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The result of the labours of the Commission for the consolidation and revision of the Rules of Practice for the High Court of Justice for Ontario has been published. The Rules consist of 1214. Appended thereto are forms, with tariff of costs. We propose in our next issue to refer to the changes and additions that have been made.

It has been stated more than once. and with truth, that the recent appointment of Colonial Judges to the Judicial Committee of the Privy Council is an important step towards Imperial Federation. Our English namesake asks whether the Bar is to render the same service in this connection as the Bench, and takes exception to the proposal that a member of the profession in any part of H. M. possessions should be free to practice in any other part, on the ground that "one Bar for the whole empire would inevitably mean the weakening if not the destruction of the disciplinary control of the profession." There is something in this, but things are moving in the direction of federation, and difficulties such as these will of course have to be faced and dealt with when the time comes.

We would suggest to our namesake of Albany that he should let the politicians discuss the arrangements of the Canadian Government in respect to the Klondike gold mines. The indignation of the editor is entirely misplaced, and he is evidently not fully informed of the facts. We can also assure him that there is no fear that "the Canadian Government will find its hands full in enforcing the outrageous regulations it has, in its inordinate greed, seen fit to impose." The editor should not judge of the management of such matters by

knowledge acquired in his own country. The swift justice meted out by such men as Chief Justice Begbie and Mr. Crease, who maintained the supremacy of the law in British Columbia forty years ago, the strict and admirable order preserved in Rossland in recent days, notwithstanding the presence of a large number of roughs from the United States and other countries, and the firm, wise and humane management of our Indians by the North-west Mounted Police are a sufficient promise that Commissioner Walsh will keep up the reputation of British justice on the Alaskan boundary, protect law-abiding citizens and collect all Government dues without having to call in the assistance of Judge Lynch, who still seems in all the States of the Union, with the exception of those in good old New England, a necessary and much invoked official.

THE "SWEAT BOX."

The inquisitorial practices of French courts appear to be gaining in favour, if not with our courts, at all events with some of the officials concerned in the administration of our criminal law.

It was recently announced in the newspapers that the boy Allison, under arrest at Galt, charged with the murder of Mrs. Orr, had, while a prisoner and despite the protests of his counsel, been subjected by detective Murray of the provincial force, to a "sweat-box" cross-examination of five hours duration.

No friend of the accused, not even his counsel, was permitted to be present, and the Crown officer has not made a statement as to the information elicited from Allison; but, as the result apparently of the inquisition, it was immediately afterwards announced by the newspapers that the Crown had dropped every other line of investigation and was working solely on the theory that Allison was the guilty party. One of the leading papers of the Province went further and stated that the verdict of the coroner's jury, which at that

time had only held one session and had then adjourned for further evidence, was sure to connect Allison with the murder.

The British rule that no person accused of a criminal offence shall be compelled to convict himself had its origin doubtless in a proper sense of fair play. In the United States, while the rule still holds good in the letter, it is often grossly outraged in the spirit; all sorts of expedients being adopted by detectives to worm confessions from accused persons, and then the detectives' evidence is accepted at the trial. Our judges have so often and so strongly expressed their disapprobation of American methods in this respect, that the wonder is that a veteran Canadian officer should have lent himself to them. The effect of the trial and conviction of Allison by the detective and the newspapers may, however, as has happened in previous cases of a similar character, have an opposite effect from that intended. Anything like coercion of a prisoner by officials creates prejudice against the officer and sympathy for the prisoner. In the present case, the prisoner being a mere boy, and, it seems, a stupid one at that, it can readily be imagined what use a clever counsel will make at the trial of the treatment his client has received at the hands of a Crown officer and the newspapers.

It is as undesirable that a prisoner should be convicted on the strength of impressions formed by opinions of detectives and irresponsible and frequently very ignorant reporters, as that he should go unpunished, to mark the disgust of the jury at such unfair and un-British treatment. It is possible for the Government to prevent objectionable action on the part of its officers, but where shall we find anyone who can restrain newspaper reporters, who, in their anxiety to produce interesting "copy," recklessly create impressions which should ony be formed after hearing legal evidence given at a judicial hearing?

SOME MINOR POINTS REGARDING THE STATUTES.

Now that the decennial revision of the Ontario Statutes is progressing, it may not be amiss to notice briefly some minor points connected with statutes and statute making. The aim of this article will be more in the direction of interesting students than of furnishing matter of much practical benefit to the legal profession; and more, perhaps, regarding statutes in their literary, than in their legal aspect.

A (British) Act of Parliament or statute, has been defined to be "A law made by the sovereign, with the advice and consent of the Lords, spiritual and temporal, and the Commons in Parliament assembled." (Blackstone.)

The introductory words, constituting, or including the preamble, have remained substantially the same for centuries. There is usually a clause beginning with "whereas," followed by these or similar words: "Be it therefore enacted by the King's (or Queen's) most excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same." Some ancient statutes, however, are in the form of charters or ordinances, proceeding from the Crown, and in which the consent of the Lords and Commons is not expressed.

The formula for Upper Canadian Acts, under the old regime (1792) was: "Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, 'An Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, intituled 'An Act for making more effectual provision for the government of the Province of Quebec in North America,' and to make further provision for the government of the said province,' and it is hereby enacted," or "and by the authority of the same," the latter words being used in the Acts of the 9th July, 1793, and thenceforward. This form was retained

down to the year 1840, excepting that the word "King" was replaced by "Queen" in the year 1838. This was at the "Third Session of the Thirteenth Provincial Parliament of Upper Canada, met at Toronto on the twenty-eighth day of December, in the first year of the reign of our Sovereign Lady Victoria."

After the union of Upper and Lower Canada under the Imperial Act of 1840 (the union taking place in February, 1841), the formula for Canadian Acts was (after the usual introductory clause beginning with "whereas") as follows: "Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Legislative Council, and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, 'An Act to reunite the provinces of Upper and Lower Canada, and for the government of Canada,' and it is hereby enacted by the authority of the same."

The first Parliament of Upper Canada met at Newark (now Niagara), 18th September, 1792. The first united Parliament met at Kingston in 1841. The last formula, above given, continued to be used down to the year 1855; the Acts assented to on the 19th and 30th days of May of that year, being thus introduced.

On the latter of these dates an Act was assented to called "An Act to alter the mode of drawing up the Provincial Statutes." (18 Vict. c. 88). By s. 1 of this Act the form of preamble then in use was abolished and replaced by the following: "Her Majesty by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:"

The reason for the change is thus stated in the preamble to that Act: "Whereas the form in which the Provincial Statutes are drawn up is needlessly prolix, rendering their publication too expensive, and tending to create confusion in the laws, in lieu of facilitating their comprehension; and whereas the recital in the preamble at the beginning of each statute,

of the authority by virtue of which it is passed, may be made shorter." The change thus effected has, no doubt, accomplished all that was expected of it in regard to a saving of expense in publication. Whether the comprehension of the statutes has been in a like degree facilitated, may not be so apparent.

The second section of the Act provides that "after the insertion of these words, which shall follow the setting forth of the considerations or reasons upon which the law is grounded, and which shall, with these considerations or reasons, constitute the entire preamble, the various clauses of the statute shall follow in a concise and enunciative form.

The form of preamble provided by this Act continued in use down to the time of the confederation of the provinces (1867). By 31 Vict. (D.) c. 1, s. 1, it was enacted that "The following words may be inscribed in the preambles of statutes, and shall indicate the authority by virtue of which they are passed: 'Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows':" Following this, s. 2 of 18 Vict., showing what shall constitute the preamble, etc., is re-enacted.

By 31 Vict., (O.) c. 1, s. 1, the form provided is: "Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:" And again s. 2 of 18 Vict. is re-enacted. No change has since been made in the preambles to our Acts of Parliament. By clause "thirty-ninthly" of s. 7 of each of those Acts (the Interpretation Act), "The Preamble of every such Act as aforesaid shall be deemed a part thereof, intended to assist in explaining the purport and object of the Act."

So much for the "Preamble"; and now, shortly, as to titles of statutes. The titles of some statutes being rather lengthy (or, perhaps, needlessly prolix), the citing or referring to such, in other Acts, or in legal proceedings, where thought necessary to give the title in extenso, would be a matter of some inconvenience. And in comparatively early times, "short-cuts," somewhat in the nature of soubriquets or nick-names, were occasionally resorted to; and the name of the place where the Parliament

was held, the subject matter of the statute, the name of the member introducing the Act, or the initial words of the Act were used to designate the Act intended. Instances of such were "The Statute of Westminster 2" (or De Donis) 13 Edwd. I, c. 1; "The Statute of Marlbridge" (52 Hen. III., c. 23); "The Statute of Mortmain" (9 Geo. II., c. 36); "The Nullum Tempus Act" (9 Geo. III., c. 16); "Lord Campbell's Act"; "Lord Denman's Act," etc.

About the year 1850. in England, and shortly after that in Canada, "short titles" began to be introduced, authorized by the Acts themselves, sometimes with the year in which passed, and sometimes without. Among such were, in England, The Common Law Procedure Act, 1852; The Merchant Shipping Act, 1854: The Bankruptcy Act, 1869; Law of Evidence Amendment Act, etc. Of such Canadian Acts may be noticed: The Common Law Procedure Act, 1856; (see sec. 317 of that Act), The Municipal Act; the Judicature Act; The Post Office Act, 1867, etc.

The proper division of statutes into chapters, clauses, sections, etc., and their numbering, seems to have been, at times, matters not altogether free from difficulty. One learned author says: "Statutes are numbered according to rather an inconvenient arrangement; the entire Acts of one session are considered as forming two collections or volumes, one of Public, and one of Private Acts, each Act forming a distinct chapter, and sub-divided into sections." (Brande.) Wharton (Law Lexicon, 8th ed., p. 15,) says: "All the Acts of a session together make properly but one statute, and therefore, when two sessions have been held in one year, it is usual to mention stat. 1 or 2," etc.

This matter of the division of the statutes into chapters and sections, etc., has on several occasions been the subject of judicial comment. "The Consolidated Statutes may be treated as one great Act, and the several chapters as being enactments which are to be construed collectively, and with reference to one another, just as if they had been sections of one statute, instead of being separate Acts." Per Lord Westbury in *Boston et al.* v. *Lelievre et al.*, L.R. 3 P.C. 162.

"The word 'section' does not necessarily mean one of the divisions of an Act numbered as such; but may refer, if the context requires it, to any distinct enactment, of which there may be several included under one number:" see *Dain* v. *Gossage*, 6 P.R. 103: head note 2. "The word section has no technical meaning, nor indeed any very exactly defined meaning. No doubt it is usually applied to the numbered paragraphs of an Act." . . . . It means a part divided or cut off." . . . . "If a piece of chalk were broken in two, each half would be a piece of chalk and so, if the section of an Act consisting of distinct parts, be divided, I do not see why each part should not, in one sense, be called a section, because each is really a distinct enactment, although each would not be a numbered paragraph." (Per Mr. Dalton in the same case.)

