 2 Ch., pp. 525-599.

PRACTICE—BILL OF SALE—AFFIDAVIT OF EXECUTION OF BILL OF SALE—AFFIDAVIT SWORN BEFORE SOLICITOR OF GRANTEE—ORD. XXXVIII. R. 16 (ONT. RULE 613)—"PARTY."

In *Baker* v. *Ambrose*, (1896) 2 Q.B. 372, Wright, J., has given a decision on a point of practice which will be somewhat of a surprise to many practitioners. An affidavit proving the execution of a bill of sale was sworn before the solicitor of the grantee, and the learned Judge held that the English Rule Ord. xxxviii. r. 16, which forbids the swearing of affidavits before the solicitor of a party on whose behalf the affidavit is to be used, extends to such affidavits, and that therefore the affidavit being void, the bill of sale was also invalid for want of due registration. Ont. Rule 613, which is in pari materia with the English Rule Ord. xxxviii. r. 16, is, however, worded slightly differently, and is possibly susceptible of a different interpretation. The English Rule reads as follows: "No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent," etc., etc. The Ord. Rule reads: "No affidavit shall be read or made use of for any purpose, if sworn before the solicitor of the party in the cause on whose behalf the affidavit is made, or before the clerk," etc., etc. We should have thought that both the English and Ontario Rules are confined to affidavits made in actions or matters pending or intended to be brought in the Court, and have no relation to affidavits not made or intended

primarily to be used in proceedings before the Court. It is, however, by no means clear that the same interpretation which has been placed on the English Rule might not also be placed on the Ontario Rule, to the great peril not only of a good many chattel mortgages, but also of many conveyances of land.

INSURANCE—INDEMNITY—SUBROGATION—RIGHT OF INSURER TO BENEFIT OF CONTRACT ENTERED INTO BY ASSURED—LANDLORD AND TENANT.

In *West of England Fire Insurance Co.* v. *Isaacs*, (1896) 2 Q. B. 377, the facts were somewhat complicated, and the case turns upon the right of an insurer to the benefit of any other contract made by the insured for his protection against the loss insured against. The defendant was a sub-lessee of certain premises which he insured against loss by fire with the plaintiff company. By the ground lease the lessee (who was the defendants' lessor) was bound to repair and leave in repair, and also to insure the premises in the joint names of the original lessor and lessee. By the sub-lease to the defendant he was also bound to repair and leave in repair, and it was also provided that the sub-lessor was to insure, and that the moneys to be received from such insurance were to be applied in rebuilding the premises, with a proviso that if such moneys were insufficient to restore buildings destroyed by fire, the defendant should be liable to make good any deficiency under his covenant to repair. The premises were insured by the sub-lessor for £800, with the Royal Exchange Co., and also by the defendant in his own name for £800 with the plaintiff company. A loss took place, and the loss was adjusted with the concurrence of both insurance companies, at £100. The plaintiff paid the defendant the amount of the loss; and the defendant thereafter on the expiration of his term, having been called on to make good dilapidations under his covenant to repair, it was then agreed between him and his lessor that any amount for which he was entitled to credit under the insurance effected by his lessor in respect of the above-mentioned loss by fire, should be applied on his liability, and he released his lessor from all further claims in respect thereof.

The plaintiffs now claimed that upon the payment of the £100 insurance they were entitled to be subrogated to any right the defendant then had to indemnity as against his lessor. in respect of moneys received under the insurance effected by the latter, and as the defendant had released this right, the plaintiffs were entitled to recover from him the value of it, viz., £100, and Collins, J., held that the claim was well founded, and gave judgment in favor of the plaintiffs accordingly.

CONTRIBUTORY—'FULLY PAID UP SHARES"—CERTIFICATE THAT SHARES ARE FULLY PAID UP—ESTOPPEL—COMPANY—WINDING UP.

*In re Veuve Monnier*, (1896) 2 Ch. 525, is a case which deserves attentive consideration in these days of mining excitement. One Blumenthal lent to a joint stock company £1,600 on its promissory note, on the terms that the company should transfer to him as collateral security 16,000 £1 shares fully paid up, subject to a stipulation that the shares, or a proportionate part thereof, were to be returned to the company at the same rate as Blumenthal had received them, on the loan or any part of it being repaid. The company delivered to Blumenthal certificates for 16,000 shares, which certificates stated that they were fully paid up, and that he was the registered holder of them. Nothing in fact had been paid on the shares. Some of them were afterwards sold by the company, and Blumenthal executed transfers thereof to the purchasers. His name remained on the register for the balance when a winding-up order was made against the company, and he was placed on the list of contributories. He claimed to have his name removed from the list on the ground that the certificates estopped the company from claiming that the shares in question were not fully paid up; but Williams, J., refused the application, and the Court of Appeal (Lindley, Lopes and Rigby, L.JJ.) affirmed his decision. Their lordships considered that the fact that after he had been registered as a shareholder, he executed transfers as a shareholder and took the case out of the principle of *Beck's Case*, L. R. 9 Ch. 392, and he was not in a position to contend that he had been put upon the register without authority, and that as Blumenthal knew that the shares in question were the company's shares,

and that he himself had paid nothing for them, he knew enough to show him that they could not be paid up shares as alleged in the certificates. Lopes, L.J., put the point thus: "If Mr. Blumenthal did not know, and had no reason to know, that these shares were not fully paid up, the certificates to which reference has been made, which state in the clearest and most unequivocal language that the shares were fully paid up, would estop the liquidator, and would prevent his setting up the truth; but if, on the other hand, he knew, or ought to have known, that those shares were not fully paid up, the estoppel would be unavailing."

DAMAGES—INJURY TO LAND—TRESPASS BY DEPOSITING REFUSE—MEASURE OF DAMAGES.

In *Whitwham* v. *Westminster Brymbo Coal Co.*, (1896) 2 Ch. 538, the Court of Appeal (Lindley, Lopes and Rigby, L.JJ.,) have affirmed the judgment of Chitty, J., as to the proper measure of damages for trespass to land by depositing refuse thereon. It was contended by the defendants that the proper measure of damages in such cases is simply the amount by which the land is diminished in value by the trespass; but the Court has held that the defendants are liable for the user of the land for the purpose for which they used it; and that therefore as to so much of the land as was covered by refuse deposited by the defendants, they were liable for what the right to use the land for that purpose was worth, and that as to the rest of the land the measure of damage was the amount by which it had been diminished in value by the defendants' wrongful acts.

COMPANY—WINDING UP—POSSESSION BY LIQUIDATORS FOR PURPOSE OF SELLING PROPERTY AS GOING CONCERN—MORTGAGEE—LEAVE TO DISTRAIN FOR INTEREST, REFUSED—COMPANIES ACT, 1862 (25 & 26 VICT., ch. 89), ss. 87, 163—(R.S.C. ch. 129, ss. 16, 17.)

*In re Higginshaw's Mills*, (1896) 2 Ch. 544; in this case the liquidators and receivers of a cotton mill company in liquidation, and whose mill was subject to a mortgage, without any objection on the part of the mortgagee, entered into possession and carried on the business with a view to selling the

mill property as a going concern. The mortgagee then applied for leave to distrain for interest accrued after possession had been thus taken, and the Vice-Chancellor of Lancaster granted the leave, but the Court of Appeal (Lindley and Lopes, L.JJ.,) were of opinion that the order ought not to have been made, and discharged it, thinking that the liquidators were in possession as much for the benefit of the mortgagee as the shareholders and other creditors: the case of a mortgagee seeking to distrain under such circumstances being considered much weaker than that of a landlord.

STATUTE OF LIMITATIONS—TENANT FOR LIFE WITH POWER OF APPOINTMENT—APPOINTEE UNDER POWER—REAL PROPERTY LIMITATIONS ACT, 1833 (3 & 4 W., ch. 27), SS. 1, 2 3, 20—REAL PROPERTY LIMITATIONS ACT, 1874 (37 & 38 VICT., ch. 37) SS. 1, 2, (R.S.O. ch. 111 SS. 2, 4, 5, (12), 6).

*In re Devon Settled Estates, White* v. *Devon*, (1896) 2 Ch. 562, turns upon the well understood principle that a person claiming an estate under a power of appointment takes, not from the appointor, but from the donor of the power. In this case the land in question was vested under a settlement in a tenant for life, with a remainder to another for life, with remainder to such uses as the first tenant for life should appoint by will. Both tenants for life died without having been in possession, and there had been an adverse possession for upwards of twenty years; the second tenant for life died in 1891, whereupon persons entitled under the appointment executed by the first tenant for life claimed to recover possession, and it was held by Chitty, J., that they were entitled to succeed, and that their rights were not barred.

COMPANY—MEETING OF SHAREHOLDERS—SHOW OF HANDS—MEMBER PRESENT BY PROXY—PROXIES, RIGHT OF, TO VOTE—PROXY, VALIDITY OF.

