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IT has been rumored that it is proposed to appoint some member of the Canadian Bench or Bar to the Judicial Committee of the Privy Council. We much question there being any foundation for this rumor. We also question the desirability of such a step. The very essence of the excellence of this tribunal consists in its supreme indifference and consequent undisputed impartiality in all cases coming before it; and if any such appointment were made, it would necessarily be of our best man, whom we could least spare. In every case that comes before it, the Court is assisted by counsel from the colony from which it comes, and with all the knowledge they possess of the law on which the decision may depend; and there does not appear to have been any complaint of want of ability or of willingness to use that ability, in the Court as now constituted, or any reason for adding a judge whose appointment might be supposed to imply such want in its present members.

The Behring Sea controversy has assumed a new phase by the application made by Mr. Choate, under instructions from Sir John Thompson, at the instance of the Imperial Government, to the Supreme Court of the United States for a writ of prohibition to the District Court, forbidding its execution of the judgment condemning the sealer, *W. P. Sayward*. A correspondent of *The Mail* has shewn by citation from the United States laws that the Supreme Court has the power to issue such writ, "where a state or an ambassador or other public minister, or a consul is a party," the word "state" clearly indicating a foreign state, and not a state of the Union—and Great Britain is such a state and Her Majesty's Attorney-General for Canada a proper authority to convey Her Majesty's instructions to Mr. Choate in this case, the *Sayward* being a British ship owned in Canada. Some doubts have been expressed in the newspapers as to the form of the application or the action of the court, but Mr. Choate is not likely to be wrong on those points. It seems to us that the supposition that the American Government or people can be annoyed at what Sir John Thompson has done is ridiculous, and that no greater compliment could have been paid the Supreme Court or the Government which appointed it than the application in question. Both Americans and Canadians are deeply indebted to Sir John for his suggestion. To suppose that the American Government could, or would if it could, control the action of the court, would be an insult to both and to the law.

THE English Law Reports are not the place one usually resorts to for occasions of amusement, and yet one sometimes comes upon some bright jewel in their dull and decorous pages suitable for the mirth of grave and sober men, such as, we all know, the legal profession is composed of. One of these solemn jokes is the case of *Haslewood* v. *Consolidated Credit Co.*, 25 Q.B.D., 555. The action was one of trespass, instituted in the Lord Mayor's Court. The defendants justified their acts under a chattel mortgage for £30 made by the plaintiffs. The plaintiffs claimed the mortgage was void under the Bills of Sale Act, and its validity turned upon the question whether the variations it contained from the form prescribed by the Act were of such a character as to be readily understood without legal assistance. The plaintiffs claimed that they were not, and that the stipulations for repayment of the loan were obscure and difficult to understand. The plaintiff was non-suited in the Mayor's Court, and then appealed to the Queen's Bench Division, and it so happened that the Divisional Court on this occasion was composed of no less exalted personages than the Lord Chief Justice and the Master of the Rolls who, after a solemn, critical, grammatical consideration of the terms of repayment, were agreed that they were obscure and difficult to understand, and that the chattel mortgage was therefore void. With a persistence paralleled only by the insignificant amount at stake, the defendants appealed to the Court of Appeal, where Lindley and Bowen, L.JJ., presided. After hearing argument, they evidently felt a little delicacy in overruling the two chiefs, so they ordered the case to be re-argued before the full court (Cotton, Lindley, and Bowen, L.JJ.), and upon its coming up before them, the counsel for the appellants were not even called on. After hearing what the respondents' counsel had to say, they unanimously reversed the decision of the Lord Chief Justice and the Master of the Rolls, and not only dissented from their law, but politely ridiculed their grammar, and held the clause perfectly plain and unambiguous. One would have thought that the very fact that two eminent judges should differ from three others on its construction was *prima facie* evidence that it could not be very clear; but it so happened that in *Goldstrum* v. *Tallerman*, 18 Q.B.D., to which Lord Esher, M.R., himself had been a party, the Court of Appeal had decided that such a difference of opinion among judges had no such result. Bowen, L.J., tried to soften the blow by ascribing the difference of opinion between the Court of Appeal and the Divisional Court to the fact that the Court of Appeal had the case of *Goldstrum* v. *Tallerman* in their minds, which the Court below had not, yet the reporter with a brutal regard for accuracy is careful to state in a foot-note that that case was cited to the Divisional Court: perhaps the true explanation of the decision of the Divisional Court is to be found in the fact that the mortgage bore interest at the modest rate of sixty per cent. per annum; and it was as Carlyle would say a case of "approximate justice striving to accomplish itself in one way or another." As an instance of the marvellous persistency of litigants, and the occasional apparent obtuseness of the ablest judges, and the indiscretion of law reporters, the case in question is a striking instance.

LEGAL ANTIQUES.

While sauntering along the streets of an old but flourishing city one day, when the Dog-star was ruling all nature with its fiery sway, I chanced upon an imposing building; something within my breast caused me to pause and gaze upon the structure with an unusual amount of interest. Over the chief entrance was the statue of a lady evidently belonging to a bye-gone day; her dress, although appropriate to the season (if comfort only was to be considered), was yet rather scant, and such as would have incurred the severe condemnation of the Lord Chamberlain, had he sat in judgment upon it. Methought that perhaps at some time during the ages past her soul abode in the breast of an ostrich—for as a bandage was across her eyes she could not see, and judging from the coolness and calmness with which she stood, she thought that she herself could not be seen; she was like naked truth. In one hand was a sword of such mighty proportions that it would have taxed all her strength to wield it; and I afterwards found that in consequence she ofttimes neglected to strike when she should have smitten, and sometimes she smote when from knowledge obtained after she had lifted it on high she would have had mercy. In her other hand she held a pair of balances; from the accumulation of dust and cobwebs on these, I fear she could not always weigh with scientific accuracy—they would not always be "equal scales, whose beam stands firm, whose rightful cause prevails." The sculptor had so placed the bandage above her slender nose, tip-tilted, that when she chose she could see on one side.

But I am like many another, slandering her whose name was Justice, called in her early days by those world civilizers, the Greeks, Themis, the daughter of Heaven and Earth. The building was a temple erected for her honor, and containing the work-rooms of her ministers and servants, but which, alas! were often turned into dens of thieves.

I entered the building and found therein divers spacious apartments, each one of them a veritable old curiosity shop, filled with relics of the past, memorials of the day and objects affecting the future. I quickly found that of the numbers trooping into the building many hurried through unmindful of their surroundings, and as if everything was naught, while others who had brains behind their eyes saw many a wonder, many a thing of beauty, many a thing *monstrum, horrendum, informe.*

In some of the rooms I found

> The old laws of England; they
> Whose reverend heads with age are grey,
> Children of a wiser day;

in others, creatures green, untried, but powerful to hurt, armed cap-a-pie, as was Minerva when she sprang from Jove's almighty head; but if they had issued from the head of any Jove, it was but from the head of a nodding Jove. There was stowed away an immense amount of rubbish, as the Rev. Mr. Gascoigne would say; but then "I don't see that law rubbish is worse than any other kind of rubbish. It is not so bad as the rubbishy literature that people choke their minds with. It doesn't make one so dull," as Mr. Rex would respond.

One chamber contained a wonderful collection of old actions—real ones, we were told by the guide, philosopher, and friend, who joined us and escorted us over the building—a well-read cicerone was he, one eloquent as the original founder of that family, an old Roman family, as compared with which those who came over with the Conqueror are but as yesterday. In this room three ancient servitors John Doe, Richard Roe and the Casual Ejector clad in the composite suits of bye-gone days acted as janitors or caretakers; these servants, hard-worked for generations, were begrimed with dust and dirt; they were of the earth, earthy; for although neither farmers nor real estate agents, they had, until appointed to their present position, always worked in land. Arranged in cases round the rooms were numerous actions, long since disposed of, settled and embalmed in the books like flies in amber.

"What be these?" I asked, pointing to a trio, evidently triplets, save in so far as the adjectives old, older, oldest, might distinguish them. "These are writs of aiel, besaiel, and tresaiel," was the answer, given with an air of surprise at the archæological ignorance of the last decade of the nineteenth century.

"And what were they when they lived and moved and had their being?" I queried, for I knew that writs used to run in days when all the rest of the world only crept.

The answer given was, "When a man's grandfather died seized of land (and in those old days when a man had a grandfather the grandsire always had land), and a stranger entered and kept out the heir, then a writ of aiel issued forth to put things to rights; when a great-grandfather died and a stranger intermeddled, then besaiel was invoked; and when his great-great-grandfather, then tresaiel came to the rescue."

I felt inclined to ask what writ would have issued if a stranger had interfered on Adam's death, but the gravity of my guide made me repress all my feelings of levity. Impressed with the keenness of discrimination possessed by our ancestors, I passed on to another set of three, and was told that they were Formedon in descender, Formedon in remainder, and Formedon in reverter. Formidable affairs, by the Olympians!

"Are these antiques?" I questioned.

"They go back to the time of Westminster the Second, in the days of Edward the First."

"Were they of value?"

"They were the highest writs that any tenant in tail could have to recover land."

"Have you a tenant in tail here?"

"Yes, many of them of former generations; but the family still survives and is vigorous, especially among the aristocracy."

"Are all other tenants descended from these entailed ones, as the Darwinians say, that the man of to-day is from the tail-adorned ape?" I enquired, anxiously.

"No, my friend. It is not a case of evolution, but retrogression. Tenants in tail are younger than tenants in fee; they are the offspring of the venerable statute, De Donis Conditionalibus. Tail is akin to tailor; yet though it requires

only nine tailors to make a man (a statement which, according to Jekyll, is as old as Magna Charta), still any number of tenancies in tail will not make a tenancy in fee."

My friend then pointed out some strange-looking things, which he seemed to consider worthy of minute attention: they were writs, and labelled, "entry sur desseisin in the quibus," "entry sur desseisin in the pur," another "in the per and cui," and yet a fourth "in the post." But I hurried on to where I saw a man, lugubriously sitting, surrounded by a host of shadowy forms; so alike, these shades, that no one who was a stranger could tell them apart; so unlike that it would at all times have been unsafe to summon one to your aid when another should have been employed. The man was clad in a black gown, and bemoaned and wept—like Rachael weeping for her children—because these sham, yet real things, were no more. They lie buried in the dust of ages past. The tombstone on which their names were engraven, though visible to the men of the Ontario statutes of 1877, is not to be seen by those of 1887 (*Vide* R.S.O., 1877, c. 51, s. 75).

Next we entered a room in which were only women, dressed in widows' weeds. "Who be these relicts of matrimonial bliss?" I asked.

"These are doweresses," was the reply, "they have placed their husbands in the ground, and on that ground they claim part of their husbands' grounds."

"They seem to differ considerably in appearance?"

"Yes, and with reason. That one was the last to obtain dower ad ostium ecclesiae; there is one who in her day had dower ex assensu patris; those whose weeds are fading and who sing the doleful refrain of the Laureate, "Too late, too late," have been longer widowed than those others whose mourning is still fresh and new, who look so gladsome and are weaving chaplets."

