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TABLE OF CANADIAN CASES

Reported and Noted in this Volume.

TABLE OF ENGLISH CASES

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RULES OF PRACTICE

Referred to in this Volume.

TABLE OF STATUTES

Referred to in this Volume.

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WE regret to see that an agitation is in progress, both in London and Ottawa, having for its end the sitting of a judge of the High Court at those places every week for the purpose of holding court. The true inwardness of the matter is simply that the practitioners at those places desire to save counsel and agency fees, or the travelling expenses which they have to pay in order to transact such business in Toronto. This is not an unreasonable desire on their part; but if the demand be acceded to, it may have consequences far beyond what the promoters of the scheme contemplate. If London and Ottawa are thus favoured, how will it be possible to resist the demand of Kingston, Peterborough, Hamilton, St. Thomas, Brantford, Barrie, Windsor, etc., for similar favours? In short, the Bench of the High Court would in the end become simply an assemblage of peripatetic county judges. Judges cannot be kept running about the country if they are to do their work satisfactorily.

THE objections to the proposed change are numberless. A few more may be referred to. Superior Court judges especially should have ample time for the preparation of their judgments, and ready access to the library at Osgoode Hall. Not only this, but the opportunity of conference of judge with judge is an important advantage, not only to the judge, but to suitors depending on his judgment. All these advantages are to be jeopardized, if not altogether lost, by the proposed scheme. It may be a sacrifice for some members of the profession to place the best and truest interests of the profession and the law above their own private and individual interests, but we think the great majority of them would be willing to make the sacrifice. We devoutly trust that the agitation may come to naught, as we are firmly convinced that it would have a deteriorating effect on the administration of justice.

We would, in this connection, draw attention to the position of things in the Province of Quebec. Decentralization there has been most injurious to the best interests of the Bench and Bar.

The County of Simcoe Law Association, a year ago, discussed this question, and arrived at the correct conclusion in the following very sensible and well-considered resolution: "*Resolved*, that this association desire to place on record their opposition to the proposal now being made for the decentralization of High Court business in the manner now suggested in the west and east of this Province, it being the opinion of this association that such a course would not tend to improve the administration of justice in Ontario, and might (as has been the case in an adjoining province) prejudicially affect the standing of the judiciary. And this association believes that the true principle as affecting that standard—the uniformity and convenience of practice and the general administration of justice, and the one in conformity with British usage and traditions, and to which is largely due the high standard of British judges—is the centralization of the judiciary and law business (other than Chamber and formal matters) in one natural, educational, and legal centre. And, further, that the question of practice applies with peculiar force to the central, east and west, central and northern districts of this Province."

THE DEVELOPMENT OF LAW ASSOCIATIONS.

The recent official visit of the Minister of Justice to the Court House Library, and the reception tendered to Sir John Thompson and other members of his cabinet, also members of the Bar, by the Hamilton Law Association, marks an epoch in the history of these associations calculated to improve their usefulness, and cause them to be more largely appreciated.

On the occasion referred to, the attention of the Ministers was drawn to the very great convenience a well-equipped library must always be in a court house, and how necessarily important a factor it is in the efficient administration of justice, and the want of which must frequently have been seriously felt alike by the Bench

and the Bar before the action of the Law Society rendered it possible to establish the same at the various county towns.

The assistance which the parent society has been able to afford to the local Law Associations by a system of initiatory grants, on a progressive liberal basis, has, of course, done much to develop local Law Associations; such grants have been made upon the basis of, and in proportion to, the amount expended by local practitioners, either in subscriptions or in donations of law books. The rule was intended to operate as an inducement to organizing and developing such associations, and, while working satisfactorily in large centres, has not been found, in the case of small county towns, to accomplish fully the end desired, which is not only the establishment of a library, but the keeping it well up to date with the standard reports, as well as the latest and most approved text-books.

Under these circumstances, the application made some years ago to the Ontario Government for a money grant had considerable weight, looking to the fact that the result of the work was the supplementing, to a large extent, the facilities for the disposition of business, and in that way benefiting directly the public, as well as the profession, by the more efficient, expeditious, and convenient administration of justice. And so Sir Oliver Mowat, recognizing the great usefulness of the work accomplished, was able to recommend a grant towards the judges' libraries where associations were organized, in that way substantially complying with the request of the associations. This amount voted by the Ontario Legislature has been, thus far, equally distributed each year among the nineteen associations which have availed themselves of the offer of the Law Society; the County of York Association, be it said to their credit, waiving their right to share in the grant.

The recognition by the Ontario Government of the system which is the subject of this article justified the Hamilton Association in making an application to the Dominion Government also for some substantial assistance, basing the application upon the fact that the Federal Government had so largely to do with the judiciary in its administration of the Department of Justice, as well as the arrangement for the trial of controverted Dominion election cases. The Minister of Justice, in the two interviews granted him at Ottawa to the writer and other representatives of

the Law Associations of the Province, as well as on the recent occasion of the reception in the court house at Hamilton, stated his hearty approval of the system; and the Dominion Government has so far recognized the importance of the institutions as to direct the free distribution to them of the statutes, notes on criminal law, the Supreme and Exchequer Reports, the *Canada Gazette*, and Orders in Council, which hitherto had been a charge upon the funds of the associations, and, to that extent, the supplying of these valuable publications is a saving of expense.

The Government has still under consideration the question of making a money grant for the purpose of assisting local associations, possibly by way of supplementing, from time to time, the works on Criminal and Election Law, all important and valuable additions to such libraries.

The question, also, of encouraging the importation of English and other law books, for the exclusive use of law libraries without the imposition of duty, was also forcibly brought to the attention of the Ministers; and that question is under consideration by the Government. Judging from the interest evinced by the Premier in the working of these organizations, and the weight given to the arguments advanced by the deputation, it is hoped that, at the approaching session of Parliament, the tariff will be so modified as to permit works of technical character, when imported for law libraries, to be put upon the free list.

The fact that the Law Society at Osgoode Hall paid last year in duty about $340.00, and that other associations in proportion make annual disbursements for the same purpose, show the large annual saving that would be effected if the duty were removed. As the Government has already placed upon the free list all books imported for the use of Public Libraries, it is hoped that the principle will be adopted in the case of libraries organized for the convenience of and largely used in the administration of justice.

It may be useful and interesting to trace the growth of the Law Associations and the establishment of Law Libraries in in Ontario, the earliest of which was that of the County of Brant, organized in 1853. The remainder of the twenty organizations were formed as follows:—

County of Bruce Law Association, organized in 1879, with an initiatory grant of $126.

Frontenac Law Library Association, organized in 1879, receiving an initiatory grant of $120.00.

The Hamilton Law Association, organized in 1879, receiving an initiatory grant of $680.00.

The Middlesex Law Association, organized in 1879, receiving an initiatory grant of $360.00.

The Peterborough Law Association, organized in 1879, receiving an initiatory grant of $132.00.

The Wellington Law Association, organized in 1880, receiving an initatory grant of $800.00.

The County of Ontario Law Association, organized in 1882, receiving an initiatory grant of $460.00.

The Essex Law Association, organized in 1884, receiving an initiatory grant of $147.00.

The County of Welland Law Association, organized in 1884, receiving an initiatory grant of $200.00.

The Lindsay Law Association, organized in 1885, receiving an initiatory grant of $340.00.

The County of York Law Association, organized in 1885, receiving an initiatory grant of $1,500.00.

The Elgin Law Association, organized in 1886, receiving an initiatory grant of $590.00.

The Norfolk Law Association, organized in 1887, receiving an initiatory grant of $200.00.

The Perth Law Association, organized in 1887, receiving an initiatory grant of $460.00.

The Carleton Law Association, organized in 1888, receiving an initiatory grant of $660.00.

The Leeds and Grenville Law Association, organized in 1889, receiving an initiatory grant of $660.00.

The County of Grey Law Association, organized in 1891, receiving an initiatory grant of $560.00.

The County of Hastings Law Library, organized in 1891, receiving an initiatory grant of $1,000.00.

The Simcoe Law Association, organized in 1891, receiving an initiatory grant of $988.50.

During these years the parent society has paid in initiatory grants the sum of $9,185. We gather from this and from the fact that the grant is based upon the amounts subscribed by the individual members of local associations that the members of

the profession have contributed large sums out of their own pockets in addition.

It is a matter of surprise that more associations have not been brought into existence, looking to the liberal terms with which they would now be treated by the parent society at the outset, not only by way of loan, as provided in the rules of the Society, but in the further concession of a proportion (not more than two-thirds) of the charges for telephone service, where the members of an association do not exceed one hundred in number, in addition to the payment also of a proportion (not more than half) of the salary of the librarian of any Law Association [The maximum grant under the rule not to exceed $200.] This liberal allowance goes a long way towards meeting the salary of the librarian, which would leave the balance of the money available from other sources for the equipment of the library in other respects.

It will readily be seen, therefore, that great advances have been made in the development of Law Associations since the inception of the scheme, not only by way of increased initiatory grants, but by the advancing, in some cases, of sums of money by way of loans, repayable to the Law Society, *without interest* [by being deducted from the yearly grants to the borrowing association], and which has been, and must of necessity always be, of incalculable benefit to young Law Associations in equipping the library at the outset. In addition to this, the law has been so framed as to impose the duty upon County Councils of finding and furnishing suitable apartments in the court house for the libraries (55 Vict., cap. 42, sec. 466) ; and, in some cases, the County Councils make small annual grants towards the supplying of stationery, telephone service, etc.

Thus with the timely aid from the Ontario Government, as well as the recognition and assistance which is looked for from the Dominion Government, it may fairly be predicted that from the development which must necessarily follow, there is still a wider field of usefulness in the future for the Law Associations of the Province.

W. F. BURTON.

TOBACCO AND SMOKING.

