## DIARY FOR APRIL.

4. Sun....Low Sunday.
5. Mon. ..County Court Terms begin, County Court sitt. without jury (ex. York) begin.
8. Thur..Supreme Court Act assented to, 1875.
10. Sat. ..County Court Terms end.
11. Sun. ..Second Sunday after Easter.
18. Sun. ..Third Sunday after Easter.
23. Fri. ...St. George's Day.
24. Sat. .. Earl Cathcart, Governor General, 1846.
25. Sun. ..Fourth Sunday after Easter.
27. Tues...Queen Victoria proclaimed Empress of India, 1876.

## CONTENTS.



# Canada Law Journal.

*Toronto, April, 1880.*

Mr. McCarthy, Q.C., has introduced an Act in the Dominion Parliament to get rid of the difficulty we referred to last month (*ante* p. 71) by giving the Supreme Court power to make amendments and to take further evidence when required.

The *Canada Gazette*, of the 23rd March, contains an announcement of the disallowance of an Act passed by the Legislature of Ontario, on 11th March, 1879, intituled "An Act respecting the administration in the northerly and westerly part of Ontario," on the ground that it was not competent for the Local Legislature to pass such an Act.

The Attorney-General has wisely yielded to the wish generally entertained by the profession, and expressed in this journal, that the new Judicature Act should stand over until next session. It will doubtless then become law, but in the meantime there will be ample time to make suggestions, which we doubt not, will be fully considered and acted upon, if thought desirable.

The rules of the English Judicature Act provide for suing partners in the name of the firm. This is copied into the proposed Canadian Judicature Act, which, we are glad to say, is not yet law. In a late case James, L. J., observed that some difficulty may arise from this provision inasmuch as we have not yet introduced into our law the notion that a firm is *persona*. If there is a change in the constitution of the firm, so that were partners at the time of

the contract, and E. F. G. at the time of the action, it might be that you could not sue the firm as such: *Ex p. Blain*, 28 W. R. 336.

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The Division Court Act brought in by the Government has passed with many amendments—sixty-eight sections in all. The efforts of the "Conservative" Opposition further to subvert the existing order of things was, fortunately, unsuccessful. The Division Court is no longer what it was constituted as—the poor man's court; and the pettifogging peddler has been helped to shove himself one step further into the professional hall-door. The Attorney-General and the learned leaders of the Opposition, together with the Benchers, might as well open it wide and bid him and his conveyancing brother welcome.

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The Insolvent Act is no more. The strong feeling evinced against it last session had partly died away this year; but its doom was sealed. We trust it may be an omen of better times. We shall now see how far the Act, prepared by the Attorney-General, will meet the necessities of the case. We have had occasion to say some strong things against Sheriffs, who will be principally concerned in the administration of the new Act; but we are satisfied that nothing could be more unsatisfactory than the reign of official assignees. Creditors will feel now that pleasant sense of relief which comes over the backwoodsmen when the mosquito season is over.

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An important case was recently decided in the Supreme Court, which can hardly be considered satisfactory in the result, at least to those who pin their faith to the judges of their own Province. Taking the judgments delivered in the different courts together, there were seven judges in favour of the defendant's contention, and six in favour of the plaintiff. But these six were all from Ontario, where the case arose—Wilson, Moss, Patterson, Burton, Strong, and Gwynne—a formidable array. The others were—Harrison, Morrison, Galt, Ritchie, Henry, Taschereau and Fournier. He would be a bold man who would lay money against the chance of a reversal if there were a fourth court to go to.

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The gossip going the round of the lay newspapers touching the alleged strictures of the Master of the Rolls on the judgments of the Lord Chancellor appears to be quite without foundation. The facts are that a passage was cited from one of Lord Cairns' judgments which was found to be unintelligible, whereupon Sir George Jessel said the judgment could not have been revised by the Chancellor—thereby intending to blame, not the judge, but the reporter. The Master of the Rolls afterwards conferred with the Lord Chancellor, who said he had had occasion to blame the reporter for not submitting some of his judgments to him for revision and that he always revised his decisions when they were sent to him by the reporter.

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The last number of the Supreme Court reports (No. 2, vol. 3) is just received. There has been a gradual and marked improvement in these reports since the first number was issued. We have had occasionally to point out mistakes in these as well as other reports, and to urge various suggestions for improvements; but it has been done in no unkind spirit. We know also the difficulties which the publisher, Mr. Cassels, has had to contend with. It is, therefore, the more gratifying to see that these reports, which ought to

be the best in the country, being those of the highest Court, have now assumed an appearance very like the English models. The courteous and energetic registrar of the Court, who is responsible for the publishing, is to be congratulated upon this. We understand that applications and subscriptions for these reports are to be sent to Mr. Cassels direct.

## THE SUPREME COURT.

We shall not be accused of speaking evil of dignities, when we refer to the feeling which has arisen against the Supreme Court, inasmuch as expression has been given to it on several occasions in the halls of Parliament itself.

Nor do we refer to these complaints, except so far as a useful purpose would seem to be served by so doing. Some of the matters complained of are things of the past, and some are unworthy of notice in a legal journal. The attempts that have been made to do away with the Supreme Court have come to nothing, and Parliament has unmistakeably pronounced it to be a necessary incident of Confederation. In this state of affairs it is in the interest, both of the profession and of the public, to consider some of the causes which do at the present time, or which may in the future, interfere with its usefulness. If the difficulties thus presenting themselves seem to point to any particular mode in which a change can beneficially be made, it will be for others to take the matter up, and, if possible, apply an appropriate remedy.

Under the most favourable circumstances the Court has much to contend with. Its members are called together from the four quarters of the Dominion; from Provinces having different systems of laws, different legal traditions, different practice, and one of them speaking a different language from the others. It is not, therefore, much to be wondered at if there is some want of homogeneity in the Court. So long as the same Judges remain together, there may in this be a gradual improvement. But here, again, the Judges are placed at a disadvantage. In Toronto, Montreal, and the capitals of the different Provinces, there are large and strong Bars, and a large and learned Bench; and this is especially so in Toronto, where there are congregated, at Osgoode Hall, no less than nine Judges of Superior Courts, and four Appellate Judges—thirteen in all. It is impossible to estimate, and unnecessary for us to enlarge upon the benefits derivable from assistance and attrition of that kind. In Ottawa, of course, the Judges are deprived almost entirely of this advantage.

A difficulty of much practical importance will from time to time be felt so long as the sittings of the Court are held, and the Judges are compelled to reside at Ottawa; and that is, the difficulty of obtaining for the Supreme Court Bench the best available talent. Men will not, as a rule, break up their establishments, scatter their families, and leave their friends to live in an out-of-the-way, and to them uncongenial place like Ottawa; the only countervailing inducements being a small increase of salary, and a name, which may be much to the few, but little to the many, in comparison to the disadvantages and discomforts. It is unnecessary to dilate upon the results which would flow from an inferiority in point of talent of those composing the Court of last resort. We are not, of course, speaking of those at present on the Bench, but of those who may be appointed after the glamour of the thing has disappeared, and possible recipients of the honour thoroughly understand how much they have to give up and how little they get in return.

We feel bound also to refer to another point which cannot be overlooked, but which we wish to touch upon as lightly as possible, not that any evil *has* resulted, or, we believe, *could* result during the present constitution of the Court as regards its *personnel*. It is, we conceive, contrary to sound policy that any Court which may be called upon to decide questions of Constitutional Law, and to decide Election cases, should live under the shadow of its appointing power. It may be said that this is a purely imaginary evil; but the imagination of such a thing would in itself be a source of evil, and should, if possible, be avoided. It was something of this kind, if we remember correctly, which induced Bismarck to move the Supreme Court of Prussia from any possible influence of this nature. It is, moreover, most wholesome for the Judges themselves (and they will be the first to reiterate these remarks), that they should live in a large rather than in a small city, and be subject to the restraining and beneficial influence of strong public and professional opinion, and surrounded by a large, able and well-trained Bar, and within the precincts, of such a place for example, as Osgoode Hall, replete with the noble traditions of its learned Judges, strong in their integrity and devotion to duty, examples for all time to those who shall occupy judicial positions.

So much for the Court itself and its members. We must also consider the suitors and the Bar. The former have a right to ask the best talent at the Bar to conduct their cases before the Court of final resort, but the circumstance of that Court being at Ottawa is often too strong for them. For example, a suitor in one of the Maritime Provinces would naturally wish to have his case presented by one of the best men there; but this would entail a very heavy expense, so that he is compelled to employ counsel residing at Ottawa, where the choice is necessarily limited. If the Court were at Toronto instead, he could secure the services of some of the most eminent men in the Dominion for a sum, which, in comparison to bringing counsel from Halifax, &c., would be trifling. In any case, Toronto would be, for all practical purposes, as near to them as Ottawa.

A consideration of these things would seem to point to one conclusion, and that is, the advisability of a removal of the headquarters of the Supreme Court from Ottawa to some more desirable place. Our Quebec friends would naturally prefer to see it in Montreal, but they are far too liberal to allow anything of a dog-in-the-manger policy to influence them, if they are convinced that any change should be made. We understand, moreover, that several eminent men from that Province have already said that if the choice lay between Ottawa and Toronto, they would prefer the latter. Both cities are in the Province of Ontario, and the further distance to Toronto would surely be counterbalanced by the many disadvantages incident to remaining at the present capital of the Dominion.

Our wish, however, at present is not so much to speak of the place where the Court should be placed, but to show some good reasons for a change from its present location. Anything which can, even in a slight degree, affect the well being of this Court must be of interest, not merely to the profession but to the public. We have not by any means exhausted the subject, and have hardly more than touched upon the negative side of the case. But we think we have suggested a few thoughts for the consideration of those who are responsible for the well being of the highest Court of our Dominion.

## *EVIDENCE OF COLLATERAL MATTERS.*

It is sometimes a question of nicety, and in jury trials of vast importance, to know when evidence may safely be given of occurrences similar to, but not specifically connected with the matters in issue between the parties. In so far as actions grounded on negligence are concerned, most of the recent authorities are collected and commented on in *Edwards* v. *The Ottawa River Navigation Company*, 39 U. C. R. 264. The Company in that case was sued for negligence in the construction and management of a steamboat, whereby sparks caused the ignition of the plaintiff's lumber yard. It was contended that the fire was caused by leaving the screens of the funnels open; and it was held not competent for the plaintiff to give evidence that on other occasions at different times and places the screens were open and cinders had escaped. This class of testimony could not assist the jury in coming to the conclusion that the fire in question was thus caused. As a contrast to this case, where the suit was in contract for the recovery of wages, and the dispute was whether the person who hired the plaintiff was the agent of the defendant, it was held proper to prove by persons who worked *at the same job* with the plaintiff, that they had applied to the defendant for payment, and were paid by him: *Stewart* v. *Scott*, 27 U. C. R. 27. To the same effect is an older case, in which the facts were that the wife of the defendant took her niece to the plaintiff's school, and while there the defendant visited her. The father of the young lady died while she was at school, but the plaintiff had never had any communication with him. It was held that the jury might consider evidence of tradespeople showing that the defendant had paid for various things ordered by his wife as evidencing a general recognition by the defendant of his wife's authority to bind him by her acts: *McGeorge* v. *Egan*, 3 Jur. O. S. 266. It is indeed questionable whether this case, as reported, has not carried the law of evidence a little too far, and this may account for its omission in the ordinary text-books.

