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DURING the long vacation, Mr. Justice Ferguson will be the vacation judge in the Chancery Division, and Mr. Justice Street during part of vacation in the other Divisions. Tuesday in each week is fixed as the day on which vacation motions should be made:

LET not our readers expect two numbers each month during vacation; if they do they will be disappointed. We think we are very good to them to give them anything at all this warm weather. We wish it could be said with truth that all of our hard-worked brethren were "away on their vacation." If it could be so said, *we* would be ditto. But some of them are detained because the long vacation is not a vacation; some because the tariff of fees is not revised contemporaneously with the increased cost of living, whilst counsel take care that their fees *are* increased year by year; and some because they have mistaken their vocation, and need never expect to make enough even to indulge in the luxury of reading these pages.

THE attention of students is directed to the special notice at the end of the Law Society's advertisement in this number, by which all papers required to be filed before final examinations must be filed with the secretary on or before the third Saturday before term, and fees paid at the same time. Each affidavit of execution must state the *date of execution* of the articles of assignment. Students who failed at the Law School examination in May last, and desire to present themselves for examination in September next, should give notice to that effect to the secretary on or before August 18th, stating in the notice whether they intend to present themselves for examination in all the subjects, or only in those in which they failed to obtain 55 per cent. of the marks, mentioning the names of such subjects.

IT may not be known that some years ago it was formally recommended by a Committee appointed by the Lord Chancellor, composed of some of the most eminent judges and prominent members of the Bar in England, that litigation should thereafter be conducted in the High Court of Justice without any pleadings: "the Committee is of opinion that, as a general rule, the questions in controversy between litigants may be ascertained without pleadings." The following rule was recommended by the Committee, "No pleadings shall be allowed unless

by order of a judge." For pleadings there was to be substituted a brief endorsement on the writ of summons, indicating the nature of the plaintiff's claim, and a brief notice from the defendant of any special defence, such as the Statute of Limitations or payment. This interesting report, which is signed by Lord Coleridge, James, L.J., Hannen and Bowen, JJ., the Attorney-General, the Solicitor-General, and others, may be found in the London *Times* for Oct. 8, 1881.

Two questions of some moment were recently debated before the Divisional Court of the Chancery Division. One was as to the right of the Lieut.-Governor of Ontario to exercise the Royal prerogative of pardon respecting offences against Provincial statutes. This question was formally raised by a suit between the Attorney-General for Canada as plaintiff, and the Attorney-General for Ontario as defendant, instituted under the provisions of sect. 52, s-s. 2 of the Judicature Act, to determine the validity of the Ontario statute, 51 Vict., c. 5, which purports to confer the power in question on the Lieut.-Governor. The case was argued with great ability by Mr. Christopher Robinson, Q.C., and Mr. Lefroy, for the Dominion, and by the Hon. Mr. Blake, Q.C., for the Province. While it would be out of place to attempt to forestall the decision of the Court, we may nevertheless rejoice that a beginning has been made in thus submitting to judicial decision questions in dispute between the Dominion and Provincial authorities. It is far better that where differences do arise they should be properly settled in this way, than be suffered to remain a constant source of bickering and irritation between the two governments. The temptation to Provincial politicians is to stretch their authority at the expense of the Dominion Government, and of the Dominion authorities to stretch their power at the expense of the Provincial Government. But whatever politicians for their own ends may do, the people must ever bear in mind that they are equally interested in both Provincial and Dominion Governments, and that both are intended to promote their welfare, and exist for that and no other purpose, and that all they are really concerned to see is that the power vested by the Constitution in these two governments shall be exercised according to the Constitution, and that neither government shall unduly encroach upon the province of the other. It is not a question whether Mr. Mowat or Sir John Macdonald is best fitted to advise Her Majesty in the exercise of the prerogative of pardon in the cases in question, but in which of the two governments the Constitution has placed this power; and that is purely a question of law. This particular question, we observe, was raised in Nova Scotia as long ago as 1868, and it has been simmering ever since. The other question to which we refer is as to the criminal jurisdiction of the Chancery Division, which arose incidentally upon an application in the case of *Regina* v. *Burchall* to commit certain newspaper editors for contempt of court in publishing matter calculated to prejudice the fair trial of the defendant, who is in gaol on a charge of murder. The Divisional Court (the Chancellor and Ferguson, J.) were divided in opinion. The Chancellor thinking that the Divisional Court could exercise the general criminal jurisdiction of the High Court; and Ferguson,

J., being of opinion that criminal jurisdiction is vested in the High Court as a whole, and that while the Queen's Bench and Common Pleas Divisions, as being continuations of the former Courts of Queen's Bench and Common Pleas, can respectively exercise a general criminal jurisdiction, yet that no provision has been made enabling the Chancery Division, or its Divisional Court, to exercise any general criminal jurisdiction. This, of course, does not apply as regards Crown cases reserved for the disposition of which each of the Divisions of the High Court is expressly constituted a Court (R.S.C., c. 174, s-s. 2, 259 *et seq.*). What is needed, according to the view of Ferguson, J., is some enactment by the Dominion Parliament, enabling the judges of the Chancery Division singly, or when sitting in the Divisional Court of that Division, to exercise the general criminal jurisdiction vested in the High Court. Owing to the division of opinion the decision has not the same weight it would have had, had the learned judges been agreed, but, though lacking in conclusiveness, it has nevertheless made clear that the point is one open to doubt, and this should be removed at the next session of the Dominion Parliament. In remodelling the Courts, as was done by the Judicature Act, it is obvious that owing to the divided powers of legislation possessed by the Dominion and Province, and to the diverse nature of the jurisdiction exercised by the former Courts, that, in order to properly carry out what was intended, concurrent legislation by both legislatures was necessary, and it was a pity that it was not secured at the time.

INEQUALITY OF CRIMINAL SENTENCES.

In most cases under the Criminal Statutes, there is a discretion in the trial judge, within certain limits, as to the extent and duration of the sentence imposed. In such cases it must be a painful and anxious duty for a conscientious judge to decide the punishment to be inflicted in each particular case. We extract from one of our exchanges the following clear exposition of the principles which ought to govern the judge under such circumstances:

"The recent debate in the House of Lords has again brought forward this much-vexed question. Lord Herschell desired to call attention to the difference of opinion which prevailed as to the principles which should regulate the severity of the sentences to be inflicted upon criminal offenders, and the consequent inequality in the sentences passed in cases of the like gravity. It is to be regretted that the noble lords who followed him did not confine themselves more to the main point of Lord Herschell's theme, which was the difference of opinion as to the principles of punishment. It is generally accepted that punishment may proceed on the theory of reformation of the criminal, of the prevention of crime, or of retribution; and it seems that, in truth, all these elements should be taken into consideration in attempting to fix a canon or standard system of sentences. A criminal is punished in the first place for the greater safety of the community; secondly, to satisfy and remove the craving for personal vengeance; and lastly, for his own good. And, in our opinion, this is the proper order in which these elements should be taken into consideration.

Now, in the House of Lords, Lord Coleridge is reported to have said that, if he questioned anything in the speeches of his noble and learned friends, it was their use of the word "principle," for he doubted very much whether those who administered the criminal law were conscious, when pronouncing sentence, of administering law according to any elaborate and philosophical principle. But we should hold it to be one of the first duties of those who are called to the office of a judge amongst us to try and keep before them a right principle, and to apply it to the facts in passing sentence, just in the same way as if they were giving judgment in a civil case. This is absolutely the only way in which anything like equality of sentences can be obtained without sacrificing the substance for the shadow of justice. It is, of course, impossible to prevent the misapplication of principle to facts, and the principle must, in the nature of things, be so framed as to be very wide in its terms. But there are, it will be found on consideration of the subject, many safeguards that will keep the judge from going very far wrong.

The first object, as already stated, to be kept in view is the greater safety of the community. With reference to this object the facts may be grouped somewhat in the following way: The nature of the crime must be considered. If it affects that which every member of the community possesses, the punishment must be the more deterrent, as any member may be liable to suffer from the like crime at any future time. In this view of the case, offences occasioning bodily injuries would be regarded as more heinous than those involving injuries to property, and we think, to a certain extent, this ought to be so. Then it must be considered whether the like offences are rife in the neighbourhood, so as to occasion a widespread feeling of terror or insecurity. It may here be observed that crimes committed in combination by several offenders should be punished more severely than isolated offences by single criminals, because the existence of combinations antagonistic to the general interests of the community is more dangerous to public safety than any single individual can be, however many offences he can commit. With regard to offences against property, it seems that injuries to public property should be punished more severely than those against private property, and in punishing injuries against private property, it may fairly be taken into account whether such property is of a nature to be beneficial to the community such as industrial property, or is purely for the benefit of the individual possessor. Lord Coleridge remarked that the one most important duty of a judge was to take care that a sentence did not enlist the sympathy of the public on the side of the criminal. It is obvious that if the judge keeps always in view the greater safety of the community as the first object of punishment, he will run far less risk of enlisting public sympathy on the side of the criminal, especially if, in sentencing him, he takes care to make it clearly appear how far the offence is a violation of the public right. The repetition of offences is not always of great importance in this connection, and that is why it has not been sooner referred to. Its importance really depends upon the class of offence, so far as the public are concerned. It should always be remembered that the preventive power of punishment is strictly limited. In the

case of repeated offences, it comes to be limited solely by the length of the term of imprisonment awarded to inveterate offenders.

The second object of punishment, as above stated, is retribution. It is quite hopeless to urge that this element should not be taken into account. Unless the desire for vengeance is in some way gratified by the law, the injured party takes the law into his own hands. Besides, if justice is retributive, it has a better deterrent effect. It stands in a sort of way in the place of compensation. The prisoner pays with his body. But, for practical purposes, this object need not be kept so clearly in view by the judge as the first object of prevention of further crime. A punishment which is sufficient to secure the prevention of further crime is generally sufficient to satisfy the party actually injured.

The third and last object of punishment is the reformation of the criminal. If a punishment is sufficient to prevent a criminal, either by its deterrent effect or by main force during its continuance, from the further commission of crime, that is the utmost extent of reformation with which punishment has practically to do. It cannot be altogether lost sight of in inflicting punishment, because it is to that extent involved in the first object of punishment, namely, the prevention of crime. But a real reformation consists not only in ceasing to do evil, but in learning to do good. And it is plain that the teaching of how to do good can scarcely be accomplished within the same period that will suffice for the first half of the lesson, namely, as to ceasing to do evil.

