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THE profession will have learned with universal regret of the death of Robert Gladstone Dalton, who for many years past has so successfully discharged the duties of Master in Chambers. Mr. Dalton was born in Kingston in 1818, and was consequently 74 years of age at the time of his death. He was the son of Thomas Dalton, a Liverpool merchant, who settled in Kingston, and subsequently came to Toronto and established the *Patriot* newspaper about 1833. Mr. Dalton we believe received his education partly at a school established at Kingston by his father before his removal to Toronto, and partly at Upper Canada College and at the Toronto University. He studied law with the firm of Sherwood & Crawford and was admitted on the 9th November, 1842, as an attorney and solicitor, and in Hilary Term, 1843, was called to the Bar. When Mr. Dalton commenced the practice of his profession special pleading was in vogue, and Mr. Dalton soon acquired considerable reputation as a skilful pleader. From an early period he was distinguished by the possession of that rare faculty known in the profession as a judicial mind—a quality of intellect which enables a man to look at all sides of a question, and prevents him from being carried away by prejudices or prepossessions of any kind. Thus it came to pass that Mr. Dalton's office on Church street, near the corner of King street, became a favourite resort for those who desired to dispose of matters in dispute by arbitration; and as an arbitrator, Mr. Dalton early acquired the judicial habit which fitted him so well for the duties of his later years. During his practice at the Bar Mr. Dalton associated with him Mr. Gilbert, who subsequently removed to Chicago, where he became sheriff; later, Mr. J. G. Scott, Q.C., the present learned Master of Titles, became first a student in his office and afterwards his partner until Mr. Dalton entered the service of the government. On 26th June, 1867, Mr. Dalton was appointed one of Her Majesty's counsel, and on 21st February, 1870, he succeeded the late Lawrence Heyden as clerk of the Crown and Pleas in the Court of Queen's Bench, and in the same year an act was passed enabling the judges to confer on that officer power to discharge many duties theretofore discharged by the Judges in Chambers. Mr. Dalton's judicial abilites were therefore immediately called into play by the passing of a rule conferring on him the necessary power to act as a Judge in Chambers. Up to the passage of the *Judicature Act* in 1881 Mr. Dalton's duties were confined to actions in the common law courts, but on that act coming into force he was created Master in Chambers, and his jurisdiction was thereby extended to actions in all the divisions of the High Court. Mr. Dalton was not an equity lawyer, and was somewhat at a disadvantage in regard to cases involv-

ing equity principles, but such was his capacity for work that he speedily made himself sufficiently master of those principles to enable him satisfactorily to dispose of all kinds of cases which came before him. For the benefit of future generations it may be well to record here what manner of man our departed friend was. He was of medium height, and of a spare frame, never very robust. His face, which was void of hair, was of an intellectual cast, evidencing much thought. He was of an extremely gentle and obliging disposition, and was not too proud to learn even from the humblest student who appeared before him anything that he was able to impart. He was invariably courteous and polite to all, and neither bores nor upstarts ever succeeded in ruffling his equanimity. He had a high sense of what was just and right, and the whole aim of his career in Chambers was to effectuate as far as possible substantial justice. Mr. Dalton's sister was married to the late Chief Justice Sir Adam Wilson, with whom he l[illegible]d in closest friendship until the latter's death.

CONTEMPT OF COURT AND THE PARDONING POWER.

In the English *Law Times* of June 18th we find the following remarks anent the action of Sir Ambrose Shea, Governor of the Bahamas, in releasing from prison the editor of a newspaper who had been committed by the Chief Justice of those islands for an alleged contempt of court :

"Mr. Yelverton, an English barrister who some time since was appointed Chief Justice of the Bahamas, is on his way to England to lay before the authorities a state of things which is somewhat remarkable. The Chief Justice committed an editor of a local newspaper for contempt of court. There was an outcry, and the Governor in effect issued a writ of *habeas corpus* and liberated the captive. The Governor overruling the Chief Justice of the Supreme Court in the preservation of the dignity of his court is a novelty. We shall be curious to see by virtue of what law he justifies his action. He will find, we believe, that while he has the power to pardon for offences against the laws, he has none to release a person committed to prison for contempt of court."

Now it is well known that *quandoque bonus dormitat Homerus*, and we harbour the suspicion that, while penning the above opinion, the astute English editor was a victim of the soporific influences of early June weather. Taking it for granted, as our learned friend seems to do, that the Governor's commission gives him a general power to pardon "offences against the laws," can it be seriously contended that a contempt of court is *not* an offence against the laws ? If it is not such, then what is it, and to what classification of evil-doing shall we assign it ? As it is purely a wrong created by positive law, and one not arising *in foro conscientiæ*, there ought to be no difficulty in finding its true place in English jurisprudence.

We might say at the outset that we do not make it our business to justify the action of the Governor in bringing the prisoner before him by the process above indicated. [illegible] h [illegible]hat matter we do not concern ourselves in this article. It

is our present purpose merely to call in question the opinion of the *Law Times* that a contempt of court is not an "offence against the laws," and that the prerogative of pardon cannot be extended to a person who has been adjudged to be in contempt and has been committed to prison therefor.

Notwithstanding Sir James F. Stephen's cautiously expressed doubt to the contrary ("Digest of the Criminal Law," Art. 65, *n.* 2), it is well established by the authorities that contempts which involve disrespect of the court or its process, and are punished by fine and imprisonment, form a breach of the criminal law. They have been treated as such from the very earliest period of English law. (See *The King* v. *Almon* in Wilm. Op. 253; *In re Pollard*, L.R. 2 P.C. 106; Hawk. P.C., Vol. I., c. 22, p. 207; 4 Bl. Com. 283; Harris. Prin. C.L., 5th ed., p. 106; Bouv. L.D. v. "*Crime.*") Erle, C.J., in *Ex parte Fernandez*, 10 C.B.N.S. 38, in speaking of the nature of contempts, says: "The judges, in the discharge of their important functions, are liable to be interrupted by those who are interested in supporting wrong, whether by personal disturbance of the judge, or by improperly influencing the jury, or by perverting or keeping back evidence, and so hindering and obstructing the course of public justice. Powers must necessarily be vested in the judges to keep that course free and unimpeded. Such offences are properly punishable as *sinning against the majesty of the law.*" Perhaps no better definition of the character of such contempts can be furnished than that pronounced by Blatchford, C.J., in *Fischer* v. *Hayes*, 6 Fed. Rep. 63: "A contempt of court is a specific criminal offence, and the imposition of a fine for such contempt is a judgment in a criminal case." Authorities to the like effect might be cited to a practically unlimited extent both in English and American law.

Having thus seen that a contempt of court, such as the one in question, has a recognized status in punitive law, and should not be relegated to some undefined limbo of wrongs, let us pass on to consider whether or not it is an offence that is pardonable.

Bishop, in his work on the "Criminal Law" (7th ed., vol. 2, s. 913), hits the nail on the head for us in a very summary way. He there says: "Contempts of court are public offences, pardonable like any other." In support of this proposition he cites Hawk. P.C., Vol. II., Bk. 2, c. 37. Again, in 2 Ventris 194, we find the following statement of an anonymous case bearing on the subject in hand: "An attachment was granted against an attorney for a misdemeanour in practice, and upon a rule of court it was referred to the prothonotary to tax costs for the party grieved, which were taxed accordingly; and then came out the Act of General Pardon, which discharged the contempt." There is still an older case than this, *i.e.*, *The Mayor of Sandwich's Case* (22 Edw. I., Mich. Mem. Scacc.), which is more decisive of the point. In this case the mayor of Sandwich was committed by a Baron of the Exchequer because "he would not answer the court." He was adjudged to be in contempt by such behaviour, and was fined and sent to prison, but "*the King pardoned his contempt.*" In the more recent English case of *Ex parte Fernandez, ut supra*, although the Courts of Exchequer and Common Pleas both refused to grant a writ of *habeas corpus* the case of in a

person who had been committed by a Court of Assize for contempt in refusing to answer a question put to him as a witness, yet the Chief Justice of the Common Pleas said: "If Mr. Fernandez feels himself aggrieved by the course which has been pursued, *he may petition the Sovereign for relief.*"

It will suffice for our purpose to cite but two cases illustrative of what the American law is on the subject. In *The State* v. *Sauvinet* (24 La. Ann. 119; 13 Am. Rep. 118), Taliaferro, J., says: "The opinion entertained to some extent that punishments decreed for such offences [contempts] must necessarily be inflicted at the stern arbitrament of the judges, without remission or abatement by the pardoning power, we do not find to rest upon any firm basis of principle or authority. A contempt of court is an offence against the State, and not an offence against the judge personally. In such a case the State is the offended party, and it belongs to the State, acting through another department of its government, to pardon or not to pardon the offender." In *Ex parte Hickey* (4 Sm. & M. 783), Thacher, J., in the course of a very able opinion, says: "Contempts of court are treated by all elementary writers as public wrongs. The whole doctrine of contempts goes to the point that the offence is a wrong to the public, not to the person of the functionary to whom it is offered, considered merely as an individual. It follows, then, that contempts of court are either crimes or misdemeanours in proportion to the aggravation of the offence, and, as such, are included within the pardoning power of the State."

Perhaps it will be well, in order to satisfy our transatlantic contemporary that the American doctrine, as above expounded, was not settled without reference to a good and substantial English foundation, to quote the language of Chief Justice Marshall in delivering the opinion of the Supreme Court of the United States in *United States* v. *Wilson* (7 Pet. 160): "The power of pardon in criminal cases has been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institutions ours bear a close resemblance. *We adopt their principles respecting the operation and effect of a pardon,* and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it."

Without entering at all into the argument of expediency (because that is quite beyond the scope of the present discussion), we are free to say that, in view of the fiction of English law which endows Her Majesty with ubiquity in respect of the courts of record in all her wide dominions, and makes disrespect offered to the judges thereof contempts against the Sovereign in person, it does seem a strange thing to hold that she cannot extend to one who offends against her own dignity in this way "the most amiable prerogative of pardon."

We think the whole current of authority, both in England and America, is in harmony with the cases we have here referred to, and that it goes to establish beyond a doubt that contempts of court not only fall within the meaning of that very comprehensive phrase, "offences against the laws," but that a certain class of them (such as the one in question) are treated and punished as crimes, and, as such, are properly pardonable by the Crown.

INJURIES TO FREE PASSENGERS.

This subject is one of much interest in this country, more so, in fact, than in England, where the practice of giving free passes is less common than it is on this continent. We give our readers the benefit of an able article on this subject from the pen of Mr. James Schouler, of Boston, published in the *American Law Review*.

The writer thus deals with the subject: "If there be any principle which is fundamental, in American law at least, it is that the bailment relation is in the nature of a trust and sedulously guarded by public policy. The party who performs the bailment undertaking may stipulate in various directions; but he cannot so stipulate as to procure absolute immunity from the consequences of his own negligence or misconduct, or that of the servants whom he may have chosen to employ about the business. Admitting that we call public policy swerves from one epoch to another, no bailee, nevertheless, can make a valid contract for exemption against his wilful wrong; and even bailees of the lowest grade of legal responsibility—they who perform an undertaking without the expectation of any benefit whatsoever—are not permitted to undertake performance for a lower grade of negligence than that which the law fixes as the lowest—namely, gross negligence, which is so close to fraud that it always appears culpable.[1] I may, when assuming, out of pure favour to my neighbour, to take custody of his goods, to perform work upon them, or to carry them from one place to another, agree specially with him to do this or that for my own relief; or, if foolish enough, to insure them against accident. But I cannot stipulate so as to put all the risk of loss or injury upon him, regardless of all fault on the part of myself or my servant.