Of unexceptionable authority, however, is the late case of *Woodward* v. *Buchanan*, L. R. 5 Q. B. 285. That was an action for work done and materials supplied to the defendant for houses, on the orders of a third person who it was alleged was the agent of the defendant. The latter denied that he was the owner of the houses, or the real principal. Evidence was received that other workmen had received orders from the defendant directly, to do the work at the *same houses*, without shewing that the plaintiff knew of these orders at the time he did his work. This line of evidence tended to shew by the conduct of the defendant that he was the owner of the houses in question. So in an action for money lent, the poverty of the alleged lender is a relevant fact to be proved by surrounding circumstances, *Dowling* v. *Dowling*, 10 Ir. L. R. N. S. 244.

In the last English case, *Blake* v. *The Albion Life Assurance Society*, 45 L. J. C. P. 663, the point we are dealing with arose first upon an application referred by Amphlett, B., to the full Court, to strike out certain paragraphs of the plaintiff's claim as irrelevant. The action was to recover the amount of a premium upon a policy effected with the defendants. It appeared that one Howard advertised himself as ready to lend money on personal security, and the plaintiff applied for a large loan. Howard required him to insure with the defendants and to deposit the policy as a security. This was done, but then Howard

declined to advance the money on various frivolous pretexts, and it was alleged that the defendants had paid over half the premium to Howard. The paragraphs complained of stated that in various other instances the defendants and Howard had pursued a similar course. The clauses were struck out as being not relevant. Coleridge, C. J., observed, "I am of opinion that they contain statements which are not evidence even in chief. It is in effect saying that there is fraud here, because there has been fraud in other cases." Brett J. took the same view, and said further, "they may be facts which, upon a cross-examination, might be brought out in order to damage the credit of the defendants or their witnesses." Lindley, J., hesitated as to the matters being evidence (see S.C. 24 W.R. p. 677). These learned Judges, however, must have reconsidered their views, because when the trial came on before Lord Coleridge he admitted evidence in chief of the other examinations, as tending to prove a system of fraud (L. R. 4. C.P.D. 97). During the argument for a new trial he said, "if our observations previously made were in effect only that you cannot prove one offence by merely proving another they are right. If they convey the idea that to complete the chain of proof in a case of fraud, other like frauds of the same offenders cannot be shewn by the evidence, our ruling was wrong and I will not be bound by it" (ib. 99).

The plaintiff's case was that there was an agreement between Howard and the defendant in order to defraud persons in the plaintiff's position, and, in support of this, evidence was given shewing that a number of other persons in consequence of similar advertisements had been induced to invest with the Company, and that, in each case, there had been a failure to get the money under circumstances exactly the same as those of the plaintiff's case, and that the same Howard had figured in these various transactions under different aliases. This kind of evidence was by all the judges *in Banc* held admissible. Mr. Justice Lindley put it on the ground that the various frauds formed part of a systematic series of fraudulent transactions. "If it can be shewn," he said, "that the fraud is one of a class having common features, I am of opinion that the evidence of the other frauds is admissible. The common feature in the present case is the false pretence." Mr. Justice Grove said that "the evidence was well received, because in many cases you can only prove fraud by showing what is behind: the question being one of intention, showing the intention, the motive or the design is the only way of showing the fraud. If this could not be done, fraud could often not be proved in cases where it exists." The Chief Justice agreed with both views, and said further, that the various transactions were not *res inter alios acta*, but necessary links in the chain of the plaintiff's proof.

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## *DIVISION COURT CLERKS AND BAILIFFS.*

We give the following remarks by a County Judge in answer to a letter to him, complaining of the neglect of a clerk in collecting money on a claim placed in his hands for suit. It may serve to show that clerks and bailiffs are often complained of in an unreasonable manner. After dealing with the particular complaint, the learned Judge thus speaks:—

You remark that you hope a better system will be established for the collecting of debts throughout the county than the present mode, as carried out by the Division Court Act. I have no doubt that there are instances of neglect on the part of clerks and bailiffs of Division Courts. But I be-

lieve that those instances are fewer in number than is generally supposed. There is a very common disposition to attribute neglect to these officials, merely because the money is not forthcoming. Now, pray, look for a moment at the difficulties they have to encounter. A judgment has been obtained, and execution has issued against a person of doubtful solvency. The bailiff seizes; a claim is made by some third party to the goods. If the bailiff interpleads, and the case goes against the plaintiff, then he blames the clerk and bailiff, for not having known better than to lead him into such trouble and costs. If the bailiff is indemnified by the plaintiff, and proceeds to sell, he may have to stand as the defendant in an action, and should he be defeated, and the plaintiff called upon to indemnify him for the costs, here is another cause of complaint. The clerk and the bailiff, it is perhaps said, are playing into each other's hands, and perhaps into the hands of the successful claimant, or of the debtor. If the plaintiff declines to act either one way or the other, and the matter stands still, then the clerk is blamed for neglect. If he does not enter into a full correspondence on the subject, he is also blamed, although there is no pecuniary allowance made to him, even if he were to write a dozen letters on the subject. Then again, suppose the bailiff does proceed to sell—very likely there is an understanding amongst the bystanders that no one shall bid beyond a trifle, so that the goods may be bought in by the friend of the debtor, and thus only a portion of the amount is realized. These difficulties and many others are almost entirely in the case of debtors who are scarcely solvent—and in some cases are really insolvent—where the debtors are in good circumstances they pay the demands against them without trouble. But it is too much the custom by entreaty, promises and representations to induce people to buy goods who ought not to have had credit. These people are sure to cause trouble when the collecting has to be done. Sometimes they try to shield themselves from paying by setting up that the goods sold were of a miserably shoddy description, and that they were deceived, and induced to give a note by false representations. If this defence should prove unavailing, then an effort is made to defeat the execution. Of course there are, unfortunately, instances where debtors who have no cause of complaint, will nevertheless do this in order to avoid payment. In this state of things it is well to remember that the clerks and bailiffs in the rural parts have no attorney to apply to, as the sheriff of a county may do. In such cases, when there is a difficulty in the way, the sheriff can always communicate with the creditor's attorney, and act accordingly. But with the clerk and bailiff there is no such refuge; neither of these can get advice from an attorney unless he pays for it out of his own pocket. If he corresponds with the creditor on the subject, he must do it gratuitously, for he is allowed nothing for letters written by him on such a subject. And if he were to do so, in all probability the creditor would pronounce him to be a very troublesome person. I see no remedy for this state of things other than this, namely: that credit should not be given to persons whose solvency is doubtful. It is a vain and useless thing to cry out about bailiffs and clerks not immediately making the money from people of this kind—depend upon it, the remedy is to be found deeper than with clerks and bailiffs. I repeat that there may be, and doubtless are, instances where they are remiss in their duties. All I ask for is some forbearance and some consideration of the difficulties which surround them.'

# NOTES OF CASES

## IN THE ONTARIO COURTS, PUBLISHED IN ADVANCE, BY ORDER OF THE LAW SOCIETY.

## *COURT OF APPEAL.*

From Q. B.] [March 2.

### Mitchell v. Goodall.

*Equitable assignment.*

By the terms of a deed of surrender, a farm reverted to the plaintiff with the fall wheat sown, and the tenant one W. was to have the privilege of reaping the wheat he had sown or selling it by paying rent up to a certain date, in advance, or securing it by the 1st of October, 1878. When that date arrived without payment being made or security given, the plaintiff refused to allow the removal of the wheat. Thereupon W. offered to give him an order on the defendant, a commission merchant, to whom he was accustomed to send his grain for sale, if the defendant would accept the order. The plaintiff accordingly saw the defendant, when W., in defendant's presence, signed the order in the plaintiff's favour, which defendant said he would pay as soon as he realized on the grain. There was conflicting evidence as to whether the plaintiff did or did not tell defendant that unless he got the order he would not let the grain go. The grain was then shipped to the defendant, who sold it and passed the

proceeds to W., who instructed him not to pay the order in plaintiff's favour.

*Held*, affirming the judgment of the Queen's Bench, that the plaintiff was entitled to recover, as what was done clearly constituted an equitable assignment of the wheat.

*McMichael*, Q. C., for appellant.

*Rose*, for respondent.

*Appeal dismissed.*

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From Proudfoot, V. C.] [March 2, 1880.

Morton v. Nihan et al.

*Insolvent Act of 1875—Fraudulent mortgage—Evidence—Burden of proof.*

This was a bill filed by the assignee in insolvency of one T. to set aside a mortgage given by him shortly before his insolvency to the defendants as fraudulent and void; the alleged consideration being an advance of $2,000.

*Held*, reversing the decree of Proudfoot, V.C., that under the suspicious circumstances which surrounded this case the *onus* was wholly upon the defendants, to prove not only that a debt existed, but that the money received by T. in payment thereof had been honestly advanced to him on the faith of the impeached mortgage, which the evidence entirely failed to establish.

*W. Cassels* for the appellants.

*Maclennan*, Q.C., for the respondents.

*Appeal allowed.*

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From Q. B.] [March 2.

Nasmith v. Manning.

*R. W. Co.—Action by creditor against shareholder—Proof of defendant being a shareholder—Allotment.*

*Held*, reversing the judgment of the Queen's Bench, Moss C. J. A. dissenting, that the evidence was not sufficient to prove notice of the allotment of the shares to the defendant.

*Ferguson*, Q. C., for the appellant.

*McMahon*, Q.C., and *Proctor*, for the respondent.

*Appeal allowed.*

From Spragge, C.] [March 2.

Griffith v. Brown.

*Statute of Limitations.*

In order to obtain convenient access to the upper rooms of their house, the plaintiffs constructed a wooden platform and stairway on the outside of the house, on the defendant's land. This structure was composed of planks laid upon blocks or scantling resting upon the ground, but the platform at the head of the stairs leading from this pathway rested upon posts more firmly affixed to the freehold. The platform and stairway were open to every one, including the defendant, and there was no bar or gate to prevent defendant from entering on his property. The defendant did not take any proceedings against the plaintiff, or make any protest against him for more than ten years.