The subjects of smoking and tobacco are not unknown in legal literature, although neither has a separate place in the ordinary digests. Hence the necessity of this paper. "Nothing is harder than a definition," saith Dean Trench. We will, therefore, not attempt to define our leading terms. Yet we will give some definitions that have been propounded by learned judges anent the subject.

An Indiana court decided that tobacco was neither "victuals" nor "clothes." The action was to enforce a contract by a son to "victual, clothe, etc.," his father for life, in return for the use of his farm. The judge refused to hold that either whiskey or tobacco were included in the words mentioned: *Wiseheart* v. *Grose*, 71 Ind. 260. (It does not appear that the early case of Adam and Eve going about clad in fig-leaves was cited.) On the other hand, another court held that tobacco was both a "victual" and a "drink," and directed a new trial because the successful party had treated the jury to cigars, the statute forbidding either food or drink to them: *Baker* v. *Jacobs*, 25 Atl. Rep. 588.

Apropos of cigars, a Minnesota court has, perhaps wisely, decided that a cigar-maker's watch, used to time his workmen, is not exempt as an *instrument* used and kept by the debtor for the purpose of carrying on his trade. The judge said, "It is not kept or used for the purpose of carrying on his trade, *i.e.*, to make cigars with, but for his own convenience in keeping the account between himself and those by whom he makes cigars. His workmen could make as many and as good cigars if he were to keep their time and regulate his duties by the sun:" *Rothschild* v. *Bolten*, 18 Minn. 361. Some smoking tobacco gave a Wisconsin judge the opportunity of judicially deciding that an Indian and a negro look so much alike that persons of mere ordinary discrimination cannot tell them apart by a casual glance. The action was brought to restrain the infringement of a trade mark upon smoking tobacco put up in packages of a certain form, in paper wrappers of a particular colour and mark, stamped "Nigger-hair Smoking-tobacco." The most conspicuous feature of the label was a negro's head, crowned with a wealth of woolly hair, with a ring pendant from the nasal organ and other circlets from his auricular appendages. The defendant's

imitation label had the head of a Red-man, with a ring in the ear, but none in the nose, and the packages were stamped "Big Indian." On demurrer, it was held that the dissimilarity was not so marked as to make it apparent that no one could be deceived, and the demurrer was overruled: *Leidersdorf* v. *Flint*, 50 Wis. 401.

The practical joker may get into trouble if he plays any of his pranks with one's smoking tobacco. Enslow was a tobacconist, and his custom was to keep a box of smoking tobacco on his counter for the free use of the visiting public; it was Parker's habit to resort to this box, as Enslow well knew. Enslow playfully mixed gunpowder with this tobacco (perhaps he was growing tired of the size of P.'s pipe, or perhaps it was to celebrate the fourth of July: we know not). Parker entered the shop, and, according to his wont, sauntered up to the box, charged his pipe, applied his lighted fusee, and then—instead of the match being blown out, he was blown up, and his eyes were seriously and permanently injured. Parker saw and felt the joke, but failed to appreciate it; he threatened an action for damages. Enslow, to soothe him, gave his note for the amount desired: afterwards he declined to pay the amount, so his former friend sued him, and the court held that the note having been given in settlement of the threatened action for damages the consideration therefor was a valid one. They said: "The putting of powder in smoking tobacco, whether a mere thoughtless act for the purpose of amusement, or a malicious act for the purpose of doing harm, was necessarily extremely dangerous in its tendency, and cannot be excused. Even if the plaintiff had been taking the tobacco as a trespasser, this was not justifiable as a measure of prevention:" *Parker* v. *Enslow*, 102 Ill. 272. One, of course, at once remembers that the law concerning spring-guns and man-traps bears out the statement with regard to trespassers.

We are sorry to find—although we confess that, under all the circumstances, we are not surprised—that it has been decided in Michigan that a railway station keeper has no right to eject a tobacco-chewing passenger from the station because he expectorates on the floor instead of into the cuspidor: *People* v. *McKay*, 46 Mich. 439.

As there were brave men before Agamemnon, so there were wise legislators before the present Premier of Ontario. As long

ago as May, 1647, it was enacted by the General Court of Connecticut as follows: "Forasmuch as it is observed that many abuses are crept in, and committed by frequent taking of tobacko, It is ordered by the authority of this Courte, That no person under the age of twenty years, nor any other, that hath not already accustomed himselfe to the use thereof, shall take any tobacko, until he hath brought a certificate under the hands of some who are approved for knowledge and skill in phisik, that it is usefull for him, and allso, that he hath received a lycense from the Courte for the same. And for the regulating of those who, either by theire former taking it have, to theire own apprehensions, made it necessary to them, or upon due advice are persuaded to the use thereof, It is ordered, That no man within this colonye, after the publication hereof, shall take any tobacko publiquely, in the streett, highwayes, or any barneyardes, or uppon training dayes, in any open places, under the penalty of sixpence for each offence against this order, in any the particulars thereof, to be paid without gainesaying, upon conviction, by the testimony of one witness, that is without just exception, before any one magistrate. And the constables in the severall townes are required to make presentment to each particular Courte of such as they doe understand and can evict to be transgressors of this order:" Col. Rec., I., 153.

Years prior to this, the colony of Massachusetts had tried to stop smoking in public; in 1632 it was ordered that the punishment for this improper act should be "one penny" for every conviction. This law not accomplishing the intended purpose, in 1634 it was enacted that victuallers, or keepers of an ordinary, should not suffer any tobacco to be taken in their houses, under the penalty of five shillings for every offence, to be paid by the victualler, and one shilling by the smoker. Sterner still was the decree that followed, which inflicted a penalty of 2s. 6d. upon any one taking (*i.e.*, smoking) tobacco publicly, or "privately, in his owne house, or in the house of another, before strangers," or upon two or more taking it together anywhere. Apparently, there was nothing for a man, then, but to smoke up his own chimney in lonely solitude. In the following March this virtuous legislature ordered that, after the last of September then next, no person whatsoever should buy or sell any tobacco within the jurisdiction, under the penalty of 10s. a pound, and so pro-

portionately for more or less, to be paid by buyer and seller; and to prevent any merchants putting up the price because of the prohibition that was to be, it was decreed that meantime the price was to be fixed by the governor. But the reaction came, and in 1637 all the laws against this plant were repealed, and tobacco was set at liberty. The freedom was of short duration, for in September, 1638, the General Court, finding that since the repealing of the former laws against tobacco the same was more abused than before, ordered "That no man shall take any tobacco in the fields, except on his journey, or at meale times, under pain of 12d. for every offence; nor shall take any tobacco in (or so near) any dwelling-house, barne, corne, or hayrick, as may likely endanger the firing thereof, under pain of 10s. for every offence; nor shall take any tobacco in any inn or common victualing house, except in a private room there, so as neither the master of the same house, nor any other guests there, shall take offence thereat: which if they do, then such person is forthwith to forbear, upon pain of 2s. 6d. for every offence." (Mass. Col. Records, Vol. I.) Even when a man might smoke, the law was particular as to how he should light his pipe, for in the order of 1638 are the words: "Noe man shall kindle fyre by gunpowder for taking tobacco, except on his journey, upon paine of 12d. for every offence." In Pennsylvania, at one time, to smoke tobacco on the streets, either by day or by night, was punishable by death. It is not so now! Green Bag, III., p. 9.

It is also on record that the colony of New Haven sought to prevent any one "taking tobacco in an uncovered place, as on the street of the town, or in men's yards," by inflicting on the guilty a fine of 6d. for each offence. A similar fine was the punishment for taking it on training days, either in the company or the meeting house at any time. This was in 1646. (His Holiness Pope Urban the Eighth had already issued a bull forbidding its use in churches.) In 1655 the same General Court decreed that no tobacco should be taken in the streets, yards, or about the houses in any plantation or farm in the colony, or without doors near or about the town, or in the meeting house, or body of the train soldiers, or any other place where they might do mischief thereby, under the penalty of sixpence a pipe or a time, which was to go to him that informed or prosecuted; which, if refused, was to be recovered by distress . . . but if he were a poor

servant and had not to pay, and his master would not pay for him, he should then be punished by setting him in the stocks one hour: New Haven Col. Rec., Vol. I., p. 261; Vol. II., p. 148.

Her Majesty the Queen, as Duchess of Lancaster, is the Lady of the Manor of Methwold, Norfolk. In turning over the Court books, we find the following entry made at a Court holden October 4th, 1695: "We agree that any person that is taken smoakeninge (*sic*) tobacco in the street shall forfeit one shilling for every time so taken, and it shall be lawful for the petty constable to destraine for the same to be putt to the uses above said, (*i.e.*, to the use of the town). Wee present Nicholas Barber for smoaking in the street, and do amerce him 1s." The same order was made at Courts held in 1696 and 1699: Notes and Queries, 4th ser., 386.

The Legislature of this Province in 1892 enacted that any person who sells, gives, or furnishes any minor under eighteen cigarettes, cigars, or tobacco in any form shall, on summary conviction, be subject to a penalty of from $10 to $50, with or without costs, or to imprisonment (with or without hard labour) for not more than thirty days, or to both fine and imprisonment, at the discretion of the magistrate. Under the Act, a person who appears to the justice to be under eighteen shall be presumed to be so, unless there is evidence to the contrary. The Act does not apply to children carrying the written order or consent of parent or guardian when making a purchase: 55 Vict., c. 52.

Notwithstanding the penalties aforesaid, day after day, boys, whose lips and cheeks are innocent of the slightest signs of the hirsute appendages of manhood, may be seen on our streets smoking this weed unchecked. Unfortunately, a clause permitting the punishment of the babes in whose possession tobacco was found was rejected. Some twenty-five of the States to the south of us have passed similar laws, some of them going much further than our mild Ontario enactment: 46 Alb. L.J. 229.

In England, under the second Charles, it was enacted that tobacco was not to be planted in that country, under a forfeiture of forty shillings if so planted. However, the law did not extend to hinder the growing of it in "physic gardens" in quantities not exceeding half a pole of ground. Magistrates had power to issue search warrants to constables to search for the growing weed, and, if found, to destroy it: 15 Ch. II., c. 7; 12 Ch. II., c. 34; 22 and 23 Ch. II., c. 26; 5 Geo. II., c. 11.

