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THERE has been some heartburning within the usually peaceful and happy family walls of Osgoode Hall, caused by the action of the Benchers in reference to the secretary of the Law Society, whose salary has recently been reduced and his perquisites taken away. We regret this action. In the first place, the gentleman in question has been there for over twenty years. He has been faithful in the discharge of his duties. He has often been overworked, though there has been no hesitation to provide, from time to time, assistance as the work grew. The friends of the secretary do not pretend to say that he is without his faults, but they do say he is what he was when first appointed; and that if this be so, and there be no specific charge against him (and we understand there is none), there is no reason why his salary should be reduced, except on the supposition that the Society is compelled for some reason to reduce its salaries; which, it is said, is not the case. It may also be suggested that the Law Society is not a mercantile concern, or a number of shareholders whose pecuniary interests must be considered, but is more in the nature of a club or body of gentlemen, who would, we are inclined to think, if consulted, regret the action that has been taken. It seems to us that there has been a defective system, and that this has been unhappily visited on one not responsible for the defects. Whilst this is to be deplored, we are sure that no one desired to do that which was unjust, or even harsh. Perhaps a further consideration of this view of the matter may result in making some change in the present arrangement which would be acceptable to all concerned.

A WAR is now in progress in the city of New York between the Metropolitan Telephone & Telegraph Co. and those who rent its telephones. The latter have organized, and, it is stated, are about to apply to the State Legislature for a reduction of the company's charges. The subscribers complain that the system as now worked is unsatisfactory—and any one who has had experience of New York telephone communication will more than bear this out—and they also contend that the system is intentionally inefficient, and is so maintained for the private pecuniary gain of the owners. They, moreover, allege that the State has the right to regulate the charges for the use of the telephone in all cases where the service is a monopoly, where public streets and highways are used, and where the service is of such a character that its use has become a matter of necessity on the part of the community; for then the plant is affected by a public use, and the public is *ipso facto* taken into co-partnership, and in either of these cases the public right to regulate charges is as clear as though the owners of the plant

were exercising the right of eminent domain. This principle was established in the case of *Munn* v. *Illinois* (94 U.S. 113), which has been followed in the courts of all the States of the Union, and one of the grounds upon which the right to regulate, as determined by the above cited case, was based was that whenever the service is of such a nature as to be a public necessity, the right to regulate is incidental thereto.

THAT we are very much over-governed in proportion to our wealth and population cannot be denied. It is refreshing, therefore, to find that, after all, that part of the machine known as a Lieutenant-Governor is not, as has been supposed, always and absolutely useless.

Recent occurrences in Quebec have demonstrated that notwithstanding the apparent passivity of that functionary in ordinary affairs, there is yet in him a residuum of latent force which is capable of being called into activity for the benefit of the State on suitable occasions.

For a Lieutenant-Governor to undertake to dismiss a minister who is supported by a parliamentary majority is undoubtedly a very grave and serious enterprise, and one not to be entered upon without the most patent conviction that it will be sustained by the people as a proper and legitimate exercise of a very drastic remedy. The result of the general election in Quebec has shown that the Lieutenant-Governor of that Province correctly estimated the current of public opinion there.

To permit the forms of constitutional usage to shelter rogues and enable them to keep control of public affairs after their rascality had been exposed, would indeed be perverting those forms into an instrument of oppression, and would be an outrage to common sense. Politicians are too prone to assume that the government of the country exists primarily for their benefit, and that the forms of the constitution are to be scrupulously regarded under all circumstances so as to maintain themselves in power. But we are glad to see that Mr. Mercier's frantic appeals against the supposed violation of the constitution by the Lieutenant-Governor of Quebec have fallen on deaf ears.

The Province of Quebec has safely passed through a very serious crisis in its affairs, and incidentally it has been shown that it is necessary that a power such as was recently exercised in Quebec should be vested in some one. The game may possibly be worth the candle, and it may be that there is no way of meeting such a difficulty as the one alluded to other than by the present enormously expensive system. Possibly when the pressure of taxation is felt a little longer, some more economical machinery may be found, or some radical changes in the constitution effected.

We trust that the good work thus begun in Quebec will be continued by bringing the guilty to justice. There may be some question of policy in the matter, but that some, at least, of those concerned have brought themselves within the criminal law seems scarcely to admit of a doubt.

THE BEHRING SEA CONTROVERSY.

May we not hope that the difficulty said to have arisen between Lord Salisbury, acting for the British Government, and Mr. Harrison, for that of the United States, will be soon settled in a manner honourable and satisfactory to all parties, and the treaty respecting the seal fishery in Behring Sea sanctioned and carried out. It seems that Mr. Harrison wants the *modus vivendi* of last season continued during that now approaching, that Lord Salisbury, in his first note in answer, expressed a wish that the arrangement should extend only to the distance of thirty marine miles from the Pribiloff Islands, that Mr. Harrison objected, and that by a note subsequently received Lord Salisbury has intimated that if he agreed to this it must be understood that England did not undertake to indemnify the owners of British sealers for losses arising from such continuance —a condition from which it may, perhaps, be inferred that the continuance had been asked for or approved by the Canadian Government, who would, very properly, favor anything tending to the early settlement of our misunderstanding with our southern neighbor. On this the *New York Herald* says: "But what Lord Salisbury now claims is the liberty for Canadian poachers to catch all the seals they can with entire exemption from liability on the part of England if the arbitrators shall decide that these poachers have no business in Behring Sea:" and a Canadian paper rejoins: "The impudent pretension of the Americans that they own Behring Sea—and this is implied in the above use of the word 'poaching'—raises no doubtful issue. They have exactly the same claim to the whole Pacific Ocean." Which is true.

We, however, assume that Lord Salisbury only intimated that if, under the award of the arbitrators, any sum should be paid to British sealers as damages arising from the continuance of the *modus vivendi* in compliance with the desire of the Canadian Government, such sum must be reimbursed to England by the said Government, as, of course, it ought to be. But if the award of the arbitrators be that the United States have no exclusive rights in the seal fisheries in Behring Sea outside of three marine miles from the shore of their possessions adjoining it, then such damages, if paid, must be repaid by the United States.

Unfortunately there is yet no Parliament of Nations, and therefore no written Act defining the international law in such a case; but it has always been understood that the exclusive jurisdiction of a country over the seas adjoining it extends only to three marine miles from the shore, and, as this rule has, beyond all question, been insisted on and allowed by England and the United States in all other places, it is for the United States to show that it does not apply to Behring Sea. On the Atlantic side of America, both parties have admitted it as unquestionable. All the arguments Mr. Harrison has hitherto urged against its applicability to the present case seem to have been abandoned by him or shown by his opponents to be futile. Russia, from whom Mr. Harrison claims to have derived such right, never claimed or exercised it against England, and therefore England cannot be said to have acquiesced in it: she disputed it, and so did the

United States before they bought Alaska. England never seized a foreign ship and had her condemned for approaching St. Helena, or for fishing in a tract of sea north of Scotland, where Mr. Harrison says she prohibited such fishing, or for fishing for pearls near Ceylon; so that the *tu quoque* argument urged by Mr. Harrison fails; and neither England nor the United States ever declined to take fish outside the three-mile line on the Atlantic side because such fish were bred and fed inside that line; and if Pribiloff seals go outside the three-mile line to catch fish for food, they feed on fish to which the United States have certainly no exclusive claim.

It would seem, therefore, that these arguments are futile; but as Mr. Harrison and many of his fellow-countrymen, whose opinions are entitled to the utmost respect, believe them to be valid (at least we are willing to assume good faith on their part), the arbitration is most desirable, and we have full confidence that the decision of such men as are to be appointed on it will command the assent of the "other powers" which the treaty wisely provides the high contracting parties shall endeavor to obtain; for if the United States have the rights they claim, they have them against the world, and no *other* nation has a right to catch a seal in Behring Sea if England has not.

It has been said that Lord Salisbury cannot consistently, by continuing the *modus vivendi*, aid the United States in enforcing a right of which he denies the existence, but he did so during the last season, and has at least equally good reasons for continuing it during the coming one and the pendency of the arbitration. And however firmly we may believe that England's contention is just and clear, our very consent to arbitrate shows that we admit that our opponents may honestly believe in the righteousness of their claim. A close season would be useless if agreed to only by England and the United States. The arbitration will settle the vexed question: Whether the United States have or have not the exclusive right they claim, and *that* relating to a close season if necessary, a point on which it has been said the experts employed by the contending parties have not agreed; and if they have, our Parliament has not yet had their report before it. The Hon. Mr. Tupper has not spoken on the subject from his seat, and he must undoubtedly have much valuable information bearing on many disputed points about the habits of the seal and its destruction or preservation. Let us hope, then, that the continuation of the *modus vivendi* may be granted, and the arbitrators appointed, so that a decision may be assured, and peace and good will with it:—the costs such continuance may occasion must be paid by the party by whose fault or error they are occasioned, and will be as nothing in comparison with the mischief which would attend the prolongation of this dispute between two nations whose relations should be more than friendly, and between whom "a small unkindness is a great offence."

Since writing the above, we have seen it stated that Lord Salisbury has proposed modifications of the terms on which he will consent to a continuation of the *modus vivendi*, which the Senate may accept, and we shall be glad if this is true—or the discussion may take some other turn before this number is distributed. All we desire is that the arbitration may proceed and a decision be given.

March 23.

COMMENTS ON CURRENT ENGLISH DECISIONS.

(Law Reports for February—*Continued.*)

ASSESSMENT—RAILWAY TUNNEL—HEREDITAMENT.

In *Metropolitan Railway Co.* v. *Fowler* (1892), 1 Q.B. 165, the question was as to the liability of the roadbed of the Metropolitan Underground Railway to taxation under a statute authorizing the imposition of taxes on "all and every manors, messuages, lands, and tenements, and also all quarries, mines, iron mills, furnaces, and other iron works; salt springs, and salt works; all alum mines and works; all parks, chaces, warrens, woods, underwoods, coppices; and all fishings, tithes, tolls, annuities, and all other yearly profits, and all hereditaments of what nature or kind soever they may be." It was argued on behalf of the railway company that the interest which the company had in the tunnel through which their railway ran was in the nature of an easement or servitude and was not a hereditament, but the majority of the Court of Appeal (Lord Esher, M.R., and Kay, L.J.) were of opinion that it was a hereditament, and, as such, liable to taxation; but from this view Lopes, L.J., dissented.

WILL—CONSTRUCTION—DEVISE TO SEVERAL "AS JOINT TENANTS, AND NOT AS TENANTS IN COMMON, AND TO THE SURVIVOR OF THEM, HIS OR HER HEIRS AND ASSIGNS FOREVER"—WILLS ACT (1 VICT., C. 26) S. 28—(R.S.O., C. 109, S. 30).

In *Quarm* v. *Quarm* (1892), 1 Q.B. 184, the construction of a will was in question whereby the testator had devised a freehold estate to seven persons as "joint tenants, and not as tenants in common, and to the survivor of them, his or her heirs and assigns forever." The testator died after the Wills Act (1 Vict., c. 26)—(R.S.O., c. 109)—took effect. It was contended that the effect of the devise, as controlled by s. 28 of that Act (s. 30 of Ont. Act), was to make the seven devisees joint tenants in fee, the omission of words of limitation in the first part of the devise being, as it was contended, cured by the statute. But Lord Coleridge, C.J., and Wright, J., considered that "a contrary intention" sufficiently appeared by the will, and therefore that s. 28 did not apply, and that the proper construction of the will was to give the devisees named a joint estate for life, with a contingent remainder in fee to the survivor.

STATUTE—CONSTRUCTION—EJUSDEM GENERIS.