"How is that? Is it not contrary to the usual way of widows? Do they wreathe the crowns for the graves of the dear departed ones?"

"The chaplets are to adorn the massive brows of Ontario's Attorney-General The mourners are those childless ones whose good men died without wills—before the Dog-days of the year of grace, 1886; and they receive from the hands of the Law but one-third of the husbands' lands and tenements, and that only for their lives; while the happy ones having managed to persuade their husbands to postpone their submundane journeyings until after Dominion Day, 1886, now (thanks to the Government of Ontario) get one-half of all their late partners' property."

I passed on, meditating on the power for weal or woe of politicians.

In another room were preserved various old suits in equity and suits in chancery—far more costly were these than the suits of armor preserved in the ordinary museums. Some of them were hoary with age; others were anything but sweetly savored; some had been dragged on for years and years; others were so foul that no one could get into them with clean hands. Here we saw some visionary and imaginary ones, like Jarndyce and Jarndyce and Peebles and Plainstanes, "et per contra," and Hutchinson against Mackitchinson. "Oh, it is a beautiful thing to see how long and how carefully justice is considered in this country," as the man in the Mackitchinson suit anent the backyard said to the

Antiquary when speaking about Scotland. Peter Peebles thought "it grandeur upon earth to hear one's name thundered out along the long arched roof of the court-house, and see 'a' the best lawyers in the house fleeing like eagles to their prey.'"

On one side of the room were relics from Scotland collected by a Mr. Burton, "interlocutors, suspensions, tacks, wadsets, multiple poindings, adjudication in implement, assignations, infeftments homologations, charges of horning, quadrennium utiles, vicious intromissions, decrees of putting to silence, compact actions of declarator and reduction improbation," while across the room were English specimens gathered by the same collector, and which he himself much preferred, such as, "common recoveries, demurrers, quare impedits, tails-male, tails-female, docked tails, latitats, avowries, nihil dicits, darrien presentments, emparlances, mandamuses, qui tams, capias ad fraciendum and ad witherman." There were a number of old Scotch suits in which the Lord Ordinary had "refused interim interdict, but passed the bill to try the question, reserving expenses; or had repelled the dilatory defences, and ordered the case to the roll on the peremptory defences; some that he had taken to avizandum, or had ordered re-revised condescendence and answers on the conjoint probation; and some he had sisted diligence till caution be found, judicio sisti."

In the same apartment were a lot of French "bills of complaint, accusations, impeachments, indictments, warnings, citations, summonings, compositions, appearances, mandates, commissions, delegations, instructions, informations, inquests, preparatories, productions, evidences, proofs, allegations, depositions, cross-speeches, contradictions, supplications, requests, petitions, inquiries, instruments of the deposition of witnesses, rejoinders, replies, confirmations of former assertions, duplies, triples, answers to rejoinders, writings, deeds, reproaches, disabling of exceptions taken, grievances, salvation bills, re-examination of witnesses, confronting of them together, declarations, denunciations, libels, certificates, royal missives, letters of appeal, letters of attorney, instruments of compulsion, delineatories, anticipatories, evocations, messages, dismissions, issues, exceptions, dilatory pleas, demurs, compositions, injunctions, reliefs, reports, returns, confessions, acknowledgments, exploits and executions" which Justice Bridlegoose, so much spoken of by Rabelais, had well and exactly seen, surveyed, overlooked, reviewed, read and read over again, turned and tossed over, seriously perused and examined, both at the one and the other side, as a good judge ought to do, conformed to what had been noted thereupon.

Our guide told us that this eminent judge was, like Lord Eldon, never hasty or rash in dealing with the cases before him, but had been known to say, "I defer, protract, delay, prolong, intermit, surcease, pause, linger, suspend, prorogate, drive out, wire-draw, and shift off the time of giving a definitive sentence, to the end that the suit or process, being well fanned and winnowed, tossed and canvassed to and fro, narrowly and precisely, and neatly garbled, sifted, searched and examined, and on all hands exactly argued, disputed and debated, may by succession of time come at last to its full ripeness and maturity." He thought that by this means, "when the fatal hazard of the dice ensueth thereupon, the parties

cast or condemned by the said aleatory chance will, with much greater patience and more mildly and gently, endure and bear up the disastrous load of their misfortune than if they had been sentenced at their first arrival in the court."

I moved on, as poor Jo was told to do, and entered another chamber. "Here we have a collection of documents of priceless value;" remarked an expert in handwriting, "records and writings that have figured in legal history, and autographs of the great, the wise and the good, that have come within the eye of the law."

This attendant pointed towards two old scraps of paper. "Those," said he, "speak not only volumes, but the character of the writer as well; they are not open, fervent, eloquent epistles, breathing nothing but the language of affectionate attachment" (we saw that plainly enough at a glance); "but covert, sly, underhand communications."

With interest we read as follows, "Garraway's, twelve o'clock. Dear Mrs. B., Chops and Tomato Sauce. Yours, Pickwick." "Dear Mrs. B., I shall not be at home until to-morrow. Slow Coach." Charmed was I to see the signature and caligraphy of the immortal Pickwick—the tell-tale letters in Bardell versus Pickwick—the letters with which Sergeant B[illegible] convinced the enlightened, high-minded, right feeling, conscientious, dispassionate, sympathizing, contemplative jury to give the poor widow seven hundred and fifty pounds damages. In the same case we saw the warrants issued by George Nupkings, Esquire, Justice of the Peace, and under which Gummer, the bailiff, arrested Blank Pickwick and Blank Tupman, for intending to fight a duel "against the peace of our suffering Lord, the King, statit in that case made and purwided." Here they had Antonio's bond, once held by Shylock; and the deed of gift whereby that unfortunate son of Abraham had to give all that he was possessed of at his death unto his son Lorenzo and his daughter. By itself stood the will of Adam—a monstrously long affair, and no wonder, for, as the Arabs say, when that grand old gardener was about to prepare the document, Gabriel descended from heaven with sixty-two millions of angels, each provided with a clean white sheet of parchment and a new quill pen, the archangel sealed the will as a witness. We looked in vain for the clause in Adam's testament which the first Francis of France was so anxious to see—the one whereby the vast inheritance of the Americas was given to the Spaniards, as the Pope said. Near by was another parchment, with the seal of Caesar, found by Antony in his closet, his will; giving to every Roman citizen, to every several man, seventy-five drachmas. Beside this, inscribed on a brick-bat, was the will of Sennacherib, "the Assyrian who came down like a wolf on the fold;" he gave a lot of precious things to his son Esarhaddon, a youth who, to please his father, had changed his name to Assursar-illik-pal.

The only other document that we examined in that room was an ancient Egyptian deed, on parchment, of a piece of land in hundred-gated Thebes, written one hundred years before our era, and with a certificate of registration attached. The descriptions of the parties were more minute than those now given; this is how they were mentioned, "Pamonthes, one of the male grantors

aged about forty-five, of middle stature, dark complexion, handsome person, bald, round faced, and straight nosed; Snachomneus, aged about twenty, of middle size, sallow complexion, round faced, and straight nosed; Semmuthis Persinei, aged about twenty-two, middle size, sallow complexion, round faced, flat nosed, and of a quiet demeanor; and Nechutes the less, the son of Assos, aged about forty, of middle size, sallow complexion, cheerful countenance, long face, and straight nose, with a scar upon the middle of his forehead."

COMMENTS ON CURRENT ENGLISH DECISIONS.

[Notes on December numbers of Law Reports—*Continued.*]

WILL—FORFEITURE CLAUSE—INTERFERING WITH MANAGEMENT—FRIVOLOUS ACTION AGAINST TRUSTEES.

Adams v. *Adams*, 45 Chy.D., 426, is an illustration of the old fable of "the dog and the shadow." The plaintiff was an annuitant under the will of his father, which contained a proviso that if he should in any way intermeddle with or interfere in, or attempt to intermeddle with or interfere in, the management of the testator's estate, real or personal, the annuity should cease. The plaintiff brought the present action alleging that the trustees had not paid him the annuity under the will; that they had neglected the estate, and wantonly destroyed cottages and trees, and committed other waste upon the testator's estate, so that the rents had become insufficient to pay his annuity (all of which allegations Fry, L.J., before whom the action was tried, held were unfounded), and he claimed an injunction and receiver. The defendants, by counter-claim, set up that by bringing the action the plaintiff had incurred a forfeiture of his annuity, and the court so held, and made a declaration accordingly, while dismissing the plaintiff's action. On this point Fry, L.J., said: "If the action had been really in defence of his annuity, I should have been prepared to hold that there was no attempt to meddle or interfere within the meaning of the proviso. But I am also prepared to hold that where, as in this case, there is no probable cause of action, where all the points set up by the plaintiff are trivial and the property is really in good condition, then there is an attempt to intermeddle and interfere with the management of the estate contemplated by the proviso."

INFANT—APPRENTICESHIP DEED—VALIDITY—UNREASONABLE PROVISIONS.

De Francesco v. *Barnum*, 45 Chy.D., 430, has already been referred to (see *ante* vol. 26, p. 145) when the case was before the court on a motion for an interim injunction. It may be remembered the action was brought to restrain the violation of the terms of an apprenticeship deed by the apprentices, who were infants, and to restrain third persons from enticing them away from the plaintiff's employment. The case, as against the infants, was practically disposed of by Chitty, J., on the motion for the injunction, he having decided that no action would lie at law or in equity against an infant on an apprenticeship indenture, and this point was not again seriously argued. But there is one observation which Fry, L.J., who tried the case, made on this point which seems worth re-

producing here, viz.: "I should be very unwilling to extend decisions the effect of which is to compel persons who are not desirous of maintaining continuous personal relations with one another to continue those personal relations. I have a strong impression and a strong feeling that it is not in the interest of mankind that the rule of specific performance should be extended to such cases; I think the courts are bound to be jealous, lest they should turn contracts of service into contracts of slavery." As against the third persons from whom damages were claimed for enticing the children away from the plaintiff, the case also failed, because, in the opinion of the judge, the terms of the apprenticeship deed were not beneficial to the infants, in that it imposed extraordinary obligations on them without any fairly correlative benefits. Among other things the infants were restrained during the stipulated term from accepting any other employment, whereas there was no corresponding agreement that during the term the master would himself furnish them with employment, and there was also a power to the master at any time after fair trial to put an end to the indenture if he should find the apprentices unfit, and also a power enabling him to require the infants to undertake an engagement at any theatre in England or anywhere else in the world. He therefore held that the indenture was one which was not for the benefit of, and did not bind the infants, and therefore no action would lie against the third persons by whom they were alleged to have been enticed away from the plaintiff.

BREACH OF TRUST—FOLLOWING ASSETS—STATUTE OF LIMITATIONS—PARTIES.

In re Bowden, Andrew v. *Cooper*, 45 Chy.D., 444, was an action brought by a new trustee against the personal representative of a former trustee to compel him to make good a loss occasioned by improper investments made by the former trustee more than six years prior to the action; and brings to our attention the fact that in England, under such circumstances, the defendant may successfully plead the Statute of Limitations in bar of the action, where there has been no fraud on the part of the deceased trustee; this is by virtue of the Trustee Act, 1888 (51 and 52 Vic. 59), s. 8, of which, we believe, no counterpart is yet to be found in the Ontario Statute Book. The point was raised whether the plaintiff trustee sufficiently represented his *cestui que trust*, and the court held that he did under Ord xvi, r. 8 (Ont. *Rule* 309).