*Held*, reversing the decree of SPRAGGE, C., that the plaintiffs had not such exclusive possession of the land covered by the structure as by force of the Statute of Limitations to vest in them a title in fee simple, and that even if the Statute had commenced to run, it was stopped by the fact that during the ten years the defendant had, for the purpose of carrying out some works on his own premises, temporarily taken up the platform, and removed a portion of the stoneway.

*W. Cassels* for the appellant.

*Robinson*, Q. C., and *G. Cox* for the respondent.

*Appeal allowed.*

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From Proudfoot, V. C.] [March 2.

The Canada Fire and Marine Insurance Company v. The Western Insurance Company.

*Marine Insurance—Re-insurance.*

The bill was filed to recover back money paid under a mistake of fact. It appeared that one B., was the agent in Montreal of the Western Insurance Company and the Canada Fire Insurance Company. He accepted a risk on a vessel of $7,700 for the Western Insurance Company, but as the limit prescribed by that Company for risks on any one

vessel was $5,000, it became necessary for him to effect a re-insurance, and he immediately directed his clerk to write a memorandum of application and acceptance on the books of the Canada Fire and Marine Insurance Company for a re-insurance for $2,700, which was done, but the clerk whose duty it was to endorse the particulars on the open policy, prepare the certificate, and report the transaction in the daily return, unintentionally omitted to do so, and no notice of the re-insurance was given to the re-insuring company until after the loss occurred.

*Held*, affirming the decree of PROUDFOOT, V. C., that the defendants were not liable, as the application and acceptance of the risk were, under the circumstances, sufficient to make a binding contract of re-insurance.

*Appeal dismissed.*

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From C. C. Simcoe.] [March 2

Barrie Gas Company v. Sullivan.

*Contract.*

The defendant contracted with the plaintiffs to sink an artesian well at seventy-five cents a foot. Having sunk a distance of one hundred and sixty feet, an impediment occurred, and defendant refused to proceed with the work.

*Held*, that he was entitled to be paid for the work done, as the evidence did not show that he agreed that he should receive nothing unless he succeeded in finding water.

*Pepler* for the appellant.

*McMichael*, Q. C., for the respondent.

*Appeal allowed.*

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From Q.B. and C.P.] [March 3.

Wright v. Sun Mutual Insurance Co.

*Insurance Policy—Want of seal—Estoppel—Departure.*

The policy sued on in this case was issued by the Company without the corporate seal being affixed, although the attestation clause stated that the Company had thereunto affixed its seal. The Act of Incorporation of the Company provided that "all policies ..... shall be signed, ..... and being so signed and countersigned, and *under the seal of the Company*, shall be deemed valid and binding upon them." *Held* affirming the judgments of the Queen's Bench and Common Pleas, that the policy was a valid insurance contract notwithstanding the absence of the seal. The declaration was on a policy of insurance and to the plea of "*non est factum*," the plaintiff replied, setting out that the policy was issued and acted upon by all parties as a valid policy, and that the seal was inadvertently omitted to be affixed, and claiming that the defendants should be estopped from setting up the absence of the seal or ordered to affix it. *Held* a good replication, and not a departure from the declaration.

*Bethune*, Q. C., for appellant.

*H. J. Scott*, for respondent.

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Wright v. London Life Insurance Co.

This case was similar to the preceding, except that the statute incorporating the Company provided that "no contract shall be valid unless made under the seal of the Company, and signed ..... except the interim receipt of the Company." *Held*, that the policy was, nevertheless, binding, and (*per* Patterson, J.,) would be construed if necessary, as an interim receipt.

*Bethune*, Q. C., for appellant.

*H. J. Scott*, for respondent.

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## *QUEEN'S BENCH.*

### IN BANCO—HILARY TERM.

Canadian Bank of Commerce v. Green et al.

*Principal and surety—Negligence of creditor—Discharge of surety.*

Defendants were maker and endorser respectively of a promissory note for the accommodation of D., who discounted it with the plaintiffs, they having knowledge of the facts.

On the maturity of the note plaintiffs handed it to D., who was their solicitor, for

protest. D. did not protest or notify defendants of its dishonour, but delivered it to them, adding that he had paid it. About three months after its maturity D. absconded in insolvent circumstances, and after that defendants were for the first time notified of the non-payment of the note.

In an action against defendants on the note they pleaded, on equitable grounds, the above facts and that, by the laches of the plaintiffs, they were prevented from obtaining indemnity from D., and that if compelled to pay the note, they would be defrauded out of the amount.

*Held*, a good defence, and that the defendants were discharged.

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In re Brock and The Corporation of the City of Toronto.

*Assessment for sewers — Statutes — Revised Statutes—Repeal—Construction.*

Sec. 464, sub-sec. 2, of 36 Vict. c. 48, enacts that the council of every city, town, and incorporated village, shall have power to pass by-laws for assessing upon the real property to be immediately benefited by the making, &c., of any common sewer, &c., "on the petition of at least two-thirds in number and one-half in value of the owners of such real property, a special rate," &c. This sub-sec. is amended, so far as the same relates to the City of Toronto, by 40 Vict. c. 39, sec. 2, by inserting after the words "owners of such real property" the words "or where the same is in the opinion of the said council necessary for sanitary or drainage purposes." 40 Vict. c. 6, respecting the Revised Statutes, passed in the same Session, repealed 36 Vict. c. 48; and R. S. O. c. 74, sec. 551, sub-sec. 2, corresponds with the repealed sec. 464, sub-sec. 2.

*Held*, Armour, J., doubting and Cameron, J., dissenting, 1. That under 40 Vict. c. 6, sec. 10, the R. S. O. was substituted for the repealed Acts, and the amending Act was applied to the R. S. O. c. 174. 2. The amendment in 40 Vict. ch. 39, was a reference in a former Act remaining in force to an enactment repealed, and so a reference to the enactment in the Revised Statutes, corresponding to the sec. 464, sub-sec. 2, within sec 11 of 40 Vict. c. 6. 3. That the City of Toronto, therefore, could pass a by-law in 1879 to construct a sewer, when necessary in their opinion for sanitary or drainage purposes, without any petition therefor.

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Mykel v. Doyle.

*Easement—Obstruction—Limitation—R. S. O., c. 108.*

*Held*, Armour, J., dissenting, that the Ontario Act (R. S. O., c. 108), reducing the period of limitation to ten years, does not apply to the interruption of an easement, such as a right to a way, *in alieno solo*, in this case a lane, which the defendant had occupied and obstructed for ten years, but which the plaintiff had used prior to such obstruction.

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Sullivan v. The Corporation of the Town of Barrie.

*Municipal Corporations—Defective drainage —R. S. O., c. 174, sec. 491—Limitation of action.*

To a declaration charging negligence in the construction and maintenance of drains, in order to drain the streets of a town, whereby the drains were choked and the sewage matter overflowed into the plaintiff's premises, defendants pleaded that the cause of action did not accrue within three months: *Held*, bad, as sec. 491 of the Municipal Act, R. S. O., c. 174, did not apply.

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Cosgrave et al. v. Boyle, Executor of James Stewart.

*Promissory note—Death of endorser—Notice of dishonour.*

S. endorsed a note to the plaintiffs for the accommodation of the maker, and the plaintiffs discounted it at a bank. S. died before it fell due, and at its maturity on the 8th of March, 1879, it was protested at the bank for non-payment, where the death of S. was unknown, and notice was sent addressed to S. at the place where the note was dated. The defendant, executor of

S., proved the will in January, and the plaintiffs, who knew of the death of S., had written to his son three days before maturity, calling his attention to the note. The plaintiffs having taken it up and sued defendant,

*Held*, that the notice was insufficient, Armour, J., dissenting.

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Dunlop v. The Canada Central Railway Company.

*R. W.'s and R. W. Co.'s—Deed by part owner of land—Infants' interest barred—31 Vict. ch. 68, D.*

The mother of infant children, resident with her, being entitled to a third undivided interest in the land, they owning the residue, by deed agreed with a railway company, in consideration of an extension by them of their line of railway from R. to P., and for $1, to grant to them in fee the right of way "through my land in P., consisting of such portion of lots 18 and 19 as may be required to carry the railway across said lots," and conveyed to them accordingly. At the time of the conveyance she had not been appointed guardian to her children: *Held*, that under the Railway Act of 1868 (31 Vict. c. 68, sec. 9, sub-secs. 3, 9, D.), her deed barred the children's interest in the land as well as her own, and that they were not therefore entitled to compensation from the company.

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## VACATION COURT.

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Cameron, J.] [March 23.

In re Corporation Albermarle and Corporation, Eastnor, Lindsay and St. Edmonds.

*Separation of Municipalities—Apportionment of assets and liabilities.*

*Held* 1. That on the separation of united townships, arbitrators appointed to apportion assets and liabilities may consider receipts and expenditures during the union, and are not restricted to a mere division of assets, with set off of liabilities. 2. Under the facts of this case the arbitrators had improperly distributed the Municipal Loan Fund moneys.

Observations on the duties of arbitrators in such cases, and the mode of procedure.

*Bethune*, Q. C., for applicants.

*H. J. Scott, contra.*

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Cameron J.] [Feb. 24.

In Re Countryman v. Edwardsburgh.

*Municipal Corporations—Stopping up original road allowance—By-law—R. S. O. ch. 174.*

It is not for the Court to consider the balance of convenience or inconvenience that may arise from the passing of a by-law for closing an original road allowance, if passed after the observance of the preliminary requisites prescribed by the Municipal Institutions Act (R. S. O. ch. 174).

A Township Council has power, under the above Act, to pass a by-law merely for the stopping up of an original road allowance, and is not restricted to the passing of a by-law for stopping up the allowance for the purpose of sale.

*Rose* for applicant.

*Watson*, contra.

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Osler J.] [Feb. 27.

In Re Langdon and the Township of Arthur.

*Railway — Bribery — Refusal of Council to pass by-law—Mandamus.*

Where a by-law granting a bonus to a railway has been carried by the electors, a Municipal Council may refuse finally to pass the same in consequence of its passage having been procured by bribery, and may set up such bribery in answer to an application for a mandamus.

Observations as to how far bribery must be proved in a case of the kind.

*J. K. Kerr*, Q. C., for applicant.

*H. J. Scott*, for Township.

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Cameron J.] [March 2.

Canadian Bank of Commerce v. Green et al.

*Principal and surety—Negligence of creditors—Change of surety.*

Defendants were makers and endorsers,

respectively, of a promissory note for the accommodation of D. who discounted the same with plaintiffs, they having knowledge of the facts.

On the making of the note, plaintiffs handed it to D. who was their solicitor, for protest. D. did not protest or notify defendants of its dishonour, but delivered the note to them, alleging that he had paid it. About three months afterwards D. absconded in insolvent circumstances, and defendants were then, for the first time, notified of the non-payment of the note.

In an action against defendants upon the note, they pleaded, on equitable grounds, the above facts, and that by the laches of the plaintiffs they were prevented from obtaining indemnity from D., and that, if compelled to pay the note, they would be defrauded out of the amount.

