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JUDGE ELLIOT, of the Colorado Supreme Court, in the case of *People ex rel. Attorney-General v. MacCabe* (Jan. 30th, 1893), remarks that "The ethics of the legal profession forbid that an attorney should advertise his talents or his skill as a shopkeeper advertises his wares." We would commend this observation to those of the profession in this country to whom it applies—happily, not very many. The Benchers also might take a note of it, for use when occasion requires. We have notified them in these columns of such cases of this nature as have come under our notice. Some of these cases have been brilliant efforts in the direction indicated, though we are glad to know that the publicity we have given them has somewhat damped their ardour.

THE case of *Cobb* v. *The Great Western*, 68 L.T.N.S. 122, may be law, which we venture to doubt, but it certainly does not seem to us to be common sense. The plaintiff was a passenger travelling on the defendants' railway; a gang of sixteen men were admitted into the carriage in which the plaintiff was travelling, and which was constructed to carry only ten persons, and they robbed him of £89 1s. He complained to the defendants' station master, who refused to assist the plaintiff to have the men searched in order to recover his property, or delay the train to enable him to give them into custody, although there were police officers in the station. No doubt this is a necessary deduction from *Pounder* v. *Great Western R. W. Co.*, 13 App. Cas. 31, but that case is opposed to the American cases, as we pointed out at the time (see *ante* vol. 28, pp. 236-7). If a passenger may be half killed with impunity by a fellow-passenger, without the company being in any way bound to protect him, it follows as of course that he

may also be robbed with impunity, so far as the company is concerned. We trust, however, that, should the point ever arise in our own courts, some way may be found for adopting the American view as to the responsibility of railway companies for the protection of those they invite to travel on their lines.

CRIMINAL LAW AND THE B.N.A. ACT.

[COMMUNICATED.]

"*Tempora mutantur et nos mutamur in illis,*" so wrote Virgil; and yet his truism does not affect the decisions of the Privy Council, the last court to which a British subject can appeal when he thinks that inferior courts have done him a wrong, and the decisions of that court are final. True, times do change, and we change with them; but the decision of the last court of ultimate resort does not change, although the times have changed, because the enactment of the legislature applicable to the date on which it was passed has not been changed by succeeding legislatures. This is a well-founded principle of law, and it is the duty of the legislature to reform defects which exist on the statute book when it is found that time should bring about its changes, for in doing right and justice "all seasons are summer, and every place a temple."

In what state do we stand at present with regard to our criminal law in Canada? The British North America Act was framed with care, and with a desire that there should be no warring between the Dominion and Provincial legislatures; but, notwithstanding that care, case upon case has gone to the Privy Council for their interpretation of the intention of the Imperial legislature in enacting certain sections of our Canadian Magna Charta.

The following sections and subsections of the British North America Act have to be reconciled one with the other:

Sec. 91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the fore-

going terms of the section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:

S-s. 27. The Criminal Law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters.

Sec. 92. In each Province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say:

S-s. 14. The administration of justice in the Province, including the constitution, maintenance, and organization of Provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

Sec. 94. Notwithstanding anything in this Act, the Parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia, and New Brunswick, and of the procedure of all or any of the courts in those three Provinces; and from and after the passing of any Act in that behalf the power of the Parliament of Canada to make laws in relation to any matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making provision for such uniformity shall not have effect in any Province unless and until it is adopted and enacted as law by the legislature thereof.

Sec. 101. The Parliament of Canada may, notwithstanding anything in this Act, from time to time, provide for the constitution, maintenance, and organization of a general Court of Appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada.

Sec. 94 has to be reconciled with sec. 101. I can see no reason why the latter is not subservient to the former, should the recent decision of *The Queen* v. *Leminger*, 22 O.R. 690, be good law. The decision in that case is the most recent one, and by it we are bound. Should this decision state the law correctly, as we are bound to assume that it does—deciding that the crime of forgery can be tried at the Court of General Sessions—what becomes of previously decided cases, not carried to the Court of Privy Coun-

cil, which this decision overrides, viz.: *Queen* v. *Watson*, 17 A.R. 221-251; *Regina* v. *McDonald*, 31 U.C.R. 337; *Regina* v. *Dunlop*, 15 U.C.R. 118, and the judgment of MacMahon, J., gave on this particular act in the case of *Regina* v. *Toland*, 22 O.R. 505, deciding that 53 Vict., c. 18, s. 2, was *ultra vires* of the Ontario Legislature?

What is the result of this decision in *Reg.* v. *Levinger*? Does it not say in unmistakable terms that the nomination of a court for the trial of offences comes within s. 92, s-s. 14, of the British North America Act, and not under s. 91, s-s. 27, of the same Act? The respective powers of the Dominion and Provincial legislatures being laid down by this Act, the Dominion legislature has, according to this decision, been trenching upon the powers of the local legislatures. The Dominion legislature has no right to constitute the forum where offences against their laws may be tried, and consequently they have erred in saying that certain offences shall only be tried in Court of Oyer and Terminer and not before the Sessions, as they have done by c. 174, s. 4, by which treason, libel, murder, rape, and all offences under ss. 21, 22 & 23 of c. 162 are exempted from the jurisdiction of the Sessions. (See Taschereau, Canada Criminal Acts, 2nd ed., pp. 641, *et seq.*). A recent decision of the Supreme Court, however, (*Re County Court Judges of British Columbia*, *ante* p. 72), seems to us to be in antagonism with *Queen* v. *Levinger*.

The legislature had the power to enact such a law subject to the provisions of s. 94, which provides that such Acts shall only have force when enacted and adopted by the Provincial legislature. But have such Acts been adopted, and do chapters 48 and 49 of R.S.O. give the adoption required by s. 94 of the British North America Act? For my part, I do not see that these Acts give the necessary adoption required by said section of the British North America Act. Should this view be correct, and the law as laid down in *Queen* v. *Levinger* be sound, viz., that the nomination of the forum in which cases against the laws of Canada shall be tried is a matter of constitution of the court and not a matter of procedure in criminal matters, then the Dominion legislature has trenched upon the constitution of the courts unduly by the enactments of c. 174 and otherwise. Under s. 101 of the British above-mentioned North America Act, the Dominion has power to constitute additional courts.

As yet no step seems to have been taken to secure from the Local Legislature, now in session, an enactment similar to those contained in c. 48 & 49, R.S.O., adopting generally the criminal Acts of the Dominion, should such an adoption be necessary.

The criminal laws and the interpretation thereof, involving the life and the liberty of the subject, are no less important than the civil laws which govern the recovery of land and of dollars and cents. Why should there not be, therefore, an Exchequer Court as in England, whose jurisdiction shall be wholly to deal with criminal matters, and to the Bench of which shall be appointed those who have made criminal law their special study, and the lives and liberties of the subjects not to be entrusted to the interpretation of judges who have earned their well-merited position on the Bench by their proficiency as expounders of commercial, real estate, and equity law?

N. MURPHY.

SOME NECESSARY AMENDMENTS.

Notwithstanding the watchful eye of the Attorney-General for needed improvements in the statutory law, there are many changes yet to be made before a state of comparative perfection be reached. We are not advocates for the continual alterations and amendments to the Provincial statutes which are made session after session by the assembled wisdom of the Legislative Assembly, more particularly in the municipal and other kindred enactments; but a change in any statute should not be looked upon with hesitancy when it is apparent that such change would produce beneficial results.

It may be that the attention of the members of the House, other than the Ministers, is directed more to municipal law than to any other branch, owing, doubtless, to a more thorough knowledge of the subject by reason of the fact that most of the members have passed through all the grades in township, town, and county councils. Whatever may be the cause, it is to be regretted that so much time is taken up, and so much confusion is occasioned, by tinkering with the municipal and assessment laws every year, when there are many other questions deserving the serious consideration of our lawmakers. We propose to call

attention briefly to a few matters which are certainly quite as urgent and important as these we mention, and trust that some steps may be taken to remedy the obvious anomalies and evils which beset the path of those who are compelled to seek relief by recourse to the Revised Statutes of Ontario and subsequent legislation.

