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ASSIGNMENTS BY INSOLVENTS.

It is generally conceded by the legal profession that R.S.O., c. 124, the Act respecting Assignments and Preferences by Insolvent Persons, and the amending Acts, are *ultra vires* of the Ontario Legislature, with the possible exception of sections 1 and 2, but it is by no means clear that even these are valid. Three of the four judges of the Court of Appeal have so held: *Clarkson* v. *Ontario Bank*, 15 A.R. 166; *Edgar* v. *Central Bank*, 15 A.R. 196; *Reg.* v. *County of Wellington*, 17 A.R. 421; *In re Assignments and Preferences Act*, s. 9, 20 A.R. 489. The necessary effect of the judgment of the Supreme Court in *Quirt* v. *The Queen*, 19 S.C.R. 510, seems to be to make this conclusion inevitable.

Assignments are no longer taken under it, and consequently it is necessary to carefully consider the position of a common law assignment.

The design of 54 Vict., c. 20, is to secure the *pro rata* distribution of the assets of insolvents, and for this reason it declares any other mode of distribution an unjust preference. It remains to be seen whether, having regard to its manifest purpose, and its close connection with the remainder of the Act which it amends, it can be judicially construed as anything else than what it is, viz., an insolvency law. In *Roach* v. *McLachlan*, 19 A.R. 500, Mr. Justice Osler follows this argument so far as to cast doubt on the Creditors' Relief Act itself, which, "*even if intra vires*, is but a crippled substitute for insolvent legislation." If the whole Act respecting Assignments and Preferences be *ultra*

vires, and we incline to the belief that it is, diligence in enforcing a claim is now of considerable importance, but diligence, to avail, must be with the assistance of the debtor. He may now transfer property to a favoured creditor, and so long as the transfer is made in advance of an execution in thesheriff's hands it is valid. He may even transfer book debts and other choses in action owing to him after an execution has actually reached the sheriff's hands, for book debts are not "securities for money" within the meaning of the Execution Act,R.S.O., c. 64, s. 17: *McNaughten* v. *Webster*, 6 U.C.L.J. 17; *McDowell* v. *McDowell*, 10 U.C.L.J. 48; *Harrison* v. *Paynter*, 6 M.&W. 387. "Other securities," says North, J., in speaking of 1 & 2 Vict., c. 110, s. 12, the original of our Act, "I think, means only securities *ejusdem generis* with the securities particularly mentioned in the section," *i.e.*, "cheques, bills of exchange, promissory notes, bonds, mortgages, specialties": *Re Rollason*, 56 L.J. Ch. 769. Book debts can only be reached by attachment. As for stocks and shares in companies, they may be transferred by the debtor, until the notice required by R.S.O., c. 64, ss. 10, 11, has been given to the company. But it is only with the assistance of the debtor that a creditor can be favoured, for if the latter seeks to make his money by an execution the Creditors' Relief Act will compel a *pro rata* distribution to all the execution creditors who have intervened within the limited time. This difficulty, however, can easily be overcome with the assistance of the debtor by his raising a loan on the security of his assets, after the favoured creditor has his execution in the sheriff's hands. Subsequent executions rank only on the residue after paying the first execution and the mortgage in full, and it is probable that the same result can be effected by making an assignment for the benefit of creditors before a second execution reaches the sheriff's hands: *Roach* v. *McLachlan*, 19 A.R. 496. For the mode of obtaining judgment so as to evade section 1, even if *ultra vires*, see *Turner* v. *Lucas*, 1 O.R. 623.

When section 9 was declared *ultra vires*, the usefulness of the Act was destroyed. The consequence will probably be to curtail the credit of those who have only small capital, and to make creditors rush for the assets of the debtor, on the first signs of financial embarrassment.

If the Act respecting Assignments and Preferences is wholly

invalid, then all its provisions respecting filing the assignment and advertising in the *Ontario Gazette* and otherwise are no longer applicable. The creditors have no power to replace one assignee by another, and until some creditor has assented to the assignment it may be revoked by the debtor.

Section 12 only removes " an assignment for the general benefit of creditors under this Act " from the operation of the Act respecting Mortgages and Sales of Personal Property. Consequently, it will be necessary to strictly comply with the provisions of the latter Act as to the description of the property, the affidavits of execution and *bona fides*, and filing within five days in the proper office as a bill of sale: *Whiting et al.* v. *Hovey et al.*, 13 A.R. 7.

As respects fraudulent transfers of property made by the assignor, the assignee is in the same position as the assignor, and there is now nothing to prevent any creditor from proceeding to attack such a transfer, either by action or under Con. Rule 1007, if the transfer be of land. But the rights of the attacking creditor are more meagre than those given by the Act in question. He will now have to rely on 13 Eliz., c. 5, as amended by R.S.O., c. 96. For the cases under this statute, see Holmested & Langton, p. 788; *Building and Loan Association* v. *Palmer*, 12 O.R. 1.

The result sought to be attained by s. 5 may still be reached by apt words in the assignment itself. To give the partnership property to the partnership creditors and the individual property to the individual creditors *pro rata* is not unfair. Where the assignment empowered the assignee to sell the property assigned " by auction or private contract, as a whole or in portions, for cash or on credit, and generally on such terms and in such manner as he shall deem best or suitable, having regard to these presents," and the trusts were declared to be (1) for the payment of expenses; (2) to retain a reasonable compensation, based upon the time and trouble bestowed on and about the trusts; (3) after a just and equitable distribution of the expenses as between partnership and separate estate, " to pay and divide the residue of the partnership estate and the surplus of the separate estates unto and among all and every the creditors of the said partnership according to the amount of their respective claims ratably and proportionately, and the respective separate

estates (less proportion of the costs, charges, expenses, and allowances) and any surplus of the partnership estate unto and among the separate creditors respectively," and provided also that the assignee "shall only be answerable or chargeable for wilful neglect or default," the instrument was upheld as not being a fraudulent preference: *Badenach* v. *Slater*, 8 A.R. 402, affirmed in the Supreme Court, June 23, 1884.

The most extensive change made by the sweeping away of the Act in question is in regard to the rights of creditors who have security for their claims. They are entitled to prove their claims in full, and to share *pro rata* with the other creditors on the whole amount of their claims, and they may also realize on their security, the only limitation being that they must not get more than one hundred cents on the dollar: *Rhodes* v. *Moxhay*, 10 W.R. 103; *Beaty* v. *Samuel*, 29 Grant 105; *Eastman* v. *Bank of Montreal et al.*, 10 O.R 79. The state of the accounts at the time the claim is put in is that which forms the basis of the dividend sheet, and the amount is to be fixed by the assignee at that date. Any moneys received prior to that from collaterals are to be credited; those received afterwards from such sources need not be taken into account unless they, with the dividend, bring up the amount received by the creditor to more than one hundred cents on the dollar.

This may tend to make wholesale merchants and others look for security on the stock-in-trade of the debtor, and it will possibly do a little to check the pernicious habit of giving indiscriminate credit engendered of ruinous competition. But it will put it in the power of the debtor to pay one creditor in full, and leave the others less fortunate to mourn the confidence they placed in him.

It is high time that, in the interests of business morality, as well as of honest debtors, we had an efficient bankruptcy law.

CURRENT ENGLISH CASES.

LANDLORD AND TENANT—COVENANT TO PAY CHARGE IMPOSED ON LESSOR IN RESPECT OF PREMISES—ORDER BY SANITARY AUTHORITY TO LESSOR TO ABATE NUISANCE—EXPENSES OF ABATING NUISANCE.

Smith v. *Robinson*, (1893) 2 Q.B. 53, is another case on the law relating to landlord and tenant. In this case the defendant had covenanted, as lessee, to pay all tax, sewers rate, drainage rate, and all other rates, taxes, assessments, charges, or impositions whatsoever, parliamentary, parochial, or otherwise, taxed, charged, assessed, or imposed upon the demised premises. The defendant also covenanted to repair. The defendant failed to repair a drain; in consequence, it got out of order and caused a nuisance. The sanitary authority, acting under statutory powers, made an order on the lessor to repair the drain, and the lessor incurred expenses in complying with this order, and the action was brought to recover the amount. A Divisional Court (Mathew and Wright, JJ.) held that the plaintiff was entitled to succeed, as the expenses so incurred were a charge imposed on the lessor in respect of the demised premises within the meaning of the covenant.

CRIMINAL LAW—CRUELTY TO ANIMALS—WILD ANIMALS, CRUELTY TO—12 & 13 VICT., C. 92, SS. 2, 29; 17 & 18 VICT., C. 60, S. 3.—(CRIMINAL CODE, S. 512).

Aplin v. *Porritt*, (1893) 2 Q.B. 57, was a case in which the defendants were charged with cruelty to animals. It appeared from the evidence that the animals in question were wild rabbits kept for coursing, and that the defendants had been guilty of cruel treatment of them. The justices had dismissed the complaint on the ground that, the animals not being "domestic animals," the statute did not apply. Mathew and Wright, JJ., held that the magistrates were right, and that the Act only applied to domestic animals. The Canadian Criminal Code, s. 512, though not worded in the same way as the English Acts above referred to, appears also to be confined to cases of cruelty to domestic animals.

SALE OF GOODS—MEMORANDUM IN WRITING—STATUTE OF FRAUDS (29 CAR. 2, C. 3), S. 17.

In *Taylor* v. *Smith*, (1893) 2 Q.B. 65, the plaintiff sought to recover payment for goods sold and delivered, and the defence

set up was that there had been no acceptance of the goods, nor any sufficient memorandum in writing within s. 17 of the Statute of Frauds. The defendant carried on business in Manchester, and orally agreed with the plaintiffs to buy from them a quantity of spruce deals to be forwarded to the defendants from Liverpool by a carrier nominated by the defendants. An invoice of the goods was sent by the plaintiffs to the defendant, and the carrier also sent the defendant an advice note to inform him of the arrival of the goods. This note specified the number of the deals, and stated them to be consigned by the plaintiffs to the defendant, but did not state the price, nor refer to the invoice or any other document. On the day of their arrival and the following day the defendant inspected them, and subsequently wrote and signed the following memorandum on the advice note: "Rejected. Not according to representation," and a few days afterwards he wrote to the plaintiffs rejecting the goods as not being according to contract. The Court of Appeal (Lord Herschell, L.C., and Lindley and Kay, L.JJ.) agreed with Wright, J., that there was no sufficient memorandum within s. 17 of the Statute of Frauds, and also that there had been no such dealing by the defendant with the goods as to constitute an acceptance of them by him within the same section. We may remark that this is a case which shows that the Court of Appeal may refuse to disturb the finding of a jury on a question of fact, and yet, when it is itself acting as a jury, may refuse, on similar evidence, to come to the same conclusion. For instance, in *Page* v. *Morgan*, 15 Q.B.D. 228, the Court of Appeal refused to disturb the finding of a jury that there had been an acceptance within the statute, although the evidence on which that acceptance was based was simply that the defendant had examined the goods to see whether they agreed with the sample, and refused to accept them because they did not; while in the present case the court, as judges of fact, finds on almost identical evidence that such an act does not amount to acceptance within the statute.

PRACTICE—SERVICE OUT OF JURISDICTION—CONTRACT "WHICH ACCORDING TO THE TERMS OF IT OUGHT TO BE PERFORMED WITHIN THE JURISDICTION"—ORD. XI., R. 1 (E)—(ONT. RULE 271 (E)).