In the early days of the American colonies, silver currency was as scarce as paper was in the last year of grace. We are told that in the seventeenth century, in New England, taxes were paid in beef, pork, cheese, or such like; in one town, in milk-pails. In Delaware, debts were, at times, paid in pumpkins; in Pennsylvania, the principal kinds of produce were legal tenders; in Massachusetts, in 1635, the General Court made musket balls current for a farthing apiece (however, "noe man was compelled to take above 12d. att a tyme, in them"). Rice was the prevailing currency in South Carolina; but in Maryland and Virginia, from a very early period until many years after the Revolution, the pound of tobacco was the unit of value—debts and taxes, and fines and penalties, were calculated in it and paid by it. The charges of innkeepers were thus fixed, in 1699, by a law of Maryland: "Every ordinary-keeper that shall demand or take above 10 lbs. of tobacco for a gallon of small beer, 20 lbs. of tobacco for a gallon of strong beer, 4 lbs. for a night's lodging in a bed, 12 lbs. for a peck of Indian corn or oats, 6 lbs. for a night's grass for a horse, 10 lbs. for a night's hay or straw, shall forfeit for every offence 500 lbs. of tobacco." No one could sell, in that province (under that law), any cider, quince-drink, or other strong liquor, to be drunk in his or her house, under penalty of 1,000 lbs. of tobacco for every conviction. The following clause in the same act would be a perfect godsend to the bummers and deadbeats of this nineteenth century; it was: "No ordinary-keeper shall refuse to credit any person capable of giving a vote for election of delegates in any county, for any accommodations by him vended, to the value of 400 lbs. of tobacco, under the penalty of 400 lbs. of tobacco."

A magistrate presuming to join persons in holy wedlock, when there was a minister in the parish, was, under the laws of 1700, subjected to a fine of 5,000 lbs. of tobacco. In the same province, and under the same law, and for the encouragement of able ministers, instead of tithes, a tax of 40 lbs. of tobacco per poll was, yearly, levied on every taxable person in every parish.

In Virginia, it was enacted, in 1632: "Because of the low price of tobacco at present, it is further granted and ordered that there shall be likewise due to the mynisters, from the first day of March last past, for and during the term of one whole year next ensueinge, the twentyeth calfe, the twentyeth kidd of goats, and

the twentyeth pigge, throughout all the plantations of the colony." (Hening's Statutes at Large, I., p. 83.) The Virginians, in those old days, mixed tobacco and religion in a wonderful manner. By an act of 1641, continued by an act of 1644, if a minister neglected to preach in the forenoon and catechize in the afternoon of every Sunday, he forfeited 500 lbs. of tobacco. If a man absented himself from divine service any Sunday, without an allowable excuse, he forfeited a pound of tobacco, and he that absented himself for a month was to forfeit 50 lbs. This was in 1623-24. (Hening's Statutes, I., pp. 312, 123.) As the years rolled on, either the people got more wicked and inattentive to their religious duties, or the legislators grew more pious; for, in 1652, it was enacted that "all persons inhabiting in this country of Virginia, having no lawful excuse, shall, every Sunday, resort to their parish church or chapel, and there abide orderly during the common prayer, preaching, and divine service, upon the penalty of being fined 50 lbs. of tobacco by the county court." (This act did not extend to Quakers, or other recusants, who totally absented themselves. Elizabeth's statute provided for their case a fine of £20 sterling for every month's absence; later on, the Quakers were able to pay in tobacco.) However, people still shirked their public devotions; so, in 1695, another law was passed to the effect that any one of full age, absent from divine service at his or her parish church or chapel for the space of one month (except those Protestant Dissenters exempted by the Act of William and Mary) should be fined five shillings, or 50 lbs. of tobacco; and, on refusal to pay at once, or give sufficient caution for payment, the transgressor was to receive, "on the bare back, ten lashes, well laid on:" Mercer's Abridgment (1737), pp. 177, 209. In those good old days, it cost as much to stay away from church as it does now to go there.

Quakers, who by the act of 1660 were called "an unreasonable and turbulent sort of people, teaching and publishing lies, miracles, false visions, prophecies and doctrines," were, by a statute of 1662, liable to a penalty of 200 lbs. of tobacco each for every time of meeting in unlawful conventutes. In the following year it was enacted that, "if Quakers, or other Separatists whatsoever in Virginia, assemble themselves together to the number of five or more, of the age of sixteen or upwards, under pretence of joining in a religious worship not authorized in England or the

colony, the parties so offending shall forfeit for the first offence 200 lbs. of tobacco; for the second, 500 lbs. of tobacco; and for the third offence the offender shall be banished the colony of Virginia." A shipmaster bringing a Quaker to the colony to reside there was liable to a fine of 5,000 lbs. of this fragrant weed; and any inhabitant entertaining any Quaker in or near his house, to preach or teach, was to be fined a like amount: Hening, I., 532.

In 1643 the Assembly of the colony enacted that any person feloniously killing "*a tame hogg*, being none of his owne," and being thereof lawfully convicted, should suffer as a felon (*i.e.*, death). Four years later this penalty was mitigated to a fine of 2,000 lbs. of tobacco, or two years' penal servitude: Hening, I., 244, 351. In 1662 every county court in Virginia was ordered to set up a pillory, a pair of stocks, and a whipping-post, near the court house, and a ducking stool in such a place as they should think most convenient. The neglect of this order for more than six months was punishable by a fine of 5,000 lbs. of tobacco. The ducking stools being provided, those who should sit in them had to be named, and so we find that in the same year the brave assemblymen decreed: "Whereas, oftentimes many brabbling women often slander and scandalize their neighbours, for which their poore husbands are often brought into chargeable and vexatious suites, and caste in great damages; Be it therefore enacted, that in actions of slander occasioned by the wife aforesaid, after judgment passed for damages, the woman shall be punished by ducking; and if the slander be so enormous as to be adjudged at a greater damage than 500 lbs. of tobacco, then the woman to suffer a ducking for each 500 lbs. adjudged against the husband, if he refuse to pay the tobacco": Hening, I., 75: II., 166-67.

Notwithstanding the soothing influences attributed by some to tobacco, and the terms applied to it by poetic men like Spenser and Lilly, such as "Herba santa," "Sana sancta Indorum," "Herba panacea," "Our holy herb nicotian," still it had much to do in stirring up the Virginians against the Crown, and in bringing about the crisis which, when it had passed, left the United States of America a free and independent republic. It happened after this manner: tobacco was the legalized currency of the colony. In 1755, and again in 1758, years of war and distress, the legislature gave the people the alternative of paying

their public dues (including the dues to the established clergy) in money, at the fixed rate of twopence for the pound of tobacco. All but the parsons assented to the law. The Bishop of London, under whose jurisdiction these clergy were, opposed the ratification of the act, and so it was vetoed by the King in council. The courts of law in Virginia had now to say what damages the clergy had sustained, the "Twopenny Act" being void *ab initio*. The colonists looked upon the contest as one between the prerogative and the people. The first action tried was that of Rev. Mr. Maury, which came on in December, 1763. The contract with him was that he should be paid, as his salary, 16,000 pounds of tobacco: the act of 1758 had fixed the value at twopence per pound. As a matter of fact, in 1759 it was worth thrice that sum: the King had vetoed the act of 1758. Counsel for Maury thought he made a clear case, and that his client should recover the real value. Patrick Henry was of counsel for the defence. He was one of those heaven-born men who make for themselves a royal road to learning: after six weeks of cramming Coke upon Littleton, and the statutes of Virginia upon that, he gained his license to practise at the bar. This forest-born orator was a little awkward when he first rose to address the special jury—to some of whom Maury had objected as a "vulgar herd," and "New Light Dissenters"—but he quickly carried the war into Africa. As Bancroft tells us, he built his argument on the natural right of Virginia to self-direction in her affairs, against the prerogative of the Crown, and the civil establishment of the church, against monarchy and priestcraft. The act of 1758, having every characteristic of a good law, and being of general utility, could not, consistently with the original compact between King and people, be annulled. "A King," he cried, "who annuls or disallows laws of so salutary a nature, from being the father of his people degenerates into a tyrant, and forfeits all right to obedience." Cries of "Treason! treason! treason!" from the ultra-royalists did not stop him, as the crowd was with the patriot. He then defined the use of an established church, and of the clergy, adding, "When they fail to answer those ends, the community have no further need of their ministry, and may justly strip them of their appointments. In this particular instance, by obtaining the negative of the law in question, instead of acquiescing in it, they ceased to be useful members of the state,

and ought to be considered as enemies of the community. Instead of countenance, they deserve to be punished with signal severity. Except you, gentlemen of the jury, are disposed yourselves to rivet the chains of bondage on your own necks, do not let slip the opportunity now offered of making such an example of the reverend plaintiff as shall hereafter be a warning to himself and his brothers not to have the temerity to dispute the validity of laws authenticated by the only sanction which can give force to laws for the government of this colony, the authority of its own legal representatives, with its governor and council." Verdict for the plaintiff, with one penny damages. Motion for new trial refused. An appeal granted, but the verdict being received there was no redress. The man who had thus taught his fellows to aspire to religious liberty and legislative independence became the hero of the hour, and did much to lead the colonists on to victory: Bancroft's History of the United States, Vol. III., Ch. 9.

R. V. R.

CURRENT ENGLISH CASES.

The Law Reports for December last comprise (1893) 2 Q.B., pp. 349-537; (1893) P., pp. 281-328; (1893) 3 Ch., pp. 209-548; and (1893) A.C., pp. 561-641.

PRINCIPAL AND AGENT—CONTRACT WITH AGENT FOR UNDISCLOSED PRINCIPAL—SET OFF AGAINST PRINCIPAL OF DEBT DUE BY AGENT.