Canadian statutes have usually been divided into clauses or sections, numbered consecutively, beginning with number 1, following the preamble. Down to the year 1857 Roman numerals continued to be used for the sections, as I., II., III., etc.: Arabic (or Brahmanic) numerals, 1, 2, 3, etc., were first used for the principal sections in the statutes of 1858 (22 Vict.). They had been in use for some time previously to that for sub-sections. The change from Roman to Arabic numerals was certainly an improvement.

The evolution of the sub-section is a matter of some interest. There seems scarcely to be a trace of what are now known as sub-sections in our early statutes. They appear for the first time, I think, in the statutes of 1852 (16 Vict., c. 22). The main or principal sections, were then, as we have seen, designated by Roman numerals. Where sub-sections were added Arabic numerals were used, beginning with number 1: and the reference would be, if the first sub-section were intended: "Sub-section 1, of section —." For instances of this manner of numbering, see sections II., III., V., VI., of chapter XXII. of the statutes of 1852. What might be called sub-sections were in use at an earlier date, but they were either not numbered (see 33 Geo. III., 1793, c. V., s. 111; 10 & 11 Vict., 1847, c. 45, s. 111), or were clauses of a

section. (See 9 Vict., 1846, c. 20, ss. II, III., XIII; and c. 27, s. L.)

The statutes . 1854 (18 Vict.) furnish, I think, the first instance of numbering the sub-sections according to the method now generally adopted. Section I. of chapter II. has one sub-section, and that is numbered 2, the main section having the Roman numeral. Section X. of chapter 3 has several sub-sections, beginning with number 2. Sections XI. and XII. are similarly composed. From this time onward the fortunes of the sub-section have been marked by vicissitudes.

Section 1 of 19 Vict., c.XI. (1856) has one sub-section not numbered. Section XIX. of c. 14 has several sub-sections not numbered. Section IV. of c. 17 has several sub-sections beginning with number 1. (Perhaps, however, these may have been reckoned as me : clauses.) Section IX. of c. 101 has several sub-sections beginning with number 2. So have sections XI, XVI., XXIV., and XXV. Section III. of 20 Vict. (1857), c. 22, is followed by three sub-sections or clauses, in the form of provisos: "Provided first," "Provided secondly," "Provided thirdly," and then follows: "Provided always," numbered as section IV!

Chapter 40 of the statutes of that year (1857) furnish many examples of the numbe' ıᵣ of sub-secti' ıs beginning with 2; or taking what would 'e the main section as the first sub-section. Passing now a decade, we notice in the Statutes of Ontario (31 Vict., 1868) a return to the former method of numbering. Chapters 19, 20, 29, 51, exhibit numerous examples of what would seem to be the proper method of numbering. That is, where the principle se :tions are properly numbered as consecutive divisions of the statute, and where sub-sections occur, their numbering in every case begins with number 1. See especially sections 8, 14, 18, 24, 39, 45, 46, 47, 48 of chapter 29.

The next volume of the Ontario Statutes (32 Vict., 1868-9) presents us with as many specimens of the modern, and what seems to me the incorrect mode of numbering, that is, where the first sub-section adde' is numbered 2. See especially

secs. 1, 10, 13, 14 of c. 4.; secs. 4, 9, 17, 22 of c. 6; secs. 7, 12, 18, 20, etc., of c. 21. And from this time forward, this mode of numbering has become decidedly predominant, sometimes the principal section being numbered twice; first with its proper number as a section, and then with the figure 1 in brackets (1) as a sub-section, and sometimes this is omitted.

The former, and what I am inclined to call the common sense method, cannot, however, as yet, be said to be a wholly extinct species. Sec. 4 of c. 6 of the Ontario statutes of 1892 has sub-sections beginning properly with (1). Sec. 4 of c. 34 of the same statutes has sub-sections beginning with (1). Sec. 4 of c. 90 of the statutes of 1893 has sub-sections beginning also with (1). Sec. 2 of c. 15 of the statutes of 1895 (Ont.) provides that "s. 140 of the Jurors' Act is amended by adding thereto the following as sub-sections, 1, 2 and 3 of the said section." And s. 10 of the Municipal Amendment Act of 1896 provides that: "The following shall be added to s. 44 of the said Act as sub-sec. 1."

While tracing the development of the sub-section I have tried to discover the reason that induced our statute-makers to adopt the present style of numbering. My search has been fruitless. I know of no ground upon which it can fairly be defended. Let us examine its working a little further. Take for instance s. 210 of the Municipal Act (R.S.O. 1887, c. 184). By s. 8 of the Municipal Amendment Act, 1891, this was repealed. "and the following substituted therefor." Then s. 210 is re-enacted with some modifications, as sub-sec. (1); followed by a sub-section numbered (2). And these were re-enacted in the Consolidated Municipal Act of 1892. Now, in citing this will the principal section, or what was such, be called sub-sec. (1) of s. 210? By s. 4, sub-sec. 2, of the Municipal Amendment Act, 1896, sub-sec. (2) of s. 210 is repealed. Will what remains of that section be now cited as sub-sec. (1) of s. 210?

Are all sections of a statute really sub-sections, travelling incognito, to be revealed in their true character only when an extra clause is added?

As a matter perhaps worth mentioning in connection with this, I have noticed several instances in our statutes, where sections without any sub-sections, are numbered as sub-sections, (1), in addition to their proper numbering as sections.

Before closing, permit me to direct the attention of the student to the report of the Commissioners to whom was entrusted the work which resulted in "The Revised Statutes of Ontario, 1877." This will be found in a convenient form in Vol.XI., p. 7 of the CANADA LAW JOURNAL. It is a carefully prepared and instructive document, and will well repay perusal. And for able and interesting articles touching upon some of the matters I have been discussing see "Acts of Last Session," and "Private Bills," at pages 35 and 68 respectively, of the same volume of the LAW JOURNAL.

EDWARDS MERRILL.

Picton.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

(Registered in accordance with the Copyright Act.)

TRUSTEE ACT, 1893 (56 & 57 VICT., C. 53, S. 12), S.S. 1—(R.S.O., C. 110, S. 4, S.S. 1)—TRUSTEES FOR PERFORMING THE TRUST—VESTING DECLARATION—MORTGAGE.

In *London & County Banking Co.* v. *Goddard* (1897), 1 Ch. 642, a mortgagor of land by deposit of title deed declared himself trustee of the legal estate for the mortgagee, and also gave the manager of the mortgagee power to remove him from the office of trustee and appoint a new trustee. In pursuance of this power a new trustee was appointed in place of the mortgagor, and a vesting declaration may by the appointor, under the Trustees Act, 1893 (56 & 57 Vict., c. 53, s. 12, sub-sec. 1 (R.S.O., c. 110, s. 4, sub-sec. 1). The mortgagor subsequently purported to convey the legal estate to a subsequent encumbrancer, with notice of the prior mortgage, and the question was whether the vesting declaration had the effect of vesting the legal estate as against the mortgagor's

grantee. North, J., held that it had, and the new trustee was a "trustee for performing the trust" within the meaning of the Trustee Act, 1893.

PRINCIPAL AND AGENT—SALE OF LAND BY AUCTION—AUCTIONEER, IMPLIED AGENCY OF—CONTRACT—SIGNATURE OF BY AUCTIONEER'S CLERK ON BEHALF OF PURCHASER—REVOCATION—STATUTE OF FRAUDS.

Bell v. *Balls* (1897), 1 Ch. 663, is one more case to be placed to the credit of the Statute of Frauds, that ever perennial fountain of litigation. The action was for specific performance of a contract for the purchase of land, and the case turned on whether the contract had been signed so as to bind the purchaser (the defendant). The facts were that the defendant attended a sale by auction of the lands in question, and became a bidder, and the property was knocked down to him: he left the auction room without signing the contract, and, upon being subsequently applied to, to sign it, refused; alleging, in effect, that he had merely bidden as a puffer at the request of the auctioneer, and not with the intention of buying. In the meantime a formal contract had been filled up by the auctioneer's clerk, commencing "I, George Balls," and the question was whether this memorandum was sufficient to bind the defendant, notwithstanding the defendants' refusal to sign it. Stirling, J., held that although the auctioneer himself might have bound the defendant by signing the contract, yet that he had no power to delegate the authority to his clerk, and that the memorandum drawn up by the latter was therefore not binding on the defendant, he not having by word or sign authorized him to sign on his behalf. A week after the sale, at the request of the vendors, the auctioneer himself had filled up and signed on behalf of defendant a contract, but this was also held not to be binding on the defendant, on the ground that the auctioneer's implied authority to sign for a purchaser can only be exercised at the time of the sale. This conclusion was arrived at apart from the question whether a purchaser can at the sale revoke the auctioneer's authority to sign for him at any time before he has actually done so, although the learned Judge does say, that he shares with Lord Romilly his reluctance to hold that upon a sale by auc-

tion under ordinary circumstances the vendor or the purchaser can say after a lot has been knocked down, "I am dissatisfied with the price and withdraw the authority given to the auctioneer": see *Day* v. *Wells*, 30 Beav. 220.

ADMINISTRATION OF ASSETS—INSOLVENT ESTATE—CROWN DEBT—PREROGATIVE RIGHT TO PRIORITY OF PAYMENT—PRIORITY.

In *Re Bentinck*, *Bentinck* v. *Bentinck*, (1897) 1 Ch. 673, Stirling J., determined that where the Crown is entitled to the prerogative right of payment of a simple contract debt in priority to other creditors, and the assets are more than sufficient to pay the Crown debt and specialty debts, that the assets ought first to be apportioned rateably between the specialty and simple contract debts, and that the Crown debt ought then to be taken out of the amount apportioned to the simple contract debts. It would seem as far as Ontario is concerned that the prerogative right of payment in priority to other creditors has been abolished by statute both as regards debts due to the Dominion: as to which see 14 & 15 Vict., c. 9, and 29 & 30 Vict., c. 43 of the old Province of Canada; and also as regards debts due to the Ontario Government as to which: see R.S.O. cc. 94, 110; *Attorney-General* v. *Clarkson*, 15 O.R. 632; 16 A.R. 202; *Maritime Bank* v. *The Queen*, 17 S.C.R. 657; 1892, A.C. 437.

PRACTICE—DISCOVERY—PRODUCTION OF DOCUMENTS—"POSSESSION OR POWER" SOLICITOR'S LIEN—ORD. XXXI. R 12 (ONT. RULES 508, 513).

Lewis v. *Powell*, (1897) 1 Ch. 678, is a practice case. In his affidavit on production of documents the plaintiff stated that certain documents were in the hands of his former solicitors who "hold them subject to their lien for their bill of costs against me." Their right to costs he disputed and claimed to have a cross-claim against the solicitors for negligence. The defendant applied for a further and better affidavit and it was held by Stirling, J., that the affidavit was insufficient and that the plaintiff was bound to satisfy the Court by affidavit that he had done his best to procure the production of the documents, he therefore made the order asked for, giving the plaintiff leave to apply, in the event of his finding a difficulty in the way of obtaining the documents.