In *Thomson* v. *Palmer*, (1893) 2 Q.B. 80, an appeal was had from a Divisional Court (Wills and Charles, JJ.) refusing to set

aside an order allowing the plaintiff to serve the defendant, a foreigner residing out of the jurisdiction. The plaintiff claimed that the cause of action was within Ord. xi., r. 1 (*e*) (Ont. Rule 271 (*e*)), viz., a contract "which according to the the terms thereof ought to be performed within the jurisdiction." It appeared that the plaintiff was a civil engineer residing in Newcastle, and the contract was made with him by the defendants, who had undertaken to construct docks in Spain, to design and superintend their construction. By the terms of the contract the plaintiff was to prepare drawings and specifications, to take out quantities, and to superintend the construction of the docks, in consideration of a commission of £5 per cent. on the total cost of the works. He was to be paid travelling expenses in connection with his visits, which were fixed at £40 per visit, and the agreed commission was to be paid in cash as follows: £1 10s. per cent. on the contract price of each contract, as and when it was made, and the remaining £3 10s. at the expiration of every three months on the value of the work done during such three months, subject to the retention of a certain amount as security for the performance of the plaintiff's duties, which amount was to be paid within seventy-five days of the final completion of the work. The contract did not expressly provide where the payments were to be made. The action was brought for a balance due under the contract. The Court of Appeal (Lord Esher, M.R., and Lopes and Kay, L.JJ.) were of opinion that, having regard to the position of the parties and the circumstances under which the contract was made, the payments to the plaintiff were to be made at Newcastle, and therefore the defendants might properly be served out of the jurisdiction.

PRACTICE—VENUE—ABOLITION OF LOCAL VENUES—ORD. XXXVI., R. 1 (ONT. RULE 653).

In *Buckley* v. *Hull Docks Co.*, (1893) 2 Q.B. 93, a Divisional Court (Pollock, B., and Kennedy, J.) arrived at the same conclusion as was reached in *Legacy* v. *Pitcher*, 10 O.R. 620, viz., that the effect of Ord. xxxvi., r. 1 (Ont. Rule 653), was to abolish all then existing local venues, and the exception, which is contained in the English Rule (but which is omitted from the Ontario Rule), viz., "Except where otherwise provided by statute," only applies to subsequent statutory enactments, and

does not have the effect of reviving local venues created by statutes passed prior to the Judicature Act, 1875. This decision gives precisely the same effect to the English Rule that has been given by the Court of Appeal to the Ontario Rule in the recent case of *Howard* v. *Herrington*, 20 Ont. App. 175. In that case, it may be remembered, the Court of Appeal held that the re-enactment in the Revised Statutes (1887) of previous statutory provisions prescribing local venues had the effect of overriding the provisions of Ont. Rule 653.

PRACTICE—FOREIGN DEFENDANT—FOREIGNER CARRYING ON BUSINESS WITHIN THE JURISDICTION IN A NAME OTHER THAN HIS OWN—SERVICE OF WRIT—ORD. XLVIII. (A), RR. 3, 11 (ONT. RULES 266, 318).

St. Gobain v. *Hoyermann*, (1893) 2 Q.B. 96, was an action brought against a foreigner who carried on business in London under a name other than his own. He was sued in the name of the firm under which he carried on business in London, and the writ was served on the manager of the London business. The Court of Appeal (Lord Esher, M.R., and Smith, L.J.) held that Ord. xlviii. (*a*), rr. 3, 11, did not apply to foreigners resident out of the jurisdiction, and therefore that the defendant must be sued in his own name, and must be personally served. This case would seem to be applicable to the construction of Ont. Rules 266, 318, although they differ somewhat from the English Rules above referred to.

PROBATE—WILL AND CODICIL—REMOVAL OF PAPER PASTED OVER CODICIL—REVOCATION.

In the goods of Gilbert, (1893) P. 183, the President made an order for the removal of a piece of paper pasted over the codicil of a will presented for probate, in order to ascertain whether what had been written by the testatrix amounted to a revocation of the codicil.

PROBATE—TWO WILLS—NO EXECUTORS NAMED IN THE SECOND WILL—SECURITY.

In the goods of Allen, (1893) P. 184, a testator had in January, 1884, devised and bequeathed all his real and personal estate to his wife, whom he named as sole executrix. This will he mislaid, and in November of the same year he made another will which was identical with the missing will, except that he omitted to name any executor. Both wills were presented for probate

but the President directed letters of administration to issue to the widow with the second will annexed, and dispensed with any security except her own personal bond.

LEASE—FORFEITURE—BREACH OF COVENANT—NOTICE TO REMEDY BREACH OF COVENANT—44 & 45 VICT., C. 41, S. 14, S-S. 1—(R.S.O., C. 143, S. 11, S-S. 1).

In *Lock* v. *Pearce*, (1893) 2 Ch. 271, an appeal was had from the decision of North, J., (1892) 2 Ch. 328 (noted *ante* volume 28, p. 494). The learned judge had held that a notice to remedy a breach of a covenant in a lease given under 44 & 45 Vict., c. 41, s. 14, s-s. 1 (R.S. O., c. 143, s. 11, s-s. 1) was not bad because it omitted to claim any money compensation, and the Court of Appeal (Lord Esher, M.R., and Lindley and Kay, L.JJ.) held that he was right, notwithstanding a decision of Bacon, V.C., to the contrary. The Court of Appeal also held that the plaintiff, who had raised the question by an originating summons, was wrong in point of practice, and that the proper course was to proceed by action.

COVENANT—JOINT AND SEVERAL COVENANT BY PRINCIPAL AND SURETY TO PAY ON DEMAND—DEMAND OF PAYMENT, WHEN NECESSARY—STATUTE OF LIMITATIONS (3 & 4 W. 4, C. 42), S. 3.—(R.S.O., C. 60, S. 1).

In re Brown, *Brown* v. *Brown*, (1893) 2 Ch. 300, a creditor applied to be let in to prove a claim against a deceased person's estate which was being administered by the court, and his application was resisted on the ground that his debt was barred by the Statute of Limitations (3 & 4 W. 4. c. 42), s. 3 (R.S.O., c. 60, s. 1). The debt sought to be proved arose under a covenant contained in a mortgage dated 26th September, 1867, in which the deceased, as surety for his son, had joined in a joint and several covenant to pay the mortgagee £3,500 "on demand," and that they would "in the meantime from the date thereof" pay interest on the same at the rate therein mentioned. The father died in November, 1872, and no demand was made against his estate until July, 1889. The present action for administration of his estate was commenced in 1880. It was contended that no demand was necessary, and that the Statute of Limitations ran from the date of the mortgage. But Chitty, J., was of opinion that the proper construction of the covenant as to the surety was that a demand was necessary before he should be liable to pay,

and that therefore no cause of action arose against his estate until July, 1889, when the demand was made, there being a difference, as he held, between the case of a covenant by the principal debtor to pay "on demand" and one by a surety. In the former case no demand would be necessary before action, but in the latter case the right of action is dependent on a demand being first made.

MARRIED WOMAN—MARRIAGE SETTLEMENT MADE BY INFANT—SEPARATE ESTATE—REPUDIATION OF SETTLEMENT BY SETTLOR ON COMING OF AGE—MARRIED WOMEN'S PROPERTY ACT, 1882 (45 & 46 VICT., C. 75), SS. 2, 9 (R.S.O., C. 132, S. 4, S-S. 4, S. 20).

Stevens v. *Trevor-Garrick*, (1893) 2 Ch. 307, shows that the Married Women's Property Act has not yet exhausted its surprises, and certainly reveals a somewhat curious condition of the law. The facts of the case were very simple. A woman under age, being about to marry, and being entitled on her marriage to £1,000, joined with her intended husband in assigning the same to trustees, to be held by them upon the usual trusts for the benefit of herself, her husband, and children. The marriage took place, and the following year she came of age, and repudiated the settlement, and the present proceeding was brought to obtain the declaration of the court that, notwithstanding the settlement, the wife was absolutely entitled to the £1,000. Chitty, J., held that, apart from the Married Women's Property Act, 1882, the £1,000 would, on marriage, have passed to the husband; that, apart from the Act, the settlement by the husband would have been a valid settlement of the money; and as by s. 19 of the Act (R.S.O., c. 132, s. 20) nothing in the Act is to interfere with or affect any settlement made respecting the property of the wife, the result was that the settlement by the husband bound the money, and the repudiation of it by the wife was therefore of no avail. We can only say that the result is a very curious one, and seems to show that, while a man may repudiate a settlement made by him during an infancy, a woman, though she may also repudiate it, yet in some cases her repudiation will be ineffectual for any practical purpose.

BUILDING SOCIETY—WITHDRAWAL OF MEMBER—NOTICE OF WITHDRAWAL—ALTERATION OF RULES AFTER NOTICE OF WITHDRAWAL

In *Pepe* v. *City & Suburban P. Building Society*, (1893) 2 Ch. 311, the short point was whether a member of a building society

who had given a month's notice of withdrawal pursuant to the rules of the society was bound by a subsequent alteration of the rules of the society made to his detriment before the expiry of the month. Chitty, J., held that, as he continued a member up to the expiration of his month's notice, he was bound by any alteration of the rules made in the meantime. The alteration in question in this case was one enabling the directors to pay off in priority to other members those holding less than £50 in the society.

VENDOR AND PURCHASER—FORM OF CONVEYANCE, GENERAL WORDS—EASEMENT—RIGHT OF WAY.

Re Peck & School Board, (1893) 2 Ch. 315, Chitty, J., held that the Conveyancing and Property Act, 1881 (44 & 45 Vict., c. 41), confers no additional rights on purchasers, and that a purchaser cannot insist on the insertion in his conveyance of the general words provided by that Act, so as to cover rights and interests not properly included in his contract. In the present case the purchaser claimed the insertion of the general words so as to cover the right to a way of convenience over adjoining property of the vendor, which the vendor objected to do on the ground that such right had not been included in the contract; and it was held that the vendors were entitled to have the conveyance so worded as not to make them grant anything they had not agreed to grant.

ANNUITY AND CHARGE ON CORPUS — SETTLED ESTATE — RAISING ARREARS OF ANNUITY BY SALE OR MORTGAGE OF ESTATE.

In re Tucker, Tucker v. *Tucker,* (1893) 2 Ch. 323, is a decision of North, J., that where an annuity charged on the corpus of a settled estate is in arrear, the court has a discretionary power to order such arrears to be raised by sale or mortgage of the estate.

VENDOR AND PURCHASER—POWER OF SALE WITH CONSENT OF TENANT FOR LIFE—BANKRUPTCY OF TENANT FOR LIFE—CONCURRENCE OF TRUSTEE IN BANKRUPTCY.

In re Bedingfield and Herring, (1893) 2 Ch. 332, was an application under the Vendors and Purchasers Act. The question presented for the opinion of the court was as to the proper mode of executing a power of sale of the land in question. The land was settled, and the trustees (the vendors) had a power of sale, with the consent of the tenant for life. The tenant for life incum-

bered his interest, and had become bankrupt. North, J., held that, notwithstanding his bankruptcy, the consent of the tenant for life was necessary, and that a good title could not be made unless the incumbrancers and the trustees in bankruptcy of the tenant for life also concurred.

SETTLEMENT—REAL ESTATE—SALE—TRUST FOR IMMEDIATE CONVERSION—POWER TO POSTPONE CONVERSION, ABSENCE OF—TENANT FOR LIFE—REMAINDERMAN.

In *Hope* v. *D'Hedouville*, (1893) 2 Ch. 361, there was a contest between the representatives of a deceased tenant for life and a remainderman. Realty was settled upon trust to pay the rent to A. for life, and immediately after A.'s death to sell and invest and pay the dividends to B. for life. A. died, leaving B. surviving, who died about a year after A. The land was sold without undue delay after A.'s death, but not until after the death of B. The rents received between the death of A. and B. amounted to more than four per cent. on the purchase money realized from the land, and the question was whether B.'s representatives or the remainderman were entitled to the excess. Kekewich, J., held that notwithstanding the absence of any power to postpone the sale, or any direction as to interim rents, the tenant for life was entitled to the income of the property directed to be sold up to the time of his death, and that the rents received for that period formed part of his personal estate.