WILL.—CONSTRUCTION—ANNUITY TERMINABLE ON EXPIRATION OF LEASE—GIFT-OVER ON DEATH OF A. WITHOUT "LEAVING" CHILD.

In re Hemingway, James v. *Dawson*, 45 Chy.D., 453, is a decision of Kay, J., on the construction of a will. The testator gave to his daughter Lucy an annuity during her life payable out of the rents of leasehold property, held for an unexpired term of sixty years, and after Lucy's death he directed the annuity to be paid to her child or children; and if more than one equally, who being sons should attain twenty-one, or being daughters should attain that age or marry; and in the event of the death of Lucy "without leaving" any such child, the testator gave the annuity to and among the survivors of the testator's children and grand-children. Lucy had one child who attained twenty-one, but pre-

deceased her, and the question to be determined was whether Lucy took an absolute interest in the annuity or whether the gift-over took effect. Kay, J., decided in favor of the gift-over, being of opinion that the principle of construction whereby "leaving" is sometimes construed as "having had," so as not to take away an interest previously vested, is not to be applied when the subject matter of the gift is an annuity which *ex vi termini* involves the notion of personal enjoyment, annuities standing in this respect on a different footing to a capital sum.

ADMINISTRATION ACTION—FUND CARRIED TO SEPARATE ACCOUNT—INCUMBRANCES ON SEPARATE ACCOUNT—UNDISCLOSED PRIOR CLAIM CONTRIBUTION—RES JUDICATA—PRIORITY—STOP ORDER.

In re Eyton, Bartlett v. *Charles*, 45 Chy.D., 458. By an order funds in an administration action were directed to be carried over to the separate account of the perpetual annuity of the defendant and her issue. The defendant charged her interest in this fund, and the chargees obtained stop orders. Subsequently it was discovered that when the order was made the defendant was jointly and severally liable with the testator for breaches of trust which had been wholly made good out of the testator's estate; the plaintiff was unaware of the defendant's liability when the order to carry over the fund was made. The plaintiff applied for an order directing that out of the fund so directed to be carried over contribution should be made in respect of this liability, notwithstanding the stop orders: but Chitty, J., held that though as regards the defendant herself she could take nothing from the testator's estate until she had made good her proportion of the losses in question, still that as between the plaintiff and the incumbrancers the matter was *res judicata*, and they were entitled to priority.

In Ontario the English practice of carrying funds over to a separate account on the accountant's books has not hitherto prevailed; still it is probable the principle of this decision would apply when by a master's report duly confirmed, or by order of the court, moneys in court are found to belong to any particular person.

BUILDING SOCIETY—WINDING UP—PAST MEMBERS—LIABILITY OF PAST MEMBERS FOR LOSSES.

In re West Riding of Yorkshire Building Society, 45 Chy.D., 463, it was held by Chitty, J., that the rules of a building society constitute a contract between the society and its members, by which the liability of all classes of members is regulated; and that on a winding up, past advanced, or past investing members, who have satisfied all their obligations to the society in accordance with the rules, are no longer under any liability to contribute to the losses of the society with present members.

VOLUNTARY GIFT—INCOMPLETE GIFT—SPECIFIC PERFORMANCE—CREDITORS—PRIORITY.

In re Lucan, Hardinge v. *Cobden*, 45 Chy.D., 470, shows in a striking way the important difference between a complete and incomplete gift. In this case an annuity was granted by Earl Lucan in consideration of love and affection to one Ellen Cobden for her life, charged on certain lands and upon his "moneys, securities for money, and other effects." At the time the deed was executed

the grantor was entitled, *inter alia*, to a reversionary interest in certain railway stock standing in the names of trustees. The annuity was paid for twenty-one years, until the Earl's death. The real estate was then found to be insufficient to provide for the annuity, and his personal estate was insufficient to pay his debts. The question consequently arose whether the annuitant had a prior right over creditors in the reversionary interest in the railway stock; and Chitty, J., held that the deed did not create a perfect and complete equitable charge on the stock, because the stock was not given or transferred by the deed, and therefore that the creditors were entitled to priority.

LESSOR AND LESSEE—AGREEMENT FOR LEASE—USUAL COVENANTS—PROVISO FOR RE-ENTRY.

In re Anderton & Milner, 45 Chy.D., 476, the short point was whether, under an agreement for a lease which was to contain the usual covenants, to insure from loss by fire, repair, and pay rent and all outgoings, etc., a proviso for re-entry could be inserted, not only for non-payment of rent, but also for breach of any of the clauses, covenants, and assignments, contained in the lease. Chitty, J., held (following the rule laid down by James, L.J., in *Hodgkinson* v. *Crowe*, 10 Chy. 622) that the proviso should be confined to the non-payment of rent. It may be well to note that the lessee had paid a premium for the lease, which was also an element in the case which was considered of importance.

VENDOR AND PURCHASER—CONTRACT BY LETTERS—SPECIFIC PERFORMANCE—OFFER AND ACCEPTANCE.

Bellamy v. *Debenham*, 45 Chy.D., 481, was an action for specific performance of a contract for the purchase of land. The contract was contained in a correspondence; the defendant claimed that there had never been a complete contract. The defendant made an offer which was accepted; subsequent letters were written as to executing a contract, and some subsequent correspondence took place as to its terms; and the parties not being able to agree on its terms, the defendant refused to go on with the negotiations. It was contended that the negotiations which followed the defendant's offer and its acceptance showed that there was no complete contract, but North, J., was of opinion that where there is a clear offer and acceptance, subsequent letters showing that the vendor wished to add terms to the contract which the purchaser refused, would not entitle the latter to annul the valid contract which the offer and acceptance had created. But inasmuch as in the present case the plaintiff had caused the whole difficulty by insisting on the insertion of terms into the formal contract to which he was not entitled, he thought that it would be inequitable to enforce specific performance of the contract, and he dismissed the action without costs.

LEGACY IN LIEU OF DOWER—INTEREST.

In re Bignold, Bignold v. *Bignold*, 45 Chy.D., 496, the only point decided by North, J., was that a legacy to the testator's widow in lieu of dower bears interest only from the expiration of a year from the testator's death. Although a legacy to a widow usually carries interest from his death, yet where it is a case in which she is put to her election between the legacy and her dower, the cir-

cumstance that the legacy is not payable for twelve months after the testator's death (unless an earlier time for payment is expressly named) is one of the ingredients to be taken into account in making the election.

PARTITION ACTION—COSTS—INCUMBRANCES ON SHARES—COSTS OF INCUMBRANCES.

In *Belcher* v. *Williams*, 45 Chy.D., 510, North, J., came to the conclusion that in a partition action the costs of incumbrances on particular shares should be paid generally out of the estate, and not out of the particular shares encumbered. In *McDougall* v. *McDougall*, 14 G.C., 267, the opposite conclusion was arrived at by Vankoughnet, C., and it appears to us the latter is the preferable rule.

MORTGAGE—MORTGAGE BY COMPANY OF EQUITY OF REDEMPTION—PARTIES—DEBENTURE HOLDERS.

In *Griffith* v. *Pound*, 45 Chy.D., 553, Stirling, J., dealt with two points: one, as regards the right of consolidating mortgages having regard to certain provisions of the Conveyancing and Law of Property Act, 1881, which it is not necessary to refer to here, and the other was a question of practice. A company, being the owner of an equity of redemption in mortgaged property in question, had issued debentures which were made a charge on their interest in the equity of redemption, and the present action was brought to foreclose the mortgage, and the point was raised whether it was necessary to make all the debenture holders parties, or whether some could be made parties as representatives of the whole, under Ord. xvi., r. 9 (Ont. *Rule* 315). Stirling, J., held that all of them must be made parties.

VENDOR AND PURCHASER—SALE OF BUSINESS AND GOOD WILL—RIGHT OF PURCHASER TO USE VENDOR'S NAME.

Thynne v. *Shove*, 45 Chy.D., 577, was an action by the vendor of a business with the good will, to restrain the purchaser from using the vendor's name in carrying on and advertising the business. The deed contained no express assignment of the right to use the plaintiff's name. Part of the stock in trade was a number of trade cards bearing the plaintiff's name, which the defendant used until they were exhausted, and then printed others bearing the plaintiff's name as before. The immediate object of the action was to restrain the defendant from printing or publishing such cards, or otherwise trading in the name of the plaintiff. Stirling, J., thought both parties had put their rights too high, the plaintiff in claiming to restrain the defendant *in toto* from using his name, and the defendant in claiming the right to use it without any restriction; and he granted an injunction merely restraining the defendant from using the plaintiff's name in such a way as to expose him to any liability.

MUNICIPAL LAW—LOCAL IMPROVEMENT—CHARGE UPON PREMISES FOR LOCAL IMPROVEMENT TAXES—PRIORITY OF CHARGE.

In *Tendring Guardians* v. *Dowton*, 45 Chy.D., 583, Stirling, J., held that a charge for local improvements created under a statute upon premises affected thereby, is an overriding charge upon the whole proprietorship of such premises;

and that premises held by the present owner subject to a restrictive covenant as to building may be sold for the purpose of satisfying such charge, free from such restrictive covenant.

CONFLICTING EQUITIES—NOTICE—PRIORITY.

In re Richards, Humber v. *Richards*, 45 Chy.D., 589, is a case which could hardly arise under our system of registration as regards the transfer of real estate; and yet it is interesting as illustrating the manner in which the court deals with the rights of parties where there are conflicting equities. It is the old story of two parties being defrauded by a third party and a contest between them as to which is to bear the loss. The facts were that a solicitor received in 1883 a sum of money from a client for investment, and represented to the client that he had invested it on a specified mortgage, whereas in fact the mortgage specified was one which had been previously taken by the solicitor in his own name. The solicitor paid interest on the amount of the specified mortgage to his client down to his client's death in 1885, and to his representatives down to his own death in 1888. Shortly before the solicitor's death he had deposited the title deeds of the mortgaged property with a bank as security for an overdraft of his account; and he died leaving his account overdrawn to an extent exceeding the value of the mortgage property. Immediately after the solicitor's death the bank notified the mortgagors of the deposit of the title deeds with them, and at the date of the deposit the bank had no notice of the claim on behalf of the client, and their notice was prior in point of date to any notice given by the executors to the mortgagors. Under these circumstances Stirling, J., decided that the solicitor had constituted himself trustee of the mortgage for his client, and that the latter and his representatives had not been guilty of any negligence which would deprive him or them of the prior equity, and that the bank had not acquired any priority by reason of their notice to the mortgagors being prior in time to that of the executors.

COMPANY—IRREGULAR FORFEITURE OF SHARES FOR NON-PAYMENT OF CALL—REALLOTMENT OF SHARES—DAMAGES.