In *Ernest* v. *Loma Gold Mines*, (1896) 2 Ch. 572, the question arose whether a shareholder represented by proxy at a meeting of shareholders convened for the purpose of passing a special resolution, had a right to vote upon a show of hands, and also the further question, whether a person to whom a proxy has been sent is entitled to fill up a blank left therein for the date of the meeting at which it is to be used. The

first question was determined by Chitty, J., in the negative. As to that, the learned judge holds that on a vote by a show of hands, only those actually present can vote; if any are dissatisfied, they must call for a poll. As regards the second point it appeared that the proxies in question had been sent out by the secretary to certain shareholders, with a request to return them to him, to be used at a meeting for a certain purpose; these proxies were signed by the shareholders and returned to the secretary, but the date of the meeting had been left blank, and the secretary had subsequently filled it in, and Chitty, J., held that he had implied authority from the shareholders who sent them so to do.

TRUST—INVESTMENT—"COMPANY INCORPORATED BY ACT OF PARLIAMENT."

In *Re Smith, Davidson* v. *Myrtle*, (1896) 2 Ch. 590, Kekewich, J., has held that where a trust authorizes an investment in the shares of any "company incorporated by Act of Parliament," it does not authorize the investment to be made in the shares of a company incorporated by registration under the provisions of the Companies Act, 1862. He draws what seems a rather fine distinction between the present case and that of *Elve* v. *Boyton*, (1891) 1 Ch. 501 (noted ante, vol. 27, p. 264), where it was held by the Court of Appeal that a company incorporated by Royal Charter, issued under the provisions of an Act of Parliament, was a company incorporated by Act of Parliament. One would have thought that inasmuch as incorporation by registration derives all its efficacy from an Act of Parliament it is just as much incorporation by Act of Parliament as is the case of a company incorporated by charter issued under the provisions of an Act, and the reasoning by which the learned judge arrives at the opposite conclusion does not seem by any means conclusive.

# CORRESPONDENCE.

## *MECHANICS' LIEN ACT.*

*To the Editor of the Canada Law Journal.*

As the Legislature have by the Mechanics' Lien Act of 1896, recognized the entire uselessness of the "writ of summons" so far as liens on land are concerned, it would seem to be an opportune time for the Rules Committee to give the writ its quietus and allow all actions to be begun by filing and serving a statement of claim. The next step in the cause should be the delivery of defence, thus dispensing with a formal "appearance." In addition to the saving of expense there would be the further gain to the mercantile public of having some more definite information of the cause of action than the present vague indorsement in damage or injunction suits. Business men often complain that writs for damages unstated or placed at a ridiculously high figure are kept hanging over them for long periods after the same have been notified to their patrons and creditors through the mercantile test sheets, and they are powerless to force the plaintiff to expedite his cause. For this there should be a remedy.

W.

# REPORTS AND NOTES OF CASES

## Dominion of Canada.

### EXCHEQUER COURT OF CANADA.

THE ACTIESELSKABET (OWNERS OF THE "PRINCE ARTHUR") *v.* JEWELL ET AL., OWNERS OF THE "FLORENCE."

*Maritime law—Tow and tug—Negligence of pilot—Liability.*

The pilot of a tow and the pilot of the towing vessel were both at fault in not changing the course steered after passing a certain point. The pilot of the tow discovered the mistake and gave notice to the tug by executing the proper manœuvre in that behalf, but not until it was too late to avoid an accident that befell the tow.

*Held*, that the owners of the tow could not recover from the owners of the tug in such a case.

[OTTAWA, Oct. 27—BURBIDGE, J.

This was an appeal from a judgment of the Local Judge for the Admiralty District of Quebec. (Reported in 5 Ex. C.R. 151).

The facts are stated in the judgment.

*A. H. Cook*, for appellants.

*C. A. Pentland*, Q.C., for respondents.

BURBIDGE, J.: This is an appeal by the plaintiffs from the judgment of the Judge in Admiralty of the Quebec Admiralty District, dismissing an action brought by them against the defendants to recover damages for the loss of the barque "Prince Arthur," which, on the 27th June, 1893, while being towed by the defendants' tug, "The Florence," was run on shore on Red Island Reef in the St. Lawrence River and became a total loss.

The accident happened because the course of the tow and the tug was not altered as it should have been after passing Red Island Light Ship. The pilot of the tug was at fault from that time until the accident was inevitable. There is no question about that. The pilot of the tow was also at fault for a time after passing the light ship. That, too, is, I think, beyond question. But he discovered the mistake that had been made before the accident actually happened, and hailed the tug, directing it to change its course. Failing to make himself heard or understood he had the helm of the barque put hard-a-starboard, the effect of which was to bring the vessel upon her proper course, and at the same time to indicate to the pilot of the tug that he too should change his course. That was, it is clear, the proper thing to do under the circumstances, and the only question is, was it done in time to avoid the accident? The learned Judge of the Quebec Admiralty District has found that it was not. Referring to the pilot of the barque, he says:

"I am of opinion that the evidence shows that the pilot was negligent and grossly in fault throughout. His statement that twenty minutes before the accident, or even fifteen, he commenced to starboard his helm with a view of keeping the tog on the starboard bow of the ship, and continuing in that

condition up to a period shortly before the accident, when he put the helm hard-a-starboard, is entirely incredible. It is impossible that any such movement on the part of the ship would not have been at once felt by the man at the wheel of the steamer, and it is incredible to suppose that after feeling the effect which such a motion on the part of the tow would have had on the tug, that he should have continued his course without putting his own helm to starboard, and the only result that I can deduce from the fact is that the pilot did not perceive his danger until he gave the order to the man at the wheel to hard-a-starboard, when it was evidently too late to save the vessel from going on the reef."

I have examined the evidence carefully. It is no doubt conflicting and contradictory, but as a whole it justifies, it seems to me, the finding on the question of fact to which I have referred.

The tug was also in fault in not having a proper look-out. But that was not the cause of the disaster, and it could not have contributed to it if the directions which the tow gave to change the course were given too late to avoid it. That incident would have been a material fact in the case if the pilot of the tow had discovered the mistake in time to avoid the consequences of such mistake, and for want of the look-out the tug had not observed and followed the directions given to it as quickly as it otherwise would have done. But if the fact is, as it has been found to be, that the mistake was not discovered and the directions to change the course were not given until it was too late to avoid the accident, the absence of a proper look-out was not in any sense the cause of the accident, and did not contribute thereto.

The case is an extremely hard one for the plaintiffs, and I should be glad, in dismissing the appeal, to dismiss it without costs, if it were proper for me to do so. I think, however, that there are no sufficient reasons for me to depart from the ordinary and usual rule as to costs.

The appeal is dismissed, and with costs.

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BURBIDGE, J.] [Sept. 14.

AMERICAN DUNLOP TIRE CO. *v.* ANDERSON TIRE CO.

*Patent of invention—Bicycle pneumatic tires—Infringement.*

The plaintiffs were the owners of letters patent No. 38,284 for improvements in bicycle tires. The inventors' object was to produce a pneumatic tire combining the advantages of both the "Dunlop" tire and the "Clincher" tire, and that was done by finding a new method of attaching the tire to the rim of the wheel. They used for this purpose an outer covering, the two edges of which were made inextensible by inserting in them endless wires or cords, the diameter of the circle formed by each wire being something less than the diameter of the outer edge of the crescent or "U" shaped rim that was used and into which the tire was placed. Then when the inner or air tube was inflated the edges of the outer covering were pressed upwards and outwards, as far as the endless wires would permit, and were there held in position by the pressure exerted by the air tube. In the second and third claims made by the plaintiffs and in their description of the invention they describe a rim "pro-

vided with an annular recess near each edge into which enters the wired edge of the outer tube or covering." In their first or more general statement of the claim is described "a rim, the sides of which are so formed as to grip the wired edges of the outer tube."

*Held*, that a rim with annular recesses did not constitute an essential feature of the invention, the substance of which consisted in the use of an outer covering having inextensible edges which are forced by the air tube when inflated into contact or union with a grooved rim, the diameter of the outer edges of which are greater than the diameters of the circles made by such inextensible edges.

2. The defendants manufactured a pneumatic tire with an outer covering through the edges of which was passed an endless wire forming two circles instead of one. The wire was placed in pockets, in the outer covering, which ran nearly parallel to each other, except at one point where the two circles crossed each other. The wire being endless the two circles performed in respect of the inextensibility of the edges of the outer covering the same part and office that the wire with a single coil or circle in the plaintiffs' tire performed. There was, however, this difference, that the two circles into which the wire would form itself in the defendants' tire when the inner tube was inflated, would not be concentric, but as one circle became larger the other would become smaller.

*Held*, that while the defendants' tire might have been an improvement on that of the plaintiffs', it involved the substance of the plaintiffs' patent and constituted an infringement upon it.

*Ross* and *Rowan*, for plaintiffs.

*Z. A. Lash*, Q.C., *W. Cassels*, Q.C., and *A. W. Anglin*, for defendants.

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# Province of Ontario.

## HIGH COURT OF JUSTICE.

MEREDITH, C.J., ROSE and MACMAHON, JJ. [Sept. 15.

IRVINE *v.* MACAULAY ET AL.

