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LORD SELBORNE, long familiarly known to the Bar of a fast departing generation as Sir Roundell Palmer, is no more. Full of years and of honours, he died on the 4th of May last. He was one of the ablest and most distinguished of the lawyers who have adorned Her Majesty's reign. It was during his chancellorship that the English Judicature Act was enacted, and, if it has not answered all the expectations formed of it, it is in some measure due to the fact that the legislature did not see fit to pass the Act as originally framed by him. Lord Selborne was not only a great lawyer, but a good man in the highest sense of the term. Our contemporary, the English *Law Times*, somewhat sneeringly observes "that there was in him a completeness of virtue which lawyers do not always admire." This is a remark which hardly reflects credit upon that influential journal. It would be all the better for themselves and the country if all were of that sort. Whilst the character of this eminent man cannot be too highly spoken of, his manner on the Bench was sometimes complained of by members of our Bar as being occasionally rather supercilious. Perhaps we in this country, whilst having a high respect for those over us in authority, are not accustomed to what seems to us the rather extravagant deference to the Bench which is seen in England.

COLONIAL JUDGES IN THE PRIVY COUNCIL.

It appears from an article in the English *Law Times* that the Lord Chancellor has presented, or intends to present, a bill to Parliament providing for the appointment of colonial judges to the Judicial Committee of the Privy Council. For a full understanding of this question, we would refer our readers to an article which appeared in these

columns in 1891 (*ante* vol. 27, p. 259). The legislation on the subject is there collected and commented upon. We are not, as yet, informed whether it is intended to place those who may be called to the Judicial Committee from the colonies upon the same footing as other judges holding like responsible positions in England, for, of course, no one fit for the position would accept the pittance at present allowed, which is referred to in the article above referred to. Our contemporary justly, we think, takes exception to the fact that the contemplated measure proposes to limit the class of colonial lawyers eligible for such an appointment to those who have attained the Bench, and very properly points out that one of the present members of the committee, viz., Lord Watson, whom it styles a "supreme lawyer," had never, previously to his appointment, exercised judicial functions, as a reason for there being a similar latitude of appointment as regards colonial lawyers. The truth is that as matters stand at present we do not look to the Bench exclusively for those who would best represent the Dominion on the Judicial Committee of the Privy Council. In fact, the thought of the profession would turn rather to at least two members of the Ontario Bar who have shown that they possess qualifications which would eminently fit them for the position referred to. We allude to Hon. Edward Blake and to the counsel for the Dominion in the Behring Sea arbitration. Very possibly neither of them would accept the appointment. But as to the former, he is already as much at home before the highest tribunal in the Empire as before the Supreme Court of Canada, and his great ability is recognized there as well as here; and he would, we are sure, find on the Bench a far more fitting and, probably, a more congenial field for his labours and his learning than in pursuing the "Will o' the wisp" of Irish Home Rule.

With the suggestion of our contemporary, that advantage should be taken of the proposed reconstitution of the committee to provide for the delivery of dissentient judgments, we are not able to agree. If the court of ultimate appeal were to speak with a discordant voice, we believe it would be a great blow to its usefulness. Besides, *cui bono?* In the case of an inferior tribunal, where there is a dissent, the litigants may carry the case further, but the Judicial Committee is the apex of the judicial edifice, beyond which it is impossible to go, and the only

effect of a dissenting judgment would be to make the losing party still more dissatisfied with the result of the litigation. In the case of an inferior tribunal *non constat* but that the judgment of the judge who dissents is really the true exposition of the law, though overborne *pro tem.* by the adverse opinion of the majority of the court, but in the case of the Judicial Committee that is not possible. And, speaking from the colonial point of view, we should say by no means abolish or alter the present system which prevails in the Privy Council of giving its judgment, or, to be technically accurate, of tendering its humble advice to the Crown.

THE ONTARIO LEGISLATURE.

The recent session of the Provincial Legislature, although unusually short, was more than usually prolific, no less than 126 Acts receiving the royal assent at prorogation. The annual volume of statutes promises to run over 700 pages in length, and nearly one-half of this space is devoted to the amendments of the public general laws of the Province.

Many of these enactments are of an important, not to say radical, nature, and of considerable interest to the general public as well as to the legal profession. It has been common to criticize, perhaps unfairly, the work of our local legislators, especially where enactments affecting the laws of property and legal procedure are concerned; but it must be borne in mind that our Legislature is not composed of lawyers, and that many bills introduced are of so technical a character that it is impossible that more than a very few of the members of an Assembly which represents, and, for the most part, very fairly represents, all classes of the community should be familiar with the subjects dealt with, or be able to understand the evils sought to be remedied, or the value of the remedies to be applied. It must be remarked, in reference to the annual outcome of the legislative mill, that few people understand the difficulties or appreciate the labours of the draughtsman, and it may be that, as to the comments of Bench and Bar upon the wording of Ontario Statutes, a certain ancient and useful proverb concerning persons who live in glass houses is applicable, and it is claimed by some of those who ought to know that no Provincial Legislature, and not

even the Canadian Parliament, can show a more creditable record in law-making than the Legislature of Ontario.

An extended critique of each of the Acts of 1895 would here be impossible, and we must content ourselves with indicating some of the more interesting and prominent enactments.

A difficulty which had arisen in the construction of the election laws led to the passing of The Definition of Time Act, 1895, which provides that what is known as "standard time" shall govern in interpreting expressions relative to time contained "in any Act . . . or in any by-law, deed, or other instrument." The Act further authorizes the adoption of the "24-hour notation."

The Manhood Suffrage Registration Act, 1894, is extended to county towns, and amended to meet certain difficulties which arose at the last general election and the subsequent by-elections in cities.

A somewhat lengthy measure makes some important changes in the Controverted Elections Act, and the Election Act of 1892, besides setting at rest some questions as to the disqualification of persons holding minor offices under the Dominion and Provincial Governments. The "disclaimer" hitherto permitted to persons elected to municipal office is also adopted with respect to candidates for the Legislative Assembly. The practice of handing to the voter a ballot paper marked for a particular voter before he enters the polling place, and requiring him on coming out again to give up the ballot handed to him by the deputy returning officer, presumably with a view to ascertaining that the "free and independent" elector has given good value for money paid or promised, is rendered more difficult by the 14th section of the Act, which contains some stringent provisions with regard to the identification of ballots.

The Succession Duty Act, 1892, is amended, and hereafter all property situate within this Province, wherever the owner may have been domiciled at the time of his death, will be liable to the duties imposed by the Act; and it is further provided that property brought into Ontario for distribution, and which has not paid duty elsewhere, shall be liable to the tax, or, if duty has been so paid, then to the difference between such duty and the Ontario tax.

Of great interest to the legal fraternity and the law reformers

who have been exposing some supposed and substantial grievances in the public press during the last few months are the "Act to consolidate the Acts governing the Supreme Court of Judicature *of* (?) Ontario," and the "Law Courts Act, 1895." The former Act, and certain portions of the latter relating to appeals, procedure in the Court of Appeal, divisional sittings of the High Court, appeals to and from Divisional Courts, and the sittings and constitution of Divisional Courts, and the reduction of the cost of copies of evidence, will not go into effect until a day (not earlier than the 1st September, 1895) to be named by proclamation. Without entering too minutely into the details of the Acts, we may sketch, briefly, the attempted reforms in procedure. Litigants are hereafter to be limited to one appeal in this Province from any judgment or order of a provincial court, subject to a rather formidable list of specified exceptions. Security for costs of appeal is not to be required unless specially ordered by the court to which the appeal is taken. The procedure upon appeals to the Court of Appeal is further simplified, and the printing of appeal books rendered unnecessary. This last provision alone lessens enormously the expense and labour involved, while the perfection to which typewriting is being brought provides an excellent substitute for the old costly printed volumes. Uniformity of decision is aimed at in the section headed, "Effect of Judicial Decisions," and hereafter we may hope that we may not witness the unedifying spectacle of two divisions of the High Court giving diverse decisions upon the same point, each declining to be bound by the opinion of the other, and claiming the right to strike out a new line of judicial interpretation for itself. The decision of a Divisional Court of the High Court is to be final in all cases, except that the respondent in the Divisional Court may appeal therefrom, and appeals may be allowed on special leave in certain exceptional and important cases. Monthly sittings of a Divisional Court are provided for, and concurrent sittings of two or more Divisional Courts may be held when deemed necessary for the due despatch of business.