LIGHT—OBSTRUCTION OF ANCIENT LIGHTS—CONTINUING TORT—ACTIO PERSONALIS—3 & 4 W. 4, C. 42, S. 2—R S.O., C. 110, S. 9).

Jenks v. *Clifden* (1897, 1 Ch. 694, was an action to recover damages for the obstruction of ancient lights. The injury complained of was occasioned by the building of certain erections by the late Viscount Clifden in 1894; the defendant was his administrator, and the question was raised whether the injury complained of could be considered a tort committed by the deceased within six months before his decease, he having died more than six months after the obstructive buildings had been completed. Kekewich, J., was of opinion that the case was governed by *Woodhouse* v. *Walker* (1880), 5 Q.B.D. 404, and that the continuance of the obstruction gave rise to a cause of action from day to day, and therefore that the action was maintainable.

Correspondence.

To the Editor of the Canada Law Journal.

DEAR SIR,—So much has lately been written against appeals from inferior Courts that it is unpopular to suggest a case in which I think an appeal should be provided.

Under 53 Vict.,,c. 76, s. 5, a County Judge, Stipendiary or Police Magistrate, has power to specify the county to be charged with the maintenance of a boy committed by them to an Industrial school. The charges for such maintenance may amount to $1,000 or more, and an appeal is only given to them—not from their decision. This is too important to be without an appeal from a County Judge or Local Magistrate. I lately observed a case where a Police Magistrate on a complaint made under R.S.O., c. 234, s. 7, sub-secs. 4 and 5, specified the county that should maintain the boy under 53 Vict., c. 76, s. 5, which I thought he had no power to do, as the boy was convicted of no offençe under the last mentioned act. No general rule will be established till there is given an appeal to a Superior Court Judge.

A. SHAW.

Walkerton.

[It seems to us that our correspondent is right. Want of space has prevented his letter appearing before.—ED. C.L.J.]

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Privy Council Reference.] [May 1.

IN RE CRIMINAL CODE, 1892.

Constitutional law—Criminal Code, ss. 275, 276—Bigamy—Canadian subject marrying abroad—Jurisdiction of Parliament.

Secs. 275 and 276 of the Criminal Code of 1892 respecting the offence of bigamy are intra vires of the Parliament of Canada. *Macleod* v. *Attorney-General of New South Wales* (1891), A.C. 445 distinguished. STRONG, C.J., dissenting.

Newcombe, Q.C., Deputy Minister of Justice, for Government of Canada.

Ontario.] [May 1.

BROUGHTON *v.* TOWNSHIP OF GREY.

Municipal law—Drainage—Assessment—Inter-municipal obligations as to contributions—By-law—Ontario Drainage Act of 1873—36 Vict, c. 38 (O.)—36 Vict., c. 39 (O.) R.S.O. (1887), c. 184—Ontario Consolidated Municipal Act of 1892—55 Vict., c. 42 (O.).

Where the council of a municipality assumed to pass a by-law under s. 595 of the Consolidated Municipal Act of Ontario (55 Vict., c. 42) for the construction, maintenance and repair of drainage works, and thereby to charge and assess lands in an adjoining municipality for benefit as for outlet in order to raise the funds necessary to meet the cost of such works,

Held, reversing the judgment of the Court of Appeal for Ontario (23 Ont. App. Rep. 601), and of the Division Court (26 Ont. R. 694), that as the drain only emptied into a natural stream extending into the adjoining municipality, the lands in said adjoining municipality purported to be affected by such by-law were not assessable for a liability thereunder to contribute towards the cost of the works, and so far as they were concerned the by-law was ultra vires of the initiating municipal corporation, and that a person whose lands might appear to be affected thereby or by any by-law of the adjoining municipality proposing to levy contributions towards the cost of such works would be entitled to have the adjoining municipality restrained from passing a contributory by-law or taking any steps towards that end by an action brought before the passing of such contributory by-law.

Appeal allowed, with costs.

Mabee, for the appellant.

Garrow, Q.C., for respondent Grey.

McPherson, for respondent Elma.

EXCHEQUER COURT.

BURBIDGE, J.] [May 3.

PETERSON *v.* CROWN CORK AND SEAL COMPANY.

Patents of invention—Action to avoid—Default of pleading—Judgment—Registrar's certificate—Practice.

Upon a motion for judgment in default of pleading in an action to avoid certain patents of invention, the Court granted the motion, but directed that a copy of the judgment should be served upon the defendants, and that the Registrar should not issue a certificate of the judgment for the purpose of entering the purport thereof on the margins of the enrolment of the several patents in the Patent Office until the expiry of thirty days after such service.

J. F. Smellie, for the motion.

BURBIDGE, J.] [May 3.

THE QUEEN *v.* CONNOLLY.

Practice—Judgment by default—Reference to Registrar.

Upon a motion for judgment in default of pleading to an information by the Crown it appeared that the information, while showing that the Crown was entitled to judgment, did not show clearly the amount for which judgment should be entered, and a reference was made to the Registrar to ascertain the amount.

E. L. Newcombe, Q.C., (D.M.J.) for the motion.

Province of Ontario.

HIGH COURT OF JUSTICE.

ROSE, J.] [June 29.

REG. EX REL. MCKENZIE *v.* MARTIN.

Voters lists—Finality of qualification of voter—Municipal election.

The voters' lists are final as to the qualification to vote at a municipal election, and, on a motion to set aside the election of a member of a municipal council, no enquiry will be made as to the elector's right to vote.

Judgment of Mr. Cartwright, Official Referee, affirmed.

Aylesworth, Q.C., for the motion.

H. M. Mowat, contra.

FERGUSON, J.
MCMAHON, J. } [June 30.

MAY *v.* WERDEN.

Security for costs—Prior action—Costs unpaid—New plaintiff—Notice—Nominal and insolvent plaintiff.

Security for costs may be ordered where the costs of a former action for the same cause are unpaid, even although the actions are not between precisely the same parties, if the plaintiffs are suing substantially by virtue of the same alleged title.

McCabe v. *Bank of Ireland*, 14 App. Cas. 413, followed.

And where the title to property, the subject of the present and a former action of ejectment, was shifted in the hands of the present plaintiff, to evade, if possible, the effect of an order requiring the plaintiff in the former action to give security for costs—the former action having been dismissed for default of such security—and it appeared that the present plaintiff knew the history of the prior litigation, an order for security for costs was affirmed.

The order was also maintainable upon the ground that the plaintiff was a person of no substance, and the action brought mainly, if not entirely, for the benefit of some unknown and unnamed person, not a party to the record.

J. A. Donovan, for the plaintiff.

Middleton, and *J. M. Godfrey*, for the defendant.

BOYD, C., MEREDITH, C.J., }
MACMAHON, J. } June 30.

McLEOD *v.* NOBLE.

Parliamentary elections—Recount by County Judge—Injunction of High Court to restrain—Jurisdiction—Disobedience of—Motion to commit for contempt for disobedience of injunction.

The Dominion House of Commons is clothed with the like privileges, immunities and powers as were, at the date of Confederation, enjoyed and exercised by the House of Commons in England, which had the right to determine all matters concerning the election of its own members, and their right to sit and vote in Parliament.

In all matters not relegated to the Court, the House retains and exercises its jurisdiction.

The preliminary recount provided for by R.S.C., c. 8, s. 64, is a delegation pro tanto of parliamentary jurisdiction, and the presiding officer (County Judge) is one designated by Parliament, and responsible to the House for the right performance of his duties.

On an application to commit for contempt of Court a barrister, who had in argument as agent of a candidate urged a County Court Judge to disregard an injunction staying proceedings granted by the High Court of Justice, and proceed with the recount, and a returning officer who had under the direction of the County Judge produced the ballots for the purpose of the recount, notwithstanding that the injunction prohibited him from so doing.

Held, that the plaintiff (the defeated candidate) had no particular specific legal right as applicant for a recount which entitled him to claim a specific legal remedy in the Courts.

That the Provincial Court had no jurisdiction to enjoin the prosecution of proceedings connected with controverted elections of the Dominion, such as a recount under s. 64, R.S.C. c. 8.

That a County Judge having jurisdiction and having issued his appointment for a recount the procuring of an injunction from the High Court was an unwarrantable attempt to interfere with the due course of the election.

That the injunction being one the Court had no jurisdiction to grant was extra judicial and void, and a thing which might be disobeyed.

And the application to commit was dismissed with costs.

Aylesworth, Q.C., and *Shepley*, Q.C., for the motion.

E. D. Armour, Q.C., and *Leighton McCarthy*, contra, for the barrister.

Wm. Macdonald and *R. A. Grant*, for the returning officer.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] [May 8.

THE QUEEN *v.* MCLEOD.

Abusive language—One justice cannot try and convict for use of—Summary Convictions Act, R.S., 5th series, c. 103—Acts of 1889, c. 36.

Defendant was convicted before a justice of the peace for the County of Pictou for using abusive language towards H. on a public thoroughfare, contrary to the provisions of R.S. (5th series), c. 162, s. 12.

Held, that the conviction was bad and must be quashed, there being no jurisdiction under the Summary Convictions Act, R.S. (5th series), c. 103, as amended by Acts of 1889, c. 36, in one magistrate to try and convict for such an offence.

The motion being unopposed no costs were allowed. Terms were imposed that no action should be brought by defendant.

J. J. Power, for appellant.

Full Court.] [May 8.

DUFFY *v.* ADAMS.

Dismissal of action for want of prosecution—Exercise of discretion by trial judge not interfered with—Motion to postpone trial on account of absence of material witness—Special circumstances considered.

Plaintiff brought an action for slander December 13th, 1894. The defence was delivered July 4th, 1895. On October 19th, 1895, there was an order dismissing the action for want of prosecution, unless it was brought on for trial at the next ensuing special term. The order was not insisted upon and the cause came on for trial at the regular sittings in May, 1896, when plaintiff moved for postponement on account of the absence of a material witness, whose evidence was relied upon to prove the words complained of. The witness had undertaken to be present, but had not obeyed his subpœna.

Held, that the ground upon which the postponement was asked would have been sufficient under ordinary circumstances, but that the circumstances of this case being of an exceptional character, and the trial judge having exercised his discretion in refusing the extension of time asked for, the Court would not interfere.

F. B. Wade, Q.C., for appellant.

J. A. McLean, Q.C., for respondent.

Full Court.] [May 8.

MCASKILL *v.* POWER.

Bill of sale—Insufficient description—Finding of trial judge as to question of property—Form of execution—Protection of sheriff.

A bill of sale given by M. to plaintiff described the property conveyed as follows: "One horse or mare, three cows, two heifers, sheep, cart, all my farming implements."

Held, that the description was insufficient.

The evidence showed that M., being about to leave the Province, sold his farm, stock, etc., to plaintiff, but returned in a short time, and occupied the farm under an agreement to redeem it, and treated the stock as his own, selling and otherwise disposing of it as he saw fit.