This cardinal principle has been constantly discussed and applied, during the last three-quarters of a century, to the bailment of common carrier; and the strong conclusion of American courts, led by the guiding hand of our Supreme Federal tribunal, in an important case which was decided early in the new era of steam transportation, has been that public policy will not tolerate the exemption of a common carrier from liability to his customers for the consequences of negligence or misconduct on the part of himself or his servants, no matter what contract to that effect he may specially set up; that restriction of his liability as insurer, that exemption against misfortune, is the proper limit of any such special exoneration on his behalf from the hard exactions of the common law respecting his profession.[2] It is true that the strict rule of the common law, which pronounces the carrier liable, by reason of his public vocation, for all losses excepting those occasioned by act of God or act of public enemies,[3] applied only where the carrier was pursuing his business for hire; but even in the exceptional instance of a gratuitous carriage for any one he was considered subject to all the legal restraints of policy at least which attach to any bailee without recompense.

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[1] Story Bailments, s. 32; Schouler Bailments, ss. 20, 51, 77.

[2] *New Jersey Steam Nav. Co.* v. *Merchants' Bank*, 6 How. 244; Schouler Bailments, ss. 453, 454.

[3] To which exceptions, as stated in the older books, modern precedent justifies us in adding act of the customer and act of public authority. Schouler Bailments, s. 405.

It is important to remark here that the English courts longago omitted to observe such fundamental limitations of public policy in their early dealings with our young modern giant of inland traffic. Lapsing into the pernicious theory, about the dawn of the present century, that a common carrier might, by making special acceptance of goods, carry on that footing of qualification rather than in the strict exercise of a public vocation, they reached a standard quite opposed to our salutary American doctrine, about the same time that the latter became established. They concluded, in short, that a carrier who employed servants in the course of transportation might stipulate for complete immunity against losses which were occasioned by their default or misconduct in the course of the undertaking.[1] This conclusion proved intolerable; for the business of transportation, as organized in modern times, we find carried on almost altogether by the servants or agents of a corporation, whose irresponsibility for their acts must be almost tantamount to practical irresponsibility altogether. The British public would not tolerate such a conclusion; and Parliament in consequence, by the Railway and Canal Traffic Act of 1854,[2] proclaimed, as to the leading classes, at all events, of inland carriers, that no special condition which they might seek to impose should hold good unless "just and reasonable" in the opinion of the court, and embodied besides in a special contract signed by the sender of the goods. English legislation therefore, and not the English judiciary, directed the practice of that country to conform to something like that true bailment conception to which American courts steadily adhere of their own accord. And of American courts, those of New York furnish the only marked instance of national departure from our just national standard. Yielding too readily to the seductive influences of a powerful railway corporation, the Court of Appeals in that State discredited its own early traditions,[3] and sanctioned the stipulations of a railway carrier to the effect that a sender of cattle, in consideration of certain favours, might be compelled to bear all the risks of the transportation for himself. This latter doctrine our Supreme Court of the United States, upon a last appeal, overturned; and in an exhaustive opinion, replete with learning, philanthropy, and sound sense, reaffirmed the principle that special conditions, unjust and unreasonable like that in controversy, could not be imposed by any carrier.[4] To their own conclusion the New York courts still nominally adhered; yielding, however, so far, though quite ungraciously, as to presume for the future that a railway contract did not intend in reality the obnoxious exemption.[5]

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[1] *Hinton* v. *Dibbin*, 2 Q.B. 646; *Peck* v. *North Staffordshire R.*, 10 H. L. Cas. 473, 494.

[2] Since extended by legislation to steamships.

[3] See 19 Wend. 251; 25 Wend. 459.

[4] *Railroad Co.* v. *Lockwood*, 17 Wall. 357 (1874). The conclusions of the court are summarized at the close in the able opinion of the late Justice Bradley. "*First*, That a common carrier cannot lawfully stipulate for exemption from responsibility when such exemption is not just and reasonable in the eye of the law. *Secondly*, That it is not just and reasonable in the eye of the law for a common carrier to stipulate for exemption from responsibility for the negligence of himself or his servants. *Thirdly*, That these rules apply both to carriers of goods and carriers of passengers for hire, and with special force to the latter. *Fourthly*, That a drover travelling on a pass, such as was given in this case, for the purpose of taking care of his stock on the train, is a passenger for hire." *Ib.* 384.

[5] Observe the reluctant drift of such late New York decisions as *Mynard* v. *Syracuse R.*, 71 N.Y. 280; 89 N.Y. 370; 97 N.Y. 870.

This brief preliminary exposition of legal principles and legal history may serve to impress the readers with two points quite germane to our present discussion which do not as yet appear to have been brought steadily to view by our State judges. One point is, as our citation in the foregoing note clearly indicates, that there is a close analogy of public policy between the carriage of goods and the carriage of passengers. The other point is that the courts of England and of New York State have departed so widely from the recognized American standard in the limitations allowable by special contract of the carrier that they ought to furnish no criterion for other American tribunals to adopt. And the discussion which now concerns us—one to which the Supreme Court of the United States has not yet clearly committed itself—concerns the extent to which a carrier of passengers, and more especially a railway carrier, may claim lawful immunity for injuries received by a passenger who travels upon a free ticket.

It is admitted that the carriage of passengers is no bailment, in the strict sense of the term. Nevertheless the law of that topic is closely related to bailment law, and presents the strongest analogies. The same transporters, the same organized companies, combine often the business of carrying goods and passengers; and this is notably true of the railway. Public policy regulates the vocation with the same jealous regard for the public welfare in the one instance as the other, and confers like privileges in return. The same obligation is imposed to serve the whole people alike, so as far as the transporter's facilities and the scope of his vocation may permit, making no arbitrary selection of customers; the same right is recognized of collecting all carriage dues in advance and of making one's reasonable recompense the prerequisite of performance.[1] This analogy, moreover, extends to the conduct of the transportation. The passenger carrier, it is true, suffers no such compulsion at the law, is no such insurer against accident, as the carrier of the goods; and yet the standard of liability for human life and limb intrusted to his keeping is set very high; and the later precedents, English and American (departing somewhat, as it would seem, from the earlier ones), hold passenger carriers to the highest degree of practicable care for personal transportation under the circumstances presented. Not satisfied with the usual or "ordinary" means and appliances for safety and comfort in transportation, they usually lay it down that the "utmost" diligence, prudence, and foresight should be applied. In short, for bodily injury occasioned to a passenger that which bailment law terms "slight negligence" on the carrier's part is now becoming the standard.[2] Such a standard well befits this humane and enlightened age—an age in which the swarming of the people hither and thither is found one of the most remarkable characteristics. From carriers of goods and carriers of passengers as well, therefore, the weightiest of our judicial authorities exact the requirement to-day that nothing unjust or unreasonable shall be attempted on the bailee's part in derogation of the fundamental right of the inhabitants to travel with strong safeguards of legal indemnity against the culpable carelessness or misconduct of the carrier company which holds their lives in jeopardy.[3]

[1] Schouler Bailments, ss. 622-626.

[2] *Ib.*, ss. 638-652.

[3] Observe the third rule cited from 17 Wall. 357 in our note *supra*.

All this humane and sensible provision of the law applies, it may be said, only to the carriage for hire of goods or of passengers. Granting this to be literally true, bailment law with its analogies does not cease to regard public carriage as a public trust. Even they who are taken gratuitously may demand to be treated with the tenderness of fellow-beings. If carelessly injured or killed, the individual is wrong and the whole human brotherhood suffers a compassionate shock; and if the unrecompensed carrier of a cow or a cask of cement who destroys the property by his gross negligence or misconduct, or by that of his agents, must make good the loss, why is it not equally good law that the unrecompensed carrier of his fellow-man should respond correspondingly, at least, in damages when he has maimed and mangled that fellow-being by negligence or misconduct similarly gross? Where public policy abhors a special contract seeking to divest the carrier in the one case, so ought it none the less in the other. For this age is presumed an age of benevolence in advance of all earlier ones.

We are glad to see a disinclination in most American courts to permit passenger carriers to regulate at their own unfettered discretion by any special stipulations the momentous responsibility which is incumbent upon them: whatever may be the leniency allowable in the lesser concern of insuring a person's inanimate baggage. The Supreme Court of the United States, it is true, carefully avoids a premature announcement in this matter of free passengers—aware, doubtless, of the contradictory precedents it must encounter when the subject comes up;[1] but the whole spirit of that sympathetic opinion pronounced by the late Justice Bradley in *Railroad Company* v. *Lockwood* certainly impels in the true humane direction. That great case laid down the law unhesitatingly for the case of "drovers' passes"—of passes which were called "free," but which the court decided were really given upon consideration, thus making that particular question one of a paying passenger's rights. The Supreme Court standard—and, we may safely add, the true American standard—is therefore diametrically opposed to the English and New York precedents here, as in the public carriage of goods, aside from legislation. English and New York courts had ruled that, with respect to any one who travelled in charge of cattle upon a "drover's pass" the railway carrier might, by the terms of the ticket thus issued, throw upon the person who used it the whole practical risk of bodily injury, no matter how morally culpable might be the servants of the company.[2]

We are not dealing so much, therefore, with English or New York precedents for guidance. They prove too much for the argument that no transcendent obligation exists to carry free passengers carefully, honourably and, humanely; for they extend the principle to persons who in reality are passengers for hire. Their ground was taken before our Federal court of final appeal had pronounced

[1] See *Railway Co.* v. *Stevens*, 95 U. S. 655; *per curiam*.

[2] For the English rule to this effect, see *McCawley* v. *Furness R.L.R.*, 8 Q.B. 57. For the New York rule, see *Wells* v. *N.Y. Central R.*, 24 N.Y. 181; 25 N.Y. 442. That English and American law conflict at this day with regard to the carriage of goods, in cases not covered by positive legislation. see 42 Ch. Div. 321; 129 U.S. 397.

its potent dissent.[1] Our chief difficulty comes in truth from those States whose judiciary, while expressing full respect for the authority of *Railway Company* v. *Lockwood*, attempt to draw a further distinction between drovers' passes and tickets which are given more clearly as a gratuity. Two recent opinions, pronounced, we regret to say, by appellant tribunals as illustrious and honoured as those of Connecticut and Massachusetts, range upon the carrier's side of the controversy, and declare that conditions are lawful and binding which disclaim, as to passengers who are carried free, all liability whatsoever on the carrier's part for personal injuries occasioned by his negligent transportation. In the earlier case of the two, that of Connecticut, in 1885,[2] a boy of sixteen years, who was employed by the keeper of a railway restaurant, had a free pass to travel over the road given him which contained a harsh condition of this character. He used the ticket more particularly when selling sandwiches and fruit upon the train; though at the time of receiving the injury he happened to be travelling on his private account, as the pass permitted him to do. He was plainly injured by the gross negligence of the railway employees; but the court, notwithstanding, shielded the company under cover of its own printed condition, and in an elaborate opinion declared that while public policy might properly annul such an exemption in a drover's pass, or wherever else one travelled for hire upon recompense, this boy had no legal redress. In 1890 the Supreme Court of Massachusetts followed with a similar decision,[3] indorsing the doctrine of this case; while fully admitting at the same time that there was great variance of legal authority on the subject, and that a well-considered Texas case[4] had recently taken an opposite view. The precise circumstances under which the "free pass" was given in this Massachusetts case are not stated; but the court intimates that the plaintiff solicited the pass for a ride to please himself, If so, this is more clearly a gratuitous instance than we have noticed in the former reports. Here the ticket which was given had a printed condition on the back which purported to assume, on the user's part, "all risk of accident of every name and nature." Singularly enough, this condition provided that the passenger should sign; but the passenger did not sign, and perhaps did not read the back of the ticket at all; and yet the court declared the plaintiff estopped to deny the validity of the contract inasmuch as he had used the ticket and taken his ride.[5] Here, once again,

[1] So, too, with the New Jersey case, *Kinney* v. *Central R.*, 32 N.J. 409 (1868), which relied upon the English and New York precedents.