In the debate in the House of Lords, Lord Herschell at first asked the Government whether they would cause inquiry to be made by Royal Commission, Committee, or otherwise, into our present system of punishments and the principles which should guide its administration, and whether it was possible to diminish the unequal incidence of punishments and to render them more effectual. At the conclusion of the debate he merely expressed a hope that the Government would give the matter early attention, and that if no other inquiry was made than that by themselves, they would, before proposing any legislation, favour the House with returns or statistics as to the results of light sentences where they had been tried.

Lord Coleridge thought that the establishment of a Court of Criminal Appeal would have a most powerful effect in promoting greater uniformity of sentences. A steady course of decisions by such a court, disregarding as it would all emotional feelings which tended to warp the judgment, would certainly, he believed, have that effect, for those who inflicted sentences would know that they were subject to revision. But if there was to be a Court of Appeal it must have the power, not only of reducing punishment, but also of increasing inadequate sentences. He did not desire that the Court should simply diminish punishment; he desired to make it useful in accordance with the righteous sentiment of the community.

There may be, with deference, room for doubt whether the constitution of a Court of Criminal Appeal would not do more harm than good in regard to inequality of sentences. As a rule the criminal classes are poor, and would have

great difficulty in finding funds to appeal, and so where the inequality bore hardly upon them they would submit to it; whilst, on the other hand, they would be pretty sure to have to defend an appeal in case their sentence appeared too light to the prosecutor, or else would have to run the risk of not being represented in defending the appeal. Besides, it would take long before a course of decisions would be established, and when established, or in course of being established, trials would be prolonged in the courts below, in order that the authorities might be brought to their notice. And there would, of course, be the less inducement to care in sentencing if it was generally felt that the case was pretty sure to be appealed.

Legislation could only to a certain extent prevent inequality of sentences by graduating a scale of punishment according to extenuating or aggravating circumstances. There is no doubt that there is room for some improvement in this direction. The first reform is obviously that in cases of murder the judge should not be obliged to pass the extreme sentence of the law. This could be altered either by leaving it entirely to the discretion of the judge, or by a statutory distinction between murder in the first degree and murder in the second degree, making the latter offence punishable by penal servitude for life, or for a less term, not being less than a certain minimum, at the discretion of the judge. There are also less serious crimes with regard to which there might be some judicial discretion. Then, with regard to previous convictions, rules might be laid down of simple character. For instance, with regard to larcenies, where, on a conviction for larceny, previous convictions for larceny of similar articles under similar circumstances were proved, the punishment should be increased sharply for the second, third, or fourth offence, but for subsequent offences the maximum should be inflicted. But where the previous convictions were for offences of a different character, they should be taken into account only so far as they led up naturally to the crime for which the punishment to be inflicted was under consideration, as where the prisoner had proceeded from picking pockets to robbery with violence, or from larceny to housebreaking, or shop-lifting to burglary.

The best of all remedies for inequality of sentences lies, no doubt, with the judicial authorities themselves. By careful self-education in the principles of punishment as generally received in this country, and there can be no question but that the general outlines are now settled, and by an intercommunication of information amongst themselves, the judicial authorities can do more than can be done for them to put them in the right way. If a man accepts the office of a judge without any previous legal experience, surely he ought to spare the time at least to consider the principles of the punishment of offenders; and the courts of general and quarter sessions might well interchange information as to sentences which would be worth their mutual attention.

The Lord Chancellor, in the course of the debate in the House of Lords, said that it was sometimes thought that particular classes of judges were more disposed than others to pass severe sentences. He believed that this was an error, and that there was no such distinction between classes of judicial functionaries, and he was therefore glad that Lord Herschell was not one of those who were

in the habit of attacking magistrates and chairmen of quarter sessions. Nevertheless, notwithstanding his Lordship's remarks, it is obvious that there must necessarily be more divergence in the views with which magistrates inflict punishment than amongst the judges of the High Court, because whilst the judges of the High Court have all been trained in the same school, the magistrates are drawn from different professions, which naturally induce different habits of thought and afford differing standpoints for the view of administering criminal justice. The judges, too, have much greater opportunities of interchanging their ideas on the subject than the magistrates have. The magistrates, therefore, have all the greater need of using the best means at their disposal for studying the practice of the bench in adjoining jurisdictions. Special provisions have quite recently been passed providing for the expenses of associations of county councils who are performing administrative functions recently exercised by the justices without any advantage of that sort. There seems to be no reason why the justices should not have similar facilities with regard to the discussion of the duties that yet remain to them. It has been always one of the great defects of the administration of criminal justice in this country that the jurisdictions of the several judicial authorities have been too much hedged about from each other, so as to be almost foreign countries to each other. There should be some better provisions for maintaining an interchange of ideas, and the best will then be found generally to prevail with less sharp contrasts than now obtain."

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for June comprise 24 Q.B.D., pp. 625-754; 15 P.D., pp. 81-121; 44 Chy.D., pp. 1-217; 15 App. Cas., pp. 49-202.

PRACTICE—DISCOVERY—INSPECTION OF DOCUMENTS.

In *Wideman* v. *Walpole*, 24 Q.B.D., 621, the Court of Appeal (Lord Esher, M.R., and Lopes, L.J.) permitted an affidavit to be filed by plaintiff denying the possession or control of a document ordered to be produced for inspection, and thereupon the appeal from the order made by the Divisional Court (24 Q.B.D., 537) noted *ante* p. 295, was reversed with costs.

PRACTICE—PLEADING—MATTER IN AGGRAVATION OF DAMAGES—LIBEL—ORD. XIX., R. 27 (ONT. RULE, 423).

In *Whitney* v. *Moignard*, 24 Q.B.D., 630, a point of practice was disposed of by a Divisional Court (Huddlestone, B., and Williams, J.). The question was one of pleading in an action for libel, published in a newspaper. The statement of claim alleged that the defendant knew that the words published would be, and the same in fact were, repeated and published in other editions of the same newspaper. It was held that the evidence of the facts stated in the paragraph would be admissible at the trial, and therefore the paragraph was properly

pleaded and ought not to be struck out. This decision seems to be the converse of *Pursley* v. *Bennett*, 11 P.R., 64, in which it was held that facts in mitigation of damages may be pleaded by a defendant, though the contrary was held in England in *Wood* v. *Durham*, 21 Q.B.D., 501.

PRACTICE—INFORMATION—CONVICTION—ALTERNATIVE STATEMENT OF OFFENCE.

Cotterill v. *Lempriere*, 24 Q.B.D., 634, is a case in which, to use the language of Lord Coleridge, C.J., the Court, "with extreme reluctance," gave effect to a technical objection as to the sufficiency of an information and conviction for an offence against a by-law, which provided that "no smoke shall be emitted from the engines so as to constitute any reasonable ground of complaint to the passengers or the public." The information stated that the defendant did permit smoke to escape from his engine contrary to the by-law, and the conviction was to the same effect. On a case stated by the convicting magistrates, it was objected that the offence being stated to have been committed contrary to the by-law, without specifying whether the offence was a reasonable ground of complaint to the passengers or the public, or both, the offence was stated in the alternative, and was therefore bad, although the same penalty was imposed by the by-law whether the passengers or public were injured.

SALE OF GOODS—CONTRACT TO MANUFACTURE EQUAL TO SAMPLE—LATENT DEFECT IN SAMPLES—IMPLIED WARRANTY.

In *Jones* v. *Padgett*, 24 Q.B.D., 650, upon an objection to the charge of the judge at the trial, a question of law was decided by a Divisional Court (Lord Coleridge, C.J., and Lord Esher, M.R.), on appeal from a County Court. The plaintiff carried on two businesses, that of a woollen merchant, and that of a tailor. The defendants, not knowing that he carried on the business of a tailor, contracted to manufacture cloth for the plaintiff according to sample. The plaintiff intended to use the cloth in his business of a tailor for making into liveries, but he did not communicate this to the defendants. There was evidence that cloth of the kind in question was ordinarily employed in making liveries. The cloth was made according to the samples, but owing to a latent defect in the sample, it was unsuitable for making into liveries, but there was no evidence that it was unsuitable for other purposes for which such cloth was ordinarily employed. The action was for breach of an implied warranty of merchantableness. The judge left it to the jury to say whether the cloth was merchantable as supplied to woollen merchants, and refused to leave the question to them whether an ordinary and usual use of such cloth was the making of it into liveries. The plaintiff objected, but the Court of Appeal held the trial judge was right. It was contended by the plaintiff that the doctrine established by *Jones* v. *Bright* 5 Bing., 533, that where goods are sold which the vendor knows are to be used for a particular purpose, there is an implied warranty that they are fit for that purpose, had been extended by *Drummond* v. *Van Ingen*, 12 App. Cas., 284, so as to create an implied warranty that goods are fit for the purpose which the vendor ought to know that such goods are ordinarily used, but the Court refused to accede to that proposition.

NUISANCE—THISTLES—NEGLECT OF OCCUPIER OF ADJOINING PROPERTY TO CUT THISTLES—NOXIOUS WEEDS.

Giles v. *Walker*, 24 Q.B.D., 656, shows that in the absence of legislation such as that contained in *The Municipal Act* (R.S.O., c. 184, s. 489, s.s. 22), empowering municipalities to pass by-laws for preventing the growth of noxious weeds, there is no legal liability on the part of an owner of land to cut down noxious weeds so as to prevent the seed therefrom being blown on to the lands of his neighbour. Lord Coleridge, C.J., and Lord Esher, M.R., sitting in appeal from a County Court, in which judgment had been entered for the plaintiff on a finding of the jury that the defendant had been guilty of negligence, reversed the judgment and dismissed the action.

MARINE INSURANCE—INSURANCE AGAINST SUM PAID BY ASSURED FOR DAMAGE BY COLLISION WITH ANOTHER SHIP—LIABILITY OF SHIPOWNER WHEN BOTH SHIPS ARE TO BLAME.

The London Steamship Ins. Co. v. *The Grampian Steamship Co.*, 24 Q.B.D., 663, is a case in which the plaintiff sought to enforce a policy of insurance against a loss occasioned by the ship assured having come into collision with another vessel, in consequence of which both vessels being to blame, they had to share the damage equally. The question was whether this was a cross liability on the part of each vessel to pay half the damage sustained by the other. The Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.) held that there was not a cross liability, but one liability only, viz., the liability of the vessel less damaged to pay the more damaged one, half of the amount by which the damage to the one exceeds the damage to the other. The plaintiff's vessel being the less damaged vessel of the two, it was therefore held that he could not recover on the policy.

PHARMACY ACT, 1868 (31 & 32 VICT., C. 12), S. 15 (R.S.O., C. 151, S. 24)—SALE OF POISONS—UNREGISTERED ASSISTANT OF REGISTERED CHEMIST—PENALTY.

