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Various changes have recently taken place on the English Bench. Lord Esher, having resigned the office of Master of the Rolls, has been made a Viscount, and is succeeded by Lord Justice Lindley. The place of the latter in the Court of Appeal has been taken by Sir Richard Henn Collins, Judge of the Queen's Bench Division. He is succeeded by Mr. Darling, Q.C. Lord Ludlow (formerly Lord Justice Lopes) has also resigned, and is succeeded by Mr. Justice Vaughan Williams.

We publish in another place an interesting and valuable article on an important branch of the law of torts, contributed to our columns by Mr. C. B. Labatt, formerly Foundation Scholar of Trinity College, Cambridge, now one of the editors of the Lawyers Reports Annotated (U.S.) His articles in *The American Law Review* for May and September for this year on the power of corporations to execute guaranties, and as to the relation between assumption of risks and contributory negligence, are well known to the readers of that learned periodical.

The following statistics on the subject of lynch law have recently been published: "There have been 97 cases of lynching in the United States since Jan. 1, 1897, an average of over twelve per month. Fourteen of the southern States are represented in this black list as follows: Texas 19, Alabama 12, Mississippi 10, Georgia and Louisiana 8 each, Tennessee 7, Florida 6, South Carolina, Kentucky and Arkansas 5 each, Missouri 3, Virginia 2, and Arizona and Maryland 1 each.

In the north, California, Ohio, Nevada, Alaska, and Illinois have had 1 each. Of the victims of these 97 lynchings 80 have been negroes, 14 whites and 3 Indians."

A legal periodical (*Chicago Law Journal*) takes up the parable and thus moralises on this primitive mode of administering justice:

"Lynching a Virtue.—Lynch law is bad, very bad, but lynch law is a virtue compared to the horrible crime of the outrage of a pure, good woman, and you may preach the authority of the law from sunrise to sunset to men whose female relatives or friends have suffered such an outrage, but their tempers will never be soothed into submission to the law's delays. Just as long as such outrages continue will lynch law continue."

It may safely be said that no amount of lynching or any other punitive process will put an end to crime; and the very lawlessness of lynching tends to aggravate the evil in some shape or other. One cannot but feel surprised that a legal journal should be betrayed into advocating such barbarous and illegal acts in a civilized country, especially so when the point attempted to be made is not supported by the facts. This appears by the following analysis:

"The southern papers, in seeking to palliate and excuse the prevailing lawlessness in that section, continually charge odious crime upon the negroes as the main cause. The statistics, however, do not sustain the charge. Of the 80 negroes lynched 35 were killed for the crime of murder, while but 14 have been killed for assault on women, and 9 for attempting it, Of the remainder, 4 have been lynched for robbery, 3 for arson, 2 for suspicion of arson, 2 for race prejudice (!) 2 for murderous assaults, 2 for unknown causes, and 1 each for burglary, writing an insulting letter, eloping with a white woman, train-wreckers, refusing to give evidence, insults, and harboring a murderer."

It has been aptly said that lynch law "marks the difference between civilized and uncivilized nations;" and it is appalling to contemplate the volume of lawlessness which these figures indicate. These acts were not the outcome of dire necessity for selfprotection in a country where from some temporary reason might is right, and ruffianism is rampant,

but occurred in old settled States where full provision is made (nominally at least) for the protection of life and property by recognised legal process.

EXTRA PROVINCIAL COMPANIES.

At the last session of the Ontario Legislature was passed "The Ontario Companies Act," sec. 104 of which requires that "Every company not incorporated by or under the authority of an Act of the Legislature of Ontario, which . . carries on business in Ontario, having gain for its purpose or object," shall transmit to the Provincial Secretary a statement under oath, showing the incorporated name of the company, how incorporated, where the head office is, the amount of capital stock, how much subscribed, and the amount paid up; also the nature of the business carried on. A penalty of $20 is incurred for each day during which business is carried on until the requirements of the section are complied with. This section recently came into force by proclamation, November 1st being the day fixed for compliance.

It having been doubted by some whether this section applied to companies incorporated by Dominion charter, we might mention that the point is probably decided in *Parsons* v. *Queen Ins. Co.*, 7 App. Cas. 96; 4 S.C.R. 215, which case reviewed the powers of the Dominion and the Provinces respectively under sections 91 and 92 of the B. N. A. Act. It was decided in that case that the exclusive jurisdiction given by section 91 to the Dominion for the purpose of the "regulation of trade and commerce," must be read in conjunction with section 92 of the Act. It is therefore advisable, in the absence of direct decision on that point, that every company carrying on business in Ontario under a Dominion charter should comply with the Ontario Act, provided that the latter Act would apply to such company apart from its Dominion charter.

MISREPRESENTATION AS NEGLIGENCE.

We note an article in an esteemed contemporary dealing with the legal effects of misrepresentation, contributed by Mr. J. S. Ewart, Q.C., of the Manitoba bar, as to which he invites criticism, it being a condensation of some chapters in a work he is publishing on the law of Deceit.

He states that misrepresentation gives rise to an action of negligence—a proposition which seems to us both novel and startling. The argument by which it is supported seems even more dangerous, and in its mixture of law and logic savors of those refined discussions which some centuries ago confounded the senses of real property lawyers in England.

"Negligence," says the writer, "must not, loosely, be thought of as mere carelessness; but more accurately as the neglect or disregard of some legal duty. . . . Misrepresentation to be actionable must be in breach of legal duty, and, therefore, must be actionable as such. But," he adds, "this is merely saying that for misrepresentation an action will lie *as for breach of duty*, that is, that an action of negligence will lie." Reduced to cardinal principles this is tantamount to saying that every cause of action gives rise to an action of negligence, inasmuch as every cause of action arises by reason of a breach of duty, i.e., for a neglect to perform such duty.

It is scarcely necessary to state that such is not the law, or to assert that the action of negligence lies only for the breach of a specific duty, that of exercising reasonable care. This is clearly stated by Brett, M.R., in the judgment in *Heaven* v. *Pender*, L.R. 11 Q.B.D. 503, where he defines negligence as "the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care or skill."

A glance at any of the recognized authorities on the principles of negligence shows a clear distinction between actions of deceit and negligence in the presence or absence of intention. This distinction has been forcibly expressed by Fry, J.,

in *Kettlewell* v. *Watson*, 21 Ch. D. At p. 706 he says, "Fraud imports design and purpose, negligence imports that you are acting carelessly and without that design."

Whilst we appreciate the ingenuity of the author, we cannot allow such reasoning, with its attendant deduction, to pass unchallenged. Jurisprudence ought to approach as nearly as possible to an exact science. Whilst the impossibility of attaining this high mark by reason of the constant change in the state of society must be admitted, all agree in the desirability of defining as accurately as possible the various legal conceptions with which the science deals. It may be that on further reflection Mr. Ewart will expunge from his forthcoming work any attempts at generalization, which, instead of adding to the merit of a book which we shall all be glad to peruse, will tend only to confuse those who may seek the aid of its pages.

RIGHTS OF CIVIL SERVANTS AGAINST THE EXECUTIVE.

The Judge of the Exchequer Court has recently decided two cases of considerable interest to civil servants and the federal Executive—*Bradley* v. *The Queen* (post pp. 730, 732) and *Balderson* v. *The Queen* (post p. 732). In the former case the construction of section 51 of The Civil Service Act was involved. By that section it is enacted, inter alia, as follows: "No extra salary or additional remuneration of any kind whatsoever shall be paid to any deputy head, officer, or employee in the Civil Service of Canada, or to any other person permanently employed in the public service." According to the interpretation placed upon this section by the Auditor-General and the officers of the Department of Finance, civil servants and all persons permanently employed in the public service are precluded from receiving any moneys from the Government beyond their regular salaries, no matter what services extraneous to their ordinary work they may perform, unless payment for such services is first specifically authorized by Par-

liament. It was upon an application of this reading of the statute to the claim of one of the Hansard reporters for services rendered, during the recess of Parliament, in and about the execution of the Royal Commission to enquire into the liquor traffic in Canada, that the first case arose. Dr. Bradley is the chief of the Hansard staff of the House of Commons, and as such is paid an annual salary out of moneys voted by Parliament. When the commission above mentioned was about to begin its labors, the chairman of the commission employed Dr. Bradley to report the evidence, and do certain other work in connection with its execution, agreeing to pay him at a certain fixed rate therefor out of the moneys supplied by Parliament to defray the expenses of the commission. After a considerable sum on account of his services had been paid to the plaintiff, upon the cheques of the chairman and secretary of the commission, the Department of Finance took exception, under the above enactment, to the plaintiff's right to be paid anything for the services so rendered by him, and declined to sanction the payment of the balance claimed. Upon a reference of the claim to the Exchequer Court, Burbidge, J., held that, notwithstanding the provisions of the enactment above quoted, the plaintiff was entitled to recover the balance actually due him in respect of his services rendered in connection with the commission, and gave judgment accordingly. Upon appeal to the Supreme Court of Canada, the judgment of the Exchequer Court was unanimously affirmed, and an opinion was expressed by the learned judges that the inhibition of the section in question only applied to extra services performed by Government employees in the line of, or cognate to, the regular and ordinary duties of their offices, and not to work of a character distinct therefrom. The reasonableness of this construction is demonstrable by postulating a very simple case. A person in, say the Post Office Department, is employed and paid to do purely clerical work. At the same time he is possessed of certain scientific skill or knowledge, for instance, in the province of mineralogy. If, without neglecting his ordinary duties, he employs his technical skill in some matter, at the request of and for the

benefit of the Government, would it not be absurd to say that, under the wording of this enactment, Parliament intended that he was not to receive any remuneration therefor? Payment to him in such a case could not be said to be in the way of "*extra* salary" or "*additional* remuneration," because he is not permanently employed as a mineralogist nor receiving pay as such.