Held, in an action brought by plaintiff against the defendant sheriff who levied upon the stock in satisfaction of a judgment recovered against M., that the trial judge was right in finding the property levied upon to be that of M.

Held, further, that an execution not entitled in the cause, but giving the names of the parties to the cause in which the judgment was recovered, and the date and amount, was valid and sufficient to protect the sheriff.

W. A. Henry, for appellant.

J. A. Chisholm, for respondent.

Full Court.] [May 8.

WHITFORD *v.* ZINK.

Motion for restitution of property—Costs.

Plaintiff purchased at sheriff's sale goods of defendant which were sold under execution issued on a judgment recovered by plaintiff against defendant.

The judgment under which the sale took place was set aside and a new trial ordered. This resulted in a second judgment for plaintiff, and the goods were again sold and bought in by him, but, in the interval between the setting aside of the first judgment and the new trial, there was a motion by defendant for restitution of the property.

Held, that the order applied for could not be made, plaintiff having in the meantime acquired a good title under the second judgment and execution, but that defendant having been entitled to succeed at the time the motion was made was entitled to an order for his costs.

F. B. Wade, Q.C., and *W. B. A. Ritchie*, Q.C., for plaintiff.

Drysdale, Q.C., for defendant.

Full Court.] [May 8.

MCDOUGALD *v.* MULLINS.

Trial judge—Power to amend order for judgment in case of error in taking—Remedy by appeal—Prothonotary—Duties purely ministerial.

At the conclusion of the evidence given on the trial a verdict, by consent, was taken for plaintiff for one dollar damages, and an order was prepared, sealed and filed. It subsequently came to the notice of the judge that the

order had been taken with costs, and, stating that this was a mistake, and that he did not intend to allow costs, he directed the prothonotary to produce the order, and caused the portion of it relating to costs to be erased.

Held, that the judge had power to make the correction ordered.

Held, also, that counsel for plaintiff could not get rid of the order as corrected by refusing to accept it, but must appeal.

Held, also, that the functions of the prothonotary being purely ministerial, he was not justified in treating the corrected order as abortive, and in neglecting to file it.

D. A. Hearn, for plaintiff.

D. A. Cameron, for defendant.

Full Court.] [May 8.

THE QUEEN *v.* G[illegible]IN.

Canada Temperance Act, s. 117—Powers of Court to amend conviction limited by—Word "penalty" held to include imprisonment under Code, s. 372 Imprisonment for first offence—Where awarded for a period possibly more than three calender months held bad.

Sec. 117 of the Canada Temperance Act limits the powers by virtue of which the Court is enabled to amend or ignore defects in convictions as follows: "If no greater penalty is imposed than is authorized.

Held, that the word "penalty" as used in the words quoted, includes imprisonment awarded under the Code, s 372, as an alternative punishment under the Canada Temperance Act.

Held, further, that a conviction for a first offence under the Act which provided for imprisonment for 90 days in default of payment of the fine imposed, or of a sufficient distress, 90 days being possibly more than three calendar months, was bad, and could not be amended.

A. Drysdale, Q.C., for appellant.

W. B. A. Ritchie, Q.C., for respondent.

Full Court.] [May 8.

WENTZELL ET AL. *v.* ROSS ET AL.

Real estate—Rescission of agreement for purchase—Estoppel—Damages.

Plaintiffs went into possession of land under a written agreement under seal to purchase from defendants. A portion of the purchase money was paid on the completion of the agreement, and the balance was to be paid on the delivery of the deed. An action of trespass was brought against plaintiffs by D., who was in possession of the land at the time, having gone into possession under a prior agreement of a somewhat similar character. On the trial of the latter action an agreement was entered into in open Court, under which plaintiffs agreed to relinquish their claim to the land on being repaid the amount of their deposit with interest, and defendants agreed to convey the land to D.

Held, that plaintiffs, having become parties to this agreement, were estopped from making any claim for damages against defendants, on account

of the failure of the latter to carry out their agreement to convey to plaintiffs; that if plaintiffs intended to reserve such a right, they were bound to say so, and could not by their silence mislead the parties into such a change of their position as would materially affect their rights and liabilities.

Held, further, that the fact of the agreement between plaintiffs and defendants being under seal did not prevent the parties from entering into a new and different agreement.

Held, also, the contract being one relating to land, and defendants being unable to make title, that, in the absence of fraud, plaintiffs could not recover damages for the loss of their bargain, but only for the expenses incurred by them.

F. B. Wade, Q.C., for appellant.

J. A. McLean, Q.C., for respondent.

Full Court.] [May 8

CULTON *v.* HARRIS.

Assignment—Held bad as against creditors—Badges of fraud—Preferences—Smallness of assets in relation to secured claims—Employment of assignors to wind up business.

Defendant as sheriff of the County of Pictou levied upon certain goods included in an assignment made by M. and E. to plaintiff for the benefit of creditors, with certain preferences.

Held, in an action of replevin brought by plaintiff, the assignee, against the sheriff, affirming the judgment of the trial judge, and dismissing plaintiff's appeal with costs, that the assignment was fraudulent and void as against creditors, for the following reasons:

(1) The assignee was a person totally ignorant of the business, and incapable of properly performing the duties of winding it up.

(2) Discretion was given to the assignee to expend money in connection with the sale of the goods in the purchase of additional stock.

(3) The assignee was a brother-in-law of one of the assignors, and lived in the same house with him, and was given power to employ the assignors in carrying out the alleged objects of the instrument, in such a way as would give the actual control of the whole concern to the assignors, or one of them.

(4) Notwithstanding formal possession taken by the assignee the business was continued under the same management as before, the assignors having been employed by the assignee for that purpose.

(5) The control exercised by the assignee over the business was of a purely nominal character.

Held, further, that the provisions of the deed were especially objectionable on account of the small value of the goods assigned, and the extent to which they were encumbered by a bill of sale held by one of the creditors.

H. McInnes, for appellant.

H. T. Lovett, for respondent.

Full Court.] [May 8.

O'BRIEN *v.* CHRISTIE.

Partnership—Winding up—Appeal by receiver against order for payment of judgment held proper—Preserving rights of creditors.

On the 10th July, 1896, an order was made appointing H. B. S. receiver of the firm of C. & O'B., of which plaintiff and defendant were members, for the purpose of having the affairs of the firm wound up. On the 9th February, 1897, application was made to a Judge at Chambers, on behalf of the S. Manufacturing Co., a creditor of the firm, for an order for payment of the amount of a judgment recovered by the company against the firm, out of the funds in the hands of the receiver, or, in the alternative, that the funds should stand charged with the amount of the judgment and costs, and costs of the application. The application was resisted by the receiver and by plaintiff on the ground that the firm was hopelessly insolvent, and that the granting of the application would prejudice other creditors, one of whom had recovered judgment for a larger amount than that due to the S. company. The order applied for having been made the receiver appealed.

Held, allowing the appeal with costs, the costs below to be costs in that proceeding ;

(1) That the appeal was a proper one.

(2) That the rights of creditors should be preserved by substituting an order allowing the charge, but requiring an undertaking to deal with the funds acccording to the order of the Court, the intention being to preserve to the company such legal rights as they would have had in case the sheriff had levied and sold under execution.

Kewing v. *Attrill*, 34 Ch. D. 345, followed.

D. K. Grant, for appellant.

R. E. Harris, Q.C. for respondent.

Full Court.] [May 8.

ROUTLEDGE *v.* ROUTLEDGE.

Married woman—Real estate purchased with separate funds—Title taken in name of husband—Wife protected against persons claiming under husband—Evidence.

Plaintiff was a married woman owning separate property, and having an income which was retained entirely under her own control, without any interference or attempt at control on the part of her husband. The title to a farm purchased for plaintiff was taken, and a mortgage for part of the purchase money was given in the name of the husband but the evidence showed that the payment made on account of the purchase in the first instance, and the subsequent payment of the balance for the purpose of obtaining a release of the mortgage were made by plaintiff out of her own moneys. It also appeared that the husband, when under examination in legal proceedings, by a trust deed executed by him and deposited with his solicitor but never delivered, and in other ways, disclaimed any interest in the property and recognized it as belonging wholly to plaintiff.

Held, GRAHAM, E J., dubitante, that there was no reduction into possession by the husband, and no gift to him, and that plaintiff, as against children of her husband by a previous marriage, was entitled to a declaration that she was entitled to the property in her own right.

Held, also, that the deed found in the possession of the solicitor after the husband's death, while not effective to pass the property, was admissible as evidence of intention.

Held, also, that defendants, the children of the deceased husband, stood in a different position from creditors.

W. B. A. Ritchie, Q.C., for appellant.

F. H. Bell, for respondent.

Province of New Brunswick.

SUPREME COURT.

Full Court.] [August 3.

EX PARTE JOHN MILLER.

Mandamus against school trustees—Right to attend school depends upon residence of child.

This was an application for a mandamus to compel the trustees of school district No. 8, parish of Canterbury, York Co., to admit the children of the applicant to the school of that district. The applicant with his wife and five children removed to district No. 8 from district No. 10 of the same parish in December, 1896, and rented a house. His children were admitted to the school of district No. 8 and attended thereat until the close of the then current term about the end of that month. In consequence of an epidemic this school was not re-opened until March, 1897, when the trustees, notwithstanding the applicant's children had been living with their mother in the district during the interval, refused them further admission, claiming that their father was still properly a resident of district No. 10 and should send his children to the school of the latter district.

Held, per LANDRY, VANWART and MCLEOD, JJ., that the right of a child to attend school depended upon the residence of the child by the terms of s. 74 of the Schools Act, and not upon the residence of the father, and that, whatever the residence of the parents, the child might acquire another residence for school purposes.

Per BARKER, J., that the right to tax for school purposes depends upon residence and the right to claim school privileges in a district depends upon the liability to be taxed; and that the applicant in the present case had rendered himself liable to be taxed by asserting his residence in district No. 8.

Per TUCK, C.J., and HANINGTON, J., that the applicant had no legal residence in district No. 8, and that the application should be refused.

Rule absolute for mandamus.

McCready, in support of rule.

Rainsford, contra.

BARKER, J.
In Equity. [Aug. 17.

WARDEN *v.* RAWLINS AND BERRYMAN.

Practice—Set-off—Costs—Solicitor's lien.

The plaintiffs recovered a judgment in the Supreme Court on September 7th, 1895. On September 5th the defendant Berryman filed a bill of sale executed to him by Rawlins a few days previously. The plaintiffs filed a bill in equity to set aside the bill of sale, and the defendant Berryman settled. The defendant Rawlins was insolvent, and some time after the commencement of the suit left the province. An application by his solicitor to dismiss the suit against him for want of prosecution, was granted with costs. The plaintiffs now applied on the authority of *Flegg* v. *Prentis* (1892), 2 Ch. D. 428, to set off their judgment against the costs.

Held, that the lien of the solicitor for his costs was paramount to the equities between the parties, but under the circumstances the application should be dismissed without costs.

W. H. Trueman, for the plaintiffs.

J. R. Armstrong, for the defendant, Rawlins.

BARKER, J.
In Equity. [Aug. 17.