[2] *Griswold* v. *New York & New England R.*, 53 Conn. 371.

[3] *Quimby* v. *Boston & Maine R.*, 150 Mass. 365.

[4] *Gulf R.* v. *McGown*, 65 Tex. 640.

[5] It seems a little strange that the court should have ruled to this effect so unhesitatingly. To be sure there are numerous cases of "contract tickets" where special stipulations of various kinds, none of which involved the doubtful assumption of all risk for personal injury, have been sustained in the carrier's favour upon the suggestion of estoppel by use of the ticket, although not signed by the passenger as the ticket provided. See this subject reviewed with copious citations in *Fonseca* v. *Cunard S.S. Co.*, Mass. 1891. But on the other hand may be found numerous precedents which protect a carrier's customer, especially where the stipulations not thus clearly assented to were of questionable character, or printed on the back of the document given to the customer, or such as not likely to meet his eye. See Schouler Bailments, ss. 466-472. The idea of non-assent to the special condition was strongly pressed before the court in *Railway Co.* v. *Stevens*, 95 U.S. 655, a case very closely resembling that of 150 Mass. 365, though,

culpable carelessness in causing the injury was clearly fastened upon the company; and yet the Massachusetts court decided that such a stipulation on the carrier's behalf against all liability whatsoever, which might be against good morals had the passenger been carried for recompense, was not against good morals when he travelled free.

How subtle and difficult becomes this line of distinction between passengers for hire and non-paying passengers when the legal consequences are considered so fundamentally different. Not many years ago the Supreme Court of the United States applied its own doctrine in a case where the inventor of a new coupling device had sent his servant to negotiate with a railway for the use of his patent, and the servant received a pass to see some officer of the road upon this matter; here the court held that he, like the drover, was in effect a passenger for hire and not legally bound by the stipulation expressed in the ticket that he should travel "free" at his own risk.[1] The drover's pass, we have seen, is considered a ticket for recompense, although called "free" and notwithstanding the drover is assigned to a cattle car; yet according to another Massachusetts case, which admits all this, a railway may stipulate that an express agent who travels with a somewhat similar charge of express matter, to the relief of the carrier's burden for such freight, is subject, unlike the drover, to special stipulations like any free passenger.[2] To say the least, a baggage car should befit any passenger's safety better than a freight train of cattle And observe, too, with what painful effort the court, in our Connecticut case, remitted the sandwich youth to the category of gratuitous passengers; conceding that the railway company was incidentally benefited by the station restaurant, that its passengers derived a needful refreshment on their journey in consequence, and that, in fact, the railway officials had promised to aid the keeper in every way possible—issuing this very pass to the boy accordingly. We are not aware whether the restaurant keeper paid rent to the company or not; but at all events the court held that the railway had no direct interest either in the restaurant or the boy's peregrinations. And upon so refined a distinction this was concluded to be the case of a literally free passenger.[3]

In this Connecticut case it is furthermore suggested that our rule of public policy goes very far for the people in making any carrier company liable for the torts or misconduct of its servants as well as for their negligence. And yet under the Roman law of agency any principal is clearly liable for all negligence not wilful on the part of those he employs. Negligence not wilful is the usual concomitant of railway accidents; and to draw the strict line between the negligence and wilful misconduct of a railway's agents in these carrier cases would be intolerable to the public. Nor does the court appear, in this case, to have tried to ascertain

to be sure, the court decided, as in most of the other instances, on the theory that the bailment was one for recompense.

[1] *Railway Co.* v. *Stevens*, 95 U.S. 655.

[2] *Bates* v. *Old Colony R.*, 147 Mass. 255. To be sure, the court found here that riding on the baggage car instead of the passenger cars attached to the train conduced materially to the accident in question; so that, perhaps, on the ground of the plaintiff's contribution to his own injury the decision stood well enough upon the particular merits of the case.

[3] 53 Conn. 371, cited *supra*.

whether the accident was caused by a servant's gross but unintentional negligence. For such negligence any principal, o matter whether a carrier or not, is held legally liable at the suit of the injured party. The court suggests further that a company, in the sense of stockholders or the board of directors, may not be morally culpable where the accident is caused by careless servants who were selected with discretion; but that does not relieve the principal of legal liability for his servant's negligence, even though the bailment undertaking were purely gratuitous on his part.

Against the English, New York, and New Jersey precedents, and these more important because more discriminating decisions in Connecticut and Massachusetts, we find a great array of American authorities, impelled by the powerful direction of the Supreme Court of the United States, whose combined opinion is quite unfavourable in spirit to these unphilanthropic distinctions between free and paying passengers; Pennsylvania, Ohio, Indiana, Texas, being among the States which insist that, whether it be upon a drover's pass or any other free or limited ticket, whether under expressed terms of restriction or otherwise, our railway carrier must not be permitted to shield himself from the legal consequences of his own negligence and misconduct or of that of his servants and those whom he employs in the transportation.[1] Some of these latter decisions assert the broad doctrine that towards all passengers the utmost care and diligence must be exercised; while others incline to the view that passengers strictly free can claim indemnity only for the transporter's gross carelessness, and where, in other words, slight care and diligence were wanting. The limited view, it may be admitted, though the less humane and practicable, in cases of accident, conforms more closely to the true bailment standard.

The time approaches, most probably, when our Federal Supreme Court—already the recognized arbiter among the clashing State tribunals in carrier controversies—must adjudicate upon the rights of passengers admittedly free, and must once more formulate a national doctrine. Since its disapproval of the English and New York rule has already moulded the local decisions, so ought its influential sanction or disapproval be given to this later rule of Connecticut and Massachusetts with like effect. If a sanction, then we shall see railway companies over all the Union straining after special immunities and restrictions in every possible way where human beings are carried, just as they have steadily done in the conveyance of goods, striving to bargain off altogether their liability for bodily injury in consideration of reduced fares. We shall see them limiting unreasonably the maximum of damages recovered, setting unreasonable bounds to the time for presenting claims, mixing conditions legal and illegal so as to make the one sort buoy up the other; and all this, as carriers of goods are keen in contriving how to do, by printing conditions which may or may not be read, so as to elicit a passenger's inferential assent without discussion. But should the Supreme Court take the other course and disapprove, the cause of public morals will be stronger in consequence. For if passenger carriers be-

[1] See Schouler Bailments, s. 656; citations in 53 Conn. 386; 63 Tex. 640.

come discouraged from issuing free passes, neither the stockholders nor the public need grieve greatly. If the long list of persons who have been carried nominally free on our great railway lines were scrutinized closely, it would be found that officials of various lines who sought luxurious perquisites out of their position, or journalists, lobbyists, and public men whose favour was courted by the carrier for selfish and sinister ends, made up the great majority. Few passes are issued from strictly benevolent motives and without some element of expected recompense. Our whole free pass system is too often corrupt or insidiously corrupting. Personal privileges are always odious in a free republic; and if one citizen must pay his fares on the public highway, so ought another to do the same."

COMMENTS ON CURRENT ENGLISH DECISIONS.

(Law Reports for May—*Continued.*)

PRACTICE—GARNISHEE ORDER—AFFIDAVIT IN SUPPORT OF APPLICATION—ORDER XLV., R. I (ONT. RULE 935).

Vinall v. *De Pass* (1892), A.C. 90, is a case which was known in its previous stages as *De Pass* v. *The Capital & Industries Corporation*, under which name it is reported (1891), 1 Q.B. 216 (see *ante* vol. 27, p. 103), which, although involving a mere point of practice, seems to have been thought of sufficient importance to be carried to the House of Lords. Their Lordships (Lords Halsbury, L.C., Watson, Macnaghten, Field, and Hannen) unanimously agreed with the Court of Appeal in holding that the defendant in an affidavit in support of an application for a garnishee order need not swear positively to the existence of a debt due from the garnishee to the judgment debtor, but that it is sufficient if he states that he is informed and believes that there is a debt due; and also that it is no answer to such an affidavit for the garnishee to deny that he owes the particular debt referred to by the applicant, but he must deny that he owes any debt to the judgment debtor; and as the garnishee in the present case did not deny that he owed any debt, but merely denied owing the particular debt referred to by the judgment creditor, they held that the order to pay over was rightly made. Lord Halsbury, L.C., points out that the strict rules of legal evidence are not applicable to mere interlocutory proceedings, and the courts are accustomed to act in such matters upon a less strict degree of proof than would be insisted on at a trial of an action. Moreover, the attaching order does not in terms merely attach the particular debt sworn to, but all debts due by the garnishee to the judgment debtor, and the garnishee can only free himself from liability by showing that he owes nothing.

PRACTICE—HOUSE OF LORDS—APPEAL IN FORMA PAUPERIS—PAUPER—COSTS OF SUCCESSFUL APPEAL IN FORMA PAUPERIS.

Johnson v. *Lindsay* (1892), A.C. 110, is a decision of the House of Lords as to the costs a person suing *in formâ pauperis* is entitled to recover for a successful appeal to the House of Lords, and their Lordships ruled that the fees of the House must be disallowed, also the fees of counsel, and that the pauper's soli-

citor was to get only his costs out of pocket, with a reasonable allowance to cover office expenses, including clerks, etc. In *Casey* v. *McColl*, 3 Ch. Ch. 24, Mowat, V.C., considered that the rule in equity was to allow a successful pauper *dives* costs unless otherwise ordered; but the present case would rather go to show that the rule is now the other way, and that pauper costs only are taxable unless otherwise ordered.

TRUSTEE—INVESTMENT OF TRUST FUNDS—INSTRUMENT GIVING NO POWER TO VARY INVESTMENTS—VARYING EXISTING SECURITIES—TRUST INVESTMENT ACT (52 & 53 VICT., C. 32), S. 3 (R.S.O., C. 110, SS. 29, 30).

Hume v. *Lopes* (1892), A.C. 112, is a case known as *In re Dick, Lopes* v. *Hume-Dick* (1891), 1 Ch. 423, which was noted *ante* vol. 27, p. 263, in which the House of Lords affirm the decision of the Court of Appeal, holding that the Trust Investment Act, 1889 (see R.S.O., c. 110, ss. 29, 30), which enables a trustee, unless expressly forbidden by the instrument, if any, creating the trust, to invest "any trust funds in his hands" in certain securities, includes not only trust funds awaiting investment, but all trust funds, whether at the time invested or not; in short, that it includes the power to vary investments.

PRACTICE—GARNISHEE ORDER—ATTACHMENT OF DEBT—ATTACHMENT OF PART OF DEBT—ORDER XLV., RR. 1, 2 (ONT. RULE 935).