*Held*, a good defence, and that the defendants were discharged.

*Creelman* for the demurrer.

*Spencer*, contra.

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Galt, J.] [March 12.

Regina v. Davidson et al.

*Trespass to land—32-33 Vict., c. 22, sec. 60—Title to land—Quashing conviction.*

Where the defendants had been convicted, under 32-33 Vict., c. 22, sec. 60, of trespass to land, and it appeared that there was a dispute between the parties as to the ownership.

*Held*, that it was a case in which the title to land came in question, and that defendants had been improperly convicted, even though the magistrate did not believe that they had any title to the land in question, it not being within his power to decide on the title, but merely on the good faith of the parties alleging it.

*J. K. Kerr*, Q.C., for prosecutor.

*C. Robinson*, Q.C., *contra*.

## *COMMON PLEAS.*

### VACATION COURT.

Cameron J.] [February 20

Atwood v. Rosser.

*Magistrates—Action for not making immediate return of conviction—Pleading.*

To an action against two Justices of the Peace, for not making an immediate return, in writing, of a conviction made by them against defendant, for swearing profanely, &c., the defendants pleaded that they duly made the return of the said conviction required by law to be made by them to the Clerk of the Peace.

*Held*, on demurrer, by Cameron, J., plea bad.

*Bartram* for the plaintiff.

*Maclennan*, Q. C., for the defendants.

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Cameron J.] [March 2.

Grand Junction Railway Company v. Pope.

*Principal and surety—Guarantee—Pleading.*

Action against defendants as sureties for the due performance, by one B., of a contract made by him with the plaintiffs, for building a railway, &c., from Belleville to Lindsay, and providing the requisite land, &c., therefor, alleging the failure to build said railway. Fifth plea: that plaintiffs mortgaged and otherwise incumbered the said roadway. *Held* bad, as not showing how the said incumbrance said in any way prejudiced the principal in the performance of the contract.

Sixth plea: that plaintiffs altered the conditions of the contract by allotting to the principal a large quantity of stock in the company, and thereby released defendants. *Held*, also, bad, in not showing how the allotment altered the contract.

Ninth plea: that the plaintiffs sustained no loss or damage by B.'s default. *Held* bad, for that the defendant's contract was not merely one of indemnity, but also guaranteed the performance by B. of certain specified acts.

Tenth plea: alleging that the contract

was executed after breach. *Held* bad, as being no answer to causes of action created by the breaches alleged.

*Appelbe* for plaintiffs.
*Robinson*, Q. C., for defendants.

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Cameron J.] [March 2

SMITH v. BURN.

*Assignment of judgment debt—Surety—Statute of Limitations.*

*Held*, that an assignment of a judgment to a trustee for one of the defendants, who was a surety for another of the defendants, made six years after the surety had paid the judgment to the judgment creditor, could be validly made, although the surety's direct cause of action against the principal and co-judgment debtor had been barred by the Statute of Limitations.

*J. K. Kerr*, Q.C., for the plaintiff.
*Appelbe*, for the defendant.

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## IN BANCO.

MARCH 5.

CRANDELL v. CRANDELL.

*Malicious arrest—Proof of warrant and information—Date of acquittal—Proof of—Statute of Limitations—Evidence—Excessive damages.*

The first count of the declaration alleged that one K falsely and maliciously, and without reasonable or probable cause, issued a warrant against plaintiff on a charge of fraud, and obtaining money under false pretences, and that defendant falsely and maliciously, and without reasonable or probable cause, prosecuted same, and caused plaintiff to be arrested and imprisoned, alleging the trial and the acquittal of the plaintiff and the termination of its proceedings. The second count alleged that the defendant falsely, and maliciously, &c., caused plaintiff to be indicted on said charge, and to be tried therein, alleging his acquittal, &c.

*Held* that, under the first count, the warrant under which plaintiff was arrested should have been proved, or sufficient evidence of a search therefor and its loss, to enable evidence of its contents to be given; but as evidence of such contents was given at the trial without objection, an objection taken in the rule *nisi* was too late. A similar objection taken in the rule *nisi* as to proof of the information, even if such proof were necessary, was for the same reason, also held to be too late.

*Held* that, under the second count, proof of such documents was not necessary.

*Held*, also, that plaintiff was not bound by the day stated in the record of acquittal, but might show as a matter of fact the actual day on which the acquittal took place.

*Held*, also, that the Statute of Limitations commenced to run from the date of acquittal, when the proceedings were terminated, and not from the date of arrest.

*Held*, also, that the evidence, set out in the case was sufficient to connect the defendant until the arrest and prosecution of the plaintiff.

The Court was of opinion that the damages found for the plaintiff, $3,000, were excessive, and directed, subject to plaintiff's acceptance, that they should be reduced to $1,000, but if defendant paid $500 and the costs of the action, before 1st June next, the amount should be reduced to that sum; but if plaintiff refused to accept this there should be a new trial on payment of costs by the defendant.

*Bigelow*, for the plaintiff.
*Maclennan*, Q.C., for the defendant.

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ANCHOR INSURANCE CO. v. PHŒNIX INSURANCE CO.

*Marine insurance—Total loss of freight—Action for.*

The owner of a vessel called the "St. Andrews" had insured his vessel with defendants on a voyage from Toledo, U. S., to Kingston, Ont., and had effected another insurance with them on its freight. The vessel met with an accident in the Welland Canal, near Port Colborne, and sank. The cargo was damaged, and the owner of it had abandoned it to the plaintiffs. The plaintiffs' agent being of opinion that it was better to take possession of the cargo where it was, and send it to Buffalo, in place of having it forwarded to Kingston, applied to the owner to give plaintiffs possession of the car-

go, offering to pay him one-half of its freight *pro rata itineris*, but to this defendants objected, unless the owner would exonerate them from any claim under their policy. Under these circumstances, an arrangement was made between the owner and the plaintiffs, whereby he assigned to them the freight policy, and gave them possession of the cargo, and they paid him the full freight. The cargo was then taken to Buffalo and there sold by the plaintiffs. The plaintiffs contend that, under the circumstances, as it would have been impossible to have taken the cargo to Kingston, there was in truth a total loss of freight, and that they were, therefore, entitled to recover therefrom against the defendants.

*Held*, Wilson, C. J., dissenting, that the plaintiffs were not entitled to recover.

*Maclennan*, Q. C., for the plaintiffs.

*Robinson*, Q. C., for the defendants.

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Smith v. Gordon.

*Work and labour—Architect's certificate—Necessity for—Wrongful dismissal—Added count.*

In an action on the common counts for work and labour, the plaintiff was held disentitled to recover, by reason of his not having procured the certificate of the architect in charge of the work, of the work having been done to his satisfaction, which was rendered necessary by the terms of the contract.

An amendment, however, was made in term, adding a count for an improper and wrongful dismissal of the plaintiff, whereby he was prevented from completing the contract, and from obtaining the architect's certificate for the work already done by him at the time of dismissal; and as all the evidence which could be given in relation thereto had already been given under a plea setting up, as an answer to the action, the dismissal under a supposed right or power conferred by the contract, which evidence clearly showed that the plaintiff was entitled to recover, a verdict, therefore, on such added count was entered for the plaintiff.

*Ferguson*, Q.C., for the plaintiff.

*J. E. McDougall* for the defendant.

Bank of Commerce v. Gurley.

*Promissory note — Illegal consideration — Bona fide and for value as collateral security for antecedent debt—Right to recover.*

*Held*, that an antecedent debt is a good consideration for a note transferred as collateral security for the debt, so as to enable a *bona fide* holder without notice to enforce it, though void for illegality as between the maker and payee.

*Ferguson*, Q. C., for the plaintiff.

*Ritchie*, for the defendant.

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Long v. Anderson.

*Patent from Crown—Construction of—Fee simple.*

By a patent from the Crown to one J. L., widow, after reciting that she had contracted with the Crown Lands Department for the absolute purchase of the land at a price specified, the land, in consideration of the payment of said sum, was granted to the said J. L., upon the condition "below stated. . . To have and to hold to the said J. L., for the use and benefit of herself and children, Margaret, Robert, and Henry L., their heirs and assigns for ever; and also to have and to hold the said parcel or tract of land hereby granted," &c., "unto the said J. L., upon the condition above stated, her heirs and assigns forever."

*Held*, that in order to carry out the contention of the Crown, the habendums must be transposed, and the second read as the first, and so reading them, J. L., as the grantor of the use first declared, took, under the Statute of Uses, a fee simple in the land.

*Meredith*, for the plaintiff.

*Bethune*, Q. C., for the defendant.

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Dominion Bank v. Blair.

*Bond—False representation—Evidence.*

Action on a bond against defendants as sureties for one F. The bond was a continuing guarantee until countermanded by notice in writing, by its sureties to the bank. The defence set up by the defend-

ants, who it appeared had never read over the bond, was that they were induced to execute it by the false and fraudulent representations of the defendants' agent, that the bond was merely a renewal, for a year, of a former bond for a year, to which the same defendants were parties.

*Held*, that there was no evidence to show any such misrepresentation as alleged, and that the defendants were therefore liable on the bond.

*Robinson*, Q. C., and *McMichael*, Q. C., for the plaintiffs.

*Hector Cameron*, Q. C., and *Farewell* for the defendants.

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Harris v. Prentiss.

Prentiss v. Peck.

*Tenancy in common—Possession—Notice.*

Where one tenant in common of certain lands, without any authority from his co-tenants, usurped their rights by giving leases of the land to trespassers in possession, and on the termination of such leases, the lessees continued in adverse possession of the land for the neccessary statutory period.

*Held*, that under 4 Wm. IV. c. 1, s. 24, a good possessory title was acquired.

*Held*, also, that notice of persons being in possession of land, to a husband seized thereof, in right of his wife, is notice to the wife.

*Bethune*, Q. C., for the plaintiff.

*Wallbridge, Q. C.*, for the defendant.

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Smyth v. Morton.

*Insolvency—Act of* 1875, *sec.* 123.

G. & C., a manufacturing firm, being unable to meet a note given to plaintiff in the course of their business, at the plaintiff's request, gave him a chattel mortgage for $1,500 and interest, on certain machinery and tools in their manufactory, payable in eleven months, the mortgage containing a covenant by the mortgagor to insure against fire, and on demand to assign the policy to the plaintiff. No insurance was effected after the mortgage was executed, and shortly there after the property was destroyed by fire. The mortgagor, however, held an insurance in the Waterloo County Mutual Insurance Company which was not on the property in question, but on the building. Some days after the fire G. & C., the mortgagors, with the knowledge that they were in insolvent circumstances, and within thirty days of being declared insolvent, gave the plaintiff an order on this Company for a certain amount of money.