The zeal of any judge whose physical strength and desire to promptly dispose of business may render him inconsiderate of the health of the members of the Bar appearing before him receives a very proper check in the section requiring that no sitting for the trial of causes shall begin before nine o'clock in

the forenoon, nor extend beyond seven o'clock in the evening, with at least half an hour's intermission for lunch. On the other hand, limitations are imposed upon the reference of any matter within the competence of a judge. Local judges of the High Court are given jurisdiction over all cases arising under The Over-Holding Tenants' Act, and the words "without colour of right" are struck out of that statute. Every judge of a County Court hereafter appointed must be a barrister of ten years' standing, and no junior judge is to be appointed in any county having a population not exceeding 80,000. This attempt to raise the standard of the local judiciary will meet with general approval among country practitioners.

The subject of executions is dealt with, and provision made for the triennial renewal of writs, and for the seizure of the equity of redemption in stocks, and a limit may now be set to the term of imprisonment for contempt, and relief granted to persons who have been imprisoned for an indefinite period.

The foregoing is a necessarily brief and imperfect sketch of the changes made. It is to be hoped that the earnest endeavour to remove the causes of complaints respecting the administration of justice in civil matters, which these Acts manifest, will prove successful, and that they will receive a fair and honest trial at the hands of the judiciary, the legal profession, and the public before this branch of law is again thrown into confusion by a new cloud of amendments.

The law respecting jurors and juries is the subject of amendments relating to the method of selecting jurors, providing for the keeping of the jury panel secret, and imposing some new penalties for tampering with jurors. The latter provisions are extremely wholesome, for, while "jury fixing" has never been carried on in this country to the extent to which it prevails in some of the states of the American Union, there has been a growing suspicion that corrupt methods have been in vogue in certain localities, accounting for some very extraordinary verdicts, especially in criminal cases. The disbarring and striking off the roll of any member of the legal profession found guilty of corruptly influencing jurors is none too severe a punishment for so infamous an offence. By another Act the agreement of ten jurors is rendered sufficient to enable them to return a verdict or answers to questions in a civil action, and the illness or absence

of one juror during the trial of an action, or the discovery of his interest in the result, is not to render a new trial necessary.

Passing on to the Acts affecting the law of property, we find at length rectified an error, caused by the omission of 51 Vict., c. 15, to amend the form of notice of sale in the Act respecting Mortgages of Real Estate (R. S. O., c. 102). The English Settled Estates Act is adopted, and powers conferred upon the courts which will obviate the necessity of applications to the Legislature, with their attendant expenses and trouble, for power to make leases, sales, or mortgages of settled estates, in a comprehensive and well-worked-out measure containing some fifty sections, with a schedule of "Rules of Court," governing questions of practice and procedure, and an appendix of well-drawn forms. The widow of an intestate is to be entitled, upon the distribution of the estate, to the sum of $1,000 absolutely, in addition to her present interest in the residue.

There is the usual "Act to amend the Registry Act," which contains, among other provisions, a section requiring that where an instrument is written in a foreign language, a translation verified by the oath of the translator must be registered with it. It seems to be very doubtful whether before this Act registration of an instrument, written in any language but English, was effectual. The amendment will be gratefully received by English-speaking solicitors who have occasion to search the registry offices in our eastern counties.

An "Act to make further provision respecting Assignments for the Benefit of Creditors" enables the proceeds of goods fraudulently assigned and disposed of by the assignee to be followed, and, if there has been no assignment for the benefit of creditors, renders them liable to seizure under execution. The Act respecting Assignments and Preferences by Insolvent Persons is made to apply to any assignment for the general benefit of creditors from which a portion of the debtor's estate has been excepted. The assignor may hereafter be examined at the instance of the creditors, or a majority of them, in the same manner as a judgment debtor.

The Bills of Sale and Chattel Mortgage Act of 1894 is amended by providing that it shall not be necessary to renew mortgages given to secure the debentures of companies, and s. 41 of the Act, regulating the registration of "lien notes," is

amended so as to require registration in the office of the county court clerk of the county where the purchaser of the goods resides, when the agreement of sale is made.

The law of dower is the subject of an amending Act, which is intended to settle the vexed question of the right to dower in the surplus of purchase money arising from the sale of land under mortgage or execution. The wisdom of the present provision appears to be doubtful, and the section is not scientifically correct. How is the right to dower to be preserved and enforced?

The "Act respecting the relations of Landlord and Tenant" amends the Act respecting Short Forms of Leases, in order to remedy a gross injustice which has been brought to light by the judicial interpretation of the covenant to "leave the premises in good repair." Hereafter, under the ordinary short form lease, the tenant will be entitled to remove his trade fixtures upon making good any damages which he may occasion thereby. A proviso is added to the short form that: "In the event of fire, rent shall cease until the premises are rebuilt." After assignment for the benefit of creditors, the preferential lien of the landlord for rent is limited to one year's lease previous to, and the three months following, the assignment. An assignee or liquidator may also elect to retain the premises for the unexpired term of the lease. The Act concludes with a declaration that the relation of landlord and tenant shall be deemed to be founded in contract, and not upon tenure or service, and that a reversion shall not be necessary to such relation.

A brief Act in 55 Vict. (c. 32) reads as follows: "The Law Society *of Ontario* (?) may in its discretion make rules providing for the admission of women to practise as solicitors." This Act is now amended to allow the admission of women as barristers also. Does the Legislature wish to evade the women's prayer by not making the Act apply to the "Law Society *of Upper Canada*? And where does the Law Society *of Ontario* carry on business?

Among the Acts relating to companies, we notice an Act to regulate the chartering of trust companies, and defining the powers which may be granted to them by letters patent; also a long and highly technical series of amendments to the Insurance Law. The tendency of the latter will be, no doubt, to greatly cheapen and simplify the winding up of insurance corporations. The investment of the funds of benefit societies, and the limita-

tion of the right of action for assessments, are also dealt with. The Act must have entailed an immense amount of care and labour, and it is to be regretted that, instead of being limited to insurance corporations, most of its provisions were not made applicable to the winding up of all companies.

Another long and important Act is that "Respecting Electric Railways." For the preparation of an Act of this kind care has to be taken that, while the public interests are properly guarded in disposing of valuable franchises, private enterprise is not unduly fettered. Many of the sections of this Act appear to be very stringent, and its usefulness must be left to be determined by future experience of its working.

There is an unusually long "Municipal Amendment Act"; an Act to provide for the appointment of an official municipal arbitrator for the city of Toronto; an Act to prevent the quashing of convictions under municipal by-laws by reason of the want of formal proof of the by-law before the convicting magistrate; an amendment and consolidation of the Acts respecting Free Libraries and Mechanics' Institutes; and an Assessment Amendment Act. The second section of this last-mentioned statute shows signs of excessively careless preparation, and has already been the subject of much comment in the public press.

There are a number of other Acts which we cannot now refer to. They are mainly drawn under the direction of the members of the Government familiar with the practical working of the laws governing their departments in the administration of public affairs, and they may be very safely trusted as judges of the necessity of amendments. On the whole, our annual grist of legislation appears to be somewhat larger and more important than usual. Whether its usefulness will justify its volume remains to be seen.