MUTUAL LIFE ASS. CO. OF NEW YORK *v.* JONAH.

Evidence—Fraudulent intent—Proof of other frauds.

Where a defendant is charged with a fraudulent intent in procuring insurance on the life of another for the defendants' benefit, evidence that the defendant procured insurance with a fraudulent intent on the lives of other persons both before and since is admissible for the purpose of showing intent.

Pugsley, Q.C., and *A. G. Blair*, jr., for the plaintiffs.

W. B. Chandler, for the defendants.

BARKER, J.
In Equity. [Aug. 17.

KENNEDY *v.* NEALIS.

Mortgage of vessel—Sale by mortgagee—Invalid exercise of powers of sale—Account.

On May 21, 1888, the defendant as mortgagee of a vessel took possession of her and transferred her to a clerk in his employ, who immediately re-transferred her to the defendant. The consideration expressed in both instances was $2,000. The defendant retained the exclusive use and management of the vessel until her loss in June, 1889. In a suit to redeem the mortgage,

Held, that the sale was not a valid exercise of the power of sale vested in the mortgagee, and that the defendant was chargeable with the fair value of the vessel at the time he took possession.

R. LeB. Tweedie, for the plaintiff.

C. A. Palmer, Q.C., and *M. McDonald*, for the defendant.

BARKER, J.
In Chambers. } [Aug. 17.

EX PARTE GILBERT.

Arbitration—Award of compensation for land—Review of award by judge.

By 57 Vict., c. 74, which provides for the expropriation of land by the Saint John Horticultural Association on compensation to the owner to be assessed by arbitrators it was enacted by s. 14 that "any party to the arbitration may within one month after receiving a written notice from one of the arbitrators of the making of the award, appeal therefrom upon any question of law or fact to a judge of the Supreme Court, and upon the hearing of the appeal, the judge shall, if the same is a question of fact, decide the same upon the evidence taken before the arbitrators, as in a case of original jurisdiction. The judge, upon such appeal, shall have the right to hear additional evidence and decide the question upon the original as well as the new evidence," and by s. 15 it is enacted that "upon such appeal, the practice and proceedings shall, except as hereinbefore provided, be, as nearly as may be, the same as upon an appeal from the decision of a Supreme Court judge."

Held, on an appeal from an award under the Act that it did not make the judge appealed to a substitute for the arbitrators, or permit him to disregard the award and deal with the evidence de novo, but that his jurisdiction should be exercised as though the appeal were from the judgment of a subordinate Court.

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

W. Pugsley, Q.C., and *A. H. Hanington*, Q.C., for the Saint John Horticultural Association.

BARKER, J.
In Equity. } [Aug. 18.

MUTUAL LIFE ASS. CO. OF NEW YORK *v.* ANDERSON.

Pleading—Allegation of fraud—Failure to sustain allegation—Costs.

In a suit to compel the surrender and cancellation of three policies of life insurance, issued by the plaintiffs to the defendant A., and assigned by him to the defendant M., the bill charged that the policies were obtained by fraudulent misrepresentations on the part of A., and that M. was a party to the fraud. At the hearing there was no dispute that A. had fraudulently misrepresented the state of his health, and that the policies would have to be set aside, but the Court found that there was no evidence of fraud on the part of M. Before the commencement of the suit the plaintiffs acquainted M. with the circumstances under which the policies had been procured by A., and tendered M. with the amount he had paid on account of the premiums, and to A. in consideration of the assignment.

Held, that though ordinarily a defendant who is successful in resisting a charge of fraud is entitled to the costs of such a defence, this defendant had by his conduct occasioned the suit, and therefore costs should not be given to either party.

Pugsley, Q.C., and *A. G. Blair*, jr., for the plaintiffs.

W. B. Chandler, for the defendant M.

TUCK, C.J., In Chambers.] [August 18.

TROOP *v.* EVERETT.

Practice—Entering suggestion of death of parties.

Where after an appeal to the Supreme Court of Canada sustaining an order by the lower Court for a new trial one of the plaintiffs and one of the defendants died, an application may be made at Chambers by the surviving plaintiffs for leave to enter a suggestion on the record of the death of the parties.

C. A. Palmer, Q.C., for the plaintiffs.

Millidge, Q.C., and *Hanington*, Q.C., for the defendants.

ST. JOHN COUNTY COURT.

FORBES, J.] [August 28.

JONES *v.* MONROE.

Practice—Debtors' Act, 59, Vict., c. 28, s. 53—Attachment.

The defendant was examined under the Act 59 Vict., c. 28, s. 53, and ordered to pay the amount of a judgment debt by instalments payable at the plaintiff's office. Having made default an order was taken out against him to show cause why an attachment should not be issued against him for contempt.

Held, that the application should be dismissed as the defendant was not in contempt until the order to pay instalments was made a rule of Court and served upon him; and that a demand for the payment of the instalment was also necessary.

J. K. Kelly, for the plaintiff.

Alward, Q.C., for the defendant.

Province of Manitoba.

QUEEN'S BENCH.

Full Court.] [July 10.

SIFTON *v.* COLDWELL.

Set-off—Trustee—Assignment—Notice of assignment—Estoppel.

Appeal from the County Court of Brandon.

The defendant signed the following memorandum; "I hereby acknowledge to have received from on the 8th February, 1895, $134, to be held by me as a deposit for claim of W. Hanbury against T. Chambers, or to be deposited by me where directed or agreed upon by Hanbury and Chambers, pending a contest or settlement between them over the claim of *Hanbury* v. *Chambers*, for wages for work done on school building, in consideration whereof I, on behalf of Hanbury, withdraw all claim to certain unpaid moneys in the hands of Dominion Government."

Hanbury's claim against Chambers was settled by the recovery of judgment on the third of December, 1896, for $65.35. But prior to this a note made by Chambers in favor of one Johnson, and overdue, had been transferred by indorsement to defendant, in order that he might set off the amount against the balance of Chambers' money in his hands. This was done for the benefit of Johnson, defendant having no beneficial interest in the note.

After the transfer and before the date of the judgment, Chambers assigned his interest in the moneys in defendant's hands to the plaintiffs, but no notice of this assignment was given to the defendant until 12th February, 1897, before which time defendant had applied the balance of the money in his hands on account of the note, and endorsed a memorandum on it of having done so.

Held, affirming the judgment of the Court below, that defendant had the right of set-off as exercised by him, and that the verdict in his favor should stand.

Fair v. *McIver*, 16 East, 130; *Lockington* v. *Coombs*, 6 Bing. N.C. 71, and *Belcher* v. *Lloyd*, 10 Bing. 310, distinguished, on the ground that they were decided under the set-off clauses of the Bankruptcy Act, which as shown by Parke, B., in *Forster* v. *Wilson*, 12 M. & W. 191, are given a different construction from the statutes of set-off.

Talbot v. *Frere*, 9 Ch. D. 568, also distinguished on the ground that the set-off there asked for would prejudice the creditors of the estate of a deceased mortgagor which was insolvent.

Held, also, following *Lowe* v. *Bouverie* (1891), 3 Ch. 82, that the defendant's letter did not contain such a clear and unambiguous admission of Chambers' right as to create an estoppel.

A. D. Cameron and *O. H. Clark*, for plaintiff.

Ewart, Q.C., for defendant.

DUBUC, J.] [July 10.

FOSTER *v.* MUNICIPALITY OF LANSDOWNE.

Municipality—Negligence in exercising statutory powers—Right of action—Arbitration.

This was a demurrer to the plaintiff's claim which alleged that the defendants by constructing in a negligent and improper manner a ditch for drainage purposes caused the plaintiff's land to be overflowed with water whereby he suffered damages.

The defendants contended that under s. 665 of the Municipal Act, R.S.M. c. 100, the plaintiff's remedy was confined to an arbitration.

Held, following *Atcheson* v. *Portage la Prairie*, 9 M.R. 192, that that section does not prevent a party from resorting to an action for damages in case the statutory powers of the municipality are exercised negligently or improperly, and as negligence was alleged in this case the demurrer was overruled with costs.

Metcalfe, for the plaintiff.

A. D. Cameron, for the defendant.

DUBUC, J.] [July 20.

RE TAYLOR AND CITY OF WINNIPEG.

Municipality—By-laws—Dairy inspection—Quashing by-laws—Ultra vires.

After the decision of Taylor, C.J., in *Re Taylor and City of Winnipeg*, noted ante. p. 125, and reported 11 M.R. 420, the Legislature by 60 Vict., c. 20, s. 14, amended s. 593 of the Municipal Act, R.S.M. c. 100, by giving the municipalities additional powers in connection with the regulation and licensing of milk vendors and inspection of cows and stables; and the council of the city then passed a new by-law, No. 1313, for the same purposes as the former by-law which had been quashed.

This application was then made to quash the new by-law when the following objections to it were taken:

1. That although the Council has power to prevent and regulate the sale of milk in the city, clause 3 assumed to regulate the sale of milk outside of the city limits for use in the city, and to pass regulations which might prevent a citizen from going outside the city and purchasing some milk for his own use.

2. That the by-law would enable the veterinary surgeon to delay the second inspection of cows found, on a first inspection, to be affected by disease, and thereby to injure the dairymen.

3. That by clause 12 of the by-law the issue of a license in a disputed case is left to the discretion of a committee of the Council who might exercise it in an arbitrary and unfair manner.

4. That power is given to the health officer or veterinary surgeon to require a vendor of milk to state where he obtained the milk he is selling, and, if requested, to permit a sample or samples of any milk for sale to be taken for examination.

Held, that the by-law was not unreasonable or ultra vires in any of the particulars objected to and was fully authorized by the amending statute referred to.

Application dismissed with costs.

Mathers, for applicant.

Isaac Campbell, Q.C., for City of Winnipeg.

Province of British Columbia.

SUPREME COURT.

DAVIE, C.J.] [June 28.

SMITH *v.* VANCOUVER.

Municipal corporation—Misfeasance—Personal injuries—Damages.

The plaintiff sustained injuries by stepping from the sidewalk to the ground below. The corporation in 1891 constructed a sidewalk eight feet wide along Westminster Avenue as far as its intersection with Tenth Avenue, at which point they connected a crossing only four feet wide. The crossing was not laid from the centre of the sidewalk, but had a space of two and a half

feet on the side nearest the road, and one and a half feet on the inside. The two and a half feet space sloped towards the road, and instead of being filled up an abrupt drop was left, of from 12 to 14 inches from the end of the sidewalk to the sloping ground. The plaintiff coming along here at night time, when the electric light was out, stepped off and seriously injured herself. The sidewalk was orignally constructed with the abrupt termination off which the plaintiff fell. The jury found that pedestrians using ordinary precautions might step off at night and be injured, although with the same care in daylight the place would not be dangerous, and that the sidewalk and crossing were originally constructed in a reasonably safe and proper manner, and with due regard to the safety of travellers, but that the approaches should be filled level with the sidewalk. The jury acquitted Mrs. Smith of any want of ordinary care, and awarded her $500 damages.