There are some who think that the jurisdiction of the County Courts ought to be extended. It is suggested that actions for libel and slander, generally trumpery actions at best, might with advantage be tried at the County Court. The law relating to these matters is not very difficult or complicated, and must be quite within the competency of the average County Court judge. An action is brought in the High Court for the construction of a will affecting a piece of land of the value of fifty or one hundred, dollars, and the costs of trial amount to between four and five hundred dollars. We are asked, Is there any valid reason for not trying this in the lower court?

It is manifest that there would be a great saving to suitors if the County Courts were given extended jurisdiction as to the amounts in reference to matters already within their purview. All this, however, brings up another question, and that is whether it is desirable to throw more work upon the county judges and take it from the judges of the High Court. It would probably give more work to the judges of the Court of Appeal. We should be glad to hear from others on these points.

With reference to arbitrations, we had occasion some time ago to call attention to the creation of a court of arbitration in London for determining matters in dispute arising out of commercial transactions. It is needless, for the present, to do more than mention the subject, as it must be apparent to every one that the settlement of differences arising between merchants and others engaged in commercial business can be accomplished by means of a competent tribunal of men peculiarly skilled in these matters in a cheaper and infinitely more expeditious manner than by the long, expensive, and tedious delays of the ordinary courts, presided over by men who, no matter what their ability may be, must from necessity be comparatively lacking in that kind of knowledge and experience necessary to judge and determine the issues arising out of the complicated system of modern commerce.

Dealing with the question of limitation of actions, it would save a great deal of litigation if some scheme were adopted similar to that suggested in the last number of the *Law Quarterly Review*. The writer there points out the absurdity of the English legislation. In referring to the case of *Jay* v. *Johnstone*, (1893) 1 Q.B. 25, he says: "Is it not time that this piecemeal legislation with regard to the limitation of time within which actions may be brought should come to an end? It is a subject which ought to be made clear, and could easily be made clear to laymen. A parliamentary draftsman who is well versed in the Statute of Limitations could easily draw up a short Act, exhibiting the periods of limitation in a tabular form, and this," the writer points out, "would be a benefit both to lawyers and to the public." This remedy is so simple that the wonder is some one did not offer it long before this time.

There is a feeling abroad that the Quieting Titles Act, as also the Torrens system, should be simplified, and the cost of the proceedings reduced. It is not so clear, however, how this should be done. Time must be spent, great caution exercised, and expense incurred when title is being made, as it were, against the world. We should be glad to have some suggestion on these matters from those who are complainants in the premises. We think it would be quite proper to do away with the expense of advertising in applications under the Land Titles Act, and it would be very easy to dispense with much of the red tape now required to perfect a cessation of charge. The courteous Master of Titles certainly does his best to make the working of the Act a success. By the returns of last year, it appears that the cost to the Province for operating the land titles office in Toronto amounted to $7,350, whilst the whole receipts from fees, as shown by the blue book, were only $4,863, though it was, in fact, $5,257, the difference being the percentage going to the stamp issuer.

Under the Master and Servant Act, a difficulty frequently arises which renders the Act inoperative. If the defendant puts in a set-off to the servant's claim the proceedings are ousted before the justice, and the parties are forced to go to the Division or other court, as the case may be, for a determination of their troubles. If the justice has power to deal with the subject-matter of the complaint, he ought to be given power to deal also with all matters connected therewith and incidental thereto, and it is

only creating a burden for the servant to give him the partial remedy he has under the present law. The truth is that this provision is only of value in a few country places where there are only occasional sittings of local courts. In cities, towns, and villages it would be better to leave to the Division Courts the collection of small amounts due for wages.

Coming to the Mechanics' Lien Act, it is not going too far to say that it is the cause of more loss and injury to workmen and artisans than anything else on the statute book. The proceedings are quite as expensive as a Chancery suit, and the delays are proverbial. A workman having a claim for a few dollars files the necessary papers, and, in order to do so, he must employ a solicitor. Once in court he finds references and appeals following each other in quick succession, until eventually he wakens up to the sad reality that, instead of the estate owing him anything on account of his claim, he is indebted to his lawyer in an amount greater than the original indebtedness. The property is sold, the costs are taxed, and the lienholders, in four cases out of five, after waiting for months, are called upon to make good the deficiency caused by prolonged and expensive litigation. The best way of amending this Act would be to wipe it out of existence. It was originally introduced as a political trap to catch the workingmen's vote, and will never be any good. It has the evil effect, moreover, of encouraging an objectionable system of credit instead of cash payments.

It is about time that something was done by the Legislature to get rid of the decisions of the courts as to interest where a rate in excess of six per cent. is reserved. In *Grant* v. *People's Loan Co.*, 17 A.R. 85 (affirmed in 18 S.C.C. 262), the redemption clause in a mortgage was as follows: "Provided this mortgage to be void on payment of $7,500 on or before the first day of June, 1884, with interest thereon at the rate of ten per cent. per annum until such principal money and interest shall be fully paid and satisfied." It was held, in accordance with previous decisions, that notwithstanding the obvious intent of the parties only six per cent. could be recovered after the due day of the mortgage. The present state of the law on this subject is a notable example of the truth of the saying that "hard cases make bad law." The courts not only facilitate a dishonest debtor in breaking a solemn contract, but actually sug-

gest to him the dishonesty, and then deliberately break the contract and make a new one between the parties which neither of them ever intended or dreamt of, and which one of them at least would never have entered into had he known how plain words would be twisted. A rule has been laid down which, while aiming at preventing one iniquity, breeds many; and which, in the view of an ordinary business man, is an injustice and an absurdity.

Another matter of some little importance which might be dealt with is one of the relics of a practice which has come to us from England arising from a different state of law from that existing in this country. In England what is known as a solicitor's abstract is a matter of necessity. Here it is not so, as is proved by the almost universal custom of providing against a requisition for it. The law should provide that, notwithstanding any practice to the contrary, no solicitor's abstract shall be required to be furnished by a vendor to a purchaser unless expressly stipulated for, but that it shall be sufficient to furnish a registrar's abstract. This would save unnecessary expense and delay, and often prevent great injustice being done by some sharp practitioner who desires to put some unwary, or confiding, or ignorant vendor to annoyance, expense, and delay.

Leaving now the civil and going to the criminal phase of the law, it must be apparent to every one observant of the administration of criminal justice that the jurisdiction of the General Sessions is too limited. A police magistrate, on election by the party accused, may try a felony punishable by imprisonment for life. The General Sessions may, without such election, try the same class of offences. But misdemeanours punishable, in some cases, by at most three years' imprisonment, and in some by a fine, must be tried at the Assizes. The old theory, that only crimes accompanied by an actual or imminent breach of the peace could be tried at the Sessions, is exploded. The tendency of modern legislation is to look at the practical and not the theoretical side of things. What is wanted is speedy, economical, and substantial justice, without regard to time-worn and moss-covered principles, which should have no business and no place in this utilitarian age. If, as decided in the *Queen* v. *Levinger*, the Legislature of Ontario has power to create the Sessions a court competent to try forgery in certain cases, why should not the minor offences

mentioned in sections 60 to 76 of the Larceny Act be tried there also? The same remark applies to sections 21, 22, & 23 of the Act respecting offences against the persons. The Act of 1890, c. 18, is a step in the right direction, but it does not go far enough. The offences under sections 28 to 31 of the Forgery Act now within the jurisdiction of the General Sessions, with one exception, may be punishable by life imprisonment. Section 34, relating to the forgery of records of the courts, a matter peculiarly within the care of the Provincial Legislature, imposes a penalty of only seven years. So with s. 35, pertaining to a similar matter. The forgery of orders, etc., of justices of the peace appointed under the Provincial system, merits at most three years' imprisonment. Notwithstanding these facts, the Sessions may try the more serious phases of the crime of forgery, but may not have the power to sentence an offender for three years in one case, although in another it may give him a life sentence!

We might go on multiplying examples of the incongruities of our law which would but show that practical application should be the sole guide, and that in considering amendments the government should look more to the wants of the public and less to the refined theories upon which, unfortunately, much of our legislation, both here and at Ottawa, is based.

CURRENT ENGLISH CASES.

POWER—EXERCISE OF POWER—VALIDITY OF—FRAUD ON POWER.