In re New Chile Gold Co., 45 Chy.D., 598, Stirling, J., holds that when a board of directors of a company by resolution of the board declared certain shares, then at a premium, to be forfeited for non-payment of a call, without having previously given the holder notice in accordance with one of the articles of association, that if he failed to pay the call by the day appointed for payment, they might forfeit his shares; and where, after such irregular forfeiture, they reallotted the forfeited shares among numerous other shareholders—that on a winding up of the company the shareholder whose shares had thus been forfeited, and who was, by another article of association, restricted to a claim for damages for the irregular forfeiture, was entitled to prove in the liquidation for the damages, and was entitled so to prove his claim in competition with other creditors of the company; and he also held that a clause of the Companies' Act, 1862, which declared that "no sum due to any member of a company, in his

character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company payable to such member in case of a competition between himself and any other creditor," etc., had no application to a claim of that kind.

PRACTICE—COSTS—SEPARATE SUITS FOR SIMILAR CAUSES OF ACTION.

In re Metropolitan Coal Association, 45 Chy.D., 606, turns upon a question of costs; the point was this, two separate actions against the same defendant were conducted by the same solicitor, and were supported mainly by the same evidence; there had been no order or agreement made that the result of one should govern the other, and Kekewich, J., decided that the plaintiff in each case was entitled, on the taxation of his costs of the action, to have his own action treated as entirely distinct and independent of the other, and to have the same allowances as if the two actions had been conducted by separate solicitors and counsel, except as regards attendances or other matters which were, or ought to have been done at the same time in both cases. Thus, the costs of copies of documents and correspondence may properly be charged for in both actions if made; and no abatement can properly be made in counsel fees in either action merely because the same counsel are employed in both.

COSTS—FUND SECURED BY ACTION OF PUISNE INCUMBRANCER—PRIORITY FOR COSTS.

The only point for which it appears to be necessary here to draw attention to *Batten* v. *Dartmouth Harbor Commissioners*, 45 Chy.D., 612 is the disposition of the question of costs. The action was instituted by chargees of a harbor trust property, at whose instance a receiver had been appointed, and the moneys received by him had been paid into court. Inquiries were directed as to encumbrances, some were reported to be prior, and others subsequent to the plaintiffs'; and it was held by Kekewich, J., that the plaintiffs were entitled, in priority to the other incumbrancers, to be paid out of the fund their costs of the action so far as the other parties had had the benefit of it in securing the fund in court, and ascertaining and determining the rights of the parties.

PRACTICE—ACTION FOR ACCOUNT AGAINST LICENSEE OF PATENTEE—DISCOVERY.

Ashworth v. *Roberts*, 45 Chy.D., 623, was an action by a patentee against the defendant, his licensee, for an account. The defendant, besides denying user of plaintiff's patent, set up a plea that the process used by him was secret; and the question was to what extent the plaintiff was entitled to have discovery as to the extent to which alone, or in combination with his own, he had used the plaintiff's process. Kekewich, J., decided that in such a case the plaintiff is entitled to examine the defendant with reference to the plaintiff's specification, taking it step by step, and asking whether and to what extent he has used this or that particular process claimed in the specification, but that the examination must be so conducted as not to compel the defendant to disclose his secret process.

TENANT FOR LIFE—REMAINDERMAN—LOSS ON INVESTMENT OF TRUST FUND—APPORTIONMENT OF LOSS.

In re Foster, Lloyd v. *Carr*, 45 Chy.D., 629, a trust fund of £7535 had been invested on a mortgage. The trustees had entered into possession of the mortgaged premises, but the rents were insufficient to keep down the interest. One of the *cestui que trust* was a tenant for life, at whose death the interest in arrears on the mortgage amounted to £3400. Shortly after the death of the tenant for life the mortgaged property was sold and only realized £7005. Kay, J., was called on to determine how the loss was to be borne, and he held that it must be apportioned between the representatives of the tenant for life and the remainderman, in the proportion which the original capital of £7535, plus interest thereon at five per cent. from the time of the death of the tenant for life to the date of the sale, bore to the aggregate amount of mortgage interest (less income tax) which the tenant for life would have received had it been regularly paid, the executors of the tenant for life giving credit for what they had actually received.

WILL—REPUBLICATION OF WILL—MARRIED WOMAN—WILL EXECUTED DURING COVERTURE—TESTAMENTARY PAPER EXECUTED AFTER HUSBAND'S DEATH.

In re Smith, Bilke v. *Roper*, 45 Chy.D., 632, raised a point which Stirling, J., declared was not covered by authority. A married woman had made a will during coverture; after her husband's death she executed a testamentary paper not in anyway referring directly or indirectly to her previous will, and the question was whether this latter testamentary paper was a republication of the former will so as to make it speak from the date of republication. Although on the authorities it is clear that a codicil would have had that effect, yet Stirling, J., was of opinion that an independent testamentary paper not in anyway referring to the former will would not have that effect; and he therefore held that as to the property which the testatrix was incompetent to dispose of by will during her coverture there was an intestacy. To use the learned judge's words: "In order that republication may be implied, something must be found in the second testamentary paper from which the inference can be drawn that when making and executing it the testator considered the will as his will," *i.e.*, we presume, the first will.

APPEAL—JURISDICTION OF THE COURT OF APPEAL—HABEAS CORPUS—ORDER DISCHARGING PRISONER.

Cox v. *Hakes*, 15 App. Cas., 506, although a case arising out of an ecclesiastical suit, establishes nevertheless an important point of general interest. The House of Lords having determined that where a court of first instance discharges a prisoner from custody on a *habeas corpus*, the adjudication is final and conclusive, and no appeal lies from the decision to the Court of Appeal; whereas if a discharge be refused, it would seem that an appeal would lie in a civil action (see *Reg.* v. *Bernardo*, 23 Q.B.D., 305), though not in a criminal proceeding (see *ex parte Woodhall*, 20 Q.B.D., 832). This case is an authority upon the construction of Ont. Jud. Act, s. 43.

WILL—CONSTRUCTION—SURVIVOR AND SURVIVORS—INTESTACY.

King v. *Frost*, 15 App. Cas., 548, is the only other case to be noticed. This case is an appeal to the Judicial Committee from the Supreme Court of New South Wales upon the construction of a will whereby a specified portion of the testator's real estate, and an equal share of the residue, was devised to each of the testator's five sons for life, with remainder to their respective children, with cross remainders between them, and the will declared: "I do hereby declare that in case any or either of my said five sons shall depart this life without leaving any child or children him or them surviving, then I devise the share or shares of such son or sons unto and equally between the survivors or survivor of them my said sons and their respective heirs as tenants in common in tail." Joseph the eldest son, died without issue; then three others of the brothers died leaving issue; William, the youngest son, died last, leaving no issue; and the question was, upon his death who became entitled to the share devised to him for life? The Judicial Committee affirmed the court below in holding that on the death of William his share was undisposed of by the above clause of the will: but their Lordships were of opinion that on a point to which the attention of the court below had not been directed the judgment should be varied; this point was, that while as to the share of the residue there was an immediate intestacy, yet as to the specifically devised property, the remainder or reversion expectant on William's death without issue was caught by the residuary devised and passed under it. The following declaration of the rights of the parties was therefore made by their Lordships, viz.: "That on the death of William without issue, so much of his share as consisted of the testator's residuary real estate was undisposed of by the will, but that so much thereof as consisted of specifically devised real estate passed by the residuary devise, and stood limited upon trust for the five sons of the testator as tenants in common for life with remainders over as in the will mentioned; and that by reason of the death of Joseph without issue, his one-fifth share therein devolved upon his four brothers who survived him as tenants in common in tail; and that in the events which happened, William's one-fifth share, having already passed as residue, was undisposed of by the will." The result of the variation would appear to be, that there was an intestacy only as to William's share so far as it was residuary estate; and consequently as regards his specific share only that part of it to which he became entitled as part of the residue, was undisposed of by the will.

Notes on Exchanges and Legal Scrap-Book.

A CORRESPONDENT sends in the following item of information. As he is a barrister and gives his name, we have no reason to doubt the correctness of his information. He says that "a man was recently arrested in an unincorporated village in Western Ontario for indecent exposure and using profane language. The township where the offence was committed has a by-law regulating such

offences; and when the case came up for hearing, a subpœna was served upon the clerk to produce the original by-law; he, for some reason, was unable to do so, and of course the case was dismissed; but the J.P. imposed the costs of the prosecution upon the township, and, in default of payment, ordered the imprisonment of the Reeve for ten days. The conviction is just filed in the office of the Clerk of the Peace." The suggestion is a valuable one, and, if it could be carried out in some other cases that might be referred to, would doubtless produce beneficial results. It was, perhaps, a little hard on the Reeve, but there is no rose without its thorns, and those who are high in position should remember that "Uneasy lies the head that wears a crown."

SOME MEDICO-LEGAL POINTS—HYPNOTISM.—A demonstration showing how hypnotism may be abused by causing the commital of a crime by suggesting the deed to a subject, and also how to detect the imposture, was recently given by Dr. George Andre, at Manchester. Two subjects were taken—a man of middle age and a youth—and after being hypnotised the former was told to steal a hat, to be done a minute after being awakened, and he accordingly, acting under the impulse, did so. In the pocket of the hypnotised youth was placed an empty revolver, and it was suggested he should murder his fellow-subject at the other end of the stage. Getting on his hands and knees the boy crawled round to the man, pounced on him and flung him to the ground. On being afterwards examined by a deftly-formed court of justice, judge and jury, he explained that he bore no grudge against the man beyond a suddenly conceived dislike. A real crime, it was stated, could be detected if it were suggested while the accused was under the influence of hypnotism.—*The Law Journal.*

QUALIFICATIONS FOR THE BAR.—A well-known weekly journal recently sent one of its representatives to interview Sir Charles Russell, Q.C. Some useful advice may be gleaned from the result. With regard to the qualifications that should be possessed by a young man entering at the bar, Sir Charles Russell considers that sound health should be the first thing, and a real love of the profession the next. A man who has not a love of the work will be sure to find it intolerable drudgery. But a young man is not likely to have a real liking for the bar unless he is well fitted for it. The characteristics he should possess in order to fit him for it are good common-sense business faculties. Who was it—Swift—who said that a young man who isn't good-looking enough for the army, and has too much ability for the Church, is sent to the bar? There is some truth in that, and the consequence is that there is a greater amount of ability at the bar than in either of the other professions; but much of it is ability of the wrong kind. The profession is very much over-crowded, but for those who have the requisite qualifications there is still plenty of room. Sir Charles Russell next enunciated a very simple rule which he considered was really the great secret of success in making a jury grasp the facts of a case. However intricate and com-

plicated it might be, if the facts of a case were laid before the jury in the order of their dates, all would become plain sailing. That was the rule. It appears, therefore, that a man who is to succeed at the bar should have a power of dealing with facts in a common-sense business-like way. He should have a quick eye for the strong point in his case, and he should have the well-balanced judgment that will enable him to see the strength of his opponent's position as well as his own. He should see at a glance his own strong point, and should concentrate all his power upon it; and he should recognise the strong point of his opponent, and prepare the jury for it. We commend these very simple rules to the rising generation of barristers; their excellence is vouched for and exemplified by the experience and lofty status of the eminent advocate who has uttered them.—*The Law Journal.*