MCLELLAN *v.* MACAULAY ET AL.

*Limitation of actions—Payment of instalment of purchase money—Possession—Time statute commences to run.*

The defendant's predecessor in title having had certain negotiations for the purchase of land, in 1840 went into possession; and subsequently by a new agreement, dated March 6th, 1852, agreed to purchase the land and pay for it in six annual instalments with interest, on first day of November in each year, the first instalment to be paid November 1st, 1853. He remained in possession and paid that instalment on November 1st, 1853, but nothing more thereafter.

*Held*, that the Statute of Limitations did not begin to run until one year from the date of the payment made, viz., on November 1st, 1854, when the next payment became due, and default was made, and that an action to recover possession begun on October 19th, 1874, was commenced in time, and that the plaintiff was entitled to recover.

Judgment of ROBERTSON, J., reversed.

*Clute* Q.C., for the plaintiff.

*Shepley*, Q.C., and *H. W. Delaney*, for the defendants.

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ROBERTSON, J., Weekly Court. [Sept. 26.

IN RE ERMATINGER.

*Trustee—Compensation—Railway company—Trustee of bonus debentures—R.S.O. ch. 110.*

Petition of C. O. Ermatinger for compensation for services as trustee in respect to the debentures mentioned in the various municipal by-laws set out and confirmed in 58 Vict., ch. 113, O., whereby the said debentures, which had been voted by the respective municipalities as a bonus to a certain railway company, were to be held by the petitioner until completion of the railway as in the said by-laws respectively mentioned, and then delivered to the railway company, which, however, had assigned them to the Imperial Bank of Canada.

*Held*, that the petitioner was a trustee within the meaning of R.S.O. ch. 110, and was entitled to compensation thereunder for his services in connection with the holding of the said debentures.

*Moss*, Q.C., and *Saunders*, for the petitioner.

*Bicknell*, for the Imperial Bank of Canada.

*C. W. Kerr*, for the railway company.

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BOYD, C., Non-jury Sittings. [Oct. 8.

BANK OF TORONTO *v.* HAMILTON.

*Mistake—Banks and banking—Recovery back of money—Error in telegraphing credit.*

The defendant sold cattle to Halliday for $2,827, the condition being that if the purchase money was not paid the defendant was to resume possession of the cattle. Halliday came to Elliott with a shipping bill of the cattle and asked an advance upon that security. Elliott agreed to advance $2,000 and issued a cheque for that amount payable to the Bank of Toronto at Montreal, on account of the defendant. Elliott handing the cheque to the plaintiffs at Montreal, requested them to telegraph the $2,000 to the defendant's credit in Toronto, but by a mistake in transmitting the message, the amount was received in Toronto as $3,000. The defendant came to the bank in Toronto, and being told that $3,000 was at his credit, drew it out and allowed the cattle to be shipped away from Montreal. The bank had no notice of the transaction out of which the credit arose.

After the cattle had been shipped, the plaintiffs, having discovered their

mistake, demanded from the defendant repayment of the $1,000, which he refused to make except as to the difference between the $2,827 and the $3,000.

*Held*, that the defendant's right to retain the money as against the bank and Elliott was no stronger than Halliday's would have been, and that the defendant had no right to retain the overplus of the money paid by reason of the mistake of the plaintiffs.

*Wallace Nesbitt*, and *T. P. Galt*, for the plaintiffs.

*Moss*, Q.C., and *Garrow*, for the defendant.

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MEREDITH, C.J., ROSE, J., MACMAHON, J. Oct. 22.

AIKINS *v.* DOMINION LIVE STOCK ASSOCIATION OF CANADA.

*Club—Committeemen—Liability—Amendment—Parties—Co-contractors—Application to add—Affidavit—Costs.*

Where credit is given to an abstract entity such as a club, the creditor may look to those who in fact assumed to act for it, and those who authorized or sanctioned that being done, at all events where he did not know of the want of authority of the agent to bind the club. ROSE, J., dissenting.

Review of English cases on this subject.

The liability in such cases is not several, but joint.

By analogy to the old practice where a plea in abatement for non-joinder of co-contractors was pleaded, a defendant now moving to stay proceedings until the co-contractors are added as parties, should show by affidavit the names and residences of the persons alleged to be joint contractors whom he seeks to have added, and the same liability as to costs, in case persons are added who turn out not to be liable, should be entailed upon him.

In an action begun against an incorporated company, as a partnership, to recover a sum for costs paid by the plaintiffs, an order in Chambers allowing the plaintiffs to amend by adding as defendants certain members of the executive committee of the company, and to charge them in the alternative as personally liable by reason of their having sanctioned the arrangement between the plaintiffs and the association, was affirmed without prejudice to the defendants applying to add parties.

*W. R. Smyth*, for the plaintiffs.

*Allan McNab* and *L. G. McCarthy*, for the defendants.

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BOYD, C., Weekly Court. [Oct. 22.

ELLIS *v.* TOWN OF TORONTO JUNCTION.

*Police magistrate—Appointment without salary—Salary given and subsequently rescinded.*

The plaintiff was appointed police magistrate of Toronto Junction by commission of the Lieutenant-Governor, expressed to be without salary, in 1892, the Town Council having previously in 1890 requested that a police magistrate should be appointed. In 1890 the population was under 5,000, but in 1892, when the appointment was made, it was over 5,000; and on the plaintiff demand-

ing $800 per annum as salary, asserting that it was his due under R.S.O. c. 72, the Town Council at first paid him this salary. In 1894, having first in vain tried to get the plaintiff to resign, the Town Council resolved to pay him only $400 a year, which the plaintiff agreed to accept. In 1895 the Town Council resolved to discontinue the plaintiff's salary altogether.

*Held*, that the plaintiff not having been appointed as a salaried official, had no right to a salary as one of the incidents of his office, and R.S.O. c. 72, s. 28, did not apply; and the Town Council were entitled to act as they had done.

*Raney*, for the plaintiff.

*Going*, for the defendants.

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MACLENNAN, J.A.] [Oct. 24.

BOURNE *v.* O'DONOHOE.

*Appeal—Court of Appeal—Order of Divisional Court affirming Chambers orders—Leave to appeal—Special circumstances—Terms.*

An appeal lies to the Court of Appeal from an order of a Divisional Court dismissing an appeal from an order of a Judge in Chambers, dismissing an appeal from an order of the Master in Chambers, dismissing a motion to set aside judgment by default of defence in an action for the recovery of land; but only upon leave to appeal being obtained.

Construction of secs. 72 and 73 (as amended) of the Judicature Act, 1895.

And leave to appeal was granted, where the omission to file the defence was a mere slip of the solicitor; the application for relief was made promptly; and it appeared that in a previous action the Court had stayed proceedings under the power of sale contained in the mortgage upon which this action was brought, and had required an action of ejectment to be brought.

Terms of payment of costs and security for costs imposed.

*Masten*, for the plaintiffs.

*Meek*, for the defendant.

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BOYD, C.] [Oct. 24.

CRERAR *v.* HOLBERT.

*Parties—Causes of action—Joinder.*

The statement of claim alleged that two of the defendants, by fraudulent representations, induced the plaintiffs to enter into an agreement for the purchase of a horse; that one of these defendants, in the name of his partner, a third defendant, having agreed to become a co-partner with the plaintiffs in the purchase, made a fraudulent profit by way of commission out of the transaction; that these three defendants transferred promissory notes made by the plaintiffs with the intention of carrying out the transaction, to the fourth and fifth defendants, who had notice of the fraud; and claimed to have the agreement declared fraudulent and void and ordered to be cancelled; to have the notes declared void and ordered to be cancelled; or to have the first three defendants ordered to indemnify the plaintiffs against the notes; damages for the false representations; or that the defendants alleged to have received a commission should be ordered to account to the plaintiffs therefor.

After the parties had been for more than six months at issue, the defendants applied to strike out the statement of claim as embarrassing.

*Held*, that the transaction complained of was one that should be investigated in all its parts on the one record, and that no peculiar difficulty would arise in dealing with it as a whole, and then following such details as might be pertinent.

*J. H. Moss*, for the plaintiffs and the defendants, McDonald and Grenier.

*R. McKay*, for the defendants, Holbert, Eby and Vance.

*W. H. Blake*, for the defendants, J. and R. Forbes.

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MASTER IN CHAMBERS.] [OCT. 29.

PICKEREL RIVER IMPROVEMENT CO. *v.* MOORE.

*Discovery—Production of documents—Penalty—Double tolls—R.S.O., ch. 160, sec. 42.*

The double tolls imposed by sec. 42 of the Timber Slide Companies Act, R.S.O., ch. 160, for false statements, are imposed by way of punishment, and not as compensation ; and therefore an action to recover such double tolls is an action for a penalty, in which discovery of documents will not be enforced

*Biggs*, Q.C., for the plaintiffs.

*J. Bicknell*, for the defendants.

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## FIFTH DIVISION COURT, COUNTY OF VICTORIA.

BIRMINGHAM *v.* MALONE; NEALON, Garnishee.