CURRENT ENGLISH CASES.

The Law Reports for May comprise (1895) 1 Q.B., pp. 673-770; (1895) P., pp. 161-178; and (1895) 1 Ch., pp. 577-778.

LANDLORD AND TENANT—AGREEMENT FOR LEASE BY TWO, ONE OF WHOM IS AN INFANT—INFANT JOINT CONTRACTOR--SPECIFIC PERFORMANCE—INJUNCTION.

Lumley v. *Ravenscroft*, (1895) 1 Q.B. 683; 14 R. April 307, is a case which one would naturally expect to find in the Chancery Division. The action was brought for the specific performance

of a contract for a lease to the plaintiff, or in the alternative for damages, and for an injunction restraining the defendants until after the trial from leasing the premises in question to any other person than the plaintiff. One of the defendants was an infant. Day, J., granted an interlocutory injunction against the adult defendant, and from this order an appeal was taken to the Court of Appeal (Lindley and Smith, L.JJ.), and the order was reversed, the Court of Appeal being of the opinion that an interlocutory injunction can only be properly granted as ancillary to relief which the court may grant at the trial; and inasmuch as the court could not grant specific performance of the contract, owing to the infancy of one of the defendants, the plaintiff's only remedy was by way of damages.

LANDLORD AND TENANT—NOTICE TO QUIT, SUFFICIENCY OF.

In *Bury* v. *Thompson*, (1895) 1 Q.B. 696; 14 R. May 259, the Court of Appeal (Lord Esher, M.R., and Lopes and Rigby, L.JJ.) have affirmed the decision of the Divisional Court (noted *ante* p. 197), as previously intimated. The Court of Appeal hold the case is governed by the previous decision of the Court of Appeal in *Ahearn* v. *Bellman*, 4 Ex. D. 201. It may, therefore, be taken to be definitely settled, as far as the Court of Appeal can settle the point, that a notice to quit is not rendered bad by the addition of an intimation that the person giving it is willing to make a new agreement with the person to whom it is given.

CRIMINAL LAW—DEMANDING MONEY WITH MENACES—LARCENY ACT, 1861 (24 & 25 VICT., C. 96), S. 44—(CR. CODE, S. 403).

The Queen v. *Tomlinson*, (1895) 1 Q.B. 706; 15 R. Mar. 397, was a case stated by Lawrance, J. The prisoner was tried and convicted under the Larceny Act, 1861 (24 & 25 Vict., c. 96), s. 44 (see Cr. Code, s. 403), of having sent a letter to the prosecutor demanding money, and threatening, if the demand was not complied with, to let his wife and friends "know of his doings" with a certain woman who was named. The defendant had been dismissed from the prosecutor's employ for being discovered in an act of immorality with the same woman. The counsel for the prisoner contended that the menaces contemplated by the statute were menaces of violence or injury to the person or property, or of accusations of crime within ss. 46 and 47 (see Cr. Code, ss. 405, 406); but the court (Lord Russell, C.J., and Pollock, B., and Wills, Charles, and Lawrance, JJ.) were unanimously of

opinion that the offence may be committed within s. 44 (Cr. Code, s. 403) if there be a threat to accuse the prosecutor of misconduct, even though not amounting to a criminal offence; and the conviction was therefore affirmed.

PARTNERSHIP—JUDGMENT AGAINST PARTNER—EXECUTION—RECEIVER.

Brown v. *Hutchinson*, (1895) 1 Q.B. 737; 14 R. May 314, may be referred to, not so much on account of the point actually decided as for the fact of its serving to point out a difference which exists between the law of England and Ontario as to the manner of enforcing a judgment for a separate debt against a partner of a firm. This cannot be better done than by quoting the words of Lindley, L.J.: "The Partnership Act of 1890, as is well known, made very little alteration in the legal procedure, except by s. 23. Section 23 is absolutely new. It replaced a very cumbrous method of proceeding which had to be adopted before and even under the Judicature Act. When a creditor obtained a judgment against one partner, and he wanted to obtain the benefit of the judgment against the share of that partner in the firm, the first thing was to issue a *fi. fa.*, and the sheriff went down to the partnership place of business, seized everything, stopped the business, drove the solvent partners wild, and caused the execution creditor to bring an action in Chancery in order to get an injunction to take an account and pay over that which was due by the execution debtor." As a remedy for that, s. 24 of the Partnership Act provides that an execution shall not issue against any partnership property except on a judgment against the firm, and enables the court to make an order charging the interest of a partner in the firm in favour of his separate judgment creditors, and in order to enforce that charge enables the court also to appoint a receiver of his interest, and also enables the solvent partner to get rid of the judgment debtor. This feature of the English Partnership Act, we think, is an additional reason for its early enactment in Ontario.

MASTER AND SERVANT—CRIMINAL ACT BY SERVANT IN COURSE OF EMPLOYMENT—CIVIL LIABILITY OF MASTER FOR CRIMINAL ACT OF SERVANT—CONVICTION—RELEASE OF SERVANT FROM CIVIL PROCEEDINGS FOR SAME CAUSE, EFFECT OF ON MASTER'S LIABILITY—THE OFFENCES AGAINST THE PERSON ACT, 1861 (24 & 25 VICT., C. 100), S. 45—(CR. CODE, S. 866).

Dyer v. *Munday*, (1895) 1 Q.B. 742; 14 R. May 266, raised a somewhat novel point. The action was to recover damages for an assault committed by the defendant's servant, in the course

of his employment, under the following circumstances: The servant in question was employed by the defendant to manage h's business for the sale of furniture on the hire and purchase system. He sold a piece of furniture to a person who was lodging in the plaintiff's house, and on one of the instalments being in arrear he went to the house and removed the furniture, and in the course of doing so assaulted the plaintiff. He was tried and convicted and fined for the assault, and paid the fine. Two points were raised on behalf of the employer. First, it was contended that he was not liable at all, because the wrongful act of the servant was not a mere tortious act, but a crime; and, secondly, even if he were liable, the servant, having paid the fine, was by 24 & 25 Vict., c. 100, s. 45 (Cr. Code, s. 866), released from any civil liability for the same act, and his master was, therefore, also discharged. But the Court of Appeal (Lord Esher, M.R., and Lopes and Rigby, L.JJ.) gave effect to neither of these contentions, holding that the master is responsible for an act done by his servant in the course and in furtherance of his employment, even though the act be a criminal one; although Lord Esher admits that the fact that a criminal act is committed may be a material fact for the consideration of the jury in deciding whether or not it was done in furtherance of the master's business. And the other point the Court of Appeal decided against the defendant, on the ground that the words of the Act were not wide enough to release anybody from liability except the offender.

DEED—CONSTRUCTION—GENERAL WORDS—EJUSDEM GENERIS.

Anderson v. *Anderson*, (1895) 1 Q.B. 749; 14 R. May 327, bears upon the doctrine of *ejusdem generis*, recently discussed in these pages (see *ante* pp. 146, 187, 223), and serves to show that the doctrine is one intended to assist in arriving at the real intention of documents. The document in question in this case was a post-nuptial settlement, whereby a husband assigned to trustees for his wife a leasehold property and "household furniture, plate, linen, china, glass, and tenant's fixtures, wines, spirits, and other consumable stores, and other goods, chattels, and effects in or upon or belonging to" the leasehold messuage. The messuage was described as a piece of ground with the messuage tenement or dwelling house, back buildings, coach houses, stable buildings, and all other erections thereon. The question

arose between the plaintiffs, who were the executors of the husband who had died, and the trustees of the settlement, whether under the general words "other goods, chattels, and effects," were included the carriages, horses, harness, and stable furniture in or upon the coach house and stable buildings. The Court of Appeal (Lord Esher, M.R., and Lopes and Rigby, L.JJ.) held that they did, affirming the decision of Wright, J. In comparing the reports of this case in the *Law Reports* and the *Law Times*, some notable variations are to be seen. In the latter Lord Esher is made to say: "It seems to me that the doctrine of *ejusdem generis* was a bad one, and I do not wonder that the tendency of the courts in modern times has been to reject it." In the *Law Reports* this passage appears as follows: "No doubt many cases are to be found in the reports in which the meaning of general words in deeds or wills have been thus limited. But I am not surprised to find that the modern tendency of the courts has been to construe general words in their ordinary sense. It cannot, however, be doubted that there are cases in which such words must be construed in a limited or restricted sense, and the question is how the words of construction are to be applied." From the *Law Times* one would infer that Lord Esher disapproved of the doctrine *in toto*, but from the *Law Reports* we infer he approves of it, and recognizes its necessity, subject to proper limitations. Here the fact that the settlor had expressly assigned the stables and coach house led the court to conclude that the general words were necessarily intended to cover their contents.