In *Montagu* v. *Forwood*, (1893) 2 Q.B. 350, the defendants claimed to set off against moneys collected by them which belonged to the plaintiffs, a debt due by the plaintiff's agents by whom the defendants had been employed to collect the money; such agents not having disclosed their principals, and there being nothing in the transaction, as the court found, to lead the defendants to suppose that the agents were not themselves the principals. The Court of Appeal (Lord Esher, M.R., and Bowen and Kay, L.JJ.) agreed with Day, J., that the defendants were entitled to set off the debt due to them from the agents, and that the principle established by the cases of *George* v. *Clagett*, 7 T.R. 359, and *Fish* v. *Kempton*, 7 C.B. 87, applied.

LIMITATIONS, STATUTE OF—TRUST, BREACH OF—EXPRESS OR CONSTRUCTIVE TRUST —SOLICITOR OF TRUSTEE, RECEIPT OF TRUST FUND BY.

Soar v. *Ashwell*, (1893) 2 Q.B. 390, was an action brought by a trustee against the personal representative of a deceased solicitor under the following circumstances: The solicitor had been the solicitor of the trustees, and, as such, had received the trust fund, which he had invested with other moneys upon a mortgage in his own name. The mortgage had been paid off in 1879, and the solicitor had received the money in question, and retained it in his own hands until he died in November, 1879. During his lifetime he had paid interest on the fund to the plaintiff's father, who was tenant for life, and after the solicitor's death his clerk, who wound up his business, continued to pay the interest out of the assets. In 1886 the plaintiff's father died, and the plaintiff, who was the sole trustee under the will, became absolutely entitled to the fund. The action was commenced in 1891. The defendant contended that the solicitor was merely a constructive trustee of the fund, and by analogy to the Statute of Limitations the claim was barred. Day, J., at the trial gave effect to this defence, and dismissed the action; but the Court of Appeal (Lord Esher, M.R., Bowen and Kay L.JJ.) were unanimously of opinion that the solicitor, knowing of the trust, and assuming to act as trustee of the fund, had made himself liable as an express trustee, and was not a mere constructive trustee, and that, therefore, the defence failed. But though the Court of Appeal was unanimous in favour of the plaintiff, it does not appear to have been altogether unanimous in the reasons assigned; for while Lord Esher and Bowen, L.J., seemed to be of opinion that the solicitor must be regarded in the circumstances as having been an express trustee of the fund (see pp. 394, 399), Kay, L.J., on the other hand, seems to incline to the opinion that he was really a constructive trustee, but subject to the same liabilities as if he had been an express trustee (see pp. 405-6). This variance of opinion is not unimportant in view of the statement by Bowen, L.J., "that time, by analogy to the statute, is no bar in the case of an express trust; but that it will be a bar in the case of a constructive trust is a doctrine which has been clearly and long established." According to Kay, L.J., there are some constructive trusts which, in this respect, stand on the same footing as express trusts.

PRACTICE—PARTIES—PLAINTIFFS, JOINDER OF—CAUSES OF ACTION, JOINDER OF—SEVERAL PLAINTIFFS HAVING SEPARATE CAUSES OF ACTION, JOINDER OF—O R XVI., R. 1; ORD. XVIII., RR. 1, 8—(ONT. RULES 300, 340).

Hannay v. *Smuthwaite*, (1893) 2 Q.B. 412, is a decision of the Court of Appeal (Lord Esher, M.R., and Bowen and Kay, L.JJ.) on a point of practice, on which the court were not unanimous. The several shippers of different shipments of cotton, shipped on the same ship for carriage from and to the same places, were joined as plaintiffs, claiming against the defendants, the ship-owners, under the bills of lading given to the plaintiffs respectively, damages for short deliveries. Lord Esher and Kay, L.J., held that the plaintiffs were entitled to join in the same action; but Bowen, L.J., dissented, being strongly of opinion that the Rules do not warrant the joinder of several plaintiffs having separate and distinct causes of action. *Sandes* v. *Wildsmith*, (1893) 1 Q.B. 625, noted *ante* vol. 29, p. 435, is referred to, but the court neither expressed approval nor disapproval of it. Kay, L.J., however, observes of it: "In *Sandes* v. *Wildsmith*, I do not find any reference to Ord. xviii., r. 1." (Ont. Rule 340.)

PRACTICE—DISCOVERY—AFFIDAVIT OF DOCUMENTS—PRIVILEGE FROM PRODUCTION.

In *Budden* v. *Wilkinson*, (1893) 2 Q.B. 432, the Court of Appeal (Lindley and Lopes, L.JJ.) refused to follow the decision of *Maclean* v. *Jones*, 66 L.T.R.S. 653, on the ground that it was inconsistent with *Bewicke* v. *Graham*, 7 Q.B.D. 400. There were two points in the case arising on the sufficiency of an affidavit of documents: (1) Whether they were sufficiently described? and (2) whether the ground assigned for their non-production was sufficient? The action was for trespass to land, and the defence was a right of way. As to the first point, the documents were described as "certain documents," numbered 1 to 26, tied up in a bundle marked "A," and initialled by one of the defendants. This, the court held, sufficiently identified the documents, and that it was unnecessary to give any more specific description of them. As to the second point, the affidavit stated that they related "solely to the title or case of the plaintiffs, and not to the case of the defendants, nor do they tend to support it." It was contended by the defendants that the affidavit should have gone further, and stated that the documents did not contain anything to impeach the case of the plaintiffs; but this, also, the court held was unnecessary.

SOLICITOR—STRIKING OFF THE ROLL—OFFENCE NOT IN THE CHARACTER OF SOLICITOR.

Re Weare, (1893) 2 Q.B. 439, was an application to strike a solicitor off the rolls on the ground that he had been convicted of allowing houses, of which he was landlord, to be used by the tenants as brothels. The Divisional Court (Wills and Charles, JJ.) made the order, and the Court of Appeal (Lord Esher, M.R., and Lindley and Lopes, L.JJ.) affirmed it, on the ground that his conviction had shown him to be a person unfit to remain on the roll of solicitors, and that the power to strike off the rolls was not confined to cases of professional misconduct.

PRACTICE—ACTION AGAINST FIRM—INFANT PARTNER—JUDGMENT AGAINST FIRM—EXECUTION AGAINST FIRM—ORD. XLVIII. (A), RR. 1-8—(ONT. RULES 317, 876).

In *Harris* v. *Beauchamp*, (1893) 2 Q.B. 534, the plaintiff sued the defendants as partners in the name of their firm, and obtained an order for speedy judgment against the firm. One of the partners was an infant, and they appealed from the order for judgment, claiming that they should have unconditional leave to defend, on the ground that the infant partner could not be made liable. A Divisional Court (Cave and Wright, JJ.) dismissed the appeal, and the Court of Appeal (Lord Esher, M.R., Bowen and Kay, L.JJ.) affirmed their decision. The Divisional Court added a term to the order for judgment "that execution should not issue against the separate property of the infant, or against his share (if any) of the partnership profits"; but Kay, L.J., expresses a doubt whether it was not going too far, but there was no appeal on that point.

PROBATE—TORN WILL—GRANT OF PROBATE WITHOUT NOTICE TO ONE OF PERSONS INTERESTED IN INTESTACY—TERMS IMPOSED.

In re Hine, (1893) P. 282, an application was made for the grant of probate of a will which had been torn in pieces by the testator while suffering from softening of the brain. The pieces had been collected and pasted together. The will left the estate to the testator's wife for life, and, after her death, to his two sons. Both of the sons were abroad, but the elder had written to his mother, advising her to take out probate. The widow applied for probate, and offered to give security for the share of the younger son as upon an intestacy, and on these terms the probate was granted without notice to him.

PROBATE—WILL—EXECUTION OF WILL—FOOT OR END—PROBATE OF PART OF DOCUMENT.

In re Anstee, (1893) P. 283, a testator had signed his will, and the witnesses had attested it at the foot of the first page immediately after an unfinished sentence, which was completed over leaf on the second page. Probate was granted of the will down to the bottom of the first page only.

PARTNERSHIP—VALUE OF DECEASED PARTNER'S SHARE—DIRECTION TO ASCERTAIN VALUE BY REFERENCE TO LAST SIGNED ACCOUNT—DEATH AFTER EXPIRATION OF PARTNERSHIP YEAR, BEFORE TAKING AND SIGNING ACCOUNT.

In *Hunter* v. *Dowling*, (1893) 3 Ch. 212, the defendant appealed from the decision of Romer, J., (1893) 1 Ch. 391 (noted *ante* vol. 29, p. 252). The action turned upon the construction of partnership articles, which provided for annual accounts and balance sheets to be taken on 31st March in each year, or as near thereto as conveniently might be, and to be signed by the partners; and also that, in the event of the death of a partner, his share should be taken by the surviving partners at the amount appearing to his credit in "the last annual balance sheet which shall have been signed previously to his death." A partner having died on the 10th April, 1891, but before the balance sheet had been taken for the preceding 31st March, the question was how the share was to be valued. The Court of Appeal (Bowen, Lopes, and Kay, L.JJ.) agreed with Romer, J., that the share must be ascertained on the footing of the balance sheet for March, 1891, on the principle that "that must be taken to be done which ought to have been done."

WILL—ANNUITY, DURATION OF—GIFT OF ANNUITY TO A.B. OR HIS DESCENDANTS—SUBSTITUTIONARY GIFT.