EASEMENTS OF AIR.—The law of easements has recently been carried further by a decision of Baron Pollock (*Bass* v. *Gregory*), who has decided that there may be an easement by prescription to a current of air in a defined channel. It has long been settled law that there is a distinction between water flowing in streams, whether on the surface or underground, and that which flows in undefined channels percolating through the soil or running over the surface of the land. In the case of a stream, every proprietor on its banks has a right to claim that it shall run on in its accustomed course. No one has a right to stop or divert a stream so as injuriously to affect one who has enjoyed the stream in another part of its course. Further, easements may be acquired over streams, so that by grant or prescription one man may have the right to stop a stream to the damage of another, or to increase the flow of water in a stream: (*Bealey* v. *Shaw*, 6 East, 208; *Carlyon* v. *Lovering*, 1 H. & N., 797). Similarly an easement may be acquired to discharge water over another's land by an artificial water course: (*Hill* v. *Cock*, 26 L.T. Rep. N.S., 185). But in the case of water percolating in undefined channels no such rights are recognized. Although from time immemorial one has had the benefit of such a flow of water from his neighbor's soil, no grant can be presumed; and if the neighbor chooses by sinking a well to put an end to the flow, the damaged party cannot complain. "The presumption of a grant only arises where the person against whom it is to be raised might have prevented the exercise of the subject of the presumed grant; but how could he prevent or stop the percolation of water?" (*Chasemore* v. *Richards*, 8 H.L. Cas., 349). As in the case of water, so in that of air. Air does not commonly flow in defined channels, and it was decided in *Webb* v. *Bird* (13 C.B.N.S., 841) that there cannot be an easement to have a flow of air over one's neighbor's land. Although the plaintiff had for a great number of years had the uninterrupted enjoyment of a free flow of air over his neighbor's land, inasmuch as it would have been practically impossible to prevent such a flow no presumption was raised that he enjoyed it by grant, and so he could not complain when his neighbor built so as to interfere with the free current of air. In the recent case of *Bass* v. *Gregory* (25 Q.B.D., 481), however, a dispute arose about a current of air in a defined underground channel. The plaintiff had a cellar on his land which was

ventilated by means of a shaft cut through the rock into a disused well upon the defendant's land. There was therefore a current of air passing through the shaft and up the well, and it was the right to a continuance of the enjoyment of this current of air which was in question. This current of air might have been easily stopped by the defendant, and as there was evidence from which it was inferred that the defendant knew of its existence, and he had allowed it to go on undisturbed for many years, Baron Pollock (without deciding whether it was an easement which might have been claimed under the Prescription Act) held that it was a case in which the court ought to presume a lost grant in favor of the plaintiff to the enjoyment of the current of air through the defendant's land. This case completes the analogy between easements of air and of water as suggested in *Webb* v. *Bird* and other cases.—*The Law Times.*

Reviews and Notices of Books.

The Law of Bills of Exchange and Promissory Notes, being an Annotation of the "Bills of Exchange Act, 1890." By Edward H. Smythe, one of Her Majesty's Counsel. pp. xxxii. 216. Toronto: The J. E. Bryant Company (Limited).

A short time ago we had occasion to review the full and comprehensive work of Mr. Hodgins on this Act, which, as was then remarked, has a special importance as being a successful attempt to apply the principle of codification to the "wilderness of single instances" in a leading branch of Mercantile Law. The plan of Dr. Smythe's work does not include so full a discussion and illustration of principles, but it seems to us to fulfil in large measure the design of the author, which was to present the ordinary practitioner with an edition of the Act containing, in brief compass and convenient form, such explanations as would bring out clearly its meaning, and indicate its agreement with or divergence from the law as generally understood hitherto.

The foundation for a thorough comprehension of a new Act is a due appreciation of the alterations effected by it. With this view the author has, at the outset, grouped concisely the changes introduced, in order to set forth the particulars in which the former law is varied. At pp. 2, 3, and 4, the sections and subsections which are new are enumerated in detail and in a form convenient for reference. Special attention is directed to sections 19 (2), 52, and 86, which change the law, as far as Ontario and Prince Edward Island are concerned, and abolish the distinction between bills and notes payable generally and at particular places, and make the addition of the restrictive words "only, and not otherwise or elsewhere," hereafter unnecessary for that purpose.

Care has also been taken in the notes to each section to refer to the corresponding section of the Imperial Act of 1882, which forms the basis of the Canadian Act, and to indicate the difference between the two where any exists,

so that practitioners may know how far the authority of English decisions and text-books is applicable in this country.

So far as we have been able to examine the opinions advanced by Dr. Smythe on the construction of those provisions of the Act which are new, we are glad to find ourselves in general agreement with him. It may be mentioned in this connection that in his notes to Sec. 10 (1) and Sec. 14 (3), he agrees with the view already expressed in THE CANADA LAW JOURNAL, that under the Act bills payable "at sight" are excluded from the definition of demand bills, and are therefore entitled to days of grace.

Under the title of "Crossed Cheques" at p. 142, a detailed and lucid explanation is given of the system, the introduction of which into this country is one of the most prominent features in the new Act. So far as we are aware, customers of the banks have not as yet availed themselves to any great extent of these new provisions for their benefit; but this fact only renders it the more desirable that every possible aid should be given the public and the profession towards the due comprehension of a system which has been found so advantageous elsewhere. The limits which the author's design prescribed for his work made it incumbent on him not to indulge more freely than was strictly necessary in the luxury of citing and discussing authorities, and we accordingly find that he has confined himself to the comparatively moderate number of 500 or thereabouts. These have, however, been carefully selected out of a much greater number of decisions, many of which have been rejected as being henceforth inapplicable, or as having a merely historical interest which would not warrant their citation in so small a volume.

The arrangement of the work appears to be, on the whole, convenient and satisfactory; the annotations being interspersed throughout the volume immediately after the section or subsection to which they relate, and as a part of the text, obviating the use of reference notes, and enabling the reader at a glance to refer to both without the inconvenience of turning to different pages. Cases cited are entered in foot-notes, an obviously more convenient mode than placing them in the context, where they both interrupt the sense and do not so easily catch the eye when resorted to for reference. It only remains to add that the work is provided with a good index and a useful appendix of forms, in addition to those given in the schedule to the Act. We feel it incumbent upon us to add a word as to the manner in which the publishers (The J. E. Bryant Company, Ltd.) have done their part. As our readers are aware, they are the publishers of this journal; but we do not think that this fact need hinder us from remarking upon what every intelligent purchaser of this little book will see for himself, the excellence of the paper, the size and clearness of the type, and the general freedom of the text from printers' errors, in all of which particulars it will compare favorably with any Canadian publication that we have seen. They have certainly done their part of the work excellently well; and though this is their first venture in this line, we doubt if it will be their last.

Correspondence.

THE COUNTY JUDGES AND THEIR LAW.

To the Editor of THE CANADA LAW JOURNAL :

SIR,—In a late number of THE LAW JOURNAL there appeared a *jeu d'esprit* of one of our worthy Chief Justices, who, in commenting on the statute that enables County Judges to act in other counties than their own, remarked that it was rather hard for the people of one county to have a judge coming in among them "whose law they did not understand."

The learned Chief, who rather enjoys a combat, was just then having a tilt at the Attorney-General and his Counties' Grouping Act, and was hitting at him over the backs of the County Judges.

There was some excuse formerly for a diversity in the decisions of the County judges. They had two masters to serve, and high authority tells us it is very difficult in such cases to please both. Their judgments could be carried on appeal either to the Courts of Queen's Bench or Common Pleas, at the option of the appellant; and as these courts sometimes interpreted the same law differently, the poor County Judges had a pretty hard time of it. In fact the two superior courts did not, at all times, appear to understand the law of each other.

For example, the County Judge of York decided that an execution put in the sheriff's hands prior to the registration of a bill of sale would cut out the bill of sale, though the latter were registered within the five days after it was executed. This decision was appealed to the Court of Queen's Bench, which reversed it, holding that the bill of sale took precedence. The same question again arose on precisely the same facts, and the County Judge, following the judgment of the Queen's Bench, held that the bill of sale took priority over the execution. His judgment was thereupon appealed to the Common Pleas, and the appeal was allowed, that Court deciding that the execution had priority, and holding, in effect, that the Court of Queen's Bench did not understand the law. See *Feehan* v. *Bank of Toronto*, 19 U.C.R., 474, and *Feehan* v. *Bank of Toronto*, 10 C.P., 32.

Thus whichever way the County Judge decided, his decision could be reversed by one of these courts, and no appeal lay from their decisions on county court appeals. At length the Legislature, by the Act 26 Vict., c. 46, broke the deadlock, and decided which of these courts understood the law, and which did not.

The County Judges have had a better time since the appeal from their judgments has been taken from the Queen's Bench and Common Pleas, and given to the Court of Appeal. Now, when the judges of the latter court reverse the judgment of a County Judge, as they sometimes do, he can comfort himself with the reflection that they also occasionally upset even the decisions of our worthy Chief Justice, when they cannot understand *his* law.

AMICUS CURIÆ.

[*Habet!*—"One for the County Judge."—"The retort courteous."—"Honors are easy."—ED. L. J.]

DIARY FOR FEBRUARY.

1. Sun.....*Sexagesima.* Sir Edw. Coke born, 1552.
2. Mon.....Hilary term commences. Criminal Assizes, Toronto. H.C.J., Q.B.D. and C.P.D. Sittings begin. County Court Non-Jury Sittings in York.
6. Fri.....W. H. Draper, 2nd C.J. of C.P., 1856.
8. Sun.....*Quinquagesima.*
9. Mon.....Union of Upper and Lower Canada, 1841.
10. Tues....Canada ceded to Great Britain, 1763.
11. Wed.....Ash Wednesday. T. Robertson appointed to Chy. Div., 1887.
14. Sat.....Hilary Term and High Court of Justice Sittings end. Toronto University burned, 1890.
15. Sun.....*1st Sunday in Lent.*
17. Tues.....Supreme Court of Canada sits.
19. Thur.....Chancery Division High Court of Justice sits.
22. Sun.....*2nd Sunday in Lent.*
24. Tues.....St. Matthias.
27. Fri.....Sir John Colborne, Administrator, 1838.
28. Sat.....Indian Mutiny began, 1857.

Reports.

ONTARIO.

WINDING-UP ACT.

[Reported for THE CANADA LAW JOURNAL.]

RE CENTRAL BANK.

BURK'S CASE.

Bank Act, ss. 20 and 29—Shareholder and Contributory—Promissory note for stock subscription—What is a valid transfer of bank shares—Costs.

A promissory note given for the payment of a percentage on shares subscribed for is not money, but only an engagement to pay money at a future time.

Therefore the giving of a promissory note, which was not paid at the time of the winding-up of a bank, is not a compliance with a statutory condition requiring the payment of a percentage on the shares subscribed for, and payable at the time of subscription, or within thirty days thereafter. And the person giving such promissory note, if he ever validly acquired any shares in the capital stock of the bank, forfeited the same by non-payment within the statutory time, and was not, therefore, liable, in the winding-up proceedings, as a contributory in respect of such shares.