VENDOR AND PURCHASER—CONDITIONS OF SALE—VENDOR AND PURCHASER ACT, 1894 (37 & 38 VICT., C. 78)—(R.S.O., C. 112, S. 3)—ORDER DECLARING GOOD TITLE—REVIEW—SUBSEQUENT DISCOVERY OF MATERIAL EVIDENCE—RES JUDICATA—ESTOPPEL—SPECIFIC PERFORMANCE—COVENANTS.

In re Scott and Alvarez; Scott v. *Alvarez*, (1895) 1 Ch. 596, is a sort of double-barrelled case. It is a report of an application made under the Vendor and Purchaser Act (37 & 38 Vict., c. 78) (see R.S.O., c. 112, s. 3), and also of an action subsequently brought by the vendor for the specific performance of the same contract. The case presents a curious complication of facts. The contract in question was entered into for the purchase of a lease, subject to conditions of sale which precluded the purchaser from inquiring into the title prior to a mortgage under which the vendor claimed title. On the application under the Vendor and

Purchaser Act, it appeared that the lease had been granted to one Mary Ann King, who was said to have died in 1873, having, by an informal instrument made in 1868, not under seal, purported to give the lease to her daughter, Sarah Jane Banks, who, from that time until the 10th of August, 1891, was said to have been in possession. Sarah Jane Banks, representing herself to be Mary Ann King, the original lessee, in 1889 made the mortgage of the lease under which the vendor claimed title, and which was foreclosed on the 10th of August, 1891; Sarah Ann Banks being named in the proceedings "Mary Ann Banks." It was to prevent inquiry into the title of the mortgagor that the conditions of sale were framed, and the Court of Appeal held that they were sufficient for that purpose. It appearing by the evidence on the application under the Vendor and Purchaser Act that the vendor had, by virtue of the alleged possession of Sarah Ann Banks, and those claiming under her since 1868, acquired a good possessory title, the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) held that the suspicious circumstance of Sarah Ann Banks having assumed to mortgage the property in the name of "Mary Ann Banks" did not prove the title to be actually bad, and, therefore, notwithstanding this circumstance, and the fact that the purchaser would not have a complete chain of covenants for title, the court (overruling Kekewich, J.) declared that the vendor had made a good title in accordance with the contract. The purchaser, however, refused to carry out the purchase in accordance with this order, and thereupon the vendor brought an action for the specific performance of the contract, relying on the order of the Court of Appeal as establishing his title, and as estopping the purchaser from raising any further objection to it. The defendant, by way of counterclaim, claimed to review the order of the Court of Appeal, on the ground of the discovery of new and material evidence which he could not with reasonable diligence have previously discovered. This evidence established that Mary Ann King, the original lessee, had, in fact, died in 1871, instead of 1873, leaving a will which the purchaser was prevented from discovering sooner by reason of it having been alleged that she died in 1873. By this will she bequeathed the leasehold to her daughter, the said Sarah Ann Banks, as executor and trustee for herself and two sisters; that she had for many years dealt with the lease as trust property, and had paid

her sisters and their representatives their proportion of the rents; also that the alleged document of 1868, purporting to be a gift of the lease from Mary Ann King to Sarah Ann Banks, was, in fact, a forgery, and the mortgage under which the plaintiff claimed was also a forgery. The plaintiff contended that even on this state of facts the mortgage of 1889 was sufficient to convey the estate which Sarah Jane Banks had in the lease both as executor and trustee, and as one of the beneficiaries, and that the plaintiff, having no notice of the fraud perpetrated by her, was not affected by it. But Kekewich, J., held that the conveyance by her was a breach of trust, and that, in view of the subsequently discovered evidence, the purchaser was entitled to review the order of the Court of Appeal, and that in the light of this further evidence the vendor had not made a good title, and he dismissed the action, but without costs. There were some other details connected with the case besides those above mentioned, to which want of space has prevented reference, but for the purposes of these notes the facts above set out are, perhaps, sufficient.

Reviews and Notices of Books.

The American Commonwealth. By James Bryce, author of the "Holy Roman Empire." Third edition. 2 vols. Macmillan & Co., 66 Fifth Avenue, New York. 1895. Price, $4.00.

No English writer on the American Constitution has given to the subject such careful study and consideration as Mr. Bryce. He gives in detail the history of its development, its practical working, its results upon the political life of the people. He explains the constitution of the various bodies by which the national government is carried on, and their relation to each other. He describes the Federal Courts, their powers and methods of procedure. He deals very fully with the working relations of the national and state governments, and discusses at length the merits and demerits of the federal system, a subject of vital interest to the Canadian statesman.

Mr. Bryce's comparison of the English and American systems of government is interesting and valuable to every student of constitutional history, and his observations and deductions

strongly lead to the conclusion that the system of the old country is preferable to that of the new.

The second part of Mr. Bryce's book deals exclusively with the state governments and municipal institutions, the state legislatures, executive and judiciary bodies.

In the third part Mr. Bryce devotes a number of chapters to a consideration of the party system, including the history and composition of the various parties and party organizations. He gives a very full account of the manner in which "the machine works," what it does, and how it does it. We learn from him all about "rings and bosses," and the methods of carrying on election campaigns, whether presidential or municipal.

In part four we have a dissertation upon "Public Opinion" —its nature—how it rules, and how far it fails to rule.

Part five gives some "illustrations" from events in American history, showing the practical working of the party system in municipal affairs, and a series of "reflections" upon various problems of American politics.

Part six deals with "Social Institutions," such as the Bar, the Bench, Railroads, the Universities, the Churches and the Clergy, the influence of Religion, the position of Women, and a number of subjects of less importance of a similar character.

From this mere enumeration of the topics dealt with by Mr. Bryce, the reader will easily be able to comprehend the very wide scope of his work. To realize the thorough and painstaking manner in which its details have been carried out, we must refer to the volumes themselves, every page of which shows alike careful investigation, fair criticism, and accurate reasoning.

The United States. An outline of Political History—1492 to 1871. By Goldwin Smith, D.C.L., 1893. Macmillan & Co., Publishers, 66 Fifth Avenue, New York. Price, $2.

Of the many historical works with which Mr. Smith has enriched the literature of England and America, there is none, to our thinking, of so much historical value, literary power, and perfection of language as that now under consideration. Mr Smith possesses in an eminent degree the power of expressing the most in the fewest words, and in no other of his books has he given more evidence of that power than in the present.

To Canadians, generally, many of Mr. Smith's opinions can only be described as repulsive. Even if they cannot dispute his reasoning, they will not accept his conclusions. They have set themselves a task which they are determined they will accomplish, even though the Goddess of Reason herself barred the way; even though every fact in history could be marshalled against them; even though every argument, geographical and ethnological, predicted failure.