*Division Courts—Attachment of debts—Rent.*

Rent accruing, but not yet payable, can be attached in the Division Courts.

[LINDSAY—DEAN, Co. J.

The garnishee was tenant to the primary debtor. A gale of rent was due on 15th March last. The garnishee summons was served on 14th March. The question to be decided was as to whether there was any debt due or owing, and therefore garnishable, from the garnishee to the primary debtor at the time of such service.

*G. H. Hopkins*, for primary creditor.

*A. J. Reid*, for primary debtor and garnishee.

DEAN, Co. J.—It is well settled that rent so accrued is garnishable in the other courts (see *Massie* v. *Toronto Printing Company*, 12 P. R. 12 ; *Patterson* v. *King*, 31 C. L. J. N. S. 700, and 27 O.R. 56), but there is a notable difference in the wording of the Division Court and the Judicature Acts. By the former (sec. 173) a debt "due or owing" to the debtor may be attached, by the latter (see Rule 935) a debt "owing or accruing" may be attached.

The words of the Apportionment Act are (R.S.O., c. 143, sec. 2) : "All rents . . . shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly." By sec. 3 "the apportioned part of such rent . . . shall be payable or

recoverable in the case of a continuing rent when the entire portion, of which such apportioned part forms part, becomes due and payable, and not before."

The rent is a daily accruing debt, and the Judicature Act makes a debt accruing attachable. The question here is, Is this accruing debt a debt "owing" within the meaning of the Division Court Act?

I find only two Division Court judgments dealing with the attachment of apportioned rent. The first is *Patterson* v. *Richmond*, 17 C. L. J. N. S. 324, in which rent so accrued was held to be attachable, but though the judgment seems to be fully reported, this point is not considered. It was probably not raised. The other case is *Christie* v. *Casey*, 31 C. L. J. N. S. 35, in which it is held that such rent cannot be attached.

Whilst I have very great respect for the opinion of the learned and careful Judge who decided the latter case, I feel compelled to dissent from the conclusions reached by him. As the point is one of great importance I quote the judgment. Unfortunately it is not reported as fully as its importance deserves.

"Rent accruing, but not yet payable, cannot be attached in the Division Courts. In *Massie* v. *Toronto Printing Co.*, 12 P.R. 12, it was held that rent which had accrued by virtue of R.S.O. ch. 136 (1877), (now ch. 143 of R.S.O. 1887), up to the date of the attaching order, could be atatched under Rule 370 (now 935), by which debts 'owing or accruing,' are made attachable; but I think that decision conflicts with *Webb* v. *Stenton*, L.R. 11 Q.B.D., 518. In the Division Courts, debts, to be attachable, must be 'due or owing,' and there must be a 'debt,' 'debitum in presenti,' though it may be 'solvendum in futuro." Accruing rent is not such a debt (per Crompton, J. in *Jones* v. *Thompson*, E. B. & E. 63, as cited in *Webb* v. *Stenton*, at p. 523). The Act, R.S.O. ch. 143, sec. 2, does not make it such a debt, nor does it make it "a debt" "due or owing," but "accruing" de die in diem. See *In re United Club and Hotel Company*, W.N. 1889, p. 67."

*Massie* v. *Toronto Printing Co.* was decided in 1887; *Webb* v. *Stenton*, in 1883. Even if we were at liberty to follow the earlier decision, it will be found on examination that *Webb* v. *Stenton* is itself not in point. It is valuable here only for the quotation it contains from Crompton, J., in *Jones* v. *Thompson*, referred to above, p. 523, which is as follows: "I, myself, at Chambers have always acted on the supposition that the garnishing clauses apply only to cases in which there is an existing debt, though it may be only accruing; on that principle I have refused to make orders attaching rent before it becomes due, and instalments of an annuity not yet due, because they were not yet debts."

This was a mere obiter dictum, *Jones* v. *Thompson* not being a case about rent, though at the time the dictum was good law; but this case was decided in 1858, and the Apportionment of rent Act, of which ours is a transcript, was not passed in England until 1870, so that it throws no light upon the effect of the apportionment of rent.

*In re United Club and Hotel Company*, was a matter under the English Winding-up Company's Act, 1862 (25 & 26 Vict., ch. 89, sec. 821), and was a petition for the winding up of the company presented by the landlord of the premises in which the company's business was carried on, as a creditor in re-

spect of rent payable for the current quarter on the 25th of March, 1889; the petition was presented and argued on the 23rd of March. Under the Apportionment Act, rent apportioned is payable when the entire portion of which such apportioned part forms part becomes due and payable, and not before; so that although the rent was accrued it was not due; and by the English Company's Winding-up Act a petition can be presented only by a creditor to whom the company is indebted in a sum then due (see secs. 79, 80, 82). All that was held in that case was that the accrued rent was not a debt then due.

This does not touch the point as to whether it may be "owing" though not "due." We are therefore left without authority to interpret the statute.

If a man has money borrowed at interest, with the right to repay it at any time, though the lender had the right to call it in only at some future fixed date, the debtor would be "owing" the accrued interest from day to day, and if he went to pay his debt in advance of the time fixed he would pay the accrued interest because he was "owing" it. If from any cause any rent, annuity or dividend ceases in the middle of a term, the accrued amount is "owing," though not due and payable till the end of the term. Nothing could afterwards happen to make it any more "owing," for all consideration has ceased, only judgment is postponed.

The words in the Apportionment Act "accruing from day to day" mean that the rent shall become from day to day the property of the person who at the time has the right to it, and if it is his property it is owing to him, notwithstanding the modes prescribed by the Act for its recovery.

I think the difference in the wording of the Acts has come from inadvertence, and not from any intention of the Legislature to give a different effect in the different Courts to the same state of facts.

Judgment against garnishee.

## Province of Prince Edward Island.

### SUPREME COURT.

Full Court.] [Nov. 3.

ROBINS *v.* MOTHERSILL.

*Absent debtor attachment—Abuse of process of the Court.*

The defendant left the Province of Prince Edward Island, as he alleged, temporarily, and the plaintiff, after the defendant left, issued an absent debtor attachment against his property in pursuance of the Absent Debtor Act, 1873 (Stats. of P.E.I.) That statute enables an attachment to be issued when the defendant is either absent or absconding.

When the defendant returned he applied upon affidavits to have the attachment set aside on the ground that he was not an absent debtor within the meaning of the Act.

The plaintiff resisted the application, claiming that in fact the defendant was absent at the time the attachment issued, and that he had reasonable grounds for issuing it.

The Court refused to set aside the attachment, and discharged the appli-

cation with costs, holding that the plaintiff when issuing the attachment had reasonable grounds for doing so, and that to enable the defendant to set aside an absent debtor process when the defendant was in fact absent from the province, he must show a clear case of abuse of the process of the Court.

*Stewart*, Q.C., for plaintiff.

*McLean*, Q.C., and *Morson*, Q.C., for defendant.

## Province of Manitoba.

### QUEEN'S BENCH.

KILLAM, J.] [Oct. 19.

IN RE MACDONALD ELECTION.

*Dominion Election—Preliminary objections—Affidavit of petitioner—54 & 55 Vict., ch. 20, sec. 3—Examination of petitioner.*

In this case, after preliminary objections had been presented and overruled, the petition being at issue, the petitioner was examined on his statement in the affidavit filed in accordance with the Act 54 & 55 Vict., ch. 20, sec. 3, "That he has good reason to believe, and verily does believe, that the several allegations contained in the said petition are true."

The petitioner's answers upon such examinations showing that this information was chiefly hearsay and that he had no certain knowledge as to the matters alleged in the petition, the respondent moved to stay all proceedings on the petition and to strike the same off the files of the Court on the ground that the affidavit filed was false, and was not such an affidavit as was required by the Act, and was no affidavit within the meaning of the Act, and that the presentation of the petition was therefore an abuse of the powers and process of the Court.

*Held*, that such objection could only be taken as a preliminary objection under sec. 12 of The Dominion Controverted Elections Act, and was therefore too late.

*Quaere*, whether the objection could be relied on, even if taken as a preliminary objection.

Application dismissed: costs to be costs in the cause to the petitioner in any event.

*Howell*, Q.C., for petitioner.

*C. H. Campbell*, Q.C., for respondent.

TAYLOR, C.J.] [Oct. 29.

BERGMAN *v.* SMITH.

*Jury—Counter claim—Action for breach of warranty—Queen's Bench Act, 1895, section 49.*

This was an application by defendant for an order to have the issues tried by a jury on the ground that his counter claim was for damages for breach of warranty.

He claimed that the case was within section 49 of the Queen's Bench Act, 1895, and if not strictly within that section, that the intention of the legislature

manifestly was that a suit in which a breach of warranty was in question should be tried by a jury.

*Held*, that a counter claim is not an action within the meaning of the Queen's Bench Act, 1895, not being a civil proceeding commenced by statement of claim, so that the defendant was not entitled to a jury by virtue of sec. 49, sub-sec. 1, and that no special ground was shown for an order under sub-sec. 3 for trial by jury. *Case* v. *Laird*, 8 M. R. 461; *Woollacott* v. *Winnipeg Electric St. Ry. Co.*, 10 M. R. 482, followed.