In *The Pharmaceutical Society* v. *Wheeldon*, 24 Q.B.D., 683, an important point was decided under the Pharmacy Act, 1868 (see R.S.O., c. 151, s. 24). The action was brought against an unregistered assistant of a registered chemist for selling poisons in the absence of his master; and it was held that he was liable to the penalty imposed by the Act. This is an exception to the rule *qui facit per alium facit per se*.

SESSIONS—PRACTICE—APPEAL FROM CONVICTION—RECOGNIZANCE OUT OF TIME—ESTREATING RECOGNIZANCE.

The short point decided in *The Queen* v. *The Justices of Glamorganshire*, 24 Q.B.D., 675, is that when an appeal from a conviction is dismissed with costs because the recognizance is not put in in due time by the appellants, the recognizance is not a nullity but may nevertheless be estreated, if the appellant fails to pay the costs of the appeal.

STOCK EXCHANGE—USAGE OF STOCK EXCHANGE, REASONABLENESS OF—RIGHT OF BROKER TO CLOSE ACCOUNT.

In *Davis* v. *Howard*, 24 Q.B.D., 691, the reasonableness of the usage of the stock exchange, whereby it is competent for a broker to close an account of a

principal who has instructed him to carry over stock to the next settlement, when the principal has not, after notice, paid the balance due to the broker on the settling day, or placed at the broker's disposal funds or available collateral security sufficient to cover the balances was in question; and was upheld.

PRACTICE—DISCOVERY—OFFICER OF CORPORATION—PRIVILEGE—SOLICITOR.

Salford v. *Lever*, 24 Q.B.D., 695, establishes an important distinction in reference to the practice of discovery by corporations. In *Swansea* v. *Quirk*, 5 C.P.D., 106, it was held that where a corporation itself puts forward its town clerk to make discovery on its behalf, then, when the town clerk is a solicitor, he cannot refuse to answer on the ground of professional privilege. But in the present case where the opposite party had selected the town clerk as the officer to make discovery, he might properly refuse to answer on the ground of privilege as solicitor.

ILLEGAL CONTRACT — PART PERFORMANCE — ACTION TO RECOVER MONEY PAID UNDER ILLEGAL CONTRACT.

Kearley v. *Thomson*, 24 Q.B.D., 742, is an illustration of the familiar maxim, *in pari delicto potior est conditio possidentis*. The facts of the case were that one Baynes, for whom the defendants acted as solicitors, presented a petition in bankruptcy against one Clarke. Before the day fixed for the public examination of the bankrupt, and before he had applied for his discharge, Kearley, who was a friend of Clarke, intervened, and the solicitors, accepted from him £20 on account of their costs, and agreed on his paying them £20 more to waive all claim to costs, and undertook not to appear at the bankrupt's public examination. The second £20 was duly paid and the defendants did not appear at the examination; but at the time the action was brought Clarke had not applied for his discharge. This was an illegal bargain and the plaintiff brought the action to recover the £40. The Court of Appeal (Lord Coleridge, C.J., Lord Esher, M.R., and Fry, L.J.) held the case to be governed by the rule laid down in *Collins* v. *Blantern*, 1 Sm. L.C. (7th ed.) 369, viz., "Whoever is a party to an unlawful contract, if he hath once paid the money stipulated to be paid in pursuance thereof, he shall not have the help of the Court to fetch it back again; you shall not have a right of action when you come into a Court of Justice in this unclean manner to recover it back." It was sought to bring the action within the authority of *Taylor* v. *Bowers*, 1 Q.B.D., 291, on the ground that the illegal purpose had not been wholly carried out. But Fry, L.J., while doubting the authority of that case, nevertheless was clear that the fact that there had been a partial performance of the illegal contract could not entitle the plaintiff to recover his money. He likened it to the case of A. paying money to B. to murder C. and D., and claiming to recover the money back after B. had murdered C., but before he had murdered D. The statement of the proposition seems to carry its own refutation.

PRACTICE—WRIT OF SUMMONS—ADDRESS OF PLAINTIFF—ORD. IV, R. 1 (ONT. RULES 240, 241).

In *Stoy* v. *Rees*, 24 Q.B.D., 748, the Court of Appeal affirmed a decision of a Divisional Court, to the effect that the address of a plaintiff required by the Rules to be indorsed on a writ of summons, is the place where he resides, and not merely the place where he carries on business. We may observe that the Ont. Rules 240, 241 require the plaintiff's place of residence to be indorsed only when he sues in person.

PRACTICE—INTERPLEADER—CLAIM OF APPLICANT FOR CHARGES—JURISDICTION TO ORDER PAYMENT—ORD. LVII, RR. 2, 15—(ONT. RULES 1142, 1153).

In *De Rothschild* v. *Morrison*, 24 Q.B.D., 750, Lord Coleridge, C.J., and Fry, L.J., sitting as a Divisional Court, held that under Ord. lvii., rr. 2, 15 (see Ont. Rules 1142, 1153) the Court has jurisdiction upon the determination of an interpleader issue to order payment to the party at whose instance the interpleader issue was granted, of his charges against the goods in question (which in the present case were for wharfage).

MARRIAGE—FOREIGN LAW—MARRIAGE OF BRITISH SUBJECT TO JAPANESE.

In *Brinkley* v. *Attorney-General*, 15 P.D., 76, a petition was presented under the Legitimacy Declaration Act, 1858 (21 and 22 Vict., c. 93; see R.S.O., c. 113, s. 33), praying for a declaration of the validity of the marriage of the petitioner, who was a British subject, with a Japanese woman. Evidence was adduced which showed that the marriage was valid according to the law of Japan, and that by such marriage the petitioner was precluded from marrying any other woman during the subsistence of the marriage. It was held by Sir James Hannen, P.PD , that the marriage was valid, and free from the objection which exists to a polygamous union. He took occasion to observe that although in the previous case the phrase "Christian marriage" had been used as indicating the only marriage that could be recognized as lawful, that that phrase had only been used for convenience, but that the idea intended to be expressed was that the only marriage recognized in Christian countries, and in Christendom, is marriage of the exclusive kind, whereby one man unites himself to one woman to the exclusion of all others. We may observe that it appears from this case to be the practice under the Legitimacy Declaration Act to notify the Attorney-General of the petition in a case of this kind; we presume this is to guard against such declarations being granted improperly, or without due consideration.

SHIP—COLLISION—OBSCURATION OF LIGHTS.

In *The Duke of Buccleuch*, 15 P.D., 86, it was held by the Court of Appeal, reversing Butt, J., that the mere fact that a vessel coming into collision with another had its lights obscured is not conclusive evidence of negligence on the part of such vessel, and that it was the duty of the Court in such a case to inquire into the facts in order to ascertain whether the infringement of the regulations relating to lights could possibly have contributed to the collision, and upon the evidence in this case it was held that it could not.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

EASTER TERM, 1890.

The following is a *resume* of the proceedings of Convocation during the above term:—

The following gentlemen were called to the Bar, viz.:

May 19th.—James Herbert Denton, with honors and silver medal; William Howard Hunter, with honors and silver medal; Charles Wesley Kerr, with honors and bronze medal; and Cyrus Stiles, William George Richards, Mahlon Kitchen Cowan, William James Green, Arthur James Forward, James Duncan Lamont, Harper Armstrong, James Russell Lovett Starr, Joseph Stockwell Walker, Frederick Cuyler Hastings, Miller Murdoch, William James Williams, Robert Elliott Lazier, Thomas Atkins Wardell, Dugald James MacMurchy, Lennox Irving, Robert Franklin Lyle, Edward Albert Forster, Caleb Everett Lyons, Henry Parker Thomas, Frank Leslie Webb, Robert Lazier Elliott.

May 20th.—Joseph Heighington (special case), Robert Barrie, James Henry McGhie.

May 30th.—Andrew Grant.

The following gentlemen were granted certificates of fitness as Solicitors, viz.:

May 19th.—C. Stiles, W. J. Green, F. C. Hastings, F. L. Webb, G. E. K. Cross, C. E. Lyons, F. B. Geddes, R. F. Lyle, J. H. Cooper, J. W. Mealey, N. Mills, A. Grant.

May 20th.—C. W. Kerr, R. L. Elliott, P. K. Halpin.

May 30th.—W. G. Richards, W. A. Smith, W. L. Ross, W. McBeth Sutherland, J. H. Denton.

The following gentlemen passed the Second Intermediate Examination, viz.: H. J. D. Cooke, C. P. Blair, W. M. Campbell, C. F. Maxwell, G. F. Downes, W. M. McKay, W. S. Middlebro, J. Steele, W. W. Scane, L. A. Smith, J. Lennon, F. Elliott, H. B. Travers, W. S. Buell, W. J. Clark, T. A. Gibson, F. Harding, R. H. McConnell, B. E. Swayzie, W. H. Williams, R. A. Hunt, J. H. McCurry, A. R. Walker, J. Armour, J. W. Winnett, F. C. Cousins, R. T. Harding, and W. A. Boys, J. H. Hegler, A. A. Roberts, as students-at-law

The following gentlemen passed the first Intermediate Examination, viz: H. A. Lavell, M. J. O'Connor, J. D. Swanson, J. H. Rodd, D. E. Stuart, E. G. Rykert, T. H. Lennox, G. F. Blair, F. W. Gladman, F. King, E. Donald, W. D. Card, W. Carney, P. S. Lampman, F. Jones, H. A. Stewart, C. S. Leitch, L. B. C. Livingstone, J. B. Irwin, G. M. Vance, H. C. McLean, S. S. Martin, W. F. Scott, J. H. Senkler, and A. F. H. Mills C. F. Mills as students-at-law.

The following gentlemen were entered as Students-at-Law and Articled Clerks, viz.:

Graduates—James Macalister Farrell, Charles O'Connor.

Matriculants—David Inglis Grant, Nicholas Charles Sparks, Charles William Beatty, John Galbraith, Thomas Bird German, Joseph Pierce Rogers Gundy, Samuel Herbert McKay, Frank Drake Llewellyn Smith, Richard D'Arcy Scott.

Monday, May 19th.

Convocation met.

Present—The Treasurer and Messrs. S. H. Blake, Cameron, Foy, Hoskin, Irving, Kerr, Lash, McCarthy, McMichael, Mackelcan, Martin, Moss, Murray, and Osler.

The minutes of last meeting were read and approved.

Mr. Osler gave notice of motion for the third meeting of Convocation this term, as follows:

(1) That he would introduce a rule to provide for the publication of an annual Official Law List.

(2) To amend the 44th Rule so as to make the salary of the assistant reporter of the Court of Appeal twelve hundred dollars per annum.