Held, that though mere nonfeasance according to the law of British Columbia, gives no right of action, the leaving a drop of 12 or 14 inches as in this case, was not a reasonable and safe way of leaving the sidewalk, and constituted a direct case of misfeasance against the corporation for which it is liable. If it had not undertaken to construct a sidewalk at all it would not have been liable for the failure, however much inconvenience the public might have been put to, but having undertaken to build one they were bound to do it without negligence.

Goldsmith v. *London*, 16 S.C.R. 231, distinguished.

Bowser and *Godfrey*, for plaintiff.

Hamersley, for defendant.

BOLE, Loc.J.] [Aug. 10.

CUNNINGHAM *v.* HAMILTON.

Mortgage—Interest.

Suit for foreclosure on a mortgage dated 8th October, 1890. It was referred to the Registrar to take an account of the amount due on defendant's mortgage. The interest reserved in the mortgage (under Short Forms Act), was ten per cent. per annum, and there was no covenant for payment of interest at all after the 8th of October, 1892, the date when the principal became due. The Registrar calculated the interest at the rate of ten per cent. since that date.

Held, that interest subsequent to the day fixed for payment of principal is recoverable only by way of damage, and that interest recoverable by way of damages cannot exceed a yearly rate of six per cent.

Book Reviews.

A Digest of all reported cases decided by Federal and Provincial Courts in the Dominion of Canada, and by the Privy Council on appeal therefrom, during the year 1896, with Table of Cases referred to, also Tables of Cases affirmed, reversed or specially considered, and of the statutes referred to, by CHARLES H. MASTERS, Reporter of the Supreme Court of Canada, and CHARLES MORSE, LL.B., Reporter of the Exchequer Court of Canada. Toronto: Canada Law Journal Company, 1897.

As the authors say in their preface, the digesting of the law of a community has always been marked in history as an epoch of national progress, and the more complex the original sources of the law are the more speedily does the need of uniformity assert itself. This has a special significance at the present time, and we are glad that this Digest, thus appearing at an opportune time, has been so well and carefully prepared and makes such an excellent appearance.

In form and type the book before us is similar to "Mew's Annual Digest," but is, if anything, superior to it, and its typographical dress excels that of any other legal publication in Canada. Over 800 cases are digested. Many of these are from French reports, which necessitated a translation, and the authors had to cope with the great difficulty of harmonizing decisions bearing upon principles emanating from two systems of jurisprudence, the common law and the civil law. The work has evidently been done with the greatest care, and no expense spared by either authors or publisher. The large claim we made for the undertaking in our issue of April 1st has we think been fully realized.

The authors have confined their labours to cases appearing in what are colloquially termed the "Official Reports" of the various provinces, but there are a number of cases of considerable interest reported in legal periodicals, and notably in this journal, which would seem to come within the scope of the work. These might well be referred to hereafter, and perhaps it is the intention so to do. Many of these decisions are exceedingly valuable, and should appear in this Digest, which will doubtless be a vade mecum in every lawyer's library throughout the Dominion. As the book before us already exceeds "Mews' Digest" for 1896 by nearly 50 pages, the authors may perhaps be excused for not having inserted the cases we have referred to in this their first volume.

The Dominion Conveyancer, comprising precedents for general use, and clauses for special cases. Selected and edited by WILLIAM HOWARD HUNTER, B.A., of Osgoode Hall, Barrister-at-Law, Second Edition. Toronto: The Carswell Co. (Limited), 1897.

When we reviewed the first edition of this book in 1893, we were compelled to call attention to the many inaccuracies appearing in it, and we expressed the hope that, when a second edition should appear, the work would be thoroughly revised, so that it might be used with confidence by the profession. That this has not been done seems incomprehensible. The only errors which have been corrected appear to be those to which we called specific attention in our review. The new edition is still entirely unreliable as to very many forms, and it is to be regretted that the author did not bestow on

this book the care which he has taken in some of his other works. In this connection we would instance forms 60, 149, 151, 210, 235, 240, 322, 344, 351, 404, 581, 582 and 583. A large number of forms are copied from Rordan's old Conveyancer, and the mistakes and antiquated forms there appearing are reproduced: for example see Nos. 63, 64, 142, 164, 176, 364, 405, 406, 423, 424, 426, 428, 429, 434, 435, 457 and 485.

At the sacrifice of neatness, the publishers have employed the stereotypes of the pages of the first edition, and have inserted additional pages with subnumbers, containing the new matter. This has caused, in many places, forms on the same subject to be separated, and others to be inserted without any apparent regard to the general headings. For instance, we find a "Conveyance of mining lands in Quebec" under the title "Arbitration," and as the form is not indexed it would be somewhat difficult to find. A form of "Disclaimer of trusts of a settlement," appears under "Conditional sale of chattels," while forms of "Surrender of lease" appear under "Separation deeds."

The forms of affidavit as to chattel mortgages do not comply with the Act of 1894, and any mortgage with affidavits following these forms would not be received for registration, or, if received, could, we should think, be set aside by a bona fide purchaser or creditor, and the solicitor would probably be liable to his client for any loss that might accrue. Under the Act of 1894 (s. 2) the affidavit of execution "shall also contain the date of the execution of the mortgage" This is omitted in the form, and would be a fatal defect. (See No. 235, p. 222). Again in the affidavit of bona fide (form 236, p. 222, line 11) the word "preventing," required by s. 3, is omitted.

Forms 1, 3a, 9, 210, 235, 236, 406, 423, 434 and 435, among others, do not comply with the Act authorizing them.

Errors in forms, as well as clerical errors, are entirely too numerous throughout the work, and they frequently occur in important places, causing latent ambiguities.

Form 404 does not comply with the form approved by the Land Titles Office. As to the statement at p. 378 "no seal necessary" to a charge under this Act, see note in "O'Brien's Conveyancer," at p. 254.

The index, which should be a most carefully compiled part of the work, is incorrect and defective. We notice casually some 25 forms which are not indexed, also some 30 errors in referring to the numbers of the pages, etc.

We regret that we can say but little favourable to this work. We have not dealt exhaustively with its contents, only referring to a few matters which caught the eye on glancing over the pages. Possibly the errors to which we have called attention may be all that it contains; but a book of forms, if not accurate, is worse than useless, and, if there were not a responsibility cast upon us to call attention to these defects for the protection of unwary readers, we should gladly have said nothing on the subject.

LAW SOCIETY OF UPPER CANADA.

EASTER TERM, 1897.

TUESDAY, MAY 18.

Present: The Treasurer and Messrs. Edwards, Kerr, Strathy, Bayly, Martin, Bruce, Clark, Idington, Hoskin, Ritchie and Shepley.

The complaint of Mr. J. B. Tremain against Mr. L. F. Heyd, barrister, was read. Ordered that complainant be informed that the matter complained of is not one which falls within the powers of the Law Society.

The complaint of Mr. P. P. Newell against Mr. C. F. W. Clarke of Tilsonburg, solicitor, was read. Ordered that the Secretary do inform the complainant that the ordinary proceedings of the Court will afford him relief if he be entitled thereto.

Convocation then entered upon consideration of the Report of the Discipline Committee upon the complaint of Mr. R L. Fraser against Mr. John MacGregor. Mr. E. F. B. Johnston, Q.C., attended on behalf of Mr. MacGregor and Mr. T. D. Delamere on behalf of the complainant. Ordered that the matter do stand until June 4th, 1897, and that a special call of the Bench be made for that date.

Ordered that Mr. W. W. Richardson be called to the Bar.

In the matter of Mr. G. G Martin, a solicitor of over five years' standing who applies for call under 57 Vict., c. 44, Messrs. Strathy, Bayly, Martin and Clarke were appointed a Special Committee to subject him to an examination under the Act, and said committee having reported that he had passed a satisfactory examination, ordered that he be called to the Bar.

Ordered that Mr. A. F. Godfrey a solicitor of ten years' standing be called to the Bar.

Ordered that the Society do arrange with Mr. Chief Justice Burton to sit for his portrait to be painted and placed in Osgoode Hall, and that Messrs. Osler, Shepley and Aylesworth be a Committee to make the necessary arrangements.

The letter of Mr. Justice Moss stating that his seat as Bencher had become vacant was read. Ordered that a special Call of the Bench be made for June 4th to fill the seat.

Mr. Shepley from the Reporting Committee presented the editor's quarterly report :—"The work of reporting is in a forward state. In the Court of of Appeal, Mr. Cassels has all cases reported except those in which judgment was delivered last week, in the High Court of Justice. Mr. Lefroy has two judgments of March, both ready to issue. Mr. Harman has two cases, one of March, ready, and one of April; Mr. Lefroy has twelve, three of March, one of April, and eight of this month; Mr. Boomer has two, both of April; Mr. Brown has seven, five of April and two of this month. There are seventeen practice cases not reported, one of March now ready to issue, seven of April and nine of this month." The report was received.

Mr. Shepley, on behalf of Mr. Osler, Convener of the Joint Committee appointed on 2nd Feb., 1897, to settle the details of a Consolidated Digest presented the following report :—"1. That a proportion of the cost of the proposed Consolidated Digest should be borne by the Law Society, that is to say, the Digest should be issued to members of the Society, considerably below cost, but that it is premature to settle the exact terms, as the amount the Society should bear would depend largely upon the state of their finances at the date of the issue.

2. "That having regard to the time which will elapse before any printing contract will be made, it is impossible to fix the price at which the Digest can be issued or the cost to the Society, but for an edition of 1,500 copies, the cost of the whole work may be roughly estimated at $27,500, presuming the total pages to be about 5,000.

3. "That the editing and compiling of the Digest be placed in the hands of the Editor, Mr. J. F. Smith, Q.C., upon whom the responsibility of the work is to rest, and that he be offered for his total services including remuneration to his assistants the sum of three dollars per page, the Society furnishing all material required in the shape of stationery, digests, reports, etc., to the Editor." The Editor's letter of May 1st, 1897, upon the subject of the total cost of the work was also read.

Ordered that the Joint Committee be asked for a supplemental report especially bearing upon the period at which Mr. Smith expects he will be able to publish the Consolidated Digest duly completed.

Messrs. A. F. Godfey, G. G. Martin and W. W. Richardson were then called to the Bar.

Convocation then proceeded to take into consideration the following report of the Special Committee. appointed on the 4th December, 1896, to enquire into and report on the probable outlay to the Society and the powers of Convocation in relation to the payment of allowances to non-resident members of Convocation, and to report upon the question of the days and times of meeting of Convocation: "That at a meeting of the Committee the questions submitted were considered. Appended hereto is a memorandum of expenses that would be incurred if all the outside members of Convocation attended every meeting of Convocation and also every meeting of the several committees. The Committee is of opinion that Convocation has jurisdiction to provide for such remuneration, but in view of all the surrounding circumstances and having regard to the financial report presented to Convocation for the last preceding year, and the large expenditure contemplated for Century Digest, and to the custom which has so long prevailed under the constitution: Your Committee is of opinion that no provision should be made at present for the remuneration or reimbursement of expenses to the outside members, and that the resolution in favour of such payment by the Law Society should be rescinded. The Committee also recommend that no change be made at present in the number and times of meeting of Convocation."