*Held*, that the order was void, under the 133rd section of the Insolvent Act of 1875.

*Bethune*, Q.C., for the plaintiff.

*McClive*, for the defendant.

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Hope et al. v. Ferris.

*Principal and agent—Proof of agency—Partnership—Money demand.*

The plaintiffs and several others, including one W., were tenants in common of certain lands in Pennsylvania, on which an oil well was sunk. In 1875, W. conveyed his interest to the defendant, by way of mortgage for a loan, and defendant received from time to time, through plaintiffs, the amount of W.'s share in the proceeds of the sale of oil. The plaintiffs, who were managing the business, at the request, as they alleged, of the several owners, incurred heavy liabilities in sinking new wells, and this action was brought to recover the proportion thereof claimed to be payable by defendant, the plaintiffs claiming that they acted as defendant's agents.

*Held*, that the evidence failed to establish the agency relied upon; that the defendant, by the receipt as mortgagee of the proceeds of the sale of oil, did not assume any liability which W. was under to plaintiffs; and even if she did, she would be in the position of a partner, and entitled, before an action would lie against her, to have the partnership accounts taken, and a balance ascertained or admitted to be due.

*Held*, also, that plaintiff's claim was not a claim for money, under the A. J. Act, so as to be recoverable at law.

*McCarthy*, Q. C., for the plaintiff.

*Bethune*, Q. C., for defendant.

### Wilson v. Hume.

*Master and servant—Hiring servants—Delegated authority—Liability of master.*

In an action against defendants, the owners of a vessel, for employing incompetent sailors, whereby an accident happened to the plaintiff, the mate, it appeared that the duty of hiring the sailors had been delegated by the owners to the captain, and that, in accordance therewith, he had hired the men in question.

*Held*, that the defendants were not liable.

*J. Reeve* for the plaintiff.

*McCarthy* Q. C., and *E. D. Armour*, for the defendants.

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### Ballantyne v. Watson.

*Sale of goods—Proof of contract—Parol evidence—Time—Damages.*

Where a contract is to be made out from letters and telegrams, it is not essential that each should refer in terms to the preceding one, but the contract may be made out even from the subject matter of the correspondence, so long as it appears that it all relates to the same contract.

In an action for breach of contract for not delivering 700 boxes of cheese, *held*, that from the telegrams and letters, set up in the case, read in the light of the parol evidence and surrounding circumstances, a valid contract was proved.

It was objected by the defendant that the contract was indefinite as to the price mentioned, 6c., whether per lb. or per box; but *held*, that the evidence showed that the cheese was always put up in boxes, and at a rate per lb., and that the price in this case was, therefore, per lb.

*Held*, also, that even although by the terms of the contract the plaintiff bought subject to inspection, this was principally for the purchaser's protection, and that he might, as was done here, dispense with it.

A further objection was, that the defendant was merely acting as agent of several certain cheese factories; but *held* that even if so, the defendant, by the contract, contracted in his own name without any qualification, and was therefore personally liable; and that an equitable defence setting up that the real agreement of the parties was that defendant was merely acting as such agent, and that the plaintiff was inequitably taking advantage of a mistake in the written contract, was not proved.

A further objection was, that time was the essence of the contract, but *held* that the evidence disproved this, and at all events it was waived; and further, that by the contract the delivery was to be within the usual time, which the evidence showed was from ten to thirty days, and that plaintiff proved a readiness within that time.

*Held*, also, that in the absence of any joint contract by plaintiff with the several cheese factories, the plaintiff, by proceeding against one of the factories for the amount they had to deliver, and settling with them, did not preclude himself from now suing defendant for damages for the residue of the cheese not delivered.

*Held*, also, that the fact of plaintiff having contracted to re-sell to a third person would not limit his damages to the price agreed upon on such re-sale; but that he was entitled to the market price.

*Robinson*, Q.C., for the plaintiff.

*Bethune*, Q.C., for the defendant.

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### Coleman v. Robertson.

*Deed—Description—To water's edge at low water mark—Ad medium filum aquæ—Possession.*

In a deed of land, the description was as follows: "Commencing on the verge of the River Moira, at low water mark," and then after stating the first two courses, stated the third course to be, "to the water's edge of the said river at low water mark," and concluded, "and thence down with the winding of said river to the place of beginning."

*Held*, that the particular limitation must be construed as specifically stated, and therefore the grant could not be deemed to extend *ad medium filum aquæ*.

In this case, the defendant claiming under such particular limitations was therefore *held* not entitled to land between the

water's edge and the *medium filum aquæ*. A title by possession set up by him was also decided against him.

*Wallbridge*, Q. C., for the plaintiff.

*Bethune*, Q. C., for the defendant.

## COMMON LAW CHAMBERS.

Mr. Dalton, Q.C.] [February 28.

CLARK v. FARRELL.

*Interpleader—Sheriff—Laches.*

At the instance of a Sheriff an interpleader order was granted, and issues tried to determine the rights of certain claimants to goods seized by him in execution. Previously to the order being granted, the landlord of the premises laid claim to the goods, which claim the Sheriff did not mention when applying for the order.

*Held*, that, after the trial of the issue, the Sheriff was not entitled to a second interpleader to test the landlord's claim, as this should have been disposed of on the first application.

*Aylesworth*, for Sheriff.

*Crickmore* and *Ogden*, for claimants.

*Clarke*, for landlord.

Cameron, J.] [February 28.

WHEATLEY v. SHARPE.

*Arrest under ca. sa.—Indigent debtor—Allowance—Clerk of Crown, jurisdiction of.*

In an action for seduction, the defendant was arrested under a *ca. re.* Judgment having been entered against him, a *ca. sa.* was issued, and defendant was surrendered by his bail to the custody of the Sheriff.

*Held*, that the defendant was not in custody as a debtor or on execution, but on *mesne* process as a wrong doer, and that he was not entitled to an order for weekly allowance under the Indigent Debtors' Act, R. S. O. c. 69.

*Held*, that it is within the power of the Clerk of the Crown in Chambers to make an order for the payment of a weekly allowance to a debtor, under the above Act, when it can legally be made.

*Richards*, Q.C., for plaintiff.

*Aylesworth*, for defendant Wallace.

Hagarty, C. J.] [March 2.

IN RE HOLLAND v. WALLACE, ET AL.

*Division Court—Garnishee—Jurisdiction—Prohibition.*

A plaintiff in a Division Court proceeding against a primary debtor and garnishee, in a Court which would not have jurisdiction against the primary debtor alone, must run the risk of proving a garnishable debt in the hands of the garnishee; otherwise a prohibition will lie.

A garnishee is not a defendant within the meaning of R. S. O. c. 47, sec. 62, so as to give jurisdiction to a Court where none exists against the primary debtor alone.

*Thorne*, for plaintiff.

*Cameron*, Q.C., for defendant.

Osler, J.] [March 12.

REGINA EX REL. McDONALD v. ANDERSON.

*Quo warranto—Regularity—Elections—Rule 1 M. T. 14 Vict.*

A writ of *quo warranto* to test an election was directed to issue by a County Judge during Hilary Term. Respondent applied to have the writ set aside, on the ground that under Rule 1, M. T. 14 Vict. the *fiat* for the writ could in term time be made only by rule of one of the Courts of Queen's Bench or Common Pleas.

*Held*, that the writ was properly issued, and that the above rule has by subsequent statutory enactments become inoperative.

*Holman*, for relator.

*Aylesworth*, for respondent.

Galt, J.] [March 16.

IMPERIAL BANK v. DICKEY.

*Judgment debtor—Service of order—Exhibiting original.*

In proceeding against a judgment debtor under R. S. O. c. 50, sec. 305, for breach of an order to examine him, to entitle the plaintiff to a *ca. sa.*, it is not necessary in serving the order to examine to exhibit the original to the defendant, unless demanded by him.

*Shepley*, for plaintiff.

*Holman*, contra.

## CHANCERY CHAMBERS.

Proudfoot, V.C.] [Feb. 9.

Re John Randall.

*Lunacy.*

This was an application to declare John Randall a lunatic.

The motion was ordered to stand over, in order that further medical testimony might be produced.

This could not be obtained, and *Winchester*, for petitioner, asked for an order dismissing the petition.

Proudfoot, V.C., declined to make such an order, declaring that the Court did not see fit to make any order on the application.

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Proudfoot, V.C.] [Feby. 12.

Trust & Loan Company v. Kirk.

A mortgage suit. Interest payable half-yearly in advance. Bill filed by mortgagees for sale. In taking the account of what was due the plaintiffs the Registrar appointed a day in July for payment, but refused to allow the plaintiffs the whole rate of interest falling due in April, but only so much as will have accrued due on the date of payment.

*Marsh*, for plaintiffs.

*Plumb*, for defendant.

*Held*, that the Registrar was right, as the mortgagees are calling in their money, they will be entitled to interest for the time the money has been on loan only.

*Application refused.*

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Proudfoot, V.C.] [Feby. 12.

Stevenson v. Bain.

*Contract of sale—Loss after execution of.*

A purchaser at a sale under decree signed the usual contract to purchase and paid the deposit. The next day the buildings on the property were burned down.

*Held* on appeal, that the loss would not fall on the purchaser as the interest contracted for did not vest in him till the report on sale became absolute.

Proudfoot, V.C.] [Feb. 12.

Fleming v. McDougall.

*Application of purchase money—Prior mortgagee.*

A purchaser at sale under a decree having paid his purchase money into court, mortgaged the lands, conveyed the equity of redemption and then inadvertently, and without legal advice took a vesting order without seeing to the application of his purchase money to the payment of a prior mortgage. The Referee made an order for the payment out of Court of his claim to the prior mortgagee. A subsequent mortgagee appealed from this order.

*Cassels*, for the appellant.

*Moss*, for the purchaser.

*Held*, that the rule that the purchaser will be bound by any act of his shewing an intention on his part to fulfil the contract, and to waive any claim in regard to the matter in question, ceases to apply when it is satisfactorily established that the purchaser's act was occasioned by inadvertence, mistake, or was done without proper advice.

*Held* also, that the covenants in a short form mortgage are absolute, and extend to all incumbrances, whether made by the mortgagor or not.

*Appeal dismissed with costs.*

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Proudfoot, V.C.] [Feb. 12.

Hyde v. Barton.

*Dower—Delay in proving claim for.*

Bill for sale upon a mortgage. Defendants were the widow and heirs of the mortgagor. Usual decree with reference as to encumbrances. Widow did not prove her claim for dower in the Master's office. The sale took place, and on application of the purchaser the Referee made an order dispensing with payment into Court, and vesting the estate in the purchaser.

The widow seeks to establish her claim and appeals from this order.

*Murray*, for the appellant.

*Cassels*, for the purchaser.

*Hoyles*, for the plaintiff.

*Held*, that the same principles should govern an application to dispense with pay-

ment into Court, as apply to an application for payment out of Court. The money could not have been paid out without notice to all parties including the widow.