In re Morgan, Morgan v. *Morgan*, (1893) 3 Ch. 222, a testator gave all his real and personal property upon trust to pay out of the interest and rents arising therefrom "to my wife, £250 per annum; to H.M., or to his descendants, £250 per year; to P.M., or his descendants, £250 per year; to A.H., or her descendants, £250 per year; to Mrs. S.P., £50 per year; to Mrs. S.S., 10s. per week," and the testator gave the residue of the interest and rents, after the above payments had been made, to certain charitable purposes. The question was whether the annuitants whose

descendants were referred to were entitled to perpetual annuities, and whether the gifts for charitable purposes included the *corpus*. Stirling, J., was of opinion that the annuities were for the life of the respective annuitants only, and that the charities were entitled not only to the income, but the *corpus* of the residue. The Court of Appeal (Lindley, Lopes, and Smith, L.JJ.) agreed with Stirling, J., that all of the annuitants took for their respective lives only, but that if any of them whose descendants were referred to were dead at the time of the testator's death, then their descendants then living would take in substitution the annuity between them as joint tenants; and it would seem, though that is not stated, that the annuity would be payable to the survivors of such descendants as long as any of them should live. Upon the other point, also, the Court of Appeal agreed with Stirling, J. The Court of Appeal admitted that the case, as regards the annuities, was indistinguishable from *Bent* v. *Cullen*, 6 Ch. 235, in which Lord Hatherley had arrived at the conclusion that, under a will in similar terms, the gift of the annuity amounted to a gift of a sufficient portion of the fund to realize the annual payment, and was therefore, in effect, a gift of a perpetual annuity.

TRUSTEE—APPOINTMENT OF NEW TRUSTEE—VESTING ORDER, FORM OF—TRANSFER OF STOCK TO NEW TRUSTEE—TRUSTEE ACT, 1850 (13 & 14 VICT., C. 60), S. 26.

In re Gregson, (1893) 3 Ch. 233, Lindley, L.J., explains the form of order adopted *In re New Zealand Trust & Loan Co.*, (1893) 1 Ch. 403 (noted *ante* vol. 29, p. 322), and points out that there is a difference between cases where, on the appointment of new trustees, stock on which there is no liability for calls is to be vested in them, and cases where stock is to be vested on which there is such liability; and while in the former case it is proper for the order not only to vest the right to call for a transfer of such shares in the new trustees, but also to direct them to transfer such shares into their own names, yet where there is a liability for calls on the shares to be vested the direction to the new trustees to transfer the shares into their own names should be omitted, whether the order is made under the Lunacy Act, 1890, or the Trustee Act, 1850, and that it is competent for a judge to make the order in either form, according

to the circumstances. In connection with this case, it may be useful to refer to the provisions of The Companies Act (R.S.C., c. 119), s. 56; The Banking Act (53 Vict., c. 31 (D.)), s. 44; and R.S.O., c. 156, s. 38, which exonerate trustees from personal liability in respect of shares coming under the provisions of those acts.

PRINCIPAL AND SURETY—CONTRIBUTION BETWEEN CO-SURETIES.

In re Ennis, Coles v. *Peyton*, (1893) 3 Ch. 238, is a decision upon a novel point in the law of principal and surety. The facts of the case were as follows: Finnie, with Ennis and Burnand as sureties, entered into a bond to a society to secure the payment of a sum of money at the end of five years, and of interest thereon in the meantime. The bond provided that if the sureties, or either of them, should die, and if Finnie did not within a month procure a solvent person to enter into a further bond to the same effect as the present one, the principal money should become immediately payable. Ennis died, and a fresh bond was entered into by Finnie, with Burnand and Houldsworth as sureties, to the same effect as the former bond, with the additional provision that the giving of it should not release the heirs, executors, or administrators of Ennis, or in any way alter, vary, or lessen their liability, or affect any right or remedy of the society under the first bond. Burnand and Houldsworth, having paid the debt, now claimed contribution from the executor of Ennis, and claimed that he was liable for one-half of the amount under the original bond. The executor contended that by the taking of the second bond he was released from all liability, or, if liable at all, he was only so for one-third of the amount paid by the other two sureties. Bacon, V.C., decided that the executor was liable for one-half; but the Court of Appeal, though agreeing with Bacon, V.C., that the second bond did not operate as a release of Ennis' estate, yet differed with him as to the proportion of the debt for which it was liable, and held that as a surety is entitled to the benefit of every security held by the creditor the Ennis estate was, therefore, only liable for one-third of the debt. The provision in the second bond above referred to the Court of Appeal held was introduced for the purpose merely of preserving the rights of the creditor against the Ennis estate, and not of fixing the amount of the liability of the sureties *inter se*.

Kings, had long attained a high position in political and professional life. He had "won his spurs" and made his mark as a leading member of the Bar before the present eminent Chief Justice had attained any such distinction, filling the office of Solicitor-General with great ability for several years. It will not be disputed that he was the equal of any, and the superior of several, of those who have in the meantime sat in the higher court in the qualities that make up an able and useful judge. He was early endowed with the additional office of judge of the Court of Vice-Admiralty for New Brunswick, which added $600 a year and fees to his emoluments; but his repeated applications, or those of his friends, for his advancement to the Supreme Court Bench of the Province were met and vetoed by the arbitrary and senseless rule, "No County Court judge need apply"; a demoralizing rule, discouraging and checking the legitimate ambition of a judge of the lower court to excel in his high calling. There can be no valid reason for such a rule any more than for one prohibiting a judge of the Supreme Court of the Province from aspiring to the Supreme Court of Canada, or a judge of the Superior Court of Quebec from being promoted to the Queen's Bench of that Province.

The County Courts of New Brunswick and Nova Scotia are more analogous, in many respects, to the Superior Court of Quebec than they are to the County Courts of Ontario; and from the Superior Court of Quebec promotion is continually made.

Strong memorials from the Bar of New Brunswick, backed by pressure from influential quarters, failed to secure Judge Watters' further elevation, but they were not without an agreeable result in one way: his salary as County Judge was raised to $3,000, while one of his counties was detached from the district, thus lessening his labour and expenses. Thenceforth he was, until his death, and his successor since has been, in the anomalous position of enjoying $600 a year more salary than any other County Court judge in the Dominion. This increase, really a partial compensation for non-promotion, was justified in Parliament by the considerable amount of criminal business that fell to him, but on the same ground every County Court judge in the Province had a similar claim; while it was notorious to every one acquainted with both cities that the civil business alone in Halifax gave the judge more work than the civil and criminal

Correspondence.

COUNTY JUDGES AND THE HIGH COURT BENCH.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—In an article in last volume, at page 146, taken from the (English) *Law Gazette*, the remark is made that "the appointment of men like Trench, Q.C., and Austin, to the County Courts, makes the promotion of third and fourth-rate lawyers to the High Court Bench impossible for the future." The recent advancement of Judge Landry from a County Court of New Brunswick to the Supreme Court of that Province seems to indicate a new and wise departure, in the spirit of the above extract, from the practice heretofore prevailing in Canada.

Several of the County Court judges in the Maritime Provinces accepted office without the slightest idea that their doing so would be any bar to that promotion to which their abilities and previous standing, added to some judicial experience, would in due course entitle them; and were amazed and dismayed when their proposed advancement was refused, on account of an alleged "rule" that no County Court judge could be any further promoted, no matter how great his merits. Four of them, at least, I should say, would never have accepted the office had they been made aware that it subjected them to such humiliating conditions. True, during the premiership of Mr. Mackenzie, a judge of the County Court of Prince Edward Island was elevated directly to the Chief Justiceship of the Island over the heads of the puisne judges of the Supreme Court, and no one saw in the fact, or its results, anything anomalous or inconsistent with the fitness of things. But hitherto, under other administrations, a rule forbidding any such promotion has been laid down, to the detriment of the public interests and the claims of worthy judges.

County Courts were established in New Brunswick before Confederation, and the Bench filled under the auspices of the party instrumental in carrying that great measure. Each judge had an extensive district and aggregation of counties committed to him, with a jurisdiction concurrent with that of the Supreme Court in all criminal cases not capital. Judge Watters, who was appointed for the city and county of St. John and county of

Kings, had long attained a high position in political and professional life. He had "won his spurs" and made his mark as a leading member of the Bar before the present eminent Chief Justice had attained any such distinction, filling the office of Solicitor-General with great ability for several years. It will not be disputed that he was the equal of any, and the superior of several, of those who have in the meantime sat in the higher court in the qualities that make up an able and useful judge. He was early endowed with the additional office of judge of the Court of Vice-Admiralty for New Brunswick, which added $600 a year and fees to his emoluments; but his repeated applications, or those of his friends, for his advancement to the Supreme Court Bench of the Province were met and vetoed by the arbitrary and senseless rule, "No County Court judge need apply"; a demoralizing rule, discouraging and checking the legitimate ambition of a judge of the lower court to excel in his high calling. There can be no valid reason for such a rule any more than for one prohibiting a judge of the Supreme Court of the Province from aspiring to the Supreme Court of Canada, or a judge of the Superior Court of Quebec from being promoted to the Queen's Bench of that Province.

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business together gave Judge Watters. Now that the Speedy Trials' Act has removed all inequalities so far as criminal jurisdiction is concerned, and imposed new burdens, not of labour alone, but of disbursements for travel and expenses away from home on the other County Court judges—those who have several counties in their districts—it is to be hoped that this glaring and offensive distinction in respect to salary may be removed; not removed by levelling down, but by levelling up. For, in the present conditions of life in these Provinces, $3,000 a year should be the minimum which any gentleman fit for the high office of a District Judge should have. Unlike County Court judges of Ontario, those in the Maritime Provinces have no other official emoluments than their salaries, and cannot earn any more, whether always busy or not; while those in Nova Scotia have a higher jurisdiction in civil cases, and, as I have pointed out, those of New Brunswick a higher one in criminal matters, than any other County Court judges in the Dominion.