Convocation adopted the report with the exception of the last paragraph.

Mr. Edwards moved that the question of the meetings of Convocation, and the arrangement of business thereat be referred to a special committee, consisting of Messrs. Strathy, Clarke, O'Gara, Martin, Shepley, Ritchie, and the mover Lost.

The whole Report was then adopted. It was then ordered that the resolution of the 15th September, 1896, as follows:—that members of Convocation not resident in Toronto or within five miles thereof be entitled to be paid their expenses of attending meetings of Convocation and of Committees, be rescinded.

Convocation then rose.

WEDNESDAY, May 19.

Present: The Treasurer, and Messrs. Aylesworth, Strathy, Shepley, Teetzel and Robinson.

Mr. Shepley, from the Finance Committee, presented the following report: "That they have had under consideration the letters dated the 31st March and 9th April from the city engineer in which the enquiry is made as to what proportion of the cost of a new sidewalk in front of Osgoode Hall on Queen street the Law Society would be willing to bear, the total cost of a concrete walk being estimated at $1,400, and that of a brick walk at $1,200. Your Committee is of opinion that an offer should be made by the Law Society, to pay one-half, not exceeding $700, of the cost of the sidewalk estimated in the correspondence at $1,400, the city bearing the other half of the expense, and they recommend that such offer be made on condition that the new walk be extended without expense to the Society, westward to the western limit of the city property (on Queen street)." Ordered for consideration on Saturday, May 22nd.

Convocation then rose.

SATURDAY, May 22.

Present: The Treasurer and Sir Thomas Galt, and Messrs. Martin, Osler, Shepley, Guthrie, Robinson, McCarthy, Aylesworth, Ritchie, Watson and Bayly.

Mr. Martin moved, seconded by Mr. McCarthy, that Mr. Irving be elected Treasurer for the ensuing year. Carried.

Ordered that the chairmen of the several standing committees for the past year, with Mr. Ritchie to act in lieu of Mr. Moss, be a Special Committee to report to Convocation a list of members to form the Standing Committees for the ensuing year.

Mr Martin from said Special Committee reported the following as members to compose such committees:—

FINANCE.

Messrs. G. H. Watson, A. B. Aylesworth, B. M. Britton, A. Bruce, A. H. Clarke, E. B. Edwards, G. C. Gibbons, John Hoskin, W. Kerr, E. Martin, W. R. Riddell, C. H. Ritchie, G. F. Shepley, H. H. Strathy.

REPORTING.

Messrs. B. B. Osler, B. M. Britton, E. B. Edwards, D. Guthrie, W. D. Hogg, J Idington, D. McCarthy, Colin McDougall, W. Proudfoot, C. H. Ritchie, J. V. Teetzel.

DISCIPLINE.

Messrs. John Hoskin, R. Bayly, A. Bruce, E. B. Edwards, Donald Guthrie, W. D. Hogg, Colin Macdougall, D. B. Maclennan, C. Robinson, H. H. Strathy, G. H. Watson.

COUNTY LIBRARIES.

Messrs. E. Martin, B. M. Britton, A. Bruce, W. Douglas, G. C. Gibbons, D. Guthrie, J. Idington, W. Kerr, M. O'Gara, B. B. Osler, H. H. Strathy, A. J. Wilkes.

LIBRARY.

A. B. Aylesworth, S. H. Blake, W. Douglas, J. Idington, D. McCarthy, W. Proudfoot, W. R. Riddell, C. H. Ritchie, C. Robinson, G. F. Shepley, H. H. Strathy, G. H. Watson.

LEGAL EDUCATION.

Messrs. G. F. Shepley, R. Bayly, A. H. Clarke, John Hoskin, E. Martin, B. B. Osler, W. Proudfoot, W. R. Riddell, C. H. Ritchie, C. Robinson, H. H. Strathy, J. V. Teetzel.

JOURNALS AND PRINTING.

Messrs. A. Bruce, A. B. Aylesworth, R. Bayly, John Bell, A. H. Clarke, G. C. Gibbons, W. Kerr, Colin Macdougall, D. B. Maclennan, M. O'Gara, J. V. Teetzel.

NOTE.—Mr. Barwick was on June 4th appointed to fill vacancies on the Reporting, Discipline and Journals Committees.

The report of the Finance Committee presented on the 19th May, as to contribution to the cost of a new sidewalk on Queen Street, was now adopted, with a direction to the Committee to, as far as possible, superintend the plans and specifications and completion of the work.

The petition of Mr. George H. Galbraith, a solicitor of over five years' standing, praying for call to the Bar was referred to a Special Committee composed of Messrs Ritchie and Bayly, and they having reported that he had passed a satisfactory examination, it was ordered that he be called to the Bar, and he was introduced and called accordingly.

Convocation then rose.

FRIDAY, June 4th, 1897.

Present: The Treasurer and Messrs. Martin, Shepley, Macdougall, Hogg, Teetzel, Bruce, Maclennan, S. H. Blake, Edwards, Bayly, Riddell, Guthrie, Ritchie, Osler Wilkes and Aylesworth.

Mr. Shepley, from the Legal Education Committee, reported on the result of the Third Year Examination, Easter, 1897.

Ordered that the following gentlemen be called to the Bar and do receive their certificates of fitness as solicitors:—Messrs. C. S. MacInnes, A. D. Meldrum, W. B. Milliken, M. S. McCarthy, J. H. Clary, A. Haydon, W. J. Moore, W. A. Gilmour, W. M. Boultbee, H. E. B. Robertson, F. B. Goodwillie, G. E. Dunbar, J. A. Scellen, J. M. Hall, W. R. Wadsworth, J. W. Bain, J. S. McNeely, C. A. Moss, W. M. Lash, H. K. Beattie, J. C. Brokovski, G. I. Gogo, W. M. Crom, W. B. Laidlaw, W. M. H. Nelles, J. E. Little. Ordered, also, that Mr. C. S. McInnes and Mr. A. D. Meldrum be called with honours and that Mr. McInnes do receive a bronze medal. Ordered, also that the cases of other gentlemen who have been reported as having passed be reserved for further report.

Mr. Shepley from the same Committee also reported in the case of Mr. A. E. Knox who passed the Third Examination in Easter, 1896, but was not entitled to take same until 1897, recommending that the examination be allowed, and further that he be called to the Bar and receive his certificate of fitness. Ordered accordingly. Mr. Shepley further reported on the cases of Mr. E. H. Cleaver and Mr. T. R. Atkinson which were referred back to the Committee for further inquiry. Mr. Shepley also reported on the case of Mr. E C. Clark who asked that his date of admission be reckoned as of Easter, 1894, that the Committee are unable to recommend allowance of the petition. Report adopted.

Mr. Shepley further reported that Mr. W. F. Gurd, who had passed the Third Year Examination in Easter, 1894, that his papers for Call are complete, and recommending that he be called to the Bar. Ordered accordingly.

The following gentlemen were then called to the Bar: Messrs. C. S. MacInnes (bronze medal) and A. D. Meldrum, both with honours; W. B. Milliken, M. S. McCarthy, J. H. Clary, A. Haydon, W. J. Moore, W. A. Gilmour, W. M. Boultbee, H. E. B. Robertson, G. E. Dunbar, J. A. Scellen, J. M. Hall, J. W. Bain, W. R. Wadsworth, J. S. L. McNeely, C. A. Moss, W. M. Lash, H. K. Beattie, J. C. Brokovski, G. I Gogo, W. M. Cram, W. M. H. Nelles, J. E. Little, A. E. Knox, W. F. Gurd.

It was referred to the Finance Committee to arrange for the use of the Law Society's property for the purpose of the meeting of the Canadian Bar Association.

Mr. Walter Barwick was elected a Bencher in the place of Mr. Moss, recently appointed a Justce of the Court of Appeal, and was appointed a member of the Committees on Reporting, Discipline and Journals.

Mr. Shepley reported in respect to the First Year Examinations, Easter, 1897. Ordered that the following students be allowed their First Year Examinations:—Messrs. W. T. White, J. G. O'Donoghue, J. A. Rowland, J. A. Wilson, E. C. Sanders, A. R. Clute, R. I. Towers, John Jenning. W. E. Burns, J. G. Merrick, R. F. McWilliams, O. S. Black, N. Sinclair, F. B. Proctor, M. R. Gooderham, G. B. Henwood, H C. Osborne (with honours); also Messrs. W. Ridout Wadsworth, A. F. Healy, J. G. Stanbury, W. C. Brown, A. C. Kingstone, J. W. Lawrason, Anson Spotton, C. Garrow, N. H. Peterson, H. R Smith, M. McEwen, H. L. Boldrick, J. W. Mahon, J. D. Falconbridge, Miss Eva M. Powley, V. P. McNamara, T. A. White, J. C. Brown, J. H. Campbell, John Milden, G. A. Ferguson, G. F. Mahon, F. K. Johnston, R. C. McNab, T. F. Slattery, J L. Taugher, J. A. McPhail, E. G. Morris, C. W. Bell, C. T. Goodison, A. W. Holmsted, J. W. Crozier, W. C. Armstrong, T. H. Crerar, A. R. Colville, G. H Gauthier, J. A. Milne, C. S. Cameron,

J. A. Clarke, W. E. N. Sinclair, F. J. McIntosh, J. H. Addison, A. Beatty, J. C. Milligan. Ordered that Messrs. L. H. Bowerman and J. W. McNiely be noted as having passed. (These are special.)

Ordered that the following be allowed their first year examination with honours :—W. T. White, J. G. O'Donoghue, J. A. Rowland, J. A. Wilson, E. C. Sanders, A. R. Clute, R. T Towers, John Jennnings, W. E Burns, J. G. Merrick, R. F. McWilliams, O. S. Black, N. Sinclair (aeq.), F. B. Proctor, M. R. Gooderham, G. B. Henwood, H. C. Osborne ; and that Mr. White do receive a Scholarship of $100, Mr. O.Donoghue one of $60, and Messrs. Rowland, Wilson, Sanders, Clute and Towers, each one of $40.

Mr Shepley reported upon the admission of students as of Easter, 1897. Ordered that the following be admitted :—M. G. V. Gould (Graduate Class) and C. K. Graham, C. F. Newall and W. Watkins (Matriculant Class).

Mr. Shepley further reported on the application of Mr N. G. Guthrie for admission as a student-at-law of the matriculant class. Although not a matriculant of any university in this province, he has on his standing at McGill University been admitted ad eundem statum in the Second Year, Arts Course, at the University of Toronto, and the Committee recommend the allowance of the petition. Ordered accordingly.

The report of the Principal was then read. This report has been distributed to the profession with the reports.