In the case of *Balderson* v. *The Queen* the suppliant alleged that after having been regularly appointed and employed in the permanent public service for a period of fifteen years and paid his proper quota to the superannuation fund, he had been retired, ostensibly for the purpose of promoting economy in such service within the meaning of s. 11 of the Superannuation Act. By the order of the Governor-in-Council retiring him, he was granted a superannuation allowance based upon the average salary he had received for the three years next preceding his retirement and the actual period that he had served, namely, fifteen years. It was not contended in his behalf that under the provisions of the above section Parliament had declared he was entitled to have ten years added to his term of service for the purpose of arriving at the proper amount of his retiring allowance, and that the Executive had no discretion to disallow such additional period. Burbidge, J., found, first, that there was no contract, either express or implied, subsisting between the Government and the suppliant whereby he was legally entitled to any retiring allowance at all; and, secondly, that the Exchequer Court had no jurisdiction either to enforce the performance of a duty, if any, cast upon the Governor-in-Council by the enactment in question to allow the additional ten years to the suppliant, or, when the Governor-in-Council has exercised his discretion to grant a retiring allowance, to review the exercise of such discretion.

We think the decision of the Judge of the Exchequer Court is in harmony with English authority, bearing in mind that the powers and duties in this behalf of the Commissioners of the Treasury in the mother country are not materially different from those of the Governor-in-Council in Canada. *Cooper* v.

The Queen, decided in the year 1880 (14 Ch. D. 311), must be regarded as the leading case on the status of civil servants in relation to the enforcement of claims under the Imperial Superannuation Acts. It is true that it is only a decision of the Court of first instance, but it was not appealed from, has never been judicially questioned, and is accepted generally by text-writers as good law. In delivering judgment in that case (pp. 314, 315) Malins, V.C., said: "Now this right to superannuation allowance is a very peculiar right. As I read the Acts of Parliament, it is a right which can never be enforced in the civil tribunals of this country." He then quotes s. 30 of 4 & 5 Wm. IV., c. 24 (re-enacted by 22 Vict., c. 26, s. 18), which is in substantially the same terms as s. 8 of the Canadian Superannuation Act, and proceeds: "The Crown, in fact, says: 'This is what we intend to give you, but as a matter of bounty only, and you shall have no legal right whatever, and it is not intended to give any person an absolute right of compensation for past services, or for allowances under the Act.' He must, therefore, depend upon the bounty of the Crown whether he is to have the whole amount, or any part which the Commissioners may think fit, or what they will take into consideration, or what they will not."

We are aware that some extra-judicial opinions have been expressed in England to the effect that a public officer might obtain a mandamus from the Court of Queen's Bench to compel the Treasury to pay him whatever was justly due him under the Superannuation Acts (see Imperial Hans. D., v. 180, p. 503, and Todd's Parl. Govt. in Eng., 2nd ed., vol. 1, p. 654). But since the decision in *Cooper* v. *The Queen* (supra) the question, under existing legislation, ought, we think, to be regarded as having fairly passed within the domain of stare decisis.

THE RATIONALE OF CAUSATION IN ACTIONS OF TORT.

The juridical theory of causation is evolved partly from Lord Bacon's maxim, In jure non causa remota sed proxima spectatur, and partly from the principle that a tort-feasor is liable only for the natural and probable consequences of his act. In this instance, as in so many others, the common law must be pronounced decidedly unfortunate in the fundamental axioms upon which it is forced to rely. The unsatisfactory nature of both these tests of responsibility is shown by nothing more significantly than by the fact that judges, with whatever affectation of scientific precision they may undertake to apply them to the solution of problems presented by particular groups of facts, have been practically compelled to take refuge in the doctrine that every case must in the end be decided with reference to its own peculiar circumstances. (*a*) The only difference between the courts in this respect is that some have admitted more frankly than others the real poverty of resources from which this department of our jurisprudence is suffering. Within the limits of a brief article like the present, it is, of course, impossible to enter upon any extended criticism of the axioms referred to, but a summary of the reasons why they are not adapted to serve as a basis for a comprehensive and scientific theory of causation, and a few suggestions as to the direction in which the quest for greater simplicity and exactitude should be conducted, will perhaps be of some interest to the readers of this journal.

The aphorism, In jure non causa remota sed proxima spectatur, may be said to express the retrospective conception of responsibility,—that which starts from the injury complained of, and traces it to its source. The inadequacy of this aphorism as it stands, for the purposes of a judicial investigation in an action of tort, is manifest. If taken in

(*a*) *Insurance Co* v. *Tweed*, 7 Wall. 52. In *Hobbs* v. *London, etc., R. Co.*, L.R. 10 Q.B. 3, it was remarked that the task of distinguishing between proximate and remote causes was "something like having to draw a line between night and day."

its literal sense, it must be regarded as contemplating merely a single chain of successive antecedents, and as connecting the occurrence for which redress is sought with the antecedent immediately preceding the occurrence. To insurance cases this limited signification is entirely appropriate, and to these alone. In actions of tort, it need scarcely be said, there would frequently be a miscarriage of justice if the law did not, on the one hand, fasten upon remote antecedents as being the true efficient cause of the injury, and on the other hand, impose the penalty of damages upon a defendant whose misfeasance or nonfeasance is only one of several causes which have co-operated in producing the injury.

If the maxim can be made to cover these cases at all, it is only by means of an extremely liberal paraphrase, and, as a matter of fact the reports show that "proxima" is habitually construed as if it meant "efficient," and the whole phrase as if it implied that an injured person is entitled to maintain a suit for damages against the author of any act which appears to have been one of the efficient causes of the injury (*a*).

In this transmuted form the aphorism expresses a principle which, so far as it goes, is unexceptionable, and if that principle had been consistently applied by all common law tribunals, a good many decisions which shock common sense would never have been rendered. Unfortunately, some judges of the very highest reputation, unable, as it seems, to free themselves entirely from the influences of the idea conveyed by the actual words of the maxim, have absolved defendants from liability under circumstances which, upon any reasonable theory of responsibility, should undoubtedly have been regarded as raising an obligation to make good the damage suffered by the plaintiffs. Far the worst offender in this respect is the Supreme Court of Pennsylvania, which

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(*a*) The proximate cause is the efficient cause—the one which necessarily sets the rest in motion: *Insurance Co* v. *Boon*, 95 U. S. 117.

"By 'proximate cause' is meant an act which directly produced or concurred directly in producing the injury": *Baltimore, etc. R. Co.* v. *Tramer*, 33 Md., 542.

"When several proximate causes contribute to an accident, and each is an efficient cause, without the operation of which the accident would not have happened, it may be attributed to any or all of the causes; but it cannot be attributed to a cause, unless, without its operation, the accident would not have happened": *Ring* v. *City of Cohoes*, 77 N.Y. 83.

has not shrunk from such startling rulings as these: that a railroad company is not liable for the destruction of property by a fire which has passed through the premises of another party before reaching the plaintiff's land (*a*); that a street-car company is not liable for injuries to a person who is knocked down by a runaway team after he has been shaken off the platform by a sudden movement of the horses (*b*), and that a township is not liable for injuries to horses which, being frightened by an ash heap negligently left on a highway, become uncontrollable, and making their way on to a railway track meet a train, which so alarms them that they turn in the opposite direction and are run over by another train (*c*).

These rulings are all based on the theory of an intervening cause breaking the connection between the original negligence and the final damage received by person or property, and are evidently attributable to the supposed necessity of circumscribing the right of redress within the narrow limits indicated by the words of the maxim construed literally. The true and the false methods of applying those words may be effectively contrasted by comparing the third of the above decisions with the English case in which a railroad company was held liable for injuries to cattle which were frightened through the negligence of an engine-driver, and, after running some distance along a highway, made their way through a gap in a fence, negligently maintained by another railway company, and were run over by a train belonging to the latter company (*d*).

It must be admitted, however, that the maxim, even when expanded by the most liberal of paraphrase is but ill adapted for use in the practical atmosphere of a law court. The question whether a cause is efficient must always—in the first instance at least—be submitted to a jury, and it is preposterous to expect that, where the circumstances are at all complex, the minds of men who are so little familiar with logi-

(*a*) *Pennsylvania R. Co. v. Kerr*, 62 Pa. St. 353.

(*b*) *South Side, etc., R. Co. v. Trich*, 117 Pa. St. 390.

(*c*) *West Mahanoy Township v. Watson*, 116 Pa. 344.