The appeal was allowed, but without costs as the dilatory conduct of the widow invited discussion.

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Proudfoot, V.C.] [February 12.

Stephenson v. Bain.

This was reported *ante*, page 15.

Proudfoot, V. C., on appeal. "I consider" (in conclusion), "that *ex parte* Minor has not been overruled, that it still remains good law, and that the order in this case (of the Referee) must be discharged."

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Blake, V.C.]

Nells v. Graham.

*Guardian's costs.*

The plaintiff took out the usual order appointing a guardian *ad litem* for an infant defendant.

The minutes of the decree which directed the plaintiff to pay the guardian's costs were spoken to.

*Boyd*, Q.C., for plaintiff.

*Hoyles*, for defendant.

*Hoskin*, Q.C., for infant defendant.

Blake, V.C., directed that the decree should go as settled by the Registrar. Costs in the cause.

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## MASTER'S OFFICE.

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Blake, V.C.] [Sept. 22, 1879.

Re Berkeley's Trusts.

*Remuneration of trustees.*

Trustees, on assuming the trust estate, are not to be allowed a commission for merely taking the same over; but trustees properly dealing with the estate and handing it over upon the determination of the trust are entitled to a commission for the receipt and proper application of the estate payable out of the corpus. Trustees are not entitled to a commission for the investment or reinvestment of the funds of the estate. Trustees are entitled to a commission on the receipt and payment of the income of the estate, payable out of the income, and to a compensation for looking after the estate payable out of the corpus. Trustees may not unreasonably be allowed something for services not covered by the commission awarded.

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Mr. Taylor.] [Oct. 22, 1879.

Western v. Ince.

*Receiver—Application of—Liability of.*

On the 29th January, 1878, an order was made directing that J. C. Daniels be receiver in the suit, he first giving security to the satisfaction of the Registrar.

At the date of the order and previously thereto, Daniels was the agent of the mortgagor, and as such collected all rents of the property in question.

Daniels received verbal notice of the order and executed his own bond as security which the Registrar declined to accept. Daniels continued to receive the rents and pay them to the mortgagor.

On the 20th May, Daniels executed a second bond reciting order of 29th January, and conditioned that he "do and shall account for every sum of money which he *shall* receive on account of the rent" which was filed on 22nd May, and on 3rd June, a copy of order of 29th January was served on him, and he was notified that his security had been accepted.

*Held*, by the M. in O. that Daniels was accountable for the rents received since the 29th January, but was entitled to be allowed for any disbursements properly made by him.

On appeal, Spragge, C. sustained the Master's judgment.

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Mr. Taylor,] [Dec. 1879

Blake, V. C.] [Jan. 1880.

Court v. Holland, *ex parte* Dolan.

*Subsequent encumbrancer—Claim of onus of proof.*

A decree for redemption was made in the cause which directed an account to be taken

of the amount due by the plaintiff to the defendants.

The defendants, the Dorans, on proving their claims in the M. O., produced their mortgages and filed an affidavit verifying their claim, and stating that $20,309.88 was due them for moneys advanced by them to the mortgagor, and secured by the said mortgages.

*Held* by the Master in Ordinary that their claim was *primâ facie* proven, and the onus of reducing the amount of it rested on the plaintiff.

On appeal, Blake, V. C., upheld the Master's judgment.

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Mr. Taylor.] [Feb. 23.

Bissett v. Strachan.

*Taxation.*

The bill had been filed by a simple contract creditor, to obtain judgment to prevent the alienation of land.

During the continuance of the suit one of the defendants made an application in Chambers to have the *lis pendens* removed. This was granted, with costs. The plaintiff then dismissed his bill with costs.

The defendant above mentioned thereupon brought in his bill for taxation, which consisted of only one item—viz., instructions to defend, $4.00, together with the usual charges of having a bill taxed.

It appeared by the affidavit that the bill had never been served, and that no answer had ever been drawn or filed; but defendant's solicitor swore that he had taken instructions to draw the answer some two months before the dismissal of the bill.

The Master in Ordinary, on appeal from the taxing officer, *held* that the defendant was entitled to tax his instructions, but they were taxed at $2.00 only, because instructions had already been taxed on the motion to remove the *lis pendens*.

*H. Cassels* for plaintiff.

*Ewart* for defendant.

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# CANADA REPORTS.

## *QUEBEC.*

### SUPERIOR COURT.

Guest v. Macpherson.

*Damages for libel—Criminal proceedings not a bar to action for civil damages; but punitive damages will not be awarded after defendant has been convicted and punished in a criminal court for the same libel.*

[Montreal, February 26.

Mackay, J., said this was an action of damages brought against the defendants for libelling the plaintiff in a certain scurrilous paper called *City Life*. There had been a criminal indictment for libel against the defendant, and a true bill being returned, he had been tried and found guilty. The defendant was then punished by a fine of $100, and costs, under the Dominion Libel Act, taxed at $50; so that he had already paid in the Criminal Court $150. Now the sum of $500 fresh damages was asked against him by a civil action. The plaintiff claimed both special and nominal damages—special for moneys that he had expended for fees in the Criminal Court beyond what his attorney's bill was taxed at, and he alleged further, that he had been hurt in his feelings, &c. The plea denied malice, and alleged that the whole thing was meant for a mere joke; that the publication did not hurt the plaintiff, and that in the Criminal Court the defendant had made an apology for his practical joke. His Honor did not see that in this court the defendant's pleas amounted to an apology, but rather raised the objection that by the action *au criminel* the plaintiff was debarred from proceeding by civil action. The defendant was wrong as to this. The two remedies compete, and in France it is quite common to join the two. The plaintiff was entitled to both remedies. He had taken proceedings in the Criminal Court, and now he came here and asked for damages special and nominal. He was entitled to some damages. The defendant's plea was bad as to criminal proceedings being a bar to civil action. But the ques-

tion of degree or measure of damages came up: for there were damages nominal, damages compensatory, and damages punitive. The plaintiff might have come here for his civil damages at once, but he had harassed the defendant by getting him convicted by a petty jury, and involved in all the ignominy of criminal punishment. There was no occasion, therefore, for more punitive damages. There was no suggestion of express malice. The defendant was evidently a stupid fellow, who went in for fun, and was in for damages here; but his Honor would not award punitive damages, but only nominal. The Court could not award as damages the *honoraires* which had been paid to lawyers in the Criminal Court for attending to the case. Judgment would go for $20 damages, and costs of the lowest class, Superior Court.

—*Legal News.*

## *ONTARIO.*

### GENERAL SESSION OF THE PEACE —COUNTY OF OXFORD.

SKERVING, *Appellant*, and HONEYMAN, *Respondent*; and SKERVING, *Appellant*, and MCDONALD, *Respondent*.

*Conviction for Practising Medicine without license. 37 Vict. cap. 30. O.*

These were two appeals from the convictions of the appellant for practising medicine contrary to the statute 37 Vict. cap. 30, Ont.

One was a conviction on 20th March, 1879, on the complaint of Ebenezer Honeyman, before one Justice of the Peace. The other was a conviction on the 8th May, 1879, on the complaint of Hector McDonald, before two Justices of the Peace. In each case the appellant was ordered to pay a fine of $25 and costs, or in default to be imprisoned one month.

Both appeals were argued at the June Sessions, 1879, and the Court was adjourned for the purpose of giving judgment.

*Beard*, for the appellant, admitted that he had practised under such circumstances as required him to be registered unless he came under the protection of the Imperial Act, and for the purpose of showing he was entitled to such protection.

James Skerving being sworn, said, "I am the appellant. I am licentiate of the faculty of Physicians and Surgeons, Glasgow, Scotland. I registered in the City of Edinburgh and got certificate. Archibald Ingles, Branch Registrar of Scotland, handed me this certificate. He gave it to me at his private residence. He acted as such Branch Registrar. There was a fee of £5 which was paid by me at that time. I produced my diploma and he registered it. My certificate has never been cancelled. I have applied for registration in Ontario. I have paid my fee, $10. It was tendered on the 2nd August, and again on the 13th August, and 3rd time on 3rd September. Registrar said he could not take it. He would not take the money in September, but I afterwards mailed it to him and I got receipt for it. Dr. Pine is the Registrar. The certificate produced was got from Dr. Pine for use at this Court. I practised three years in Scotland, and a few months as Surgeon on the Allan Line Steamers.—Cross-examined in answer to Mr. Bull. I mailed the money after the offence was committed, if any.

*Cross examined.*—I got the book produced from Churchill, the publisher, in London, on page 910 my name appears; the book was published in 1877; on page 882 Archibald Ingles' name appears as the purser who gave me my certificate and was acting as Registrar of the Medical Council.

*Ball*, Q. C., for respondent, admitted that appellant was a registered practitioner of the Scottish Branch of the General Medical Council. It is admitted also that he was not registered in Canada under the R. S. O. cap. 142, but contended that he was properly convicted for a breach of "the Ontario Medical Act" in not being registered, and that his remedy to enforce registration was by mandamus, and referred in support of his contention to the "Canada Lancet," of 1st September, 1879, containing the correspondence between the Imperial and Canadian Governments on this subject.

*Beard*, for appellant, contended that the

latter had a right to practise without registration under the Imperial Act 21 & 22 Vict., cap. 90, that the 31 & 32 Vict., cap. 79, sec. 3, giving power to Colonial Legislatures to enforce registration of persons registered under the Imperial Act has not been acted upon, but the Ontario Medical Act leaves it optional with the "Council" to admit to registration persons registered under the British Medical Act.

Macqueen, Co. J.—It being admitted and indeed proved, that the appellant was duly registered under "the British Medical Act" can these convictions for breaches of the Ontario Medical Act be sustained? I think not. By the 31 sec. of the Imperial Act, 21 & 22 Vict., cap. 90, it is declared that "Every person registered under this Act shall be entitled, according to his qualification or qualifications, to practise medicine or surgery, or medicine and surgery, as the case may be, in any of Her Majesty's Dominions."

This Act, then, extending its provisions to Canada, as a portion of Her Majesty's Dominions, gave to medical practitioners registered under it the right to practise their profession in this Province without any further examination and without the payment of any fees.

But the force of this enactment has, it appears to me, been since restrained, 1st, by the passing of the British North America Act (1867), which conferred upon Provincial Legislatures powers to make laws in relation to property and civil rights in the Province, and exclusively in relation to "education" and secondly, by the Imperial Act, 31 & 32 Vict. cap. 29 (1868), whereby the right to deal with this matter, as conferred by the British North America Act, was in effect limited.