Warburton v. *Huddersfield Industrial Society* (1892), 1 Q.B. 213, is an illustration of the restriction of general words in a statute by the application of the rule *ejusdem generis*. The statute in question, which incorporated industrial societies, provided that the funds of such societies might be applied in certain specified ways, "or to any lawful purpose," and it was held by Mathew and A. L. Smith, JJ., that the generality of these words must be limited to objects *ejusdem generis* as those specified, and did not authorize the application of the funds to any purpose whatever that was not unlawful.

ADULTERATION—GUILTY INTENT—SALE OF FOOD AND DRUGS ACT, 1875 (38 & 39 VICT., C. 63), S. 9—(R.S.C., C. 107, S. 15).

Dyke v. *Gower* (1892), 1 Q.B. 220, was a case stated by justices for the opinion of the court, and disclosed that the respondent, a retail milk seller, had poured

eight gallons of unskimmed milk into a pail which she sold in small quantities to her customers, dipping it out from time to time with a measure. The sale extended over four or five hours, during which time the cream kept rising to the surface, of which the customers first served got the benefit, but those who came last practically got skimmed milk, owing to the milk not having been stirred from time to time. The appellant, who was served when only two quarts remained, complained of the deficiency of cream, and on analysis it was discovered that the milk served to him was deficient in thirty-three per cent. of fatty matter, which was entirely due to the way the earlier customers had been served. The court (Lord Coleridge, C.J., and Wright, J.) held that the respondent was guilty under the Adulteration Act, s. 9 (see R.S.C., c. 107, s. 15), in that she sold the milk without disclosing its condition, and that it was immaterial that she had no intent to defraud in abstracting the cream as she did.

MASTER AND SERVANT—EMPLOYERS AND WORKMEN ACT, 1875 (38 & 39 VICT., C. 90), S. 10—(R.S.O., C. 141, S. 1, S-S. 3)—PERSON ENGAGED IN MANUAL LABOR—GROCER'S ASSISTANT.

In *Bound* v. *Lawrence* (1892), 1 Q.B. 226, the Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.) reversed a decision of the Queen's Bench, and held that a grocer's assistant, whose duty was to serve customers over the counter, and make up parcels, and carry parcels from the shop to the cart at the door, and bring up goods from the cellar, was not engaged in "manual labor" within the meaning of the Employers and Workmen Act, 1875 (R.S.O., c. 114, s. 1, s-s. 3). The real and substantial duty of the person must be looked at, and the mere fact that, as incidental to that duty, some slight acts of manual labor are performed is not sufficient to bring the employee within the category of a servant engaged in "manual labor."

PRACTICE—RECEIVER—TRUSTEE—REMUNERATION.

In re Bignell, Bignell v. *Chapman* (1892), 1 Ch. 59, was an administration action, in which a receiver and manager of the business of the testator had been appointed, and the question was whether such receiver was entitled to remuneration. The testator had directed his trustees, of whom Mrs. Squier was one, to allow Mrs. Squier to manage his business during her own life, subject to a power in her co-trustees to stop the business if it should be carried on unsuccessfully for any period of eighteen months, and Mrs. Squier was to have one-fourth of the profits, not exceeding £800 a year. Shortly after the testator's death the judgment for administration had been made, and Mrs. Squier had been appointed receiver and manager of the business without giving security, but nothing was said as to remuneration. About fifteen months after the testator's death Mrs. Squier resigned her office as receiver, having been in bad health for several months, and shortly afterwards died. The business had fallen off, and the profits for the whole period of the receivership were trifling. Her executors, on passing her accounts, asked for remuneration to be allowed at the rate of £800 a year. The residuary legatee objected to any remuneration being allowed, contending that there was an inflexible rule that a trustee, when appointed as receiver, is never entitled to remuneration. The Court of Appeal (Lindley,

Bowen, and Fry, L.JJ.), however, came to the conclusion that no such rule existed, and that although the court does not usually appoint a trustee to be receiver except on the terms of his acting without salary, yet when these terms are not imposed when the appointment is made the question of remuneration is in the discretion of the court; and in this case the allowance of remuneration at the rate of £400 a year, which North, J., had made, was not disturbed.

MORTGAGEE—RECEIVER AND MANAGER.

In *Whitley* v. *Challis* (1892), 1 Ch. 64, the Court of Appeal (Lindley, Bowen, and Fry, L.JJ.) reversed an order of Kekewich, J., appointing a manager of a hotel business under the following circumstances: The defendant was a hotel-keeper who was about to rebuild his hotel, and had an agreement for the grant to him of a lease for eighty years when he had rebuilt it, and he charged the building agreement and all the premises comprised therein, and the hotel and buildings to be thereafter erected as aforesaid, and the lease so to be granted, with the repayment of a sum borrowed from the plaintiff, and agreed to execute to the lender as soon as the lease was granted a valid second mortgage, which should be in such form and contain such powers, covenants, and provisions as the solicitor or counsel of the plaintiff should advise or require. The hotel was rebuilt and the defendant carried on business on the property, but no mortgage was executed. The present action was brought to enforce the charge by sale or foreclosure and the plaintiff had moved for a receiver of the mortgaged property and a manager of the hotel business. Kekewich, J., had granted both a receiver and a manager, but the Court of Appeal was of opinion that as the good will or business had not been charged by the defendant the plaintiff had no right to the appointment of a manager of the business, and that the stipulation as to the mortgage being in such form, etc., as the mortgagee's solicitor or counsel should require could not enlarge the subject of the mortgage, but only provided for perfecting the charge on the property specifically agreed to be mortgaged.

WILL—CHARITABLE LEGACY—GIFT FOR ENDOWMENT OF CHURCH—CONTINUING CONDITION—RETENTION OF FUND IN COURT.

In re Robinson, Wright v. *Tugwell* (1892), 1 Ch. 95, a testatrix had made a bequest towards the endowment of a church, subject, among others, to an "abiding condition" that the black gown should be worn in the pulpit, unless there should be any alteration in the law rendering it illegal. It was claimed that the condition was impossible or illegal of performance, and that the bequest was void; but North, J., held that it was valid, and that the fund should be retained in court, and the income paid to the incumbent of the church so long as he fulfilled the condition as to wearing a black gown.

SOLICITOR—LIEN—DISCHARGE OF SOLICITOR BY CLIENT.

In *Boden* v. *Hensby* (1892), 1 Ch. 101, the plaintiff in a partition action changed his solicitor, and an application was then made to compel the discharged solicitor to deliver up the papers connected with the action to the new solicitor to enable him to carry it on. The solicitor resisted the application, claiming

that, as the plaintiff had discharged him, his costs should be first paid. North, J., held that as the action was of a representative character, in which other persons were interested, the solicitor was bound to deliver up all documents he had received since the commencement of the action, and for the purposes of the action, to the new solicitor, subject to his lien, and upon an undertaking to return them to him when the court should direct.

Notes on Exchanges and Legal Scrap Book.

PUBLIC TRUSTEE IN ENGLAND.—The hostility of the legal profession to the proposal of the Government to establish an official department to transact the business now carried out by private trustees is rapidly gaining in extent and force. Upon the widely-spreading notion that it is the duty of the State to take under its ample wings the personal concerns of all its "chicks," we are not disposed to make any comment here. We desire to direct the attention of our readers to the proposed appointment of a public trustee on the sole basis of this particular case. This course is quite sufficient for our purpose, which is to point out the needlessness and danger of the proposal. The advocates of the change pin their faith, not so much to the merits of their own proposal, but to what they are pleased to regard as the great number of cases of misappropriation of trust funds. Is this an attitude which facts justify? We venture emphatically to declare that the instances of dishonesty are very few compared with the extraordinarily large number of trusts which are faithfully and ably carried out. It is well to remember, too, that the legal reformers who desire to establish a public trustee do not assume a logical position upon this important branch of the question, because they do not go so far as to propose that the public shall be compelled to resort to the official department they wish to create. The adoption of the official plan of administering trusts is to be optional. How can they claim, then, that their scheme would destroy the dishonest trustee? We believe that it would effect scarcely a vacancy in the ranks of the evil race. The statement which our observation leads us to make is that the cases in which trust funds are misappropriated are usually those in which the trustees have been on intimate terms with the testators, who possessed more than ordinary confidence in them, and who were certainly not the men to avail themselves of the advantages of an official department, if one had existed in their time. The necessary absence of compulsion must almost inevitably render the scheme a failure, and the simple result of the legislative wisdom expended in conceiving and propounding it will be an expensive department with idle officials; the mouse that will come out of the mountain will be a reproduction of the Land Registry; the egg that will be laid by the parliamentary hen will be a soft-shelled one. In any event the cost of a public trustee would be greater than the expenditure required under the present system. Officialism, like science, "travels slowly on from point to point." A public trustee could not possibly

act with the promptitude and precision that a private trustee can. The increase of officialism in the Bankruptcy Court demonstrates the justice of the hostile observations usually made upon red-tapeism, and justifies the dislike with which practitioners view the efforts of influential men to introduce officialism into the management of private estates. An official department would not possess that personal knowledge of the estate and the beneficiaries which enables an ordinary trustee to act promptly and wisely. The result of this absence of personal knowledge would be that strict proof of everything would be required, and in this way, not to mention others, the expense of administration would be increased. The primary object of the measure is to benefit the beneficiaries, but even in the light of the considerations we have found space to refer to, it may confidently be stated that this object would not be attained. Would the State be answerable for the errors of the public trustee? This is a question to which a definite answer is needed.—*Law Gazette.*

Liability for Injuries Caused by Barbed-Wire Fencing.—Commenting on the recent decision of the learned Recorder of Belfast in *M'Quillan* v. *Crommellin Iron Ore Co.* (26 Ir. L.T. Rep. 15), the *Albany Law Journal* of the 5th inst. observes: "This has long been the law of this country (U.S.A.), the home of the barbed-wire fence, and the structure is in some States, we believe, prohibited by statute. The particular reason, perhaps, was that hides were thus injured for tanning." So far back as 1887, indeed, attention was directed to *Polak* v. *Hudson*, the first decision in the United States on this subject (see "Duty as to Fences," 21 Ir. L.T. 319), where, in an action to recover damages for fatal injuries to a horse by reason of his coming in contact with a barbed-wire fence, erected by the defendant between his land and the adjoining land on which the horse was depastured, it was held that an owner of land who erects a division fence owes it to his neighbor not to incorporate in the fence anything which, in view of the habits of the animals for which the land would naturally be used, would naturally tend to their injury. The defendant's liability, as put, seemed to turn on the circumstance that the defendant knew that the plaintiff was accustomed to turn the horse into the pasture, and therefore that the injury would be the natural consequence; but we ventured to suggest that such cases should rather be deemed to come within the class of cases, such as *Firth* v. *The Bowling Iron Co.* (3 C.P.D. 254) and *Groucott* v. *Williams* (23 L.J. Q.B. 237), where the tort-feasor is held liable regardless of intention or negligence—a barbed-wire fence being so dangerous *per se* that in erecting it at all he acts at his peril. The view so suggested appears to have eventually prevailed in *M'Quillan* v. *Crommellin Iron Co.*, where—without reference to the English and American cases just cited—the learned Recorder followed *Bennett* v. *Blackmore* (90 L.T. 395, 26 L.J. 228), which itself it followed the Scottish case of *Elgin Road Trustees* v. *Innis* (1886, 14 Rettie, 48). The learned County Court Judge of Kilkenny, in his well-known work (De Moleyns, L.P.G., 7th ed., 316), observes that, "apart from negligence as to the sufficiency of the fence, the owner of an

Sir Portling v. Noakes (1894) 2 QB 281

animal may be liable in *trespass* for any injury which it may cause to animals on the adjoining lands, as in the case of an injury inflicted by a horse through a wire fence"—but this (citing *Lee* v. *Riley*, 18 C.B.N.S. 722; *Ellis* v. *Loftus Iron Co.*, L.R. 10 C.P. 10) relates not to injuries inflicted by a wire fence, but by a horse kicking through it, and injuring animals on the adjoining land. Neither have the cases about man-traps, spring-guns, and similar dangerous instrumentalities used for the protection of property (fully discussed in 17 Ir.L.T. 379, 393, 407), any very influential bearing on this particular branch of the subject; and though *Crowhurst* v. *Amersham Burial Board* (4 Ex. D. 5) is often cited with reference to barbed-wire fences, it will be found on examination to turn upon grounds inapplicable to the question as to the right to maintain such fences. Nor yet was *Firth's* case (*ubi supra*) a case affecting the peculiar position occupied by such a dangerous instrumentality: but it goes some way, holding, so far as it is not determined by its special facts—the death of an animal caused by swallowing fragments of rusted iron dropping from a fence which the defendants were bound to maintain—that, where an obligation exists to fence, the fencing must be done in such a way as not to cause injury, not only while the fence is efficient, but from the natural effects of decay (and see *Hawken* v. *Shearer*, 56 L.J.Q.B. 284, treated of in 21 Ir.L.T. 319).