(*d*) *Sneesby v. Lancashire, etc., R. Co.* L.R. 9 Q.B. 263; *Harris v. Mobbs*, L.R. 3 Exch. D. 268 may also be usefully consulted in this connection.

cal distinctions as those who make up an ordinary panel, will be found competent to grapple successfully with such an investigation. Owing, it may be, to a consciousness of the fact that the significant words of the maxim are themselves sorely in need of elucidation, the courts and text writers have cast about them for some recognized principle of law which would be more easily understood by untrained intellects, and have discovered one in the rule that a tort-feasor, being presumed to intend the natural and probable consequences of his acts, is therefore responsible for those consequences alone. The requirement of a concatenation between cause and effect, it is said, is not fulfilled if the wrong and the resulting damages are not known by common experience to be naturally and usually in sequence " (*a*).

The rule, as thus explained, embodies a prospective conception, and serves as a sort of complement to the maxim, which, as already pointed out, expresses the retrospective view of responsibility.

The use of this familiar phrase, in this connection, if it tends to clear up some of the obscurities of the subject, also creates some difficulties. Few of those who glibly repeat it stop to consider what it really means, or take the trouble to subject it to a critical analysis for the purpose of determining whether its apparent exactitude is more than a specious pretence. That it does not support the ordeal of a minute examination from an abstractedly scientific standpoint, and that, in its ordinary form, it can by no means be fitted to the actual decisions in numerous cases, must, we think, be admitted. The principle it expresses has doubtless been qualified by the insertion of the word "probable" with a view to lightening in some degree the responsibility of wrongdoers, whom it would otherwise render answerable for any and all consequences of their acts which are physically possible (*b*). But the courts have so often refused to impose liability where the injury was certainly a "probable" consequence of the

(*a*) Addison on Torts, p. 6.

(*b*) See the remarks of Pollock, C.B., in *Greenland* v. *Chapin*, 5 Exch. 243.

defendant's act, if that term is to be taken in its usual signification of "more likely than not to happen," and have so often required a defendant to respond in damages where the injury was not, in that sense, a "probable" consequence of his act, that it is impossible to avoid the conclusion that the rule would be presented in a much more serviceable form if the second adjective were omitted (*a*). The whole conception of "probable" consequences is reduced well nigh to an absurdity when we find some courts of high authority declaring that the originator of a defamatory statement is not liable for damages caused by its being repeated by other persons (*b*). though such repetition is a consequence which, as everyone knows, is certain to follow in ninety-nine cases out of a hundred, and other courts of equally high authority hold a defendant responsible under circumstances like those under review in *Clark* v. *Chambers* (*c*), though the average man would assuredly deem the events which led up to the final catastrophe to be very unlikely to happen.

It would seem, therefore, that, if the principle which has, for explanatory purposes, been vouched in aid of Lord Bacon's maxim is to serve as a main resource in inquiries of this sort, there is no other way of escaping the difficulties thus indicated than to resort in this case, as in the case of the maxim itself, to a very free paraphrase of the words "natural and probable," and to interpret them as meaning "not so unnatural and so unlikely to happen that, in the opinion of a reasonable fair-minded man it would be unjust to impose responsibility upon the defendant." This expedient, however, involves the rather lame and impotent conclusion that proximity of cause, when referred to the test of natural and probable consequences, ultimately depends upon the views of that most shadowy of legal abstractions, the typical

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(*a*) Frequent attempts have been made by judges to formulate some expression which would serve as a substitute for that which is ordinarily employed, but it cannot be said that these attempts have produced any very noteworthy results. For a collection of the alternative phrases suggested the reader is referred to a note compiled by the writer of the present article for the American State Reports: Vol 36, p. 809.

(*b*) "Damages for libel cannot be enhanced by the general probability of publication:" *Burt* v. *Advertisers, etc., Co.*, 154 Mass. 238 (per HOLMES, J.)

(*c*) L.R. 3 Q.B.D. 327.

citizen, who has become such a familiar figure in our jurisprudence as the person whose conduct is the standard by which the existence or absence of negligence is determined. A bolder and more logical method of rescuing this branch of the law from the fluid and unsettled condition into which it has been brought by the too exclusive use of the loose axioms from which it has been developed would be to recur to first principles. If conducted on a strictly scientific basis, the inquiry in every action of tort in which a question of causation is involved must proceed with due reference to the consideration that an injury will, if subjected to analysis, exhibit itself as a composite whole, made up of several distinct factors or elements, representing the tangible effects of the operation, direct or indirect, of an intelligent will, exerting itself through the medium of that congeries of atoms which constitutes the human body, upon the feelings, reason, or instincts of living organisms, or upon the material substances which make up those organisms, or upon the properties and forces of inorganic matter. Should the evidence show that some act of the defendant disturbed the normal relations of some of the subjects upon which an intelligent will can thus operate, that this disturbance was calculated to damage person or property, supposing certain conditions of time and space to be satisfied, that it still retained its mischievous potentialities when the event occurred upon which the plaintiff 's demand is based, and that the fact of its existence at that particular time and place was an efficient physical cause of the damage actually suffered by the plaintiff, it seems to be a very simple logical conclusion that the defendant should answer for the share which he has had in bringing about the final catastrophe. Under an ideal system of administering justice, he would of course be held answerable only for that share, and this principle has actually received recognition in a recent case in which the English Court of Appeal laid down the doctrine that, where an injury is caused partly by an act of God, and partly by the negligence of a responsible agent, that agent is entitled to have the damages apportioned (*a*).

(*a*) *Nitro-Phosphate, etc., Co.* v. *London, etc., Docks Co.*, 9 Ch. D. 503.

But the difficulty of obtaining any evidence upon which such an apportionment could be based must, as a general rule, be an insuperable obstacle to a practical enforcement of this theoretical right, and in an investigation conducted on the lines supposed, it would usually be necessary to give relief on the same principle as that which is exemplified in the familiar rule which makes two or more joint tort-feasors severally responsible for the damage arising from their acts.

That the effect of a method of inquiry based upon the decomposition of an injury into its constituent elements would be to confine both Lord Bacon's maxim and the principle with which it is identified to a much narrower field of application, will be abundantly evident if we consider from this standpoint the only problems in causation which can in practice create any embarrassment, viz., those in which, owing to the operation of some independent agency, some event to which the result complained of is partially attributable has occurred after the defendant's act. Not an uncommon view is that under these circumstances the defendant is liable or not, according as the later event was or was not one which he was bound to anticipate as a possible contingency, and upon this general theory has been engrafted the special doctrine that a subsequent act of negligence will not necessarily absolve a tort-feasor, because such an act is one which is supposed to be within the range of reasonable expectation, but that a wilful misfeasance will always sever the causal connection between his act and the injury, unless that misfeasance is one which, as a matter of fact, he intended to bring about (*a*), the rationale of the distinction being that the defendant is entitled to the benefit of a presumption that other persons will not be guilty of any intentional misconduct, but not to the benefit of a presumption that they will not be negligent.

Whether the curious tribute to virtue expressed by this subsidiary doctrine is justified by statistics need not now be investigated. In the present connection it is enough to point out that the main theory not only does not stand upon any logical basis, but introduces a wholly gratuitous complication

(*a*) Wharton on Negl., sec. 145; *Burt* v. *Advertiser, etc.*, Co., 154 Mass. 238.

into the subject. The only question which really demands an answer is whether the earlier and the later acts are traceable by their effects to the ultimate result which constitutes the injury. The test of reasonable anticipation may not improperly be applied as regards the totality of harm suffered by the plaintiff, for the purpose of determining whether such an entirely new form has been imparted by the later act to the abnormal conditions created by the earlier act, that it would be unjust to hold the author of the earlier act responsible for the final injury. But if no such metamorphosis has taken place, and if the injury is physically an actual result of a co-operation between the abnormal conditions created by both acts, either of the authors of those acts must, upon any rational principles, be regarded as responsible for a part of the injury (*a*), and it is idle to ask whether the later act was one which might have been anticipated. A fortiori must the author of the earliest of several efficient causes of an injury be held unanswerable, where the later causes are traceable to a rightful or non-culpable act, or to the operation of some physical force, and are therefore attributable to agencies which are legally irresponsible (*b*). Here the later causes are neglectable quantities, not only for the purposes of the suit against the author of the earlier act, but for the purposes of any suit, and it becomes wholly immaterial whether they were or were not such as might have been expected to supervene.

Want of space prevents us from pursuing the subject any further. The cases already cited will suffice as authorities for what we believe to be the true principle upon which the whole theory of causation should rest, viz., that, if the abnormal conditions created by the defendant's act are found to

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(*a*) The reader is referred to the "highway cases" in various courts of the United States as interesting concrete illustrations of the doctrine stated in the text. A list of them will be found at p 836 of the note in 36 American State Reports, already referred to. Compare also *Burrows* v. *...rch Gas Co.*, L.R. 5 Ex. 67; L.R. 7 Ex. 96; *Slater* v. *Mersereau*, 64 N.Y. 138; *Byrne* v. *Wilson*, 15 Ir. C. L. Rep. 332.