COPYRIGHT—PATTERN SLEEVE—MAP, CHART, OR PLAN.

In *Hollinrake* v. *Truswell*, (1892) 2 Ch. 377, Wright, J., determined that a cardboard pattern sleeve containing a scale adapting it to sleeves of any dimensions is capable of being copyrighted under 5 & 6 Vict., c. 45, as a chart or plan.

Notes and Selections.

PARTNERSHIP OUTSIDE BUSINESS.—In *Metcalfe* v. *Bradshaw*, Illinois Sup. Ct., April 4th, complainant and defendant formed a partnership "for the purpose of practising law," and agreed to give their "time, talents and strength to the prosecution of the interest of the firm." During the partnership the defendant acted as executor of several estates, with the consent of complainant, and it did

not appear that he neglected in any way his duties to the firm. ***Held***, that the commissions received by him as executor did not belong to the firm, since acting as executor does not pertain to the practice of law. The court said: "We are not unmindful of the well-settled rule that a partner will not ordinarily be permitted, for his own profit, to enter into business in competition with his firm. Thus he cannot, without the consent of his copartners, embark in a business that will manifestly conflict with the interests of his firm. Nor can he clandestinely use the partnership property or funds in speculations for his own private advantage, without being required to account to his copartners for the property and funds thus used, and for the profits. The general rule being that each partner shall devote his time, labour, and skill for the benefit of the firm, he cannot purchase for his own use, and for the purpose of private speculation and profit, articles in which the firm deals, and, if he does so, the profits arising therefrom may be claimed by the copartners as belonging to the firm, 5 Wait Act. & Def. 125. Thus, as said in 1 Bates Partn., s. 306: 'If a partner speculate with the firm funds or credit he must account to his copartners for the profits, and bear the whole losses of such unauthorized adventures himself; and if he go into competing business, depriving the firm of the skill, time, and diligence or fidelity he owes to it, so he must account to the firm for the profits made in it. And a managing partner will be enjoined from carrying on the same business for his own benefit.' But the same author says, a little further on, that a partner may traffic outside of the scope of the business for his own benefit. So also in Lindl. Partn. 312, the rule is laid down as follows: 'Where a partner carries on a business not connected with or competing with that of the firm, his partners have no right to the profits he thereby makes, even if he has agreed not to carry on any separate business.' Applying these principles to the case before us, we see no ground for sustaining the complainant's bill. The defendant, by becoming executor or administrator, engaged in no business or enterprise which can be regarded as in any sense in competition with his firm, or which involved the use, for his own advantage, of anything belonging to the firm. True, by the copartnership articles, he agreed to give his time, talents, and strength to the prosecution of the firm business; but it does not appear that he failed, by reason of the

acceptance of those trusts, in the performance of his agreement in that respect. It is not shown that any firm business suffered for lack of attention on his part by reason of his performance of the duties of executor or administrator. Nor did he accept either of these trusts clandestinely, or without the consent or approval of his copartner. As to the Neudecker executorship, the complainant takes pains to prove that the will of Neudecker was drafted by himself, and that the defendant was named therein as executor at his suggestion, and as the result of some importunity on his part, and that he subsequently became the defendant's surety on the bond given by him as executor. The complainant's consent to the defendant's acceptance of the trust could not be more clearly shown. It cannot be seen how the acceptance of these trusts, under the circumstances thus appearing, was in any sense a fraud on the partnership, or in contravention of the defendant's duties as partner, so as to call for an application of the rules arising in such cases, as stated above."—*Albany L. J.*

MERCANTILE AGENCY PRIVILEGE.—In *Mitchell* v. *Bradstreet Co.*, Missouri Sup. Ct., May 2, it was held that a false publication by a commercial agency as to the solvency of a business firm is not privileged where the publication sheet is issued to all the subscribers of the agency without regard to their being creditors of the firm. The court said: "Defendant's first contention is that the publication sheet was privileged, in the absence of motives, as to subscribers who were creditors of plaintiffs, and that the court erred in allowing the proof of publication to such subscribers. If the proof showed that no other persons than the creditors of plaintiffs had received the publication sheet in which the libellous matter is shown to have been published, there are authorities which hold that, in the absence of malice in the publication, owing to the confidential relations existing between such creditors and the defendants, the publication was privileged, and that defendant was not liable in damage therefor, although the same was false. In the case of *Trussell* v. *Scarlett*, 18 Fed. Rep. 214, it was held that, 'when a mercantile agency makes a communication to one of its subscribers who has an interest in knowing it, concerning the financial condition of another person, and when

such communication is made in good faith, and under circumstances of reasonable caution as to its being confidential, it is a protected, privileged communication, and an action for libel cannot be founded upon it, even though the information given thereby was not true in fact, and though the words themselves are libellous.' See also *Locke* v. *Bradstreet Co.*, 22 Fed. Rep. 771. But the answer in the case at bar admits, and the proof shows, that the publication sheet under consideration was not only sent to the creditors of plaintiffs, but was sent to all of the subscribers of defendant, regardless of their location or interest in the financial standing of plaintiffs. While it may be conceded that the business of defendant is a laudable one, and, in so far as it concerns the tradesmen, bankers, manufacturers, and business of the country, almost indispensable, it cannot be that when a company for hire—a moneyed consideration paid to them—makes a false statement or publication as to the financial standing of any person or persons or business firm, sends it over all the country to persons who are not the creditors of any such person or firm, as well as to those who are, and ruins them in their credit and business, and then claims immunity from liability therefor upon the ground that such publication was privileged, we are not inclined to give our sanction to a doctrine which seems to us to be so harsh and so unjust; and in this position we are sustained by courts of high authority. In the case of *Pollasky* v. *Minchener*, 46 N.W. Rep. 5, which was a suit against the agent of a commercial agency for libel, the Supreme Court of Michigan says: 'The notification sheet containing the false statement respecting the acts of Pollasky Bros. was not alone sent to those who were dealing with them and extending them credit, but to between six and seven hundred subscribers in Michigan, and others residing out of the State, from some of whom they might wish to purchase goods upon credit, and this without any request being made to be informed of the standing or credit of Pollasky Bros.; and others of whom, and by far the greater number, were engaged in different lines of business, and who were in no manner interested in knowing their standing or financial ability or business integrity, to all such the communication was not privileged. It cannot be said that a blacksmith, a sawmiller and a lumber dealer, a furniture manufacturer, a dealer in hardware, a chemist, mineral water bottlers, butchers, book agents, physicians or

druggists, or other business mentioned in the notification sheets, who are engaged in wholesale or retail dealing in dry goods, clothing, or boots and shoes, are at all interested in the business standing of a dealer in dry goods, clothing, and boots and shoes. No court has gone so far as to hold all communications made by a mercantile agency to their subscribers, if made in good faith, but made generally, without request, or to those inquiring concerning or interested in knowing the condition and financial standing of a person, are privileged. On the contrary, courts have uniformly held that privilege does not extend to false publications made to persons who have no such interests in the subject-matter. *Goldstein* v. *Foss*, 2 Car. & P. 232; *Com.* v. *Stacey*, 8 Phila. 617; *Taylor* v. *Church*, 8 N.Y. 452; *Ormsby* v. *Douglass*, 37 id. 477; *Sunderlin* v. *Bradstreet*, 46 id. 188; *King* v. *Patterson*, 49 N.J. Law, 417; *Bradstreet Co.* v, *Gill*, 72 Tex. 115; *Johnston* v. *Bradstreet Co.*, 77 Ga. 172; *Erber* v. *Dun*, 12 Fed. Rep. 526. 'The law guards most carefully the credit of all merchants and traders. Any imputation on their solvency—any suggestion that they are in pecuniary difficulties—is therefore actionable without proof of special damage. Of merchants, tradesmen, and others in occupations where credit is essential to the successful prosecution, any language is actionable, without proof of special damage, which imputes a want of credit or responsibility or insolvency.' Newell Defam. 192, 193, ss. 34, 35.

"In the case in hand the defendant was not even applied to by any of its patrons for information in regard to the financial standing of the plaintiffs, and the publication of the statement that plaintiffs had assigned was merely voluntary on their p[illegible] false in fact, and compelled them to retire from business. W[illegible] asked to retract the statement, they declined to do so. Under such circumstances, the statement was in no wise privileged. The information acquired by defendant was its own, and was communicated to others or made public in such form and upon such terms as it dictated. Neither the welfare nor convenience of society will be promoted by a publication of matters, false in fact, injuriously affecting the standing and credit of merchants and tradesmen, broadcast through the land, within the protection of privileged communications. While the defendant's business is lawful, yet in its conduct and management it must be sub-

jected to the ordinary rules of law, and its proprietors and managers held to the liability which the law attaches to the like liability of others."—*Albany L.J.*

Reviews and Notices of Books.

The Dominion Conveyancer. By Wm. H. Hunter, B.A., Barrister-at-Law. The Carswell Co., Publishers, Toronto.

The New Conveyancer. By A. H. O'Brien, M.A., Barrister-at-Law. The Goodwin Law Book and Publishing Co., Publishers, Toronto.

The gentleman to whom was entrusted the task of reviewing these works is in default, but pleads the long vacation, and so must be excused. The reviews will appear in our next issue.

Principles of the English Law of Contract and of Agency in its relation to Contract. By Sir William R. Anson, Bart., D.C.L., of the Inner Temple, Barrister-at-Law, etc. Seventh edition. Oxford: At the Clarendon Press. London: Henry Frowde and Stevens & Sons.

It is but little more than two years since the sixth edition of this book appeared, which shows the great popularity of the work, and the fact, recognized as much in Canada as in Great Britain, that it is probably the best one on the subject of contracts yet written. This edition contains no important change in the matter, and the size of the book remains the same. The latest decisions have been added.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

HILARY TERM, 1893.

During this term the following gentlemen were called to the Bar:

Messrs. W. L. Payne and A. L. Colville (special cases), and also Messrs. J. F. C. Haldane, W. A. D. Lees, F. Elliott, H. B. McGiverin, J. E. Bird, H. F. Gault, A. L. E. Malone, J. W. McGarry, L. B. C. Livingstone, W. D. Earngay, J. E. O'Connor, J. E. Varley, G. St. V. Morgan, and P. F. Carscallan.

The following gentlemen received certificates of fitness: Messrs. H. B. McGiverin, J. E. Bird, L. B. C. Livingstone, W. D. Earngay, J. E. O'Connor, J. E. Varley, G. St. V. Morgan, J. W. McGarry, W. J. McCamon, J. O'D. Dromgole, and A. J. F. Sullivan.

Monday, February 6th, 1893.

Present, between 10 and 11 a.m.: Messrs. Moss, Riddell, Irving, Osler, Hoskin, and Shepley; and in addition, after 11 a.m., Messrs. Aylesworth, Barwick, Ritchie, Watson, and Proudfoot.

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

The minutes of the last meeting of Convocation were read, approved, and signed by the chairman.

The Report of the Legal Education Committee on the result of the Pass and Honour Examinations in the third year of the Law School in May, 1892, was received and read as follows:

The committee have examined and considered the Report of the Examiners on the examination of the following gentlemen who passed the examination at the end of the third year in the Law School in May last, the Report of the Principal with respect to their attendance upon the lectures, and the Report of the Secretary upon their papers, and find that they are entitled to be called to the Bar forthwith, viz.: Messrs. W. D. Earngay, Thos. W. McGarry, G. St. V. Morgan, P. F. Carscallan.