A company is the creature of the law, and can act in no other manner than as the law creating it prescribes, and is not permitted to violate or evade the rules which legislature has prescribed in the public interest and for the protection of the creditors of such company.

A party, though successful, making a defence not warranted by law, may not be allowed the costs of such defence.

[MASTER-IN-ORDINARY, Sep. 1, 1890.

The facts of the case are fully stated in the judgment.

W. R. Meredith, Q.C., and *Hilton*, for the liquidators.

S. H. Blake, Q.C., and *Smellie*, for Burk.

MR. HODGINS, Q.C., MASTER-IN-ORDINARY: This is an application by the liquidators of the Central Bank to place the respondent, D. F. Burk, on the list of contributories in respect of fifty shares of the capital stock of the bank, and for an order to stay the issue of cheques for dividends due to him in respect of his admitted claims as a creditor.

It appears that the respondent, on the 13th December, 1884, signed the stock book, agreeing to take fifty shares at $100 per share, and that he then gave to the cashier of the bank a promissory note for $500 payable on demand, being for the ten per cent. which s. 20 of the Bank Act requires to be paid at the time of subscription or within thirty days thereafter. This promissory note has not been produced, and is said not to have been among the assets of the bank when taken charge of by the liquidators. Its non-production by the bank may be held to be evidence of payment or discharge, for the maker paying a note has a right to the possession of the instrument for his own security, and as his voucher and discharge *pro tanto* in his account with the holder: *Hansard* v. *Robinson*, 7 B. & C. 94.

The case seems to be governed by the construction to given to the proviso to s. 20 of the Bank Act, which reads as follows: "No share shall be held to be lawfully subscribed for unless a sum equal to at least ten per centum on the amount subscribed for is actually paid at the time of or within thirty days after the time of subscribing."

The canon of statutory construction, where negative words are used in a statute, is that negative words make the statute imperative, while words in the affirmative may make it directory: *Rex* v. *Leicester*, 7 B. & C., 12. And as a corrollary to this comes the rule that an absolute (or imperative) enactment must be obeyed or fulfilled exactly; but it is sufficient if a directory enactment be obeyed or fulfilled substantially: Per Lord Coleridge, C.J., in *Woodward* v. *Sarsons*, L.R. 10 C.P. 746. And if I were without any guiding rules of interpretation of the policy of the statute, which is conceded to be for the protection of the public interest, I would be compelled to give effect to the policy of the legislature, even if I had doubt as to the meaning of the words used: *Broom's Legal Maxims*, (*ibd.*) 539.

But the construction to be given to the proviso referred to has been judicially determined in the case of *Re Standard Fire Insurance Co.*, 12 App., R. 486.

There, under an analogous provision in an Ontario Act, it was held that persons who had subscribed for stock in that company, but who had not paid the ten per cent. within the time limited by the charter, had not become shareholders, and could not be made contributories under the Winding-up Act.

But it is contended that the condition in the Bank Act has been waived by the respondent in giving his promissory note for the ten per cent. payable on demand, and that the case in the Court of Appeal does not apply.

A promissory note is defined by the Bills of Exchange Act as "an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or bearer"; and the practical question here is whether such a note can be held to be a substantial compliance with the provisions of of the Bank Act as to payment. No decision in our own or in the English courts has been cited in support of this proposition; but I find ample authority and sound principles in the jurisprudence of the United States to guide me as to the right judgment on the question raised.

In *Leighty* v. *Susquehanna Turnpike Co.*, 14 Sergt. and Rawle, 434 (1826), the court, in construing an Act requiring payment in money on subscribing for shares, said: We are of opinion that the giving of a promissory note for the sum which the legislature required to be paid in money at the time of the subscription is not money. A promissory note is not money, only an engagement to pay money at a future time, which perhaps may never be complied with. If such notes were to be taken as money, the policy of the law, which required a payment in money, might be easily defeated. A company, being the mere creature of law, can act in no other manner than as the law prescribes; and cannot be permitted to enter into a contest with the legislature as to the policy or expediency which that legislature has prescribed in the public interest, and for the protection of its creditors.

In *Crocker* v. *Crane*, 21 Wend. (N.Y.) 211 (1839), the Act required a payment of two dollars per share at the time of the subscription for stock, but the directors received endorsed cheques for the subscription. It was held that such a proceeding was a mere evasion of the statute, and that it was a substitution of individual credit for the cash payment, and that a corporation so established never came into legal existence.

In *People* v. *Troy House Co.*, 44 Barb. (N.Y.) 625 (1865), under a similar provision, the learned judge said: "The clear mandate of the legislature must be obeyed. Whenever a substitute for money is tolerated, it is difficult to see why any such substitute which can come under the denomination of property may not be employed; and it necessarily leads to a troublesome examination to ascertain the true value of the proposed substitute. The statute has foreclosed any such device or transaction. Persons interested in the credit and solvency of the corporation, whether as creditors or stockholders, are entitled to this degree of protection, to wit, that the capital shall be originally paid in money. I know of no authority for dispensing with this plain provision of the law."

There are also the cases of *Henry* v. *Vermillion, etc., R. Co.*, 17 Ohio, 187 (1848); *Neuse River Co.* v. *Newbern*, 7 N.C. Jones, 275; and *Wood* v. *Coosa, etc., R. Co.*, 32 Ga., 273, and others to the same effect.

But notes so given for the preliminary subscription of stock are not void, notwithstanding the statutory condition as to membership in the company; but are enforceable by the company to which they have been given.

In *Pine River Bank* v. *Hodsdon*, 46 N.H., 114, an action was brought by the bank to recover a note given for a stock subscription, which the statute required should be paid in money. The defendant set up the provisions of the Act requiring payment in money, and contended that his note was void; but it was held that the illegality of the transaction was no defence to the action by the bank on the note.

So in *McRae* v. *Russell*, 12 Ired. (N.C.) 224, in a similar action, the learned judge said: "It is true the Act says his subscription was void unless he paid the first instalment. That only proves that no recovery could be had *on the subscription.*" But the court held that the note was not void, and that the payee could recover the amount of it.

There are, however, cases *contra*, such as *Thorp* v. *Woodhull*, 1 Sand. Ch. 411 (1844), where a cheque had been given on subscribing for stock, but was never fully paid; and *Philadelphia, etc., R. Co.* v. *Hickman*, 28 Pa. W. 318 (1857), where it was held that, after the complete incorporation of a company, with similar statutory conditions to those referred to, the company might accept payment for stock in labor or materials or in damages which the company was liable to pay, or in any other liability of the corporation, provided there was good faith. But I prefer the law of the prior cases cited, as I find their general reasoning more in harmony with what I believe to be sound law, and also more consistent with the decision of the Court of Appeal in the case cited above.

This is not a proceeding to enforce payment of the promissory note, for there is no jurisdiction in this tribunal under the Winding-up Act to give judgment on independent claims of the bank against its debtors; and a reasonable presumption may be drawn from the evidence in this case that the promissory note was given up or destroyed by the cashier.

The conclusion arrived at is that the giving of a promissory note for the ten per cent. required by the Bank Act to be paid in money, was not a compliance with the statutory condition; and that the respondent, therefore, if he ever validly acquired any shares in the capital stock of the bank, forfeited the same by non-payment of the percentage within the statutory time, and that he is not therefore now liable as a contributory; the motion of the liquidators must therefore be refused.

As to costs, the Bank Act, in equally negative and imperative words to those I have quoted as to the subscription, provides (s. 29) that no assignment or transfer of shares shall be valid unless it is made, and registered, and accepted by the person to whom the transfer is made, in a book or books kept by the directors for that purpose. No transfer of the respondent's shares can be identified in the books of the bank; but the respondent has sought by parol evidence to fit an alleged transfer of his fifty shares on to some one of the many transfers by the cashier which appear in the bank transfer-book. A contract of transfer of shares under the Bank Act as well as a contract of guarantee under the Statute of Frauds, or a contract in a bill of exchange or promissory note, must be in writing, and must contain on its face the evidence of its own identification of the parties to it; and parol evidence to identify other persons as parties to any such contract is inadmissible. The respondent has sought by parol evidence to get rid of the statutory conditions which I have cited. I can only say in the words of Lord Blackburn in *Steele* v. *McKinlay*, 8 App. Cas., 768, referring to a statute quoted: "It was thought by the legislature that there was danger of contracts of particular kinds being established by false evidence, or by evidence of loose talk, when it never was really meant to make such a contract." Nearly all the evidence on behalf of the respondent in this case is an attempt to get rid of the statutory form of transfer, or to induce a finding that some one of the many transfers made by the cashier in his own name, or as an alleged trustee fit on to his shares, is inadmissible.

No transfer of shares, however clearly it may be proved by parol evidence, is valid unless supported by the statutable evidence alone. The respondent, therefore, having rested his defence on evidence which is inadmissible, and having made no inquiry about his liability on his note or transfer of shares since 1880, has presented no merits which entitle him to costs.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Nova Scotia.] [Oct. 30.

HALIFAX STREET RAILWAY *v.* JOYCE.

Appeal—Judgment on motion for new trial—R.S.C., c. 135, s. 24 (d)—Construction of—Non-jury case.

Section 24 (*d*) of the Supreme Court Act (R.S.C., c. 135), allowing an appeal "from the judgment on a motion for a new trial, on the ground that the judge has not ruled according to law," does not give the Supreme Court jurisdiction in a case tried by a judge without a jury, but is applicable to jury causes only, the expression in such section, "that the judge has not ruled according to law," referring to the directions given by a judge to a jury.

GWYNNE, J., *dubitante.*

Appeal quashed with costs.

Russell, Q.C., for the appellant.

Newcombe for the respondent.

Nova Scotia.] [Nov. 10.

KEARNEY *v.* OAKES.

Notice of action—Employer of railway department—Contractor for building government railway—Government Railway Act, 1881 (44 Vict., c. 25), s. 109.

Section 109 of the Government Railways' Act, 1881, provides that "No action shall be brought against any officer, employer, or servant of the Department" (of Railways and Canals) "for anything done by virtue of his office, service, or employment, unless within three months after the act committed, and upon one month's previous notice thereof in w iting."

Held, reversing the judgment of the Supreme Court of Nova Scotia (20 N.S. Rep., 30), RITCHIE, C.J., and GWYNNE, J., dissenting, that a contractor with the Minister of Railways, as representing the Crown, for the construction of a branch to the Intercolonial Railway, is not an employee of the Department within the meaning of this section, and is not entitled to notice of an action to be brought for a trespass committed by him in the execution of his contract.

Appeal allowed with costs.

T. J. Wallace for the appellant.

R. L. Borden for the respondent.

Ontario.] [Nov. 10.

MACDOUGALL *v.* THE LAW SOCIETY OF UPPER CANADA.

Solicitor—Practising without certificate—Nominal member of firm—Professional advertisement.