Application refused without costs.

*Wade*, for plaintiff.

*Howell*, Q.C., for defendant.

## Province of British Columbia.

### SUPREME COURT.

DRAKE, J., In Chambers. } Oct. 24.

CARSE *v.* TALLIARD.

*Practice—Order 12, Rule 19—Order 2, Rule 3—Summons to set aside writ and service.*

This was a summons to set aside the writ and service on defendant on the ground that plaintiff's address given on the indorsement was "Victoria, B.C.," without the name of the street and number of the house of his residence.

A preliminary objection was taken that under Order 12, Rule 19, the application should be made by motion and not by summons.

*Held*, following *Black* v. *Dawson*, 72 L.T. Rep. 525, that the proper and convenient practice is for the defendant in the first place to apply to the Judge at Chambers to set aside the order and service of the writ, from which order an appeal could be had.

*Held*, that the writ was not irregular as the indorsement followed Appendix A, part 1, No. 2, which (unlike No. 1) does not require after the name and address for service of the plaintiff's solicitor the name of the street and number of the house of the plaintiff's residence.

No order—costs to be costs in the cause.

*Gordon Hunter*, for plaintiff.

*S. Perry Mills*, for defendant.

## North-West Territories.

### SUPREME COURT.

NORTHERN ALBERTA JUDICIAL DISTRICT.

SCOTT, J.] [Nov. 3.

REGINA *v.* MACDONALD.

*Criminal law—Larceny—Jury—N. W. T. Act.*

The accused was charged under section 326 (6) of the Criminal Code, with stealing a post-letter from a post office, created an offence by 38 Vict., ch. 7, sec. 72 (3).

*Held*, that the accused was entitled to ask for a jury under sec. 67, N.W.T. Act, as the offence is not one comprised in the list of cases mentioned in sec. 66, N.W.T. Act, not being larceny either at common law or under the Larceny Act, nor declared to be larceny under the Act originally creating the offence.

*Regina* v. *Allen*, decided by Rouleau, J., on Nov. 16, 1895, dissented from.

*J. R. Costigan*, Q.C., and *P. J. Nolan*, for the accused.

*A. L. Sifton*, Crown Prosecutor, for the Crown.

## BOOK REVIEWS.

*A Preliminary Treatise on Evidence at the Common Law; Part I, Development of Trial by Jury*, by JAMES BRADLEY THAYER, Weld Professor of Law, Harvard University. Boston, Little, Brown & Co., 1896.

This book is a very interesting beginning of what will doubtless be a very valuable addition to legal literature. The writer is singularly lucid in his style and his treatment of the subject is of a masterly character. The author says that his first intention was to write a treatise on the law of evidence for practical use, but he "soon found that it was impossible to write anything which would satisfy his own conceptions of what was needed without a careful examination of the older laws of trial, and a critical study of the various related topics crudely developed and half understood."

His first chapter takes up the older modes of trial; chapters 2, 3, and 4 treat of trial by jury and its development under the Frankish and Norman inquisitio, its transference to England, and its history, application and extension down to the present time.

If the rest of the work is at all comparable to Part I, we should not be surprised to see this book of Mr. Thayer's brought into our curriculum. As an interesting and instructive introduction to this branch of the law, we know nothing better.

## FLOTSAM AND JETSAM

RULE IN SHELLEY'S CASE.—The Rule in Shelley's Case stands indicted before the Pennsylvania Bar Association. In a paper read at their recent convention the reasons for the abolition of this time-honored Rule are thus summarized: "In wills the cardinal rule of construction is that the intent of the testator is to be gathered from the four corners of the will, taken as a whole. All technical rules of construction yield to the expressed intention of the testator, if such intent be lawful. The Rule in Shelley's Case is the one exception that strikes down the plain intent of the testator. This is so because it is a rule of law and not of construction; and if the language of the will brings it within the rule, no contrary intent of the testator, however plain and emphatic, will defeat the operation of the rule. The rule leads to hair splitting decisions and distinctions over the words 'issue' and 'children' in many wills. The rule is absurd and vicious."

## LAW SOCIETY OF UPPER CANADA.

HALF-YEARLY MEETING

TUESDAY, 30th June, 1896.

Present: The Treasurer and Messrs. Bayly, Osler, Moss, Idington, Martin, O'Gara, Shepley, Clarke, Britton, Kerry, Edwards, Strathy, Guthrie, Bruce, Maclennan, Watson, Aylesworth, Hardy, Ritchie, Teetzel, McCarthy, Douglas and Robinson.

Ordered that the following gentlemen be entered as students of the Graduate Class: W. E. Burns, Charles William Bell, A. R. Clute, J. D. Falconbridge, C. Garrow, J. G. Merrick, F. J. S. Martin, R. F. McWilliams, F. B. Proctor, W. E. N. Sinclair, J. G. S. Stanbury, W. R. Wadsworth.

Ordered that the following gentlemen be called to the Bar: A. T. Boles, J. F. Kilgour, P. E. Mackenzie, J. D. Shaw, J. P. Smith, C. A. Stuart, J. D. Philips, F. J. McDougall, J. L. Island, H. H. Bicknell, and that the following do receive their certificates of fitness as above, with the addition of Messrs. S. T. Medd and E. J. Deacon.

Ordered that the following gentlemen be allowed their first year examinations: Messrs. G. G. Moncrieff, J. H. Hunter, T. H. Hillier, J. G. Fraser, J. R. Graham, S. S. Sharpe, L. F. Stephens, C. W. Cross, A. R. Hamilton, A. M. Chisholm, C. F. Maxwell, H. G. Kingstone, J. Montgomery, A. R. Hassard, H. A. Clark, S. H. Robinson, O. E. Culbert, E. G. Osler, R. L. McKinnon, Geo. McCrea, J. A. McInnes, J. A. Thompson, C. E. Hollinrake, F. M. L. Gordon, F. E. Perrin, A. J. Kappelle, N. Williams, A. B. Drake, W. A. Chisholm, J. C. McIntosh, C. F. W. Atkinson, T. R. Carling, J. C. Hamilton, A. A. Bond, J. L. Paterson, T. A. Hunt, W. D. Henry, R. R. Griffin, T. J. Rigney, E. Gillis, A. C. W. Hardy, M. J. Kenny, N. Hayes, D. S. Bowlby, D. R. Dobie, D. Mills, R. G. R. Mackenzie, H. J. F. Sissons, A. Hall, W. L. McLaws, W. Thorburn, J. D. McMurrich, J. C. L. White, D. P. Kennedy, G. H. Levy, T. J. Murray, C. A. Macdougall, J. B. T. Caron, F. J. Pearson.

Ordered also that the following be allowed their first year examination with honors: J. H. Hunter, with a scholarship of $100; S. S. Sharpe, with a scholarship of $60, and J. Montgomery, T. H. Hiliar, L. F. Stephens, J. R. Graham, and C. W. Cross, each with a sholarship of $40.

Ordered that the following gentlemen be allowed their second year examination: A. M. Stewart, C. A. Moss, A. D. Meldrum, C. S. McInnes, W. H. Burns, A. A. Carpenter, Miller Lash, R. G. Affleck, A. B. Thompson, W. J. O'Neail, S. B. Woods, H. A. Little, J. H. Clarry, D. A. J. McDougall, W. H. Barnum, G. I. Gogo, G. E. Dunbar, A. H. Beaton, W. M. Boultbee, W. B. Craig, A. E. Christian, H. G. W. Wilson, F. R. Morris, W. H. Moore, Geo. C. Heward, M. S. McCarthy, E. A. Dunbar, V. J. Hughes, F. B. Goodwillie, H. B. Robertson, G. H. Draper, E. C. Cattanach, W. B. Laidlaw, W. A. Gilmour, L. Kehoe, B. W. Thompson, J. R. Brown, J. E. Kenigan, J. F. Gross, J. U. Vincent, E. H. Bickford, L. M. Lyon, H. H. Shaver, J. M. Hall, W. R. Wadsworth, J. A. Seellen, M. B. Jackson, F. B. Osler, U. McFadden, F. J. Maclennan, H. C. Becher, W. A. Hollinrake, J. W. Bain, C. Kappele, W. M. H. Nelles, W. J. Lander, T. R. Atkinson, C. A. S. Boddy, A. A. Miller, J. R. L. O'Connor, E. F. Appelbe, E. H. Cleaver, J. A. Philion, E. W. Jones, E. C. Clark, R. W. Eyre, S. M. Brown.

Ordered also that the following be allowed their second year examination with honors: A. M. Stewart, with a scholarship of $100; C. A. Moss, with a scholarship of $60; and W. H. Burns, C. S. McInnes, A. D. Meldrum, A. B. Thompson and W. M. Lash, each with a scholarship of $40, also R. G. Affleck, A. A. Carpenter, and S. B. Woods.

The report of the Legal Education Committee also showed that Messrs.