Rogers v. *Whitely* (1892), A.C. 118, was an action brought by a judgment debtor against a garnishee who, after service on him of an order attaching all debts due and owing by him to the judgment debtor, had refused to honour cheques drawn upon him by the judgment debtor, on the ground that there was a balance of money in his hands over and above what was sufficient to satisfy the debt of the attaching creditor. The House of Lords (Lords Halsbury, L.C., Watson, Macnaghten, Morris, Field, and Hannen) affirmed the decision of the Court of Appeal, 23 Q.B.D. 236 (noted *ante* vol. 25, p. 463), that the action would not lie, as the attaching order attached all debts, and not merely sufficient to satisfy the attaching creditor, and until it was discharged the garnishee was justified in dishonouring the plaintiff's cheques on the balance of the fund. Some of their Lordships suggest that in such a case it would be possible and proper to frame the attaching order so as merely to attach so much of the debt due by the garnishee as would be sufficient to satisfy the attaching creditor's claim.

COMPANY—ISSUE OF SHARES AT A DISCOUNT.

The Ooregum Gold Co. v. *Roper* (1892), A.C. 125, is a decision of the House of Lords on a point of company law. The question was whether a company could issue shares as fully paid up for a money consideration less than their nominal value, which their Lordships answer in the negative, affirming the judgment of the Court of Appeal to the same effect. The facts of the case were that the company was registered under the Companies Act of 1862, and by its memorandum of association the capital was stated to be £125,000 in £1 shares, and it was provided that the shares of the original or increased capital might be divided into different classes and issued with such preference, privilege, or guar-

antee as the company might direct. The company being in want of money, and the shares being at a great discount, the directors, in accordance with resolutions duly passed, issued preference shares of £1 each, with 15s. credited as paid, leaving a liability of only 5s. per share. The contract was registered under the Act of 1867, and was *bonâ fide*, and for the benefit of the company. But the transaction was held to be *ultra vires* of the company, and the preference shares, so far as the same were held by the original allottees, were declared to be held subject to the liability of the holder to pay to the company in cash the full amount unpaid thereon. Lord Herschell was, however, of opinion that if the point had been insisted on it should be declared that the terms on which the shares in question were issued were binding as between the company and the allottees, but not so as to relieve the allottees from liability for the full amount of the shares as against creditors of the company.

The Law Reports for June comprise (1892) 1 Q.B., pp. 737-913; (1892) P., pp. 137-217; and (1892) 2 Ch., pp. 1-133.

PRACTICE—WRIT OF SUMMONS—SERVICE OUT OF JURISDICTION—BREACH WITHIN THE JURISDICTION OF CONTRACT TO BE PERFORMED WITHIN THE JURISDICTION—PLACE OF PAYMENT—ORDER XI., R. 1 (E). (ONT. RULE 271 (E.)).

Rein v. *Stein* (1892), 1 Q.B. 753, was an application for leave to issue a writ for service out of the jurisdiction, on which it appeared that the action was for the price of goods consigned by the plaintiff, an English merchant, for sale in Germany by the defendant, a German subject carrying on business in Germany. There was no express stipulation as to the place of payment for the goods; but, according to the course of business in similar transactions between the plaintiff and defendant, such payment would be made in England. A Divisional Court (Cave and Williams, JJ.) had held that the leave should be granted, and the Court of Appeal (Lindley and Kay, L.JJ.) affirmed their decision. The difficulty arose from the wording of the Rule, which provides that where a contract is one "which *according to the terms thereof* ought to be performed within the jurisdiction" the action to enforce it may be brought in England; and it was contended by the appellant that this meant that there must be an express term of the contract that it should be performed within the jurisdiction in order to bring a case within the Rule; but the Court of Appeal was of opinion that it was not necessary that that term should be expressed, but it was sufficient if from the circumstances under which the contract was made the court could determine that it was one that ought to be wholly or partly performed within the jurisdiction.

SOLICITOR—MISCONDUCT OF SOLICITOR, UNFOUNDED CHARGE OF—INQUIRY INTO—REPORT OF COMMITTEE OF LAW SOCIETY—COSTS, JURISDICTION OF COURT AS TO—SOLICITORS' ACT, 1888 (51 & 52 VICT., C. 65), SS. 12, 13.

In re Lilley (1892), 1 Q.B. 759, a client made an unfounded charge of misconduct against his solicitor, which was duly investigated by a committee of the Law Society under the Solicitors' Act, 1888 (51 & 52 Vict., c. 65), and a report

was made by the committee exonerating the solicitor. The Act provides that the report is to be filed by the committee, and is to be treated by the court "in the same manner as the report of a master of the court," and that "the court may make such order thereon as to the court may seem fit." The Act is, however, silent as to the costs of such proceedings. The solicitor applied for payment by the client of his costs of the proceedings before the committee, and the Court of Appeal (Lindley and Kay, L.JJ.) affirmed the decision of the Divisional Court (Denman and Cave, JJ.), that the court had, by implication, jurisdiction to award such costs.

LIMITATIONS, STATUTE OF (21 JAC. 1, C. 16)—ACKNOWLEDGMENT—PAYMENT TO STRANGER—PAYMENT TO PAYEE OF NOTE AFTER HE HAS CEASED TO BE THE HOLDER.

In *The Stamford & Spalding & B. Banking Co.* v. *Smith* (1892), 1 Q.B. 765, the plaintiffs claimed to recover the amount of a promissory note made by the defendant, to which the defendant pleaded the Statute of Limitations. It appeared that the payee of the note indorsed it away to a bank through whom the plaintiffs claimed title, and after the indorsement the defendant, in ignorance that the payee was not still the holder, paid him from time to time, by instalments, the full amount of the note the last of such payments having been made within six years before action. The Court of Appeal (Lord Herschell, and Lindley and Kay, L.JJ.) affirmed the judgment of Williams, J., sustaining the defence and dismissing the action, being of opinion that the payment to the payee was, under the circumstances, a payment to a stranger, and could not enure to the benefit of the plaintiffs, the rightful holders of the note.

EMPLOYERS' LIABILITY ACT (1880) (43 & 44 VICT., C. 42) S. 1, S-S. 3 (55 VICT., C. 30, S. 3, S-S. 3 (O.))—INJURY FROM PLAINTIFF'S CONFORMING TO ORDER OF FOREMAN.

Wild v. *Waygood* (1892), 1 Q.B. 783, is one of a somewhat numerous class of cases to which The Employers' Liability Act (55 Vict., c. 30 (O.)) has given rise. The plaintiff was a workman in the employment of a firm of builders who were engaged in building a house. The defendants contracted with the builders to construct a lift in the house, and sent one Duplea, one of their workmen, to do the work. Duplea applied to the builders' foreman to lend him a man to assist him, and the foreman selected the plaintiff for that purpose, and there was evidence that the defendants agreed to pay the plaintiff's wages while so engaged. While the plaintiff was thus assisting Duplea, the latter told him to put a plank across the well of the lift and stand on it, and while he was standing on it Duplea negligently started the lift and the plaintiff was in consequence injured. The Court of Appeal (Lord Herschell, and Lindley and Kay, L.JJ.) reversed the decision of the Divisional Court (Mathew and Smith, JJ.) and held that the plaintiff must be taken to have been in the defendants' employment and bound to obey the orders of Duplea, and that the injury resulted from his conforming to Duplea's orders, for which the defendants were liable. The case of *Howard* v. *Bennett*, 60 L.T. 152, on which the Divisional Court relied, was discussed, and some of the observations of Lord Coleridge, C.J., therein are dissented from by the Court of Appeal, though the decision itself is not disturbed.

DEFAMATION—SLANDER—IMPUTATION OF DRUNKENNESS—TOWN COUNCILLOR—HONORARY OFFICE.

In *Alexander* v. *Jenkins* (1892), 1 Q.B. 797, the Court of Appeal (Lord Herschell, and Lindley and Kay, L.JJ.) have decided, following the old case of *Onslow* v. *Horne*, 2 W. Bl. 750, that it is not actionable, without proof of special damage, to say of a town councillor that he is "never sober, and is not fit for the council, and that on the night of his election he was so drunk that he had to be carried home," because the office was not one of profit, but of an honorary character, and the charge, even if true, would afford no ground for dismissing him from his office. The defendant was given the costs of appeal, but the action was dismissed without costs.

STATUTE, CONSTRUCTION OF—"LAWFUL PURPOSE"—EJUSDEM GENERIS.

In *Warburton* v. *Huddersfield Industrial Society* (1892), 1 Q.B. 817, the Court of Appeal (Lord Herschell, and Lindley and Kay, L.JJ.) affirmed the decision of the Divisional Court (1892), 1 Q.B. 213 (noted *ante* p. 165).

INSURANCE (LIFE)—INSURABLE INTEREST IN LIFE OF ANOTHER—14 GEO. III., C. 48, SS. 1, 3.

In *Barnes* v. *The London, Edinburgh & Glasgow Life Insurance Co.* (1892), 1 Q.B. 864, the plaintiff insured the life of a child, her stepsister, and the present action was brought to recover the amount of the policy; and the sole question raised was whether the plaintiff had an insurable interest in the life of her stepsister within 14 Geo. III., c. 48. It appeared in evidence that the plaintiff had promised the mother of the child to take care of the child, and help to maintain her, and that she had undertaken the burden of doing so. No objection was taken that the plaintiff had not, in fact, spent any money upon the child, nor as to the amount, if any, expended by her. The judge of the County Court before whom the action was tried held that the plaintiff had an insurable interest, and the Divisional Court (Lord Coleridge, C.J., and Smith, J.) affirmed his decision on the point of law.

FRAUDULENT CONVEYANCE—JOINT POWER OF APPOINTMENT—RESETTLEMENT—GIFT OVER ON BANKRUPTCY—TRUST TO PAY DEBTS, REVOCABILITY OF.

In re Ashby (1892), 1 Q.B. 872, although a bankruptcy case, is one, nevertheless, deserving of a brief notice here. Two points are discussed. The first, as to the effect of a settlement made by the bankrupt prior to his bankruptcy, under the following circumstances: Under a settlement to which he was not a party property was limited to such uses and for such trusts as the bankrupt and another should by deed appoint, and in default of appointment to him and the other person successively for life. By a resettlement executed in pursuance of the power, the trust estate was appointed to trustees for a term of 1,000 years for the purpose of raising, by way of mortgage, a sum to pay certain scheduled debts of the bankrupt, with remainder to trustees during the life of the bankrupt until he should become bankrupt, with a discretionary trust over, in the happening of that event, in favour of the bankrupt, his wife, children, or relatives, with remainders over. It was contended that the settlement was in effect a settle-

ment of the bankrupt's own property, and therefore void as against creditors and the trustee in bankruptcy; but Williams, J., held that the fact that the power was held by the bankrupt jointly with another person, and could not have been executed without that person's concurrence, prevented the property being treated as the bankrupt's own, and therefore the settlement was valid as against the trustees in bankruptcy. Subsequent to the bankruptcy, the bankrupt directed the trustees of the settlement not to pay the creditors in whose favour it had been made; and another question in the case was whether it was competent for the bankrupt to revoke the trust in their favour, they not being parties to the deed, and the deed not having been communicated to them, and it was held that the trust in their favour was a mere revocable mandate, and that the trustee in bankruptcy was entitled to the balance of the fund in the hands of the trustees under the settlement.

LANDLORD AND TENANT—COVENANT BY SUB-LESSOR FOR QUIET ENJOYMENT—INTERRUPTION—RE-ENTRY BY ORIGINAL LESSOR FOR BREACH OF COVENANT.

Kelly v. *Rogers* (1892), 1 Q.B. 910, was an action for the breach of a covenant for quiet enjoyment contained in an under lease made by the defendant whereby he covenanted that the plaintiff should have quiet enjoyment, "without any interruption from or by him the said lessor, his executors, administrators, or assigns, or any person or persons whomsoever, lawfully claiming by, through, or under him." The plaintiff had been ejected by the owners of the reversion under the original lease for breach of covenant by the defendant to pay rent, and the point in controversy was whether this was a breach of the defendant's covenant. The plaintiff recovered a verdict at the trial, but the Divisional Court (Lord Esher, M.R., Fry and Lopes, L.JJ.) set it aside, holding that, the interruption being the act of the superior landlord and not that of the defendant or any person claiming by, through, or under him, there was no breach of the covenant.