(*b*) As authorities for this doctrine it will suffice to refer to the "Squib Case," *Scott* v. *Shepherd*, 2 W. Bl. 892; *Bailiffs of Runney Marsh* v. *Trinity House*, L.R. 5 Exch. 208; *The George and Richard*, L.R. 3 Adm. 466; *Beauchamp* v. *Saginaw, etc., Co.*, 50 Mich. 163. It will be noticed that the Pennsylvania decisions cited above are indefensible when viewed from this standpoint also.

have continued up to the time when the injury was received, and to be, in a physical sense, constituent factors of the total sum of incidents which made up the injury, the defendant should in justice be required to make good the damage done. In other words the law should concern itself, not with the time at which an act is done, but with the question whether that act is still potentially operative for harm at the time when the injury itself was inflicted. For the purposes of legal responsibilty, no act can be regarded as dead so long as the disturbance produced by it in rerum naturæ is palpable in such an appreciable degree that it can be regarded as a juridical, as opposed to a merely metaphysical, cause of the ultimate result upon which the right of action is predicated.

C. B. LABATT.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

MINE — LEASE — COMPENSATION CLAUSE — SUBSIDENCE—DAMAGE CAUSED BY LESSEE'S PREDECESSOR—LESSEE, LIABILITY OF.

Greenwell v. *The Low Beechburn Coal Co.*, (1897) 2 Q.B. 165, was an action against the lessees of a coal mine for damages caused by subsidence. The plaintiffs owned certain buildings situate over a coal mine which their predecessor had granted to one Sharp, the defendants were Sharp's lessees of the mine. The deed to Sharp provided that he might work the mines, making reasonable compensation for all damage occasioned to the surface of the land or to the buildings thereon. It was contended by the defendants that this gave Sharp and his assigns the right of mining so as to let down the surface subject to their making compensation, but Bruce, J., decided that according to *Davis* v. *Treharne*, 6 App. Cas. 460, the deed gave the grantee no power to let down the surface, and it was only injuries occasioned by the express powers given by the

deed that were intended to be the subject of compensation: but inasmuch as it appeared that part of the subsidence complained of was occasioned by the workings of Sharp and were not in any way occasioned by the defendants, it was held that they were not liable for such injury, and this part of the plaintiffs' action was dismissed.

PRACTICE—DISCOVERY—INSPECTION OF DOCUMENTS—LIBEL IN NEWSPAPER—ORIGINAL MANUSCRIPT CONTAINING LIBEL—DISCRETION—ORDER XXXI. r. 18—(ONT. RULE 471.)

Hope v. *Brash* (1897) 2 Q.B., 188, an important point of practice was decided by the Court of Appeal (Lord Esher, M.R., and Smith and Rigby, L.JJ.) The action was for libel in a newspaper. the publication of which the defendant admitted, and in addition pleaded an apology and payment of money into Court in satisfaction. The plaintiff claimed inspection of the original manuscript containing the libel which the defendant admitted to be in his possession. The Court held that the plaintiff was not, on a proper exercise of judicial discretion, entitled to inspection of the manuscript; and the order of a Judge in Chambers which had ordered inspection was discharged.

GAMING—COMMON GAMING HOUSE—USER OF HOUSE OR ROOM FOR UNLAWFUL GAMING—GAMING HOUSES ACT, 1854, (17 & 18 Vict., c. 38) s. 4.—(CR. CODE, s. 198).

In *The Queen* v. *Davies* (1897), 2 Q.B. 199, an effort was made to establish that a person casually using his own house for the purpose of unlawful gaming, could be convicted of keeping a house or room for unlawful gaming. The facts were that the defendant and three friends met at a tavern, from whence they went to the house of the defendant to play cards; that they commenced to play whist, and subsequently played two other games called German Bank and Napoleon, at which one of the parties lost over £10. The jury found that German Bank was an unlawful game. There was no evidence that the defendant's house had on any other occasion been used for playing any unlawful game of cards. The Court (Lord Russell, C.J., and Hawkins, Grantham, Wright and Collins, JJ.) unanimously held that the defen-

dant could not be convicted under the Gaming Houses Act, 1854, s. 4 (see Cr. Code, s. 198) of using the house or room for the purpose of unlawful gaming being carried on there. The Court also held that the question of whether or not a game is unlawful is for the Court and not for the jury.

LANDLORD AND TENANT—FORFEITURE—RELIEF AGAINST FORFEITURE—BREACH OF COVENANT NOT TO UNDERLET—(R.S.O. c. 143, s. 11.)

Imray v. *Oakshette*, (1897) 2 Q.B. 218, cannot probably be regarded as an authority in Ontario, but it deserves attention if only for the fact that it brings out the point, that by the statute law of England 55 & 56 Vict., c. 13, s. 4, relief may now be granted there, to an underlessee against a forfeiture of the original lease for breach of a covenant against assigning or underletting without leave; but while the Court of Appeal (Lopes and Rigby, L.JJ.) were of opinion that the Court has jurisdiction to give relief against a forfeiture in such a case in favour of an underlessee, yet they were of the opinion that such relief ought not to be granted where the underlessee had acted negligently, or had knowingly participated in the breach. In this case the underlessee had purchased under a contract which prevented him from inquiring into the original lessee's title, and the Court held that that was such an act of negligence on his part as disentitled him to relief. The Ontario Act would preclude either a lessee or underlessee obtaining in any case relief from a forfeiture for the breach of such a covenant: see R.S.O. c. 114, s. 11, sub-sec. 6 (a). The case may possibly be considered as furnishing a guide in the exercise of the jurisdiction to relieve against a forfeiture under the Jud. Act, s. 52 (2).

JURISDICTION—TORT COMMITTED OUT OF THE JURISDICTION—LIBEL—PUBLICATION ABROAD—PLEADING.

Machado v. *Fontes* (1897) 2 Q.B. 231, was an action to recover damages for an alleged libel published by the defendant in Brazil. The defendant by leave of Kennedy, J., pleaded that no action would lie for such publication in Brazil, and an appeal was had from this order on the ground that even though no civil action would lie in Brazil, the act was

nevertheless wrongful in Brazil, and might be punished there by criminal proceedings. But how this latter fact was shown does not appear by the report. The defendant contended that that was a question of Brazilian law and could only be determined on evidence. But the Court of Appeal (Lopes and Rigby, L.JJ.) held that the pleading objected to did not constitute a defence and ordered it to be struck out. The reasoning of the Court, if we may say so without presumption, does not appear to us quite satisfactory. It is based on the rule laid down by Willes, J., in *Phillips* v. *Eyre*, L.R. 6 Q.B. at p. 28, to the effect that to entitle a plaintiff to sue in England for a tort committed abroad, the act complained of must be wrongful according to the law of England, and secondly it must not have been justifiable according to the law of the place where it was committed. If the judgment had been based simply on the ground that the pleading in question did not show that the act was justifiable according to the law of Brazil, we could understand it, but that would rather savor of the old law of special demurrer, but the judgment is not explicitly based on that ground. The Court seems to assume as a fact that the act was not justifiable by the law of Brazil, of which there seems to have been no evidence, and no allegation in the pleadings one way or the other. This under the old law of demurrer would be inadmissible as constituting "a speaking demurrer" to the defence: but of course with the abolition of demurrers it is impossible to define the rule by which applications of this kind ought now to be disposed of.

LOG OF MAYFLOWER—DELIVERY TO UNITED STATES GOVERNMENT OF ARCHIVES OF HISTORICAL INTEREST.

In re Log of Mayflower (1897), P. 208 will be read with interest by those of an antiquarian turn of mind, as it is the decision of the Chancellor of the Diocese of London on the application of the late United States Ambassador to England, praying that the log of the historic Mayflower might be delivered out of the archives of the Consistory Court of London to him, for the purpose of being transferred to the

custody of the authorities of the United States. The application was acceded to, upon the terms that the book should be delivered to the Governor of Massachusetts for the purpose of being deposited in the State archives at Boston, and that all persons bona fide desirous of searching it should be allowed to do so under such safeguards, and payment of such fee, as the Governor may fix and determine, etc.

PROBATE — WILL — REVOCATION — REVIVAL BY REFERENCE — WILLS ACT, 1837 (1 Vict. c. 26) s. 22—(R.S.O., c. 109, s. 24).

In the goods of Chilcott (1897), P. 223, a testatrix in 1889 made a will, and in 1892 her solicitor prepared a codicil which she took away with her, but never executed. Later in 1892 she executed a fresh will prepared by another solicitor, revoking the former will. In 1893 she executed a codicil prepared by her original solicitor, who was in ignorance of the second will, and believed that the codicil to the first will had been duly executed; this codicil purported to be a second codicil to the will of 1889, and to confirm "my said will and the first codicil thereto," Barnes, J., held that the will of 1889 was thereby revived, and that both wills, together with the codicil of 1893 must be admitted to probate, although the learned judge was compelled to admit that the result did not really carry out the real intention of the testatrix.

RECEIVER AND MANAGER—SALARY, UNDERTAKING OF RECEIVER TO ACT WITHOUT—ALLOWANCES TO RECEIVER—PREMIUM PAID BY RECEIVER TO GUARANTEE SOCIETY—EXTRA WORK DONE BY RECEIVER APPOINTED WITHOUT SALARY.

In *Harris* v. *Sleep* (1897), 2 Ch. 80, which was a partnership action, one of the partners was appointed receiver and manager without salary. He was a skilled mechanic, and during his receivership worked in the business as a common workman, which he carried on successfully for 18 months, when he became the purchaser of the business, with the sanction of the Court. In passing his accounts he claimed to be allowed £2 a week for the manual work done by him, and also £25 for two premiums paid a guarantee society which had become his surety as receiver. Kekewich, J., held that he was entitled to be allowed for the premiums, but that he

occupied a fiduciary position, and could not properly employ himself, and therefore was not entitled to any remuneration for his personal services. On appeal, however, the Court of Appeal (Lindley, Lopes and Rigby. L.JJ.) held that a receiver performing work which was not contemplated at the time of his appointment was entitled to be remunerated therefor.