It must be taken, therefore, that for anything like direct authority on the subject of liability for injuries caused by barbed-wire fences, recourse must be had solely to County Court cases so far as regards England and Ireland. It is an instrumentality becoming extensively used of late, frequently in a most indiscriminate and dangerous way, and the daily press in this city has recently teemed with angry protests against its employment. One writer has collected some of those County Court cases (see *ante*, p. 126), which, by the way, were not mentioned in *M'Quillan's* case, which case he himself omits to cite; but, as regards the Cardiff case mentioned by him, it does not appear that there is any proper report of it extant—it came after *Bennett* v. *Blackmore* (*ubi supra*), and seems to have been on all fours with *Bird* v. *Frost*. Now, *Bird* v. *Frost* was the first of the series, and the *Justice of the Peace*, of the 12th inst., says it was a case tried by the Manchester County Court in December, 1889, by Deputy-judge Goldsthorpe, "in which it was decided that the defendant, who was the occupier of land adjoining a public footpath fenced from off his land by barbed wire, was liable for damage done to the plaintiff's clothes by coming into contact with the barbs whilst he was making way for other passengers coming along the path. The only point distinguishing this case from the Scotch case"—*Elgin Road Trustees* v. *Innes*, where the fence was only three feet distant—"was that the barbed wire was set back nine feet from the path on the defendant's land. If, however, the learned judge found that even so the wire constituted a danger to persons lawfully using the path, it would be indistinguishable in point of principle. No proper report, however, of this case is to be found." The next case was *Bennett* v. *Blackmore* (*ubi supra*), after which came *Wilcox* v. *Cardiff Corporation*, already alluded to. And after stating the effect of the decision in the subsequent Irish case of *M'Quillan* v. *Crommellin Iron Ore Co.* (26 Ir.L.T. Rep. 15)—which has

been referred to, also, by the *London Law Times*, and by the *Albany Law Journal*, previously cited—the *Justice of the Peace* proceeds to discuss *Shipton* v. *Lucas*, the latest of the series, but here it will suffice to say that a full report of that case has been published in our previous issue (*ante* p. 148). And we concur with our contemporary in considering that, as the general result of the decisions, the erecting or maintaining of a barbed-wire fence, while not *per se* an illegal act, becomes illegal if so placed as to be dangerous to others in the exercise of their lawful rights, such as passing along a highway or turning out cattle into their fields, and involves liability for all the natural and probable consequences, such as tearing the clothes of travellers or injuring cattle. "And with regard to injuries to cattle, it may be mentioned that it is by no means necessary that, in order to recover damages, the plaintiff should be the owner of the field in which they were as well as of the cattle themselves. A mere gratuitous bailee, whose cattle were lawfully turned out in the field of the adjoining owner, would have a right to recover damages, just as much as the adjoining owner himself (*Rooth* v. *Wilson*, 1 B. & Ald. 59)." And so in *Polak* v. *Hudson*—the American case previously mentioned—it was held that the owner of the animals injured was entitled to recover damages, though he was not the owner of the land, and had bailed his horses to the owner of the land, who knew of the dangerous character of the fence. Never put up or maintain a boundary fence of barbed wire, for you will do so at your peril, is the moral to be deduced; and if it is sound, as we have no reason to doubt, though at present it lacks the authority of decisions in the Superior Courts, the existing law is certainly amply adequate to afford a remedy for wrongs of this kind, without requiring to be supplemented by express legislation, even to prevent "hides from being injured for tanning."—*Irish Law Times*.

Reviews and Notices of Books.

Canada Under British Rule. The History of Canada, Vol. V. By William Kingsford, LL.D., F.R.S.

Honorably and bravely "*tenax propositi*," Dr. Kingsford, though he has not yet received that public recognition and encouragement to which, in our notice of his fourth volume, we expressed the opinion that he was fairly entitled, continues to carry out his declared purpose of bringing his history of Canada down to the union of the Upper and Lower Provinces in 1841. His fifth volume is now before us, and brings the work down to the close of November 1775, when, he tells us after recounting the events consequent on the American revolution: "The only scrap of territory which remained under British rule was the city of Quebec within the ramparts. The troops of Congress held the forts of St. Johns and Chambly; they were in possession of the city of Montreal, which had submitted to their authority, and Three Rivers had accepted the new rule." A sufficiently remarkable epoch for the close of a very important and interesting

volume. A table of contents is prefixed, but no verbal index, and the incidents related are so numerous and narrated in such detail that it is impossible, in the space at our command, to give any adequate idea of them, however summary, or of the amount and value of the information the work contains. It is divided, like the preceding volumes, into books, and the books into chapters. Vol. IV. ended with chapter xi. of book xiv., and Vol. V. contains books xv. (eight chapters), xvi. (seven chapters), xvii. (six chapters), and xviii. (four chapters); filling, in all, 494 pages of the same type and size as those of the preceding volumes. Books xv. and xvi. relate to events in Canada from 1763 to 1775 inclusive. Our country was then in that unsettled state which inevitably attended its conquest and occupation by troops foreign to the native population and unacquainted with their language and habits, and of a race with whom they and their ancestors had been at war from the time of the first European settlement in America. The mass of the French population still cherished a firm belief in the invincible power of France and in speedy exercise of that power for the re-conquest of the country, and had imbued with a like belief the Indian tribes who had sided with them in their wars with the people of the New England settlements, and whom they encouraged in constant resistance to English authority and influence, and so rendered them extremely troublesome and dangerous; and although the military incomers were kept under strict discipline by their officers, who enforced order and prevented plunder or oppression, there were civilians among them who came in after the conquest in the hope and for the sake of gain, and who acted as if they thought the conquered had no rights, but must submit to any form of government the conquerors might impose for their own advantage.

The successive chapters of the book, narrate disputes and wars with the Indians, including Pontiac's plot; savage attacks on various forts, with their exciting incidents and varying results up to the conclusion of a peace; the death of Pontiac, and the proclamation of 1763 for the protection of Indian lands, which the author correctly calls a noble monument of British national justice and tells us is acted upon to this day; the appointment of Murray as Governor-General, and the disputes as to his military rank; the trouble known as the Walker affair; Murray's arrival in Montreal; the instructions given to Canadian ecclesiastics; the consecration of Mgr. Briand as Bishop of Montreal; the paper money speculation; the departure and death of Murray; the arrival of Sir Guy Carleton, and his resolution to revive French laws; the appointment of Cramahé as Governor; the establishment of a House of Assembly discussed and considered impracticable; reports by Masères, Thurlow, Wedderburn, and Marryott, as to the law which ought to be established in Canada; discontent at the creation of a Legislative Council; a code recommended by Masères, and the opposition to it; Carleton's arrival at Quebec, his character and ability. This chapter is followed by copies of the Quebec Act, 14 Geo. III., c. 83, and of the address of the General American Congress to the inhabitants of the Province of Quebec in October, 1774. Book xvii. (six chapters) and book xviii. (four chapters) relate to the American revolution, its origin and progress, and its effect on Canada; and in them Dr. Kingsford treats critically and instructively of the political state

of England; the views of the King and the Ministers on the American question; the causes of discontent in the colonies; the effect of the destruction of Louisburg; the death of George II.; the Stamp Act at Boston; the feeling of George III. regarding America; the leaning of the Rt. Hon. Earl of Chatham in favor of the Americans; objectionable legislation in the House of Commons and threatened enforcement of the Act 36 Henry VIII., under which offences committed beyond seas might be tried in England; the letters of Junius and their effect: the so-called Boston massacre; the tax on tea, commercial restrictions, and laws against smuggling: the declaration and proclamation of rights; the Boston Port Bill; and the attack on tea ships. Chapter v. the author calls "a chapter of history to be profitably read," and it deals with: A crisis in the revolution in the winter of 1774-5; the claim of the supremacy of Parliament; the disturbing influence of the American question; Chatham's demand for the recall of troops from Boston; Franklin's duplicity as to the intentions of the Americans; pride in England no longer felt by the Americans; the author's opinion as to Canada's relations to the mother country, and the causes of this feeling, his belief in its perpetuity, and his reasons for it, clearly and eloquently expressed; an American association discusses colonial rights and frames articles pledging its members to non-intercourse and non-importation; indifference in England and disbelief in armed resistance in the colonies; characters of Lords North, Dartmouth, and Suffolk, and of Governor Hutchinson; arrival in England of the news of the affair at Lexington; remarks respecting Sir William Howe, Henry Clinton, and General John Burgoyne, appointed to commands in America, and their several characters; call for troops by the colonies; the Continental Congress; affair at Bunker's Hill; George III., his character as now read in history, condition of society, and the King's example; the present United States and their mission; Washington; causes of the revolution considered; parties in Canada at that time; Ethan Allen surprises Ticonderoga; General Arnold's first expedition by the Kennebec; he takes Crown Point and proceeds to St. Johns; Carleton leaves Quebec for Montreal; conduct of French-Canadians; Indians enrolled by Carleton, who proceeds to Quebec; the first Legislative Council; Carleton at Three Rivers and Montreal; his embarrassments; troops of Congress at Isle Aux Noix; Canadians join invaders; meeting at Quebec; sympathy with Congress; false theories entertained at London; Admiral Graves, at Boston, refuses to furnish troops; attack on Ticonderoga; Congress, embarrassed, petitions the King; Schuyler ordered to invade Canada; Montgomery determines to advance; French-Canadians form a camp at Point Olivier; Cramahé's proclamation at Quebec; Ethan Allen's attack on Montreal; he is sent prisoner to Quebec; cowardice of Major Stopford; Schuyler's manifesto; attack on St. Johns; surrender of Chambly; McLean moves and retires to Lake St. Peter; surrender of St. Johns; Carleton leaves Montreal; articles of capitulation; state of the troops surrendered; Montgomery enters Montreal, which capitulates; Three Rivers feels too weak to demand a capitulation and sends Badeaux and Morris to Montreal, who surrender it there; Wooster is in charge of Montreal; Washington issues an address to the people of Canada,

which is given in full at the end of the volume; Arnold's advance by the Kennebec, the route taken by his expedition, its strength, and the facilities afforded it by the French-Canadians, who subsequently became attached to the British Government; Arnold fails to take Quebec and retires to Pointe aux Trembles; Carleton's determination to defend Quebec and his policy of defence; causes of the success of Congress. Copies of Washington's address in English and Hancock's proclamation in French close the volume.