DISCOVERY—INSPECTION OF BANKER'S BOOKS—AFFIDAVIT OF DOCUMENTS—PRIVILEGE—SEALING UP ENTRIES.

In *Parnell* v. *Wood* (1892), P. 137, the plaintiff had been required to produce documents, for the purpose of discovery, relating to her banking account. She had produced her pass books, sealing up certain portions thereof that she swore to be irrelevant to the matters in issue. Application was then made by the opposite parties for an order authorizing them to inspect the entries in the books of the bank, or for leave under the Bankers' Books Evidence Act, 1879, to issue a subpœna *duces tecum* to compel the bank to produce them at the trial. The Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) were agreed that the application must be refused, and that to grant it would be to destroy the rules of privilege; and as regards the subpœna, that that must be left to the judge at trial to say whether it should be issued.

PROBATE—WILLS OF HUSBAND AND WIFE—DEATH—PRESUMPTION OF SURVIVORSHIP.

In the goods of Alston (1892), P. 142, a husband and wife having made identical wills, each appointing the other universal legatee and sole executor, and sub-

stituting executors in case of the other dying first, both went to sea in the same vessel, which was supposed to have been lost with all on board. There was no evidence that either of them survived the other. Under this state of facts, a grant of administration with the will annexed was made to one of the next of kin of each of the deceased.

PROBATE—WILL SHOWING INSANITY—GRANT OF ADMINISTRATION AS IN CASE OF INTESTACY.

In the goods of Rich (1892), P. 143, the will of a deceased person bore on its face evident marks that the testator was insane, as it disposed of large sums of money, although at the time of making the will the testator was possessed of no property whatever, and was dependent on his relatives for support. Under these circumstances, a grant of administration without the will annexed was made.

PROBATE—ADMINISTRATION—LUNATIC WIDOW—NEXT OF KIN UNABLE TO FIND SECURITY—GRANT TO RECEIVER.

In the goods of Moore (1892), P. 145, an intestate's widow was lunatic, his brother and only other next of kin could not find justifying security as administrator. A suit had been instituted in the Chancery Division for administration of the estate, and a receiver appointed; but a portion of the estate could not be realized without the appointment of a personal representative. Jeune, J., held that administration could not be granted to the brother without security, but that a grant might be made to the receiver appointed by the Chancery Division.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

HILARY TERM, 1892.

Monday, February 1st, 1892.

Convocation met.

Present—Messrs. Irving, Lash, Hoskin, Watson, Mackelcan, Osler, Barwick, Kerr, Aylesworth, Douglas, Meredith, Shepley, and Ritchie.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of 29th December were read and confirmed.

Mr. Lash, from the Legal Education Committee, presented the Report of that committee on the candidates for call to the Bar under the Law Society curriculum as follows:

The Legal Education Committee beg leave to report that they have had under consideration the Report of the Examiners on the examination for call to the Bar passed under the Law Society curriculum, and the Report of the Secretary on the papers of the candidates for call, and they find that the following gentlemen, who have passed the examination for call and whose papers are regular, are entitled to be called to the Bar forthwith, namely:

Messrs. W. S. Morden, G. D. Grant, E. Pirie, W. E. Kelly, J. F. Carmichael, G. B. Wilkinson, R. H. McConnell, J. R. Layton, F. W. Wilson, J. G. Farmer, W. H. Williams.

The Report was ordered for immediate consideration and was adopted, and it was ordered that the above-named gentlemen be called to the Bar forthwith.

Mr. Lash, from the same committee, reported that Mr. H. White, solicitor, had passed the examination for call to the Bar as a candidate under the rules in special cases, and that his case should be referred to a special committee for enquiry and report.

The Report was ordered for immediate consideration, and it was ordered that the case of Mr. White be referred to a special committee, composed of Messrs. Lash, Hoskin, and Mackelcan for enquiry and report.

Mr. Lash, from the same committee, reported that they had had under consideration the Report of the Examiners on the examination of candidates for Certificates of Fitness passed under the Law Society curriculum, and the Secretary's Report on the papers of the candidates, and they find that the following gentlemen have passed the examination, and that their papers are regular, and they report that they are entitled to receive their Certificates of Fitness forthwith, namely:

W. S. Morden, C. P. Blain, J. F. Hare, J. R. Layton, G. B. Wilkinson, W. W. Scane, W. H. Williams.

The Report was ordered for immediate consideration and adopted, and it was ordered that the above-named gentlemen receive their Certificates of Fitness forthwith.

Mr. Lash, from the same committee, reported that Mr. D. Erastus Sheppard had passed the examination for Certificate of Fitness, that he was a candidate under 54 Victoria, Cap. 25, and that his case should be referred to a special committee.

The Report was ordered for immediate consideration, and it was ordered that Mr. Sheppard's case be referred to Messrs. Lash, Hoskin, and Mackelcan for enquiry and report.

The committee further reported that they had considered the Report of the Examiners on the examinations of certain candidates for call to the Bar in the Law School, and the Report of the Principal on the attendance of these candidates on lectures, and the Report of the Secretary on the papers of these candidates, and they find that the following gentlemen have passed the examination, that their attendance on lectures has been allowed as sufficient, and that their papers are regular, and the committee report that they are entitled to be called to the Bar, namely:

Messrs. A. B. Armstrong, J. S. Denison, J. J. Warren, F. R. Martin, W. C. McCarthy, A. S. Burnham, Louis A. Smith, J. H. D. Hulme, J. E. Cooke, J. B. Patullo, J. W. Winnett, C. B. Rae, S. A. C. Greene.

That Mr. J. S. Denison and Mr. J. J. Warren are entitled to be called with honors, and to receive a bronze medal each.

The Report was ordered for immediate consideration and was adopted, and it was ordered that Mr. J. S. Denison and J. J. Warren be called to the Bar with honors and receive each a bronze medal, and that Messrs. A. B. Armstrong, F. R. Martin, W. C. McCarthy, A. S. Burnham, Louis A. Smith, J. H. D. Hulme,

J. E. Cooke, J. B. Patullo, J. W. Winnett, C. B. Rae, and S. A. C. Greene be called to the Bar.

The committee further reported that they had considered the Report of the Examiners on the examination of candidates for Certificates of Fitness in the Law School, and the Report of the Principal allowing their attendance on lectures, and the Report of the Secretary on their papers, and they find that the following gentlemen have passed the examination, that their attendance on lectures has been sufficient, and that their papers are regular, and the committee report that they are entitled to their Certificates of Fitness forthwith, namely:

Messrs. A. B. Armstrong, J. J. Warren, F. R. Martin, W. C. McCarthy, G. S. Macdonald, A. S. Burnham, J. N. Anderson, L. A. Smith, J. H. D. Hulme, J. E. Cooke, J. B. Patullo.

The Report was ordered for immediate consideration and was adopted, and it was ordered that the above-named gentlemen receive their Certificates of Fitness forthwith.

The committee also reported that Mr. H. L. Drayton, who passed his examination in Hilary Term, 1891, had completed his papers and was now entitled to his Certificate of Fitness.

Ordered for immediate consideration, adopted, and ordered accordingly.

The same committee reported that they had considered the petitions of

(1) B. M. Jones, praying that his service under two assignments be allowed, notwithstanding the fact that the assignments were executed more than three months after date; that he had proved his service to the satisfaction of the committee, and that the committee recommend that the prayer of the petition be granted. Ordered, that the service be allowed as prayed.

(5) A. B. Armstrong, praying that the filing of his assignment two days late be allowed as good; that the committee recommend that the filing be allowed as prayed. Ordered accordingly.

(3) W. D. Card, praying that he be allowed to take his solicitor's examination in August, under the Law Society curriculum, at the same time that he takes his call examination under the same curriculum, notwithstanding the fact that his time under his articles will not have then expired, although his time as a student-at-law will have been completed. The committee recommend that he be allowed to take his examination for Certificate of Fitness in August, 1892, and if successful that his case be brought up for favorable consideration on the completion of his service. Report considered, adopted, and ordered accordingly.

(4) G. E. Deroche, praying that his First Intermediate Examination passed on 19th January instant, as a student-at-law in his third year, may be allowed him as an articled clerk, although not in his third year as an articled clerk. The committee recommend that the petition be allowed. The Report was considered, adopted, and ordered accordingly.

(5) W. C. McCarthy, praying that a certificate from the late Mr. M. E. O'Brien may be dispensed with, and that the time which elapsed between the death of Mr. O'Brien and the execution of new articles be allowed. The com-

mittee recommend that the petition be granted. The Report was considered and adopted, and ordered accordingly.

(6) Herbert W. Supple, praying to be admitted as a student-at-law upon giving due notice and paying prescribed fees on the presentation of a Matriculation Certificate in Arts from Victoria University showing that he was admitted there in October, 1887, notwithstanding the fact that more than four years have elapsed. The committee recommend that the prayer be granted. The Report was considered and adopted, and ordered accordingly.

The Secretary presented the Report of the Examiners on the First Intermediate Examination, showing that the following gentlemen had passed the examination without an oral, namely:

Messrs. Dixon, Patterson, Elliott, Stuart, Cunningham, Heggie, Deroche, Grant, Isbister, Mahaffy, Kirkpatrick, Ardagh, Spence, Findley, Blackley, Bently, A. G. Kirkpatrick, McBurnley, Mott, Mabee; and with an oral: Messrs. Patterson, McKay, and Lovering. Ordered that this Report be considered to-morrow.

The Secretary presented the Report of the Examiners on the Second Intermediate Examination, showing that Messrs. Dunbar and McMartin had passed the examination without an oral, and that Messrs. Innes, Kerby, and McConnell had passed. Ordered that the Report be considered to-morrow.

Dr. Hoskin, from the Discipline Committee, presented the following report:

The Discipline Committee, to whom the complaint of Messrs. Lount, Hewson, and Creswicke against Mr. J. B., a member of the Society, was sent to ascertain whether or not a *prima facie* case had been shown, report that the complaint is based upon the non-payment by J.B. of moneys into court in respect of which the party aggrieved can invoke the summary jurisdiction of the courts, and this course should in the first instance be adopted.

The Report was received, taken into consideration, and adopted.

The petition of Charles Millar, presented to Convocation on 29th December last, and ordered by Convocation to be referred for consideration on this day, was read. Ordered, that the petition, declaration, and paper annexed be referred to the Discipline Committee for consideration and report.

Ordered, that the certificate of the Batonnier of the Bar of Quebec, for the section of the District of Quebec, as to the good character, etc., of Charles Fitzpatrick, and the certificate under the seal of the Bar of the Province of Quebec now produced, be accepted as satisfying the requirements of subsection 4 of section 1, chapter 146, R.S.O., and that the said Charles Fitzpatrick be called to the Bar of this Province upon passing the examination provided for by the said section and paying the fee provided for in special cases; that Mr. Osler, Mr. Lash, Mr. Shepley, and Mr. Barwick, or any two of them, are hereby appointed a committee to examine the said Charles Fitzpatrick and to report thereon to Convocation.

Mr. Shepley, from the Library Committee, reported as follows:

Your committee beg to report generally upon Library work.