The report of the Legal Education Committee upon the suggestions in the Principal's report was also presented, as follows :—1. "With regard to the complaint contained in paragraph 6 respecting the ventilation of the lecture rooms, the Committee recommend that Convocation do refer the matter to the Finance Committee for enquiry and report. 2. With regard to the question of extending the library accommodation for students mentioned in paragraph 7, your committee recommend that Convocation do refer this matter to the Finance Committee for enquiry and report. 3. With regard to the question of increased accommodation for the purpose of holding examinations mentioned in paragraph 5, your Committee recommend that Convocation do refer this matter to the Finance Committee for enquiry and report. 4 With regard to the recommendation contained in the 9th paragraph respecting a division of the examinations of the second and third year classes, and that contained in the 8th paragraph as to substitution of other work for some of the Moot Courts, your Committee have requested the Principal to report to them for consideration, outline schemes for holding examinations half-yearly and and for substitution of other work in place of the Moot Courts. 5. Your Committee beg further to recommend that the Principal be deputed to visit the meeting of the Legal Education Section of the American Bar Association to be held at Cleveland next August." The report was adopted.

Mr. Shepley laid on the table the Schedule of orde of Examinations, Easter, 1897, the instructions for candidates and papers of examination questions according to the rule.

Moved by Mr. Ritchie, seconded by Riddell and ordered that a grant of $400 be made to the Osgoode Amateur Athletic Association to assist in procuring such outfit as may be essential for the purpose of the organization and in defraying necessary expenses.

Convocation then pursuant to order of 18th May, 1897, resumed consideration of the report of the Discipline Committee on the complaint of Mr. R. L. Fraser against Mr. John McGregor. Ordered that the matter do stand until the 29th June and that a Special Call of the Bench be made for that day.

Mr Shepley, from the Legal Education Committee, reported upon the question of making an arrangement for the admission of students who are examined for their degrees at Trinity College in June but do not receive their degrees until Autumn, that the Commtttee think the matter may be better accommodated by the holding of a Special Convocation of the University previous to the Society's half-yearly meeting on the last Tuesday in June. Adopted.

Mr. Shepley reported in relation to the admission of English solicitors to practice in the Courts in Ontario as follows:

"Your Committee begs leave to report upon the subject of advising legislation respecting the admission of English solicitors to practice in the province of Ontario as follows:—1. Your Committee has carefully considered the correspondence between the Secretary of State for the Colonies and the High Commissioner for Canada, the correspondence between the Department of Justice at Ottawa, and the Attorney-General's Department at Toronto; the correspondence between the latter and the Society; the draft Bill proposed to be submitted to the British Parliament upon the subject, and the various other letters and papers placed before your Committee, as well as the existing English legislation on the subject.

"2. In the opinion of your Committee it is not expedient to admit English solicitors to practice in this province, without requiring service and examination as at present. Your Committee is of opinion that at least one year's service, followed by examination as at present required, is necessary to the proper equipment of the English solicitor for practice in Ontario, having regard to the differences between the law of the province and the law of England.

"3. Your Committee points that the proposed Bill, even if it should be passed, places reciprocity entirely in the discretion of the British Government. Under the present English Statutes, as well as the proposed new Act, the application of the English legislation to any colony is entirely discretionary. The passage of any reciprocal measure by a Colonial legislature would open the door to the admission in the legislating colony of English solicitors, while the proposed English legislation would still leave the bringing into force of the English Act entirely discretionary as stated above. There is no obligation upon the British Government to pass the Order-in-Council at all, and should an order be passed, power is reserved to impose restrictions and conditions which might practically be prohibitive. There is also the power reserved to revoke any such Order-in-Council.

"4. For the foregoing reasons your Committee is of opinion that, pending the passage of the proposed Act, it is premature to discuss legislation here, and further, that in the absence of some assurance that the provisions of the English Act would be applied to this province upon a fair and equitable basis, the legislature of the province should not be approached with the view of relaxing the terms upon which English solicitors are now entitled to admission here."

The report was adopted and it was ordered that the same be transmitted to the Hon. the Attorney-General of Ontario, it being in response to his letter to the Treasurer on the subject.

Mr. Shepley was appointed the representative of the Law Society on the Senate of the University of Toronto.

Mr. Osler reported with respect to the publication of the proposed Consolidated Digest. The report and the letter of the Editor in connection therewith were ordered for consideration on June 29th.

Mr. Aylesworth, from the Library Committee, reported a regulation for closing the Library at 1 p.m. instead of 2 p.m. during the Long Vacation. Approved.

The letters of Mr F McMurray and Mr. J. H. Coburn complaining that Mr. T. H. Gilmour, who is not a barrister or solicitor of this Province, is advertising for law business in Rat Portage, were referred to the Discipline Committee.

Ordered that a Special Call of the Bench be made for Saturday, June 12th inst., at 10.30 a.m., to assemble on the occasion of the presentation of an address to the Hon. John Hawkins Hagarty.

LAW SOCIETY OF UPPER CANADA.

THE LAW SCHOOL.

Principal, N. W. W. Hoyles, Q.C. *Lecturers*, E. D. Armour, Q.C.; A. H. Marsh, BA., L.L.B., Q.C.; John King, M.A., Q.C.; McGregor Young, B.A. *Examiners*, R. E. Kingsford, E. Bayly, P. H. Drayton, Herbert L. Dunn.

ATTENDANCE AT THE LAW SCHOOL.

This School was established on its present basis by the Law Society of Upper Canada in 1889, under the provisions of rules passed by the Society in the exercise of its statutory powers. It is conducted under the immediate supervision of the Legal Education Committee of the Society, subject to the control of the Benchers of the Society in Convocation assembled. Its purpose is to secure as far as possible the possession of a thorough legal education by all those who enter upon the practice of the legal profession in the Province. To this end, attendance at the School in some cases during two, and in others during three, terms or sessions, is made compulsory upon all who desire to be admitted to the practice of the Law. The course in the School is a three years' course. The term or session commences on the fourth Monday in September, and ends on the last Monday in April, with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's day, and another at Easter, commencing on the Thursday before Good Friday and concluding at the end of the ensuing week. Admission to the Law Society is ordinarily a condition precedent to attendance at the Law School. Every Student-at-Law and Articled Clerk, before being allowed to enter the School, must present to the Principal a certificate of the Secretary of the Law Society, showing that he has been duly admitted upon the books of the Society, and has paid the prescribed fee for the term. Students, however, residing elsewhere, and desirous of attending the lectures of the School, but not of qualifying themselves to practice in Ontario, are allowed, upon payment of the usual fee, to attend the lectures without admission to the Law Society. Attendance at the School for one or more terms is compulsory on all students and clerks not exempt as above.

Those students and clerks, not being graduates, who are required to attend, or who choose to attend, the first year's lectures in the School, may do so at their own option either in the first, second, or third year of their attendance in chambers or service under articles, and may present themselves for the first-year examination at the close of the term in which they attend such lectures, and those who are not required to attend and do not attend the lectures of that year may present themselves for the first-year examination at the close of the school term in the first, second, or third year of their attendance in chambers or service under articles. Students and clerks, not being graduates, and having first duly passed the first-year examination, may attend the second year's lectures either in the second, third, or fourth year of their attendance in chambers or service under articles, and present themselves for the second-year examination at the close of the term in which they shall have attended the lectures. They will also be allowed, by a written election, to divide their attendance upon the second year's lectures between the second and third or between the third and fourth years, and their attendance upon the third year's lectures between the fourth and fifth years of their attendance in chambers or service under articles, making such a division as, in the opinion of the Principal, is reasonably near to an equal one between the two years, and paying only one fee for the full year's course of lectures. The attendance, however, upon one year's course of lectures cannot be commenced until after the examination of the preceding year has been duly passed, and a student or clerk cannot present himself for the examination of any year until he has completed his attendance on the lectures of that year.

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

supervision of the Principal and Lecturers. On Fridays moot courts are held for the students of the second and third years respectively. They are presided over by the Principal or Lecturer, who states the case to be argued, and appoints two students on each side to argue it, of which notice is given one week before the day for argument. His decision is pronounced at the close of the argument or at the next moot court. At each lecture and moot court the attendance of students is carefully noted, and a record thereof kept. At the close of each term the Principal certifies to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student is to be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures on each subject delivered during the term and pertaining to his year. Two lectures (one hour) daily in each year of the course are delivered on Monday, Tuesday, Wednesday and Thursday. Printed schedules showing the days and hours of all the lecturers are distributed among the students at the commencement of the term. The fee for attendance for each term of the course is $25, payable in advance to the Sub-Treasurer, who is also the Secretary of the Law Society.

EXAMINATIONS.

Every applicant for admission to the Law Society, if not a graduate, must have passed an examination according to the curriculum prescribed by the Society, under the designation of "The Matriculation Curriculum." This examination is not held by the Society. The applicant must have passed some duly authorized examination, and have been enrolled as a matriculant of some University in Ontario, before he can be admitted to the Law Society. The three law examinations which every student and clerk must pass after his admission, viz., first intermediate, second intermediate, and final examinations, must be passed at the Law School Examinations under the Law School Curriculum hereinafter printed, the first intermediate examination being passed at the close of the first, the second intermediate examination at the close of the second, and the final examination at the close of the third year of the School course respectively. The percentage of marks which must be obtained in order to pass an examination of the Law School is fifty-five per cent. of the aggregate number of marks obtainable, and twenty-nine per cent. of the marks obtainable upon each paper. Examinations are also held in the week commencing with the first Monday in September for those who were not entitled to present themselves for the earlier examination, or who, having presented themselves, failed in whole or in part.

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

HONORS, SCHOLARSHIPS AND MEDALS.

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

final examination for Call to the Bar, but not in connection with the final examination for admission as Solicitor. In order to be entitled to present themselves for an examination for Honors candidates must obtain at least three-fourths of the whole number of marks obtainable on the papers, and one-third the marks obtainable on the paper on each subject, at the Pass examination. In order to be passed with Honors, candidates must obtain at east three-fourths of the aggregate marks obtainable on the papers in both the Pass and Honor examinations, and at least one-half of the aggregate marks obtainable on the papers in each subject on both examinations.

The scholarships offered at the Law School examinations are the following: Of the candidates passed with Honors at each of the intermediate examinations the first shall be entitled to a scholarship of $100, the second to a scholarship of $60, and the next five to a scholarship of $40 each, and each scholar shall receive a diploma certifying to the fact. The medals offered at the final examinations of the Law School are the following: Of the persons called with Honors the first three shall be entitled to medals on the following conditions: *The First:* If he has passed both intermediate examinations with Honors, to a gold medal, otherwise to a silver medal. *The Second:* If he has passed both intermediate examinations with Honors, to a silver medal, otherwise to a bronze medal. *The Third:* If he has passed both intermediate examinations with Honors, to a bronze medal. The diploma of each medallist shall certify to his being such medallist. The latest edition of the Curriculum contains all the Rules of the Law Society which are of importance to students, together with the necessary forms, as well as the Statutes respecting Barristers and Solicitors, the Matriculation Curriculum, and all other necessary information. Students can obtain copies on application to the Secretary of the Law Society or the Principal of the Law School.