The committee find that the following gentleman duly passed the said School examination in Easter, 1892, but failed to attend the required number of lectures. The Principal certifies that such failure was due to illness; his papers for call are regular, and the committee recommend that he be called to the Bar forthwith, viz.: Mr. H. B. McGiverin.

The following gentleman, who duly passed the School examination, but failed to attend the required number of lectures, which failure has not been certified by the Principal to be due to illness or other cause, presented a special petition, praying that his attendance be allowed for the reasons set forth therein, viz.: Mr. J. E. O'Connor.

This petition was referred to the Principal for report as to the general attendance and conduct of the applicant, and he has reported that the petitioner's attendance on the aggregate was good, as he had attended seventeen lectures more than the minimum. His deficiency is only one lecture on Practice, accounted for by his arriving too late to have his attendance credited. His papers for call are correct in all other respects. The committee recommend that his attendance on lectures be allowed as sufficient, and that he be called to the Bar forthwith.

The committee further find that the papers and service of the following candidates, who duly passed the Law School examination at the end of the third year course in

May, 1892, and have been certified by the Principal to have attended the required number of lectures, and whose period of service has expired, are correct and regular, and they are entitled to receive certificates of fitness as solicitors, viz.: Messrs. William David Earngay, Thomas William McGarry.

The committee find that the following gentleman duly passed the said School examination in May, 1892, but failed to attend the required number of lectures. The Principal certifies that such failure was due to illness, and the committee recommend that his attendance upon lectures be allowed as sufficient, viz.: Mr. Harold B. McGiverin. The Secretary reports that his papers and service are regular and sufficient, except that he does not produce a certificate from Mr. S. H. Stinson, to whom he was articled, certifying to his service as required by the statute. He shows that this is owing to the decease of Mr. Stinson. The committee recommend that the production of the certificate be dispensed with, and that Mr. McGiverin receive his certificate of fitness.

Mr. Jeremiah Edward O'Connor presented a special petition, praying that his attendance be allowed for the reasons set forth therein. The committee recommend that his attendance upon lectures be allowed as suffici[illegible] but as to his service that his case be reserved for production of further proofs.

The cases of the following gentlemen are also reserved until completi[illegible] of their service and production of further proofs: Messrs. Godfrey St. Vincent Morgan, Peter Frank Carscallan. Ordered for immediate consideration and adopted.

Ordered, that the following gentlemen, who are reported to have duly passed the School Examination, to have attended the requisite number of lectures, and to have presented regular papers, be called to the Bar forthwith, viz.: William David Earngay, Thomas William McGarry, Godfrey St. Vincent Morgan, Peter Frank Carscallan.

Ordered, that the following other gentlemen be called to the Bar forthwith, viz.: Messrs. Harold Buchanan McGiverin, Jeremiah Edward O'Connor.

Ordered, that the following gentlemen do receive their certificates of fitness as solicitors forthwith, viz.: Messrs. William David Earngay, Thomas William McGarry, Harold Buchanan McGiverin.

The Report of the Legal Education Committee on the result of the examination for Call to the Bar under the Law Society curriculum was received. Ordered for immediate consideration and adopted.

Ordered, that the following gentlemen, who are reported to have passed their examination and to have presented regular papers, be called to the Bar forthwith: Messrs. John Francis, Campbell Haldane, Joseph Edward Bird, Lorne Bruce Chadwick Livingstone, Anthony L'Estrange Malone, William Andrew Dickson Lees, Frederick Elliot.

Ordered, that the case of the following gentleman be reserved for further report: Mr. James Edward Varley.

The Report of the Legal Education Committee on the result of the examination under the Law Society curriculum of candidates for certificates of fitness was read. Ordered for immediate consideration and adopted.

Ordered, that the following gentlemen do receive their certificates of fitness as solicitors forthwith, namely, Messrs. William James McCamon, James Edward Varley, Lorne Bruce Chadwick Livingstone, John O'Donnell Dromgole, Alfred James Fitzgerald Sullivan.

Ordered, that the cases of the following gentlemen be reserved for further report: Messrs. Leslie H. Lafferty, Frederick Elliot.

Mr. Moss, from the Legal Education Committee, further reported: In the case of Mr. William Draper Card, that he is entitled to its certificate of fitness. Ordered for immediate consideration and adopted, and ordered that Mr. Card's certificate do issue accordingly.

In the case of Mr. Joseph Edward Bird, that he is entitled to receive his certificate of fitness. Ordered for immediate consideration and adopted, and ordered that Mr. Bird's certificate do issue accordingly.

In the case of Mr. William Andrew Dickson Lees, recommending that he be required to put himself under articles until the Saturday preceding Easter Term next, and that his case be reserved until the completion of such service. Ordered for immediate consideration and adopted, and ordered accordingly.

The Report of the Legal Education Committtee on the second intermediate examination under the Law Society curriculum was received. Ordered for consideration to-morrow.

The following gentlemen were then called to the Bar: Messrs. John F. Haldane, L. B. C. Livingstone, A. L'E. Malone, W. A. D. Lees, W. D. Earngay, T. W. McGarry, P. F. Carscallan, H. B. McGiverin, J. E. Bird, and H. F. Gault.

Mr. Moss, from the Legal Education Committee, presented a Report in the case of Mr. H. E. A. Robertson, recommending that the prayer of the petition be not granted. The Report was adopted, and it was ordered accordingly.

Mr. Moss, from the same committee, reported:

In the matter of the will of the late T. B. P. Stewart, that in pursuance of the order of Convocation made last term the committee had caused the Society's notice of intention to apply for legislation to be advertised in the Ontario *Gazette* and the *Mail* newspaper, and notices of the Society's intention, accompanied by a copy of the proposed Act, had been sent to each of the parties interested, and replies thereto had been received from J. Ross Robertson, Esq., President of the Sick Children's Hospital, stating that the same had no power to consent to the proposed legislation; from the Registrar of Toronto University, promising to lay the matter before the Senate thereof; and from Messrs. Fleury & Montgomery, solicitors, stating that Mr. Albert C. Cummins and Dr. Phillips object to the proposed legislation; that the committee recommend that a special committee be appointed to take charge of the progress of the proposed bill on behalf of the Society through the House, and that counsel be appointed to assist; and that some member of the Legislature of Ontario be requested to take charge of the bill in the House.

The Report was adopted, and it was ordered that the following gentlemen be appointed a Special Committee in this behalf, namely, Messrs. Osler, Martin, Strathy, Hoskin, Ritchie, Moss, and Idington; that Messrs. Nicol Kingsmill, Q.C., E. D. Armour, Q.C., and James Haverson be retained as counsel, and that Donald Guthrie, Esq., Q.C., Member for South Wellington, have charge of the bill in the House.

Mr. Moss, from the Legal Education Committee, reported that the committee had approved of the following as an inscription for the tablet to be placed in the Students' Library to the memory of the late T. B. P. Stewart:

"This tablet is erected by the Law Society of Upper Canada to the memory of T. B. Phillips Stewart, Barrister-at-Law, who by his last will devoted his property to the advancement of the Education of Students-at-Law.

Born.................18
Died.................18"

The Report was adopted, and it was ordered that it be referred to the Finance Committee to cause a suitable tablet bearing the inscription above set forth to be placed as directed by Convocation.

Mr. Moss, from the Legal Education Committee, reported a petition to

the Legislative Assembly in the above matter. Convocation approved of the petition, and ordered that the Common Seal of the Society be affixed thereto and signed by the Treasurer and Secretary, and that the petition so executed be transmitted to Mr. Guthrie for presentation.

Mr. Shepley called attention to the fact of the death of Mr. A. J. Christie, Q.C., one of the Benchers of this Society, and moved that a committee composed of Messrs. Moss, Hoskin, and Shepley be appointed to draft a resolution upon the subject. Carried.

Dr. Hoskin, chairman of the Discipline Committee, made a statement in the matter of one George A. Watson, an unlicensed conveyancer, which matter had been referred to that committee. In view of this statement of the chairman of the committee, Convocation decided to extend, *sine die*, the time for making this Report.

Mr. Shepley, on behalf of the Special Committee appointed to draft a resolution on the death of the late A. J. Christie, Q.C., presented that committee's Report, as follows:

> Convocation desires to place on record its sense of the great loss sustained by Convocation, and the profession generally, in the death of one of its members, the late Alexander J. Christie, Q.C., who was elected a member of Convocation in May, 1890. Convocation desires to bear testimony, in this resolution, not only to the high professional character and attainments of Mr. Christie, and to his estimable personal qualities, but also to his valuable services in Convocation, and to the profession.

The Report was adopted.

Mr. Shepley moved, seconded by Mr. Moss, that the resolution embodied in the Report be embodied in the minutes, and that a copy of the resolution, properly engrossed, be forwarded to the family of the deceased Bencher.

The petition of Mr. G. Taunt, against the conduct of Messrs. D—— & D——, solicitors, was read. Ordered, that Mr. Taunt be informed by the Secretary, suggesting that he place the matter in the hands of a solicitor, as the ordinary proceedings of the court will afford him redress if he be entitled thereto, the matter not being such as the Benchers can investigate.

The petition of Thomas Beck against the conduct of Mr. S——, a solicitor in the case of *Beck* v. *Tune*, was read. The Secretary was directed to inform Mr. Beck that the complaint is not a matter which the Benchers can entertain, and that it is open to him to have the question of charges referred to taxation, and thus obtain the papers which it is alleged Mr. S—— holds as security for his charges against him.

The Secretary read a letter from Mr. N. W. Hoyles, one of the delegates appointed by the Society to attend the third annual Prison Reform Conference recently held in Toronto, stating that he was personally unable to attend, but enclosing a copy of the Report of the proceedings of the Conference. The Report was received.

Convocation then proceeded to the election of a Bencher in the place of the Hon. C. F. Fraser, whose seat had been vacated owing to his absence for three successive terms. Moved by Mr. Ritchie, seconded by Mr. Hoskin, that the Hon. C. F. Fraser be elected a Bencher of the Law Society of Upper Canada. The motion was carried, and the Secretary was directed to notify Mr. Fraser of his appointment accordingly.

Mr. Barwick gave notice that at the next meeting of Convocation he

would move to repeal sub-section 10 of Rule 97, and substitute in lieu thereof the following: "(10) The Master in Ordinary of the Supreme Court, the Registrars of the Chancery, Queen's Bench, and Common Pleas Divisions of the High Court of Justice, and any additional official referee of the High Court of Justice specially appointed under R.S.O., c. 44, s. 124, s-s. 2."

Mr. Barwick gave notice that at the next meeting of Convocation he would move "That the Journals and Printing Committee be requested to report upon the reasons for delay in publishing the proceedings of Convocation."

It was ordered that a special call of the Bench be issued for Friday, the 17th inst., to elect a Bencher in the room of the late A. J. Christie, Q.C.

Convocation then adjourned.

Tuesday, February 7th.

Convocation met at 10 a.m.

Present, between 10 and 11 a.m: Messrs. Moss, Osler, Kerr, Irving, Strathy, Ritchie, Aylesworth, Shepley, and Riddell; and in addition, after 11 a.m.: Messrs. Magee, Proudfoot, Martin, Watson, and Barwick.

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

The minutes of the last meeting of Convocation of 6th February were read, confirmed, and signed by the chairman.

Mr. Moss, on behalf of the Legal Education Committee, moved the adoption of the Report of that committee on the result of the second intermediate examination under the Law Society curriculum, presented yesterday, and ordered for consideration to-day. The Report was adopted, and it was ordered that Messrs. Walter Haniford Cairns and George Gilbert Thrasher be allowed their second intermediate examination.