In re Perkins, Perkins v. *Bagot*, (1893) 1 Ch. 283, the validity of the exercise of a power of sale under the following circumstances came in question. Under the will of her father, a testatrix had power to appoint a fund among her children or remoter issue. In default of appointment, the fund was to go to her children, in equal shares, at twenty-one or marriage. By her will, which recited the power and that she had appointed the greater part of the fund in favour of her daughters, and that only a sum of £713 remained unappointed, she, in exercise of the power, appointed this sum of £713, and all other sums over which she had any power of appointment, in favour of her sons, in equal shares, on the condition that they gave up all claim to certain furniture, or the proceeds of the sale thereof; but in case of their making any claim against

her estate in respect of the furniture or the proceeds thereof, then she appointed the £713 absolutely in favour of one of her daughters. The furniture referred to in the will had been bequeathed to the testatrix for life by her husband's will, with power to sell it, and on her death the furniture, or the proceeds of the sale of it, were bequeathed to her sons in equal shares. There was no evidence that the appointment had been made in pursuance of any bargain with the sons, or that they knew of it before the testatrix's death. Under these circumstances North, J., held that the testatrix had endeavoured to increase her estate for the benefit of her residuary devisee, who was a stranger to the power, by imposing the condition of the release of their claim to the furniture or its proceeds upon the sons, and that this condition could not be severed from the appointment, and it was therefore void *in toto*, as being a fraud on the power, and the fund went therefore as upon default of appointment.

TENANT FOR LIFE—INCOME—CAPITAL—MORTGAGE—MORTGAGEE IN POSSESSION.

In re Godden, Teague v. *Fox*, (1893) 1 Ch. 292, a testator being entitled to a mortgage on a colliery, at the time of his death, proceedings for foreclosure were taken by his executors to enforce the mortgage, and a receiver was appointed of the colliery, which was a going concern. Proceeds of working the colliery came to the hands of the receiver in the foreclosure action, and were transferred to the credit of an action for the administration of the testator's estate, and the question then arose as between tenant for life and remainderman under the will how those proceeds were to be apportioned. North, J., held that the funds should be apportioned between capital and income on the following principle, viz., that it should be ascertained by computation what amount invested at four per cent. from the time of the testator's death would, with the interest, equal the fund in question; that the amount so to be ascertained should be apportioned as capital, and the balance as income.

TRUSTEE—ACCOUNT—STATUTE OF LIMITATIONS—TRUSTEE ACT, 1888 (51 & 52 VICT., c. 59), s. 8—(54 VICT., c. 19, s. 13 (O.).

In re Page, Jones v. *Morgan*, (1893) 1 Ch. 304, is a decision under the Trustee Act, 1888 (51 & 52 Vict., c. 59). The action was brought against the defendants as executors and trustees for an account. The plaintiff was entitled to certain residuary estate

which was to be held by the defendants as trustees of a will, to be paid or transferred to him on his attaining twenty-one. The testatrix died in 1875, the plaintiff being then an infant. The plaintiff attained twenty-one in 1880. The present action was brought in May, 1892. One of the defendants did not appear; the other, who had been the acting trustee and executor, deposed that he had spent the whole of the residue while the plaintiff was an infant in his maintenance and education, but he admitted that he had never rendered any account, but said he had told the plaintiff during his minority how the fund had been applied. The plaintiff made no charge of fraud or breach of trust; nor was there any evidence that the defendant had converted any part of the fund to his own use. Under these circumstances North, J., held that the Trustee Act, 1880, s. 8 (see 54 Vict., s. 13 (O.)), applied, and that the action was barred. It was therefore dismissed, but without costs.

INJUNCTION—PLAYING MUSICAL INSTRUMENTS—MALICIOUS NOISE—REASONABLE USE OF HOUSE.

Christie v. *Davey*, (1893) 1 Ch. 316 is somewhat amusing reading. The plaintiff and defendant were next-door neighbours. The plaintiff's wife and daughters were professional musicians, and they and their pupils were accustomed to practise music and singing to such a degree that the defendant's patience became exhausted. At last, in desperation, he took it into his head to try the homœopathic principle, and thought to drown the music in the plaintiff's house by making discordant noises on his own premises by playing on concertinas, trombones, trays, etc.; whereupon the plaintiff brought this action to restain the defendant from continuing such noises, or musical exercises. The defendant claimed, by way of cross relief, an injunction to restrain the plaintiff's excessive musical performances. On a motion for an interlocutory injunction, North, J., while holding the plaintiff was within his rights in practising and permitting others to practise music in his house in the ordinary pursuit of his calling as a music teacher, even though it did disturb and annoy his neighbours, yet that the defendant was exceeding his rights in maliciously making musical or other sounds or noises merely to annoy or disturb the plaintiff and his family. While, therefore, the injunction claimed by the plaintiff was granted, that claimed by the defendant was refused.

BILL OF SALE—POWER OF ATTORNEY.

Furnivall v. *Hudson*, (1893) 1 Ch. 335, is a decision of North, J., to the effect that a bill of sale may be executed by attorney, and that there is nothing to exclude the grantee from being such attorney.

VENDOR AND PURCHASER—BUILDING LOTS—SALE OF LOTS BY AUCTION—RESTRICTIVE COVENANTS—LOTS RETAINED BY VENDOR—LIABILITY OF VENDOR TO OBSERVE RESTRICTIVE COVENANTS—FORM OF CONVEYANCE.

In re Birmingham and District Land Company & Allday, (1893) 1 Ch. 342, was an application under the Vendor and Purchaser Act, 1874, and the question was whether the purchaser of a building lot sold subject to restrictive covenants was entitled in his conveyance to a restrictive covenant by the vendors in respect of those lots which remained unsold in their hands. In this particular case Stirling, J., decided that the purchaser was entitled to the covenant; but in discussing the general principle he lays it down that it is a question of fact to be deduced from all the circumstances of the case whether the restrictive covenants subject to which the lots are offered for sale are such as are imposed by the vendor merely for his own benefit, or are meant by him and understood by the several purchasers to be for the common advantage of the several purchasers, and that the retaining of part of the property by the vendor himself, though an important element, is only one to be taken into account with the other circumstances in determining the intention, and that there may be other circumstances which may show that, notwithstanding the vendor retains part of the property, the intention was that each purchaser should be entitled to enforce the restrictive covenants against the vendor himself as well as against all other purchasers.

PRACTICE—FOREIGN CORPORATION—SERVICE OF WRIT ON FOREIGN CORPORATION—ORD. IX., R. 8 (ONT. RULE 268).

Badcock v. *Cumberland Gap Park Company*, (1893) 1 Ch. 362, is a practice case in which the service of a writ on a foreign corcorporation was in question. The defendants were a hotel company carrying on business in the United States. Many of the shareholders resided in England, and the company had an agent in London, in whose possession were certain books relating to shares, and the transfer of shares of the company; and it was his duty to keep a record of such transactions, and to countersign share

certificates, and to receive payment of costs and remit the proceeds to America, and he at one time put some money of the company on the stock exchange. He acted also as agent for other companies. Circulars were issued describing his office as the London office of the defendant company. The plaintiff, a shareholder, brought the present action for an injunction to restrain the company from carrying into effect certain resolutions for its reconstruction, and the writ was served on the London agent, whereupon the defendants moved to set aside the service as unauthorized, and Stirling, J., held the same to be invalid, on the ground that the company was not carrying on any particular part of its business in London, and could not be said to be resident in England. He also expressed grave doubts whether the action, in any case, was maintainable in an English court.

BUILDING SOCIETY—ADVANCED MEMBER—MORTGAGE—PROVISO FOR REDEMPTION —ALTERATION OF RULES AFTER DATE OF MORTGAGE.

In *Bradbury* v. *Wild*, (1893) 1 Ch. 377, Kekewich, J., decides that where an advanced member of a building society executes a mortgage to the society with a proviso for redemption on payment of the several sums, whether consisting of monthly subscriptions, fines, interest, or other payments, which under the constitution of the said society and the rules and regulations thereof ought to be paid—that although the proviso did not refer to the "rules for the time being," yet the mortgagor by virtue of his contract, which was one of mortgage and membership combined, was bound by levies made on him under rules passed subsequent to the dates of his mortgage, and could not redeem without paying them.

PARTNERSHIP—VALUE OF SHARE OF DECEASED PARTNER—DIRECTION TO ASCERTAIN VALUE OF PARTNER'S SHARE BY REFERENCE TO LAST SIGNED ANNUAL ACCOUNT.