ESTOPPEL—SETTLEMENT OF LAND BY GRANTOR HAVING NO TITLE—ENTRY OF TENANT FOR LIFE UNDER INVALID SETTLEMENT—REMAINDERMAN—STATUTE OF LIMITATIONS—(3 & 4 W. 4., c. 27' s. 34—(R.S.O., c. 111 s. 5 (12)).

In *Dalton* v. *Fitzgerald* (1897), 2 Ch. 86, the Court of Appeal (Lindley, Lopes and Rigby, L.JJ.) have affirmed the judgment of Stirling, J. (1897), 1 Ch. 440, noted ante p. 488, affirming the principle that where a person enters under a deed made by a grantor having no title, he cannot under the Statute of Limitations acquire a title by possession as against other persons entitled in remainder under the same deed.

FISHERY — LICENSE, OR GRANT OF INCORPOREAL HEREDITAMENT — PROFIT A PRENDRE—DISTURBANCE OF RIGHTS OF GRANTEE.

Fitzgerald v. *Firbank*, (1897) 2 Ch. 96, was an action by the grantees of "the exclusive right of fishing" in a defined part of a river, for an injunction to restrain the defendant from injuring the fishing by emptying water loaded with mud into the stream, whereby the water became so clouded that the fish were unable to see the bait, and the spawning beds were injured. It was contended by the defendant that the plaintiffs had only a license, and that therefore there was no trespass on anything belonging to them. But the Court of Appeal (Lindley, Lopes and Rigby, L.JJ.) agreed with Kekewich, J., that the grant was not a mere license to fish, but the grant of a right to fish and carry away the fish caught, which was a profit a prendre, and was an incorporeal hereditament entitling the plaintiffs to maintain the action. The judgment in favour of the plaintiffs was therefore affirmed.

CHARITY—WILL—GIFT TO PROMOTE THE SPREAD OF EVANGELICAL PRINCIPLES.

In re Hunter, Hood v. *Attorney-General*, (1897) 2 Ch. 105, the Court of Appeal (Lindley, Lopes and Rigby, L.JJ.) have reversed the judgment of Romer, J., (1897) 1 Ch. 518, (noted ante p. 493) holding that a gift for the purpose of purchasing advowsons in order to promote the spread of principles known as Evangelical, is a good charitable gift—and that where as here, the gift is for the purchase of advow ons for the purpose of spreading those principles, there would be no discretion in the trustees to present to such livings clergy who did not hold those principles, and to do so would be a breach of trust.

VENDOR AND PURCHASER—TITLE DEEDS, RIGHT TO CUSTODY OF—RETENTION OF INTEREST BY VENDOR.

In re Williams & Newcastle's Contract, (1897) 2 Ch. 144, a mortgagee of land and policies of life insurance sold the land under the powers of sale contained in the mortgage, retaining the policies of insurance; the purchaser claimed to be entitled to the custody of the mortgage deed, but the vendor refused to deliver it up, and relied on Rule 5, in s. 2 of the Vendors' and Purchasers' Act, 1874, that "where a vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents." North, J., however, held that the word estate in that Rule referred only to land including leaseholds, and did not justify the retention of the deed by the vendor. In Ontario the right of the purchaser would be so much the stronger, inasmuch as there is no such statutory provision, and as North, J., remarks, "apart from the Vendor and Purchaser Act it is clear that the right to the deed would go with the land."

COMPANY—WINDING UP—JUDGMENT CREDITOR—RECEIVER—EQUITABLE EXECUTION—SECURED CREDITOR—COMPANIES ACT, 1862 (25 & 26 Vict., c. 89) ss. 87, 163 (R.S.C. c. 129, ss. 16, 63.)

In *Croshaw* v. *Lyndhurst Ship Co.*, (1897) 2 Ch. 154, the question at issue was simply whether a judgment creditor of a company who had obtained, prior to a winding up order against the company, the appointment of a receiver by way

of equitable execution, is a secured creditor, and entitled to any specific charge on the property subject to the receiving order. This question Stirling, J., decided in the negative, being of opinion that the mere appointment of a receiver confers no lien or charge on the property to be received. It may be observed that in this case no money or property appears to have come to the hands of the receiver prior to the winding up order, and the decision of Stirling, J., does not go the length of saying that if any money or property had been so received the creditor would not be entitled to be deemed a secured creditor as to that.

CONTRACTS IN RESTRAINT OF MARRIAGE.

LOWE *v.* PEERS.

(4 Burr. 2225.)

This is a tale of by-gone years—
Of love and law and Newsham Peers.
Likewise the rue of Cath'rine Lowe
I, by these presents, fain would show.
Kate was a widow fair and fat;
Her age? I've naught to do with that!
Her Newsham loved while he was young—
A facile scribbler, slow of tongue.
—And love-sick youth with pen and ink
Can sell itself as quick as wink!
Then must not Newsham dree his dreed
For sealing Kate this solemn deed?
"I hereby promise Cath'rine Lowe
With none else to the altar go;
"But, should I wed another lass,
One thousand pounds to Kate shall pass."
O lackaday, and woe is me,
That man should so inconstant be!
He married—but the records show
That proud Dame Peers was never Lowe.

(In soothe he vowed to love till death
Not Kate but rare Elizabeth!)

* * * * *

She dried her eyes, our Katy did,
When thus her lawyer Katy chid:
"Why weep? A thousand pounds, I trow,
Is worth a thousand Peers or so!
"So dam your tears!" (that sounds profane
But, written out, the meaning's plain!)
Then, e'er his honey-moon has paled,
Wight Newsham to Westminster's haled!
But MANSFIELD eyes the deed askance;
"This cannot hold by any chance!
"'Tis not a pledge to marry Kate,
And yet, to judge Peers celibate,
"*Propter* this deed, would over-draw
The policy of English law.
"The contract's dead, as Cæsar's dead,
Because it curbs the right to wed!"
Whereat the Judges did report
That Katy Lowe was out of Court.
—And thus the little drama went
To make a legal precedent.

CHARLES MORSE.

It is not often that any amusement of a jocular character can be extracted from a consideration of the rule in *Shelley's Case*. It is therefore refreshing to read the judgment of Lord MacNaghten in *Van Grutten* v. *Foxwell*, 77 L.T. 170, in which that learned Lord has essayed, with considerable success, to impart a certain air of breezy comicality to the battle which he recounts of the legal Titans of the past, over that celebrated rule.

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Exchequer Court.] [Oct. 19

BRADLEY *v.* THE QUEEN.

Civil servant—Official reporters—Extra salary or remuneration—Civil Service Act—R.S.C., c. 17, s. 51.

By sec. 51 of the Civil Service Act of 1888 no "extra salary or additional remuneration" can be paid to a member of the civil service or other person permanently employed in the public service. In an action by the chief reporter on the *Hansard* staff of the House of Commons to recover the price of services performed for the Crown outside the scope of his official services,

Held, affirming the judgment of the Exchequer Court, that he was entitled to recover; that the Civil Service Act applies to the official stenographers; and that the words "extra salary or remuneration" in the Act, refer only to the salary or remuneration paid to the civil service for performance of his official duties, but do not prohibit payment for other services.

Appeal dismissed with costs.

Newcombe, Q.C., D.M.J., for the appellant.

Hogg, Q.C., for the respondent.

British Columbia.] [Oct. 22.

UNION COLLIERY *v.* ATTORNEY-GENERAL OF BRITISH COLUMBIA.

Appeal—Reference to Provincial Court for opinion—54 Vict., c. 5, (B.C.)

By the Act of the British Columbia Legislature, 54 Vict., c. 5, the Lieutenant-Governor-in-Council may refer to the Supreme Court of the Province, or to a Divisional Court thereof, or to the full Court, any matter which he thinks fit so to refer, the opinion of the Court to be deemed a judgment of the Court, and an appeal to lie therefrom as in the case of a judgment in an action.

Held, that no appeal lies to the Supreme Court of Canada from the opinion of the British Columbia Court on such a reference. If it was the intention of the Act to create such an appeal, it was beyond the powers of the Legislature of the Province.

Appeal quashed with costs.

Robinson, Q.C., for the motion.

Hogg, Q.C., contra.

Ontario.] [Oct. 22.

CITY OF TORONTO *v.* TORONTO RAILWAY CO.

Appeal—Assessment cases—Court for—Persons presiding—Appointment of —52 Vict. c. 37, s. 2 (D)—55 Vict., c. 48; 58 Vict. c. 47 (O).

By the Supreme Court Amendment Act of 1889 (52 Vict., c. 37, s. 2) an appeal lies to the Court from the judgment of any Court of last resort created under Provincial legislation to adjudicate concerning the assessment of property for Provincial or municipal purposes in cases where the person or persons presiding over such court is or are appointed by provincial or municipal authority.