We have thus endeavored to give some account, though a very incomplete one, of the work, as the best eulogy we could pronounce upon it. Want of space has, of course, compelled omissions, and our readers will understand that every incident is given with full and graphic details, and that in his delineations of character the Doctor has exhibited the same skill and impartiality as in his former volumes, the same pleasure in praising the good and strong and censuring the bad and weak. Of the King he says, after admitting his weakness and obstinacy on some important points: "Nevertheless, the memory of George III. forms no painful passage in our history. As time has deadened the recollections of this obstinacy, his name is mentioned with invariable respect. The triumphs of the great admirals in after years achieved by the navy, and the bravery and endurance of the British soldier, have thrown into the background the want of statesmanship and the miserable mismanagement during the American war. The personal character of the monarch stands above reproach. His love of truth, his deep and sincere religious convictions, worked an effect upon the nation still to be traced. What is now especially remembered is the observance given by him to the sanctity of the family relations, and the simple habits which recoiled from the stupid dissoluteness of the revellers and gamblers of the day." And of Washington he says: "One name alone, in the history of American independence, stands forth unapproachable in any other chronicle. Washington, in the world's text-book of political honesty, unfailing wisdom, and true liberty, is what Shakespeare is to the English-speaking race in literature, poetry, and nobility of thought. To how many of us the words of the great poet have become an incentive to exertion in our daily struggles, a hope in our disappointments, a consolation in our sorrows. Washington's example tells us all that can be effected by true and unselfish patriotism, unflinching honesty of purpose, and high principle, blended with a judgment which never slumbered and an all-seeing forethought never overmatched." And we have mentioned in our summary many others whose characters are described with like felicity. As a law journal, we are bound to call the attention of our readers more especially to the accounts given of the discussions respecting the law to be established in the newly acquired territory, with the reports of the law officers on this subject referred to in our said summary; and to the author's statement, in chapters v. and vi. and elsewhere, of the causes which led to the American revolution; and, repeating our former conviction of Dr. Kingsford's ability, conscientious labor, and fidelity to the truth, we again thank him for proving that Canada has a history unexampled by any other covering a like extent of time, in interest and in examples of courage, hardihood, devotion to duty and martyr spirit, and an historian worthy to write it.

DIARY FOR APRIL.

1. Fri.....Prince Bismarck born, 1815.
3. Sun.....*5th Sunday in Lent.*
4. Mon.....County Court sittings for motions. Surrogate Court sits.
5. Tues....County Court sittings for trial, except in York. Canada discovered, 1498.
7. Thur.....Great fire in Toronto, 1847.
8. Fri.....Hudson Bay Company founded, 1692.
10. Sun.....*6th Sunday in Lent.* Palm Sunday.
11. Mon.....County Court non-jury sittings in York.
14. Thur.....Princess Beatrice born, 1857.
15. Fri.....Good Friday. President Lincoln assassinated, 1865.
17. Sun.....*Easter Sunday.*
18. Mon.....Easter Monday. Last day for call and admission notices. First newspaper in America, 1704.
19. Tues....Lord Beaconsfield died, 1881.
23. Sat.....St. George's Day.
24 Sun.....*1st Sunday after Easter.* Earl Cathcart, Governor-General, 1846.
25. Mon.....St. Mark.
27. Wed.....Toronto captured (Battle of York), 1813.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.] [Nov. 17, 1891.

CITY OF HAMILTON *v.* THE TOWNSHIP OF BARTON.

Municipal corporation—Powers of—Right to enter lands of another municipality for sewage purpose—Restrictions—R.S.O. (1887), c. 184, s. 479, s.s. 15—51 Vict., c. 28, s. 20 (O.).

The Municipal Act of Ontario (R.S.O. (1887), c. 184), by section 479, gave power to one municipality to enter upon the lands of another for the purpose of extending a sewer into or connecting with an existing sewer of the latter upon such terms and conditions as shall be agreed upon between the respective municipalities, and, failing an agreement, upon terms and conditions to be determined by arbitration. If the municipality into which the entry is proposed objects thereto, the arbitrators shall determine, not merely the said terms and conditions, but whether or not such entry shall be allowed at all.

By 51 Vict., c. 28, s. 20, a municipal council may pass a by-law for taking land in or adjacent to the municipality necessary or convenient for the purpose of opening, making, etc., drains, sewers, or watercourses within its jurisdiction, or enter upon, take, and use any land not adjacent to the municipality for the purpose of providing an outlet for any sewer, but subject always to the restrictions contained in the Municipal Act.

Held, affirming the judgment of the Court of Appeal, that the latter Act did not take away the necessity for having the terms and conditions of entering upon lands of another municipality settled by agreement or by arbitration as provided by s. 479 of the Municipal Act.

Appeal dismissed with costs.

MacKelcan, Q.C., and *Moss*, Q.C., for the appellant.

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

[Feb. 9.

WEST NORTHUMBERLAND ELECTION CASE.

NORTH PERTH ELECTION CASE.

Controverted Elections Act—Appeal—Deposit—Proper officer—R.S.C., c. 9, s. 51—54-55 Vict., c. 20, s. 12 (D.).

By s. 51 of the Controverted Elections Act (R.S.C., c. 9, as amended by 54-55 Vict., c. 20, s. 12 (D.)), a party desiring to appeal from the decision of a judge on a preliminary objection or from the decision of the judges who have tried the petition is to deposit the sum specified as security for costs "with the clerk of the court which gave such decision, or of which the judges who gave such decision are members, or with the proper officer for receiving moneys paid into such court." By s. 4 of R.S.C., c. 9, as amended, the distribution of cases for trial in Ontario between the Court of Appeal and the several divisions of the High Court of Justice shall, if not prescribed by the law of the Province or practice of the court, be arranged by the judges.

In the North Perth election case the petition was filed in the Chancery Division and assigned for trial to two judges of the Queen's Bench Division. The deposit was made to the registrar of the Chancery Division. In the West Northumberland case the petition was filed in the Court of Appeal, and assigned for trial before two judges of one of the Divisional Courts, the deposit being with the registrar of the Court of Appeal. On motion to quash the appeal,

Held, that making the deposit to the registrar of the court in which the petition was filed was a sufficient compliance with the Act.

Held, further, that in the North Perth case the deposit was made to the officer who was the accountant of the Supreme Court of Judicature, and, therefore, the proper officer to receive moneys paid into any of the Divisional Courts.

Motion dismissed with costs.

West Northumberland case.
Ferguson, Q.C., for the motion.
Aylesworth, Q.C., *contra*.

North Perth case.
Losh, Q.C., for the motion.
Aylesworth, Q.C., *contra*.

New Brunswick.] [Nov. 17, 1891.

SIMONDS *v.* CHESLEY.

Trespass to land—Title—Application for new trial—Misdirection—Misconduct of jurors—Nominal damages.

S. brought an action against C. for trespass on his land by placing ship's knees thereon, whereby S. was deprived of the use of a portion of the land and prevented from selling or leasing the same. On the trial S. gave no evidence of substantial damage suffered by the trespass, but contended that an action was necessary to preserve his title. The defendants, however, did not set up title in themselves, but only denied that plaintiff had title. Before the verdict was given the jury viewed the premises, one of the conditions on which the view was granted being that "nothing said or done by any of the parties or their counsel should prejudice the verdict." The jury found a verdict in favor of C., and S. moved for a new trial on the ground of misdirection and misconduct of the defendant's counsel at the view. The court below refused a new trial.

Held, that by the terms on which the view was granted S. could not set up misconduct thereat in support of his application.

Held, further, that there was no misdirection, but, if there was, all that S. could obtain at a new trial would be nominal damages, and it was properly refused by the court below.

Appeal dismissed with costs.

Skinner, Q.C., and *Simonds*, for appellant.
Currie for respondents.

[Feb. 22.

ESSON *v.* MCGREGOR.

Promissory note—Failure of consideration—Laches.

In an action on a promissory note the defence set up was that it was given in purchase of a machine for polishing wood, which machine did not do the work for which it was purchased and which it was represented to do. At the trial the evidence showed that the machine had been used for a long time in connection with building cars; that the work was under control of a contractor with the defendant; and that the superintendent of defendant's establishment had inspected the cars as they were finished and delivered, as well as watched the progress of the work. Evidence was offered on behalf of the defendant to show that the contractor had never told him that the machine was defective and he never knew it until the case was tried; and that the machine could not be used until a fan had been attached to it for keeping off the dust. The defendant himself was not examined, nor was an effort made to obtain the evidence of the contractor, who had left the Province. The jury found in favor of plaintiffs, and a new trial was refused on the ground that defendant must be charged with the knowledge of the contractor, or, at all events, his superintendent was in a position to discover the manner in which the machine worked.

On appeal to the Supreme Court of Canada,

Held, that the new trial was properly refused.

Appeal dismissed with costs.

McLeod, Q.C., for appellant.
Alward, Q.C., for respondent.

[Feb. 23.

GUARDIAN ASSURANCE CO. *v.* CONNELY.

Fire insurance—Application—Description of building—Variance—Falsa demonstratio non nocet.

An insurance policy insured goods in a one-and-a-half story building with shingled roof, occupied as a storehouse for storing horse feed and provisions, said building shown on plan on back of application for insurance as "feed house," situate attached to woodshed of assured's dwelling house. The building marked feed house on the said plan was not a one-and-a-half story building with shingled roof, was not attached

to the woodshed, and was not used as a storehouse; but another building on the plan answered the description in the policy, and the goods insured were in said last mentioned building when they were destroyed by fire. The plan had been drawn by a canvasser who had obtained the application. He was not a salaried officer of the insurance company, but received a commission on each policy obtained through his efforts.

The insurance company refused to pay the loss, claiming that the policy was made void by the alleged misrepresentation as to the building. On the trial of an action on the policy the jury found for the plaintiff, leave being reserved to move for a nonsuit on the ground of misrepresentation. The full court refuse to nonsuit.

Held, affirming the judgment of the court below, that there was no misrepresentation, that the company was in no way damnified by the misdescription in the plan, and the maxim *falsa demonstratio non nocet* applied; that if that maxim did not apply, the matter was one for the jury who had pronounced on it in favor of the assured, and that it was evident that the intention was to insure goods in the building which really contained them.

Held, also, that the canvasser could not be regarded as the agent of the assured, but was the agent of the company, which was bound by his acts and could not take advantage of his mistake.

Appeal dismissed with costs.

Weldon, Q.C., for appellant.

McLeod, Q.C., for respondent.

British Columbia.] [Nov. 17, 1891.

POIRIER *v.* BRULÉ.

Contract—Rescission—Mistake—Performance of conditions—Revocation of trust.

By a deed made between B., grantor of the first part, P., grantee of the second part, and certain named persons, trustees of the third part, B. conveyed his farm with the stock and chattels thereon to the trustees. The trusts declared in the deed were that the grantee should perform certain conditions intended for the support and maintenance and other advantage of the grantor, and if he survived the grantor the trustees were to convey the property to him; if the grantor should survive, the trustees should reconvey to him. The deed was executed and acted on for some few years, when an action was brought by B. to have it set aside on the ground of mistake, he alleging that when he executed it, being illiterate and not understanding the English language, he did not know its terms. The trial judge found that this allegation proved by the evidence, and ordered the deed to be set aside. The full court, on appeal, held against this finding of mistake, but affirmed the decision, setting aside the deed on the ground that P., the grantee, had not performed the conditions on which his right to the property, in case he survived, depended. On appeal to the Supreme Court of Canada,

Held, affirming the decision of the court below, that P. having failed to perform the obligations which he had undertaken, the trust in his favor failed, and the trustees held the property in trust for B., in whose favor the law raised a resulting trust.

Appeal dismissed with costs.

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

Gemmill for the respondent.

[Nov. 20, 1891.

BOWKER *v.* LAUMEISTER.

Deed—Construction of—Trust—Parol evidence of—Enforcement.

A suit was brought to enforce an alleged trust in a deed absolute on its face, or, in the alternative, to have the property reconveyed or sold upon the terms of the alleged agreement. The defendant claimed that he had given valuable consideration for the property, which had been accepted by plaintiff in full satisfaction and payment. At the trial parol evidence was given to establish the alleged trust, and a decree was made, granting the alternative relief prayed for, and directing the property to be sold and the proceeds applied as plaintiff claimed had been agreed. The court affirmed this decree.