(3) That the Supplemental Digest, as now printed in Robinson & Joseph's Digest, be included in the new Ontario Digest, now in preparation, and that the Reporting Committee be authorized to make the necessary arrangements with Mr. Joseph.

Mr. Hoskin, from the Discipline Committee, presented a report in the case of Mr. W., and a report in the case of Mr. T., with evidence.

Ordered, that the said reports be considered to-morrow.

Mr. Moss, from the Legal Education Committee, presented the following report as to regulations for the examinations in the Law School, viz.:

That under the provisions of Rule 145, the following regulations with regard to the Law School examinations for May were adopted, namely:

(1) That no oral examination be held in connection with the ensuing May examinations.

(2) That for these examinations the percentage of marks be 55 per cent.

(3) That the number of questions on each paper for 1st year be ten, and for 2nd year, twelve, and that the same number of questions be given in each honor paper.

(4) That the examiners make their report as to these examinations on or before the second Monday in Easter Term.

The Special Committee on Honors and Scholarships presented a report as follows:

The Committee find that the following candidates, viz.: Messrs. J. H. Denton, W. H. Hunter, and C. W. Kerr, are entitled to be called with honors, and that Messrs. Denton and Hunter are entitled to receive silver medals respectively, and that Mr. Kerr is entitled to receive a bronze medal.

All of which is respectfully submitted.

(Signed) CHARLES MOSS,
J. K. KERR,
B. B. OSLER.

The report was adopted, and ordered accordingly.

The letter of A. D. Crooks was read.

Ordered, that one hundred and forty dollars, deposited by him for the purpose of his bar and solicitor examination, be refunded to him.

The letter of W. S. Gibbon as to A. L. Weed was read.

Ordered, that it be acknowledged, and that Mr. Gibbon be informed that the Law Society is in communication with Mr. Weed on the subject.

The letter of Mr. A. L. Weed was read.

Ordered, that he be informed that there is no special law touching the case of United States' practitioners, and that the law already sent is all that is applicable.

The letter and report of Mr. D. B. Read, Q.C., on the subject of entries of names of Benchers, was read.

Ordered, that the report be referred to a Special Committee composed of Messrs. Ferguson, Mackelcan, Shepley, and Kerr, with instructions to revise the same, to report thereon, and to report on the question of remuneration to Mr. Read.

Mr. Lash, pursuant to notice, moved as follows:

That it is expedient to consent that the Dominion Government have certain privileges over Osgoode Street, in rear of Osgoode Hall grounds, in connection with the drilling of volunteer troops thereon, and that Messrs. Murray, Shepley, Foy, Irving, Robinson, and the mover, be a Special Committee to prepare and submit to the next meeting of Convocation a draft of such agreement and statutes as, after conference with the Government and municipal authorities, they may think should be entered into and passed for the purpose of granting such privilege and protecting the interests of the Law Society.—Carried.

Tuesday, May 20th.

Convocation met.

Present—The Treasurer, and Messrs. Beatty, Bruce, Cameron, Hoskin, Irving, Kerr, Macdougall, McMichael, Martin, Morris, Moss, Murray.

The minutes of last meeting were read and approved.

Mr. Moss, from the Legal Education Committee, presented a report.

In the case of J. Heighington, recommending that he be called to the Bar.

In the case of R. L. Elliott, recommending that he receive a certificate of fitness as a solicitor.

In the case of J. H. McGhie, recommending that he be called to the Bar.

The report was considered, adopted, and ordered accordingly.

The death of Mr. Adam Hudspeth, Q.C., M.P., a Bencher of the Law Society, was announced.

It was then moved by Mr. Cameron, and seconded by Mr. Moss, and unanimously adopted as follows:

That the Benchers of the Law Society in Convocation, desire to express the general feeling of regret at the recent death of Mr. Adam Hudspeth, Q.C., M.P., a member of this body for several years past, and direct that this resolution be entered on the minutes of their proceedings, and that the deep sympathy of Convocation be communicated to the family of their lamented colleague.

Ordered, that a meeting of Benchers be called for Friday, 30th May instant, for the purpose of electing a Bencher to supply the vacancy caused by the death of Mr. Hudspeth, and that the Secretary do issue notices accordingly.

Mr. Martin presented the report of the County Library Aid Committee, and the report of Mr. Winchester, the Inspector of County Libraries.

The above reports were received, read, and adopted, and it was ordered that Mr. Winchester be re-appointed Inspector at a salary of one hundred and fifty dollars a year, and further that a grant to the Leeds and Grenville Association, and the loan to the Essex Association, be made.

Mr. Hoskin, on behalf the Discipline Committee, reported in the case of Thomas A. Gorham, barrister, against Mr. W., barrister, that the complaint in question had not been substantiated, and that the Committee recommend a dismissal of the same.

The report was adopted.

Mr. Hoskin, on behalf of the same committee, reported the case of Mr. T., a member of the Society, at the suit of Messrs. Ashton and Stevenson.

Ordered that the consideration of the report be postponed, to enable the complainants to apply to the Courts to strike Mr. T. off the rolls, and that the solicitor of the Society be instructed to watch the proceedings, and that Mr. Marsh, Q.C., be retained as Counsel to represent the interests of the Society upon such proceedings.

Mr. Moss laid before Convocation the report of the Principal of the Law School, which was received, and it was ordered that the report be printed and distributed to the benchers, and that the report be taken into consideration on Saturday, 7th June, and the benchers be informed.

Mr. Moss submitted a letter addressed to him as Chairman of the Legal Education Committee by Mr. Marsh, with reference to his position, as Lecturer in the Law School, the consideration of which was deferred.

The Secretary reported that Mr. J. S. Walker had completed his service, and was entitled to his Certificate of Fitness.

Ordered accordingly.

Mr. Read, the Solicitor of the Society, announced by letter that the Court of Appeal had dismissed Mr. Macdonnell's appeal, in the case of *Macdonnell* v. *Blake and the Law Society* with costs.

Messrs. Heighington, Barrie, and McGhie, were called to the Bar.

Saturday, 24th May, 1890.

At a meeting of the Law Society, held in Convocation Room, Osgoode Hall, on this day.

Present—Messrs. Moss and Murray.

There being no quorum at 11 a.m., being thirty minutes after time of meeting, the senior barrister present adjourned the meeting to 10:30 a.m., on Friday, 30th May, instant.

(Sd.) CHARLES MOSS,
H. W. M. MURRAY.

Friday, May 30th.

Convocation met.

Present—The Treasurer and Sir Adam Wilson, Messrs. Cameron, Foy, Hoskin, Irving, Kingsmill, McMichael, Mackelcan, Morris, Murray, Shepley, and Smith.

The minutes of the last two meetings were read and approved.

Ordered, that the members of the Bench present be requested to attend H.R.H. the Duke of Connaught during his visit to Osgoode Hall this day, and that Convocation be at the time of the said visit adjourned during pleasure.

Ordered, that Mr. Blake be re-appointed Treasurer for the year.

Ordered, that Mr. A. J. Christie, Q.C., of Ottawa, be elected to fill the vacancy in the Bench caused by the death of Mr. Hudspeth.

Ordered, that the Standing Committees for this year be composed of the same members as last term, save that the name of Mr. Christie be substituted for that of Mr. Hudspeth.

Mr. Morris, from the Legal Education Committee, presented a report on the petition of T. F. Lyall, recommending that the prayer of the petition be not granted. Also, in the cases of W. M. Sutherland and J. H. Denton, recommending that they receive Certificates of Fitness.

The report was received, adopted, and ordered accordingly.

Mr. Shepley, from the Reporting Committee, presented a report, also the Report of the Editor.

Your Committee beg to present the Editor's Report upon the state of the work of reporting, which is herewith laid before Convocation.

Your Committee beg to call attention to the fact that according to the Editor's Report there are at this date unreported cases of the month of April to the number of thirteen, of March to the number of twenty-one, and of February one case.

EDITOR'S REPORT.

Toronto, 23rd May, 1890.

DEAR SIR,—I have to report that there are now in the Court of Appeal, in addition to the judgments of last week, which have yet to be considered, six unreported cases, all of March, which, however, were not given to the reporter until the 8th April. In the Queen's Bench there are three, two of which are of March (ready), and one of April. In the Common Pleas there are seventeen; fourteen of March, of which seven are revised, and three of April. In the Chancery Division Mr. Lefroy has six; one of March ready to issue, one of April, and four of May. Mr. Boomer has seven; one of February ready to issue, four of March, of which one is revised, and two of April. Of the Practice Cases there is one of May, all cases up to the first of that month having been published.

I am yours truly,

(Sd.) J. F. SMITH.

B. B. Osler, Esq., Q.C., *Chairman.*

Ordered, that the Reporting Committee call the attention of the Editor to the arrears with the view of their being brought up in the course of the ensuing month.

Ordered, that the consideration of the report of the Examiners of the Law School do stand till the next meeting of Convocation.

Mr. Murray from the Finance Committee presented a report.

(1) The Finance Committee beg leave to report that they have caused to be prepared a statement of the revenue and expenditure of the Law Society for the year ending 31st December, 1889, and they submit same herewith, together with a statement showing the assets and liabilities as on the 31st day of December, 1889.

(2) That they lately had under consideration the question of insurance, and, after consulting with the architect of the Society, they increased that on the examination and dining halls from $25,000 to $30,000, and that on the remainder of the Law Society building from $15,000 to $25,000.

(3) That in view of the recent fire at the University of Toronto they communicated with the Minister of Public Works, and they believe that further precautions have been taken in that part of the building belonging to the Ontario Government.

They have also approved of a report made by the architect at their request, whereby a better system for a supply of water will be secured in the future. Certain doors and a window between the Law Society and the Government parts of the building will be closed with iron doors, or built up with brick. There will be a fire escape provided from the upper part of the building, a messenger call introduced, hand grenades kept in every room, and the use of coal oil lamps has been forbidden.

(4) They also recommend that the use of the examination hall by the Osgoode Legal and Literary Society be confined to debates.

(5) They have caused an enquiry to be made as to the occupation of the wardrobes used by the members of the Society, and find that of fifty-eight in the Queen's Bench room the occupation of two only is unknown. Of twenty-five in the Common Pleas room only one is unknown; and twenty-five in the Chancery Division, the occupation of only nine is unknown, and they have directed the secretary to put up a further notice that if any wardrobes remain unclaimed on the 15th day of June, the same will be opened and possession thereof resumed by the Society; they also report that they allowed an increase in the wages of caretaker Gilly of $10 a month during the past session of the Law School.