By every rule of war the British soldier has often been declared to be beaten, when in truth he has come out the victor from the smoke and turmoil of the battle. And so the Canadian goes straight on his course, careless whether his flanks are assailed by batteries of logic, or his rear threatened by volleys of criticism. But no logic or no criticism so galls him as that which comes from the pen of Mr. Goldwin Smith. Why should an Englishman of such transcendent ability, such purity of character, such power of influencing public opinion, be arrayed on the side of the enemy, when he might so greatly aid the cause of those who should be his friends—at least he ought not to put any obstacles in their path?

But in the volume now before us, though the opinions which Mr. Smith holds with regard to British power in America frequently appear, he gains our good will by the fair spirit with which he deals with American history, and especially with that portion of it relating to the revolutionary period. The part taken by our Loyalist ancestors in the events of that period has been so lied about by American writers, and their false statements have been so largely accepted by English historians, that we are grateful to any man who approaches the subject with a spirit of fairness, to say nothing of sympathy, and Mr. Smith is not only fair, but also sympathetic; and in his account of the war, the events which led to it, the cause of its ending as it did, Mr. Smith is equally fair and impartial.

Separation he believes, in any case, to have been inevitable, but the causes which immediately led to it he sums up in that magnificent passage in which he denounces woe to those by whom the offence came—to the arbitrary king and to his ministers, who, through ignorance or inability to realize the true state of affairs, upheld the letter of the law against the light of good nature and good sense, against policy and right. Woe also

to the agitators of Boston and elsewhere who did their utmost to "push the quarrel to extremity, and to quench the hope of reconciliation," and to the contraband traders and debtors who sought, in fratricidal strife, relief from trade restrictions or from debt. "Woe to all on either side who, under the influence of passion, interest, or selfish ambition, fomented the quarrel which rent asunder the English race."

Nor can we refrain from quoting the passage in which Mr. Smith describes the position of England after the war: "England came out at last with her glory little tarnished. She had yielded, not to America, but to America, France, Spain, and Holland, combined. That tremendous coalition she had faced; the national spirit of her people, which had not been thoroughly awakened by the war against her own colonists, rising to do battle with her foreign enemies; and her flag floated in its pride once more over the waters which were the scene of Rodney's victory, and on that unconquered rock beneath which the Spaniard received his share of the profits of the league."

The passages to which we have referred show the style in which this book is written, and the spirit with which it deals with the events that it records. We have not space to follow the writer any further. We can only say that in the subsequent pages the reader will find impartial record and wise reflection expressed in language such as only Mr. Smith can use.

Notes and Selections.

LORD SELBORNE AND LORD CAIRNS.—It is quite impossible to study the life of the Earl of Selborne in any of its varied aspects without being struck by the antithesis which it presents at every turn to the life of Lord Cairns. As advocates as politicians, as judges, and as men, they were "opposites," both in the literary and in the logical sense of the term. Of course they had points in common. Both possessed an intuitive insight into legal principles, a marvellous power of grasping and expounding facts, and the patient industry without which intuitions are deceitful and gifts of exposition vain. Both were "great in counsel" (the phrase was, as everybody knows, applied by Disraeli to Cairns) and dexterous in debate. Both were men of flawless rectitude. Both were deeply smitten with the religious instinct.

But these resemblances merely emphasize the far more numerous points of contrast between the two Lord Chancellors. In Cairns, evangelical zeal burned like a consuming fire. In Selborne it burned, brightly enough it is true, but still mainly within the limits prescribed by a tolerably High Churchmanship. In the exercise of his judicial patronage Cairns was absolutely indifferent to public criticism. Selborne always did what he thought right, but was sensitive about public approval of his appointments. As a judge his mind was more subtle than that of Cairns, because its subtlety was less restrained. Many of his judgments are masterpieces of luminous reasoning and legal learning. But he carried his higher subtlety with him to the Bench, and it marred his supremacy. No judgment that he ever pronounced approached to the level of that marvellous judicial revelation in which Lord Cairns settled the law as to the legal position of railway debenture-holders. As advocates Cairns and Selborne were so nearly equal that the opinion of Lincoln's Inn is still pretty evenly divided as to their comparative merits. We should not be surprised if Lord Selborne deserved the palm. The forensic field was one in which his almost superhuman acuteness must have stood him in good stead. When we turn to politics the victory rests once more with Cairns. His speeches on the calling out of the reserves by the Beaconsfield Government and the Irish Land Bill of 1881 were as superior to those delivered by Lord Selborne on the same memorable occasions as Lord Selborne's own speech against the Irish Disestablishment Bill was superior to that delivered in its favour by the late Lord Coleridge. It is only by comparison with Lord Cairns, however, that Lord Selborne suffers. He possessed a rare combination of intellectual gifts and graces, laborious industry, flawless logic, the most penetrating acumen, and matchless erudition. He deserves a place in the foremost rank of law reformers. Even in literature he has made a permanent mark. No political or religious differences can prevent lawyers of all shades of opinion from paying tribute to the high literary merit, the dialectic skill, and the learning of his "Defence of the Church of England against Disestablishment," and "Ancient Facts and Fictions concerning Churches and Tithes."—*Law Journal.*

DIARY FOR JUNE.

1. Saturday.....First Parliament in Toronto, 1797.
2. Sunday.....*Whit Sunday.*
4. Tuesday.....Lord Eldon born, 1751.
5. Wednesday....Battle of Stoney Creek, 1813.
6. Thursday.....Sir John A. Macdonald died, 1891.
7. Friday.....Convocation meets.
8. Saturday.....Easter Term ends. First Parliament at Ottawa, 1866.
9. Sunday.....*Trinity Sunday.*
10. Monday.....County Court and Surrogate Sittings in York.
11. Tuesday.....Lord Stanley (Earl Derby), Gov.-Gen., 1888.
13. Thursday.....Corpus Christi.
15. Saturday.....Magna Charta signed, 1215.
16. Sunday.....*1st Sunday after Trinity.* Battle of Quatre Bras, 1815.
18. Tuesday.....Battle of Waterloo, 1815.
20. Thursday.....Accession of Queen Victoria, 1837.
21. Friday.....Proclamation of Queen Victoria, 1837. Longest day.
23. Sunday.....*2nd Sunday after Trinity.*
24. Monday.....St. John Baptist. Midsummer day.
25. Tuesday.....Sir M. C. Cameron died, 1887. Convocation half-yearly meeting.
28. Friday.....Coronation of Queen Victoria, 1838.
29. Saturday.....St. Peter.
30. Sunday.....*3rd Sunday after Trinity.* Jesuits expelled from France, 1880.

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

From Chy. Div.] [May 14.

CRAWFORD *v.* BRODDY.

Will—Construction—Inconsistent clauses.

A testator by the third clause of his will, made in numbered clauses, devised a lot to his son F., and, after having by the fourth clause appointed executors, he, by the fifth clause, devised another lot to these executors to be disposed of by them for the benefit of named sons and daughters in certain shares and amounts. In this clause there was the following paragraph: "At the death of any one of my sons or daughters having no issue, their property to be divided equally among the survivors."

Held, reversing the judgment of the Chancery Division, 25 O.R. 635 (STREET, J., dissenting), that this paragraph did not apply to or modify the devise to F. in the third clause.

J. J. Blain for the appellants.

J. C. Hamilton and *T. Dixon* for the respondents.

W. H. McFadden for the executors.

From C.P. Div.] [May 14.

CANADIAN PACIFIC RAILWAY CO. *v.* TOWNSHIP OF CHATHAM.

Municipal corporations—Drainage—Contract—Ultra vires—By-law—R.S.O., c. 184, ss. 569, 573, 585.

Where drainage works for the benefit of lands in two townships prove, as originally initiated and constructed, insufficient, an addition thereto costing more than $200 must be authorized by petition and by-law under the Act, and a contract entered into under seal by one township binding itself to pay the cost of the additional work cannot, even after completion and acceptance of the work, be enforced.