Held, that the existence of the trust having been found as a fact by the court of first instance, and the finding having been affirmed by the full court, it should not be disturbed.

Appeal dismissed with costs.

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

Robinson, Q.C., for the respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

OSLER, J. A.] [Nov. 23.

COLE *v.* PORTEOUS.

Assignments and preferences—Bankruptcy and insolvency—R.S.O. (1887), c. 124, s. 2—54 Vict., c. 20 (O.)—Statute, time of passing—Relation back.

Acts of Parliament take effect in law from the earliest moment of the day on which they are passed, and the Act 54 Vict., c. 20, amending the Assignments Act, R.S.O. (1887), c. 124, to which the Royal Assent was given at three o'clock in the afternoon, was therefore held to apply to a chattel mortgage executed and registered before twelve o'clock on the same day.

Where an instrument made by a person in insolvent circumstances has the effect of giving one creditor a preference over others, and the instrument is attacked within sixty days after it is made, there is, under this amended enactment, an incontrovertible statutory presumption that the instrument has been made with intent to give an unjust preference, and it is void.

An interpleader issue to determine the rights of a claimant under a chattel mortgage and an execution creditor is a "proceeding" taken to impeach the mortgage.

A. J. Wilkes, Q.C., for the appellant.

W. H. Blake for the respondent.

[Jan. 20.

IN RE THE ESSEX CENTRE MANUFACTURING COMPANY.

Company—Winding up—Director—Illegal transaction—Summary application to set aside—R.S.O. (1887), c. 183, s. 23, s-s. 17.

S-s. 17 of s. 23 of R.S.O. (1887), c. 183, which provides for summary proceedings in the course of winding up a company against directors and other officers in respect of alleged misfeasance or breach of trust is not wide enough to authorize the setting aside as a breach of trust on the summary application of the liquidator of a sale of lands by the company to a director, especially where the lands have, at the director's request, been conveyed by the company to the director's wife.

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

C. Robinson, Q.C., for the respondent.

ROBINSON *v.* HARRIS.

This was an appeal by the defendant from the judgment of the Queen's Bench Division, reported 21 O.R. 43, and came on to be heard before this Court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A) on the 27th of November, 1891.

Reeve, Q.C., for the appellant.

F. E. Hodgins for the respondent.

January 8th, 1892.

The appeal was dismissed with costs, the court being equally divided. HAGARTY, C.J.O., with whom OSLER, J.A., concurred, thought that the appeal should be allowed on the ground that the one day's notice of repudiation of the contract was, under the circumstances, sufficient. BURTON, J.A., and MACLENNAN, J.A., thought that the appeal should be dismissed on the ground that no reasonable notice calling on the plaintiff to carry out the contract had ever been given.

[Feb. 16.

IN RE THE D. A. JONES COMPANY.

Company—Winding up—Sale of assets by liquidator—Order of County Court approving—R.S.O. (1887), c. 183—Practice—Appeal—Final order.

The liquidator of a company which was being voluntarily wound up under the Ontario Winding-up Act sold the assets thereof *en bloc* to a private individual, and then obtained from the County Court an order approving of the sale, and making certain provisions for the disposition of the purchase moneys.

On appeal, it was held that the order was made without authority, and that it was a nullity.

Such an order is a "final order," as nothing further remains to be done under it, and therefore is the subject of appeal.

G. H. Kilmer for the appellant.

J. A. McCarthy for the respondent.

[Feb. 12.

MCCLOTHERTY *v.* GALE MANUFACTURING CO.

Master and servant—Negligence—Machinery—"Defect"—"Arrangement"—Workmen's Compensation for Injuries Act, R.S.O. (1887), c. 141; 52 Vict., c. 23 (O.)

The plaintiff was employed in the laundry department of the defendants' factory, and while she was standing on a bench to open the window for the purpose of letting steam and hot air escape her hair was caught by an unguarded revolving horizontal shaft, which passed through the room near the ceiling and in front of the window, and she was severely injured.

Held (BURTON, J.A. dissenting), affirming the judgment of the Queen's Bench Division in favor of the plaintiff, that she could not be said to have been doing an act so entirely unconnected with her employment and duties as to be regarded as a mere volunteer, and, as such, outside the protection of the Act; and that there was a "defect in the arrangement" of the machinery within the meaning of the Amending Act, 52 Vict., c. 23, s. 3 (O.), that is, an element of danger arising from the position and collocation of machinery in itself perfectly sound and well-fitted for the purpose to which it is to be applied and used.

W. Nesbitt and *F. J. Dunbar* for the appellants.

N. Murphy, Q.C., for the respondent.

[Feb. 13.

BRITTON *v.* MILSON.

Bills of exchange and promissory notes—Presentment—Notice of dishonor—Waiver.

A statement by the endorser of a dishonored note to the holder that he would see the maker about it, and his subsequent statement that he had seen the maker, who promised to pay as soon as he could, with a request from the endorser not to "crowd the note," are not in themselves sufficient evidence of waiver of notice of dishonor.

What is sufficient evidence of such waiver discussed.

Rowell for the appellant.

T. H. Purdom for the respondent.

[Feb. 18.

IN RE LILLEY AND ALLIN.

Mandamus—Revising officer—Electoral Franchise Act, R.S.C., c. 5—Objection to name on list—Notice—Grounds of objection.

The Queen's Bench Division (21 O.R. 424) having ordered a mandamus to issue directing a revising officer to consider the objections to the qualification of certain persons whose names appeared on the preliminary voters' lists, and the revising officer having obeyed the mandamus, this court declined to consider the question of the right to grant a mandamus.

A notice of application to have a name removed from the voters' list giving as the ground of objection only the statement "not qualified" is sufficient.

I. F. Hellmuth and *H. D. Gamble* for the appellants.

Aylesworth, Q.C., for the respondent.

[March 1.

OSLER *v.* MUTTER.

Execution—Exemptions—Insurance moneys—Receiver—R.S.O. (1887), c. 64.

A judgment creditor cannot obtain by a receiving order money payable to his debtor in respect of insurance upon exempted chattels. This money takes the place of the chattels, and is subject to the same protection.

W. C. McBrayne for the appellants.

W. Bell for the respondent.

HUTSON *v.* VALLIERS.

Mechanics' lien—County Court—Division Court Enforcement in—R.S.O. (1887), c. 126, s. 28—Mortgage—Account—Cross appeal—Notice.

Section 28 of R.S.O. (1887), c. 128, which allows proceedings to recover the amount of a mechanic's lien to be taken under certain circumstances in the County Court and Division Court, applies only to actions in which the party seeking to enforce his lien is suing in the ordinary way to obtain judgment and execution. Those courts cannot entertain *an action* in the nature of an action of account by a lienholder against a mortgagee who has sold the land in question under a mortgage prior to the lien,

though there may be wider powers by way of summary application.

In County Court cases, notice of cross-appeal is not necessary.

Shepley, Q.C., for the appellants.

C. A. Masten for the respondent.

WHITE *v.* SAGE.

Fraud and misrepresentation—Deceit—Damage.

In order that a representation may be actionable, it must be fraudulently made. Where, therefore, in an action to recover damages for falsely representing that a forged cheque was genuine, the jury answered in the negative the question, "Did the defendant falsely, fraudulently, and deceitfully represent the signature to the cheque to be genuine when in truth and in fact it was forgery?" the action was held not maintainable, though, in answer to other questions, the jury found that the defendant made the representation without knowing whether it was true or false, without a reasonable belief in its truth, and without making proper enquiries.

Aylesworth, Q.C., for the appellant.

C. J. Holman for the respondents.

TOWNSHIP OF SOMBRA *v.* TOWNSHIP OF MOORE.

Ways—Negligence—Municipal corporations—R.S.O. (1887), c. 184, s. 531 (4).

Sub-section 4 of section 531 of R.S.O. (1887), c. 184, which provides that if an action is brought against a municipal corporation to recover damages sustained by reason of any obstruction, excavation, or opening in a public highway, placed, made, left, or maintained by another corporation, or by any person other than a servant or agent of the municipal corporation, the last mentioned corporation shall have a remedy over against the other corporation, or person, for any damages which the plaintiff in the action may recover against them, applies to the case of an obstruction, excavation, or opening directly or immediately placed on or dug in the highway by the corporation or person against whom the remedy over is given. It does not give a right to one municipal corporation to recover from an adjoining municipal corporation damages recovered for an accident caused by non-repair of a road lying between the townships, which they were jointly liable to keep in repair.

Shepley, Q.C., for the appellants.

Aylesworth, Q.C., for the respondents.

HAMILTON *v.* COUSINEAU.

Malicious prosecution—Reasonable and probable cause—Jury.

In an action for malicious prosecution, it is a question for the jury, and not for the judge, whether the defendant acted upon reasonable and probable cause.

If there is any evidence it must be submitted to the jury, and the judge cannot withdraw the case from them because in his opinion there was reasonable and probable cause for the prosecution.

Judgment of the Queen's Bench Division reversed, BURTON, J.A., dissenting.

W. Nesbitt for the appellant.

W. Lount, Q.C., for the respondent.

ATTORNEY-GENERAL *v.* VAUGHAN ROAD CO.

Tolls—Toll roads—Ways—Private Act—General Act—Amendments—R.S.O. (1887), c. 159, 53 Vict., c. 42.

The Act 53 Vict., c. 42 (O.), which extends in certain particulars the provisions of the General Road Companies Act, R.S.O. (1887), c. 159, as to repairs, and is declared to apply whenever a road subject to that General Act is out of repair, does not apply to the defendant company, which was incorporated by special Act, in which were included the sections of the General Act dealing with repairs.

Judgment of the Common Pleas Division reversed, HAGARTY, C.J.O., dissenting.

Bain, Q.C., and *Kappele*, for the appellants.

S. H. Blake, Q.C., and *Lawrence*, for the respondent.

MATHINSON *v.* PATTERSON.

Bills of sale and chattel mortgages—Priorities—Defect—Possession—Consideration.

Taking possession of the mortgaged chattels does not make good a defective chattel mortgage as against a subsequent chattel mortgage

existing at the time such possession is taken, though not in default.

If both mortgages are defective, priority of time will prevail; but it is not a fatal defect, in the absence of bad faith, that the consideration for the subsequent mortgage is less than the amount mentioned therein and stated in the affidavit of *bona fides* to be secured.

Hamilton v. *Harrison*, 46 U.C.R. 127, considered.

Judgment of the Queen's Bench Division, 20 O.R. 720, reversed; and that of STREET, J., at the trial, 20 O.R. 125, restored.

Masson, Q.C., for the appellants.

Shepley, Q.C., for the respondents.

[March 8.

COUNTY OF HALTON *v.* THE GRAND TRUNK RAILWAY CO.

Bond — Condition — Breach — Bonus — Liquidated damages.

In 1874 the County of Halton gave to the Hamilton and North-Western Railway Co. a bonus of $65,000 to be used in the construction of the railway upon the condition that the company should remain "independent" for twenty-one years. In 1888 the Hamilton and North-Western Railway Co. became (as was on the f[illegible] held), in effect, merged in the Grand Trunk R[illegible]way Co. and ceased to be an independe[illegible] line.

Held, affirming the judgment of the Common Pleas Division, and of ROBERTSON, J., at the trial, that there had been a breach of the condition entitling the plaintiffs to recover the whole amount of the bonus as liquidated damages.

S. H. Blake, Q.C., and *W. Cassels*, Q.C., for the appellants.

C. Robinson, Q.C., and *John Bain*, Q.C., for the respondents.

STEPHENS *v.* GORDON.

Ways — Timber—Removal—"Necessary."