In Nova Scotia, a somewhat similar case to that of the late Judge Watters presents itself. A judge is still living who accepted the county judgeships for three very important counties, in the full belief that it was a legitimate and natural stepping-stone to the higher court. Unanimous and strongly-worded memorials were, in due time, sent up from the Bar of the three counties, and the numerous Bar of an adjacent county, and other leading barristers, supported by what ought to have been strong parliamentary influence, praying for the advancement to which the Bar and the public held him entitled; to this the only answer was that he should not have taken the lower, for otherwise he would soon have got the higher office—an acknowledgment, without a practical recognition, of his eminent fitness for the position sought, while vacancies in the court above were now and again filled by men admittedly less competent than he. After the lamented death of Judge Rigby, and the retirement for a still more eminent sphere of usefulness of the present Minister of Justice from the Supreme Court of Nova Scotia, it was evident throughout the Province that the signal loss the Bench sustained could only be repaired by drawing, as early as practicable, from the resources of the County Court Bench; and, without disparaging our Supreme Court, or any of its members, it is very evident that there are more than one of them whose places might

have been more appropriately filled by men whose judgments they now review.

Surely these things ought not so to be! The common people are not slow to mark the difference in the conduct of the business of the courts by judges of different mental calibre and equipment, and they wonder—as strangers competent to judge often do—at anomalous contrasts. Experience at the Bar; still better, where practicable, some experience on the Bench of a lower court; a knowledge of affairs, as well as legal erudition, are necessary to the successful administration of justice in a court of the qualities and jurisdiction of the Supreme Courts of the Maritime Provinces.

I make these remarks in no spirit of carping, and in no feeling of disrespect to our Supreme Court, or to any particular member of it, nor of hostility to those who have wielded the patronage of these offices; but because, in common with the Bar and the public in many parts of the Province, I entertain the opinion that the interests of the public and the strength of the Bench have appreciably suffered in the particular referred to, and that, good and efficient as our Supreme Court is, it might have been made still more efficient by the recognition of merit in the lower court. I doubt if there is a lawyer in Nova Scotia who will deny this. With all deference, I do not think a majority out of any four of the seven County Court judges would have given, for instance, such a decision as three judges of our Supreme Court gave in the case of *Wyman et al.* v. *The Imperial Fire Insurance Company et al.*, reported in 20 N.S. Reports, p. 487.

Your obedient servant,

Nova Scotia, December, 1893. LEX.

Proceedings of Law Societies.

HAMILTON LAW ASSOCIATION.

The Trustees beg to submit their fourteenth annual Report, being for the year 1893.

The number of members at the date of the last Report was seventy-one; one member has resigned and one has been added. The present membership is seventy-one. The annual fees, to the extent of $302.50, have been paid. The number of volumes in the library is 2,619 (of which 121 were added during the past year), exclusive of sessional papers, *Gazettes*, etc. There are still some Reports which the Trustees would like to purchase when the funds of the Association will permit. The following periodicals are received, namely: *The Law Times* (English), *The Times Law Reports*, *The Law Journal Reports* (English), *The Solicitors' Journal*, *The Albany Law Journal*, THE CANADA LAW JOURNAL, *The Canadian Law Times*, *The Green Bag*, *The Law Quarterly Review*, and *The Western Law Times*.

The Treasurer's Report is submitted herewith, giving a detailed statement of receipts and expenditures, in the form required by the Law Society. All the liabilities of the Association have been paid, except the balance of the loan from the Law Society yet to fall due.

The questions of Decentralization of Legal Business, the fusion of the courts, and the proposed amendments to the Devolution of Estates Act, have been pressed upon the proper authorities; the judges have just promulgated rules which are to come in force on January 8th, 1894, which it is to be hoped will prove satisfactory to all concerned, and it may reasonably be expected that some action will be taken at an early date in regard to the other two matters.

On November 1st, 1893, a reception was given to the Minister of Justice, the Right Hon. Sir John Thompson, and the Attorney-General, the Hon. Sir Oliver Mowat. The claim of the Association to an allowance from the Dominion Government for the purchase of the works on Criminal, Election, and Exchequer Law was brought to the attention of Sir John Thompson, who promised to consider the request, and kindly presented the Association with a full set of the Supreme Court Reports to date. The Trustees have great pleasure in acknowledging the courteous treatment and encouragement they have received on all occasions both from Sir John Thompson and Sir Oliver Mowat.

The Trustees have, in recognition of the valuable services of the librarian, increased her salary from $260 to $320.

The Association has received from Mr. James Canfield, Local Registrar at Woodstock, a photograph of the new Court House at Woodstock, and from Mr. T. S. Shenston, Registrar of Brant, a copy of his new work on the Registry Act.

Complaints have frequently been made of the use of the Barristers' Room by litigants and witnesses. The Trustees desire to draw the attention of the members of the Association to the fact that the Barristers' Room is for the exclusive use of barristers and solicitors attending court, and that in future witnesses and litigants will not be allowed under any circumstances to use this room. The Trustees rely on the earnest co-operation and support of every member of the Association in enforcing strict observance of this rule. A suitable room for litigants and witnesses is provided on the side of the hall immediately opposite the library.

Attention is once more drawn to the anomaly existing in reference to orders issued from the offices of the Deputy-Clerk and Deputy-Registrar here. On all orders issued in the former office a fee of 50c. only is charged, whereas in the latter the fee is $1.50. This matter has been brought to the attention of the Government, and will be further pressed till the injustice is abolished.

EDWARD MARTIN, *President.*
THOMAS HODSON, *Secretary.*

TREASURER'S STATEMENT.

Receipts for the year 1893.

Jan. 3,	By balance in Bank, as per annual statement of 1892			$ 18 11
Feb. 20,	Annual grant from Ontario Law Society, made up by Secretary of Law Society as follows: Annual grant: 70 members—66 at $5 and 4 at $2.50		$340 00	
	Librarian's salary	$260 00		
	Telephone	40 00		
		300 00		
	Less one-third, under Rules of Law Society deducted	100 00	200 00	
	Amount payable		$540 00	
	Less instalment due to the Law Society on its loan without interest		100 00	
				$440 00
April 18,	Bonus from Gore District Mutual Fire Co., re fund			96
July 3,	Grant from County Council			40 00
Oct. 2,	Grant from Ontario Government			71 43
	Students' deposits during the year			20 00
	Entrance subscriptions, less allowance for annual subscriptions			5 00
	Subscriptions of 58 members at $5			290 00
	Subscriptions of 5 members at $2.50			12 50

Dec. 30,	Interest allowed by Bank on deposit throughout the year		$ 3 33
			$901 33

Expenditure for the year 1893.

To paid the Librarian's salary by several payments during the year		$320 00
Paid J. Eastwood & Co.'s account for binding, etc		42 78
Paid Boston Book Co		3 00
Paid Cook & Reid's account for printing		9 95
Fire Insurance		26 30
Gratuity to Mrs. Plastow (caretaker's widow)		5 00
Paid J. Ennis & Co		44 00
Bell Telephone Co., account, rent for line		40 00
West Publishing Co		8 00
Weed Parsons		5 00
The Carswell & Co.'s accounts		30 18
Railway fare, deputation to Ottawa		20 00
Ferris & Co., umbrella stand		2 00
Rowsell & Hutchison's accounts		9 85
Petty cash paid to Librarian		15 00
Paid *Winnipeg Law Times*		5 05
Little, Brown & Co.'s accounts		9 20
J. E. Bryant		5 00
Malcolm & Souter		2 75
Sterling draft for £6 10s. remitted to Wildy & Sons		31 92
Sterling draft to Clowes & Son		98 11
Gormully & Sinclair, Banks and Banking, and Kains' Grand Jury System		3 75
Duty on books, $4.80; freight, $5.06	$ 9 86	
" $10.65 " $3.50	14 15	
		24 01
Stamps, $2.44: Lawyers' Co-operative Publishing Co., $16.15		18 59
Times Printing Co.		3 00
		$782 44
Balance on hand		118 89
		$901 33
1893. Dec. 30, Balance on hand		118 89

Audited and found correct.

W. F. BURTON, *Treasurer.*

DIARY FOR JANUARY.

1. Monday ..... *New Year's Day.*
2. Tuesday ..... Heir and Devisee sittings begin.
4. Thursday .... Chief Justice Moss died, 1881.
5. Friday ..... Christmas vacation ends.
6. Saturday .... Epiphany.
7. Sunday ..... *1st Sunday after Epiphany.*
8. Monday ..... County Court Sitts. for motions. Surrogate Court sits.
9. Tuesday ..... Court of Appeal sits. Toronto (criminal), Ottawa, Hamilton, and London Winter Assizes begin.
12. Friday ..... Sir Chas. Bagot, Governor-General, 1842.
14. Sunday ..... *2nd Sunday after Epiphany.*
15. Monday ..... Earl of Derby born, 1841.
16. Tuesday ..... Toronto Civil Assizes begin.
21. Sunday ..... *Septuagesima Sunday.* Lord Bacon born, 1561.
23. Tuesday ..... William Pitt died, 1806.
25. Thursday .... Conversion of St. Paul.
26. Friday ..... Sir W. B. Richards died, aged 74, 1889.
28. Sunday ..... *Sexagesima Sunday.*
30. Tuesday ..... Exam. for certificate of fitness.
31. Wednesday .. Exam. for call. Earl of Elgin, Gov.-Gen., 1847.

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

From C. C. Wellington.] [Dec. 22.

REGINA *v.* HALLIDAY.

Constitutional law—Liquor License Act—R.S.O., c. 194, ss. 51 (2) and 61—Warehouse.

Section 51 (2) of the Liquor License Act, R.S.O., c. 194, which requires brewers licensed by the Government of Canada to take out licenses under that Act, is *intra vires*.

Regina v. *Severn*, 2 S.C.R. 70, has been, in effect overruled by more recent decisions of the Judicial Committee.

A cellar where beer is stored is a "warehouse" within the meaning of section 61 of the Act.

Judgment of the County Court of Wellington reversed.

J. K. Cartwright, Q.C., for the appellant.

E. F. B. Johnston, Q.C., for the respondent.

From C.P. Div.] [Dec. 22.

TREBILCOCK *v.* WALSH.

Wager—Illegality—Stakeholder—R.S.C., c. 159, s. 9.