The petitions of Messrs. Arthur Lyndhurst Colville and William Lazarus Payne, praying to be called to the Bar under the Rules relating to call to the Bar in Special Cases (both these gentlemen being solicitors of ten years' standing and upwards), were read. Ordered, that a special committee, composed of Messrs. Osler, Moss, and Riddell, be appointed to examine into the regularity of the papers and proofs submitted by the applicants, and to subject them to examination under the Rules.

The Secretary read a letter from Mr. S——, barrister-at-law and solicitor, to him, dated 6th inst., having reference to the petition which had been laid before Convocation yesterday, whereby a complaint was made by one Thomas Beck against the conduct of Mr. S——, in which letter Mr. S—— controverted many features contained in Mr. Beck's petition. The Secretary was directed to file Mr. S——'s letter, and to transmit to him a copy of the reply to Mr. Beck which Convocation had ordered him to make to that gentleman.

Mr. Strathy begged leave to draw the attention of Convocation to the action of the County of Simcoe Law Association, and by leave of Convocation read the following resolution:

"Resolution of the County of Simcoe Law Association, passed 26th January, 1893:

"*Resolved*, that this association desires to place on record their opposition to the proposal now being made for the decentralization of High Court business in the manner now suggested in the west and east of this Province, it being the opinion of this associa-

tion that such a course would not tend to improve the administration of justice in Ontario, and might (as has been the case in an adjoining province) prejudicially affect the standing of the judiciary. And this association believes that the true principle as affecting that standard—the uniformity and convenience of practice and the general administration of justice, and the one in conformity with British usage and traditions, and to which is largely due the high standard of British judges—is the centralization of the judiciary and law business (other than Chamber and formal matters) in one natural, educational, and legal centre. And, further, that the question of practice applies with peculiar force to the central, east and west, central and northern districts of this Province."

It was ordered that the resolution be entered on the minutes.

It was ordered that the further consideration of the draft Rule respecting the Retirement Fund be postponed to Friday, February 17th.

It was ordered that the consideration of the further interim Report of the Committee on Fusion and Amalgamation of the Courts, which had been by order of Convocation of 27th December, 1892, fixed for to-day, be postponed until Friday, February 17th.

The Special Committee to whom was referred the petition of Mr. Arthur Lyndhurst Colville for Call to the Bar under the Rules in Special Cases reported as follows:

They have examined the papers and proofs submitted by the applicant, and they have also subjected him to an examination as to his qualifications, and they find that he has complied with the Rules of the Society, and has passed a satisfactory examination, and is entitled to be called to the Bar under the said Rules.

The Report was adopted, and Mr. Arthur Lyndhurst Colville was ordered to be called to the Bar. Subsequently, Mr. A. L. Colville and Mr. Frederick Elliot were called to the Bar.

At 12.45 p.m. Convocation adjourned until 2.30 p.m.

At 2.30 p.m., the following gentlemen, members of the Bench, being present, viz., Messrs. Irving, Martin, Ritchie, and Riddell, the Special Committee to whom was referred the petition of Mr. William Lazarus Payne, who applied for Call to the Bar under the Rules in Special Cases, reported as follows:

They have examined the papers and proofs submitted by the applicant, and they have also subjected him to an examination as to his qualifications, and they find that he has compl[illegible] with the Rules of the Society, and has passed a satisfactory examination, and is e[illegible]tled to be called to the Bar under the said Rules.

The Report was ordered for immediate consideration and adopted, and it was ordered that Mr. William Lazarus Payne be called to the Bar. Mr. Payne was then introduced and called to the Bar.

Convocation then rose.

Friday, February 10th

Convocation met at eleven 11 a. m.

Present: Messrs. Hoskin, Moss, Irving, Proudfoot, Idington, Osler, Martin, Bruce, Kerr, Ritchie, Riddell, Barwick, Shepley, Mackelcan, Watson, and Aylesworth.

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

The minutes of the last meeting of Convocation. on the 7th February, were read, approved, and signed by the chairman.

Mr. Moss, from the Legal Education Committee, presented a Report: In the case of Mr. James Edward Varley, candidate for call to the Bar, whose case had, on the first day of term, been reserved for completion of papers, that he had now completed the same, and was entitled

to be called to the Bar. Ordered for immediate consideration, adopted, and ordered accordingly, that Mr. James Edward Varley be called to the Bar.

Mr. Moss, from the same committee, presented a Report: In the case of Godfrey St. Vincent Morgan, candidate for certificate of fitness, whose case had, on the first day of term, been reserved for completion of service and production of further proofs, that he had now completed his service and furnished satisfactory proof thereof, and was now entitled to receive his certificate of fitness as solicitor. Ordered for immediate consideration, adopted, and ordered accordingly, that Mr. Godfrey St. Vincent Morgan do receive his certificate of fitness. Messrs. James Edward Varley and Godfrey St. Vincent Morgan (the latter having on the first day of term been ordered to be called to the Bar) were then called to the Bar.

Mr. Osler, from the Reporting Committee, read the quarterly Report of the Editor on the state of reporting in the various courts, which letter was ordered to be filed, and is as follows:

TORONTO, 9th February, 1893.

DEAR SIR,—In the Court of Appeal, there are sixteen unreported cases—ten of December and six of January.

In the Queen's Bench Division there are fifteen, all of December. In the Common Pleas there are ten—one of January, 1892, now ready. This is a judgment on a special case; the material for the report, the reporter states, was not available until a few weeks ago. One of November—ready—and eight of December. In the Chancery Division Mr. Lefroy has fifteen—one of July, which has been delayed since November by the illness of Mr. Justice Ferguson, but is now ready to issue—three of November, ready—one of December, and ten of January. Mr. Boomer has eight cases—six of November, ready—and two of December. There are seven unreported Practice cases—one of November, which has been in the judges' hands for six weeks, but is now ready to issue—the other six are of January.

I am, truly yours,

J. F. SMITH.

Mr. Osler, from the Joint Committee, composed of the Reporting and Finance Committees, to whom Mr. J. E. Jones' proposal to prepare an Index of Canadian overruled cases, on the lines of Messrs. Talbot & Forts' work, had been referred by order of Convocation last term, reported as follows:

Upon the proposal of Mr. James Edward Jones to publish a Canadian Talbot & Forts', the committee recommend that the Society subscribe for fifty copies of the proposed work, at $5.00 per copy, half calf, and that if the work, when published, is deemed by the Finance Committee to be thorough and accurate, then that a grant of $250.00 be made to the editors in aid of their undertaking.

The Report was received, ordered for immediate consideration, and adopted.

A letter, dated 7th of February, 1893, from the Secretary of the County of Carleton Law Association to the Secretary of the Law Society, was read. The Secretary was ordered to acknowledge the letter.

Mr. Barwick then, in accordance with his notice given on Monday, Feb. 6th, moved that the Journals and Printing Committee be requested to report upon the reasons for delay in publishing the proceedings of Convocation. The chairman of the Journals and Printing Committee having explained the reasons of the delay in publishing the proceedings, and the steps taken by the committee to prevent the recurrence of such delays, it was ordered that the subject be referred to the Committee on Journals and Printing

to report upon the expense and the system to be adopted whereby the profession can be informed of the proceedings of Convocation.

Mr. Barwick, pursuant to notice given, moved to introduce a Rule to repeal sub-section 10 of Rule 97, and substitute in lieu thereof the following:

"(10) The Master in Ordinary of the Supreme Court, the Registrars of the Chancery, Queen's Bench, and Common Pleas Divisions of the High Court of Justice, and any additional official referee of the High Court of Justice specially appointed under R.S.O., c. 44, s. 124, s-s. 2."

The Rule was read a first time, and then a second time.

By unanimous consent, the Rule as to stages (No. 21) was suspended, and the Rule now proposed was read a third time and passed.

Mr. Bruce moved, seconded by Mr. Watson, that it is necessary and desirable that the Rules of the Society should be revised and reprinted, and that the Committee on Journals and Printing be requested to deal with the matter. Carried.

Mr. Martin, from the County Libraries' Aid Committee, presented a Report, as follows:

OSGOODE HALL, February 10th, 1893.

(1) The County of Ontario Law Association has made application for payment of their annual grants for the years 1885 to 1891, both inclusive (notwithstanding that the returns had not been regularly made), and also for an addition to the initiatory grant, so as to bring up that grant to a sum equal to $20.00 for each resident practitioner, and also for a loan of $200.00. Your committee recommend that the association be paid the sum of $310.00 for the annual grants for the years 1885 to 1890, both inclusive, the association having expended more than half that sum in the purchase of books, and for other purposes authorized by the Rules, and that the further consideration of the grant for 1891 be postponed till a more complete return for that year is made.

(2) The committee having fully considered the statements made on behalf of the association for the increased initiatory grant, and finding that the contributions from local sources were sufficient to have entitled the association to such increased grant if they had applied therefor prior to May, 1885 (see Rule 19, then in force), recommend that the association be paid $184.00, which will bring up the initiatory grant to a sum equal to $20.00 for each resident practitioner.

(3) The committee further recommend that a loan of $200.00 be granted to the association, repayable in ten equal yearly payments, without interest, on security for the due expenditure being given therefor under Rule 78.

(4) The committee recommend that Mr. James Fleming, Inspector of Legal Offices, be appointed to inspect the county libraries for 1893, and that he be paid for his services the sum of one hundred and fifty dollars, being the same as that paid to Mr. Winchester for similar services.

The Report was ordered for immediate consideration and adopted.

Mr. Moss gave notice that at the next meeting of Convocation he would introduce a Rule to amend sub-section 2 of Rule No. 207, so as to read as follows: "That he was duly admitted and enrolled, and has been in actual practice as an attorney or solicitor, as mentioned in sub-section 1 of Rule 206; and that he still remains duly enrolled as such, and in good standing; and that since his admission as aforesaid no adverse application to any court or courts to strike him off the roll of any court or otherwise to disqualify him from practice as such attorney or solicitor has been sustained, and that no charge is pending against him for professional or other misconduct."

Convocation then rose.

Friday, February 17th.

Convocation met at 11 a.m.

Present: Messrs. Meredith, Barwick, Macdougall, Douglas, Strathy, Irving, Lash, Kerr, Watson, Osler, Aylesworth, Riddell, Shepley, and Mackelcan.

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

The minutes of the last meeting of Convocation were read and confirmed.

Mr. Barwick, from the Legal Education Committee, presented a Report from that committee in the case of Mr. Jeremiah Edward O'Connor, recommending that he do receive his certificate of fitness.

Ordered for immediate consideration, and ordered that Mr. O'Connor's certificate of fitness do issue accordingly.

Mr. Watson, from the Finance Committee, presented the Report of that committee on the revenue and expenditure for the year 1892, also the estimates for 1893, as follows:

(1) The Finance Committee respectfully beg leave to place before Convocation a statement in detail of the revenue and expenditure of the Law Society for the year ending 31st December, 1892, prepared pursuant to R.S.O., c. 145, s. 53.

(2) The statement has been audited by Mr. Eddis, auditor of the Society, and subject to the approbation of Convocation is ready to be furnished to every member of the Bar who has paid all his Bar fees to the Society.

(3) The heating of the library, east wing, and appurtenances for the past season, 1891-1892, was not paid prior to 31st December, 1892, and the expenditure for 1892 should be increased under the head of heating to $890.00, and the expenditure for 1893 will consequently show two years' payment to the government.

(4) Pursuant to Rule No. 58 of the Society, the Finance Committee beg leave to forward an estimate of the probable receipts and expenditures for the year 1893, made up from such information as the respective Standing Committees charged with the management of business affecting the finances of the Society have furnished, together with the Finance Committee's own estimate of resources and liabilities for the year current:

Probable receipts as per details	$57,600.00.
Probable expenditure as per details	51,140.00.