Now, had the last mentioned Act not been passed, the power of our Provincial Legislature to deal with the whole subject as conferred by the British North America Act, was undoubted, for the Provincial Legislature had the whole field for action in the matter, and the Imperial Act, 21 & 22 Vict., cap. 90, would have been, in so far as any Province of Canada was concerned, virtually repealed the moment any Province of Canada granted a law containing provisions on the subject of registration of medical men, the practice of their profession, and the recovery of fees, &c. But the Imperial Act, 31 & 32 Vict., cap. 29, having been passed, resuming the authority which it undoubtedly possessed, and relaxing the law in some measure in favour of the Colonies, enacted, in its 3rd section, "that any person who has been duly registered under the Medical Act (21 & 22 Vict.) should be entitled to be registered in any Colony, upon payment of the fees (if any) required for such registration, and upon proof, in such manner as the Colonial Legislature shall direct, of his registration under the said Act."

Under this last enactment, the ordinary prerequisite of submitting to an examination before a Provincial Board was dispensed with, whilst it preserved to the duly registered practitioner under "the Medical Act" the right to claim registration here upon the payment of any fees the Provincial Legislature might require.

The facts of these cases are such as entitle the appellant to have those convictions quashed, for all he had to do, to enable him to practise, was to prove his registration and pay his fees, and having proved the one and tendered the other, he has complied with all the requirements of the law.

It may be remarked here, that the Local Legislatnre might have passed a law for the purpose of enforcing the registration of persons under its jurisdiction who have been registered under the "Imperial Medical Act," but I do not see that any such power has been exercised. There has been an optional power purporting to give to the Provincial Medical Council the right of admitting to registration all such persons as are duly registered in the medical register of Great Britain, upon such terms as the Council may deem expedient, which, in view of the Imperial statute in force when the Provincial Act, 37 Vict., cap. 30, was passed, may be considered as *ultra vires*.

The conviction of the 20th March, 1879, is bad, for not shewing when or where the offence was committed; and for all that appears on the face of the conviction, the offence may have been committed whilst

practising in Scotland,—nor does it appear even to have been sealed.

Both convictions are quashed with costs.

I have come to this conclusion without any regret, as I think the appellant has been harshly dealt with, in being harassed with a second prosecution pending an appeal from the first conviction.

*Convictions quashed with costs.*

## SCHOOL LAW.

### Reg. ex rel. Currie v. McLean.

*Election of School Trustee.*

Stratford, Feby. 9.

This was an application in the nature of a *quo warranto* made to the Judge of the County Court of the County of Perth, under Ontario Statutes of 1879, chap. 34, sect. 7, ss. 9, to set aside the election of John McLean to the office of Public School Trustee for the south ward of the Town of St. Mary's, in the said county, to which he was elected on the 7th day of January last.

The principal ground of objection alleged was, that the alphabetical list required by the 4th section of said Act, was taken from the Assessment Roll of the Town for the year 1878, instead of from the "then last Revised Assessment Roll" as required by the Statute, which would be the Roll of 1879.

Lizars, Co. J., *held* the election bad and ordered new election, but without costs.

## CORRESPONDENCE.

*Legal Education.*

*To the Editor of* The Law Journal.

Even the general public are discussing the total neglect in this Province of legal education in its proper sense, and the profession surely ought to consider the question, and, if possible, devise some scheme to remove the reproach.

In almost every State of the Union, law schools exist, and the larger portion of the younger members of our profession in that country have attended such schools and have a fair knowledge of the theory of law. In England, too, of late years, excellent lectures have been delivered in connection with the Inns of Court upon all branches of law, including Roman jurisprudence. Even in Quebec, advocates of recent admission have invariably attended law lectures in connection with the different Universities, principally McGill and Laval. What has been done with us? The writer is not aware that a single lecture in law will be delivered in this Province this year.

The Law Society have ample funds for the purpose, and tax all students excessively; but, by some strange apathy, even the slight effort heretofore made to impart to such as chose to attend lectures some theoretical knowledge of law has been abandoned. This has been attributed to the action of the Benchers residing out of Toronto; but the writer is inclined to think that a more cogent reason was the fact that the remuneration of the lecturers was not sufficient to induce them to prepare their lectures with sufficient care. Also, the students attended their lectures after a harassing day's work and with minds ill adapted to receive any permanent impressions from what they heard. What benefit would medical students derive from their lectures, were their attendance limited to an hour or two in the afternoon and evening after a hard day's work compounding medicines in the surgery of some physician, who paid them for such services and expected full value for such payment. Our system of education is an erroneous one, and produces a profession of narrow ideas and lacking entirely any knowledge of the theory of law. Many of its members, no doubt, in after life acquire this knowledge by mere force of will but under terrible disadvantages. How many lawyers in this Province have read Austin's Jurisprudence, the works of Maine, or the Institutes of Justinian. Probably not one in twenty, and possibly hardly half are aware of the existence of the two former of these works.

In the writer's judgment there is but one remedy for this. The drudgery of office work must not be done by students. The relationship existing between a lawyer and his pupils, as regards imparting a knowledge of law, must not be the mere myth it has been of late years; and better still,

all students intending to become *Barristers* should attend, for a stated period, lectures delivered by gentlemen who are sufficiently remunerated to make them more than a mere matter of form, and during the period of such attendance the student should have no other duties than attendance on such lectures. Law students are sufficiently taxed to enable the Law Society or such other institutions as may have charge of their education to procure for them teaching of a high character. This education should not be merely the narrow education now imparted or attempted to be imparted, but ought to embrace Roman law, Constitutional law, and particularly such generalizations of laws as are referred to in the works of Maine, Lavaleye, and kindred writers.

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*Unlicensed Conveyancers.*

*To the Editor of the* Law Journal.

Sir,—Your editorial remarks, and the correspondence which appeared in the last issue of the Law Journal in referring to "unlicensed conveyancers" could not have been more timely. Like noxious weeds this class of people seems to be increasing at a great rate. I speak not only as a member of the profession, but in the interest of the people generally (to whom these so called conveyancers, &c. &c., are a terrible curse), when I say that repressive measures should be introduced against them. In addition to the remedies already proposed I beg to submit another for consideration. It strikes me that a practicable plan to prevent people on the score of cheapness (forsooth) to go to these conveyancers would be this:—Put a tax of—say $5 on every instrument to be registered in the Registry Office, or chattel mortgage filed in the office of the Clerk of the County Courts unless the instrument bears a certificate from a duly qualified Barrister or Attorney, that it was prepared by him. This is a plan I propose in addition to others which have appeared in the Law Journal, and which seem very good.

Let the profession continue to agitate this question until they succeed in getting protection, not only for themselves, but for the whole people. Attorneys are under severe penalties unless they take out their annual certificates and pay a good sized fee therefor. Why should not unlicensed pettifoggers be under penalties as well as duly qualified professional men who have to spend much time, labour, and money to acquire their profession. I agree with your remarks and those of one of your correspondents in laying the blame on the Benchers of the Law Society in this matter, and I speak with much feeling as it happens that in the Registry offices of the county in which I practise, over one half of the documents registered are drawn by "conveyancers," &c.

Yours,

Practitioner.

February 28th, 1880.

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*Sheriffs' Fees.*

*To the Editor of the* Law Journal.

Sir,—One important point, that seems to have been overlooked both by your correspondent "B." and Sheriff McKellar, in reference to the service of bills in Chancery, writs of summons, and other process requiring personal service, is the practice that very justly prevails, in order to avoid delays, &c., of lawyers accepting service of process for their clients from whom they have received a general retainer. In the case of Banks, Insurance, Railway and other corporations this practice is very general. Again, a lawyer usually writes a letter threatening, sent before commencing proceedings, and the recipient hands the same to his lawyer, who if he advises him to defend, invariably writes the opposing attorney that he will accept service of papers for his client. It will be found if the matter be traced up, that in the greatest number of cases mentioned by the Sheriff services have been effected in this way. As far as overcharges are concerned and the slurs endeavoured to be cast on an honourable body of men by Sheriff McKellar, he should be the last one to name such a subject. He should "let sleeping dogs lie," for in case this subject is ventilated it will be very little to *his* credit.

Let him challenge an investigation if he dare on the subject of overcharges, and such a mass of testimony will be forthcoming as will consign him and his Little Book to the shades of oblivion.

"One who Knows."

Hamilton, March 10th, 1880.

## *The Law School.*

*To the Editor of* The Law Journal.

Dear Sir,—The recent action of the Council of the Law Society, in abolishing the Law School at Toronto, has had the very beneficial effect of drawing public attention to the disadvantages under which law students in this Province labour, with regard to professional instruction. At the present time, the only encouragement given to students who are willing to study, is the opportunity of competing for the scholarships. This is, however, practically confined to those who live in Toronto or its immediate vicinity, as no one residing at a distance from that city, cares to be at the expense of going up for the examination, with a good chance of being plucked, and getting laughed at by his fellow-students, for his presumption. This difficulty could, I think, be remedied by holding the examinations in every county town, from which applications might be received, in the same way that Public School Teachers' and High School Intermediate Examinations are now conducted, the papers being prepared by the Law Society examiners, and sent to the different counties. It may be objected that this would be expensive, but arrangements could probably be made with County Boards, who overlook the candidates for teachers' certificates, to do the same for the law students, and at the same time and place. The extra expense of examining the papers at Toronto, can hardly be urged as an objection. If the principle of giving these scholarships is a correct one, the more students who participate in the competition, the greater will be the good done, and there is no reason why money should be spent in aid of Toronto students to the exclusion of those in other parts of the Province. At any rate, every student pays into the treasury of the Law Society $210, or $42 per year during his clerkship, so that an increased expenditure on behalf of students should not be considered out of place by those who pay only $17 per year, and at present spend all the money on themselves.

Five years is a long time to serve under a solicitor before being admitted to practice. This term is probably ~~inspired~~ required with two objects in view. The first of these is to make sure that the student shall be well qualified before he is admitted, and the second is that the profession may be kept select—neither of these objects is attained. The only way in which the Law Society can secure proficiency in its members, is by making the examinations a real test. Some students will learn more in one year than others do in five, but all are now placed on the same level. Is it not a fact that a large number of students-at-law hardly ever look at a book until a month or so before the examination, then cram up, pass with a point or two to spare, and get the same standing in reality as the man who comes out first? Of course those who get up their work well feel the benefit of it in the future when practising, but that is no reason why they should not also be rewarded in the present. This could be accomplished by allowing a reduction in the time of all who reach a certain standard at the Intermediate, the same way as was formerly done in the Law School. Merely compelling a person to put in five years in a law office will never have the effect of providing the country with good lawyers, when there is nothing to prevent the whole five years from being frittered away, as is done by so many Ontario students. Again, the five years' rule has not the effect of keeping the profession select. It is no doubt of great advantage to the country, that the profession of law should be continually recruited by able and honourable men, and that it should be difficult for any others to enter it. But is this the natural result of this present regulation? On the contrary, the road is made easy to those who are least needed and hard to those who would bring strength to the bar. A great many well qualified by nature to become lawyers have not the

means to sit down at a desk for five years, with little or no salary, while rich men's sons, no matter what their mental calibre may be, are articled at the age of 17 or 18, and after putting in a good time for a few years, emerge as full-fledged barristers with no knowledge of the world, and very little of their profession. On the other hand, many a young man endowed with good abilities but no money, and mature enough to know what he is best fitted for, is much embarrassed by being compelled to serve so long an apprenticeship. If a student is willing and able to accomplish all that is required of him in three years, what advantage can it be to lawyers or to the public at large, to keep him five years at it.