By 55 Vict., c. 48 (O), an appeal lies in a matter of assessment from the Court of Revision to the County Court Judge, and by 58 Vict., c. 47 (O), two County Court Judges from adjoining counties may be associated with the Judge of the district in which the property assessed lies, for the hearing of such appeal. On appeal to the Supreme Court from the decision of the County Court Judges under the said legislation of Ontario,

Held, King. J., dissenting, that the persons presiding over the court appealed from were appointed by Federal authority, and the case was not within the amendment of 1889. The Court, therefore, had no jurisdiction to hear the appeal.

Appeal quashed with costs.

Laidlaw, Q.C., for the appellant.

Robinson, Q.C., for the respondent.

Ontario.] [Oct. 29.

O'DONOHOE *v.* BOURNE.

Appeal—Judgment by default—Application to be let in to defend—Discretion —R.S.C., c. 135, s. 27—Final judgment.

In an action in the High Court of Justice of Ontario by *B.* v. *O.*, judgment was entered for want of a plea. O. applied to a Master in Chambers to have the judgment set aside and to be allowed to file his appearance and defend the action. This application was refused by the Master and his refusal was affirmed on appeal to a Judge in Chambers, and on further appeals to the Divisional Court and Court of Appeal. From the decision of the Court of Appeal, O., sought to appeal to the Supreme Court of Canada On motion to quash his appeal,

Held, that it was discretionary with the Master to grant or refuse the application to open up the proceedings in the action and under R S.C. c. 135, s. 27, no appeal could be taken to the Supreme Court from the decision on such application.

Quaere: Was the judgment appealed from a "final judgment" within the meaning of s. 24 (a) of the Act?

Appeal quashed with costs.

Latchford, for the motion.

O'Donohoe, in person, contra.

EXCHEQUER COURT.

BURBIDGE, J.] [April 26.

BRADLEY *v.* THE QUEEN.

Civil Servant—Extra work—Hansard reporter—Royal Commission—The Civil Service Act, R.S.C. c. 17, s. 51—Application.

Notwithstanding the provisions of sec. 51 of the Civil Service Act, which enact that no extra salary or additional remuneration whatsoever shall be paid to any deputy head, officer, or employee in the Civil Service of Canada, or to any other person permanently employed in the public service, a reporter on the Debates' staff of the House of Commons is entitled to be paid for services rendered by him in reporting the evidence taken under a Royal Commission.

Hogg, Q.C., for claimant.

Newcombe, Q.C., (D.M.J.) for defendant.

Affirmed on appeal to Supreme Court, 19th October, 1897.

BURBIDGE, J.] [Oct. 27.

BALDERSON *v.* THE QUEEN.

Civil servant—Superannuation of—Superannuation Act, s. 11—Discretion of Governor-in-Council—Jurisdiction of Court to review.

Under the provisions of The Civil Service Superannuation Act (R.S.C. c. 18) where the Governor-in-Council exercises the discretion or authority conferred upon him by such Act to regulate the allowance to be paid to a retired civil servant, his decision as to the amount of such allowance is final, and the Exchequer Court has no jurisdiction to review the same.

W. D. Hogg, Q.C., and *J. M. Balderson*, for the suppliant.

Solicitor-General and *Newcombe*, Q.C., (D.M.J.) for the Crown.

BURBIDGE, J.] [May 25.

MATTON *v.* THE QUEEN.

Revenue law—Customs draw-back—Petition of right—Liability of Crown.

By The Customs Act 1877, (40 Vict., c. 10), s. 125, cl. 11, it is provided that the Governor-in-Council may make regulations for granting a draw-back of the whole or part of the duty paid on materials used in Canadian manufactures. In 1881, by an amendment made by 44 Vict., c. 11, s. 11, the Governor-in-Council was further empowered to make regulations "for granting a certain specific sum in lieu of any such draw-back." See also the Customs Act, 1883, s. 230, cl. 12, and R.S.C. c. 32, s. 245 (m.) On May 15th, 1880, an Order-in-Council was passed which provided that a draw-back might be "granted and paid by the Minister of Customs on materials used in the construction of ships or vessels built and registered in Canada, and built and exported from Canada under Governor's pass for sale and registry in any other country since January 1st, 1880, at the rate of 70 cents per registered ton on iron kneed ships or vessels classed for nine years; at the rate of 65 cents per registered ton on iron kneed ships or vessels classed for seven years, and at the rate of 55 cents

per registered ton on all ships or vessels not iron kneed." By an Order-in-Council of November 15th, 1883, an addition was made to the rates stated "of ten cents per net registered ton on such vessels when built and registered subsequent to July 1st, 1883." The first of these Orders-in-Council was passed prior to the amendment of 1881 referred to, and the latter thereafter. The regulation embodied therein was again approved of by His Excellency in Council on July 25th, 1888, and appears in c. 11 Consol. Orders-in-Council of Canada, s. 10 of which is in the following terms:—"A draw-back may be granted and paid by the Minister of Customs on materials used in the construction of ships or vessels built and registered in Canada, and built and exported from Canada under Governor's pass, for sale and registry in any other country, at the rate of 85 cents per registered ton on iron kneed ships or vessels classed for 9 years; at the rate of 75 cents per registered ton on iron kneed ships or vessels classed for seven years, and at the rate of 65 cents per registered ton on all ships or vessels not iron kneed. O.C. May 15th, 1880; Nov. 15th, 1883."

Held, that a petition of right will not lie against the Crown for a refusal by the Comptroller of Customs to grant a draw-back in a particular case.

Semble, that the provisions in such regulations that the draw-back "may be granted" should not be construed as an imperative direction; it not being a case in which the authority given by the use of the word "may" is coupled with a legal duty to exercise such authority.

Angers, Q.C., for suppliant.

Solicitor-General and *Newcombe*, Q.C. (D.M.J.) for respondent.

Province of Ontario.

COURT OF APPEAL.

MACLENNAN, J.A.] [Oct. 15.

BOYD *v.* DOMINION COLD STORAGE CO.

Security for costs—Court of Appeal—Special order—Judicature Act, 1895, s. 77—Foreign domicil—Company—Winding up—Property in jurisdiction.

Where the appellants were both domiciled out of Ontario, and one of them, an incorporated company, was in process of winding up under R.S.C. c. 129:

Held, having regard to ss. 17, 39, and 66 of that Act, that the property of the company in Ontario was beyond reach of the process of the Court; and the circumstances were such that a special order for security for costs of the appeal should be made under Rule 1487 (803) of the 1st January, 1896, taken from s. 77 of the Judicature Act, 1895.

Grant v. *Banque Franco Egyptienne*, 2 C.P.D. 430, and *Whittaker* v. *Kershaw*, 44 Ch. D. 296, followed.

A. J. Boyd, for the plaintiff.

George Bell, for the defendants.

MACLENNAN, J.A.] [Oct. 20.

D'IVRY *v.* WORLD NEWSPAPER CO. OF TORONTO.

Appeal—Time—Extension of—Special circumstances—Terms—Notice of motion—Late service—Objection.

Where notice of appeal was given, but the appeal was not set down in due time, and a sittings of the Court lost, the time for setting down was extended, as it appeared that there had all along been a bona fide intention of appealing, and security had been given for the debt and costs, and a large sum paid for a copy of the evidence. The terms of giving further security, setting down the appeal within a limited time, and paying costs in any event, were imposed.

An objection that a notice of motion was served five minutes too late should not prevail where the delay was occasioned by the solicitor having lately changed his office. If necessary, a new service should be permitted.

H. M. Mowat, for the plaintiff.

King, Q.C., for the defendants.

MOSS, J.A.] [Oct. 25.

DENISON *v.* WOODS.

Payment into Court—Defence—Payment out—Election—Time—Con. Rules 632 et seq.—Appeal—Removal of stay of proceedings.

In an action to recover money for services rendered, the defendant pleaded that $325 was more than an ample and sufficient payment; that he had before action paid the plaintiff $25, and had always been ready and willing and was now ready and willing to pay him $300 more; that before action he had tendered $300 in payment of the services rendered, but the plaintiff refused to accept it; and the defendant brought $300 into Court in satisfaction of all claims and demands of the plaintiff in this action.

The plaintiff did not elect to take the money out of Court, but joined issue upon the defence, and, the action proceeding, was awarded $397.50 by the report of a referee. After the defendant had unsuccessfully appealed from the report to the High Court, and had launched a further appeal to the Court of Appeal, the plaintiff applied to a Judge of the Court of Appeal for an order to remove the stay of proceedings in the Court imposed by the giving of security, for the purpose of allowing him to move for payment out of Court of the $300.

Held, that the defence was so framed that if the plaintiff had desired to take the money out of Court, he must have elected to do so before replying or before the expiration of the time for replying, as provided by Con. Rule 636, and must have taken it in satisfaction of all claims of the plaintiff in the action, and have filed and served a memorandum in accordance with Rule 635. But, as the plaintiff, instead of taking this course, proceeded with the action, the defendant was absolved from his offer, and the money remained in Court subject to further order; the defendant was entitled, in the absence of special circumstance, to have it remain to be dealt with when the case should be finally disposed of; and it was open to the defendant to contend that the amount allowed by the referee should be reduced below $300, notwithstanding

the payment into Court, by the plaintiff's election not to take the money out at the appropriate time. And therefore the stay of proceedings should not be removed.

Watson, Q.C., for the plaintiff.