Since assuming office the Librarian has been largely occupied in arranging business details in connection with the Library with a view to systematizing its management. Certain alterations

in the rules of the Society recommended by him with this object have already been submitted to Convocation by your committee, and approved by appropriate rules. These provide, among other things, that the Librarian shall be supplied with and keep account of petty cash for small Library expenditure, and shall also keep a library ledger. In the latter he proposes to enter all Library expenditure, including moneys expended upon books, periodicals, binding, rebinding, repairs, etc., thus enabling him to control the expenditure in accordance with the annual estimates, and enabling your committee to submit estimates from year to year of a much more accurate nature than has hitherto been possible. He has adopted a new system of entering and recording books received. One of its principal features is an accession book, which furnishes a complete history of each new book, and at the same time shows at a glance the growth of the Library and the cost of the books, and gives much other valuable information. This will also greatly facilitate the preparation of duplicate sheets for insurance purposes.

The Librarian has begun the work of noting cases, having already noted in all the sets of English Reports in the Library and Bencher's room all cases affirmed, reversed, followed, overruled, or judicially commented upon during the year 1891. He proposes to continue this work till it is completed. The task will be a tedious and laborious one, and cannot be completed within a year—the noting of the cases of 1891 alone involved about 1,200 entries. The Librarian also proposes to note Canadian cases, and the Dominion and Provincial Statutes, and in time to catalogue the contents of the periodical literature in the Library.

Among minor matters which have received satisfactory attention by him are the lighting of the Library and the dusting of the books, with respect to both of which your committee is pleased to report much improvement. The matter of rebinding and repairs has also been made the subject of a highly satisfactory report by him, upon which your committee has effected arrangements which secure the doing of this important work thoroughly and well, and by a system which will give the minimum of inconvenience to those who use the Library.

The report was received, taken into consideration, and adopted.

Dr. A. M. Rosebrugh's letter was read. The Secretary was directed to write to the gentlemen appointed to attend the conference of the Prison Reform Association, and to request a report from them to Convocation on the subject.

The letters of the Law Associations of York, Leeds and Grenville, and Essex on the subject of Supreme and Exchequer Court Reports were read, and referred to the Reporting Committee.

Mr. Watson, from the Finance Committee, reported recommending that the charge made of two cents for the use of the telephones of the Society be abolished, and the use thereof be free to the judges, members of the profession and their clerks, and to government officials in matters relating to their employment, and that the Secretary so direct the telephone operator, and have a notice put up in the office to the same effect.

The following gentlemen were called to the Bar: Messrs. J. S. Denison and J. J. Warren, with honors, and bronze medals were presented to them; and Messrs. W. S. Morden, G. D. Grant, W. E. Kelly, G. B. Wilkinson, R. H. McConnell, J. R. Layton, W. H. Williams, F. R. Martin, A. S. Burnham, J. H. D. Hulme, J. B. Patullo, S. A. C. Greene, F. W. Wilson, A. B. Armstrong, W. C. McCarthy, Louis A. Smith, J. E. Cooke, J. W. Winnett.

The consideration of Mr. Irving's motion in relation to the hearing by the Common Pleas Division of Mr. Fitzpatrick, Q.C., of the Quebec Bar, as counsel in a cause without his having been called to the Bar by the Law Society having been resumed, it was moved by Mr. Meredith, seconded by Mr.

Osler, That while Convocation recognizes the importance of Mr. Irving's resolution as a protest against any invasion of the rights of the Society, it is of opinion that, in view of the special circumstances of the case, and believing that there was no intention to invade the privileges or rights of the Society, no further action should be taken in the matter.

Proposed by Mr. Shepley, seconded by Mr. Barwick, to add by amendment, That Convocation does not intend by this resolution to withdraw from the principle laid down in Mr. Irving's motion, namely, that giving audience to persons not called to the Bar by this Society is a serious breach of the privileges of this Society, and the rights of the Bar which it is supposed to protect.

On Mr. Shepley's amendment: Yeas—Shepley, Douglas, Watson, Kerr, Barwick. Nays—Aylesworth, Ritchie, Meredith, Osler, Mackelcan. Chairman voted with yeas. Mr. Meredith's motion as amended was carried on the same division.

Ordered that Mr. Moss' notice and Mr. Britton's notice stand until to-morrow, Tuesday.

Convocation adjourned.

Tuesday, 2nd February, 1892.

Convocation met.

Present—Messrs. Teetzel, Riddell, Idington, Bruce, Christie, Kerr, Douglas, Lash, Magee, Strathy, Irving, Shepley, Martin, Watson, Meredith, Hoskin, Guthrie, Blake, S. H., Hardy, Bell, Barwick, Osler, and Aylesworth.

The minutes of last meeting were read and confirmed.

The Secretary reported that Messrs. H. B. Travers, R. H. McConnell, and Charles B. Rae had completed their papers, and were entitled to their Certificates of Fitness. Ordered, that they receive their Certificates of Fitness.

Mr. Lash, from the Special Committee, reported the case of Mr. Henry White, a solicitor, who applies for call to the Bar under the rules in special cases; that he had passed the examination; that his papers were regular; and that he was entitled to be called to the Bar. The report was ordered for immediate consideration, adopted, and it was ordered accordingly.

Mr. Lash, from the same committee, reported the case of Mr. D. Erastus Sheppard, a barrister, who applies to be admitted as a solicitor under 54 Victoria; that he has passed the examination, that his papers are regular, and that he is entitled to receive his Certificate of Fitness under the Act. The Report was ordered for immediate consideration and was adopted, and it was ordered accordingly.

The following gentlemen were called to the Bar, namely:

Messrs. J. F. Carmichael, C. B. Rae, H. B. Travers, J. G. Farmer.

Mr. Lash presented the Report of the Finance Committee as to reorganization as follows:

To the Benchers of the Law Society, in Convocation assembled:

With reference to that part of the order of Convocation of 17th November last referring to the Finance Committee for report to Convocation a theoretical organization as to members and salaries of the staff of the department in respect of which it is the Standing Committee, and the

best practicable plan for improving the present organization; and to the further direction by Convocation made on 29th December last to print and distribute such Report when framed before Hilary Term, 1892,

The Finance Committee report that they have considered the subject at a meeting held on 22nd January instant, and at an adjourned meeting held on 26th January following, on both which occasions the members present were unanimously of opinion that a change should be made in the department of Secretary and sub-Treasurer of the Society, and that as the result of their deliberations the Finance Committee report as follows:

That there is actual and imperative necessity for the appointment of an additional official to take control of the financial and secretarial work of the Society in that department.

At the present time the work is carried on only through the committee meeting weekly. Each of these meetings lasts several hours, and the expenditure of time which they now necessarily involve for the members who regularly attend has become so great that its continuance is impracticable, and a change in the mode of carrying on the work, under efficient officers, with a proper system, would, it is believed, remedy the present difficulties.

The chairmen and members of these committees ought not to be allowed to perform, and cannot be expected to continue performing, the duties that now devolve upon them.

It is suggested that the work be divided into two classes:

(1) That relating to the finances and matters immediately connected therewith, including the issue of certificates, the keeping of all necessary and proper books, Convocation minutes and journals, general correspondence, etc., attendance upon committees, the care and custody of the buildings and property of the Society, and superintendence of employees, etc.

(2) That relating to the students' articles, service, petitions, applications for call, admission, etc., attendance on the Law School, students' lending library, matters coming before the Legal Education Committee, including correspondence relating to subjects in this class contained.

That for the performance of the work of the first class a duly qualified official be appointed, and that Mr. Esten should attend to the work of the second class.

That as part of the duty of the new official would be to superintend the buildings, etc., such official should reside in the apartments at present occupied by Mr. Esten. The adoption of this course would involve an increase in the annual charge upon the salary list.

Mr. Esten is entitled to consideration, having regard to his period of service, and the committee recommend that the salary of Mr. Esten, on the change being made, be considered by Convocation.

That the salary of the new official should not exceed $1,500 per annum with use of the residence, with modified allowances in relation to present arrangements.

The question of dealing with the offices of Solicitor, Auditor, and servants remains in abeyance, to be considered after the subject of this Report has been considered and dealt with.

Respectfully submitted.

(Signed) ÆMILIUS IRVING,

On behalf of the Finance Committee.

The Report was taken as read, and ordered for immediate consideration.

Mr. Meredith moved, seconded by Mr. Blake, that Convocation, without committing itself to the details of the subdivision of the work of the Secretary and sub-Treasurer proposed by the Report, approves of the division on the general lines recommended thereby.—*Carried.*

Mr. Blake moved, seconded by Mr. Lash, that Mr. Esten be continued as Secretary, with duties to be defined by a committee to be composed of the Finance and Legal Education Committees.

Mr. Martin, seconded by Mr. Bruce, moved that the following words be added to the motion, namely: "That $1,500 per annum be the salary of the

Secretary, on the same terms as in the case of all the officers of the Society, without house and present privileges.

Mr. Meredith, seconded by Mr. Teetzel, moved as an amendment to the amendment that $1,500 be struck out and that $1,800 be substituted.—*Carried on division.*

Mr. Blake's motion, as amended by Mr. Meredith, was then carried on a division. Yeas: Teetzel, Meredith, Idington, Christie, Hoskin, Blake, Bell, Lash, Strathy, Bruce, Hardy.—11. Nays: Martin, Guthrie, Shepley, Douglas, Aylesworth, Watson, Magee, Riddell, Barwick.—9.

Mr. Meredith moved, seconded by Mr. Idington, that a sub-Treasurer be appointed, whose salary shall not exceed $1,500 per annum, on usual terms and tenure, including security, with use of apartments and certain privileges to be defined by the Finance Committee, with duties to be defined by a committee composed of the Finance and Legal Education Committees.—*Carried on a division.*

Mr. Lash gave notice that he would, at the next meeting of Convocation, move the adoption of Rules relating to the foregoing resolutions, affecting the offices of Secretary and sub-Treasurer to be appointed.

Mr. White and Mr. Pirie were called to the Bar.

Mr. Watson, seconded by Mr. Barwick, moved the adoption of the Report of the Special Committee appointed 27th November in relation to the fusion and amalgamation of the divisions of the High Court of Justice.

The Report was considered paragraph by paragraph, and amended as follows:

Your committee, appointed by resolution of 27th November last, begs leave to present an interim Report.

(1) Your committee is very strongly of opinion that the fusion and amalgamation of the three divisions of the High Court of Justice is an urgent necessity, and should be completed without delay.

(2) Your committee is of the opinion that it is in the interest of the administration of justice that the double circuits should be abolished, and that common sittings should be held for trial of actions in the three divisions throughout the different cities and county towns of the Province, that thereby much labour and expense would be saved, a greater uniformity maintained, and the interests of the public and of suitors much better served. Such sittings should be held at certain fixed periods for each county, and should in the case of the larger centres be more frequent than the present sittings of Assize and Nisi Prius.

(3) Your committee is also strongly of opinion that the separate sittings of the Divisional Courts should be abolished, and that there should be only one Divisional Court for the disposition of cases in all the divisions of the said court, and that such Divisional Court should be composed of not less than three judges, none of whom should be the trial judge, and that there should be sittings of the said court at least monthly, and more frequently when required.

(4) Your committee recognizes the present difficulty in effecting the abolition of the double circuits, in the pecuniary results to the judiciary, and that, in view of their present manifestly inadequate remuneration, the change should not, except with the consent of the judiciary, be pressed at the present time; and in anticipation of legislation by the Dominion Parliament at its next session, whereby provision may be made for increasing the remuneration of the judiciary, your committee is of opinion with regard to the abolition of double circuits and of separate sittings of the Divisional Courts that, beyond the presentation of a petition for such increase of salary to the judges and the presentation of copies of this Report to the Minister of Justice and

to the Attorney-General of Ontario, further action should be deferred until after the next session of the Dominion Parliament.