(6) In the matter of Mr. D.,. a solicitor against whom an order was obtained, suspending him for practising without taking out his annual certificate, your committee report that in consequence of a direction made by the Hon. Chief Justice Sir Thomas Galt, on a motion to commit for disobedience of said the Secretary wrote to Mr. D. informing him that upon payment of his order, fees, without fines or costs, he would receive his reports; that Mr. D. has not paid any fees, and has continued to practice, and is practising as a solicitor, and that the Solicitor of the Society has been instructed to at once proceed against Mr. D. on the said order, and to compel obedience to same.

(7) The Secretary, in pursuance of instructions, has prepared a list of solicitors who are in default, and the Committee submit same herewith for the information of Convocation.

(Sd.) HUSON W. M. MURRAY,
Chairman.

May 30th, 1890.

(Continued in next number.)

Correspondence.

THE LAW SCHOOL.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—When writing on several occasions on this subject I have assumed that the Benchers might come to think differently, or at any rate eventually tire of their white elephant, the Law School. But by the appointment of two more lecturers, and by other vigorous measures, it seems clear that having put their hand to the plough they will not turn back. As nothing will be gained by an iteration of general objections to the existence of a Law School, it becomes a reasonable duty to point out and call for such efficiency as will make its further life desirable and not penal.

To this end two radical changes should, I think, be made in the policy of the Benchers. (1) The stand-and-deliver mode of instruction by lectures should be relegated to a very subordinate place; (2) students should be entirely relieved of the necessity of attendance in chambers; and the School must provide the full equivalent of office instruction. If this cannot be done the Law School will remain mostly a farce, and legal education had better far been left to the Universities.

I see no reason to withdraw what I have said elsewhere, too vigorously, perhaps, of that legal education which consists in nothing more than attenuating what is most usually as clearly expressed in the text-books. Lectures are a survival of the time when professors, not books, were the repositories of knowledge, and they are only in place now-a-days when the warm personal stimulus of the lecturer, and the form of his expression, are of greater concern than the subject matter. In fact, generally, *viva voce* exposition, whether it be the lofty declamation of the orator or the unimpassioned prose of the lecturer, is only useful where the purpose is controversial, and it is sought to excite the prejudices or warp the judgment of an audience.

If this be the whole truth, the mere lecturer should have scant room in a Law School where English law is taught. There is no doubt that a few general lectures by truly great lawyers, holding up high ideals of diligence and honour, would stimulate and profit any student. In this particular case, however, the lecture has a further use, and that is where Canadian law has developed differently from that laid down in our English text-books. Any further use of the lecture may give the Benchers some cause for congratulation; it can never lead to truly valuable results. The great objection to making the lecture the main part of the programme is, that attention can never be kept up, and to the truth of this the past history of legal education will amply testify. To achieve truly valuable results the lecturer (how else shall we call him?) must sit in the midst of his class, and by exercises written and oral he must reach every member of it. But this would necessitate small classes of fifteen or twenty, and accommodation which is not now at the Benchers' disposal. Whether they can supply it or not is not a question here. If they adhere to compulsion their duty is plain.

In England it is a most common expression that a barrister learns his profession in court when a student; yet it was the main defect of the system of legal education which has just been superseded that such could not be said of Ontario barristers. Two causes have combined to produce this result, namely, the necessities of students and the cupidity of solicitors.

It is most seriously to be regretted, that before taking so important a step the Benchers did not devise some means of remedying this defect. As it is the student has been placed in a cross fire. He cannot profit much by attendance in court or chambers, while he is obliged to attend five-sixths of the lectures of the Law School. For this reason, and for the general reason that they have partly undertaken his education, the Benchers should undertake it all. Conveyancing, the drawing of wills, agreements, and other legal documents should be thoroughly taught. Further, the moot court cannot remain the absurdity it is at present. It can only be made an efficient component of legal education by making it provide, as nearly as possible, for the conduct of an action in all its branches.

Compulsion, for its present purposes at least, is wrong, and there is the strongest moral obligation upon the Benchers to provide such instruction as will render compulsion unnecessary. Until they do they will have no flattering success in their new venture.

GORDON WALDRON.

REPORT OF MACMILLAN v. GRAND TRUNK RAILWAY.

Editor of THE CANADA LAW JOURNAL:

SIR,—The June number of the *Canadian Law Times* contains an article on the case of the *Grand Trunk Railway Co.* v. *McMillan*, lately decided by the Supreme Court of Canada, and reported in Vol. 16 of the Supreme Court Reports, and the writer, who is evidently the plaintiff's solicitor, so misrepresents the facts of the case and the result of the judgments that in justice to the reporters of the Court, it should not be ollowed to pass unnoticed. The writer may not have intended to misrepresent these matters, but he has done so to such an extent that I think I am justified in saying that if the case was presented to the Court in the manner in which it appears in this article, it is not surprising if the Court did, as the writer alleges, fail to understand it.

The opening clause of the article referred to is misleading as well as grammatically absurd. It is as follows: "The report of this case in the last number of the Supreme Court Reports has recently come to hand, and presents so many features for criticism in respect of both form and substance that we cannot refrain from directing attention to it, and criticising the treatment it has received at the hands of our highest Canadian Court." From the first part of this clause one would suppose that it was the report that was to be the object of the writer's criticism, but it is evident from what he intended to say in the concluding portion as well as from the general tenor of the article that it was the case itself and the manner in which the judges treated it, with which the writer proposed to deal, and that his attack is mainly directed against the Court; there are, however, a few refer-

ences to the work of the reporters, and it is those only which I propose to notice, as I do not consider myself called upon to appear as the defender of the Court, even if such defence were called for.

I will take the points upon which the report is attacked, and deal with them in the order in which they appear in the article. The first is as follows: The writer, after mentioning the fact of an unsuccessful attempt having been made to appeal to the Privy Council in the case, says: "The judgment of the Privy Council, refusing leave to appeal, was delivered more than a year ago, and must have been in the hands of the Supreme Court reporter before the publication of the report in question. Why was it not alluded to?"

The writer is not justified in assuming that the judgment must have been in the hands of the reporter; judgments refusing leave to appeal to the Privy Council are seldom reported and the reporters never receive them, but are obliged to search for material in any case in which they desire to refer to them; but, assuming that the reporters had the material in the present case, what could they have done? The judgments are never published in full; the usual practice is to note at the end of a case that application for leave to appeal has been made to the Privy Council, and allowed or refused, as the case may be. But had such a note appeared at the end of the case of the *Grand Trunk Railway Co.* v. *McMillan*, it would have been misleading, inasmuch as it would have been open to the inference that the judgments of the Supreme Court were approved by the Privy Council, and so it was omitted; but the attempt to appeal will be found noted in the list of appeals to the Privy Council in the front pages of Vol. 16, which will be issued with the last number of the volume.

The next stricture on the report is the following: "The second clause of the head-note asserts, apparently as the decision of the entire Court, that the decision in *Vogel* v. *G.T.R.* does not govern. This, as we have endeavored to show, was not decided either by the Supreme Court or the Court of Appeal." The correctness of this depends on whether the Court of Appeal did or did not so decide. If it did, all the Judges of the Supreme Court held the same, for Mr. Justice Gwynne, with whom Fournier, J., concurred, bases his conclusion that the appeal should be dismissed on the reasons assigned in the Court of Appeal, and, of course, there is no question that the other members of the Supreme Court so decided. Then was the reporter justified in assuming that the Court of Appeal so held? The appellant's counsel in his factum says that they did, and Mr. Justice Strong, after referring to the judgment of the Divisional Court that Vogel's case did govern, says: "I entirely agree with the Court of Appeal that this view is erroneous." Further, an examination of the judgments in the Court of Appeal shows that some of the judges expressly dissented from the view that Vogel's case did govern, and they all base their judgment in favor of the plaintiff on other grounds. It is evident, therefore, that the reporter had good grounds for giving this holding as emanating from the entire Court, and could not have done otherwise if he noticed the point at all.

The next and last objection to the head-note is as to the holding, on a condition of a contract in the case requiring notice of loss of goods to be given within thirty-six hours, which holding is as follows: "*Held*, per Strong, J., that a plea setting up non-compliance with this condition having been demurred to, and the plaintiff not having appealed against the judgment over-ruling the demurrer, the question as to the sufficiency in law of the defence was *res judicata*." As to this

the writer says, "One would gather from this that Strong, J., alone held this opinion; but, as we have seen, Taschereau, J., agreed with the judgment of Strong, J. But curiously enough it so happens, as an examination of the pleadings in the appeal case discloses, *that the plea in question was never demurred to at all.*"

We will first deal with the question of fact contained in the last sentence. The holding is given in almost the exact words used by Mr. Justice Strong in his judgment; so, if the writer is correct, his Lordship has founded that holding upon a state of facts which did not exist. If such were the case, the reporter would be perfectly justified in framing his head-note upon the judgment as it stood, but the fact is that this is one of the instances of the writer's ignorance of his own case, for there can be no doubt that the plea in question was demurred to. The demurrer was to paragraphs four and eight, among others, of the statement of defence, and both these paragraphs set up a breach of this condition; Mr. Justice Strong is perfectly right as to the facts, and they are presented in the same way in the appellant's factum.

Then, as to the objection, which is repeated in another place, that the holding should not have been by Strong, J., alone, but by Strong and Taschereau, JJ. What is the fact as to that? Mr. Justice Taschereau simply says: "I think the appeal should be allowed for the reasons stated in the judgment of Mr. Justice Strong." Is the reporter to assume that Taschereau, J., agrees with everything contained in Judge Strong's judgment? I think the most that can be said is that he concurs in the grounds upon which Judge Strong disposes of the case, and not in any dicta holdings which are not necessary for such disposition. At all events it is a vexed question, and one which I have no doubt is troublesome to all reporters how far the concurrence extends in such cases, and the Supreme Court reporters have always endeavored in such case to avoid the risk of making a judge appear to decide what he may have had no intention of holding. Moreover, why should the writer complain that a holding which he considers wrong, and founded on a misapprehension of facts, is restricted to a single judge? He surely would not wish to multiply error.

The only other point in which the report is attacked is in regard to the statement of facts. I do not propose to notice that, as the objection appears to be that the reporter did not state everything that the writer considers should have appeared; but it must be remembered that the statement of facts is only supposed to contain what is necessary for a proper understanding of what is decided by the judgments, and is not a history of the entire facts of the case.

I venture to assert that if any intelligent lawyer, who has had experience of law reporting, will take the trouble to examine the report of this case, he will come to the conclusion that the severe strictures of the writer are not supported by the facts, and are entirely unwarranted. It would be a hopeless task for reporters to shape their work so as to satisfy unsuccessful litigants or their solicitors who too closely identify themselves with them. The Supreme Court Reports may not be perfect, but the case in question is certainly free from the objections urged against it, and will, I am satisfied, bear any investigation made by a candid and impartial critic.