Let me in conclusion express the hope, that the Council of the Law Society may find it advisable to consider, at an early day, whether the matters I have alluded to, are not of sufficient importance to call for some change.

Yours respectfully,

Joseph Martin.

Ottawa, February 23rd, 1880.

## *OBITUARY.*

Gonzalve Doutre, Q. C., B. C. L.[1] LL.D., Lecturer upon Civil Law, McGi University, died at Montreal, February 28th, 1880, at the age of 37. He was brother of M. Joseph Doutre, Q. C. (well known in connection with the *cause celebre* of L'Institut Canadien and the Romish Church; better known as the *Guibord case*), and a member of the legal firm Doutre, Doutre, Branchard & McCord. He edited a condensation of Le Droit Civil of Lower Canada, a work showing vast industry and much research. Mr. Doutre was also a writer in *Le Pays* and other French newspaper, and author of pamphlets upon Droit Civil, Droit National &c; lectures before L'Institut Canadien and the Law Society. He was a graduate of McGill in 1861, and was admitted to the Bar in August 1863. He was for some time secretary of the General Council of the Lower Canadian Bar.

## *BOOKS RECEIVED.*

The Law of Extradition. By Samuel T. Spear. Albany: Weed, Parsons & Co.

Snell's Equity. Fifth edition. Stevens & Haynes, London. 1880.

McIntyre & Evans. Summary of the Practice under the Judicature Act. William Amer, London. 1877.

The Struggle for Law. Callaghan & Co., Chicago. 1879.

Parliamentary Government in the British Colonies. By Adolphus Todd. Boston: Little, Brown & Co. 1880.

A Manual of Government in Canada. By D. A. O'Sullivan. Toronto: J. C. Stuart & Co. 1879.

The Powers of Canadian Parliaments, By S. J. Watson. Toronto: C. B. Robinson. 1880.

Williams on Petitions in Chancery and Lunacy. Stevens & Haynes. 1880.

## *FLOTSAM AND JETSAM.*

In an appeal of death, the defendant waged battle, and was slain in the field; yet judgment was given that he should be hanged, which the judges said was altogether necessary, for otherwise the Lord could not have a writ of escheat.

A deaf witness was, the other day, called upon at a police court to "kiss the book." True to her instincts, the old lady caught readily the word "kiss," and at once offered her face to a solicitor near her. The magistrates joined heartily in the laughter which the incident caused.

The Bench and the Bar in America.—The Indiana judges stand no nonsense from the bar. A lawyer there, lately, in the course of his argument, used the word "disparagement." "Stop using Latin words," said the judge, "or sit down." The poor lawyer, undertaking to explain, was ruthlessly fined twenty dollars for contempt.

Judge Miller.—The last time I met Joaquin Miller, the American poet, says the London correspondent of a contemporary, he spoke of himself as "Judge" Miller. I expressed my delight and surprise. I had been unaware of his judicial

dignities. Indeed, I did not even suspect that he knew any law. Upon my expressing my surprise, he replied, calmly, "Yes, sir, for four years I administered justice in Oregon—with the help of one law-book and two six-shooters."

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Supreme Court Examination in Indiana.—Years ago a young law student emigrated from New England to the State of Indiana, and applied for admission to the Bar, the examinations then being required before the Supreme Court in public session, as at the present time in Illinois. Judge Stevens was then presiding, and acted as examiner. "Let the applicant for admission come forward," proclaimed the Judge, in a commanding and lofty tone. The crowded court room was silent and sympathetic, as the modest and embarrassed young stranger presented himself before the Judge with eyes as downcast and nerves as tremulous as if he had been arraigned for crime. "Young man," demanded the Judge, with sternness and oppressive pomp, "*What is the first great duty of a lawyer?*" "*To secure his fees, Sir,*" squeaked out the bashful student, in a voice of girlish clearness. This answer to a question strangely general and indefinite, so apt and unexpected, produced an irrepressible burst of laughter at the Judge's expense, who, blushing and indignant, cried out to the clerk, "prepare a license for the applicant—I find him well qualified to practise law in the State of *Indiana*." The student became a wealthy and distinguished lawyer and citizen—the late Hon. James Farrington, of the city of Terre Haute, a gentleman universally respected and beloved.

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A correspondent of the *Albany Law Journal* has unearthed two points in criminal practice from the old reports. In the trial of the Seven Bishops, after the charge to the jury, the following colloquy took place. The Lord Chief Justice: "Gentlemen of the jury, have you a mind to drink before you go?" Jury: "Yes, my Lord, if you please." [*Wine was sent for, for the jury.*] Afterwards the following conversation ensued. Juryman: "My lord, we humbly pray that your lordship would be pleased to let us have the papers that have been given in evidence." Lord Chief Justice: "What is that you would have, sir?" Mr. Solicitor-General: "He desires this, my lord, that you would be pleased to direct that the jury may have the use of such writings and statute books as may be necessary for them to make use of." Lord Chief Justice: "The statute books they shall have." The "treating the jury," it is pointed out would probably vitiate a verdict at this day, but the authorities are not uniform. See *Van Buskirk* v. *Dougherty* 44 Iowa, 62; *Kee* v. *State*, 28 Ark. 155; *Perry* v. *Bailey*, 12 Kas. 539; *Redmond* v. *Royal Ins. Co.*, 7 Phila. 167. As regards the second point, in *Merrit* v. *Nary* 10 Allen, 416, a new trial was granted because the judge who presided allowed the jury to have a copy of the general statutes in the jury room while deliberating on their verdict. The ancient authority above mentioned does not appear to have been cited in the argument of the latter case.

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Singular Case of Disputed Identity.—A court-martial sitting in Paris has just sentenced to five years' penal servitude a man named Charles Drouhin, who was convicted nine years ago of having given information to the Germans during the siege, and who, having escaped from prison during the Communist insurrection, was recaptured under very peculiar circumstances. When the insurrection was over, Drouhin had disappeared, and nothing more was heard of him until last year, when an old man with a long white beard came to the office of the registrar of the court, and asked to be allowed to consult some of the documents filed in connection with the case, alleging that he was the eldest brother of Drouhin, who had died in an hospital a short time before. The registrar let him have the documents, but it suddenly occurred to him that the visitor must be Drouhin himself. Inquiries were made, and Drouhin, who was found begging at the porch of a church in the Rue St. Honoré, was arrested. He stoutly denied the accusation. When confronted with the warders of the prison in which he had been confined nine years ago none of them recognised him, and everything pointed to an acquittal at the trial, when the officer presiding ordered the prisoner to be taken out and shaved. He protested energetically, declaring that his occupation as a model would be gone if he were deprived of his flowing white beard; but the court was inexorable, and when he emerged from the barber's hand the warders recognised him at once. He still protested that he was the brother of the man whom they took him for, but the barber's razor had removed all doubt, and Drouhin went back to prison serve the remainder of his term.

# Law Society of Upper Canada.

OSGOODE HALL,

HILARY TERM, 43RD VICTORIÆ.

During this Term, the following gentlemen were called to the Bar, (the names are not in the order of merit, but in the order in which they stand on the Roll of the Society) :—

GEORGE WHITFIELD GROTE.
WILLIAM COSBY MAHAFFY.
P. A. MACDONALD.
WILLIAM LAWRENCE.
WILLIAM LEIGH WALSH.
JOHN J. W. STONE.
COLIN SCOTT RANKIN.
HORACE COMFORT.
ALEXANDER V. MCCLENEGHAN.
MARTIN SCOTT FRASER.
WILLIAM PATTISON.
WM. REUBEN HICKEY.
GEORGE MONK GREEN.
JAMES THOMAS PARKES.
MICHAEL J. GORMAN.
HARRY EDMUND MORPHY.
CHARLES AUGUSTUS KINGSTON.
JOHN HY. LONG.

*Special Cases.*

JAMES C. DALRYMPLE.
JOHN JACOBS.

The following gentlemen have been entered on the books of the Society as Students-at-Law and Articled Clerks .—

*Graduates.*

PETER L. DORLAND.
LEWIS CHARLES SMITH.
MATTHEW M. BROWN.
PETER D. CRERAR.
RUFUS ADAM COLEMAN.

*Matriculants.*

ANDREW GRANT.
JAMES MACOUN.
FRANCIS R. POWELL.
JOHN TYTLER.
THOMAS JOHNSTON.

*Primary Class.*

ROBERT VICTOR SINCLAIR.
HECTOR COWAN.
WILLIAM BEARDSLEY RAYMOND.
WILLIAM ALBERT MATHESON.
ARTHUR B. MCBRIDE.
FRANK HORNSBY.
WILLIAM AUSTIN PERRY.
JOSHUA DENOVAN.
M. J. J. PHELAN.
ARTHUR EDWARD OVERELL.
ROBERT SMITH.
HUGH MORRISON.
JOHN MCPHERSON.
AMBROSE KENNETH GOODMAN.
J. A. MCLEAN.
THOMAS IRWIN FOSTER HILLIARD.
RANALD GUNN.
PHILIP HENRY SIMPSON.
JOHN GEAEE.
EDWARD A. MILLER.
JOHN GREER.
DANIEL FISKE MCMILLAN.
CHARLES ADELBERT CRAWFORD.
FREDERICK ERNEST COCHRANE.
WILLIAM PEARCE.
ANDREW GILLESPIE.
G. A. KIDD.

*Articled Clerks.*

G. R. VANNORMAN.
E. M. YARWOOD.
J. HEIGHINGTON.

## RULES AS TO BOOKS AND SUBJECTS FOR EXAMINATIONS, AS VARIED IN HILARY TERM, 1880.

*Primary Examinations for Students and Articled Clerks.*

A Graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such Degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his diploma or a proper certificate of his having received his degree.

All other candidates for admission as articled clerks or students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects :—

*Articled Clerks.*

Ovid, Fasti, B. I., vv. 1-300; or,
Virgil, Æneid, B. II., vv. 1-317.
Arithmetic.
Euclid, Bs. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography — North America and Europe.
Elements of Book-keeping.

*Students-at-Law.*

CLASSICS.

1880 { Xenophon, Anabasis, B. II.
Homer, Iliad, B. IV.

1880 { Cicero, in Catilinam, II., III., and IV.
Virgil, Eclog., I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.