J. E. Ferguson, with sufficient marks to entitle him to honors, B. A. C. Craig and I. E. Weldon, also passed, but their cases are reserved until sufficient excuses for absence from lectures are furnished.

The report also dealt with the cases of certain gentlemen who were unsuccessful at the 3rd year examination, and suggested that it might prove more satisfactory in many respects, and tend to prevent such applications in future if a sub-committee were present at a meeting of the examiners when they are preparing their reports on the final results of the examinations, and suggested the adoption of that course.

The report also recommended that the supplemental examinations be held in the week commencing with the third Monday in September, instead of in the week commencing with the first Monday in September as at present.

The report in these respects was adopted.

The report of the Legal Education Committee recommended the following changes in the curriculum.

FIRST YEAR.

Take off Smith on Contracts.

Add Holland's Elements of Jurisprudence.

Substitute for Kerr's Student's Blackstone, Kingsford's Ontario Blackstone, Vol. I. (omitting pp. 123 to 166, 180 to 224, and 391 to 445.)

SECOND YEAR.

Take off Kerr's Student's Blackstone.

Add Kelleher on Specific Performance.

Substitute Todd's Parliamentary Government in British Colonies (certain specified parts) for O'Sullivan's Government in Canada.

THIRD YEAR.

Take off Kelleher on Specific Performance, and Smith's Mercantile Law.

The report was adopted.

Mr. Osler presented the report of the Special Building Committee as follows :

That the majority of this committee do not consider it desirable to make any expenditure on the eastern wing at present.

Mr. Watson moved the adoption of the report.

Mr. Osler moved that the report be not adopted, but that it be referred back to the committee to deal with the matter and to have a contract drawn on the basis of the architect's plan, as the same may be revised or altered by the Building Committee, an expenditure of $5,000 not to be exceeded, which was carried.

The following gentlemen were called to the Bar :—Messrs. F. J. McDougal, C. A. Stuart, A. T. Boles, P. E. Mackenzie, J. P. Smith, J. L. Island, J. D. Shaw.

Convocation proceeded to take action upon the report of the Discipline Committee upon the complaint of Mrs. McDonald against Messrs. J. A. Robinson and C. C. Grant.

Mr. Robinson and his counsel, Mr. Marsh, Q.C., Mr. Grant and his counsel, Mr. Johnston, Q.C., and Mr. Armour, Q.C., counsel for the complainant, were then admitted and heard.

Upon motion of Mr. Moss, it was resolved that Charles C. Grant is guilty of conduct unbecoming a student-at-law, and that the report so far as he is concerned be adopted.

Mr. Bayly moved that the report be varied by finding that John A. Robinson is guilty of conduct unbecoming a barrister and solicitor, and that the report as varied be adopted. Carried on a division.

Moved by Mr. Watson that Mr. Grant be reprimanded by Convocation. Carried.

Moved by Mr. Watson, that Mr. Robinson be reprimanded by Convocation.

Moved in amendment by Mr Idington, that Mr. Robinson be disbarred. Lost.

The motion was then carried.

Mr. Robinson was then called in and the judgment of Convocation was communicated to him, and he was reprimanded by the Treasurer in the name and on behalf of Convocation.

Mr. Grant was then called in and informed that Convocation has found him guilty of conduct unbecoming a student-at-law, and the Treasurer reprimanded him in the name and on behalf of Convocation.

Messrs. E. D. Armour, A. H. Marsh, John King and McGregor Young, were appointed lecturers for the Law School.

Mr. Douglas moved, seconded by Mr. Maclennan, that the fee payable hereafter for solicitors' certificates be reduced to ten dollars. Lost.

Mr. Martin gave notice that at the next meeting of Convocation he would move that arrangements be made to furnish the Dominion and Ontario Statutes gratis to all members of the profession entitled to receive the reports.

Mr. Strathy, from the Discipline Committee, presented a report.

Ordered that a Call of the Bench be issued for Tuesday, 15th September, to take action upon the said report, and that a copy of the said report be sent to Mr. Bartram, and that he be notified that he will be at liberty to attend the proceedings of Convocation.

Ordered that the Secretary do insert the usual advertisements calling for applications for examinerships, and that a special Call be issued for the 15th September to consider the applications.

Mr. Moss, on behalf of Sir Oliver Mowat, gave notice that on the first day of next term he would move that the Legal Education Committee do proceed to frame rules for the call of women to the Bar under the Act 58 Vict., cap. 27.

Mr. McCarthy gave notice that he would on the second day of next term invite the attention of Convocation to its disciplinary powers with a view to their abridgment.

Convocation then rose.

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TRINITY TERM, 1896.

MONDAY, Sept. 14th, 1896.

Present: The Treasurer, the Hon. E. Blake, Messrs. Moss, Britton, Clarke, Robinson, Bruce, Martin, Shepley, Bayly, S. H. Blake, Ritchie and Hoskin.

The minutes of the half-yearly meeting on June 30th, were read and confirmed.

Ordered that the following gentlemen be entered as students-at-law of the graduate class: John Jennings, John Colborne Milligan, Martin William McEwen, John Albert Rowland, Neil Sinclair, Robert Irwin Towers, Henry Campbell Osborne.

Ordered that Mr. Elihu George Morris be entered as a student-at-law of the Matriculant class.

Ordered that Mr. A. C. Kingstone's notice for admission remain posted until the last sitting day this Term.

Ordered that the following gentlemen be called to the Bar: P. E. Wilson, E. C. Kenning, J. L. McDougall, jun., S. T. Medd, L. V. O'Connor and R. A. L. Defries.

Ordered that the following do receive their certificates of fitness: Messrs. H. E. M. Choppin, P. E. Wilson, E. C. Kenning, J. L. McDougall, jun., L. V. O'Connor, R. L. Defries.

Ordered that the notices for Call given by Messrs. Parker and Choppin do remain posted until the last day of Term.

Mr. H. W. Eddis was appointed auditor for the current year ending first day of Easter Term, 1897.

The complaint of Mr. W. Masson against Mr. H. G. Tucker was referred to the Discipline Committee to consider and report whether a prima facie case had been shown.

The complaint of Mr. Bartram against Mr. Aylesworth, Q.C., was referred to the Discipline Committee to ascertain whether a prima facie case had been shown.

Mr. Moss moved, seconded by Mr. S. H. Blake, That the Legal Education Committee be directed to proeeed to frame rules for the call of women to the Bar under the Act 58 Vict., cap. 27.

The motion was carried on a division. Yeas, 8 ; nays, 4.

The following gentlemen were called to the Bar: P. E. Wilson, E. C. Kenning, J. Lorn McDougall, jr., S. T. Medd, L. V. O'Connor, also H. H. Bicknell, who completed his papers and was ordered for call last Term.

The letter dated 10th September, from Mr. J. T. Bulmer, in relation to the formation of a Canadian Bar Association, for which a meeting is to be held in Montreal on the 15th inst. was read.

The Secretary was directed to reply that the letter had been laid before Convocation at this its first meeting ; that this being the first intimation received by the Society on the subject, and the meeting being called for the following day, Convocation regretted its inability to arrange for representation of the Society thereat.

Mr. E. Blake gave notice that to-morrow he would move that it be referred to a committee to consider and report whether it be expedient to propose the formation of a library of Canadian law reports and statutes, Dominion and Provincial, in the office of the High Commissioner in London or elsewhere, for the use of Canadian practitioners in appeal to the Privy Council, and if so to report a plan for that purpose.

Convocation then rose.

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TUESDAY, Sept. 15.

Present between ten and eleven a.m., the Treasurer and Messrs. E. Blake, Moss, Maclennan, Bayly, Strathy, Teetzel, Ritchie, Robinson, Idington, Martin, Clarke, Kerr, Guthrie and Hoskin, and after eleven a.m., Messrs. S. H. Blake, Douglas, Gibbons, Edwards and Shepley.

The minutes of last meeting were read and confirmed.

Ordered that the notice for admission given by Mr. F. W. Grant do remain posted until the last sitting day of Term.

Mr. Moss, from the Legal Education Committee, reported upon the case of Mr. E. H. McLean. Ordered that the prayer of the petition be not granted.

After eleven a.m.

The report of the Principal of the Law School was considered and it was referred to the Legal Education Committee with instructions to report their suggestions thereon to Convocation.

Mr. Strathy presented the report of the Special Committee appointed on the first day of Easter Term to consider an alteration in the days and times of meeting of Convocation.

The report was considered, and as amended was adopted.

Mr. Strathy having obtained leave, moved, seconded by Mr. Clarke, the following rule to give effect to the report :

That Rule No. 11 be amended by striking out the words "Tuesdays in June and December," and substituting "Tuesday in June."

That Rule No. 12 as it now stands be repealed and the following substituted therefor :

12. The standing Convocation days shall be Tuesday and Wednesday of the first week of each Term, Friday of the last week of each Term, and Saturday of the first week of Easter Term.

The hour of meeting on Tuesday and Wednesday of the first week shall be ten o'clock in the forenoon, and on other standing Convocation days eleven o'clock in the forenoon unless otherwise ordered, and Convocation may adjourn from day to day to any day previous to the next standing Convocation day.