Yours truly,

C. H. MASTERS,
Assistant Reporter, S.C.C.

[We know nothing of the case except what appeared in the report, and in the above letter. Whilst we feel that the reporter is entitled to ample opportunity to answer the strictures contained in the article to which reference is made, yet we are satisfied the solicitor mentioned in the above communication would not knowingly make any misrepresentation or misstatement.—ED. C. L. J.]

DIARY FOR JULY.

1. Tues....Dominion Day. Long vacation begins.
3. Thur...Quebec founded, 1608.
4. Fri .....Declaration of American Independence, 1776.
5. Sat.....Battle of Chippewa, 1814.
6. Sun.....*5th Sunday after Trinity.*
7. Mon.....County Court Sittings for Motions except in York, begin. Col. Simcoe Lieut.-Gov. of Ontario, 1792.
10. Thur ...Christopher Columbus born, 1447.
12. Sat ..... County Ct. Sittings, for Motions, except in York and.
13. Sun.....*6th Sunday after Trinity.* Sir John Robinson, 7th C. J. of Q. B., 1829.
15. Tues....St. Swithin. Manitoba entered Confederation, 1870.
19. Sat.....Quebec capitulated to the British, 1629.
20. Sun.....*7th Sunday after Trinity.*
22. Tues.....W. H. Draper, 9th C. J. of Q. B., 1863. W. B. Richards, 3rd C. J. of C. P., 1861.
23. Wed.....Upper and Lower Canada united, 1840.
24. Thur....Battle of Lundy's Lane, 1814.
25. Fri.....Canada discovered by Cartier, 1534.
27. Sun.....*8th Sunday after Trinity.* Wm. Osgoode, 1st C. J. of Q. B., 1792.
29. Tues.....First Atlantic Cable laid 1866.
30. Wed.....Relief of Derry, 1689.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

[June 12.

SPINNEY *v.* OCEAN MUTUAL INS. CO.

Marine insurance—Delay in prosecuting voyage —Deviation—Increase of risk.

The cargo of a coasting vessel was insured for a voyage from Pubnico, N.S., to Lunenburg or Halifax, the policy containing the usual clause allowing the vessel, in case of extremity, to put into and stay at any port or ports without prejudice to the insurance. The vessel sailed on December 15th, 1886, and on Dec. 21st arrived off Shelburne Harbor and put in there for shelter. The next day she started again, but returned to the harbor, remaining until Dec. 27th, when she went out and again returned. She did not attempt to sail again until Jan. 3rd at midnight and was driven back by a storm, and on Jan. 4th she got out of the harbour, and there being a heavy sea attempted to get back, but got on shore and was wrecked. In an action to recover the insurance, evidence was given by the shipmasters and the log of a Government vessel cruising in the vicinity that the vessel could have proceeded on her voyage several times during the stay in Shelburne, and it was shown that other vessels had put into Shelburne during the same time and had gone to sea again. The Insurance Company pleaded among other pleas barratry and deviation. The trial judge held that the conduct of the master of the insured vessel, there being no satisfactory explanation or excuse offered for his delay, amounted to barratry, and gave judgment for the defendants on that plea. The full court, on appeal, held that barratry was not established, as it depended on the evidence of a witness to whom the trial judge attached no credit, but they sustained the verdict on the ground of deviation.

On appeal to the Supreme Court of Canada

Held, affirming the judgment of the court below (21 N S. Reports 244) that there is an implied condition in a contract of marine insurance, not only that the voyage shall be accomplished in the ordinary track or course of navigation, but that it shall be commenced and completed with all reasonable and ordinary diligence; any unreasonable or unexcused delay, either in commencing or prosecuting the voyage, alters the risk and absolves the underwriter from liability for subsequent loss.

Held, also, that in case of deviation by delay, as in that of departure from the usual course of navigation, it is not necessary to show that the peril has been enhanced in order to avoid the policy.

Appeal dismissed with costs.

Henry, Q.C., and *Bingay* for the appellants.

Borden for the respondents.

[June 12.

FITZRANDOLPH *v.* MUTUAL RELIEF SOCIETY OF NOVA SCOTIA.

Life Insurance—Application for policy—Reference to application in policy—Construction—Warranty—Misstatement.

An application for membership in a mutual insurance society contained a declaration by the applicant warranting the truth of the answers to the questions, and of the statements in such application, and an agreement that if any of the same were not true, full and complete, the bond of membership issued thereon should be void. Among the questions in the applications was one requiring the applicant to

answer "yes" or "no" as to whether he had ever had any of certain diseases named. The list of such diseases was printed in perpendicular columns, and opposite the disease at the head of each column the applicant wrote "no," and underneath it, opposite the other diseases named, placed marks like inverted commas.

On the trial of an action to recover the amount insured by a bond issued in pursuance of this application, it was found as a fact that he applicant had had one of the diseases opposite which the said marks appeared. The bond issued purported to insure the applicant "in consideration of statements made in the application herefor," etc.

Held, affirming the judgment of the Supreme Court of Nova Scotia (21 N. S. Reports 274) that the application was incorporated with the bond and made part of the contract for insurance, and that whether the applicant intended the mark opposite the disease which it was found he had had to mean "no," or intended it as an evasion of the question, the bond was void for breach of the warranty in the application.

Appeal dismissed with costs.

Borden for the appellant.

Henry, Q.C., for the respondent.

[June 12.

THE NORTH SHORE RAILWAY COMPANY *v.* MCWILLIE ET AL.

Railway—Damages caused by sparks from locomotive—Responsibility of Company—R. S.C., c. 109, sec. 27, 51 Vict., c. 29, sec. 287—Limitation of actions for damages.

A railway company by running a heavy train on an up grade when there was a strong wind caused an unusual quantity of sparks to escape from the locomotive, which set fire to a barn situated in close proximity to the railway track.

Held, affirming the judgment of the courts below, that there was sufficient evidence of negligence to make the railway company liable for the damage caused by the fire. Per GWYNNE, J., that the "damage" referred to in sec. 27 of c. 109 R.S.C., and sec. 287 of 51 Vict., c. 29, is "damage" done by the railway itself, and not by reason of the default or neglect of the company running the railway or of a company having running powers over it, and therefore the prescription of six months referred to in said sections is not available in an action like the present.

Appeal dismissed with costs.

Brosseau for appellant.

Robinson, Q.C., and *Geoffrion*, Q.C., for respondent.

[June 12.

JONES *v.* FISHER.

Damage to land by construction of dam—Servitude—Arts. 503, 549, C.C., C.S.L.C., c. 51—Improvement of water courses.

Where a proprietor has for the purpose of improving the value of a water power built a dam over a water course running through his property and has not constructed any mill or manufactory in connection with the dam, he cannot, in an action of damages brought by a riparian proprietor whose land has been overflowed by reason of the construction of the dam, justify under the provisions of C.S.L.C. c. 5.

Where the proprietor of a water course raises the level of the water by the construction of a dam so as to overflow the land of other riparian owners, he cannot acquire by possession or prescription a right or title to the maintenance of the dam in question. Arts. 503, 549 C. C

Appeal dismissed with costs.

Laflamme, Q.C., for appellant.

Geoffrion, Q.C., and *Duffy* for respondent.

[June 12.

VENNER *v.* SUN LIFE INSURANCE COMPANY.

Life insurance—Unconditional policy—Misrepresentations—Effect of—Indication of payment—Return of premium—Additional parties to a suit—R.S.C., c. 124 secs. 27 and 28—Arts. 2487, 2488, 2585 C. C.

An unconditional life policy of insurance was issued in favour of a third party, creditor of the assured, "upon the representations, agreements and stipulations" contained in the application for the policy signed by the assured, one of which was that "if any misrepresentation was made by the applicant or untrue answers given by him to the medical examiner of the company then in such a case the premiums paid would become forfeited and the policy be null and void." Upon the death of the assured the person to whom the policy was made payable sued

the company, and at the trial it was proved that the answers given by the applicant as to his health were untrue, the insurer's own medical attendant stating that assured's was a life not insurable.

Held, 1st, that the policy was thereby made void *ab initio*, and the insurer could invoke such nullity against the person in whose favour the policy was made payable and was not obliged to return any part of the premium paid.

2nd. That the statements misrepresented being referred to in express terms in the body of the policy, the provisions of secs. 27 and 28, R. S.C., c. 124, could not be relied on to validate the policy, assuming such enactments to be *intra vires* of the Parliament of Canada, upon which point it was not necessary to decide.

3rd. That the indication by the assured of the person to whom the policy should be paid in case of death, and the consent by the company to pay such person did not effect novation, (Art. 1174 C.C.), and the provisions contained in Art. 1180 C.C. are not applicable in such a case.

It is too late to raise an objection for the first time on the argument before the Supreme Court that the legal representatives of the assured were not made parties to the contestation between the parties in the cause.

Appeal dismissed with costs.

Geoffrion, Q.C., and *Amyot*, Q.C., for appellant.

Langelier, Q.C., for respondent.

[June 12.

CANADA SOUTHERN RAILWAY CO. *v.* JACKSON.

Railway Co.—Negligence—Accident to employee—Performance of duty—Contributory negligence.

J., a switch-tender of the C. S. Ry. Co., was obliged to cross a track in the station yard to get to a switch, and he walked along the ends of the ties which projected some sixteen inches beyond the rails. While doing this an engine came behind him and knocked him down with his arm under the wheels and it was cut off near the shoulder. On the trial of an action against the company in consequence of such injury the jury found that there was negligence in the management of the engine in not ringing the bell and in going faster than the law allowed. They also found that J. could not have avoided the accident by the exercise of reasonable care.

Held, affirming the judgment of the court below, GWYNNE and PATTERSON, JJ., dissenting, that there was no such negligence on J.'s part as would relieve the company from liability for the injury caused by improper conduct of their servants.

Held, per TASCHEREAU and PATTERSON, JJ., that the Workmen's Compensation for Injuries Act of Ontario, 49 Vict., c. 28, applies to the C. S. Ry. Co. notwithstanding it has been brought under the operation of the Government Railways Act of the Dominion.

Appeal dismissed with costs.

Symons for the appellants.

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

[June 12.

CLARKSON *v.* RYAN.

Lien—Costs of execution creditor—Assignment for general benefit of creditors—Construction of Statute 48 Vic., c. 26, s. 9—49 Vic., c. 25, s 2.

48 Vict., c. 26, s. 9 (o). as amended by 49 Vict., c. 25, s. 2 (o), provides that an assignment for the general benefit of creditors has precedence over all executions not completely executed by payment, "subject to the lien, if any, of an execution creditor for his costs where there is but one execution in the sheriff's hands, or to the lien, if any, of the creditor for his costs who has the first execution in the sheriff's hands."