The plaintiff was the owner of a farm of about a mile in breadth and five-sixths of a mile in length. About two-thirds of the farm was heavily wooded, and the woodland was bounded by a road at each end, but along its face was bounded by clear land. The defendant became the purchaser of the trees and timber upon the land under an agreement which provided that the purchaser should at all times within three years have full liberty to enter upon the lands and to remove the trees and timber in such manner as he might think proper, not interfering with the enjoyment of the plaintiff, save in so far as might be necessary. To take timber from the centre of the wooded belt through the woodland to the roads would have cost more than the timber was worth.

Held, that the word "necessary" was to be reasonably construed, and that this timber might be taken across the cleared land.

Osler, Q.C., for the appellant.

M. Wilson, Q.C., for the respondent.

YOUNG *v.* MIDLAND RAILWAY CO.

Railways — Expropriation — Compensation — Life tenant—C.S.C., c. 66, s. 11—24 Vict., c. 17, s. 1—Statute of Limitations.

Although under C.S.C., c. 66, s. 11, as amended by 24 Vict., c. 17, a railway company could obtain a good title in fee simple to expropriated lands by a conveyance from the tenant for life thereof, they were not justified in paying the compensation money to the tenant for life; and where such payment was in 1871 made, the company were ordered to pay the amount over again to the persons entitled in remainder, whose title accrued within six years of the time of bringing action.

Judgment of STREET, J., affirmed, BURTON, J.A., dissenting.

Osler, Q.C., and *H. S. Osler*, for the appellants.

J. K. Kerr, Q.C., for the respondent.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [Feb. 1.

IN RE GOULD *v.* HOPE.

Prohibition—County Court—Interpleader order—Rule 1141 (a)—Sheriff—Money made under execution—Claim for exemption—Issue between execution creditor and execution debtor.

A sheriff seized and sold under an execution goods of the plaintiff which he claimed as exempt from seizure to the extent of $100 as

being implements of trade; and the plaintiff brought an action against the sheriff in a County Court to recover $100. While the action was pending and the sheriff still had the proceeds of sale in his hands, he applied to the judge of the County Court for an interpleader order, which was made, directing an issue between the plaintiff and the execution creditors.

Held, on a motion by the execution creditors for prohibition, that notwithstanding that the defendant was a sheriff and that the money in his hands was made by him as sheriff under execution, he was entitled to the benefit of Rule 1141 (*a*) if the facts before the judge satisfied him that the case was within that Rule; and the judge having jurisdiction and the interpleader order being a proceeding in the suit, the court could not interfere.

Aylesworth, Q.C., for the sheriff.

H. Cassels for the execution creditors.

C. J. Holman for the plaintiff.

ORMSBY *v.* JARVIS.

CHAPMAN *v.* JARVIS.

Bill of sale—Affidavit of bona fides—Statement of consideration—R.S.O., c. 125, s. 5—54 Vict., c. 20, not retrospective—Execution creditor contesting bill of sale—Previous assent—Estoppel.

The affidavit of *bona fides* accompanying a bill of sale stated that the sale was *bona fide* and for good consideration, namely, in consideration of $830 which was the consideration expressed in the bill of sale) advanced by the bargainee by way of a loan. The evidence given upon the trial of an interpleader issue between the bargainee and an execution creditor of the bargainors showed that the real transaction was a sale and not a mortgage, and that the transfer of the goods covered by the bill of sale was made in satisfaction of a previous advance and not as security for a present one. It was contended that the affidavit of *bona fides* was defective in not stating, as required by R.S.O., c. 125, s. 5, "that the sale is *bona fide* and for good consideration, as set forth in the said conveyance."

Held, STREET, J., dissenting, that the affidavit substantially complied with the statute, and the addition of the words "advanced by way of a loan" did not render the affidavit defective.

Per STREET, J.: The most obvious meaning of the words used in the affidavit is that in consideration of a loan of $830 made by the bargainee to the bargainors, they were transferring to her the goods in question; and the plain inference is that the instrument is intended to operate as a mortgage and not as a sale. The instrument is not verified by the affidavit, but is, instead, rather qualified and rendered ambiguous by it, and the object of the Act in requiring the affidavit is not attained.

The bill of sale was given on the 17th March, 1891, and the Act, 54 Vict., c. 20, was passed on the 4th May, 1891, s. 3 of which provided that nothing in this Act shall affect any action, etc., now pending, and every such action, etc., shall be adjudicated upon, and the said Act (R.S.O., c. 124) be construed as if this Act had not been passed.

Held, per ARMOUR, C.J., and FALCONBRIDGE, J., that the Act was not retrospective and did not apply to the bill of sale in question, and that no inference was to be drawn from s. 3 that the Legislature intended that the Act should be retrospective.

It was contended that the execution creditor was prevented from contesting the validity of the bill of sale because A., who held the promissory note upon which the judgment was founded at the time the bill of sale was given, assented to its being given, his note then being overdue.

Held, per STREET, J., that admitting A. to have some days before the bill of sale was made assented to the judgment debtors transferring the goods, he did not thereby preclude himself from afterwards recovering judgment and seizing the goods before any transfer had, in fact, been made; and there was no transfer here because the attempted transfer was void.

Watson, Q.C., for the plaintiffs.

J. M. Clark for the defendant.

HOLLINGER *v.* CANADIAN PACIFIC RY. CO.

Railways and railway companies—Negligence—Accident at crossing—51 Vict., c. 29, s. 256—Ringing bell or sounding whistle—Other precautions—Unusual danger—51 Vict., c. 29, s. 260—Engine and tender, a "train of cars"—"Stop, look, and listen."

In an action against a railway company for negligence whereby the plaintiff was run over

and injured by an engine and tender at a railway crossing where eight tracks crossed the road and where trains were continually shunting,

Held, that where the company are not able to comply with the terms of s. 256 of 51 Vict., c. 29, as to ringing a bell or sounding a whistle, at least eighty rods from a crossing, because the engine starts to cross within that distance, some other kind of precaution should be taken to warn the public of danger; and where, as in this case, the crossing is unusually dangerous, it is incumbent upon them to use even greater and other precautions than those required by the statute.

Held, also, that an engine with tender, moving reversely, is a "train of cars" within the meaning of s. 260, and some one should be stationed on the tender to warn persons crossing the track.

The rule, "stop, look, and listen," as applied by the Pennsylvania State Courts to persons about to cross a railway track, is not in force here, and is not one that should be adopted.

Elgin Meyers for the plaintiff.

Wallace Nesbitt and *Angus MacMurchy* for the defendants.

IN RE DUNLOP.

Liquor License Act—R.S.O., c, 194, s. 91—Construction of transfer of license—Certificate of electors—53 Vict., c. 56, s. 1—County judge—Jurisdiction to revoke license.

Section 91 of the Liquor License Act, R.S.O., c. 194, is a penal enactment and is to be construed strictly; and as it refers only to "a license issued" contrary to any of the provisions of the Act and not to a "license transferred," and to the licensee and not to the transferee, a county judge has no jurisdiction under it to entertain a complaint against a transferee that a license has been improperly transferred to him, and has no jurisdiction under it to revoke or cancel a license not already issued.

The applicant was, in the month of March, 1891, the holder of a wholesale license to sell liquor in premises in polling subdivision 10 in a city. The holder of a shop license in polling subdivision 18 transferred his license to the applicant on the 26th March, 1891. On the same day the license commissioners, on the petition of the applicant, not accompanied by a certificate signed by a majority of the electors in polling subdivision 10, consented in writing to the transfer of the shop license, and to its transfer to the premises in polling subdivision 10, and also cancelled the applicant's wholesale license.

Held, that the commissioners erred in consenting to the transfer of the shop license to the premises of the applicant in polling subdivision 10 without his petition therefor being accompanied by the certificate required by 53 Vict., c. 56, s. 1.

Du Vernet for the applicant.

Langton, Q.C., for the commissioners.

Chancery Division.

ROBERTSON, J.] [Feb. 17.

ZIMMER *v.* GRAND TRUNK RY. CO.

Action for negligence—Railway companies—Limitation of actions—Grand Trunk Railway—C.S.C., c. 66, s. 83—51 Vict., c. 29, s. 287.

Held, that s. 287 of the Railway Act, 1888, 51 Vict., c. 29 (D.), by implication repeals C.S.C., c. 66, s. 83, and, therefore, the plaintiff was not barred of his action for damages for negligence against the defendants in respect to injuries sustained through disrepair of one of their bridges by the lapse of six months since the accrual of the cause of action, but has one year within which to commence his action.

Rowe for plaintiff.

W. Nesbitt for defendants.

RE CAMERON, MASON *v.* CAMERON.

Insurance for benefit of wives and children—Apportionment by will—R.S.O. (1887), c. 136—53 Vict., c. 39, s. 6.

On May 26th, 1885, the testator insured in the Canadian Mutual Aid Association, payable to his wife if she survived him; if not, to his children. On October 6th, 1887, he also insured in the Canadian Order of Foresters, payable to his wife and children. On August 12th, 1891, he made his will, bequeathing to his wife one-half of his life policies for her life and widowhood and, after her decease, to be given to his surviving children in equal proportions.

Held, that R.S.O. (1887), c. 136, s. 6, the Act to secure to wives and children the benefit of life assurance, as amended by 51 Vict., c. 22, s. 3, and 53 Vict., c. 39, s. 6, applied to this case; and the wife was entitled to one-half of the sum payable under the policy first mentioned for life, and the other society was untouched by the will, and went to her absolutely; while, as to the second insurance, the wife was entitled to one-half for life and widowhood by virtue of the will.

W. R. Riddell for the plaintiffs.

J. Hoskin, Q.C., for the infant defendants.

Bain, Q.C., for the widow.

Practice.

MacMahon, J.] [Feb. 20.

Blachford v. Green.

Discovery—Libel—Damages in way of trade—No allegation of special damage—Examination of plaintiffs—Disclosure as to diminution of profits—Particulars—Evidence.

In an action for damages for libelling the plaintiffs in the way of their trade, the plaintiffs did not allege special damage, but alleged generally that their business and commercial reputation had suffered. Upon examination of the plaintiffs for discovery, they refused to answer as to what business they had lost by reason of the alleged libels.

Held, that no evidence of special damage would be admissible at the trial, but that the plaintiffs would have the right to place figures before the jury to show a general diminution of profits since the publication of the alleged libels; and if the plaintiffs proposed to give this class of evidence at the trial, the defendants were entitled, on the examination for discovery, to know how such diminution was made out, and the figures by which it was proposed to support it, but not to seek information as to the loss of any particular custom; but if the plaintiffs did not propose to give such evidence, the defendants were not entitled to the discovery.

It was, therefore, ordered that the plaintiffs should give particulars of any damage intended to be claimed for diminution of profits; and if particulars given, that the examination should be continued and discovery afforded; but if particulars not given, that the evidence of diminution of profits should not be given at the trial.

Bicknell for the plaintiffs.

Kappele for the defendants.

Court of Appeal.] [March 1.

Fewster v. Township of Raleigh.

Reference — Consent — Special referee — O.J.A., R.S.O., c. 44, s. 101—Order referring all questions of fact in controversy—Determination of question of liability.

Except by consent, the court has no power to order a reference under s. 101 of the Ontario Judicature Act, R.S.O., c. 44, to any person other than an official referee or the judge of a County Court.

Where the question of the defendant's liability in an action is expressly raised on the pleadings, such question should be determined before a reference of all the questions of fact in controversy, including the amount of damages, is ordered.

Matthew Wilson, Q.C., for the appellants.

C. J. Holman for the respondent.

Jones v. Paxton.

Transcript of judgment—County Court—Division Court—Issue of execution—Return of nulla bona—"Proceeding"—52 Vict., c. 12, s. 24.