F. A. Anglin, for the defendant.

HIGH COURT OF JUSTICE.

SNIDER, Loc. J.] [July 26.

TALBOT *v.* CANADIAN COLOURED COTTON CO.

Interest on verdict—Stay of proceedings.

This was an action for damages tried before Street, J., who on Jan. 14th, 1897, made an order for the entry of judgment for the plaintiff for $1,200, with full costs of suit, but he stayed entry of judgment until the case could be brought before the Divisional Court. The judgment was affirmed by that Court and entered on Feb. 26th as of Jan. 14th. The plaintiff claimed interest from Jan. 14th. For the defendant it was contended, on the authority of *McLaren* v. *Canada Central R.W. Co.*, 10 P.R. 328, that interest should only run from Feb. 26th. By agreement of counsel the question was argued before SNIDER, Co. J., (Local Judge) in Chambers.

Held, that interest was payable from the original entry of judgment, the case being governed by Jud. Act, s. 121, and Con. Rules 765, 775, and that *McLaren* v. *Canada Central R.W. Co.* did not apply.

D'Arcy Tate, for plaintiff.

K. Martin, for the defendants.

Divisional Court.] [Oct. 4.

IN RE JONES *v.* JULIAN.

Division Court—Jury trial—Submitting questions—Acquiescence—Prohibition.

In a Division Court action for the price of goods sold, the Judge without objection taken submitted questions to the jury, and on their answers entered verdict and judgment for the plaintiff after the defendant had, however, put in a written argument in his own favor.

Held, on motion for prohibition, on the ground that the defendant was entitled to a general verdict of the jury, and that the Judge had no right so to submit questions and enter a verdict on them, but that however this might be, the defendant had so acquiesced in the course taken as to debar him from obtaining prohibition.

Douglas, for motion.

D. Armour, contra.

Divisional Court.] [Oct. 5.

FISKEN *v.* IFE.

Partition and sale—Application by tenant for life of whole estate—Reversioner.

Held, that the jurisdiction in partition matters given by R.S.O. c. 104, was not intended to be exercised at the instance of a tenant for life of the whole estate as against any reversioners who object to the sale of the life estate.

E. D. Armour, Q.C., for the applicant.
F. Arnoldi, Q.C., contra.

Divisional Court.] [Oct. 6.

OWEN *v.* SPRUNG.

Divisional Courts—Appeal—Filing case—Extension of time—Delay of Clerk—Jurisdiction—58 Vict. c. 13, sec. 47, O.

Motion to strike out an appeal from a Division Court judgment refusing a new trial.

Through the delay of the Division Court Clerk in furnishing a certified copy of the proceedings, the appellant was not able to file the same within the two weeks provided by 58 Vict., c. 13, s. 47, (4), while the Junior County Court Judge refused to make an order under that section, allowing any other period for so doing.

Held, that this Court had no jurisdiction to grant relief; but application ould be made to the Senior County Judge.

Aylesworth, Q.C., for the motion.
Hodgins, contra.

Divisional Court.] [Oct. 7.

NEVILLE *v.* BALLARD.

Criminal law—Summary trial—Assault causing actual bodily harm—Release from future criminal proceedings—Criminal Code, ss. 262, 799.

An assault occasioning actualy bodily harm within s. 262 of the Criminal Code, 1892, 55-56 Vict., c. 29, is not susceptible of being tried summarily without the consent of the defendant, under part 58 of the Code, but may be brought under part 55 of the Code by the election of the person charged under s. 786 to be tried summarily. In such case, however, a certificate of dismissal or a conviction, only releases the person charged from further criminal proceedings, under s. 799. The release does not extend also to civil proceedings as under ss. 864—866.

Riddell, for the defendant.
Mulvey, for the plaintiff.

ROBERTSON, J.] [Oct. 8.

PRESANT *v.* GUELPH LIGHT AND POWER CO.

Action for improper use of water in stream—Parties—Tenant-at-will.

In an action by a riparian proprietor to restrain an improper and illegal use of the water in a stream, the plaintiff being a mere tenant-at-will, if the reversioners do not join as plaintiffs, upon a motion by defendants they will be added as parties defendants in order to be bound by any judgment made in the action. Costs of application to defendants against plaintiff in any event.

J. H. Moss, for defendants.

H. L. Dunn, for plaintiff.

W. H. Garvey, for proposed parties.

BOYD, C., FERGUSON, J., MEREDITH, J. [Oct. 20

PALADINO *v.* GUSTIN.

Security for costs—Slander—52 Vict., c. 14, s. 1., sub-sec. (3)—Meaning of words used—Good defence.

Slander of a married woman. The words alleged to have been spoken were, "You are a blackguard; you are a bad woman;" and the innuendo was that the plaintiff was a common prostitute, and a woman of evil character. Upon an application by the defendant under 52 Vict., c. 14, s. 1, sub.-sec. (3), for security for costs, the defendant admitted having called the plaintiff "a bad, quarrelsome woman," but said he did not recollect using, and believed he had not used the word "blackguard," and he denied that he used the words with the meaning attributed to them by the plaintiff.

Held, MEREDITH, J., dissenting, that the defendant had not shown a good defence to the action on the merits, and his application was properly refused.

Per BOYD, C., and FERGUSON, J., that the expressions used might be employed in circumstances and surroundings such that bystanders might think them a statement of want of chastity.

Per MEREDITH, J., that as it was shown by the pleadings and the affidavit of the defendant that there was a real and substantial question for the jury to pass upon, and upon which the action might fail, the defendant had shown a good defence upon the merits.

J. M. Clark, for the plaintiff.

W. E. Middleton, for the defendant.

MEREDITH, J.] [Oct. 22.

DIXON *v.* TRACEY.

Parties—Causes of action—Joinder—Rule 185.

Motion by the defendant to stay proceedings in the action until the plaintiff should elect which of their causes of action they would proceed with.

Action by a father and his daughter, as plaintiffs, to recover $1,000 damages from the defendant, the claim being made generally on behalf of both

plaintiffs. The statement of claim alleged the seduction of the daughter by the defendant and the breach by him of a promise to marry her. It also alleged that the defendant induced the daughter to allow an operation to be performed upon her person to procure an abortion, which resulted in severe bodily injury.

Furlong, for defendant. These causes of action could not be joined in one action.

Masten, for the plaintiffs. By the new Rule 185 a change was made in the law, so that such cases as *Smurthwaite* v. *Hannay*, (1894) A.C. 494, and *Mooney* v. *Joyce*, 17 P.R. 241, were no longer applicable.

Held, that Rule 185 did not permit of claims for seduction and breach of promise of marriage being joined in one action, and made the order asked by the defendant with costs to be costs in the action.

MEREDITH, C.J.] [Oct. 22

MUNRO *v.* WALLER.

Damages—Measure of—Breach of covenant not to assign lease—Evidence.

By the judgment it was declared that the defendant, the assignee of a lease, had broken a covenant in the lease not to assign without leave, and a reference was directed to ascertain the damages to which the lessors were thereby entitled.

The referee found that the defendant at the time he assigned the lease was solvent and able to pay the rent as it should become due, and to perform the covenant for payment of taxes and insurance premiums, and that the person to whom the defendant assigned was insolvent, and without means, business or credit; and he assessed the past damages at $1,551.62, made up of the rent and taxes in arrear, and the future damages at $2,346, made up by capitalizing all the accruing instalments of rent and future insurance premiums down to the expiration of the lease, and $400 for damages for past breaches of the covenant to repair.

The evidence showed that the defendant up to the time he assigned the lease had paid the rent, though not punctually, and had, since he left the demised premises up to the time of judgment, paid his rent for the hotel to which he removed; but the business carried on by him upon the demised premises had been deteriorating, and must soon have become an unprofitable one.

Held, upon appeal from the referee's report, that while the plaintiffs were entitled to recover as damages such sum of money as would put them in the same position as if the covenant had not been broken, and they had retained the liability of the defendant, instead of an inferior liability; yet, the damages assessed were excessive upon the evidence, and in estimating the value of the defendant's liability no allowance had been made for the vicissitudes of business and the uncertainty of life and health; and the damages were reduced to $500.

Williams v. *Earle*, L.R. 3 Q.B. 751, followed.

D. Urquhart, for the defendant.

C. Millar, for the plaintiffs.

ARMOUR, C.J. FALCONBRIDGE, J., STREET, J. [Oct. 25.

STRATFORD TURF ASSOCIATION *v.* FITCH.

Gaming—Sale of betting privileges on race-course—Illegality—Criminal Code, s. 204—Lease of race-course by incorporated to unincorporated association.

Appeal by defendants from order of the Judge of the County Court of Wentworth refusing to set aside judgment for the plaintiffs and direct a new trial of an action in a Division Court to recover $101 and interest, as the balance due from the defendants to the plaintiffs under an agreement for payment by the defendants of $607 in consideration of their being given the exclusive betting and gaming privileges at the race-meeting to take place on the track at Stratford on the 25th and 26th August, 1896. The plaintiffs were the lessees for 1896 of the Stratford Athletic Company, Limited, an incorporated association, who owned the race-course. No evidence was adduced to show that illegal betting or gaming was in contemplation of the parties to this agreement at the time it was made. The defendants contended that the cause of action was in reference to a gambling transaction.