(5) The Finance Committee, being required by Rule No. 58 to report on the said estimates their own observations, beg leave to reiterate their expression of opinion contained in their Report of the 12th February, 1892, that at present no surplus over expenditure can be expected beyond the annual interest realized from the bank account and investments.

(6) The gain on the past year's estimates may be attributed to exceptional causes.

(7) The Finance Committee deem it desirable that the occasion should be taken to lay before Convocation a statement of the investments of the Society as effected during the past year, and also a statement of the insurances against fire now current and in force.

The statement of investments shows that the Society now holds debentures and other securities to the amount of $77,600.00, according to the details in the statement set forth.

The statement of insurances, as per detail furnished herewith, may be summarized as follows:

On books in library, paintings and furniture in building	$50,000.00
On original east wing	25,000.00
On examination hall building and appurtenances	30,000.00
On new Law School building and appurtenances	15,000.00
On the stock of books stored at Rowsell & Hutchison's	10,000.00
On copies of the Ontario Digest stored at Rowsell & Hutchison's	2,500.00
	$132,500.00

STATEMENT RELATING TO INVESTMENTS.

On the 1st January, 1892, the Society held debentures amounting to $60,000, as follows:

Name of Company.	Maturity.	Interest.	Amount.
Western Canada.........	1st July, 1893....	4½	$10,000
	1st January, 1894.	4½	5,000
Canada Permanent.......	1st April, 1894....	4½	10,000
Building & Loan........	1st August, 1892..	4½	5,000
	1st February, 1894	4½	5,000
Huron & Erie...	1st July, 1895....	5	5,000
Farmers' Loan..........	1st November, 1892	5½	20,000
			$60,000

Of the above, the following were, during the year 1892, paid, viz:

Western Canada (due July, 1892)........................... $10,000
Building & Loan (due August, 1892)........................ 5,000
Farmers' Loan... 20,000

$35,000

Leaving in the hands of the Society debentures as follows of the above named:

Name of Company.	Maturity.	Interest.	Amount.
Western Canada.........	1st January, 1894.	4½	$ 5,000
Canada Permanent ...	1st April, 1894...	4½	10,000
Building & Loan.	1st February, 1894	4½	5,000
Huron & Erie...........	1st July, 1895....	5	5,000
			$25,000

In addition, the Society has made further investments during the year as follows:

Central Canada, maturing 1st January, 1895, at 4½........... $10,000

Also mortgages under the guarantee systems of the following companies:

Toronto General Trusts 23,000
Trusts Corporation of Ontario............................ 19,600

Total investments held on 1st January, 1893............... $77,600

STATEMENT AS TO INSURANCE.

The following insurance policies are held by the Society:

(a) On the original east wing, examination hall, and appurtenances, books in library, paintings, and furniture:

British America Insurance Co.............................. $10,000
Lancashire.. 7,500
Norwich Union... 7,500
Phœnix.. 10,000
Guardian.. 10,000
Fire Insurance Association................................ 10,000
Citizens' Insurance Company of Canada..................... 10,000
Western Assurance Company................................. 10,000
Hand-in-Hand.. 5,000
Queen City.. 5,000
Imperial Insurance Company................................ 10,000
Royal Insurance Company................................... 10,000

$105,000

The rate for the foregoing is one per cent. for three years, and all the above are in force until the 1st of April, 1894.

(*b*) On the Law School :

Imperial Insurance Company..............................	$ 2,500
Queen City..	2,500
Lancashire..	2,500
Norwich Union...	2,500
Phœnix..	2,500
Hand-in-Hand..	2,500
	$15,000

The rate for the foregoing is one per cent. for three years, and all the above are in force until 21st July, 1894.

(*c*) On the stock of law books in the building of Messrs. Rowsell & Hutchison :

Queen City..	$ 5,000
Hand-in-Hand..	5,000
	$10,000

The premium for the foregoing is $90 per annum, and both policies, which have recently been duly renewed, are in force until the 15th February, 1894.

(*d*) On the stock of copies of the Ontario Digest in the building of Messrs. Rowsell & Hutchison :

Gore Mutual...	$ 2,500

The rate for the above is $22.50 per annum, and the policy is in force until 21st July, 1893, on the expiration of which policy a renewal will be unnecessary.

The Report was received and adopted.

On motion by Mr. Meredith, it was ordered that it be an instruction to the Finance Committee to consider and determine as to the expediency of effecting further fire insurance, it being the opinion of Convocation that the amount of insurance now carried should be increased.

Mr. Strathy gave notice of motion as follows: "I give notice that on the second day of next term I will move that the Supreme Court Reports be supplied each year to each member of the profession who shall, when paying his annual fees to the Treasurer, pay him the sum of $1.50 in addition to such annual fees, and that the Finance Committee do supply the necessary funds for the purpose."

Mr. Watson, from the Committee on the Fusion and Amalgamation of the Courts, asked to have the time for consideration of that committee's last interim Report extended to the last Friday of next term. Convocation ordered such extension accordingly.

The Secretary then read the following resolution from the Frontenac (County) Law Association, passed at a special meeting held on the 10th February, 1893, at the city of Kingston: "Moved by Dr. R. T. Walkem, Q.C., seconded by Dr. E. H. Smythe, Q.C., and resolved: That this association believes that the interests of justice would be promoted by more frequent holdings of sittings in the principal towns and cities of the Province, at which sittings general business might be heard and disposed of by the sitting judge."

The resolution was referred to the Committee on Fusion and Amalgamation of the Courts.

Mr. J. E. O'Connor was then introduced and called to the Bar.

The Secretary then read a letter from Mr. James S. Cartwright, Registrar of the Queen's Bench Division, thanking the Society for their recent order that he be supplied with the ' aw Reports.

Convocation then proceeded to the election of a Bencher in the place of Mr. A. J. Christie, Q.C., deceased, when Mr. M. O'Gara, Q.C., of Ottawa, was elected to the vacancy.

Mr. Barwick then gave notice of the following motion: "That it be referred to the Finance Committee to report upon the expense of establishing a gymnasium in the Law School building."

On the motion for the second reading of the Rule drafted on the Report of the Finance Committee in respect to the Retirement Fund, it was moved by Mr. Aylesworth, seconded by Mr. Shepley, that the Rule be read a second time this day six months. Lost.

The Rule was then read a second time on the same division. The Rule was read a third time on a division. The Rule was declared carried.

By consent, tne motion of which Mr. Moss had on February 10th given notice, namely, to introduce a Rule to amend sub-section 2 of Rule 207, was postponed until the first day of next term.

Convocation then rose.

J. K. Kerr,
Chairman Committee on Journals.

[Note.—The financial statement is omitted, as it had already been distributed to the profession.]

DIARY FOR SEPTEMBER.

2. Saturday.... De Beauharnois, Governor, 1726.
3. Sunday ..... *14th Sunday after Trinity.*
5. Tuesday.....Court of Appeal sits. Exam. for cert. of fitness.
6. Wednesday.. Examination for call.
10. Sunday...... *15th Sunday after Trinity.*
11. Monday.....Trinity Term for Law Society begins.
12. Tuesday.....Convocation meets. Gen. Sess. and Co. Ct. sitts. for trial in York. Frontenac, Gov. of Canada, 1692.
14. Thursday....Jacques Cartier arrived at Quebec, 1535. Quebec taken, and death of Wolfe, 1759.
15. Friday.......Convocation meets.
17. Sunday..... *16th Sunday after Trinity.* First Parliament of U.C. met at Niagara, 1792.
18. Monday.....Quebec surrendered to the British, 1759.
22. Friday.......Convocation meets. Courcelles, Gov. of Can., 1665.
23. Saturday.... Trinity Term ends.
24. Sunday...... *17th Sunday after Trinity.* Guy Carleton, Lieut.-Gov. and Com.-in-Chief, 1766.
25. Monday.....Sir Wm. Johnston Ritchie died, 1892. Law School begins.
28. Thursday....W. H. Blake, 1st Chancellor U.C., 1849.
30. Saturday.... Sir Isaac Brock, Administrator, 1811.

Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.] [May 1.

HOWLAND *v.* DOMINION BANK.

Practice—Renewal of writ—Setting aside order for—Statute of Limitations.

A writ issued from the High Court of Justice for Ontario in June, 1887, was renewed by order of a Master in Chambers three times, the last order being made in May, 1890. In May, 1891, it was served on the defendants, who thereupon applied to the Master to have the service and last renewal set aside, which application was granted, and the order setting aside said service and renewal was affirmed on appeal by a Judge in Chambers and the Divisional Court. Special leave to appeal from the decision of the Divisional Court was granted by the Court of Appeal, which also affirmed the order of the Master, Mr. Justice Osler, who delivered the principal judgment, holding that the Master had jurisdiction to review his own order; that he held that plaintiffs had not shown good reasons, under Rule 238 (*a*), for extending the time for service, and this holding had been approved by a Judge in Chambers and a Divisional Court; and that the Court of Appeal could not say that all the tribunals below were wrong in so holding. On appeal to the Supreme Court of Canada,

Held, that for the reasons given by Mr. Justice Osler in the Court of Appeal the appeal to this court must fail, and be dismissed with costs.

Appeal dismissed with costs.

Arnoldi, Q.C., for the appellants.

McMichael, Q.C., for the respondents.

Ontario.] [May 1.

MOORE *v.* JACKSON.

Married woman's property—Separate estate—Contract by married woman—Separate property exigible—C.S.U.C., c. 73—35 Vict., c. 16 (O.)—R.S.O. (1877), cc. 125 & 127—47 Vict., c. 19 (O.).

By the Married Woman's Property Act, 1884, of Ontario (47 Vict., c. 19), a married woman is capable of acquiring, holding, and disposing of real or personal property as if she were a *femme sole*, of entering into and rendering herself liable on any contract, and of suing or being sued alone in respect of such property. The right of the husband as tenant by the curtesy is not to be prejudiced by such enactment.

Held, reversing the decision of the Court of Appeal, that the property held by a married woman under this Act is "separate property," and may be taken in execution for her debts notwithstanding the reservation in favour of her husband.

Appeal allowed with costs.

Moss, Q.C., for the appellant.

Armour, Q.C., for the respondent.

Ontario.] [May 1.

DUMOULIN *v.* BURFOOT.

Contract—Sale of land—Building restriction—Description—Street boundaries—Construction of covenant.

The owners of a block of land in Toronto, bounded on the north by Wellesley Street, and west by Sumach Street, entered into an agreement with B., whereby the latter agreed to purchase a part of said block, which was vacant wild land, not divided into lots, and containing neither buildings nor street, though a by-law had been passed for the construction of a street immediately south of it to be called Amelia Street. The agreement contained certain restrictions as to buildings to be erected on the property purchased, which fronted on the two streets north and west of it respectively, and the vendors agreed to make similar stipulations in any sale of land on the south side of Wellesley Street produced.

A deed was afterwards executed of said land, pursuant to the agreement, which contained the following covenant: "And the grantors covenant with the grantees that in case they make sale of any lots fronting on Wellesley Street or Sumach Street, on that part of lot 1 in the city of Toronto, situate on the south side of Wellesley Street and east of Sumach Street, now owned by them, that they will convey the same subject to the same building agreements or conditions (as in the agreement).

The vendors afterwards sold a portion of the remaining land fronting on Amelia Street, and one hundred feet east of Sumach Street; and the purchaser being about to erect thereon a building forbidden by the restrictive covenant in the deed, B. brought an action against his vendors for breach of said covenant, claiming that it extended to the whole block.