In an action against a sheriff for a false return to a writ of *fi. fa.* issued on a judgment entered in a County Court by the filing therein of a transcript of a judgment recovered in a Division Court, it was objected by the defendant that the transcript was a nullity, because no execution against goods had ever been issued and returned *nulla bona* in that Division Court.

Held, that, under the statute and Rules now in force, the issue of execution and return of *nulla bona* in another Division Court, to which a transcript had previously been sent, was a sufficient foundation for the transcript to the County Court.

Burgess v. *Tully*, 24 C.P. 549, distinguished.

Held, also, that a transcript to a County Court is not a proceeding within the purview of s. 24

of 52 Vict., c. 12, providing that no further proceedings shall be had in a Division Court after a transcript to another Division Court without an order or affidavit.

Aylesworth, Q.C., and *Chapple*, for the appellant.

Farewell, Q.C., and *E. D. Armour*, Q.C., for the respondent.

BABY *v.* ROSS.

Appeal to Court of Appeal—Order for committal of judgment debtor—R.S.O., c. 47, s. 42 County Court appeal—Certificate of judge Objection to security—Making away with property to defeat creditors—Direction to imprison debtor in gaol of any county where he may be found—Rule 932.

1. An appeal lies to the Court of Appeal from an order of the judge of a County Court, in a County Court action committing the defendant to gaol, upon his examination as a judgment debtor, for concealing or making away with his property in order to defeat or defraud his creditors. Such an order is, in its nature, final, and therefore comes within s-s. 2 of s. 42 of the County Courts Act, R.S.O., c. 47, as controlled by the proviso at the end of the section.

2. It is not a valid objection to an appeal that the judge of the County Court has not, in certifying the proceedings, expressed in his certificate that they are certified "to the Court of Appeal."

3. The Court of Appeal will not entertain an objection to the security upon the appeal given in the County Court appealed from.

4. It appeared that the judgment debtor's wife had mortgaged her farm for the purpose of paying some of his debts, and that after the mortgage, instead of his continuing to work the farm for his own benefit or on shares with his wife as he had formerly done, he had agreed that until the mortgage was paid off he would work it for his wife alone.

Held, that this arrangement was not illegal nor unreasonable, and on no principle could it be said that it was a making away with property in order to defeat or defraud creditors.

5. The order directed that the defendant should be committed to the county gaol of L. or of any other county in which he might be found.

Held, that this was wrong and not warranted by Rule 932, but it was not a ground for setting the order aside altogether.

Aylesworth, Q.C., for the appellant.

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

[March 8.

MCGILL *v.* GRAND TRUNK RY. CO.

Principal and agent—Corporations—Railways —Carriers—Contract—Damages.

Where it was sworn that the foreman of the freight department at one of the defendant's stations agreed to have certain trees forwarded to a station not on the defendant's line, but on a connecting line, it was

Held, that this was evidence to be submitted to a jury of a contract to that effect binding the defendants, and that a nonsuit was wrong.

The measure of damages against carriers for non-delivery of trees considered.

Judgment of the County Court of Middlesex reversed, HAGARTY, C.J.O., dissenting.

G. W. Marsh for the appellants.

H. S. Osler for the respondents.

The Master-in-Ordinary.] [March 16.

WESTERN CANADA L. & S. CO. *v.* HEIMROD.

Redemption—Period of—Mortgage action.

Held, that the English practice giving one period for redemption for several subsequent mortgagees is in force here.

That there must be special reasons and circumstances shown to warrant a departure from the settled practice of the court in giving successive periods for redemption in ordinary mortgage cases, as illustrated by the decisions in *Cripps* v. *Wood*, 51 L.J. Chy. 584; *Lewis* v. *Aberdare and P. Co.*, 50 L.T. Rep. 451; *Edwards* v. *Martin*, 28 L.J. Ch. 49.

A. H. O'Brien for the plaintiffs.

E. T. English for the defendant Wagner.

R. McKay for other defendants.

Law Students' Department.

EXAMINATION BEFORE HILARY TERM: 1892.

CALL.

Equity.

Examiner: A. W. AYTOUN-FINLAY.

1. A., already a married man, goes through the ceremony of marriage with B., and then he and she assign her life interest in a trust fund to an innocent purchaser, C.

On the discovery by B. of the fraud practised upon her by A., she brings action to have the assignment set aside.

What are the equities of the parties?

2. A. makes a purchase of land and takes the conveyance in the name of his son, who happens to be also solicitor for his father.

Does or does not the doctrine of advancement apply?

State reasons of your answer.

3. A., a bedridden man of 70 years of age, acting without independent professional advice, which he had declined to employ, conveyed away property of the value of $2,000 for the consideration of a provision by way of board and lodging during his life, which only endured six weeks after the conveyance.

The sale is impeached by the representatives of A. No fraud is shown. Can the transaction be allowed to stand? Explain.

4. A., surety for B., discharges the obligation under which he is surety by a compromise with C., the creditor, for a less sum than the liability.

For what sum is he now creditor against B. —the full amount of the obligation, or the sum actually paid? Explain.

5. A. is entitled to a reversionary interest in real property on the death of his father, B. A. obtains an advance of $25,000 from an insurance company on the security of a charge on this reversionary interest and a life policy for $75,000, interest and premiums to accumulate and be added to the principal sum lent. It is specially agreed that if A. pays up accrued interest and premiums in five years, the company will only retain a lien for the principal sum and after-accruing interest and premiums; but if A. does not so pay within five years, the company is to retain the whole value of the policy of $75,000 in case A. dies before his father. A. does not pay interest and premiums within five years, and dies before his father.

The latter brings action to recover the surplus out of the policy moneys, after deducting the principal sum, $25,000, accrued interest and accrued premiums.

What are the equities of B. and of the insurance company respectively? Explain.

Harris' Criminal Law.

Best on Evidence.

Examiner: A. W. AYTOUN-FINLAY.

1. A. writes a letter marked "strictly private" to B., in which he uses language of C. which, if published, is of a distinctly libellous character.

Is there such publication here as to constitute a libel, and is there any evidence of malice in such a case?

2. A., B., and C. are indicted for having obtained $50,000 from Her Majesty's Government by fraud.

They are convicted, and A. and C. are then further indicted for conspiring to obtain the said $50,000 by fraud.

What is the liability of A. and C. on such further indictment, and why?

3. What is meant by *murder-malice?*

Distinguish between manslaughter and homicide in self-defence.

4. Wherein consists the crime of arson?

On the trial of A. for arson the evidence showed that a faggot of wood was set on fire on the boarded floor of a room, where it could not have got by accident. The faggot was nearly consumed, the flooring was "scorched black, but not burnt."

How far was this sufficient to support the indictment, and why?

5. What number of peremptory challenges of jurors may be made by the prisoner and by the Crown respectively?

6. How far do interlineations, erasures, etc., vitiate a document produced in evidence; and what presumption generally obtains in case such interlineations, etc., occur in a conveyance or in a will respectively?

7. Can it be set up as a presumption of law that the Sovereign is acquainted with the law, and is it ever competent to show otherwise?

8. A document has been lost, but an acknowledged copy of it is in court. Notwithstanding this, counsel proceeds to examine a witness who had read the original document upon its contents without producing the copy. The opposing counsel objects. What is the position of the examining counsel?

9. A. is convicted of forging a bill of exchange. Afterwards a civil action is brought against him on the bill. How far is the conviction conclusive or admissible as evidence against A. in this action; and how far is it conclusive of the fact upon which the conviction must have proceeded?

10. In what cases, if any, may witnesses be permitted to compare disputed writings with alleged genuine writings of a party to an action?

Blackstone, Theobald on Wills, The Statute Law, and Pleading and Practice.

Examiner: M. G. CAMERON.

1. A. makes a devise to B. for life, and after his (B.'s) death to B.'s children, followed by a gift to C. upon the death of B. without leaving children. B.'s children predecease him. Who take?

2. A. and B. are witnesses to the will of C. Upon a contestation regarding the proper execution of C.'s will, they swear that they did not see him sign. What evidence of attestation must be shown in order to prove the proper execution of the will under these circumstances?

3. A gift is made direct to the children of A. as B. may appoint. In default of appointment, would the children of A. living at the death of the testator and those born after the testator's death, though before the death of B., take? Explain.

4. A. makes a gift to the children of B., to be distributed when the youngest child attains twenty-one years. Will the fact that there is a child *en ventre sa mere* postpone the division? Would the child *en ventre sa mere* be admitted to a share?

5. Define demonstrative, specific, and general legacies, and give an example of each.

6. A. brings an action against B., and succeeds. He is entitled to tax his costs against B. He brings his bill before the taxing officer, but is dissatisfied with that officer's rulings in certain respects. What steps must he take?

7. When, if at all, can an appeal be made from a master before he has made his report?

8. Can a plaintiff sign judgment when the defendant enters an appearance after the time limited for an appearance has expired, although up to the time of the entering of the appearance the plaintiff has taken no steps in the direction of entering judgment?

If he can, what steps should the defendant take to prevent it?

9. Enumerate what particulars will be ordered in an action of slander.

10. What is the true test to be applied in order to determine whether the answers of a judgment debtor are, or are not, satisfactory?

Dart on Vendors and Purchasers.

Examiner: M. G. CAMERON.

1. Under what circumstances, if at all, will a purchase by a solicitor from his client be upheld where the client is seeking to have it set aside?

2. A. gives to B. express authority to sell for him by private contract a parcel of land. B. instead of selling by private contract sells by public auction. Under what circumstances, if at all, would he be justified in so doing?

3. A., the owner of a furnished house, agrees to let it to B., and B. agrees to rent. It appeared that at the time fixed for the commencement of the tenancy the house, owing to defective drainage, was unfit for habitation, and B. declined to carry out his agreement. Would the courts uphold him in this course? Explain.

4. In order to support an action for slander of title, what must the plaintiff prove?

5. A house long known and rated as 39 Peter Street, Toronto, was sold in Toronto by auction by that description, and the purchaser bought it without previous enquiry, and then found that it was not actually on Peter Street, but on a side street commanding no lake view, and was a smaller house than the house on Peter Street. Can the purchaser be held to his bargain? Explain.

Contracts - Common Law.

Examiner: F. J. JOSEPH.

1. A. writes to B. offering him a house and lot at a certain price, and stating that he will keep the offer open for one month. Before the week is over A. sells the house and lot to C. B. subsequently, but within the week, accepts A.'s offer. What are B.'s rights against A.?

2. A., in New York, sells to B., in Toronto, several diamonds of considerable value, upon which there is a duty on their entering Canada. It is arranged between A. and B. that A. shall place the stones in the false bottom of a certain box, so that B. can smuggle them through the customs. Under these circumstances can A. recover the price of the stones in an action against B.?

3. When a party to a contract promises to do a certain thing at or before a specified time, what is the consequence if he fail to do such act within the specified time?

4. A contractor agreed to erect a bridge according to certain specifications of a railway engineer. It turned out that the work could not be erected in the manner described. After further attempts, in which the contractor made large expenditure, it was found that the bridge had to be built in a different way. Could the contractor recover for his expenditure in endeavoring to complete the work according to the first specification?

5. A., a married man, promises to marry B. Can A., in answer to an action by B. for damages for non-performance of his agreement, set up the impossibility of performance owing to the illegality of a marriage with B.?

6. A. covenanted with B., the intended husband of C. (A.'s daughter), to bequeath to her (C.) an equal share with his other children of the property he might die possessed of. C. died in the lifetime of A. On the death of A. intestate, would B. have a right of action against A.'s personal representatives on A.'s covenant?

7. A municipal corporation employs a contractor to make a drain in a public street. The servants of the contractor leave an excavation open, into which B. drives on a dark night and is injured. Against whom would you, acting for B., bring an action?

8. A passenger takes a valise that has not been checked into a railway carriage in which he himself is travelling. At a way-station he leaves the train and enters the station for luncheon. On his return he finds the valise has been stolen. Has he any remedy against the railway company?