(5) Your committee, however, is of the opinion that provision might and should be made forthwith for the abolition of a double sittings for the trial of actions in the city of Toronto, and that there should be one sittings only in the city of Toronto, for the trial of non-jury cases in all the divisions, and that judges in rotation should be assigned to take such sittings of the court for a period of at least two months each, and that there should be a sittings fortnightly of the said court, such sittings to commence on the first and third Tuesdays in each and every month throughout the year, with direction and power to the said trial judge in his discretion, upon application of either party to an action, to order and summon a special jury for the trial of such cases as may be deemed proper therefor, and that in addition to the provision above mentioned there should be a quarterly sittings of the said court for the trial of jury and criminal cases as the practice now exists. And, further, that upon a special application to the Chancellor or to the Chief Justice of the Queen's Bench or Common Pleas Division, a special sittings of the court for the trial of non-jury cases or of cases requiring a special jury in any other city or county town may be at any time directed and held. And, further, that the separate weekly sittings of the Chancery Division and of the Queen's Bench and Common Pleas Divisions in single court at Toronto should be immediately abolished, and also the separate sittings of a judge in chambers; and that hereafter there should be only one sittings of a judge daily for the purpose of hearing all motions in single court for all the divisions, and one daily sittings of a judge in chambers for the hearing of all appeals or motions in all the divisions.

(6) And your committee is respectfully of opinion that the changes as above-mentioned with regard to the sittings of the court for trial of actions in Toronto and the outer special sittings of the court for the trial of actions and the sittings of a judge in single court and in chambers are not only urgently necessary, but are quite practicable, and that common and public interests require that the same should be put into immediate force and effect.

(7) And it is recommended that a copy of this Report be transmitted to the Attorney-General of this Province and to the President of the High Court of Justice, and the Chief Justices and Judges of the several divisions of the said courts.

(8) Your committee is of opinion that the tariff relating to the allowance for printing appeal books for the Court of Appeal should be revised, and that hereafter a less rate per page of six folios should be taxed or allowed in the action for the printing of such appeal books.

(9) Your committee is desirous that the directions and power given to them by the resolution of Convocation should be continued for further action and report.

Instructions were given to the committee to consider and report upon the following topics, namely:

(1) That the Court of Appeal should sit for the hearing of causes on three days of each week.

(2) That appeals to the Court of Appeal should be carried from the court below with more promptitude and with less expense than at present, including the question of abolishing security for appeal in certain cases.

(3) That the names of the three divisions of the High Court of Justice be abolished, and that all actions be entitled, "In the High Court of Justice, Ontario."

(4) That the expense of procuring evidence for motions against judgments or findings at trial should be reduced, and that the judge holding court shall, when the solicitors of the parties reside in the county where the court is being held, try to dispose of all motions which a judge sitting in court in Toronto may dispose of, and all such cases may be set down and such motions made as are now made in Toronto.

The following members of Convocation were requested to wait upon the Minister of Justice in respect of the matters contained in the 4th paragraph, and to wait upon the Attorney-General in reference to the other matters in the said Report and in the further instructions given to the committee for their consideration, namely: The Treasurer, and Messrs. Osler, Robinson, Hoskin, Meredith, Christie, Moss, Shepley, Strathy, Watson, and Barwick.

The further consideration is deferred until the committee again report to Convocation.

Ordered, that the consideration of the Reports of the Reporting and Legal Education Committees be deferred until the next meeting of Convocation; and ordered, that the Report of the Library Committee on the subject of reorganization be postponed until such time as the committee can conveniently report.

The Report of the Special Committee on the subject of appointment to and tenure of office was considered, and its further consideration deferred until the meeting of Convocation on Friday, the 12th day of February, 1892.

The motions of Mr. Britton and Mr. Moss on the subject of the Supreme and Exchequer Court Reports, and of the admission of candidates who pass the departmental examinations in lieu of the matriculation examination, were deferred until those gentlemen respectively are present.

Mr. Barwick gave notice that at the next meeting of Convocation he will move that the Finance Committee be instructed to have erected a suitable flagstaff in the grounds of the Society, on which the British flag shall be hoisted during the sittings of the courts.

Convocation adjourned.

Reviews and Notices of Books.

A Decade in the History of Newspaper Libel. By John King, Q.C.

This pamphlet has been published by the Canadian Press Association, before which body the paper was read at its last annual meeting in Ottawa. The learned author has given us a useful sketch of the various changes in the law of libel as affecting newspapers during the past ten years, and has referred to several recent cases on that branch of the law; and he has also pointed out several matters in which the law may be improved. The brochure will be useful not only to newspaper men, but to lawyers also, and will well repay perusal.

DIARY FOR AUGUST.

1. Mon.....Slavery abolished in British Empire, 1834.
3. Wed.....Battle of Fort William Henry, 1757.
6. Sat......Thos. Scott, 4th C.J. of Q.B., 1804.
7. Sun......*8th Sunday after Trinity.* Duquesne Gov. of Canada, 1752.
11. Thur....Battle of Lake Champlain, 1814.
12. Fri.......First American railroad completed, 1830.
13. Sat.......Sir Peregrine Maitland, Lieut.-Gov., 1818.
14. Sun......*9th Sunday after Trinity.* Battle of Fort Erie, 1814.
15. Mon......Last day for filing notices for call.
16. Tues....Battle of Detroit, 1812.
17. Wed.....General Hunter, Lieut.-Governor, 1799.
19. Fri.......River St. Lawrence discovered, 1535.
21. Sun......*10th Sunday after Trinity.*
24. Wed.....St. Bartholomew.
25. Thur....Francis Gore, Lieut. Governor, 1806.
26. Fri.......Prince Albert, late Prince Consort, born, 1819.
28. Sun......*11th Sunday after Trinity.*
31. Wed.....Long vacation ends.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

[June 21.

WEIR *v.* SMYTH.

Justice of the peace—Qualification—R.S.O., c. 71, s. 9.

The property qualification of a justice of the peace required by R.S.O., c. 71, s. 9, need not be in itself of the value of $1,200. It is sufficient if he has, in lands which are of the value of $1,200 over and above what will satisfy and discharge all incumbrances affecting the same, and over and above all rents and charges payable out of or affecting the same, such an estate or interest as is mentioned in the section, whatever the value of the estate or interest may be.

Judgment of the County Court of Middlesex affirmed.

Aylesworth, Q.C., for the appellant.

J. B. McKillop for the respondent.

RYAN *v.* MCCARTNEY.

Division Court—County Court—Transcript—Judgment summons.

A transcript may be validly issued from a Division Court to the County Court, notwithstanding the pendency in the Division Court of proceedings by way of judgment summons; but as soon as the transcript is issued and filed, the judgment becomes a judgment of the County Court, and the judgment summons proceedings cannot be continued.

The form of a transcript considered.

Judgment of the County Court of York reversed.

T. Hislop for the appellant.

J. M. Glenn for the respondent.

GORDON *v.* RUMBLE.

False arrest—Malicious prosecution—Sheriff—Bailiff.

The plaintiff, acting as bailiff under a landlord's distress warrant, attempted to remove some grain which was at the time under seizure by the defendant as sheriff's officer, and was arrested by the defendant.

Held, reversing the judgment of the Queen's Bench Division, that the sheriff was liable for the act of his officer.

Beatty v. Rumble, 21 O.R. 184, considered.

John McGregor for the appellant.

C. C. Robinson and *G. F. Cane* for the respondents.

IN RE ALGER AND THE SARNIA OIL COMPANY.

Company—Winding up—Sale by tender—Extending time.

This was an appeal by J. L. Englehart from the judgment of BOYD, C., reported 21 O.R. 440, and was argued before HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A., on the 3rd of June, 1892.

W. R. Meredith, Q.C., and *F. A. Hilton* for the appellant.

E. R. Cameron for the respondent Alger.

D. MacMillan, Q.C., for the liquidator.

June 21st, 1892. The appeal was dismissed with costs, the court agreeing with the reasons for judgment in the court below.

ROACH *v.* MCLACHLAN.

Execution—Wages—Chattel mortgage—Creditors' Relief Act (R.S.O., c. 65)—Wages Act (R.S.O., c. 127.)

Certain goods, upon which the execution debtor had given a chattel mortgage, were sold under an execution, the proceeds not being more than the amount of that execution, over which the chattel mortgage did not claim prior-

ity. Notice of the levy was given by the sheriff, and within the time limited servants of the execution debtor, who had obtained judgments for their claims, placed executions in the sheriff's hands.

Held, reversing the judgment of the County Court of Elgin, by which the sheriff's scheme of distribution was affirmed, that the wage-earners were not entitled to the proceeds of the sale in priority to the first execution creditor, or even to share in such proceeds.

Aylesworth, Q.C., and *J. A. McLean* for the appellants.

J. M. Glenn for the respondents.

MARSH ET AL. *v.* WEBB ET AL.

Title—Adverse possession—Husband and wife—32 Hen. VIII., c. 9.

This was an appeal by the defendants from the judgment of the Queen's Bench Division reversing the judgment of ROSE, J., at the trial in their favour, reported 21 O.R. 281, and was argued before HAGARTY, C. J. O., BURTON, OSLER, and MACLENNAN, JJ.A., on the 28th of March, 1892.

W. R. Riddell, Q.C., and *F. L. Webb* for the appellants.

J. R. Roaf for the respondents.

June 21st, 1892. The court, BURTON, J.A., dissenting, dismissed the appeal with costs, agreeing with the court below that on the evidence the possession of George S. Marsh was not adverse, and agreeing in their view of the result of such finding.

BURTON, J.A., dissented on the ground that the finding of the trial judge as to the nature of the possession should be accepted as conclusive.

DAVIES ET AL. *v.* GILLARD ET AL.

Assignments and preferences—Pressure—Collusion—R.S.O., c. 124, s. 2.

This was an appeal by the defendants from the judgment of the Queen's Bench Division, reported 21 O.R. 431, reversing the judgment of ARMOUR, C.J., at the trial in their favour, and was argued before HAGARTY, C.J.O., BURTON, OSLER, MACLENNAN, JJ.A., on the 31st of May, 1892.

This action was brought to set aside as a fraudulent preference a chattel mortgage made by the defendant McKellar to his co-defendants Gillard & Company on the 11th of March, 1891, before the passing of the amending Act, 54 Vict., c. 20 (O.).

Moss, Q.C., for the appellants.

W. Cassels, Q.C., and *S. King* for the respondents.

June 21st, 1892. The appeal was allowed with costs, the court holding that on the finding of the learned Chief Justice as to pressure the transaction ought not to have been set aside.

REGINA *v.* ELBORNE.

Intoxicating liquors—Sale by druggist—R.S.O., c. 194, s. 49, 50, 52, 85.

These were appeals by the Crown from three orders of the Common Pleas Division quashing three convictions of the defendant, a druggist, "for that he . . . unlawfully did sell liquor without recording the same as required by the Liquor License Act." The decision of the Common Pleas Division in one case is reported 21 O.R. 504.

The appeals were argued before HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A., on the 27th and 30th of May, 1892.

Langton, Q.C., for the appellant.

G. W. Meyer for the respondent.

June 21st, 1892. The court allowed the appeals without costs, holding that the convictions might properly be upheld under s. 85 for the offence of not recording sales in a book, though not for unlawfully selling.

See now 55 Vict., c. 51, s. 7 (O.).