Judgment of the Common Pleas Division, 25 O.R. 465, affirmed, OSLER, J.A., dissenting.

Moss, Q.C., and *A. MacMurchy* for the appellants.

M. Wilson, Q.C., and *Pegley*, C., for the respondents.

From C.P. Div.] [May 14.

GORDON *v.* DENISON.

Trespass—Police magistrate—Jurisdiction—Warrant to compel attendance of witness—R.S.C., c. 174, s. 62—Malicious arrest—Imprisonment—Damages.

Where a police magistrate, acting within his jurisdiction under R.S.C., c. 174, s. 62, issues his warrant for the arrest of a witness who has not appeared in obedience to a subpœna, he is not liable in damages, even though he may have erred as to the sufficiency of the evidence to justify the arrest.

Judgment of the Common Pleas Division, 24 O.R. 576, affirmed.

Osler, Q.C., and *H. S. Osler* for the appellant.

Delamere, Q.C., and *Macklem* for the respondent.

In an action for malicious arrest, judgment cannot be entered upon answers to questions submitted to the jury; a general verdict must be given.

Judgment of the Common Pleas Division, 24 O.R. 576, reversed, MACLENNAN, J.A., dissenting.

H. M. Mowat for the appellant.

Osler, Q.C., and *H. S. Osler* for the responder..

From MACMAHON, J.] [May 14.

SWEENEY *v.* SMITH'S FALLS.

Municipal corporations—Local improvements—Debentures—By-law—Registration—R.S.O., c. 184, ss. 351, 352.

Even after registration, under s. 352 of the Municipal Act, R.S.O., c. 184, of a local improvement by-law, a ratepayer may show that the by-law is invalid, and successfully resist payment of the local improvement tax.

Judgment of MACMAHON, J., reversed.

Osler, Q.C., for the appellant.

Moss, Q.C., and *Lavell* for the respondents.

From BOYD, C.] [May 14.

FITZGERALD *v.* CITY OF OTTAWA.

Municipal corporations—Drainage—New territory—Old drain.

Where a municipality makes alterations in and thus adopts as part of its own drainage system a drain existing in territory acquired from another municipality, it is liable for damages caused by subsequent neglect to keep the drain in repair.

Judgment of BOYD, C., 25 O.R. 658, affirmed, MACLENNAN, J.A., dissenting.

Moss, Q.C., and *MacTavish*, Q.C., for the appellants.

Wyld for the respondent.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [Feb. 28.

COPE *v.* COPE.

Judgment—"Subject to dower"—Right to writ of assignment of—R.S.O., c. 55, s. 7.

The judgment, or decree, in an action to establish a will, which had been destroyed, in which it was held that the plaintiff was entitled to the land in question in fee simple, "subject to the dower of the defendant R.C.," is not such a judgment as will entitle the dowress to sue out a writ of assignment of dower under section 7, R.S.O., c. 55, and consequently does not prevent the Statute of Limitations running.

Judgment of ROSE, J., reversed.

E. D. Armour, Q.C., for the appeal.

John G. Farmer, contra.

Div'l Court.] [May 22.

BRABANT *v.* LALONDE.

Will—Construction—"Nearest of kin"—Period of ascertainment—Tenants in common—"The"—Dower—Election.

Judgment of ST. ET, J., *ante* p. 280, affirmed on appeal to a Divisional Court composed of ROSE and FALCONBRIDGE, JJ.

Shepley, Q.C., for the appellants, the defendants, J.B. and O. Lalonde.

J. B. O'Brian for the plaintiff.

FALCONBRIDGE, J.] [May 6.

RE MCGOLRICK *v.* RYALL.

Prohibition—Division Court—Promissory notes—Separate causes of action—Title to land—Liquors drunk in tavern—Indemnity bond for lost note.

Plaintiff, a liquor dealer, sold liquors to defendant, a tavern-keeper, and took a note for the amount, $383, on which he brought an action. In settlement of the action defendant gave security by a deed of land, but stipulated by agreement for an account when it should be sold. A new note was given, which was subsequently divided into three notes of $125 each.

On a motion for prohibition,

Held, that each $125 note was a separate cause of action, and could be sued in the Division Court.

That the title to land did not come in question.

That the words "Liquors drunk in a tavern or alehouse" in s-s. 2, and "such liquors" in s-s. 3, s. 69, of the Division Court Act, mean liquors drunk in the tavern or alehouse of the vendor.

Held, also, that the non-filing of a bond of indemnity for a lost note is a matter of practice, and not a ground of interference with the Division Court.

D. Armour for the motion.

W. H. Blake, *contra*.

Chancery Division.

Div'l Court.] [May 27.

RE GRANT.

Life insurance—R.S.O., c. 136, s. 6—51 Vict., c. 22, s. 3 (O.)—53 Vict., c. 39, s. 6 (O.)—58 Vict., c. 34, s. 12 (O.)—Terms of policy—Variance by will—Apportionment.

On an appeal by the executors from the judgment of ARMOUR, C.J., reported 26 O.R. 120, the widow, the beneficiary named in the policy, waiving her claim in favour of the children, for whom the executors claimed the fund on condition that the fund should be retained by the court and administered for the benefit of the children, the court dismissed the appeal, but without costs, and refused leave to appeal.

J. J. Warren for the executors.

Hamilton Cassels for the widow.

F. W. Harcourt for the children.

ARMOUR, C.J.] [April 3.

LOVE *v.* WEBSTER.

Assessment and taxes—Sale of land for—Setting aside—Assessment Act of 1892—55 Vict., c. 48 (O.)—Provisions of sections 121, 141, and 142.

In an action to set aside a sale of land for taxes on the ground of irregularities,

Held, following *Town of Trenton* v. *Dyer*, 21 A.R. 379, that the provisions of s. 121 of the Assessment Act of 1892, 55 Vict., c. 48 (O.), are imperative, and that a roll made and transmitted thereunder not complying therewith is a nullity.

Held, also, that the non-compliance with the provisions of sections 141 and 142 before the sale was also a fatal objection to its validity, and the sale was set aside.

G. M. Macdonell, Q.C., for the plaintiff.

J. L. Whiting for the defendant.

BOYD, C.] [April 5.

MCSLOY *v.* SMITH.

Impounding—Cattle straying from one enclosure into another—Running at large—Act respecting Pounds—Poundkeeper—R.S.O., c. 195.

The effect of ss. 2, 3, 6, 20, and 21 of the Act respecting Pounds, R.S.O., c. 195, is to give a right to impound cattle trespassing and doing damage, but with a condition that if it be found that the fence broken is not a lawful fence, then no damages can be obtained by the impounding, whatever may be done in an action of trespass.

Cattle feeding in the owner's enclosure, or shut up in his stables, cannot be held to be running at large within the meaning of the usage and the law when they may happen to escape from such stable or enclosure into the neighbouring grounds.

Du Vernet and *Kelly* for the plaintiff.

Ball, Q.C., for the defendant.

MEREDITH, C.J., Non-Jury Sittings. [April 9.

JANES *v.* O'KEEFE.

Landlord and tenant—Covenant to pay taxes—Construction—Right of building over lane—Interest in land.

A lessee of property in Toronto covenanted to pay all taxes "to be charged upon the said demised premises, or upon the lessor on account thereof." The premises consisted of a building property on Yonge street which had in the rear a lane over which the lease provided that the lessee might at any time erect a building or extension, provided the same was always nine feet above the ground. The lease contained a covenant for renewal, with a proviso that if the lessors elected not to renew it they were to pay a fair valuation for the buildings which should at that time be erected "on the lands and premises hereby demised, and over the said lane."

Held, that on the proper construction of the above lease the words "demised premises" in the covenant as to paying taxes must be referred only to the building lot itself, and not to the interest in the lane which passed by the lease.