All business shall, as far as it can conveniently be done, be transacted on the Tuesday and Wednesday sittings of each Term. These rules as amended shall come into force at the close of this present Term of Trinity, 1896.

The draft amending rule was read a first time, and by unanimous consent was read a second and third time, and was passed.

Convocation then appointed the following gentlemen as examiners: Messrs. R. E. Kingsford, P. H. Drayton, H. L. Dunn and E. Bayly.

Mr. Martin in pursuance of notice given moved :—

That Rule 179 be repealed and the following substituted therefor: 179. Students who fail to pass the prescribed examinations for the first and second intermediate examination at the conclusion of any year of the course, shall again attend the lectures of such year. Students who fail to pass the examination of the third year of the course (being the examination for Call and admission as a solicitor) may again attend the lectures of such year, or may within three years, without attending such lectures, present themselves for examination for Call to the Bar and admission as a solicitor at any examination provided for the third year of the course of the Law School, upon giving the notice provided for by Rule 189.

The draft rule was read a first time, and it was ordered that the same be referred to the Legal Education Committee for report, that the passage of the rule be stayed meantime.

Moved by Mr. Moss, seconded by Mr. S. H. Blake, that members of Convocation not resident in Toronto or within five miles distance therefrom, be entitled to be paid their expenses in attendance at meetings of Convocation, and of committees, and that Messrs. Watson, Shepley, Moss, Riddell, Ritchie, S. H. Blake and the Treasurer, be a committee to prepare and report the necessary regulations in regard thereto. Carried.

Moved by Mr. Moss, seconded by Mr. S. H. Blake, that the County Libraries Committee be requested to consider whether any arrangements can be made for providing Law Libraries at Sault Ste. Marie, Port Arthur, Rat Portage, Bracebridge, Parry Sound and North Bay, and such other places as may be similarly situated. Carried.

Ordered that Messrs. Robinson, Bruce, Britton, Gibbons, Osler, Shepley and Moss be a Special Committee to report to Convocation as to what if any steps should be taken with a view to observing the centennial anniversary of the Law Society of Upper Canada.

The order of Convocation made on the 30th June in last Term in the matter of Mr. W. H. Bartram, was then, considered. The letter of Mr. Bartram dated 4th August to the Secretary was read.

Ordered that further consideration of the report of the Discipline Committee be adjourned until Tuesday, the 17th November, at twelve o'clock noon, and that a special call of the Bench be made for that day.

The Treasurer announced that upon the general invitation of the American Bar Association to the Law Society of Upper Canada to send representatives to the annual meeting in August last, he, accompanied by Mr. Osler, attended the meeting at Saratoga, where they were most cordially welcomed and received, and had the pleasure of hearing the address upon International Law delivered by the Lord Chief Justice of England, Baron Russell, of Killowen. Before leaving Saratoga, Mr. Osler and himself, in accordance with the generally expressed wish of the members of Convocation then in Toronto, invited the Lord Chief Justice and the gentlemen accompanying him, to luncheon

with the Benchers at Osgoode Hall during their visit to Toronto, this being the only form of entertainment that the short stay of the Lord Chief Justice would permit.

The invitation being accepted, his Lordship, accompanied by Sir Frank Lockwood, Q.C., late Solicitor-General for England; Mr. Montagu Crackanthorpe, Q.C., Mr. James Fox and Mr. Charles Russell, the son of Lord Russel, took luncheon with the Benchers on August 26th, at Osgoode Hall, where the Chief Justice of Ontario, Sir William Meredith, and such other members of the judiciary as could be invited in time for the event, assisted in receiving them.

Convocation then rose.

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FRIDAY Sept. 18.

Present: The Treasurer and Sir Thomas Galt and Hon. E. Blake, Messrs. Hoskin, Moss, Watson, Robinson, Edwards, Bayly, Shepley, Osler, Aylesworth and Macdougall.

The minutes of the last meeting were read and confirmed.

Ordered, that the notices for admission given by Messrs. Machin and Plummer do remain posted until the last sitting day of this Term.

Ordered, that Mr. H. E. Sampson be called to the Bar with honors and a gold medal, and that he do also receive his certificate of fitness.

Mr. Edward Blake then moved the motion of which he had on the first day of Term given notice with regard to the formation of a library of Canadian law reports in England.

It was resolved that it is expedient to form a library in England, and that it be referred to a committee to report whether it be practicable, and if so, to report a plan.

It was then further ordered that the Treasurer, Messrs. Robinson, Osler, Moss, Watson and Shepley do compose the said Committee, Mr. Robinson to be the Convener, and that Mr. Eakins, Librarian, do act as Secretary of such special Committee.

It was further ordered upon motion of Mr. Osler, that the question of effecting an exchange of publications with the four Inns of Court in London be referred to same Committee.

It was ordered that in the matter of the offices of editor and reporters to the Society, which terminate on the last day of Michaelmas, 1896, the Secretary advertise for applications for the said offices, such applications to be sent to the Secretary on or before the first day of next Michaelmas Term, the advertisements to have four insertions in the three Toronto morning papers, and to state that the present officers are eligible for re-appointment. It was further ordered that a special call of the Bench be issued for Friday, the 4th day of December next, to consider the applications and make such appointments as may be deemed proper.

The letter of Mr. John Greer was read, setting out the fact that Mr. J. D. Phillips, who had written at and passed the third year examination of the Law School in May last, had died shortly afterwards, before being actually called to the Bar and admitted as a solicitor, and praying for a refund of the fees. Ordered, that under the painful circumstances shown, the sum of $140 be refunded to his father.

Dr. Hoskin, from the Discipline Committee, reported in the matter of the complaints of R. Tennant against Mr. H. W. Peterson, that the petitioner had, with the permission of the Committee, withdrawn his complaint. The report was received.

Dr. Hoskin further reported in the complaint of Mr. W. H. Bartram against Mr. A. B. Aylesworth, Q.C., that the letter of Mr. Bartram is so meagre that the Discipline Committee are unable to ascertain the ground of complaint, and they recommend that Mr. Bartram should be so informed, and notified that if he desires the matter to be investigated he must set forth in a petition,

verified by a statutory declaration, the facts upon which he relies, and forward the papers necessary to enable the Committee to investigate the same. Ordered accordingly.

Dr. Hoskin further reported in the matter of the complaint of Mr. A. W. Aytoun-Finlay against Mr. A. G. Browning, a member of the Society, that all parties were duly notified of the time and place of investigation, that Mr. Browning appeared, but Mr. Aytoun-Finlay failed to do so although notified.

The Committee find:

1. That Mr. Aytoun-Finlay has not supported his ground of complaint, and that Mr. Browning by his answer has fully met the same, and your Committee report that the petition should be dismissed.

2. Your Committee further report that in their opinion Mr. Aytoun-Finlay, who is a member of this Society, has been guilty of great disrespect to the Benchers of the Law Society in not appearing to support his complaint or notifying the Committee that he abandoned the same. The report was adopted.

Mr. H. E. Sampson was then introduced and called to the Bar, and with honors and presented with a gold medal.

Convocation then rose.

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FRIDAY, Sept. 25.

Present: The Treasurer and Messrs. Martin, Osler, S. H. Blake, Edwards, Bruce, Watson, Hon E. Blake, Moss, Shepley, Hoskin and Aylesworth.

The minutes of the last meeting were read and confirmed.

Ordered that Messrs. A. C. Kingstone and G. B. Henwood be entered as students-at-law of the Graduate Class, and Messrs. F. W. Grant, H. A. C. Machin, C. F. Plummer, E. G. Long, J. H. Parker, G. A. Stiles and G. E. Kingsford as of the matriculant class.

Ordered that Messrs. W. R. P. Parker and H. E. M. Choppin, whose notices had remained duly posted, be called to the Bar, and that Mr. Parker do receive his certificate of fitness.

Mr. Moss reported upon the result of the third year supplemental examinations.

Ordered that the following gentlemen be called to the Bar and receive their certificates of fitness:—Messrs. H. R. Morwood, G. D. Graham, A. F. R. Martin, W. P. Bull, and S. S. Martin.

Mr. Moss reported upon the case of Mr. F. W. Tiffin, recommending that the production of the certificate of service from Mr. Gearing (now deceased) be dispensed with.

Mr. Moss reported upon the results of the first and second year supplemental examinations.

Ordered that the following gentlemen be allowed their first year examination: D. S. Storey, E. T. Bucke, J. D. Ferguson, H. A. Burbidge, W. F. Bald, J. C. Mackins, I. W. McArdle, G. H. Davy, J. K. Burgess, L. W. Brown and J. McD. Mowat.

Ordered that the following be allowed their second year examination:—J. S. L. McNeely, W. A. Hodgson and J. B. Noble.

Mr. Moss reported upon the petition of Mr. H. C. Osborne, that the Committee do not think any ground is shown for the relief asked. Ordered accordingly.