Held, per RITCHIE, C. J., FOURNIER and TASCHEREAU, JJ., affirming the judgment of the Court of Appeal (16 Ont. App. R. 311) that the lien referred to in this section attaches to the full costs of the action of the execution creditor against the insolvent debtor.

Held, per GWYNNE and PATTERSON, J.J., dissenting, that such lien is only for the costs of issuing execution and sheriff's fees, etc., incurred in executing the same.

The Statute of Ontario requiring special leave to appeal to the Supreme Court in cases where the amount in controversy is under $1,000 (s. 43, Jud. Act, 1881), is *ultra vires* of the legislature of Ontario and not binding on the Supreme Court.

The Court of Appeal cannot impose upon a suitor conditions upon which he shall be allowed to appeal to this Court.

Appeal dsmissed with costs.

Foy, Q.C., for the appellant.

Aylesworth for the respondent.

[June 12.

SHOOLBRED *v.* CLARK.

Winding-up Act—R.S.C., c. 129—Application of to Provincial Company—Winding-up proceedings—Reference to master.

The Union Fire Insurance Co. was incorporated by the Ontario Legislature, and having become insolvent an assignee was appointed to settle its affairs under the Insolvent Act of 1875. When the Winding-up Act was passed a petition was presented to the Court to have the company wound up under its provisions and a winding-up order was made which was set aside by the Supreme Court of Canada (14 Can., S.C. R. 642). A second winding-up order having been made and confirmed by the Court of Appeal, a second appeal was had to the Supreme Court by S., a shareholder.

Held, affirming the judgment of the Court of Appeal (16 Ont. App. R., 161) and that of the Chancellor (14 O. R., 618) that notwithstanding the company was incorporated by the Provincial Legislature, it could be put into compulsory liquidation and wound up under the Dominion Winding-up Act, R.S.C., c. 129.

Held, also, that the powers assigned to Provincial Courts or judges by the Winding-up Act are to be exercised by means of the ordinary machinery of the courts and their ordinary procedure. It was therefore no ground of objection to the winding-up order in this case that it was referred to a Master to settle the security to be given by the liquidator appointed therein.

Appeal dismissed with costs.

S. H. Blake, Q.C. and *McLean* for the appellant.

Bain, Q.C., for the respondents.

[June 12.

TURNER *v.* PREVOST.

Statute of frauds—Contract relating to interest in land—Part performance.

B., a resident of British Columbia, wrote to his sister in England that he would like one of her children to come out to him, and in a second letter he said, "I want to get some relation here, for what property I have, in case of sudden death, would be eat up by outsiders and my relations would get nothing." On hearing the contents of these letters, T., a son of B.'s sister and a coal miner in England, came to British Columbia and lived with B. for six years. All that time he worked on B.'s farm and received a share of the profits. After that he went to work in a coal mine, Idaho. While there he received a letter from B. containing the following:—"I want you to come at once as I am very bad. I really do not know if I shall get over it or not and you had better hurry up and come to me at once, for I want you and I dare say you will guess the reason why. If anything should happen to me you are the person who should be here." On receipt of this letter T. immediately started for the farm, but B. had died and was buried before he reached it. After his return he received the following telegram which had not reached him before he left for home: "Come at once if you wish to see me alive, property is yours, answer immediately. (Sgd.) B." Under these circumstances T. claimed the farm and stock of B., and brought an alleged agreement by B. that the same should belong to him at B.'s death.

Held, affirming the judgment of the Court below, that as there was no agreement in writing for the transfer of the property to T., and the facts shown were not sufficient to constitute a part performance of such agreement, the fourth section of the Statute of Frauds was not complied with and no performance of the contract could be decreed.

Appeal dismissed with costs.

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

Moss, Q.C., for respondent Power.

McCarthy, Q.C., and *A. F. McIntyre* for other respondents.

[June 13.

POWER *v.* MEAGHER.

Trustees—Commission to—Rule of Law.

Prior to the passing of the Nova Scotia Statute 51 Vict. c. II. sec. 69, there was no statutory authority for trustees to receive commission for their services when none was provided for by the instrument creating the trust. In a case which did not come within the statute

Held, reversing the judgment of the Supreme Court of Nova Scotia (21 N. S. Reports, 184), that the English rule of law prohibiting such

commission was applicable to and in force in that Province.

Appeal allowed with costs.

Hon. L. G. Power appellant, in person.

Henry, Q.C., for the respondent.

[June 13.

DUGGAN *v.* DUGGAN.

Will—Legacy under—Contingent interest—Protection against waste.

The will of J. D. contained a bequest to any child or children of a deceased brother of the testator who should be living at the death of the testator's wife. P. D. was the only son of such deceased brother, and during the life time of the widow he brought suit to have his legacy protected against dissipation of the estate.

Held, reversing the judgment of the court below, that P. D. had more than a possibility or expectation of a future interest ; that he had an existing contingent interest in the estate, and was entitled to have the property preserved so that his legacy could be paid in the event of the interest becoming vested.

Appeal allowed with costs.

E. L. Newcombe for the appellant.

Borden for the respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

BOYD, C.] June 4.

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

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

A vessel loaded with coal stranded under stress of weather, and was abandoned as a total loss to the underwriters, the plaintiffs. The owners of the cargo, the defendants, proposed to unload at their own expense, but the plaintiffs refused to allow this and told the defendants that they could not get the cargo without signing an average bond. Upon this the defendants signed a bond which was *ex facie* imperfect, and the plaintiffs took steps to save vessel and cargo by one expedition. They failed to rescue the vessel, but saved the larger part of the cargo. They now claimed upon adjustment contribution from the defendants for the expenditure incurred, which was in excess of the value of the salvage.

Held, that the vessel and her cargo were not when stranded in a common danger, and the expenditure was not for the preservation and safety of both ship and cargo, but for the deliverance of the vessel alone ; that the average bond signed did not bind the defendants to pay more than they were rightfully liable to pay, and the adjustment was no obstacle to the determination of the real liability, and that the defendants were liable only to pay what they would have paid to recover the cargo by their own exertions.

Osler, Q.C., for plaintiffs.

Delamere, Q.C., and *T. Urquhart* for defendants.

BOYD, C.] [June 4.

CUMMING *v.* LANDED BANKING & LOAN CO.

Trusts and trustees—Breaches of trust—Taking securities in name of one of two joint trustees—Pledging securities for advance—Misapplication of moneys advanced—Following securities in hands of pledgee.

W., one of two joint trustees, assumed to lend trust moneys on the security of mortgages on land, taking the mortgages to himself alone as trustee of the estate and effects of J. C., deceased. These mortgages were hypothecated by W. to the defendants, and moneys were advanced to him by the defendants, ostensibly to meet an unexpected call by one of the beneficiaries ; but the moneys were not so applied, nor otherwise for the benefit of the estate, and they were not required for any such purposes under the terms of the will creating the trust.

In an action by the other trustee and two new trustees, who were also beneficiaries, appointed in the stead of W :

Held, that W. had been guilty of two breaches of trust, and that the plaintiffs were entitled to follow the trust-securities and to make the defendants account for all moneys received by them thereunder.

Marsh, Q.C., for the plaintiffs.

S. H. Blake, Q.C., and *Mackelcan*, Q.C., for the defendants.

BOYD, C.] [June 4.

CANN *v.* KNOTT.

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

The defendant was locatee of certain land under the Free Grants and Homesteads Act, R.S.O., c. 25, and duly obtained patents therefor. Afterwards he and his wife sold and conveyed parts of the land, taking back mortgages to secure the purchase money.

Held, that the mortgages were not interests in the land exempt from levy under execution within the meaning of s. 20, s-s. 2.

The exemption extends to the land or any part thereof or interest therein, so long as it is held by the original location title, whether before or after patent; but where there has been a valid alienation, a mortgage taken by the original locatee does not vest in him qua locatee. Moreover, the word "interest," used in the subsection, does not extend to the chattel interest of a mortgagee.

D. Urquhart for the plaintiff.

Foy, Q.C., for defendants.

Div'l Ct.] [June 6.

MCCRANEY *v.* MCCOOL.

Partnership—Dissolution—Pending contract.

The defendants contracted to deliver lumber to a firm of three partners. Before delivery the firm was dissolved, and the defendants refused to carry out their contract.

In an action brought in the individual names of the three partners for damages for non-delivery,

Held, that the dissolution of the firm was no justification in law for the defendants' refusal to carry out their contract.

Fullerton, Q.C., for plaintiffs.

M. J. Forman for defendants.

Chancery Division.

BOYD, C.] [June 6.

MACKLEM *v.* MACKLEM ET AL.

Will—Devise—Forfeiture—Actual possession and occupation—Possession by servant, caretaker, or worker on shares.

S. M. had become entitled under T. C. S.'s will to certain property called "Clark Hill," of which T. C. S. was owner when he died, and also to an undivided interest in certain other property of which T. C. S. was tenant in common with others. He also became entitled to a legacy under the following clause of A. H. S.'s will: "I will and direct that so soon as S. M. * * can and does take actual possession of the real estate and property * * under the will of T. C. S. * * my executors shall * * so long as he remains the owner and actual occupant of the said real estate pay over to him * * the annual sum of $2,000 to enable," etc.

Held, that this clause read in connection with the will of T. C. S., referred only to the land of which T. C. S. was absolute owner and not to the land he owned as tenant in common.

Held, also, that actual possession and occupation as to the land is consonant with and satisfied by the possession of a servant or caretaker or even a worker on shares.

F. Hodgins for plaintiff.

Robinson, Q.C., for S. Macklem.

Moss, Q.C., and *Bruce*, Q.C., for Mrs. Fuller and assignees.

Bicknell for D. C. Plumb, Executor of J. B. Plumb.

O. Macklem for Mrs. Becher, and Executors of Julia A. Macklem.

Div'l Ct.] [June 9.

WHITE *v.* TOMALIN.

Sale of goods—Agreement in writing—Offer—Statute of Frauds—Evidence.

In an action for specific performance of an alleged agreement worded as follows: "I hereby agree to sell my stock of * * * and agree to take in payment for said stock * * one hundred acres of land being * * (terms set out) and signed J. T. (defendant) and F. B. McM. (assignor to plaintiff)," it was

Held (affirming FALCONBRIDGE, J.) that the document was not an agreement in writing sufficient to satisfy the Statute of Frauds but a mere offer or proposal to sell.

It was shown that an acceptance worded "I hereby agree to purchase the above mentioned stock in the terms aforesaid and to convey the land intended to be taken in exchange," was subsequently added and signed by F. B. McM.