Held, affirming the decision of the Court of Appeal, GWYNNE, J., dissenting, that the covenant included all the property south of Wellesley Street; that the

land not being divided into lots, any part of it was a portion of a lot of land fronting on Wellesley and Sumach Streets, and so within the purview of the deed; and that the vendors could not by dividing the property as they saw fit narrow the operation and benefit of their own deed.

Held, per GWYNNE, J., that the piece of land in question did not front nor abut on either Wellesley or Sumach Streets, but on Amelia Street alone, and was not, therefore, literally within the covenant of the vendors.

Appeal dismissed with costs.

Arnoldi, Q.C., and *Bristol* for the appellants.

Nesbitt and *Galt* for the respondent.

Ontario.] [June 24.

THE MIDLAND RAILWAY CO. *v.* YOUNG.

Title to land—Tenant for life—Conveyance to railway company by—Railway Acts—C.S.C., c. 66, s. 11, s-s. 1—24 Vict., c. 17, s. 1.

By C.S.C., c. 66, s. 11 (Railway Act), "all corporations and persons whatever, tenants in tail for life, *grevés de substitution*, guardians, etc., not only for and on behalf of themselves, their heirs and successors, but also for and on behalf of those whom they represent . . seized, possessed of, or interested in any lands, may contract for, sell, and convey unto the company (railway company) all or any part thereof; and any contract, etc., so made shall be valid and effectual in law."

Held, affirming the decision of the Court of Appeal, that a tenant for life is not authorized by this Act to convey to a railway company the interest of the remainderman in the land.

Osler, Q.C., for the appellants.

Kerr, Q.C., for the respondents.

Ontario.] [June 24.

MILLER *v.* PLUMMER.

Promissory note—Accommodation—Bad faith of holder—Conspiracy.

P. indorsed a note for the accommodation of the maker, who did not pay it at maturity, but, having been sued with P., he procured the latter's indorsation to another note, agreeing to settle the suit with the proceeds if it was discounted. He applied to a bill broker for the discount, who took it to M., a solicitor, between whom and the broker there was an agreement by which they purchased notes for mutual profit. M. agreed to discount the note. M.'s firm had a judgment against the maker of the note, and an arrangement was made with the broker by which the latter was to delay paying over the money, so that proceedings could be taken to garnishee it. This was carried out; the broker received the proceeds of the discounted note, and, while pretending to pay it over, was served with the garnishee process and forbidden to pay more than the balance after deduction of the amount of the judgment and costs, and he offered this amount to the maker of the note, which was refused. P., the indorser, then brought an action to restrain M. and the broker from dealing with the discounted note, and for its delivery to himself.

Held, affirming the decision of the Court of Appeal, that the broker was aware that the note was indorsed by P. for the purpose of settling the suit on the former note; that the broker and M. were partners in the transaction of discounting the note, and the broker's knowledge was M.'s knowledge; that the property in the note never passed to the broker, and M. could only take it subject to the conditions under which the broker held it; that, the broker not being the holder of the note, there was no debt due from him to the maker, and the garnishee order had no effect as against P.; and that the note was held by M. in bad faith, and P. was entitled to recover it back.

Appeal dismissed with costs.

Donovan for the appellant.

Beck for the respondent.

Ontario.] [June 24.

WISNER *v.* COULTHARD.

Patent—Combination—Old elements—New and useful result—Previous use.

In an application for a patent, the intention claimed was "in a seeding machine in which independent drag-bars are used a curved spring tooth, detachably connected to the drag-bar in combination with a locking device arranged to lock the head-block to which the spring tooth is attached substantially as and for the purpose specified." In an action for infringement of the patent, it was admitted that all the elements were old, but it was claimed that the substitution of a curved spring tooth for a rigid tooth was a new combination, and patentable as such.

Held, affirming the decision of the Court of Appeal, GWYNNE, J., dissenting, that the alleged invention being the mere insertion of one known article in place of another known article was not a patentable matter.

Smith v. *Goldie*, S.C.R. 46, and *Hunter* v. *Carrick*, 11 S.C.R. 300, referred to.

Appeal dismissed with costs.

Ridout for the appellants.

Arnoldi, Q.C., and *Roaf* for the respondents.

Ontario.] [June 24.

CUMMING *v.* LANDED BANKING AND LOAN COMPANY.

Trustee—Will—Executors and trustees under—Breach of trust by one—Notice—Inquiry.

W. and C. were executors and trustees of an estate under a will. W., without the concurrence of C., lent money of the estate on mortgage and afterwards assigned the mortgages, which were executed in favour of himself, described as "trustee of the estate and effects of" (the testator). In the assignments of the mortgages, he was described in the same way. W. was afterwards removed from the trusteeship, and an action was brought by the new trustees against the assignees of the mortgages to recover the proceeds of the same.

Held, reversing the judgment of the Court of Appeal, that in taking and assigning said mortgages W. acted as a trustee and as an executor; that he

was guilty of a breach of trust in taking and assigning them in his own name; that his being described on the face of the instruments as a trustee was constructive notice to the assignees of the trusts which put them on inquiry; and that the assignees were not relieved as persons rightfully and innocently dealing with trustees, inasmuch as the breach of trust consisted in the dealing with the securities themselves, and not in the use made of the proceeds.

Appeal allowed with costs.

Marsh, Q.C., for the appellants.

W. Cassels, Q.C., and *Mackelcan*, Q.C., for the respondents.

Ontario.] [June 24.

DWYER *v.* PORT ARTHUR.

Municipal corporation—By-law—Street railway—Construction beyond limits of municipality—Validating Act—Construction of.

The corporation of the town of Port Arthur passed a by-law entitled, "A by-law to raise the sum of $75,000 for street railway purposes, and to authorize the issue of debentures therefor," which recited, *inter alia*, that it was necessary to raise said sum for the purpose of building, etc., a street railway connecting the municipality of Neeping with the business centre of Port Arthur. At that time a municipality was not authorized to construct a street railway beyond its territorial limits. The by-law was voted upon by the ratepayers and passed, but none was submitted ordering the construction of the of the work. Subsequently an Act was passed by the Legislature of Ontario in respect to the said by-law, which enacted that the same "is hereby confirmed and declared to be valid, legal, and binding on the town. And for all purposes, etc., relating to or affecting the said by-law, any and all amendments of the Municipal Act shall be deemed and taken as having been complied with."

Held, reversing the decision of the Court of Appeal, that the said Act did not dispense with the requirements of ss. 504 & 505 of the Municipal Act requiring a by-law providing for construction of the railway to be passed, but only confirmed the one that was passed as a money by-law.

Held, also, that an erroneous recital in the preamble of the Act, that the town council had passed a construction by-law, had no effect on the question to be decided.

Appeal allowed with costs.

Aylesworth, Q.C., for the appellant.

Delamere, Q.C., for the respondents.

Nova Scotia.] [June 24.

O'CONNOR *v.* NOVA SCOTIA TELEPHONE COMPANY.

Municipal corporation—Ownership of roads and streets—Rights of private property owners—Ownership ad medium filum viæ—R.S.N.S., 5th ser., c. 45—50 Vict., c. 23 (N.S.).

The Act of the Nova Scotia Legislature, 50 Vict., c. 23, vesting the title to highways and the lands over which the same pass in the Crown for a public highway does not apply to the city of Halifax.

The charter of the Nova Scotia Telephone Co. authorized the construction and working of lines of telephone along the sides of and across and under any public highway or street of the city of Halifax, provided that in working such lines the company should not cut down or mutilate any trees.

Held, TASCHEREAU and GWYNNE, JJ., dissenting, that the owner of private property in the city could maintain an action for damages against the company for injuring ornamental shade trees in front of his property in working the telephone line.

Appeal allowed with costs.

Newcombe for the appellant.

Borden, Q.C., for the respondent.

Nova Scotia.] [June 24.

HALIFAX STREET RAILWAY COMPANY *v.* JOYCE.

Negligence—Street railway—Height of rails—Statutory obligation—Accident to horse.

The charter of a street railway company required the road between and for two feet outside of the rails to be kept constantly in good repair and level with the rails. A horse crossing the track stepped on a grooved rail, and the caulk of his shoe caught in the groove and he was injured. In an action by the owner against the company it appeared that the rail, at the place where the accident occurred, was above the level of the roadway.

Held, affirming the judgment of the Supreme Court of Nova Scotia, that as the rail was above the road level, contrary to the requirements of the charter, it was a street obstruction unauthorized by statute, and therefore a nuisance, and the company was liable for the injury to the horse caused thereby.

Appeal dismissed with costs.

Ross, Q.C., for the appellants.

Newcombe for the respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [June 10.

GRAVEL *v.* L'UNION ST. THOMAS.

Life insurance—Benefit society—Expulsion of member—Fair trial—Report of committee—Evidence not before committee—Absence of member.

The plaintiff, as executor for his deceased son, sued the defendants, an incorporated benefit society, to recover the money benefit accruing upon the death of a member. Before the death the defendants had passed a resolution

removing the son from the list of members, on the ground that he had given untruthful answers to questions as to the state of his health put to him upon his admission. The complaints against him had been referred to the committee of management, who had reported in his favour, but the society at a meeting refused to adopt the report, and in the absence of the deceased, without any notice to him or opportunity of appearing, accepted an *ex parte* statement made by a member present at the meeting, which had not been before the committee, and acted upon it by forthwith passing the resolution referred to. By the rules of the society, it was provided that if it shall be established that a new member has not answered truthfully he shall *ipso facto* be excluded from the society; and also that if it is proved, after his admission, that he has not answered truthfully, he shall by reason thereof be struck off the list of members. The committee of management was the body appointed under the rules to take the evidence and find the facts, their report being subject to confirmation or rejection by the society.

Held, that, upon the principles governing such an inquiry, the person accused should not be condemned without a fair chance of hearing the evidence against him, and of being heard in his own defence; that the action of the defendants was contrary to these principles and to their own rules; and therefore the expulsion was not legally accomplished, and the plaintiff was entitled to recover.

D. B. MacTavish, Q.C., for the plaintiff.

Shepley, Q.C., and *G. F. Henderson* for the defendants.

Div'l Court.] [June 10.

YORK *v.* TOWNSHIP OF OSGOODE.

Waters and watercourses—Ditches and Watercourses Act—Award—Affirmance by county judge—Jurisdiction of engineer of municipal corporation—Determination by court—Requisition—Assent of majority of owners—Notice—"Owner," meaning of—Tenant at will—Benefit from work to be done under award—Notice of letting work—Time.

(1) Where the engineer of a municipal corporation purports to make an award under the Ditches and Watercourses Act with respect to the making of a drain, the affirmance of such award by the County Court judge does not preclude the High Court from entertaining the objection that the engineer had no jurisdiction to make the award; nor is such an objection one for the determination of the County Court judge alone.

Murray v. *Dawson*, 17 C.P. 588, distinguished.

(2) In the absence of a resolution of the municipal council such as is provided for by s. 6 (*b*) of the Ditches and Watercourses Act, R.S.O., c. 220, the question whether the engineer has jurisdiction to make an award depends upon whether, before filing the requisition, the owner filing it has obtained the assent in writing of a majority of the owners affected or interested, as provided by s. 6 (*a*); if he has obtained such assent, the engineer is immediately upon such filing clothed with jurisdiction; and the absence of the notice (Form D.) required by s. 6 would not deprive him of such jurisdiction, but would form only a ground of appeal against his award.

(3) The assent of the municipal corporation as one of the landowners interested may be shown by resolutions passed by the council directing the engineer to proceed with the work.

(4) The term "owner" as used in the Act means the assessed owner; and a tenant at will may be an owner affected or interested within the meaning of the Act.