Hunter v. *Dowling*, (1893) 1 Ch. 391, seems to be an illustration of the equity maxim, "That equity considers that to be done which ought be done." This was a question arising under a partnership deed which provided that an account should be taken annually and signed by the partners, and further provided that in the event of the death of a partner the value of his share in the partnership should be ascertained by reference to the last signed annual account. One of the partners died shortly after the expiration of a partnership year, and before the account for that year

had been actually taken and signed. Under these circumstances Bowen, J., held that the surviving partners could not insist, as against the personal representatives of the deceased partner, that the share of the latter should be valued by reference to the last account actually taken and signed before his death, notwithstanding that it had been the practice of the firm not to take or sign the annual account until a much later period than that at which the partner had died; but that the representatives of the deceased partner were entitled to have the account taken for the partnership year which expired just before the partner's death, and to have the value of his share ascertained on the basis of such last-mentioned account.

CONTRACT—REASONABLE TIME FOR PERFORMANCE—EXTRAORDINARY CIRCUMSTANCES OCCASIONING DELAY.

Hick v. *Raymond*, (1893) A.C. 22, is the only case in the appeal cases to which we think it necessary to refer. In this case the House of Lords (Lord Herschell, L.C., and Lords Watson, Ashbourne, Morris, and Field) affirmed the decision in the case reported as *Hick* v. *Rodocanachi*, (1891) 2 Q.B. 626 (noted *ante* vol. 28, p. 38), their lordships holding that where a contract provides for the performance of a work within "a reasonable time" such contract is sufficiently performed if it be performed within a time that is reasonable under the existing circumstances, assuming that those circumstances, in so far as they involve delay, are not caused or contributed to by the person required to perform the contract. In this particular instance, the contract was to unload a vessel, the contract being silent as to the time within which the work was to be done, and when the vessel arrived in port the unloading was delayed by a strike of dock labourers, in consequence of which it became impossible to procure the necessary labour to carry on the work. The House of Lords agreed with the Court of Appeal that the effect of the contract was that the unloading was required to be done within "a reasonable time"; but that taking into account the delay occasioned by the strike, for which the contractor was not responsible, the reasonable time had not been exceeded. The sanction of the House of Lords has been, therefore, given to the proposition that in determining what is "a reasonable time" for doing an act regard is to be had not merely to the ordinary course of business, but also to the actual existing state of the circumstances at the particular time.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

TRINITY TERM, 1892.

Proceedings of Convocation.

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

September 12th, 1892: Fletcher Cameron Snider, John David Macdonald Spence, Francis King, Robert James Gibson, Alfred Taylor Hunter, James Kerr, Francis Thomas Costello, Francis George Evans, John Strachan Johnston, John Donald Swanson, Walter McClellan Allen, John Henry Madden, Allan Stuart Macdonell, Miron Arden Everetts, Alfred Bicknell, Stephen Johnston Young, William Draper Card, John Earl Halliwell, Arthur Edward Overell, William Evileigh Gundy, Archibald Alexander Roberts, Leighton Goldie McCarthy, Lawrence Henry Henderson.

September 13th: John Coutts, William Hendry Grant, McKibbon Howard McLaughlin, Arthur Freeman Lobb, James Craig Cameron.

September 17th: Harry George Tucker and James Albert Harvey.

The following gentlemen were granted Certificates of Fitness, viz.: John David Macdonald Spence, Francis King, Alfred Taylor Hunter, James Kerr. Francis Thomas Costello, Francis George Evans, John Strachan Johnston, James Steele, John Donald Swanson, Walter McClellan Allen, William James Elliott, James Francis Keith, Colin St. Clair Leitch, Thomas Joseph Murphy, William Evileigh Gundy, Augustus James Jackson Thibaudeau, George Arthur Sayer, John Bond Head Ferguson, Leighton Goldie McCarthy, John Henry Madden.

The following gentlemen passed the Second Intermediate Examination: Neil Hugh McIntosh, Clarence George Powell, Herbert Ewin Arden Robertson, Thomas Duff.

The following gentlemen passed the First Year Law School Supplementary Examination: Thomas David Dockray, James Wilson Hannon, James Scott Brown.

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

Graduates.—Lyman Aaron Kennedy, James Lundy Naylor, Franklin David Davis, Louis Joseph Macdonell, George Duncan Graham, John Kines Arnott, Stanley Thorn Chown, John Alexander Cooper, John Gordon Mackay.

Matriculants.—Charles Christie Henderson, Edmund Carlyon Wragge, William Erskine Knowles, Uriah McFadden, Henry George Wilson, Robert Eugene Gagen, Herbert Long Harding, Mark Howard Irish, Thomas Percival Rowland, Thomas Waterson, Ernest Francis Appelbe, John Campbell Elliott, Francis Wilson Griffiths, John Franklin Gross, William Arthur Hollinrake, Henry Oscar Huber, David Porteous Kennedy, Alexander Mackenzie Lewis, Thomas Peare Morton, George Clarke Sellery, Arthur Boyd Thompson.

Monday, September 12th.

Present, between 10 and 11 a.m.—The Treasurer, and Messrs. Irving, Moss, Shepley; and in addition, after 11 a.m., Messrs. Magee, Christie, Hoskin, Kerr, and Riddell.

Business transacted before 11 a.m.—The minutes of the last meeting of Convocation were read, approved, and signed by the Treasurer.

Mr. Moss, from the Legal Education Committee, presented their Report on the result of the examination of candidates for call to the Bar, as follows:

The Legal Education Committee report that they have considered the report of the Examiners on the examination of the following gentlemen who passed the Third Year Examination in the Law School in May last, the Report of the Principal with respect to their attendance on lectures and the Report of the Acting Secretary on their papers, and find that they duly passed the School examination, are certified by the Principal to have duly attended the requisite number of lectures, their papers for call to the Bar are regular, and they are entitled to be called to the Bar forthwith. (Names appear in above list.)

The committee also find that the following gentlemen duly passed the School examination, but failed to attend the required number of lectures. The Principal certifies that such failure was due to illness; their papers for call are regular, and the committee recommend that they be called to the Bar, viz.: J. S. Johnston, J. D. Swanson, W. M. Allen.

The committee have also considered the Report of the Examiners on the result of the Supplemental Examination in the third year of the Law School and the Acting Secretary's Report on the papers of the candidates, and, after enquiry upon and examination into the same, find that the following gentlemen have passed the examination, and their papers for call are regular, viz.: J. H. Madden, A. S. Macdonell.

With regard to their attendance on lectures, the Principal reports that Mr. Madden has duly attended the required number of lectures, and that Mr. Macdonell is deficient by one lecture in Constitutional Law. He presents a special petition, explaining that his absence was caused on one occasion through being obliged to go to Eglington to transact some business, and being detained until too late to attend the lecture. The Principal reports in favour of allowing his attendance, and the committee recommend that the examination and attendance of Messrs. Madden and Macdonell be allowed, and that they be called to the Bar.

Messrs. J. A. Oliver and H. W. C. Shore are also certified by the Examiners to have duly passed the Supplemental Examination in the third year, but they are not entitled at present to be called to the Bar or receive Certificates of Fitness, and their cases are not now dealt with.

The committee also considered the Report of the Examiners on the examinations of candidates for call to the Bar under the Law Society curriculum and the Acting Secretary's Report on their papers, and after enquiry upon and examination into the same find that the following gentlemen have passed the proper examination, their papers are regular, and that they are entitled to be called to the Bar. (Names appear in the above list.)

The Report was ordered for immediate consideration and adopted, and ordered that they be called to the Bar forthwith.

Ordered, that the cases of the following gentlemen be reserved for further report, viz.: J. A. Oliver, H. W. C. Shore.

Mr. Moss, from the Legal Education Committee, presented their Report on the result of the examination of the candidates for Certificates of Fitness as Solicitors, as follows:

The Legal Education Committee beg leave to report that the following gentlemen, who have duly passed the School examination, and have been certified by the Principal to have attended the required number of lectures, whose period of service has now expired, and whose service and papers are correct and regular, are entitled to receive Certificates of Fitness as Solicitors. (Names appear in above list.)

That the papers and service of the following gentlemen, who have duly passed the School examination, but failed to attend the required number of lectures, and as to whom the Principal certified that such failure was due to illness, and whose period of service has now expired, are correct and regular in all other respects, and your committee recommend that they receive Certificates of Fitness as Solicitors, viz.: J. S. Johnston, James Steele, J. D. Swanson, W. M. Allen, W. J. Elliott.