Semble, where a tenant agrees to pay taxes on the land demised to him the omission of the assessor to enter his name on the assessment roll, or that of the landlord to resort to the Court of Revision to have the omission rectified, would not be any answer to the claim of the latter that the tenant should indemnify him against payment of the taxes.

Held, also, that the interest of the defendants in the lane under the above lease was clearly an interest in the land.

Johnston, Q.C., and *Davidson* for the plaintiff.

Moss, Q.C., and *Lockhart Gordon* for the defendants.

Common Pleas Division.

Div'l Court.] [May 23.

IN RE FRANKLIN *v.* OWEN.

Prohibition — Division Court — Jurisdiction — Garnishing claim — Primary debtor abroad — Garnishees — Plaintiff carrying on business — Cause of action — 57 Vict., c. 23, s. 12.

Upon an appeal by the primary creditor from the order of STREET, J., *ante* p. 321, granting prohibition, upon the ground that no Division Court except that of the division in which the cause of action arose had jurisdiction, his order was affirmed by a Divisional Court composed of MEREDITH, C.J., and MACMAHON, J., upon the same ground.

Kilmer for the primary creditor.

Swabey for the primary debtor.

Totten, Q.C., for the garnishees.

MACMAHON, J.] [May 20.

IN THE MATTER OF MILTON A. THOMAS' LICENSE.

Prohibition of license commissioners—R.S.O., c. 194, s. 21.

The granting of a license under the Liquor License Act by a Board of License Commissioners imposes no duty or obligation upon any individual, and a writ of prohibition prohibiting them from entertaining or hearing applications for same was refused. *Regina* v. *Local Government Board*, 10 Q.B.D., at p. 321, and *Re Godson and the City of Toronto*, cited and followed.

Semble, an application under the latter part of s. 21, R.S.O., c. 194, for an additional tavern license in a locality largely resorted to in summer by visitors, may be made at any time, so long as the license does not extend beyond the prescribed period of six months from the first of May.

Maclaren, Q.C., and *W. Lockhart Gordon* for the motion.

McCarthy, Q.C., and *James Haverson* for the applicant.

W. M. Douglas for the Commissioners.

Practice.

ROSE, J.] [May 13.

LENNOX *v.* STAR PRINTING AND PUBLISHING CO.

Security for costs — Libel — Newspaper — R.S.O., c. 57, s. 9 — Defence — Denial — Good faith — Appeal.

In an action of libel against the publishers and editors of a newspaper, the defence suggested by affidavits filed upon an application under R.S.O., c. 57, s. 9, for security for costs, was that the statement complained of as defamatory did not refer to the plaintiff.

The judge who heard an appeal from an order made by a Master for security being of opinion that, upon the fair reading of the statements complained of, they did refer to the plaintiff,

Held, that it did not appear that the defendants had a good defence on the

merits, and that the statements complained of were published in good faith, and therefore the order should be set aside.

Swain v. *Mail Printing Co.*, 16 P.R. 132, distinguished.

Neville for the plaintiff.

Gunther for the defendants.

FALCONBRIDGE, J.] [May 14.

HAGER *v.* JACKSON.

Costs—Scale of—Action on bond—Penalty—Ascertainment of amount recoverable—R.S.O., c. 47, s. 19.

In an action on a bond for $500 given to secure payment of costs of the Supreme Court of Canada in a prior action, judgment was given for the plaintiff for $318.55, the amount at which such costs were taxed and certified in the Supreme Court.

Held, that the amount recovered was not ascertained by the act of the parties or by the signature of the defendants, within R.S.O., c. 47, s. 19, and the plaintiff was entitled to costs of the action on the scale of the High Court.

MacGregor for the plaintiff.

George Ross for the defendants.

Q.B. Div'l Court.] [May 23.

HALLIDAY *v.* TOWNSHIP OF STANLEY.

Venue—Change of—Convenience—Appeal—New material—Change of circumstances.

The plaintiff's right to select the place of trial is not lightly to be interfered with, where it has not been vexatiously chosen.

And where the defendants, in moving to change the venue to the county where the cause of action arose, did not show a considerable preponderance of convenience in favour of the change, their application was refused; and the refusal was affirmed on appeal to a Divisional Court, composed of FALCONBRIDGE and MACMAHON, JJ.

Held, also, that the appeal must be dealt with on the facts as they were exhibited before the Master and Judge in Chambers, although since their orders the trial had been postponed from the spring to the autumn, and the court ought not to look at new material, nor listen to suggestions of possible changes, unless, in a proper case, to allow a new substantive application to be made.

L. G. McCarthy for the plaintiff.

Garrow, Q.C., and *D. Armour* for the defendants.

MANITOBA.

COURT OF QUEEN'S BENCH.

Full Court.] [May 15.

GOGGIN *v.* KIDD.

Husband and wife—Ownership of crops grown on wife's land—Separate business.

At the trial of an interpleader issue between the plaintiff, the wife of the executio.. debtor, and the defendants, execution creditors of the husband, the judge found on the facts as follows:

That the lands on which the crops seized had been grown were mortgaged to the Trust and Loan Company; that the mortgagor, the debtor, had failed in 1893, most of his crops of that year and his stock and farming implements having been seized and sold under execution and chattel mortgage; that, interest being in arrear, the officers of the loan company in the spring of 1894 leased the property to the plaintiff for three years, whether by the authority of the company or not did not appear; but that the plaintiff entered into the lease in good faith, and that both the husband and wife intended and understood that there should be and was a lease to the wife, and that she should and did carry on the work of farming on the said lands for her separate profit and as her separate business; also, that the horses and cattle by the work of which the farming operations were carried on had been sold to the plaintiff by the mortgagee under chattel mortgage given by the husband, and that such sale was not fraudulent as against the creditors; that the plaintiff enteredi no a covenant to pay the rent under the lease, and incurred a heavy liability to an implement company for seed grain and implements and binding twine, and also hired the men who were employed to conduct the farming operations, and that she assumed to make a contract with her husband to act as her servant for wages; that she was actually the farmer, and that it was intended and understood between herself and her husband and the loan company that she should have the possession and use of the premises; that the farming operations carried on in 1894 under such circumstances constituted a separate occupation by her, and were her separate business; and that, on the whole, the amounts which she covenanted to pay for the three years of the lease represented the fair rental value of the property for that period, and he entered a verdict for the plaintiff.

On motion to the Full Court to reverse this verdict, and to enter a verdict for the defendants,

Held (DUBUC, J., dissenting), that the evidence was insufficient to establish any separate occupation of the lands by the wife, or that the farming business was her separate business. The court should require clear and unequivocal evidence of the reality of such separate occupation on the part of the wife. The plaintiff, when she undertook to farm for herself, had no means of her own. The lands upon which the crops claimed were grown had in the fall preceding been plowed and prepared for seed by the husband, and some of the seed

belonged to him. After she leased the land the plaintiff and her husband and their family continued to live on the homestead as before, and the actual farming work on the land was done for the most part by the husband and two men, who had worked for him before the lease was made to the plaintiff. The court was satisfied that the hiring of the husband as a farm servant was no more than an empty form, and colourable. The only evidence as to such hiring and as to the manner in which the farm work was managed and carried on was that of the plaintiff and her husband, and the court held that it failed to prove definitely that the plaintiff conducted and managed the farming operations separately from her husband, and suggested the suspicion that her assuming to carry on the farm was colourable, and little more than nominal, and that her husband had a part in the conduct and management of the farming operations as well as in the manual work.

Per DUBUC, J.: There is sufficient evidence to support the findings of the trial judge on the facts, and this case should be decided on the principles laid down in *Murray* v. *McCallum*, 8 A.R. 277; *Dominion Loan and Investment Company* v. *Kilroy*, 14 O.R. 468; *Lavell* v. *Newton*, 4 C.P.D. 7; and *Ingram* v. *Taylor*, 46 U.C.R. 52; and the verdict should not be disturbed.