Mr. Moss, from the Legal Education Committee, then reported upon the case of Mr. Charles C. Grant, a student-at-law, who had been admitted as such upon production of a certificate from the Department of Education, stating that he had passed the Junior Matriculation Examination.

Ordered that the Secretary do inform Mr. Grant that the Department of Education having cancelled the certificate of matriculation and having communicated such cancellation to the Society, he is required on or before the first

day of November, next, to assign in writing by letter addressed to the Secretary of the Law Society any reason why his name should not be removed from the books of the Law Society as a student thereof; and that Mr. Grant be further informed that on the first day of Michaelmas Term next (Tuesday, 17th November,) at twelve o'clock noon Convocation will proceed to take action upon his case, when he may attend and have an opportunity of being heard.

Mr. Moss, from the Legal Education Committee, reported the rules they had framed with regard to the admission of women to practice as barristers-at-law.

The report was read and it was moved that it be considered forthwith.

Mr. Edwards moved, seconded by Mr. Watson, that the report be taken into consideration on the first day of Michaelmas Term next. Lost on a division.

Mr. Moss introduced a rule to give effect to the report, and moved the first reading.

The rule was read a first time and it was ordered that the said rule be read a second time on Tuesday, the 17th November, of which special notice shall be given to members of Convocation.

Mr. Edwards gave notice that on Tuesday, 17th November next, he would move that the Resolution of Convocation, passed on 14th day of September, 1896, directing that the Legal Education Committee be instructed to prepare rules providing for the admission of women as barristers-at-law, and the resolutions of Convocation passed on 25th day of September, 1896, dealing with the Report (of the Legal Education Committee), be rescinded.

Ordered also, that special notice of Mr. Edwards' motion be given to members of Convocation.

Mr. Watson gave notice that at the next meeting of Convocation he would move to rescind the resolution passed on 15th September, 1896, providing for payment to members not resident in Toronto of their expenses in attending meetings of Convocation and committees, and that the appointment of a committee to frame rules and regulations therefor be also rescinded.

Mr. Shepley moved the rescission of the order of Convocation made 15th September, ordering Mr. L. H. Bowerman's notice for admission as a solicitor to stand for next Term. Upon this being granted, Mr. Shepley reported that Mr. Bowerman had completed his papers by furnishing the proper certificate from the Supreme Court of New Zealand. Ordered that Mr. Bowerman do receive his certificate of fitness.

Mr. Osler, from the Building Committee, reported as follows:

That the total net contracts amount to $4,901. That the Committee have had to allow the further expenditure of the sum of $222, making total contracts, including architect's fees, $5,123, and your Committee ask that Convocation authorize the expenditure over the sum of $5,000 (already authorized) of the sum of $500, out of which the Committee may be able also to erect a mural tablet to Chief Justice Osgoode.

Order made adopting the report, it being on the understanding that the grant of $500 in addition to the $5,000 already granted, shall suffice to pay the contracts for work and also for the erection of a mural tablet to Chief Justice Osgoode if the Committee deem it proper to erect such tablet.

Dr. Hoskin, from the Discipline Committee, reported in the matter of the complaint of Mr. W. Masson, against Messrs. Tucker and Patterson, that Mr. Patterson has departed this life, and that as to Mr. Tucker a prima facie case has been found.

Ordered that the complaint be referred to the Committee for investigation and report.

Dr. Hoskin, from the Discipline Committee, reported upon the complaint of J. O. Connors against Mr. Thomas C. Robinette.

Ordered that the report be considered on the first Wednesday of next

Term, and that a copy of the report be sent to Mr. Robinette, and that he be informed that Convocation will take action on his case at the hour of 12 o'clock that day, at which hour he will be at liberty to attend and be heard by himself or by counsel, and that the counsel for the complainant be also notified.

Ordered also that a special call of the Bench be made for Wednesday, 18th November, to take the report into consideration.

Mr. Bruce, from the Committee on Journals and Printing, reported as follows :—They beg to submit herewith the proposed consolidated rules of the Society, and submit that the same are in proper form to be passed by Convocation.

The Committee recommend that 2,000 copies of the Rules be printed with the appended statutes and other documents.

Ordered accordingly.

The following gentlemen were then called to the Bar :—Messrs. H. E. M. Choppin, W. R. P. Parker, G. D. Graham, A. F. R. Martin, S. S. Martin, H. R. Morwood and W. P. Bull.

Mr. Watson gave notice that at the next meeting of Convocation he would move that the number of the reporters of the Court be reduced to three, and that the resolutions of Convocation for appointment of reporters be amended accordingly ; also that the advertisement to be published should indicate that the appointment would be of three or four reporters as then required by resolution of Convocation.

Ordered that the Incorporated Law Society be included in the reference to the Special Committee appointed on the subject of the exchange of publications.

Ordered that a committee consisting of the Treasurer and Messrs. Osler, Watson and Riddell, be appointed to act in conjunction with the Judges and the County of York Law Association in case an invitation be extended to Convocation to co-operate in perfecting the arrangement of the accommodation in the new Court House at Toronto for judicial and cognate purposes.

Ordered that it be referred to the Finance Committee to enter into negotiations with the Dominion Government for a renewed period for the supply of the Supreme Court reports.

Ordered that no further action be taken upon the letter of Mr. E. F. H. Cross upon the subject of his examination.

Mr. McCarthy's notice as to powers of Convocation in matters of discipline was further deferred to the first day of next Term.

Ordered that a committee be appointed, consisting of Messrs. Osler, Shepley, Moss, Robinson, Watson and Bruce (Mr. Bruce to be Convener) to consider the advisability of having an index to private and local Acts of the several Legislatures of the Province of Canada, Upper Canada, Ontario and the Parliament of the Dominion of Canada, prepared as suggested by Mr. Dymond in correspondence submitted, and report thereon to Convocation.

Convocation then rose.

## LAW SOCIETY OF UPPER CANADA.

### THE LAW SCHOOL.

*Principal*, N. W. Hoyles, Q.C. *Lecturers*, E. D. Armour, Q.C.; A. H. Marsh, B.A., LL.B., Q.C.; John King, M.A., Q.C.; McGregor Young, B.A. *Examiners*, R. E. Kingsford, E. Bayly, P. H. Drayton, Herbert L. Dunn.

### NEW CURRICULUM.

FIRST YEAR.—*General Jurisprudence.*—Holland's Elements of Jurisprudence. *Contracts.*—Anson on Contracts. *Real Property.*—Williams on Real Property, Leith's edition. Dean's Principles of Conveyancing. *Common Law.*—Broom's Common Law. Kingsford's Ontario Blackstone, Vol. 1 (omitting the parts from pages 123 to 166 inclusive, 180 to 224 inclusive, and 391 to 445 inclusive). *Equity.*—Snell's Principles of Equity. Marsh's History of the Court of Chancery. *Statute Law.*—Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.—*Criminal Law.*—Harris's Principles of Criminal Law. *Real Property.*—Kerr's Student's Blackstone, Book 2. Leith & Smith's Blackstone. *Personal Property.*—Williams on Personal Property. *Contracts.*—Leake on Contracts. Kelleher on Specific Performance. *Torts.*—Bigelow on Torts, English edition. *Equity.*—H. A. Smith's Principles of Equity. *Evidence.*—Powell on Evidence. *Constitutional History and Law.*—Bourinot's Manual of the Constitutional History of Canada. Todd's Parliamentary Government in the British Colonies (2nd edition, 1894). The following portions, viz: chap. 2, pages 25 to 63 inclusive; chap. 3, pages 73 to 83 inclusive; chap. 4, pages 107 to 128 inclusive; chap. 5, pages 155 to 184 inclusive; chap. 6, pages 200 to 208 inclusive; chap. 7, pages 209 to 246 inclusive; chap. 8, pages 247 to 300 inclusive; chap. 9, pages 301 to 312 inclusive; chap. 18, pages 804 to 826 inclusive. *Practice and Procedure.*—Statutes, Rules and Orders relating to the jurisdiction, pleading, practice and procedure of the Courts. *Statute Law.*—Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.—*Contracts.*—Leake on Contracts. *Real Property.*—Clerke & Humphrey on Sales of Land. Hawkins on Wills. Armour on Titles. *Criminal Law.*—Harris's Principles of Criminal Law. Criminal Statutes of Canada. *Equity*—Underhill on Trusts. De Colyar on Guarantees. *Torts.*—Pollock on Torts. Smith on Negligence, 2nd ed. *Evidence.*—Best on Evidence. *Commercial Law.*—Benjamin on Sales. Maclaren on Bills, Notes and Cheques. *Private International Law.*—Westlake's Private International Law. *Construction and Operation of Statutes.*—Hardcastle's Construction and Effect of Statutory Law. *Canadian Constitutional Law.*—Clement's Law of the Canadian Constitution. *Practice and Procedure.*—Statutes, Rules and Orders relating to the jurisdiction, pleading, practice and procedure of the Courts. *Statute Law.*—Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

NOTE.—In the examinations of the Second and Third Years, students are subject to be examined upon *the matter of the lectures* delivered on each of the subjects of those years respectively, as well as upon the text-books and other work prescribed.