(5) The decision of the County Court judge as to matters over which the engineer has jurisdiction cannot be reviewed by the court; and whether the plaintiff were benefited by the proposed work was a matter to be determined by the engineer, and the subject of appeal to the County Court judge.

(6) The mere publication by the engineer, within a year after the affirmance of an award, of a notice that he would let the work be done upon the land of one of the persons affected by the award, and that such letting would take place after the expiry of a year from such affirmance, does not afford any ground for an action of trespass.

Aylesworth, Q.C., and *D. B. MacTavish*, Q.C., for the plaintiffs.

G. F. Henderson for the defendants.

Div'l Court.] [June .o.

TURNER *v.* BURNS.

Covenant—Construction of—Reasonableness—Certainty—Damages for breach —Evidence—New trial—Refusal of judge to submit question to jury—Non-direction.

The male defendant sold his business of a wholesale and retail confectioner to the plaintiff, and covenanted that he would not, during a limited period, either by himself alone, or jointly with, or as agent for any other person, carry on, or be employed in carrying on, the business of a retail confectioner in the same city which should in any way interfere with the business sold to the plaintiff, and that he would, .o the utmost of his power, endeavour to promote the interest of the plaintiff among his (the defendant's) customers. This defendant had carried on his wholesale business in the basement of his premises, and his retail business in the shop above, of which latter his wife, the other defendant, had the management. The business carried on in the shop included the sale of cakes, candy, etc., and the serving of lunches. In the sale to the plaintiff were included an assignment of the lease of these premises, and all the chattels and fixtures, as well as those used in the serving of lunches as in other ways. During the period limited by the covenant, and while the plaintiff was carrying on the business in the same way as the male defendant had previously carried it on and upon the same premises, the defendants began a precisely similar business in a shop in the same street, the shop being leased and the retail business carried on in the name of the wife, and that branch of the business conducted by her as theretofore, while the husband carried on the wholesale business in the basement. The jury found that the retail business was, in fact, that of the husband.

Held, (1) that the serving of lunches was part of the business of a retail confectioner, according to the meaning to be ascribed to those words in the covenant.

(2) That the covenant was reasonable, and sufficiently certain to be enforced by the court.

(3) That general loss of custom after the commencement of the new business by the defendants could be shown by the plaintiff as evidence to go to the jury of damages resulting to him from such business.

Ratcliffe v. *Evans*, (1892) 2 Q.B. 524, applied and followed.

(4) That damages were properly assessed up to the date of the judgment.

Stalker v. *Dunwich*, 15 O.R. 342, followed.

(5) It is no ground for a new trial that the judge refused to submit any particular question to the jury; but if the judge refuses to charge the jury in respect to the subject-matter of any question which counsel desire to have submitted, it may be made the subject of a motion for a new trial for non-direction.

Osler, Q.C., and *Dowdall* for the plaintiff.

Moss, Q.C., and *D. B. MacTavish*, Q.C., for the defendants.

Div'l Court.] [June 26.

OLIVER *v.* MCLAUGHLIN.

Fraudulent conveyance—Action to set aside—Plaintiff not an execution creditor—Qui tam action—Appropriate relief—Demurrer to relief prayed—Rule 384—13 Eliz., c. 5—Status of plaintiff—Claim upon implied contract to pay mortgage—Proof of contract—Voluntary conveyance—Fraudulent intent.

(1) Where a creditor brings his action to set aside as fraudulent a conveyance made by his debtor of his property, without first obtaining judgment and execution, he must sue on behalf of all the creditors of the debtor, and in such action his relief will be confined to setting aside the conveyance, leaving him to resort to some independent proceeding to obtain execution against the property comprised in such conveyance.

(2) A demurrer to the relief prayed in respect of the cause of action, and not to the cause of action itself, will not now be allowed. Rule 384 referred to.

(3) The protection of 13 Eliz., c. 5, is not confined to creditors only, but extends to creditors and others who have lawful actions; and in this case, where, before the impeached conveyance was made, all the moneys secured by a mortgage, subject to which the plaintiff had conveyed the mortgaged lands to the fraudulent grantor, had fallen due, the plaintiff had at the time of the making of the conveyance a lawful action upon the implied contract of his vendee to pay the moneys secured by the mortgage, and this implied contract was sufficiently proved against the fraudulent grantee by proof of the mortgage and of the conveyance by the plaintiff to the fraudulent grantor subject to the mortgage.

(4) Where a conveyance is voluntary, it is not necessary to show the fraudulent intent of both parties to it, but only of the maker.

W. H. Blake for the plaintiff.

Aylesworth, Q.C., for the defendants.

Practice.

MEREDITH, J.] [June 10.

CITY OF TORONTO *v.* TORONTO STREET RAILWAY CO.

Money in court—Result of proceedings—Appeal to Supreme Court of Canada—Payment out of court.

By the terms of a consent order, a sum of money was to be retained in court to abide the result of such proceedings as the plaintiffs might be advised to take to assert and enforce their rights and remedies with respect to a claim made by them, and such proceedings were to be commenced within four months. Substantially, the sum of money was to represent that which the plaintiffs claimed, and they were to have it if their claim proved a valid one. The plaintiffs brought this action to enforce their claim, and carried it to the Court of Appeal, where it was dismissed. They then commenced an appeal to the Supreme Court of Canada.

Held, that this appeal was one of the proceedings or part of such proceedings as the plaintiffs were at liberty to take under the order, and until its determination the money should not be paid out.

S. H. Blake, Q.C., for the plaintiffs.

McCarthy, Q.C., and *Shepley*, Q.C., for the defendants.

ROSE, J.] [June 16.

JONES *v.* MACDONALD.

Judgment debtor—Examination—Refusal to answer—Committal—Imprisonment—Discharge—Consent.

Where a judgment debtor was imprisoned under an order directing his committal for three months for a contumacious refusal to answer questions put to him upon his examination as such judgment debtor,

Held, that an application to the indulgence and discretion of the court for his discharge from custody before the expiry of the term of imprisonment could not be granted, even upon the consent of the judgment creditor upon whose motion the order for committal had been made.

H. L. Drayton for the plaintiff.

W. H. Wallbridge for the defendant.

BOYD, C.] [June 20.

IN RE SARNIA OIL CO.

Leave to appeal—Winding-up Act, R.S.C., c. 129, s. 74—Successive applications.

Where an application for leave to appeal to the Court of Appeal from a decision in a matter under the Winding-up Act, R.S.C., c. 129, has been made under s. 74, and refused by a judge, a fresh application will not be entertained by another judge.

The cases in which successive applications to successive judges have been favoured are not pertinent to a case where the right to appeal, upon leave, is sought under a special statute.

G. W. Marsh for the liquidator.

E. R. Cameron for Russell A. Alger.

ROSE, J.] [June 26.

SPROULE *v.* WILSON.

Costs—Interest upon verdict—R.S.O., c. 44, s. 88—Interest between verdict and judgment.

The interest which a verdict or judgment bears by virtue of R.S.O. c. 44, s. 88, is no part of the claim, and the question as to the scale upon which costs are to be taxed is to be determined by the amount of the verdict or judgment, irrespective of such interest.

Malcolm v. *Leys*, 15 P.R. 75, distinguished.

Semble, interest is to be allowed between the date of the verdict and the judgment.

Akers for the plaintiff.

Watson, Q.C., for the defendant.

BOYD, C.] [June 21.

EXLEY *v.* DEY.

Attachment of debts—Promissory note—Garnishee—Parties.

The enlarged provisions of Rule 935 do not extend the right of attachment of debts to the case of moneys payable on negotiable securities; the claim of a judgment debtor to be paid the amount of a promissory note is not dependent on the doctrines of equitable execution.

Jackson v. *Cassidy*, 2 O.R. 521, followed.

What is to be garnisheed is not the note itself, but the money payable thereunder; therefore the maker of the note, and not the person holding it for the judgment debtor, should be made garnishee; and there is no warrant in the practice for ordering the holder to hand the note over to the judgment creditor.

Pattullo for the plaintiff.

Middleton for the defendant.

Obituary.

HIS HONOUR JUDGE DAVIS.

The sudden and untimely death of the late Judge Davis, Junior Judge of the county of Middlesex, has come as a severe shock to the Bar of the counties of Middlesex and Lambton, and to the public of those counties as well. He was sojourning at New Carlisle, on the Bay of Chaleur, to rest and recruit, when his sudden death from heart failure was announced.

The late judge was born near the city of Cork, but came to Canada when quite young and studied law. He commenced the practise of his profession in the town of Sarnia in 1852, where he continued to reside and practise until 1876. He was for many years County Crown Attorney of the county of Lambton and county solicitor. He was also the first lieutenant-colonel of the 27th Battalion, which he was mainly instrumental in forming. He was one of the commissioners sent by the Dominion Government to investigate the working of prohibition in the State of Maine. The report of that commission laid the foundation of the Canada Temperance Act. He was also on several occasions a candidate for parliamentary honours, but was defeated by small majorities. In 1876 he was made a Queen's Counsel, and in the same year he was appointed Junior Judge of the county of Middlesex. As a judge he was deservedly popular. He was painstaking, patient, and courteous, and of so cheerful and genial a disposition that he won the affection of everybody with whom he came in contact. He held the scales of justice so fairly as to win admiration from lawyers and litigants for his conscientious impartiality.

The Bar Association of the county of Middlesex held a special meeting for the purpose of passing a resolution of regret and condolence, and similar action was taken by the members of the profession in the county of Lambton.

Law Society of Upper Canada.

LEGAL EDUCATION COMMITTEE.

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THE LAW SCHOOL.

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

Lecturers: E. D. ARMOUR, Q.C.; A. H. MARSH, B.A., LL.B., Q.C.; JOHN KING, M.A., Q.C.; MCGREGOR YOUNG, B.A.

Examiners: A. W. AYTOUN-FINLAY, B.A.· M. G. CAMERON; FRANK J. JOSEPH, L

ATTENDANCE AT THE LAW SCHOOL.

This School was established on its present basis by the Law Society of Upper Canada in 1889, under the provisions of rules passed by the Society in the exercise of its statutory powers. It is conducted under the immediate supervision of the Legal Education Committee of the Society, subject to the control of the Benchers of the Society in Convocation assembled.

Its purpose is to secure as far as possible the possession of a thorough legal education by all those who enter upon the practice of the legal profession in the Province. To this end, with certain exceptions in the cases of students who had begun their studies prior to its establishment, attendance at the School, in some cases during two, and in others during three terms or sessions, is made compulsory upon all who desire to be admitted to the practice of the Law.

The course in the school is a three years' course. The term or session commences on the fourth Monday in September, and ends 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.

Admission to the Law Society is ordinarily a condition precedent to attendance at the Law School. Every Student-at-Law and Articled Clerk before being allowed to enter the School must present to the Principal a certificate of the Secretary of Law Society, showing that he has been duly admitted upon the books of the Society, and has paid the prescribed fee for the term.

Students, however, residing elsewhere, and desirous of attending the lectures of the School, but not of qualifying themselves to practise in Ontario, are allowed, upon payment of usual fee, to attend the lectures without admission to the Law Society.

The students and clerks who are exempt from attendance at the Law School are the following:

1. All students and clerks attending in a Barrister's chambers, or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889, so long as they continue so to attend or serve elsewhere than in Toronto.
2. All graduates who on June 25th, 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.

Provision is made by Rules 164 *(g)* and 164 *(h)* for *election* to take the School course, by students and clerks who are exempt therefrom, either in whole or in part.

Attendance at the School for one or more terms, as provided by Rules 155 to 166 inclusive, is compulsory on all students and clerks not exempt as above

A student or clerk who is required to attend the School during one term only must attend during that term which ends in the last year of his period of