The committee have considered the Examiners' Report on the result of the Supplemental Examination in the third year of the Law School and the Acting Secretary's Report on the papers and service of the candidates, and find that the following gentleman is entitled to receive a Certificate of Fitness, viz.: J. H. Madden.

The committee have also considered the Report of the Examiners on the result of examination of candidates for Certificates of Fitness under the Law Society curriculum and the Acting Secretary's Report on their service and papers, and after enquiry upon and examination into the same find that the following candidates have passed the proper examination, that their service and papers are regular, and that they are entitled to receive Certificates of Fitness, viz.: (Names appear in above list.)

The cases of Messrs. W. D. Card, A. Bicknell, and J. A. Harvey are reserved until expiry of their time, and production of further proofs.

CHARLES MOSS, *Chairman.*

The Report was ordered for immediate consideration and adopted

Ordered, that the following gentlemen who are reported to have passed their examination, to have attended an adequate number of lectures, to have presented regular papers, and to have served the requisite time, do receive Certificates of Fitness as Solicitors. (Names appear in the above list.)

Ordered, that the cases of the following gentlemen be reserved for further report, viz.: W. D. Card, A. Bicknell, J. A. Harvey.

Mr. Moss, from the Legal Education Committee, presented their Re-

port on the Supplemental First Year Examination and the Second Intermediate Examination, as follows:

The committee have considered the Report of the Examiners on the result of the Supplemental Examination on the first year and the Acting Secretary's Report on the standing of the candidates, and they find that the undermentioned gentleman has duly passed the examination, and he is in due course, viz.: T. D. Dockray. The committee recommend that he be allowed his first-year examination.

The following gentlemen also duly passed the examination, but were not required to attend and did not attend the lectures in the first year of the Law School, viz.: J. W. Hannon, J. S. Brown. The committee recommend that they be allowed the first-year examination.

The committee have also considered the case of Mr. J. F. J. Cashman, and, under the special circumstances of this case, the committee recommend that Mr. Cashman be allowed his first year's attendance and examination.

The committee also considered the Report of the Examiners on the Second Intermediate Examination under the Law Society curriculum and the Acting Secretary's Report on the standing of the candidates, and after enquiry upon and examination into the same find that the following gentlemen have passed the proper examination, that they are in regular course, and that they are entitled to be allowed their Second Intermediate Examination. (Names appear in above list.) Mr. John Isbister also passed the necessary examination, but he does not appear to be in due course, and his case is reserved by the committee for further enquiry.

CHARLES MOSS, *Chairman.*

The Report was ordered to be considered to-morrow.

Mr. Moss, from the Legal Education Committee, presented their Report on the admission of Students at-Law, as follows:

The Legal Education Committee reported:

(1) The candidates for admission as Students-at-Law and Articled Clerks who presented their diplomas as graduates of the universities named, and are entitled to be entered on the books of the Society as Students-at-Law of the graduate class. (Names set out in above list.)

(2) The candidates for admission who presented certificates of having passed examinations in the subjects prescribed by the rules of the Society in the universities named, and are entitled to admitted as Students-at-Law of the matriculant class. (Names appear in above list.)

(3) The gentlemen who have also applied for admission, but whose cases are reserved for production of further proofs and for consideration as to their notices.

The Report was ordered for immediate consideration.

Ordered, that the following gentlemen reported entitled as graduates be entered on the books of the Society as Students-at-Law. (Names appear in above list.)

Ordered, that the following gentlemen reported as matriculants be entered on the said books as Students-at-Law. (Names appear in above list.)

Ordered, that the cases of gentlemen named be deferred for further report.

Business transacted after 11 a.m.—Mr. Moss, from the Legal Education Committee, presented a Report as follows: In the case of T. C. Thomson, recommending that he receive his Certificate of Fitness on production of proper proof to the Acting Secretary of his having completed his service, which expires on the Sept. 25th inst. Ordered for immediate consideration, adopted, and ordered accordingly.

In the case of J. G. McKay, recommending that his name be placed on the list of students of the graduate class as of this term on the production of his diploma. Ordered for immediate consideration, adopted, and ordered accordingly.

The following gentlemen were then called to the Bar, viz.: (Names appear in above list.)

The letter of Mr. C. J. Campbell in relation to the resolution as to the death of the Honourable Sir Alexander Campbell was read.

An anonymous communication, signed "Layman," was read. Ordered, that no action be taken thereon.

The adjourned debate on the Report of the Joint Committee as to the office of Secretary and sub-Treasurer was resumed. Clauses 5, 6, 7, and 8 were adopted, and it was ordered that the Report as amended and adopted be referred to the Finance Committee, with instructions to take the necessary steps to carry it into execution, including the framing and presentation of any Rule requisite for the purpose.

Mr. Irving, as Chairman of the Finance Committee, moved for leave to introduce a Rule to amend the Rule as to the offices of the Society.—*Carried.*

The Rule was read a first time, and ordered for a second reading tomorrow

The Report of the Principal of the Law School was, pursuant to order, considered. It was ordered that it be referred to the Legal Education Committee to arrange for the utilization of the existing accommodation for the purpose of a third lecture room.

Ordered, that the matter of discipline mentioned in the Report of the Principal be referred to the Legal Education Committee, with power to frame regulations in this regard.

Mr. Hoskin, for Mr. Martin, moved the second reading of the Rule standing for this day.—*Carried.*

The Rule was passed, and is as follows: That Rule 15 be and the same is hereby amended by striking out the word "Saturday" wherever it occurs therein and substituting the word "Friday."

Convocation adjourned.

Tuesday, September 13th.

Convocation met,

Present between 10 and 11 a.m.—Messrs. Irving, Moss, Bruce, Riddell, Shepley, Britton, Idington; and in addition, after 11 a.m., Messrs. Magee, Bell, Martin, Mackelcan, Barwick, Ritchie, Kerr, and Lash.

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

The minutes of Convocation of yesterday were read and approved.

Mr. Moss, from the Legal Education Committee, presented a Report on the case of Mr. John Coutts, that he had completed his papers, and that he was entitled to be called to the Bar. Ordered for immediate consideration, adopted, and ordered accordingly.

In the cases of Messrs. J. C. Cameron and W. H. Grant, that they had passed the school examination, are certified by the Principal to have duly attended the required number of lectures, their papers for call are regular, and they are entitled to be called to the Bar forthwith. Ordered for immediate consideration, adopted, and ordered accordingly.

In the cases of H. F. McLeod, J. C. Cameron, and W. H. Grant, that they had duly passed the School examinations, are certified by the Principal to have duly attended the required number of lectures, their papers and service as Articled Clerks are correct and regular, and that they are entitled to receive Certificates of Fitness. Ordered for immediate consideration, adopted, and ordered accordingly.

In the case of A. Bicknell, that he passed the examination for Certificate of Fitness under the Law Society curriculum this term, and his case was reserved for further proofs. He now produces proof of completion of service, his papers and service as an Articled Clerk are regular, and he is entitled to receive a Certificate of Fitness. Ordered for immediate consideration, adopted, and ordered accordingly.

The following gentlemen were then introduced and called to the Bar, viz.: John Coutts, W. H. Grant, M. H. McLaughlin, A. F. Lobb.

Mr. Shepley moved the adoption of the Report of the Legal Education Committee received yesterday on the First-Year Supplemental and Second Intermediate Examination.—*Carried.*

Mr. J. C. Cameron was then introduced and called to the Bar.

At 10.50 a.m., Convocation adjourned until 11 a.m., at which hour the Treasurer took the chair.

Business transacted after 11 a.m.:

Mr. Britton presented the Report of the Legal Education Committee in the case of L. H. Henderson, who applied for call to the Bar under the Rules in special cases. The committee have examined his papers and find that he has complied with the Rules, and they recommend that pursuant to Rule 209, as amended, that a select committee be appointed to conduct his

examination. Ordered for immediate consideration and adopted. Ordered, that Messrs. Britton and Martin be appointed to conduct his examination.