Verdict for the plaintiff set aside, and verdict entered for the defendants.

Cooper, Q.C., and *Barrett* for the plaintiff.

Culver, Q.C., for the defendants.

Full Court.] [May 18.

WOOLLACOTT *v.* WINNIPEG ELECTRIC STREET RAILWAY CO.

Trial by jury—Action for damages—Application for a jury.

The plaintiff in this case sought to procure an order for a trial of the issues and assessment of damages by a jury under the Jury Act, R.S.M., c. 81, ss. 60, 61, the effect of which is to provide that actions of libel and slander shall be tried by a jury, but that if a jury is desired by either of the parties in any other civil action or proceeding at law an application must be first made to a judge for an order to that effect.

It was contended on behalf of the plaintiff that the issues in this case should be tried by a jury because there would be a considerable conflict of testimony, and a difficulty in assessing damages, and that such actions were usually tried by a jury and not by a judge. His claim was for damages for being knocked down and injured by a car of the defendants, being run along the street at a high rate of speed and without sufficient warning.

Held, that the former policy of the law which entitled parties to a trial by jury if they wished had been changed by 51 Vict., c. 1, s. 33, and that now the onus is thrown upon the party who wishes a trial by jury, except in cases of libel and slander, of showing that the case should be tried by a jury and not by a judge, and that no sufficient reason was shown in this case why a special order for a jury should be made.

Thornton v. *Union Discount Co.*, 7 T.L.R. 322, 410, followed.

Judgment of DUBUC, J., refusing the application, affirmed.

Perdue for the plaintiff.

Munson, Q.C., for the defendants.

Full Court.] May 18.

THE QUEEN *v.* GOLDSTAUB.

Criminal Code, s. 354—Fraud in concealing one's own goods.

Under s. 354 of the Criminal Code (1892), which declares that every one is guilty of an indictable offence who for any fraudulent purpose takes, obtains, removes, or conceals anything capable of being stolen, the prisoner was convicted, at the last Assizes, on the charge that he had concealed a quantity of his own goods, being things capable of being stolen, for the purpose of defrauding an insurance company which had insured the goods, and leading the company to believe that the goods had been destroyed in a fire which had previously taken place.

On a case reserved for the opinion of the court, as to whether such conviction was proper,

Held, that the prisoner was properly convicted without any evidence that he had actually made any claim against the insurance company for the loss, and that, although the things concealed were his own goods, they came within the meaning of the expression, "things capable of being stolen."

MacLean for the Crown.

Hagel, Q.C., and *Elliott* for the prisoner.

Full Court.] [May 18.

CREDIT FONCIER *v.* SCHULTZ.

Pleading in equity—Fraudulent conveyance—Alleging recovery of judgment—Certificate of judgment—R.S.M., c. 80, s. 6.

The plaintiffs sought in this suit to set aside certain conveyances of lands made by J. C. S. to the defendant, which the plaintiffs claimed were voluntary, and had been fraudulently made for the purpose of defeating and delaying them in the recovery of their judgment against the said J. C. S.

The plaintiffs had proceeded by a suit in equity against J. C. S. upon a mortgage, and the present bill alleged that in such suit a decree and report were made that "the said J. C. S. was ordered to pay to the plaintiffs the sum of $6,366.66 for principal and interest." The bill further alleged that the plaintiffs, in pursuance of such decree and report and proceedings thereunder, caused a certificate of the said decree to be issued and registered in the registry office for the proper Lands Titles District.

Section 6 of the Judgments Act, R.S.M., c. 80, provides that every decree or order of the Court of Queen's Bench on its equity side ordering money to be paid to any person may be registered in any registry or land titles office on the certificate of the registrar, signed by him under the seal of the court, stating the title of the cause or matter in which the decree or order has been made, the date thereof, and the amount of money thereby, or by any report made in pursuance thereof, ordered to be paid, and shall, when registered, have the same effect as a registered judgment.

The defendant demurred for want of equity.

The particular defects in the pleading which the defendant's counsel relied upon were that it was not stated that it was by the said decree that J. C. S. was ordered to pay the money, and there was no allegation that the decree of which the certificate was registered was a decree ordering money to be paid, nor was it stated that the certificate of the decree referred to was signed by the registrar under the seal of the court, and it was not shown that the certificate included the other matters which the statute provides for.

Held, that there was no sufficient allegation of the registration of any certificate sufficient to create a lien and charge on the lands of J. C. S. under said section, and that the demurrer must be allowed with costs.

Plaintiff's counsel contended that notwithstanding the insufficient allegations of a lien or charge the bill made a sufficient case for setting aside the deeds as fraudulent; but as it was not filed on behalf of the plaintiffs and all other creditors, this contention was held untenable.

Reese River Mining Co. v. *Atwell*, L.R. 7 Eq. 347, and *Longeway* v. *Mitchell*, 17 Gr. 190, explained.

Judgment of DUBUC, J., reversed, and demurrer allowed with costs.

Howell, Q.C., and *Huggard* for the plaintiffs.

Tupper, Q.C., and *Phippen* for the defendant.

BAIN, J.] [May 14.

IN RE CUDDY.

Mandamus—Production of books of municipality—Copies of documents.

This was an application for a mandamus to compel the clerk of the municipality of Macdonald to allow the applicant to inspect the minutes of the meetings of the council, and to furnish the applicant with certified copies of the resolutions he asked for on payment of the proper fee. The defendant excused himself for refusing the demand made upon him on the ground that the reeve of the municipality had taken the books away to Winnipeg for use in certain litigation, and that he could not get the papers or books so as to comply with the demand.

Held, that it is the duty of the clerk, under the Municipal Act, to keep the books and records of the municipality and of the council in his office, or in the place appointed by the council, and neither the reeve nor any other person has any authority to take any of these books or papers out of the custody of the clerk.

Rule absolute for a mandamus.

Howell, Q.C., and *Haney* for the applicant.

Hagel, Q.C., and *Thompson* for Cuddy.

BAIN, J.] [May 14.

LAW *v.* NEARY.

Summary judgment—Leave to defend—Payment into court.

This was an appeal from the order of the Referee, giving the defendant leave to defend on condition that he should pay into court $613.80 within a

week. The defendant was examined on his affidavit, and his examination showed no defence as to that sum, and no clear defence at all to any portion of the plaintiff's claim. He desired, however, to defend for the whole.

Held, that the referee had jurisdiction to make the leave to defend conditional upon payment into court of the part of the plaintiff's claim practically admitted as security, and that his discretion should not be interfered with in this case. *Rotheram* v. *Priest*, 49 L.J.N.S. 104, and *Oriental Bank* v. *Fitzgerald*, W.N. (1880) 119, followed.

Appeal dismissed with costs.

Pitblado for the plaintiff.

Elliott for the defendant.

BAIN, J.] [May 18.

INMAN *v.* RAE.

RAMSAY, *Claimant.*

Chattel mortgage—Affidavit of execution.

In this case it was decided, on appeal from a County Court, that a chattel mortgage was invalid and of no effect, as against the execution creditors of the mortgagor, where the affidavit of execution filed with the mortgage was defective by reason of the commissioner, before whom it was sworn, forgetting to put his signature to the jurat. The chattel mortgage had been executed in duplicate, and the witness had signed and sworn to the affidavits of execution on both originals, and the commissioner had signed the jurat on one of the originals, but not on the original filed with the clerk, whilst under section 3 of The Bills of Sale Act, R.S.M., c. 10, it is essential that a perfect and complete affidavit of execution should be filed along with the chattel mortgage, there having been no immediate delivery followed by an actual and continued change of possession of the chattels.

Judgment of Judge CUMBERLAND reversed, and verdict entered in favour of execution creditors.

Ewart, Q.C., for the plaintiff.

Culver, Q.C., for the claimant.

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