R.S.C., c. 159, s. 9, is aimed at the suppression of the business of betting and pool selling, and does not apply to bets between individuals, whether stakes are or are not deposited in the hands of a third person. And while a bet between individuals as to the result of a parliamentary election is illegal, it is not a misdemeanour to make such a bet, and either party may, before the money has been paid over by the stakeholder, recover back from him the amount deposited by that party.

Regina v. *Dillon*, 10 P.R. 352, approved.

Judgment of the Common Pleas Division affirmed; BOYD, C., dissenting.

W. R. Meredith, Q.C., for the appellant.

Aylesworth, Q.C., and *J. B. McKillop* for the respondent.

From C.C. Simcoe.] [Dec. 22.

FLEMING *v.* RYAN.

Bills of sale and chattel mortgages—Renewal—Assignment for the benefit of creditors—R.S.O., c. 124, s. 12—R.S.O., c. 125, ss. 11, 15.

An assignee, under an assignment for the benefit of creditors, made and registered pursuant to the Assignments and Preferences Act, R.S.O., c. 124, may renew a chattel mortgage made in favour of his mortgagor, without the execution and registration of a specific assignment of that mortgage. A renewal statement, in itself in proper form, alleging title through the assignment for the benefit of creditors, is sufficient.

Judgment of the County Court of Simcoe affirmed.

T. Hislop for the appellants.

J. R. Roaf for the respondent.

From C.C. Huron.] [Dec. 22.

ROE *v.* VILLAGE OF LUCKNOW.

Negligence—Highway—Horse.

A full report of this case as decided by the judge of the County Court of the county of Huron will be found in vol. 29, p. 217.

The mere fact that a horse that is being driven along the highway has been frightened by the whistle of a steam engine, used by the defendants for the purposes of their lawfully operated waterworks, is not sufficient to make the defendants responsible for damages resulting from the horse having run away. Some positive evidence of negligence in the use of the whistle must be given, or, at least, some evidence that the use of the whistle might reasonably be expected to cause such an accident.

Judgment of the County Court of Huron reversed; MACLENNAN, J.A., dissenting.

Garrow, Q.C., for the appellants.

Aylesworth, Q.C., for the respondent.

From BOYD, C.] [Dec. 22.

BERRY *v.* DONOVAN.

Attachment—Contempt of court—Payment of money—R.S.O., c. 67, s. 6—Practice.

Section 6 of R.S.O., c. 67, which abolishes process of contempt for non-payment of any sum of money payable by a judgment or order, refers to payments of money as between debtor or creditor, and where defendants are ordered to procure the discharge of an incumbrance wrongfully placed by them on the plaintiff's lands they may be attached for failure to comply with the order, although payment of money is, in effect, what is required.

Male v. *Bouchier*, 1 Ch. Ch. 359; 2 Ch. Ch. 254, overruled.

But where the order directs the act to be done within a limited time the defendants cannot be attached unless the order, with the proper notice of the penalty for default, has been served upon them in time to give them a reasonable opportunity of complying with its terms before the expiration of the prescribed period; MEREDITH, J., dissenting on this point.

Judgment of BOYD, C., (reported *sub nom. Roberts* v. *Donovan*, 21 O.R. 535) affirmed on other grounds.

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

J. A. Donovan and *Claude Macdonnell* for the respondents.

From ARMOUR, C.J.] [Dec. 22.

GUINANE *v.* SUNNYSIDE BOATING CLUB.

Company—Club—Expulsion of member—Evidence—Notice.

The directors of a club, in exercising disciplinary jurisdiction under a by-law providing that "any member guilty of conduct which, in the opinion of the board, merits such a course may be expelled," are not bound by legal rules of evidence, and their decision, arrived at after fair investigation of the facts, will not be interfered with because they have admitted as part of the evidence in proof of the charge the informally sworn statement of one of the persons concerned in the transaction.

Where the charge has been made discussed, and replied to in the public prints, it is not necessary to give to the accused person, when calling upon him to show cause against his proposed expulsion, specific particulars of the accusation. A general statement is sufficient.

Judgment of ARMOUR, C.J., affirmed.

W. Cassels, Q.C., for the appellant.

John McGregor and *H. M. East* for the respondents.

From C.C. Prince Edward.] [Dec. 22.

MCKIBBON *v.* FEEGAN.

Life insurance—Husband and wife—Will—R.S.O., c. 136, s. 5.

A bequest of life insurance to the testator's wife is a valid declaration of trust within the meaning of R.S.O., c. 136, s. 5, so as to cut out creditors.

Re Lynn, Lynn v. *Toronto General Trusts Company*, 20 O.R. 475, and *Beam* v. *Beam*, 24 O.R. 189, approved.

Judgment of the County Court of Prince Edward affirmed; OSLER, J.A., dissenting.

G. H. Widdifield for the appellant.

Hoyles, Q.C., for the respondent.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

ROSE, J.] [Dec. 9.

CITY OF TORONTO v. LORSCH.

Municipal corporations—Public highway—Obstruction by private person—Declaratory judgment—Injunction.

A municipal corporation has the right to have it declared, as against a private person, whether or not certain land is a public highway, and whether such person has the right to possess, occupy, and obstruct the same.

And in an action brought by the municipal corporation for the purpose, a declaration may be made according to the facts, and the defendant enjoined from possessing or occupying the land so as to obstruct the use of it as a public highway.

Fenelon Falls v. *Victoria R.W. Co.*, 29 Gr., followed.

Gooderham v. *City of Toronto*, 21 O.R. 120; 19 A.R. 641, applied and followed.

Shepley, Q.C., for the defendant.

Biggar, Q.C., for the plaintiffs.

Div'l Court.] [Dec. 7.

ST. DENIS v. HIGGINS.

Specific performance—Contract for exchange of lands—Title not in plaintiff—Knowledge of defendant.

Where the plaintiff, at the time he entered into a contract with the defendant for the exchange of lands, had no title to the lands he proposed to exchange, which were, to the knowledge of the defendant at the time of the contract, vested in the plaintiff's wife;

Held, in an action for specific performance, that the defendant could not withdraw on the ground that the plaintiff had no title, at any rate before the time fixed for the completion of the exchange, and the plaintiff, having tendered a conveyance from his wife before action, was entitled to succeed, for the defendant, having entered into the contract knowing that it did not bind the estate, but only the person, of the plaintiff, must be taken to have relied from the beginning upon the promise of the plaintiff to procure the concurrence of the owner, and could not set up that the plaintiff was not the owner.

Dictum of KEKEWICH, J., in *Wilson* v. *Dunn*, 34 Ch.D. 569, not followed.

G. H. Stephenson for the plaintiff.

Waldron for the defendant.

Div'l Court.] [Dec. 29.

BELLAMY *v.* BADGEROW.

Reformation of deed—Mortgage—Omission of bar of dower—Voluntary deed—Consideration.

A voluntary deed will not be reformed against the grantor.

And where the defendant's husband, having appropriated moneys of a client in his hands for investment, secretly executed in the client's favour a statutory mortgage not containing a bar of dower, the defendant being a party to and executing the mortgage; and subsequently, after his death, paying, with knowledge of the facts, an instalment of interest due under it, an action to reform the mortgage by inserting a proper bar of dower was dismissed, there being no consideration to support a contract by the defendant with the plaintiffs to bar her dower.

E. D. Armour, Q.C., and *W. H. Grant* for the plaintiffs.

Lash, Q C., for the defendant.

Chancery Division.

MEREDITH, J.] [Oct. 26.

GRAHAM ET AL. *v.* THE CANADAIGUA LODGE NO. 236 OF THE INDEPENDENT ORDER OF ODDFELLOWS OF THE STATE OF NEW YORK.

Devise to foreign association—Validity of—Power to take—Foreign law—Domicile.

The law of a foreign State where a testator had his domicile must generally govern, even when his will was made and his property situate in this Province; and in the absence of evidence as to what that law is, it must be taken to be the same as that of this Province.

The parties setting up the law of a foreign State to invalidate certain bequests in a will on the ground of the incapacity of the legatees to take must prove that law, and that the legatees come within its scope.

The construction of a will is a question to be dealt with according to the law of the domicile of the testator.

A devise to "C.O. Lodge 236, State of N.Y.," although not incorporated in that State and qualified to take and hold property;

Held, following *Walker* v. *Murray*, 5 O.R. 638, a valid bequest to the members of that association.

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

Moss, Q.C., for the defendants.

FERGUSON, J.] [Dec. 1 .

NORRIS *v.* CITY OF TORONTO.

Municipal corporations—Assessment—Taxes—Distress on goods left with auctioneer for sale—55 Vict., c. 48, s. 124 (O.).

Certain premises in Toronto were assessed against Dickson & Townsend as occupants, and John Catto as owner. In the early part of the present year

Dickson & Townsend vacated the premises, and Oliver, Coate & Company, auctioneers, became the occupants. The defendants distrained for taxes, payable upon the premises for the present year, certain goods of the plaintiff which had been left by him with Oliver, Coate & Company to be sold and disposed of in the ordinary course of their business as auctioneers.

Held, that by virtue of s. 124 of the Consolidated Assessment Act, 1892, 55 Vict., c. 48, the distress was valid, and motion for injunction to restrain the sale of the goods seized was dismissed without costs.

W. C. Watt and *Mackay* for the plaintiff.

Caswell for the defendants.

Practice.

C.P. Div'l Court.] [Nov. 25.

ALLEN *v.* ALLEN.

Writ of summons—Service out of jurisdiction—Rule 271—Action for alimony—Domicil.

In an action for alimony the writ of summons was served upon the defendant out of the jurisdiction, and upon a motion to set aside the service it appeared that the plaintiff and defendant were married in Ontario in 1889; that the defendant had resided in Ontario for forty years prior to 1886; that in 1886 he had been appointed to a permanent position in the Northwest Territories, and had then sold his dwelling house in Ontario and gone to reside in the Northwest, where his daughter, her husband and children, lived, and where he had ever since remained, only visiting Ontario on a few occasions. He swore that he had no intention of returning to Ontario to live. It also appeared that the plaintiff shortly after the marriage accompanied the defendant to his home in the Northwest, and lived with him for about nine months, when she left him, and proceeded to Ontario for business purposes; that she never returned to the defendant, and had since resided chiefly in the United States of America, and since the commencement of this action had stated on oath, in another cause, that she resided in the United States.