Held, that the betting or gaming to be carried on under the agreement would not necessarily be illegal under Criminal Code, s. 204, for the provisions of that section are not to extend to bets "made on the race-course of an incorporated association during the actual progress of a race-meeting," nor would it be necessarily illegal apart from this section. The betting and gaming contemplated by the agreement were to be made on the race-course of which the plaintiffs were the lessees during the actual progress of a race-meeting and this was the race-course of an incorporated association, the Stratford Athletic Company, and it was not the less so, within the meaning of s. 204, by reason of the lease to the plaintiffs; the object of the Legislature apparently being to reserve the race-courses of incorporated associations as places where betting might be made during the actual progress of a race-meeting without the betters being subject to the penalties of that section.

Wallace Nesbitt, for the defendants.

Teetzel, Q.C., for the plaintiffs.

Province of New Brunswick.

SUPREME COURT.

BARKER, J. In Equity. [Oct. 19.

FERGUSON *v.* FERGUSON.

Foreclosure—Mortgagee in possession—Judgment pro confesso—Reference.

On a motion in a suit for foreclosure and sale, where the mortgagee had been in possession, to take the bill pro confesso for want of an appearance, a reference was ordered to take the accounts before a sale would be decreed.

G. G. Gilbert, Q.C., for the motion.

BARKER, J.
Equity Chambers. [Oct. 22.

IN RE MCNAUGHTON.

Administration bond—Application to put in suit—Creditor abroad—Security for costs—C. 52 s. 51, C.S.N.B.

Where an application to put an administration bond in suit under c. 52, s. 51, C.S.N.B., is made by a creditor residing outside the jurisdiction of the Court he will not be required to put in security for the costs of action to be brought upon the bond as a condition of obtaining the order, nor is the applicant required to make out more than a prima facie claim against the estate of the deceased, and that there has been default by the administrator.

The order of the Court allowing the bond to be put in suit was directed to be taken out of the Clerk's office.

Form of order in *In re Hunter*, 1 Han. 235, followed.

M. G. Teed, for the petitioner.

W. B, Chandler, for the sureties.

COUNTY COURT.

FORBES, Co.J.] [Oct. 12.

KELLY *v.* BURGESS.

Civil Action— Wrongful arrest—Habeas corpus—C. 41, C.S. N.B.

Proceedings for the discharge of a prisoner arrested on civil process out of the Parish Civil Court of Lancaster may be taken under s. 4, c. 41, C.S. N.B., and the section is not confined to criminal or quasi-criminal cases.

Chapman, for the application.

Baxter, contra.

Province of British Columbia.

SUPREME COURT.

DRAKE, J.] [Oct. 12.

REG. *v.* PETERSKY.

Certiorari—Sunday observance by-law.

This was an application for a writ of certiorari to remove the proceedings relative to the conviction of Simon Petersky for breach of a by-law of the Richmond municipality, being a by-law for the better observance of the Lord's day, commonly called Sunday. The by-law enacts that no person whomsoever shall do or exercise any worldly labor, business or work of his ordinary calling upon the Lord's day, or any part thereof, works of necessity and charity only excepted, and no person shall publicly cry forth or expose for sale, or sell, or permit to be exposed for sale or sold, any wares, merchandise, fruit, fish, game

or other goods and chattels, whatsoever, on the Lord's day. Any person guilty of an infraction of this by-law shall upon conviction forfeit or pay a sum not exceeding five pounds sterling, or an equivalent in Canadian currency together with costs of prosecution, and in default of payment of such fine and costs within a time to be named by the Justice, the Justice may commit such person to the common goal for any period not exceeding two months without hard labor, unless the fine and costs are sooner paid.

Held, that the legality of the by-law may be questioned on these proceedings, although no application is made to quash it: *Regina* v. *Osler*, 32 U.C.R. 324, *Regina* v. *Cuthbert*, 45 U.C.R. 19, and in that it purports to affect all persons without exception, and would include a minister of religion, farmers, and others, who are not included in the statute, 29 Car. 2, c. 7, which statute is the law of the Province. the by-law was intended to operate outside the Act, and is ultra vires as creating new offences.

BOLE, Loc.J.] [Oct. 26.

FENSON *v.* CITY OF NEW WESTMINSTER.

Criminal Code—Appeal from Justice of the Peace—Costs.

This was an application under sec. 880 of the Criminal code, that the fine, costs and costs of appeal from a Justice of the Peace be paid out of the deposit in Court to the respondent, the appeal having been dismissed.

Held, that when a statute confers an authority to do a judicial act in a certain case it is imperative on those so authorized to exercise the authority when the case arrises and its exercise is duly applied for by a party interested, and having the right to make the application: *McDougall* v. *Patterson*, 27 L.J., C.P.; *Julius* v. *Bishop of Oxford*, 5 A.C. 224. Application granted, and the fine, costs and costs of appeal ordered to be paid forthwith to the respondent out of the deposit in Court.

BOLE, Loc. J.] [Oct. 26

STEVENSON *v.* BOYD.

Partnership—Illegal contract.

In this case the plaintiff alleging the existence of a partnership between himself and the defendant comes into Court to have the usual accounts taken. The defendant admits the partnership but says as it was formed for an illegal act, and, as the consideration therefor was iliegal and contrary to public policy, the agreement is void and should not be enforced against him. The corporation of Vancouver invited tenders for certain works in connection with the water-works of that city. The defendant had handed in his tender when he met the plaintiff who also proposed tendering, and in consequence of a conversation that then took place, the defendant withdrew his tender. Thereupon,

defendant and plaintiff agreed that each should send in a separate tender for the work, defendant's to be the lower one, and if it was accepted, as both contractors thought it probably would, then they were to share the profits and loss of the contract equally between them in pursuance of this agreement. Defendant put in another tender for a higher price than the tender withdrawn and the plaintiff sent in his tender at a higher figure than that of defendant. The defendant's tender being the lowest was accepted, and the work was commenced and carried on thereunder.

Held, that there was a partnership between the litigants, and that while such an agreement as the one under consideration is not consistent with high views of commercial morality it is not legally void : *Jones* v. *North*, L.R. 19 Eq. 426.

Flotsam and Jetsam.

The disinclination of judges to retire is a very natural one ; it is the disinclination to self-effacement. Nobody likes to be shelved, least of all the children of this generation ; for if there is one quality more than another characteristic of the nineteenth century it is the passion for notoriety—"digito monstrari et dicier hic est." All have it : politicians, actors, authors, artists ; and it is a passion which grows. How morbid it may become is shown in the case of a man who set fire to York Minster merely to enjoy celebrity—"volitare per ora virum." Lawyers are not exempt. Even so great a judge as Chief Justice Cockburn liked—so Lord Bramwell tells us—a page of the *Times* devoted every day to him and his doings, and picked out causes célèbres for his list. There is another cause operating in the case of successful lawyers which accentuates the disinclination to quit a post of honour, usefulness and emolument, and it is that the lawyers have less than most men other resources, other pursuits and hobbies to fall back upon. . . . Lawyers should be wise, and cultivate while they still have leisure some pursuit, some study, which will furnish recreation for the evening of life. Fearne, of "Contingent Remainders" fame, found time to construct optical glasses and musical instruments. The late Mr. Justice Grove gained not only relaxation but renown in the abstruse problems of the correlation of forces in science. The late Lord Coleridge had his happy hunting ground in literature. Lord Justice Fry is a devotee of botany, and Lord Davey of gardening—"sua cuique voluptas." With studies and pursuits like these retirement can never be dull. It means to rest but not to rust.—*Law Journal, Eng.*

The extraordinary rapacity of some money lenders is proverbial. Why the loaning of money should develop such inordinate greed it may be difficult to comprehend. That it exists is only too apparent. Some more than ordinary instances of extortion are referred to in the last report of the Inspector

General in Bankruptcy in England. In one case the debtor, a timber merchant, resorted to a money lender who transacts business in twelve different towns, and according to the debtor's books he received from the money lender between March and December, 1894, £3,500, and paid him back £8,500, and still, according to the money lender's proof, owed him £4,000! The same money lender lent another debtor £850, was repaid £1,294, and yet the money lender still claimed £390, although within twelve months he had received £535 by way of interest.

President Lincoln, when he was a young lawyer practicing in the Courts of Illinois, was once engaged in a case in which the lawyer on the other side made a very voluble speech, full of wild statements, to the jury. Lincoln opened his reply by saying: "My friend who has just spoken to you would be all right if it were not for one thing, and I don't know that you ought to blame him for that, for he can't help it. What I refer to is his reckless statements without any ground of truth. You have seen instances of this in his speech to you. Now, the reason of this lies in the constitution of his mind. The moment he begins to talk, all his mental operations cease, and he is not responsible. He is, in fact, much like a little steamboat that I saw on the Sangamon River, when I was engaged in boating there. This little steamer had a five-foot boiler and a seven-foot whistle, and every time it whistled the engine stopped."—*Green Bag.*

"Oh," said the lady lecturer, "I have had such a delightful conversation with the gentleman you saw bow to me as we left the train. He told me that the emancipation of woman had been his life work for ever so many years." "Yes," said the woman who had come to meet her, "that is so. He has been a divorce lawyer ever since I could remember."—*Law Times (London).*

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NEW CURRICULUM.

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

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

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

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