The firm of M.M. & B., barristers and solicitors, published an advertisement in newspapers which stated that the firm consisted of three partners, W.M., F.M., & N.B., and the three names appeared also on the professional cards and letter headings used by the firm. W.M. not having taken out a certificate of the Law Society, entitling him to practise as a solicitor, proceedings were instituted to have him suspended from practice for three months, unless the fees to the society and a penalty of $40 were paid. In these proceedings it was shewn by the evidence of F.M., taken under an order for examination, that W.M. was not, in fact, a partner in the said firm; that an agreement of partnership had been entered into between F.M. and B., who shared all the profits and paid all the expenses of the firm; that no writs were issued in the name of the firm, but were issued in the name of B., and all proceedings in the courts were carried on in B.'s name, and that W.M. was not, at first, aware that his name would appear as an ostensible partner, though he made no objection to it afterwards. As against this, the only act of practising as a solicitor by W.M., shewn by the Society, was that the name of the firm was indorsed on certain papers filed in the Ontario courts in suits with which the firm was concerned.

Held, reversing the judgment of the Court of Appeal (15 Ont. App., 150), and of the Divisional Court (13 O.R., 204), that W.M. did not practise as a solicitor in the courts of the province within the meaning of R.S.O. (1877), c. 140, s. 21, and that he was not estopped, by permitting his name to be published as a member of a firm in active practice, from shewing that he was not, in fact, a member of such firm.

Appeal allowed with costs.

Belcourt for the appellant.

Marsh, Q.C., for the respondent.

New Brunswick.] [Nov. 10.

PHŒNIX INSURANCE CO. *v.* MCGHEE.

Marine insurance—Action for total loss—Right to recover for partial loss—Findings of jury.

A vessel was insured for a voyage from St. John's, Newfoundland, to a coal port in Cape Breton, and was stranded on the Cape Breton coast at a place where there were no inhabitants and no facilities for repairing any damage she may have suffered. The captain made his way through the woods to a place where he could telegraph to the owners, from whom he received instructions to use every means to get the vessel off as she was only half insured, and to communicate with the owners' agent at Sydney. In response to a telegram to the agent, a tug was sent to the place where the vessel was, and the master of the tug, after examining the situation of the vessel, refused to attempt to pull her off the rocks. About a fortnight later one of the owners came to the place and caused a survey to be held on the vessel, and after receiving the surveyor's report he had her sold at auction, realizing only a trifling amount.

In an action on the insurance policy for a total loss, the only evidence as to the loss was

that of the captain of the vessel, who stated what the tug had done, and swore that, in his opinion, the vessel could not have been got off the rocks. The jury found, in answer to questions submitted to them, that the vessel was a total loss in the position they considered she was in, and that a notice of abandonment would not have benefited the underwriter. A verdict was given for the plaintiff, which the court *in banc* sustained.

Held, per RITCHIE, C.J., and STRONG, J., that the jury having found the vessel to be a total loss, and that finding being one that reasonable men might have arrived at on the evidence, it should not be disturbed by an appellate court.

Per TASCHEREAU, GWYNNE, and PATTERSON, JJ., that as the vessel existed in specie for some time after she was stranded, and there being no satisfactory evidence that she could not have been got off and repaired, there was no total loss.

Per RITCHIE, C.J., STRONG, and PATTERSON, JJ., that if the verdict for a total loss could not stand there should be a new trial, the plaintiff being entitled in this form of action to recover as for a partial loss.

Appeal allowed and new trial ordered.

C. A. Palmer for the appellant.

Barker, Q.C., for the respondent.

Ontario.]

GODSON *v.* CITY OF TORONTO ET AL.

Prohibition—Restraining inquiry ordered by city council—R.S.O. (1887), c. 184, s. 477—Functions of county court judge.

The Council of the City of Toronto, under the provisions of R.S.O. (1887), c. 184, s. 477, passed a resolution directing a county court judge to inquire into dealings between the city and persons who were or had been contractors for civic works with a view of ascertaining in what respect, if any, the system of the business of the city in that respect was defective, and if the city had been defrauded out of public monies in connection with such contracts. G., who had been a contractor with the city, and whose name was mentioned in the resolution, attended before the judge, and claimed that the inquiry as to his contracts should proceed only on specific charges of malfeasance or misconduct, and the judge, refusing to order such charges to be formulated, he applied for a writ of prohibition.

Held, affirming the judgment of the court below, GWYNNE, J., dissenting, that the county court judge was not acting judicially in holding this inquiry; that he was in no sense a court and had no power to pronounce judgment imposing any legal duty or obligation on any person, and he was not, therefore, subject to control by writ of prohibition from a superior court.

Held, per GWYNNE, J., that the writ of prohibition would lie and in the circumstances shewn it ought to issue in this case.

Appeal dismissed with costs.

McCarthy, Q.C., and *T. P. Galt*, for appellant.

Aylesworth for respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Full Court.] [Dec. 31.

REGINA *v.* MILFORD.

Criminal law—Fortune telling—9 Geo. II., c. 5.

The statute 9 Geo. II., c. 5, is in force in this province. By the statute the mere undertaking to tell fortunes constitutes the offence; and a conviction was affirmed where it was obtained upon the evidence of a person who was not a dupe or victim, but a decoy.

J. R. Cartwright, Q.C., for the Crown.

Murdoch for the prisoner.

Full Court.] [Dec. 31.

REGINA *v.* POPPLEWELL.

Criminal law—Threatening letter—Accusation of abortion—"Not less than seven years," meaning of.

A crime punishable by law with imprisonment for not less than seven years means a crime the minimum punishment for which is seven years; and as no minimum term is prescribed for the crime of abortion, sending a letter threatening to accuse a person of that crime is not a felony within the meaning of R.S.C., c. 173, s. 3.

J. R. Cartwright, Q.C., for the Crown.

George Lindsey for the prisoner.

Full Court.] [Dec. 31.

REGINA *v.* PETRIE.

Criminal law—Trial of prisoner by judge without jury—Right of judge to view locality of offence—Absence of prisoner—Question of law arising on trial.

The prisoner was tried without a jury by a county court judge, exercising jurisdiction under the Speedy Trials Act, upon an indictment for feloniously displacing a railway switch. After hearing the evidence and the addresses of counsel, the judge reserved his decision. Before giving it, having occasion to pass the place, he examined the switch in question, neither the prisoner or any one on his behalf being present. The prisoner was found guilty.

Held, that there was no authority for the judge taking a "view" of the place and his so doing was unwarranted; and even if he had been warranted in taking the view, the manner of his taking it, without the presence of the prisoner or of anyone on his behalf, was unwarranted.

Held, also, that the question whether the judge had the right to take a view was a question of law arising on the trial, and was a proper question to reserve under R.S.C., c. 174, s. 259.

Dymond for the Crown.

Middleton for the prisoner.

Div'l Ct.] [Dec. 31.

CANN *v.* KNOTT.

Execution—Free grants and homesteads—Exemption from execution—Interest of original locatee as mortgagee after alienation.

The judgment of BOYD, C., 19 O.R., 422, affirmed on appeal.

Foy, Q.C., for the defendant, Elizabeth Knott. *D. Urquhart* for the plaintiff.

Div'l Ct.] [Dec. 31.

WESTERN ASSURANCE CO. *v.* ONTARIO COAL CO.

Insurance, marine—General average contribution—Attempt to rescue vessel and cargo—Common danger—Average bond—Adjustment—Expenditure—Liability of owners of cargo.

The judgment of BOYD, C., 19 O.R., 462, affirmed on appeal.

Osler, Q.C., and *A. W. Aytoun-Finlay*, for the plaintiffs.

Delamere, Q.C., and *D. Urquhart*, for the defendants.

Chancery Division.

Div'l Ct.] [Dec. 11.

PEUCHEN *v.* IMPERIAL BANK OF CANADA.

Sale of goods—Implied warranty of title—Failure of consideration—Bill of lading—Transfer of interest under—Absolute sale by pledgees—Findings of jury—Inconsistency—Duty of trial judge.

The plaintiffs sued the bank to recover the price paid the bank for certain goods which, owing to a customs seizure and forfeiture, the plaintiffs never received.

The bank was never in actual possession of the goods but a bill of lading was indorsed to them as security for advances, and this bill of lading was indorsed and delivered by the bank directly to the plaintiffs.

The jury found that it was the bank which sold the goods to the plaintiffs; that they professed to sell with a good title; that they had not a good title; and that the plaintiffs could not by any diligence have obtained the goods.

Held, that upon these findings and the evidence the transaction must be regarded as a sale by the bank as pledgees with the concurrence of the pledgor, and not as a mere transfer of the interest of the bank under the bill of lading; and that the plaintiffs were entitled to recover the price as upon an implied warranty of title and a failure of consideration.

Morly v. *Attenborough*, 3 Ex., 500, commented on and distinguished.

Held, also, per ROBERTSON, J., that the trial Judge was within his right and duty in sending the jury back to reconsider their findings after pointing out their inconsistency.

Osler, Q.C., and *A. McLean Macdonell*, for the plaintiffs.

Bain, Q.C., for the defendants.

Practice.

STREET, J.] [Dec. 30.

DORAN *v.* TORONTO SUSPENDER CO.

Sheriff's interpleader—Who should be plaintiff in issue—Material on sheriff's application—Barring execution creditor.

Where goods seized by a sheriff under execution are at the time in the possession of the execu-

tion debtor, and the sheriff interpleads in consequence of a claim made upon them by a person out of possession, the claimant should be plaintiff in the interpleader issue. In order to entitle himself to an interpleader order, the sheriff is not obliged to shew that the claim of the person out of possession is open to objection.

Where upon an interpleader application the execution creditor declines to contest the right of a claimant, the order should absolutely bar the execution creditor of any right to contest the claim.

Hilton for the claimants.

C. Millar for the execution creditor.

R. J. Maclennan for the sheriff.

Q.B. Div'l Ct.] [Dec. 31.

CLARKE *v.* CREIGHTON.

Costs—Set-off—Rule 1205—Solicitor's lien—Appeal from order—Waiver—Amount in question—Dignity of court.

Where judgment was given for payment by the plaintiff to the insolvent defendant of the costs of the action, and the defendant's solicitors were by an order of court declared to have a lien upon such judgment and to have the sole right to control the judgment and execution to the extent of their costs between solicitor and client, and the plaintiff became entitled against the defendant to costs of garnishing proceedings upon the judgment, begun before the lien was declared,

Held, reversing upon this point the decision of BOYD, C., 14 P.R., 34, that Rule 1205 did not apply to enable a set-off of the costs to be made.

Where two appeals in respect of matters wholly separate and distinct were disposed of by one order,

Held, that a party might appeal from the decision in respect of one of the appeals, while taking advantage of the decision in respect of the other.

It is not beneath the dignity of the court to determine an appeal where the amount involved is less than $40.

The plaintiff in person.

C. Millar for the defendant's solicitors.

C.P. Div'l Ct.] [Jan. 5.

JONES *v.* MACDONALD.

Judgment debtor — Unsatisfactory answers — Motion to commit—Proof of service of appointment, etc.—Proof of character of examination —Ex parte certificate of examiner.