The order of 28th June, 1892, as follows, "That the matter of passing Rules under the statute passed at the last session of the Legislature, intituled 'An Act to provide for the Admission of Women to the Study and Practice of Law,' in connection with the application of Miss Clara Brett Martin, and reported to-day by the Legal Education Committee, be considered on the second day of next term, and that a special call of the Bench be made for that day to consider and deal with the above subject," was read; and pursuant to that order of the day,

Mr. Idington moved, seconded by Mr. Bell, the following resolution:

That Convocation, believing that the question of public policy involved in the admission of women to practise as solicitors should be disposed of by the Legislature, and assuming that the Act of last session authorizing the Law Society to provide for such admission is a declaration in favour of such policy, refers it to the Legal Education Committee to prepare and report Rules for that purpose.

Mr. Shepley moved in amendment, seconded by Mr. Bruce, to leave out all the words after "That" and insert the following: "Convocation being called upon by the application now before it to exercise the discretion vested in it by the Act 55 Vict., cap. 32, is of opinion that it is inexpedient to frame Rules for the admission of women to practise as solicitors."

Convocation divided on the amendment. Yeas, 9. Nays, 4. The amendment was carried. The main motion as amended was carried on the same division.

The Acting Secretary was instructed to communicate the resolution to Miss Martin.

Mr. Irving presented the Report of the Finance Committee on the reference of yesterday of the adopted Report of the Joint Committee on the subject of offices, as follows:

To the Treasurer and Benchers in Convocation assembled:

The Finance Committee, to whom was referred by order of Convocation of the 12th instant the Report of the Joint Committee composed of the Finance and Legal Education Committees, as amended and adopted, with instructions to take the necessary steps to carry it into execution, including the framing and presentation of any Rule requisite for the purpose, beg leave to report:

(1) That they have communicated to the Librarian that part of the said Report whereby it was proposed to commit to him the duties which relate to the care of the building and grounds, he receiving in compensation certain residential accommodation. In conferring with Mr. Eakins, it became apparent that filial duties precluded him from accepting the advantages offered. Mr. Eakins, in explaining his inability to entertain the proposition, expressed his personal gratification with the consideration of the Benchers for him in the premises.

(2) The committee beg leave to report a draft Rule to reunite the offices of Secretary and sub-Treasurer in accordance with the leave given: "That the Rules of the Law Society passed on the 6th February in Hilary Term, 1892, relating to the appointment of sub-Treasurer and the duties of the Secretary numbered 1, 2, 3, 4, 5, and 6, on pages 466 and 467 of Journal No. 10, are hereby repealed; and that the following be substituted therefor, numbered as 38 (1) of the Society's Rules.

"38 (1) A Secretary who shall be *ex officio* sub-Treasurer, and (numbered as 48 of the Society's Rules).

"48. The salary of the Secretary shall be fifteen hundred dollars per annum, payable monthly, for all his duties in every capacity, in addition to which he shall be furnished with such rooms in the Society's building (where he must reside), and with such fuel, water, and light, as the Committee of Finance may from time to time determine. In lieu of such rooms and allowances, Convocation may allow to the Secretary the sum of three hundred dollars per annum, payable monthly."

(3) The committee, under the direction of Convocation, propose to advertise forthwith inviting applications for the position of Secretary and sub-Treasurer, and to announce that applications already received for the position of sub-Treasurer will be taken as applications for the united offices of Secretary and sub-Treasurer.

(4) The committee consider that in view of the former applications before Convocation new applications should be made and forwarded by Wednesday, 21st September instant, and that in view of Rule No. 40 it should be ordered by Convocation that notice of the intention to appoint a Secretary on Friday, 23rd September instant, be given to each Bencher.

(5) With reference to that part of the Report requiring the committee to settle the details of a plan whereby a percentage of officer's salaries be retained to be paid on retirement with compound interest, the committee will report hereafter, not being at the present time prepared to deal with the subject.

Respectfully submitted,

ÆMILIUS IRVING.

The Report was ordered for immediate consideration and adopted.

Mr. Irving moved the second reading of the Rule read a first time yesterday, as follows:

That the Rules of the Society passed on 6th February, in Hilary Term, 1892, relating to the appointment of sub-Treasurer and the duties of the Secretary, numbered 1, 2, 3, 4, 5, and 6 on pages 466 and 467 of Journal 10, are hereby repealed; and that the following be substituted therefor, numbered as 38 (1) of the Society's Rules:

"38 (1) A Secretary who shall be an *ex officio* sub-Treasurer.

"48. The salary of the Secretary shall be fifteen hundred dollars per annum, payable monthly, for all his duties in every capacity, in addition to which he shall be furnished with such rooms in the Society's building (where he must reside), and with such fuel, water, and light, as the Committee of Finance may from time to time determine. In lieu of such rooms and allowances, Convocation may allow to the Secretary the sum of three hundred dollars per annum, payable monthly."—*Carried.* The Rule was passed.

Ordered, that the notices and advertisements proposed by the Report be issued.

Mr. Britton presented the Report of the Special Committee on Mr. L. H. Henderson's case, as follows:

The Special Committee appointed to examine Lawrence Henry Henderson as to his qualifications for call to the Bar, pursuant to Rule 209 as amended, beg to report that they have examined Mr. Henderson, and that he has passed a satisfactory examination and is entitled to be called to the Bar.

Ordered for immediate consideration and adopted. Ordered that Mr. Henderson be called to the Bar. Mr. L. H. Henderson was then called to the Bar.

Convocation adjourned.

Saturday, September 17th.

Convocation met at 11 a.m.

Present—The Treasurer, and Messrs. Hoskin, Shepley, Osler, Irving, Ritchie, Moss, Barwick, Douglas, Teetzel, and Lash.

The minutes of the meeting of Tuesday, 13th inst., were read and approved.

Mr. Hoskin, on behalf of the Attorney-General of Ontario, gave notice of motion as follows: The Attorney-General of Ontario hereby gives notice that on the first day of next term he will move in Convocation that the Society do proceed to frame Rules for the admission of women to practise as solicitors, in pursuance of the Act of the Legislature of the Province of Ontario passed in the 55th year of Her Majesty's reign, chapter 32.

Mr. Moss moved the second reading of the Rule amending Rule 156. —*Carried.* The Rule was passed, and is as follows:

Rule 156 is hereby amended by inserting therein, immediately after the first word thereof, the following words: "To the provisions of the eight next succeeding rules, and."

Rule 156 (*a*) is hereby repealed, and the following is substituted therefor: 156 (*a*). —Any Student-at-Law or Articled Clerk, not being a graduate, may attend the lectures of the first year of the School course, either in the first, second, or third year of his attendance in Chambers or service under articles, and may present himself for the examination of the first year of the School course at the School examinations which shall be held at the close of the term in which he shall so have attended such lectures.

156 (*b*).—Any Student-at-Law or Articled Clerk, not being a graduate, and not being required to attend the lectures of the first year of the School course, may present himself for the examination of the first year of the said course at the School examinations which shall be held at the close of the term in the first, second, or third year of his attendance in Chambers or service under articles.

156 (*c*).—Any Student-at-Law or Articled Clerk, not being a graduate, may attend the lectures of the second year of the School course in the second, third, or fourth year of his attendance in Chambers or service under articles, and may present himself for the examination of the second year of the said course at the School examinations which shall be held at the close of the term in which he shall so have attended such lectures; provided that no student or clerk shall by virtue of this rule be permitted to commence his attendance upon the lectures of the second year of the said course until after he shall have duly passed the examination of the first year of the said course.

156 (*d*).—Any Student-at-Law or Articled Clerk, not being a graduate, who shall have passed the examination of the first year of the School course before the commence-

ment of the School term which shall be held in the second year of his attendance in Chambers or service under articles, may elect to attend, either during such term or during the next succeeding term, the lectures on such of the subjects of the second year of the School course as he may name, provided the number of such lectures shall, in the opinion of the Principal, reasonably approximate one-half of the whole number of lectures pertaining to the said second year of such course, and may complete his attendance upon the lectures of such second year in the following term by attending the lectures on the remaining subjects of such second year.

156 (*e*).—Any Student-at-Law or Articled Clerk, not being a graduate, who shall have duly passed the examination of the first year of the School course before the commencement of the School term which shall be held in the third year of his attendance in Chambers or service under articles may elect to attend in such term the lectures on such of the subjects of the second year of such course as may, in the opinion of the Principal, reasonably approximate one-half of the whole number of lectures pertaining to the said second year, and may complete his attendance on the lectures of said second year in the following term by attending the lectures on the remaining subjects of such second year.