9. A promissory note runs, "I promise to pay," etc., and is signed by two persons. What is the effect of such a note?

10. What remedy has the subject against the Crown for a private injury?

LINES WRITTEN ON MY EIGHTY-SEVENTH BIRTHDAY.

BY DAVID DUDLEY FIELD.

What is it *now* to live? It is to breathe
The air of heaven, and behold the pleasant earth,
The shining rivers, the inconstant sea,
Sublimity of mountains, wealth of clouds,
And radiance o'er all the countless stars.
It is to sit before the cheerful hearth
With groups of friends and kindred, store of books,
Rich heritage from ages past.
Hold sweet communion, soul with soul,
O'er things now past, or present, or to come,
Or muse alone upon my earlier days,
Unbind the scroll whereon is writ
The story of my busy life,
Mistakes too often, but successes more
And consciousness of duty done.
It is to see with laughing eyes the play
Of children sporting on the lawn,
Or mark the eager strifes of men
And nations, seeking each and all
Advantage to obtain belike
Above their fellows; such is man!
It is to feel the pulses quicken as I hear
Of great events near or afar
Whereon may return, perchance,
The fate of generations ages hence.
It is to rest with folded arms betimes,
And so surrounded, so sustained,
Ponder on what may yet befall
In that unknown mysterious realm
Which lies beyond the range of mortal ken,
Where souls immortal do forever dwell,
Think of the loved ones who await me there,
And without murmuring or inward grief,
With mind unbroken and no fear,
Calmly await the coming of the Lord.

—*Albany Law Journal.*

February 13th, 1892.

Flotsam and Jetsam.

IF Distance lends Enchantment to the View, and the View refuses to return it, will an action for damages lie?—*Ex.*

WE give below a few odd names of cases, and, parenthetically, some thoughts suggested by them. Cockson *v.* Cock, Cro. Jac. 135. (Very unfilial.) Gold *v.* Death, Hobart, 927, (An ancient but futile struggle.) Beak *v.* Beak, 2 Swand, 627. (A sharp encounter.) Slack *v.* Sharp, 8 Ad. & E. 36. (Can plaintiff recover?) Onions *v.* Cheese, Lutwyche, 530. (We should think they would disagree.) Commonwealth *v.* 14 Hogs, 10 S. & R. 303. (Mean! Take one of your size.) Succession of Beer, 12 La. Ann. 698. (Estate in liquidation?) Gullett *v.* Gullett, 25 Ind. 337. (Naturally follows "Succession of Beer.") Funk *v.* Venus & Ex'rs of Venus, 3 Pa. (We have heard of her, but never of them.) Shirtz *v.* Shirtz, 5 Watts, 255. (This encounter was to be expected.) Beer *v.* Hooper, 32 Miss. 246. (Defendant can restrain plaintiff.) 651 Chests of Tea *v.* United States, 1 Paine, 499.) (The worm will turn; was this the Boston tea?) Estate of Physic, 2 Phill. Pa. 278. (Evidently needed administering.) Matter of Pie, Abb. Pr. R. 409. (This estate must have cut up well.) Happy's Will, 4 Bibb. 553. (We have heard that he "died happy," but never before that he left a will.) Pancake *v.* Harris, 10 S. & R 109. (There was probably nothing left of plaintiff at the end of this trial.)—*Green Bag.*

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.; R. E. KINGSFORD, M.A., LL.B.; P. H. DRAYTON.

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

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 the Law Society, showing that he has been duly admitted upon the books of the Society, and that he 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 the 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 attendance in a Barrister's chambers or service under articles, and may present himself for his final examination at the close of such term, although his period of attendance in chambers or service under articles

may not have expired. In like manner, those who are required to attend during two terms must attend during those terms which end in the last two years respectively of their period of attendance in chambers or service, as the case may be.

Those students and clerks, not being graduates, who are required to attend the first year's lectures in the School, may do so at their own option, either in the first, second, or third year of their attendance in chambers or service under articles, upon notice to the Principal.

By a rule passed in October, 1891, students and clerks who have already been allowed their examination of the second year in the Law School, or their second intermediate examination, and under existing rules are required to attend the lectures of the third year of the Law School course during the school term of 1892-93, may elect to attend during the term of 1891-92 the lectures on such of the subjects of said third year as they may name in a written election to be delivered to the principal, provided the number of such lectures shall, in the opinion of the principal, reasonably approximate one-half of the whole number of lectures pertaining to the said third year, and may complete their attendance on lectures by attending in the remaining subjects during the term of 1892-3, presenting themselves for examination in all the subjects at the close of the last-mentioned term, and paying but one fee for both terms, such fee being payable before commencing attendance.

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

Friday of each week is devoted exclusively to moot courts, one for the second year students and another for the third year students. The first year students are required to attend, and may be allowed to take part in, one or other of these moot courts. They are presided over by the Principal or the Lecturer whose series of lectures is in progress at the time, and who states the case to be argued, and appoints two students on each side to argue it, of which notice is given at least one week before the day for argument. His decision is pronounced at the next moot court, if not given at the close of the argument.

At each lecture and moot court the roll is called, and the attendance of students carefully noted, and a record thereof kept.

At the close of each term the Principal certifies to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student is to be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series, delivered during the term and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal makes a special report upon the matter to the Legal Education Committee. The word "lectures" in this connection includes moot courts.

Two lectures (one hour) daily in each year of the course are delivered on Monday, Tuesday, Wednesday, and Thursday. The moot courts take the place of lectures on Friday. Printed schedules showing the days and hours of all the lectures in the different subjects will be distributed among the students at the commencement of the term.

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

The fee for attendance for each term of the course is $25, payable in advance to the Sub-Treasurer, who is also the Secretary of the Law Society.

The Rules which should be read for information in regard to attendance at the Law School are Rules 154 to 167 both inclusive.

Examinations.

Every applicant for admission to the Law Society, if not a graduate, must have passed an examination according to the curriculum prescribed by the Society, under the designation of "The Matriculation Curriculum." This examination is not held by the Society. The applicant must have passed some duly authorized examination, and have been enrolled as a matriculant of some University in Ontario, before he can be admitted to the Law Society.

The three law examinations which every student and clerk must pass after his admission, viz., first intermediate, second intermediate, and final examinations, must, except in the case to be presently mentioned of those students and clerks who are wholly or partly exempt from attendance at the School, be passed at the Law School Examinations under the Law School Curriculum hereinafter printed, the first intermediate examination being passed at the close of the first, the second intermediate examination at the close of the second, and the final examination at the close of the third year of the school course respectively.

Any student or clerk who under the Rules is exempt from attending the School in any one or more of the three years of the school course is at liberty, at his option, to pass the corresponding examination or examinations under the Law Society Curriculum instead of doing so at the Law School Examinations under the Law School Curriculum, provided he does so within the period during which it is deemed

proper to continue the holding of examinations under the said Law Society Curriculum as heretofore. It has already been decided that the first intermediate examination under that curriculum shall not be continued after January, 1892, and after that time therefore all students and clerks must pass their first intermediate examination at the examinations and under the curriculum of the Law School, whether they are required to attend the lectures of the first year of the course or not. Due notice will be hereafter published of the discontinuance of the second intermediate and final examinations under the Law Society Curriculum.

The percentage of marks which must be obtained in order to pass an examination of the Law School is fifty-five per cent. of the aggregate number of marks obtainable, and twenty-nine per cent. of the marks obtainable upon each paper.

Examinations are also held in the week commencing with the first Monday in September for those who were not entitled to present themselves for the earlier examination, or who, having presented themselves, failed in whole or in part.

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

The time for holding the examinations at the close of the term of the Law School in any year may be varied from time to time by the Legal Education Committee, as occasion may require.

On the subject of examinations reference may be made to Rules 168 to 174 inclusive, and to the Act R.S.O. (1887), cap. 147, secs. 7 to 10 inclusive.

Honors, Scholarships, and Medals.

The Law School examinations at the close of the term include examinations for Honors in all the three years of the School course. Scholarships are offered for competition in connection with the first and second intermediate examinations, and medals in connection with the final examination.

In connection with the intermediate examinations under the Law Society's Curriculum, no examination for Honors is held, nor Scholarship offered. An examination for Honors is held, and medals are offered in connection with the final examination for Call to the Bar, but not in connection with the final examination for admission as Solicitor.

In order to be entitled to present themselves for an examination for Honors, candidates must obtain at least three-fourths of the whole number of marks obtainable on the papers, and one-third of the marks obtainable on the paper on each subject, at the Pass examination. In order to be passed with Honors, candidates must obtain at least three-fourths of the aggregate marks obtainable on the papers in both the Pass and Honor examinations, and at least one-half of the aggregate marks obtainable on the papers in each subject on both examinations.

The scholarships offered at the Law School examinations are the following :

Of the candidates passed with Honors at each of the intermediate examinations the first shall be entitled to a scholarship of $100, the second to a scholarship of $60, and the next five to a scholarship of $40 each, and each scholar shall receive a diploma certifying to the fact.

The medals offered at the final examinations of the Law School and also at the final examination for Call to the Bar under the Law Society Curriculum are the following :

Of the persons called with Honors the first three shall be entitled to medals on the following conditions :

The First: If he has passed both intermediate examinations with Honors, to a gold medal, otherwise to a silver medal.

The Second: If he has passed both intermediate examinations with Honors, to a silver medal, otherwise to a bronze medal.

The Third: If he has passed both intermediate examinations with Honors, to a bronze medal.

The diploma of each medallist shall certify to his being such medallist.

The latest edition of the Curriculum contains all the Rules of the Law Society which are of importance to students, together with the necessary forms, as well as the Statutes respecting Barristers and Solicitors, the Matriculation Curriculum, and all other necessary information. Students can obtain copies on application to the Secretary of the Law Society or the Principal of the Law School.

THE LAW SCHOOL CURRICULUM.

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.
Deane's Principles of Conveyancing.

Common Law.

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

Equity.

Snell's Principles of Equity.

Statute Law.

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

SECOND YEAR.

Criminal Law.

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

Real Property.

Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.

Personal Property.

Williams on Personal Property.

Contracts.

Leake on Contracts.

Torts.

Bigelow on Torts—English Edition.

Equity.

H. A. Smith's Principles of Equity.

Evidence.

Powell on Evidence.

Canadian Constitutional History and Law.

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

Practice and Procedure.

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

Statute Law.

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

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

Clerke & Humphrey on Sales of Land.
Hawkins on Wills.
Armour on Titles.

Criminal Law.

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

Equity.

Underhill on Trusts.
Kelleher on Specific Performance.
Le Colyar on Guarantees.

Torts.

Pollock on Torts.
Smith on Negligence, 2nd ed.

Evidence.

Best on Evidence.

Commercial Law.

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

Private International Law.

Westlake's Private International Law.

Construction and Operation of Statutes.

Hardcastle's construction and effect of Statutory Law.

Canadian Constitutional Law.

British North America Act and cases thereunder.

Practice and Procedure.

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

Statute Law.

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

THE LAW SOCIETY CURRICULUM*

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

Books and Subjects prescribed for Examinations of Students and Clerks wholly or partly exempt from attendance at the Law School.

SECOND INTERMEDIATE.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages, and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada, 2nd edition; the Ontario Judicature Act; R.S.O., 1887, cap. 44; the Rules of Practice, 1888, and Revised Statutes of Ontario, chaps. 100, 110, 143.

FOR CERTIFICATE OF FITNESS.

Armour on Titles; Taylor's Equity Jurisprudence; Hawkins on Wills; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and Pleading and Practice of the Courts.

FOR CALL.

Blackstone, Vol. I., containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris's Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, and Statute Law, and Pleadings and Practice of the Courts.

Candidates for the Final Examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

*The First Intermediate Examination under this Curriculum has been discontinued since January, 1892.