IN RE PRITTIE AND TORONTO.

Municipal corporations — Sewer—Easement—Arbitration—Practice—52 Vict., c. 13. (O.).

A municipal corporation has power to expropriate lands for the purpose of constructing a sewer, and also the power to expropriate, as incident thereto, the right of entry thereto for the purpose of maintenance and repair.

The date of the passing of the by-law defining the lands and the nature of the rights required is the date in relation to which the compensation should be assessed.

The effect of 52 Vict., c. 13 (O.), as to the practice in moving to set aside awards considered.

Judgment of FALCONBRIDGE, J., reversed, OSLER, J.A., dissenting.

Biggar, Q.C., and *H. M. Mowat* for the appellants.

Ritchie, Q.C., and *J. Pearson* for the respondents.

DALRYMPLE *v.* SCOTT.

Contract—Letters—Breach — Condition—Damages—Sale of goods.

To a written offer to sell some flour on certain terms the following telegram was sent :—"Letter received, offer accepted, writing." No letter was written.

Held, affirming the judgment of the Queen's Bench Division, that there was a completed contract.

Where before the time for the completion of a contract for sale of goods one party notifies the other that he does not intend to complete that notification may be treated as a breach, and at once acted on ; but if, as he may, the other party waits till the time for completion and then brings his action, he must show that at this time he had himself fulfilled all conditions precedent on his part.

Judgment of the Queen's Bench Division on this branch of the case reversed, MACLENNAN, J.A., dissenting.

Watson, Q.C., for the appellants.

S. G. McKay for the respondents.

[June 28.

CUMMING *v.* LANDED BANKING AND LOAN CO.

Trusts and trustees — Executors — Breach of trust.

One executor may, without the concurrence of his co-executor, validly sell or pledge assets of the estate to a purchaser or mortgagee in good faith, and the purchaser or mortgagee is not put upon inquiry or affected with notice of breach of trust because the executor is described in the transfer or mortgage as "trustee." Every executor is a trustee, but he does not cease to be an executor and become merely a trustee until the testator's wishes are completely carried out.

Judgment of the Queen's Bench Division, 20 O.R. 382, affirming that of BOYD, C., 19 O.R. 426, reversed, HAGARTY, C.J.O., dissenting.

F. Mackelcan, Q.C., and *W. Cassels*, Q.C., for the appellants.

Marsh, Q.C., for the respondents.

HIGH COURT OF JUSTICE.

Chancery Division.

Div'l Court.] [June 28.

GUNN *v.* CALDWELL.

Promissory notes—Given as collateral security—Discounted, retired, and sued on by holder—Effect of.

On a sale of land an extension of time for some payments was granted, when some promissory notes made by subsequent purchasers were given to the plaintiff as collateral security. The plaintiff discounted the notes, but was obliged to retire them at maturity, and afterwards recovered judgment on them without being able to realize anything.

Held (reversing the judgment of GALT, C.J.), that this treatment of the notes did not make them the plaintiff's property, and that in an action to recover the balance of the purchase money he was not bound to give credit for their amount.

Robert Hodges for the plaintiff.

A. Elliott for the defendant.

HETT *v.* JANZEN.

Lessor and lessee—Covenant to repair—Defective grating—Who liable, owner or tenant.

In an action against the owner of a building for damages caused by a defective grating in front of it, in which it was shown that the premises were leased to tenants who had covenanted to repair, and after the expiring of the lease had remained on as tenants,

Held (affirming the judgment of ARMOUR, C.J.), that the owner of the premises was not liable.

King, Q.C., for the plaintiff.

Laidlaw, Q.C., and *Miller*, Q.C., for the defendant.

STREET, J.] [July 6.

PATTERSON *v.* TANNER ET AL.

Mortgage—Power of sale—Exercise of—Obligation to carry out sale—Effect of not doing so.

A mortgagee having exercised the power of sale in a mortgage and sold the land for sufficient to pay the mortgage and costs cannot

without sufficient reason treat the sale as a nullity and fall back on the mortgage as if the exercise of the power was a mere matter of form.

Three joint owners of property mortgaged it to a loan company, and then sold to the plaintiff, who covenanted to pay off the mortgage. The plaintiff sold to the defendant in the same way, taking a similar covenant. The company exercised the power of sale in their mortgage, and one of the original owners became the purchaser at a price sufficient to pay the mortgage and costs.

The purchaser not being willing to carry out the sale, the company did not insist on his doing so, but collected by threats of legal proceedings the arrears and costs from the plaintiff.

In an action by the plaintiff to recover from his vendee, the defendant, the amount thus paid, it was

Held, that he could not recover.

Armour, Q.C., for the plaintiff.

A. Elliott for defendant Tanner.

A. McLean Macdonell for defendant McArthur.

Common Pleas Division.

Div'l Court.] [Feb. 27.

ROCHE *v.* RYAN.

Plan — Registration — Effect of — Vesting of streets in municipality.

In 1886 the plaintiff, the owner of a tract of land within the limits of a town, subdivided it into a number of lots with streets intersecting them, and duly registered a plan thereof. In 1889 the town council had a plan prepared of all the land comprised in the town limits, and embodying the plaintiff's plan, which was duly registered by the corporation in 1890. About September following the plaintiff sold two of the lots to the defendant and two to one M., and shortly afterwards defendant took from the portion of the land laid down on the plan as a street and adjoining his lots a quantity of stone for building purposes; subsequently in the same year the defendant applied to the council to open up the streets, when a resolution was passed referring the matter to the three street commissioners, and at an informal interview with two of the commissioners, the third not having been notified or consulted, verbal leave was given the defendant to take the stone; and afterwards, in 1891, an agreement therefor was entered into with the corporation, the tract up to this time having been fenced in and used for pasturage. In an action by the plaintiff to recover from the defendant the value of the stone removed by him,

Held, reversing the judgment of STREET, J., that the action was not maintainable, for that under the Municipal and Surveyors' Acts by the filing of the plan, and the sale of lots according to Acts abutting on the street, the property in the street became vested in the municipality.

The common law doctrine as to the ownership of the soil of the highway, *ad usque medium filum*, was not under the circumstances applicable.

McCarthy, Q.C., for the plaintiff.

G. H. Watson, Q.C., *contra.*

MACMAHON, J.]

BRUNTON *v.* CORPORATION OF THE TOWNSHIP OF MARIPOSA.

Sale of liquors — Sale by retail — Quantity — Locality—Days named for appointment of agents and declaring the result of polling—Sufficiency of — Notice—Sufficiency—Christmas and New Year's days—Publication on sufficiency.

A law passed by a township council under 53 Vict., c. 56, s. 18 (O.), was entituled a by-law to prohibit the retail sale of intoxicating liquors in the township of Mariposa, and enacted that "the sale by retail of spirituous liquors is and shall be prohibited in every tavern, inn, or other house or place of public entertainment, and the sale thereof is altogether prohibited in every shop or place other than a place of public entertainment."

Held, that the last part of the clause must be read in connection with the previous part so as to limit the prohibition to a sale by retail, which is now put beyond question by 54 Vict., c. 46, s. 1 (O.).

Slavin v. *Corporation of Orillia*, 36 U.C.R. 159, and *re Local Option Act*, 18 A.R. 573, followed.

Held, also, that the quantity of liquor to be deemed a sale by retail need not appear in the by-law, being defined by the statute; that the locality within which the liquor could be sold was sufficiently indicated; and that the want of penalty in the by-law did not invalidate it.

The day named in the by-law for the appointment of agents to attend at the final summing up of the votes was nearly three weeks after the the first publication of the by-law, and the day named for the clerk to declare the result of the polling was the second after said polling.

Held, both days sufficient.

The notice at the foot of the by-law after certifying that the foregoing (*i.e.*, the copy of the by-law published) was a true copy of the proposed by-law of the township of Mariposa which had been taken into consideration by the council thereof, and which would be finally passed in the event of the electors' assent being obtained thereto after one month's publication in a named paper, stated that all persons were required to take notice that on the 4th of January, 1892, a poll would be opened, naming the statutory hours at the several polling places named in the by-law, for the purpose of receiving the votes of the electors on the same. Two of the days of publication were Christmas and New Year's.

Held, that the formal notice was sufficient, and the fact of publication on the days named did not render the publication invalid, publication not being a judicial act so as to prevent publication on those days.

DuVernet and *J. E. Jones* for the applicants.
Maclaren, Q.C., and *McIntyre*, Q.C., *contra.*

FALL ASSIZES, 1892.

HOME CIRCUIT.

MacMahon, J.

Milton	Wednesday	7th Sept.
Brampton	Monday	12th Sept.
Orangeville	Monday	19th Sept.
St. Catharines	Monday	26th Sept.
Toronto (Criminal)	Tuesday	4th Oct.
Toronto (Civil)	Tuesday	18th Oct.

EASTERN CIRCUIT.

Armour, C.J.

L'Original	Monday	12th Sept.
Ottawa	Thursday	15th Sept.
Pembroke	Tuesday	27th Sept.
Perth	Tuesday	4th Oct.
Cornwall	Tuesday	11th Oct.
Brockville	Tuesday	18th Oct.
Kingston	Monday	24th Oct.
Napanee	Monday	31st Oct.

SOUTH-WESTERN CIRCUIT.

Rose, J.

St. Thomas	Monday	12th Sept.
Sandwich	Monday	19th Sept.
Sarnia	Monday	26th Sept.
London	Monday	3rd Oct.
Chatham	Monday	17th Oct.
Welland	Monday	24th Oct.
Cayuga	Monday	31st Oct.
Simcoe	Monday	7th Nov.

MIDLAND CIRCUIT.

Falconbridge, J.

Hamilton	Wednesday	7th Sept.
Barrie	Monday	19th Sept.
Picton	Monday	3rd Oct.
Whitby	Monday	10th Oct.
Belleville	Monday	17th Oct.
Cobourg	Monday	24th Oct.
Peterborough	Monday	31st Oct.
Lindsay	Monday	7th Nov.

NORTH-WESTERN CIRCUIT.

Street, J.

Owen Sound	Tuesday	13th Sept.
Goderich	Monday	19th Sept.
Woodstock	Monday	26th Sept.
Stratford	Monday	3rd Oct.
Walkerton	Monday	10th Oct.
Guelph	Monday	17th Oct.
Berlin	Monday	24th Oct.
Brantford	Monday	31st Oct.

CHANCERY CIRCUITS.

Boyd, C.

Walkerton	Monday	12th Sept.
Chatham	Monday	19th Sept.
St. Thomas	Monday	17th Oct.
Sarnia	Friday	21st Oct.
Sandwich	Tuesday	25th Oct.
Goderich	Monday	31st Oct.
London	Thursday	3rd Nov.

Ferguson, J.

Cobourg	Monday	19th Sept.
Belleville	Wednesday	21st Sept.
Kingston	Wednesday	28th Sept.
Ottawa	Monday	24th Oct.
Cornwall	Monday	7th Nov.
Brockville	Thursday	10th Nov.

Robertson, J.

Guelph	Thursday	15th Sept.
Simcoe	Thursday	22nd Sept.
Brantford	Monday	26th Sept.
Hamilton	Monday	17th Oct.
Owen Sound	Monday	14th Nov.
St. Catharines	Monday	21st Nov.

Meredith, J.

Peterborough	Monday	12th Sept.
Lindsay	Thursday	15th Sept.
Toronto	Monday	26th Sept.
Woodstock	Tuesday	25th Oct.
Stratford	Tuesday	1st Nov.
Barrie	Tuesday	8th Nov.
Whitby	Tuesday	15th Nov.