Where, upon a motion to commit a party for unsatisfactory answers upon his examination as a judgment debtor, it is shewn that he attended and submitted to be sworn and examined, it is not necessary to prove service of an appointment or payment of conduct money. And where the depositions returned by the examiner shew on their face that the party was being examined as a judgment debtor, there need be no other proof of the fact.

The certificate of an examiner is good evidence of the proceedings before him, notwithstanding that it was settled *ex parte*.

Re *Ryan* v. *Simonton*, 13 P.R., 299, commented on.

W. R. Smyth for plaintiff.

W. M. Douglas for defendant.

BOYD, C.] [Jan. 9.

FROTHINGHAM *v.* ISBISTER.

Discovery — Examination and production of documents—Assignee for creditors—Quasi-plaintiff.

In an action by creditors of a firm to establish the liability of the defendant as a partner therein, it appeared that the assignee of the firm for the benefit of creditors, who had received all the papers of the firm, was interested in the success of the action, had instigated its being brought, and was providing material in the way of documents, etc., to the plaintiffs for its efficient prosecution.

Held, that although the assignee might have no direct beneficial interest in the result, he was to be regarded for the purposes of discovery as a quasi-plaintiff, and the defendant was entitled to have production of all documents in the possession of the assignee, and to examine him for the purpose of such production.

D. E. Thomson, Q.C., for the plaintiffs.

W. Nesbitt for the defendant, James Isbister.

Aylesworth, Q.C., for the assignee.

BOYD, C.] [Jan. 2.

DONOVAN *v.* HALDANE.

Appeal to Court of Appeal—Undertaking not to appeal—Notice of appeal and appeal bond—Power of court below to set aside.

A judgment of the High Court of Justice contains an undertaking by the plaintiff not to appeal therefrom; notwithstanding which the plaintiff filed and served notice of appeal to the Court of Appeal, and also filed the usual bond for security for costs.

Held, that the action was not removed out of the High Court of Justice into the Court of Appeal; the notice and bond were irregular and unwarrantable proceedings, and the High Court being still seized of the case, could interfere, by virtue of its inherent jurisdiction, to set them aside.

Donovan, the plaintiff, in person.

C. Millar for the defendants.

STREET, J.] [Jan. 23.

HOPE *v.* TRADERS' BANK.

Costs—Taxation—Proof of documents.

Other means having been provided by statute for proving documents at the trial of actions, the costs of obtaining orders for subpœnas to public officers to produce documents, and of procuring the attendance of such officers at trials, should not be allowed on taxation except where it is clearly shewn that the documents could not be proved in any other way.

W. H. Blake for plaintiff.

Lefroy for defendants.

Law Society of Upper Canada.

THE LAW SCHOOL, 1891.

LEGAL EDUCATION COMMITTEE.

CHARLES MOSS, Q.C., *Chairman.*

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W. R. MEREDITH, Q.C.	N. KINGSMILL, Q.C.

This notice is designed to afford necessary information to Students-at-Law and Articled Clerks, and those intending to become such, in regard to their course of study and examinations. They are, however, also recommended to read carefully in connection herewith the Rules of the Law Society which came into force June 25th, 1889, and September 21st, 1889, respectively, copies of which may be obtained from the Secretary of the Society, or from the Principal of the Law School.

Those Students-at-Law and Articled Clerks, who, under the Rules, are required to attend the Law School during all the three terms of the School Course, will pass all their examinations in the School, and are governed by the School Curriculum only. Those who are entirely exempt from attendance in the School will pass all their examinations under the existing Curriculum of The Law Society Examinations as heretofore. Those who are required to attend the School during one term or two terms only will pass the School Examination for such term or terms, and their other Examination or Examinations at the usual Law Society Examinations under the existing Curriculum.

Provision will be made for Law Society Examinations under the existing Curriculum as formerly for those students and clerks who are wholly or partially exempt from attendance in the Law School.

Each Curriculum is therefore published herein accompanied by those directions which appear to be most necessary for the guidance of the student.

CURRICULUM OF THE LAW SCHOOL, OSGOODE HALL, TORONTO.

Principal, W. A. REEVE, Q.C.

Lecturers:
- E. D. ARMOUR, Q.C.
- A. H. MARSH, B.A., LL.B., Q.C.
- R. E. KINGSFORD, M.A., LL.B.
- P. H. DRAYTON.

The School is established by the Law Society of Upper Canada, under the provisions of rules passed by the Society with the assent of the Visitors.

Its purpose is to promote legal education by affording instruction in law and legal subjects to all Students entering the Law Society.

The course in the School is a three years' course. The term commences on the fourth Monday in September and closes on the first Monday in May; with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's Day.

Students before entering the School must have been admitted upon the books of the Law Society as Students-at-Law or Articled Clerks. The steps required to procure such admission are provided for by the rules of the Society, numbers 126 to 141 inclusive.

The School term, if duly attended by a Student-at-Law or Articled Clerk is allowed as part of the term of attendance in a Barrister's chambers or service under articles.

The Law School examinations at the close of the School term, which include the work of the first and second years of the School course respectively, constitute the First and Second Intermediate Examinations respectively, which by the rules of the Law Society, each student and articled clerk is required to pass during his course; and the School examination which includes the work of the third year of the School course, constitutes the examination for Call to the Bar, and admission as a Solicitor.

Honors, Scholarships, and Medals are awarded in connection with these examinations. Three Scholarships, one of $100, one of $60, and one of $40, are offered for competition in connection with each of the first and second year's examinations, and one gold medal, one silver medal, and one bronze medal in connection with the third year's examination, as provided by rules 196 to 205, both inclusive.

The following Students-at-Law and Articled Clerks are exempt from attendance at the School.

1. All Students-at-Law and Articled Clerks attending in a Barrister's chambers or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889.

2. All graduates who on the 25th day of June, 1889, had entered upon the *second* year of their course as Students-at-Law or Articled Clerks.

3. All non-graduates who at that date had entered upon the *fourth* year of their course as Students-at-Law or Articled Clerks.

In regard to all other Students-at-Law and Articled Clerks, attendance at the School for one or more terms is compulsory as provided by the Rules numbers 155 to 166 inclusive.

Any Student-at-Law or Articled Clerk may attend any term in the School upon payment of the prescribed fees.

Students and clerks who are exempt, either in whole or in part, from attendance at The Law School, may elect to attend the School, and to pass the School examinations, in lieu of those under the existing Law Society Curriculum. Such election shall be in writing, and, after making it, the Student or Clerk will be bound to attend the lectures, and pass the School examination as if originally required by the rules to do so.

A Student or Clerk who is required to attend the School during one term only, will attend during that term which ends in the last year of his period of attendance in a Barrister's Chambers or Service under Articles, and will be entitled to present himself for his final examination at the close of such term in May, although his period of attendance in Chambers or Service under Articles may not have expired. In like manner those who are required to attend during two terms, or three terms, will attend during those terms which end in the last two, or the last three years respectively of their period of attendance, or Service, as the case may be.

Every Student-at-Law and Articled Clerk before being allowed to attend the School, must present to the Principal a certificate of the Secretary of the Law Society shewing that he has been duly admitted upon the books of the Society, and that he has paid the prescribed fee for the term.

The Course during each term embraces lectures, recitations, discussions, and other oral methods of instruction, and the holding of moot courts under the supervision of the Principal and Lecturers.

During his attendance in the School, the Student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance. As far as practicable, Students will be provided with room and the use of books for this purpose.

The subjects and text-books for lectures and examinations are those set forth in the following Curriculum:

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

Common Law.

Broom's Common Law.
Kerr's Student's Blackstone, books 1 and 3

Equity.

Snell's Principles of Equity.

Statute Law.

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.

Criminal Law.

Kerr's Student's Blackstone, Book 4.
Harris's Principles of Criminal Law.

Real Property.

Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Deane's Principles of Conveyancing.

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.
Bigelow on Torts—English Edition.

Equity.

H. A. Smith's Principles of Equity.

Evidence.

Powell on Evidence.

Canadian Constitutional History and Law.

Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

Dart on Vendors and Purchasers.
Hawkins on Wills.
Armour on Titles.

Criminal Law.

Harris's Principles of Criminal Law.
Criminal Statutes of Canada.

Equity.

Lewin on Trusts.

Torts.

Pollock on Torts.
Smith on Negligence, 2nd edition

Evidence.

Best on Evidence.

Commercial Law.

Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.

Private International Law.

Westlake's Private International Law.

Construction and Operation of Statutes.

Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law.

British North America Act and cases thereunder.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

During the School term of 1890-91, the hours of lectures will be 9 a.m., 3.30 p.m., and 4.30 p.m., each lecture occupying one hour, and two lectures being delivered at each of the above hours.

Friday of each week will be devoted exclusively to Moot Courts. Two of these Courts will be held every Friday at 3.30 p.m., one for the Second year Students, and the other for the Third year Students. The First year Students will be required to attend, and may be allowed to take part in one or other of these Moot Courts.

Printed programmes showing the dates and hours of all the lectures throughout the term, will be furnished to the Students at the commencement of the term.

GENERAL PROVISIONS.

The term lecture where used alone is intended to include discussions, recitations by, and oral examinations of, students from day to day, which exercises are designed to be prominent features of the mode of instruction.

The statutes prescribed will be included in and dealt with by the lectures on those subjects which they affect respectively.

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court, if not given at the close of the argument.

At each lecture and Moot Court the roll will be called and the attendance of students noted, of which a record will be faithfully kept.

At the close of each term the Principal will certify to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student will be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series during the term, and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal will make a special report upon the matter to the Legal Education Committee. For the purpose of this provision the word "lectures" shall be taken to include Moot Courts.

Examinations will be held immediately after the close of the term upon the subjects and text books embraced in the Curriculum for that term.

The percentage of marks which must be obtained in order to pass any of such examinations is 55 per cent. of the aggregate number of marks obtainable, and 29 per cent. of the marks obtainable on each paper.

Examinations will also take place in the week commencing with the first Monday in September for students who were not entitled to present themselves for the earlier examination, or who having presented themselves thereat, failed in whole or in part.

Students whose attendance at lectures has been allowed as sufficient, and who have failed at the May examinations, may present themselves at the September examinations at their own option, either in all the subjects, or in those subjects only in which they failed to obtain 55 per cent. of the marks obtainable in such subjects. Students desiring to present themselves at the September examinations must give notice in writing to the Secretary of the Law Society, at least two weeks prior to the time fixed for such examinations, of their intention to present themselves, stating whether they intend to present themselves in all the subjects, or in those only in which they failed to obtain 55 per cent. of the marks obtainable, mentioning the names of such subjects.

Students are required to complete the course and pass the examination in the first term in which they are required to attend before being permitted to enter upon the course of the next term.

Upon passing all the examinations required of him in the School, a Student-at-Law or Articled Clerk having observed the requirements of the Society's Rules in other respects, becomes entitled to be called to the Bar or admitted to practise as a Solicitor without any further examination.

The fee for attendance for each Term of the Course is the sum of $10, payable in advance to the Secretary.

Further information can be obtained either personally or by mail from the Principal, whose office is at Osgoode Hall, Toronto, Ontario.