156 (*f*).—Any Student-at-Law or Articled Clerk, not being a graduate, who shall have duly passed the examination of the second year of the School course before the commencement of the School term which shall be held in the fourth year of his attendance in Chambers or service under articles may elect to attend during such term the lectures on such of the subjects of the third year of the said course as he may name, provided the number of such lectures shall, in the opinion of the Principal, reasonably approximate one-half of the whole number of lectures pertaining to the said third year of such course, and shall complete his attendance on the lectures of the said third year in the following term by attending the lectures on the remaining subjects of the said third year.

156 (*g*).—Every Student-at-Law and Articled Clerk entitled and desiring to make any such election as aforesaid must, before commencing his attendance on the lectures which he so elects to attend, deliver to the Principal his written election, specifying the subjects of the lectures which he so elects to attend, and obtain the Principal's approval of the same, and must also, before commencing such attendance, pay to the sub-Treasurer the School fee for the term; and such student or clerk, having paid such fee, and having had his attendance duly allowed in respect of the lectures which he shall so have elected to attend according to existing rules, shall not be required to pay any further fee for or in respect of his attendance on the remainder of the lectures pertaining to the same year of the School course.

156 (*h*).—Nothing in the preceding rules shall be deemed to permit any student or clerk to present himself at the examination of the second or third year of the School course before he shall have duly completed his attendance upon the lectures of the said second or third year, as the case may be.

Mr. Osler gave notice of motion as follows: That on Friday, the 23rd instant, he will move the first reading of a Rule to amend and add to Rules 33, 34, 35, 36, and 37, providing for the creation of the office of Vice-Treasurer, and to provide for his election and to define his powers.

Mr. Osler moved the following resolution, seconded by Mr. Irving: That the price of the Ontario Digest up to January 1st, 1893, be fixed at $5, and that the publishers be authorized to repay to the purchasers of the Digest at $7.50 who were, prior to July 1st, entitled to purchase the Digest at $5 the excess paid by them over $5, and that Rowsell & Hutchison be instructed to issue a fresh advertisement in the premises.—*Carried.*

Mr. Moss, from the Legal Education Committee, presented a Report:

(1) In the case of A. S. Macdonell, that his papers and service are complete, and that he is entitled to a Certificate of Fitness.

(2) In the case of A. J. Anderson, that his papers and service are complete, and that he is entitled to a Certificate of Fitness.

(3) In the case of J. A. Harvey, recommending that he be required to re-article himself forthwith up to the Saturday preceding next Easter term, and that his case do then come up for favourable consideration as to the term of service.

Ordered for immediate consideration, adopted, and ordered accordingly.

Mr. Moss, from the Legal Education Committee, presented (pursuant to Rule 145) the following Report and regulations for discipline in the Law School:

The Legal Education Committee beg to report as follows:

(1) As directed by Convocation, they have framed and herewith submit the annexed regulations for the maintenance of discipline and good order in the Law School.

Regulations for the maintenance of discipline and good order in the Law School approved by the Legal Education Committee, September 17th, 1892.

(1) No student or clerk shall be deemed to have duly attended the lectures of the Law School in any term unless his conduct at lectures and in the School shall upon the whole have been good; and if at the end of any term it shall appear to the Principal that the conduct of any student or clerk at lectures or in the School during such term has not, upon the whole, been good, he shall not certify to the attendance of such student or clerk as in the cases of other students and clerks, but shall report to the Legal Education Committee the facts relating to the attendance and to the conduct of such student or clerk, to be dealt with by said committee.

(2) In cases of misconduct on the part of any student or clerk at any lecture, the Principal, whether such misconduct shall have come under his own observation or shall have been reported to him by a lecturer, shall have power to disallow the attendance of such student or clerk at the lecture at which he shall have so misconducted himself, and to mark him absent therefrom upon the roll; and if by any reason of such disallowance it shall appear at the end of the term that such student or clerk has failed to attend the required proportion of lectures upon which he was in attendance, the Principal shall report to the Legal Education Committee the fact of the said disallowance and the reasons therefor, to be dealt with by said committee.

(3) In any case of misconduct at lectures or in the School on the part of any student or clerk, the Principal, if in his discretion he considers the offence sufficiently serious to call for such action, shall have power, whether such misconduct shall have come under his own observation or shall have been reported to him by a lecturer, to suspend such student or clerk from further attendance at the School until such time as the Legal Education Committee shall make some order in the matter, and immediately upon such suspension taking place the Principal shall report the same and the reasons therefor in writing to the chairman of the Legal Education Committee, in order that the matter may be dealt with by the committee.

Mr. Moss, from the Legal Education Committee, reported that, pursuant to the reference from Convocation, they have dealt with the question of a third lecture room by directing the use for the term of the large reading room as such lecture room.

Mr. Moss, from the same committee, reported on the case of Daniel Davis, that they are unable to recommend the granting of his petition in view of Rule 155. Ordered for immediate consideration, adopted, and ordered accordingly.

Messrs. H. G. Tucker and J. A. Harvey were then called to the Bar.

Convocation adjourned.

Friday, September 23rd.

Convocation met.

Present—The Treasurer, and Messrs. Moss, Mackelcan, Martin, Meredith, Osler, Bruce, Macdougall, Magee, Ritchie, Britton, Hoskin, Douglas, Aylesworth, Watson, Kerr, Irving, Barwick, S. H. Blake, Lash, and Guthrie.

The minutes of last meeting were read and approved.

Mr. Moss, from the Legal Education Committee, reported:

(1) In the case of Mr. John Isbister, reserved, recommending that he be allowed to attend the lectures of the Law School next term, and upon passing the examination at the end of the term that his case do then come up for favourable consideration.

Ordered for immediate consideration, adopted, and ordered accordingly.

(2) In the petition of W. H. Holmes, that the prayer for the allowance of his former services cannot be granted.

Mr. Mackelcan moved in amendment that the former service of Mr. Holmes be allowed.—Carried on a division.

Mr. Moss, from the Legal Education Committee, reported:

(1) In the case of certain applicants for admission to the Law School, reserved, that the following gentlemen, viz., Messrs. J. F. Holliss and G. McCrea, should be admitted as Students-at-Law of the matriculant class of this term.

Ordered for immediate consideration, adopted, and ordered accordingly.

(2) In the reserved cases of certain applicants for admission to the Society who had not given due notice, recommending that the following gentlemen be admitted as Students-at-Law of this term, but that their notices remain posted until next term, viz.: Messrs. J. K. Arnott, S. T. Chown, and J. A. Cooper, of the graduate class; and Messrs. E. F. Appelbe, J. C. Elliott, F. W. Griffiths, J. F. Gross, W. A. Hollinrake, H. O. Huber, D. P. Kennedy, A. M. Lewis, T. P. Morton, G. C. Sellery, and A. B. Thompson, of the matriculant class.

Ordered for immediate consideration, adopted, and ordered accordingly.

(3) In the cases of Messrs. F. C. Knowles, A. H. Royce, and William Smith, recommending that their cases stand for next term, until production of proper proof of their having passed the necessary examination, and that their notices be ordered to stand good for next term.

Ordered for immediate consideration, adopted, and ordered accordingly.

Mr. Irving, from the Finance Committee, presented a Report on the subject of Secretary and sub-Treasurer:

That, in pursuance of the direction of Convocation of the 12th and 13th inst., that they advertised inviting applications to be made and forwarded for the position of Secretary and sub-Treasurer, and announcing that applications already received for the position of sub-Treasurer would be taken as applications for the united offices of Secretary and sub-Treasurer.

That they have examined and carefully considered all the applications received up to the 22nd inst., being 32 in number, and have resolved to recommend Convocation to appoint Mr. Herbert E. Irwin, Barrister-at-Law and B.A., Toronto University, for the offices of Secretary and sub-Treasurer; submitting the names of the applicants and the recommendation of the committee, with all correspondence and testimonials received.