Held, that the offer originally vague and indefinite could not be made certain in that way, for any other person as well as McM. could have with as much reason appended a similar acceptance.

Held, also, that from the frame of the offer one could not know to whom it was made without parol evidence to supplement the writing, which could not be given to supply information in that regard.

Aytoun Finlay and *Schoff* for the plaintiff.

Bain, Q.C., and *Beynon*, Q.C., for the defendant.

Div'l Ct.] [June 9.

PHELPS & CO. *v.* THE ST. CATHARINES AND NIAGARA CENTRAL R. W. CO.

Railways and Railway Companies—Bondholders rights in respect to property of Railway Companies—Judgment creditors right to attach the Company's money on deposit in a Bank—Appointment of Receiver—Remedy.

On an appeal from the judgment of BOYD, C., reported 18 O. R. 581, it was

Held, (reversing BOYD, C.), that so long as a Railway Company is a going concern, bondholders have no right, even though interest on their bonds be overdue and unpaid, to seize or take or sell or foreclose any part of the property of the Company by virtue of their mortgage bonds, and that their remedy is the appointment of a receiver, and that the bondholders in this case were not entitled to the money in question.

Collier for the judgment creditors.

Hoyles, Q.C., and *Ingersoll* for the bondholders.

Practice.

STREET, J.] [Dec. 23, 1889.

IN RE. SWEETMAN AND TOWNSHIP OF GOSFIELD.

Municipal drainage by-law—Motion to quash—R.S.O., c. 184, ss. 571, 572, construction of—Time—Service of notice of motion and filing affidavits.

A municipal drainage by-law was passed on the 1st November, 1889, and on the 12th December, 1889, notice of a motion to the Court for an order quashing it, was served upon the municipal corporation, and affidavits in support of the motion were filed. The notice was for Friday, the 20th Dec.

Held, that the meaning of s. 572 of R.S.O., c. 184, is that in case the application to quash is not made within six weeks, prescribed by s. 571; the by-law shall be valid; and that the service of the notice and the filing of the affidavits within the six weeks was a sufficient making of the application.

Langton for the applicant.

W. H. Blake for the township.

FERGUSON, J.] [May 31.

WALLBRIDGE *v.* GAUJOT.

Costs—Third party—Defending action.

In an action for rent or royalties upon iron received by the defendants, the defendants served a notice upon a third party, claiming contribution from him. The third party appeared; and an order was made that he should be at liberty to defend the action as regarded the questions between the plaintiff and the defendants only, and to appear at the trial, call witnesses cross-examine the witnesses called by the plaintiff and defendants, and be bound by the findings. The third party delivered a statement of defence, which was directly against the plaintiff's statement of claim, except a portion thereof, which stated that he was not a proper party, and that no right of contribution existed against him, but this portion was struck out at the trial upon his own application. The plaintiff was successful in the action.

Held, that the third party had adopted the position of one who was called upon by his own interest to defend the action, and that he should not recover from the defendants who brought him in his costs of so defending it.

W. Cassels, Q.C., for the defendant, Palmer.

W. M. Douglas for the third party.

Chy. Div'l Ct.] [June 16.

LEACH *v.* GRAND TRUNK R.W. CO.

Discovery—Examination of officer of railway company—Driver of "light engine"—New evidence on appeal—Rule 585—Leave to appeal—Delay.

A rule of the defendant company provided that the driver in charge of a "light engine"

has all the responsibilities of a conductor in cases where a train of cars is attached to the engine.

Held, that the driver of a light engine which knocked down and killed the man for whose death the action was brought, was an officer of the company who could be examined for discovery under Rule 487.

Knight v. *Grand Trunk Railway Co.*, 13 P.R., 386, distinguished.

New evidence was allowed to be used upon appeal under Rule 585, and the decision of FERGUSON, J., 13 P.R., 388, was reversed thereupon. The discovery of the new evidence, after a sitting of the Divisional Court had passed, was received as an excuse for delay.

J W. McCullough for plaintiff.

D. Armour for defendants.

FERGUSON, J.] [July 4.

MILLER *v.* SPENCER.

Long vacation—Settling minutes of judgment.

A direction to the Registrar to settle in long vacation the minutes of a judgment pronounced on 30th June was refused.

W. H. Blake for plaintiff.

Q.B.D. Ct.] [June 27.

IN RE SMITH AND THE CITY OF TORONTO.

Costs—Arbitration—Powers of Arbitrators—35 Vict., c. 79—R.S.O., c. 184, ss. 483, 399—Duty of taxing officer.

By 35 Vict., c. 79, the waterworks commissioners of the City of Toronto were authorized to expropriate lands for the purposes of waterworks, and in case of disagreement to have the value ascertained by arbitration; and by 41 Vict., c. 41, all the powers of the commissioners were vested in the city corporation.

The city corporation, desiring to expropriate certain land for waterworks purposes, passed a by-law reciting the above enactments and authorizing the expropriation, and afterwards served a notice offering to pay the land-owner $25,000, and, in the event of his not accepting, requiring him "pursuant to s. 393 of the Municipal Act" to appoint an arbitrator. The arbitrators appointed took the oath prescribed by the Municipal Act, which was different in substance from that prescribed by 35 Vict., c. 79.

Held that s. 483 of the Municipal Act, R.S.O., c. 184, had the effect of superseding the procedure for arbitration provided by 35 Vict., c. 79, and of substituting therefor the procedure for arbitration provided by the Municipal Act; and that the city corporation, having adopted and taken advantage of the procedure provided by the Municipal Act, could not escape the consequences, and therefor the arbitrators had power under s. 399 of the Municipal Act to award costs to the land-owner, there being no power to do so under 35 Vict., c. 79.

Semble, also, that the arbitrators having awarded costs, and their award not having been moved against, it was the duty of the taxing officer to tax the costs.

H. S. Osler for the land-owner.

Biggar, Q.C., for the City of Toronto.

Law Society of Upper Canada.

LAW SCHOOL—HILARY TERM, 1890.

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

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

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

CURRICULUM OF THE LAW SCHOOL.

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

Lecturers, E. D. ARMOUR. A. H. MARSH, LL.B.

Examiners, R. E. KINGSFORD, LL.B. P. H. DRAYTON.

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

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

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

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

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

By the Rules passed in September, 1889, Students-at-Law and Articled Clerks who are entitled to present themselves either for their First or Second Intermediate Examination in any Term before Michaelmas Term, 1890, if in attendance or under service in Toronto are required, and if in attendance or under service elsewhere than in Toronto, are permitted, to attend the Term of the School for 1889-90, and the examination at the close thereof, if passed by such Students or Clerks shall be allowed to them in lieu of their First or Second Intermediate Examinations as the case may be. At the first Law School Examination to be held in May, 1890, fourteen Scholarships in all will be offered for competition, seven for those who pass such examination in lieu of their First Intermediate Examination, and seven for those who pass it in lieu of their Second Intermediate Examination, viz., one of one hundred dollars, one of sixty dollars, and five of forty dollars for each of the two classes of students

Unless required to attend the school by the rules just referred to, the following Students-at-Law and Articled Clerks are exempt from attendance at the School:

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

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

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

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

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

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

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

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

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

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

Common Law.

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

Equity.

Snell's Principles of Equity.

Statute Law.

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

In this year there will be two lectures each day except Saturday, from 3 to 5 in the afternoon. On every alternate Friday there will be no lecture, but instead thereof a Moot Court will be held.

The lectures on Equity and Evidence will embrace one-fourth of the total number of lectures and will be delivered by a lecturer.

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

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

Criminal Law.

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

Equity.

Lewin on Trusts.

Torts.

Pollock on Torts.
Pmith on Negligence, 2nd edition.

Evidence.

Best on Evidence.

Commercial Law.

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

Private International Law.

Westlake's Private International Law.

Construction and Operation of Statutes.

Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law.

British North America Act and cases thereunder.

Practice and Procedure.

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

Statute Law.

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

In this year there will be two lectures on each Monday, Tuesday, Wednesday, and Thursday, from 11.30 a.m. to 12.30 p.m., and from 4 p.m. to 5 p.m., respectively. On each Friday there will be a Moot Court from 4 p.m. to 6 p.m.

The lectures in this year on Contracts, Criminal Law, Torts, Private International Law, Canadian Constitutional Law, and the construction and operation of the Statutes, will embrace one-half of the total number of lectures, and will be delivered by the Principal.

The lectures on Real Property, and Practice and Procedure will embrace one-fourth of the total number of lectures, and will be delivered by a lecturer.

The lecturers on Equity, Commercial Law, and Evidence, will embrace one-fourth of the total number of lectures, and will be delivered by a lecturer.

GENERAL PROVISIONS.

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

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

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court.

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

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

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

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

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

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

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

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

The number of lectures on each of the four subjects of this year will be one-fourth of the whole number of lectures.

The first series of lectures will be on Contracts, and will be delivered by the Principal.

The second series will be on Real Property, and will be delivered by a Lecturer.

The third series will be on Common Law, and will be delivered by the Principal.

The fourth series will be on Equity, and will be delivered by a Lecturer.

SECOND YEAR.

Criminal Law.

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

Real Property.

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

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.
Bigelow on Torts—English Edition.

Equity.

H. A. Smith's Principles of Equity.

Evidence.

Powell on Evidence.

Canadian Constitutional History and Law.

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

Practice and Procedure.

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

Statute Law.

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

In this year there will be two lectures on each Monday, Tuesday, Wednesday, and Thursday from 10.30 to 11.30 in the forenoon, and from 2 to 3 in the afternoon respectively and on each Friday there will be a Moot Court from 2 to 4 in the afternoon.

The lectures on Criminal Law, Contracts, Torts, Personal Property, and Canadian Constitutional History and Law will embrace one-half of the total number of lectures and will be delivered by the Principal.

The lectures on Real Property and Practice and Procedure will embrace one-fourth of the total number of lectures and will be deliver d by a lecturer.

SPECIAL NOTICE.—Petition for Certificate of Fitness, Certificates of Service, Affidavit of Service, Articles of Clerkship, and assignments (if any) must be filed with the Secretary on or before the third Saturday before Term. The fees are payable at the same time. (L. S. Rule 188). Each affidavit of execution must state the date of execution of the articles or assignments. (R. S. O. 1887, ch. 147, sec. 5, ss. 1.

Notice for Call to the Bar must be filed with the Secretary on or before the fourth Monday before Term.

Petition for Call, Bond, Schedules A and B, and Presentation notice must be filed with the Secretary on or before the third Saturday before Term. The fees are payable at the same time.

The candidate is particularly requested to see that his papers for Call and Solicitor Examination are regular before the first day of Term.

J. H. ESTEN,
Sec. L. S.