Held, that the defendant had acquired a domicil in the Northwest Territories, and that the plaintiff had not acquired a distinct domicil in Ontario since she left her husband; and, therefore, it was not a case in which service of the writ of summons was permissible under Rule 271 (*c*) or (*e*).

Mikel for the plaintiff.

D. W. Saunders for the defendant

MACLENNAN, J.A.] [Nov. 27.

IN RE CHARLES STARK COMPANY.

Appeal—Cross-appeal—Enforcement of order appealed against—Waiver.

A respondent who desires to vary the decision appealed against is in the same position as if he were an appellant, and whatever would be an answer to his contention if he had brought an independent appeal would also be an answer to the same contention when urged by way of cross-appeal.

And where, before the hearing of an appeal, the respondent moved in Chambers for an order allowing him to enforce the order appealed against without prejudice to his cross-appeal;

Held, that it was not for a Judge in Chambers, in advance of the appeal, to determine a question which might arise on the appeal itself, viz., whether the enforcement of the order would be an answer to the cross-appeal.

Arnoldi, Q.C., for the American Watch Case Co.

C. J. Holman for the liquidators of the Charles Stark Co.

Chy. Div'l Court.] [Dec. 15.

SCOTT *v.* NIAGARA NAVIGATION CO.

Infants—Next friend—Foreigner—Security for costs.

The defendants appealed from the order and decision of BOYD, C. reported 15 P.R. 409, and their appeal was argued before a Divisional Court composed of FERGUSON and MEREDITH, JJ., on the 15th December, 1893.

Foy, Q.C., for the defendants.

W. J. Elliott, for the plaintiffs and the next friend, was not called on.

The court dismissed the appeal.

Court of Appeal.] [Dec. 22.

SEARS *v.* MEYERS.

Writ of summons—Service out of jurisdiction—Rule 271—Objection to allowance of service—Waiver—Appearance—Leave to appeal.

Upon a motion by the defendant for leave to appeal from the decision of the Common Pleas Divisional Court, 15 P.R. 381;

Held, that the defendant by appearing submitted to the jurisdiction, and the justice of the case consisted in allowing him to remain in the position in which he had placed himself, and there was no reason for giving leave to appeal.

H. M. Mowat for the defendant.

C.P. Div'l Court.] [Dec. 30.

BEATON *v.* GLOBE PRINTING COMPANY.

Discovery—Libel—Justification—Examination of plaintiff before delivery of defence—Rule 566.

In an action for libel against the publishers of a newspaper, the managing editor of the defendants stated on affidavit that the article complained of was published by the defendants in good faith in the public interest, not maliciously, nor with any intent to defame the plaintiff, but in the belief that the facts stated were substantially true, and such as should, in the interests of justice, be made public; that the article was, as it purported to be, copied from a New York newspaper, and was copied by a large number of other newspapers in Ontario; that it was material and necessary in the defendants' interest to have the plaintiff examined on oath before delivery of the statement of defence, in order to

ascertain the facts necessary to enable them to determine what course to take in framing their defence, and they could not properly put in that defence without discovery from the plaintiff by such examination.

Held, that the defendants should be allowed to examine the plaintiff as asked.

Rule 566 should receive a large and liberal construction.

The granting of such an order is a matter of discretion; and where that discretion has been exercised in Chambers, it should not lightly be interfered with by the court.

Per ROSE, J.: If a defendant is seeking discovery from the plaintiff in good faith to enable himself or his counsel to determine whether it would be proper to plead justification, to refuse him permission to examine before statement of defence would be to compel him to plead, and then withdraw his plea, and pay a penalty by way of increased damages, in order to have such defence on the record as he may reasonably hope to sustain.

Lynch-Staunton for the plaintiff.

Osler, Q.C., for the defendants.

BOYD, C.] [Jan. 13.

IN RE CHARLES STARK COMPANY.

Company—Winding up—Appointment of solicitor to liquidators.

In a proceeeding for the winding up of a company, a solicitor who is acting for claimants whose claims must be contested by the liquidators cannot obtain the sanction of the court to his acting also as solicitor for the liquidators. Nor will the court sanction the appointment of a special solicitor to act for the liquidators in the matter of the contested claim. The winding up must be prosecuted by one disinterested solicitor, whose services will not be divided by the assertion of antagonistic claims.

Hoyles, Q.C., for the creditors.

Lash, Q.C., for the liquidators and solicitors.

Appointments to Office.

SUPERIOR COURT JUDGES.

Province of Quebec.

John Sprott Archibald, of the City of Montreal, in the Province of Quebec, Esquire, one of Her Majesty's Counsel learned in the Law, to be a Puisne Judge of the Superior Court of the Province of Quebec, *vice* the Honourable Jonathan Saxton Campbell Wurtele, transferred to the Court of Queen's Bench of the said Province.

LOCAL MASTERS.

County of Oxford.

William Thomas McMullen, of the Town of Woodstock, in the County of Oxford, Esquire, Barrister-at-Law, to be Local Master of the Supreme Court

of Judicature for Ontario, and Deputy Registrar of the Chancery Division of the High Court of Justice for Ontario, in and for the said County of Oxford, in the room and stead of Henry B. Beard, Esquire, deceased.

CORONERS.

District of Parry Sound.

Clark Caughell, of the Village of Burk's Falls, in the District of Parry Sound, Esquire, M.D., to be an Associate Coroner within and for the said District of Parry Sound.

County of Middlesex.

John Walker, of the Village of Glencoe, in the County of Middlesex, Esquire, M.D., to be an Associate Coroner within and for the said County of Middlesex, in the room and stead of Dougald McAlpine, Esquire, M.D., removed from the county.

POLICE MAGISTRATES.

Town of Simcoe.

Robert Wood, of the Township of Windham, in the County of Norfolk, Esquire, to be Police Magistrate in and for the Town of Simcoe, in the room and stead of Matthew Charles Brown, Esquire, deceased.

DIVISION COURT CLERKS.

County of Waterloo.

William Henry Winkler, of the Village of St. Jacobs, in the County of Waterloo, Gentleman, to be Clerk of the Sixth Division Court of the said County of Waterloo, in the room and stead of J. L. Wideman, resigned.

County of Halton.

George Havill, of the Village of Acton, in the County of Halton, Gentleman, to be Clerk of the Fourth Division Court of the said County of Halton, in the room and stead of James Matthews, removed.

DIVISION COURT BAILIFFS.

County of Halton.

John Lawson, of the Village of Acton, in the County of Halton, to be Bailiff of the Fourth Division Court of the said County of Halton, in the room and stead of William Hemstreet, resigned.

District of Algoma.

Frederick Leighfield, of the Village of Thessalon, in the District of Algoma, to be Bailiff of the Third Division Court of the said District of Algoma, in the room and stead of Jacob Stevenson, resigned.

COMMISSIONERS FOR TAKING AFFIDAVITS.

City of Edinburgh (Scotland).

Arthur Leahy, of 29 Queen Street, in the City of Edinburgh, Scotland, Gentleman, Solicitor, to be a Commissioner for taking affidavits within and for the said City of Edinburgh, and not elsewhere, for use in the Courts of Ontario.

YORK LAW ASSOCIATION LIBRARY.

Late additions:

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Bicknell & Seager's Division Courts Act, Toronto, 1893.
By-laws, City of Toronto, 1891-1892. Presented by City Solicitor.
Cassels (R.), Q.C., Digest of Supreme Court Cases, Toronto, 1893.
Dymond (A.M.), Municipal Index of the R.S.O., 1887, Toronto, 1893.
Farwell (G.), Treatise on Powers, 2nd ed., London, 1893.
Haggard's Ecclesiastical Reports, 4 vols.
Hardcastle (H.), Statutory Law, London, 1892.
Holmested (G.S.), Workmen's Compensation Act, Toronto, 1893.
Hunter (W.H.), Dominion Conveyancer, Toronto, 1893.
Jones (J.T.), Constables' Manual, presented by Mr. Jones, Toronto, 1893.
Manson (E.), Law of Dogs, London, 1893.
Moore, Privy Council Cases, 1836-1873, 24 vols.
Nova Scotia Statutes, 1892-1893. Provincial Secretary, Nova Scotia.
Prince Edward Island Statutes, 1873-1893, 20 vols. Provincial Secretary, Prince Edward Island.
Quebec Statutes, 1893. Provincial Secretary, Quebec.
Revised Reports, vols. 10, 11.
Revised Reports, Index.
Robertson's Ecclesiastical Reports, 2 vols.
Taschereau (H.E.), LL.D., The Criminal Code of 1892, Toronto, 1893.
Weekly Notes, 1874-1886, 12 vols. Presented by Mr. T. D. Delamere, Q.C.
Williams (Sir R. L. V.), Executors and Administrators, 2 vols., 9th ed., London, 1893.

Flotsam and Jetsam.

IN Illinois there is an old law on the statute books to the effect that in criminal cases the jury is "judge of the law as well as of the facts." Though not often quoted, once in a while a lawyer with a desperate case makes use of it. In this case the judge instructed the jury that it was to judge of the law as well as the facts, but added that it was not to judge of the law unless it was fully satisfied that it knew more law than the judge.

An outrageous verdict was brought in, contrary to all instructions of the court, who felt called upon to rebuke the jury. At last one old farmer arose.

"Jedge," said he, "weren't we to jedge the law as well as the facts?"

"Certainly," was the response, "but I told you not to judge the law unless you were clearly satisfied that you knew the law better than I did."

"Well, jedge," answered the farmer, as he shifted his quid, "we considered that p'int."