Mr. Irving, from the Finance Committee, presented a Report on the references as to a Retirement Fund, as follows:

To the Treasurer and Benchers in Convocation:

With reference to Clause 8 of the Report made by this committee to Convocation on 28th of June last, as follows: "In the opinion of the committee a percentage of the salaries of the permanent officers of the Society should be retained and paid out to them on retirement, or, in case of death, to their families, with compound interest, and that this arrangement should be in lieu of all gratuities or allowances, and that the committee recommend a reference to the Finance Committee to settle the details of this plan and its application to the various officers appointed or to be appointed," which clause Convocation was pleased to adopt on 12th September instant, and refer to this committee to formulate and present any Rules requisite to carry the matter of such clause into effect, and the committee now respectfully submit a draft Rule applicable to the premises:

DRAFT RULE.

Regulations for the retirement of the officers of the Law Society:

(1) On and after the 22nd day of September, 1892, a fund shall be formed for the retirement of each of the officers of this Society, exclusive of the Examiners, subject to the conditions and qualifications herein contained.

(2) The said fund shall be created by the reservation out of any sum which may be assigned as an emolument of the office of percentages according to the following scale:

On so much thereof as shall not exceed $1,000, five per cent.

On any excess over $1,000, not beyond $500, or a total emolument of $1,500, seven and one-half per cent.

On any excess over $1,500, not beyond $500, or a total of $2,000, ten per cent.

On any excess over $2,000, fifteen per cent.

The accommodations given to the Secretary and sub-Treasurer shall be rated for the purpose of this regulation as equal to $300 per annum.

(3) The amounts reserved shall, in the case of each officer, be credited to a separate account to be opened and headed "Retirement Fund (*A.B.*)," and interest at the rate

of six per centum per annum shall be computed on the first day of January and July in each year on all sums, whether of principal or interest, which have been then for six months at the credit of the fund, and such interest shall be credited thereto.

(4) The amount of principal and interest at the credit of the fund under these regulations shall be invested and reinvested as a capital fund.

(5) Each year's reservation, together with all interest chargeable on the whole fund during each year, shall be estimated for and shown as a charge, and provided for out of the income fund for such year; and the aggregate of principal and interest at the credit of the account at the close of the previous year shall be shown as a capital fund.

(6) No charge shall be made to the officer for the management, investment, and collection of the principal or interest of the fund; and in case, in the opinion of Convocation, the normal current rate of interest shall materially advance or decline so as to render proper an increase or diminution in the rate of interest allowed under the third section, Convocation may, from time to time, provide for such increase or diminution to take effect from the date and during the continuance of such provision.

(7) No officer shall, during his continuance in office, have any claim or right to any part of the amount at the credit of the Retirement Fund.

(8) On the retirement of any officer, the amount at the credit of the Retirement Fund shall be payable to him.

(9) On the death of any officer, in the service, the amount at the credit of the Retirement Fund shall be payable as he may by will direct, or, in default of such direction, to the next of kin.

(10) These regulations shall apply and have force compulsorily: (1) In the case of any officer appointed after the 22nd day of September, 1892, to such officer in whole; (2) in the case of every officer whose emolument may increase after the 22nd day of September, 1892, to such officer in part, namely, to the extent to which such increase may suffice to provide funds for their application.

(11) In the case of any officer appointed before the 22nd day of September, 1892, whose emolument may not increase to such an extent as to provide, under the last preceding section, funds for the full application of the regulations, they shall not apply compulsorily as to their deficiency; but they shall be applicable as to such deficiency at the option of such officer, to be signified in writing to the Secretary, before the last day of December, A.D. 1892.

(12) In case any such last-described officer does not signify his acceptance of such option pursuant to the last preceding clause, he shall, on ceasing to be in the service of the society, have no claim whatever for any gratuity or retiring or superannuation allowance out of the general funds of the Society.

All of which is respectfully submitted.

(Signed) ÆMILIUS IRVING,

September 23rd, 1892. *On behalf of the Finance Committee.*

Ordered, that the Report of the Finance Committee on the subject of the appointment of a Secretary and sub-Treasurer be considered forthwith.

Mr. Meredith moved, seconded by Mr. Mackelcan, that Convocation do proceed to the election of a Secretary and sub-Treasurer.

Convocation proceeded to the election, whereupon Mr. Herbert Macbeth was declared elected Secretary and sub-Treasurer.

Mr. Irving moved the adoption of the Report as to the Retirement Fund.—*Carried.*

Mr. Irving moved for leave to introduce a Rule based on the Report, and that the same be read a first time.—*Carried.*

Ordered, that the Rule be read a second time on the second day of next term, and that it be printed and distributed meantime.

Mr. Bruce moved that Mr. Macbeth enter on his duties on the first day of October next, meantime giving the prescribed security, the Society contributing its customary contribution thereto, and that it be referred to the Finance Committee to complete the arrangements.—*Carried.*

The petition of Messrs. F. Harding and A. Bridgman was received and read.

Mr. Lash moved that, in the opinion of Convocation, no *prima facie* case is made by the petition.

Mr. Watson moved, in amendment, that the petition be referred to the Discipline Committee for investigation and report, in pursuance of Rule 116.

Mr. Moss moved, in amendment to the amendment, that the petition be referred to the Discipline Committee to consider and report whether a *prima facie* case has been made.

The amendment to the amendment was lost.

The amendment was carried.

The main motion, as amended, was carried, and it was ordered accordingly.

Mr. Osler's notice of motion which stood for this day was ordered to stand till the first day of next term.

Mr. Watson gave the following notice of motion: "I intend, at the next meeting of Convocation, to introduce a motion that hereafter the luncheons which have been heretofore provided for members of Convocation, at the expense of the Law Society, should be discontinued.

Mr. Martin moved that the notice of motion of the Attorney-General for next term be printed and distributed.

On motion of Mr. Hoskin the notice was, by leave, amended by substituting the second for the first day of next term.

Convocation adjourned.

DIARY FOR APRIL.

2. Sunday.....*Easter Sunday.*
3. Monday.....London Chy. sitts. Guelph Assizes. Co. Ct. sitts. for motions. Surrogate Ct. sits.
4. Tuesday.....Exchequer Court sits at Toronto. Co. Ct. non-jury sittings, except in York.
5. Wednesday..Canada discovered, 1499.
6. Thursday....St. Catharines Chancery sittings.
7. Friday.....Great fire in Toronto, 1847.
9. Sunday.....*Low Sunday. 1st Sunday after Easter.*
10. Monday.....Co. Ct. non-jury sitts in York. Kingston Assizes.
13. Thursday....Toronto Criminal Assizes begin.
16. Sunday.....*2nd Sunday after Easter.*
17. Monday.....Exchequer Court sits at Ottawa. Brantford Assizes. Last day for notice for call.
18. Tuesday.....Belleville Chancery sittings.
23. Sunday.....*3rd Sunday after Easter.*
24. Monday.....Peterboro Assizes. Earl Cathcart, Gov.-Gen., 1846.
25. Tuesday.....Ottawa Chancery sittings.
27. Thursday...Toronto captured (Battle of York), 1813.
29. Saturday....Last day for filing papers for certificate and call and payment of fees.
30. Sunday.....*4th Sunday after Easter.*

Reports.

FIRST DIVISION COURT OF THE COUNTY OF ONTARIO.

(Reported for THE CANADA LAW JOURNAL.)

COULTHARD v. PARR.

Conditional Sales Act, 51 Vict., c. 19—Manufactured article—Animal subject of a sale note.

The Conditional Sales Act, 51 Vict., c. 19, only applies to manufactured articles, and a document evidencing a conditional sale of a horse, which document contained an agreement that the title or right to possession of the property until the purchase money should be paid, is valid, without registration under the Act, as against a subsequent chattel mortgagee.

[WHITBY, March 2.

The plaintiffs were manufacturers of agricultural implements, and one H. was their agent for the sale thereof. In the course of his duty he effected the sale of a seed drill to one Pearson, who had a horse to sell. Instead of taking Pearson's notes he took the horse in payment, having previously arranged with one Bradburn to take the animal off his hands, and give the plaintiffs the latter's notes (two) of $40 each. This was done, and the plaintiffs ratified and adopted their agent's acts.

The sale note, or conditional agreement, contained a stipulation that "the title or right to possession of the property for which this note is given shall remain vested in plaintiffs until this note is paid." In the margin is the memo.: "Horse taken for Pearson's drill." There is an acknowledgment of the receipt of a copy of each note. They were dated 3rd February, 1892.

On 30th June, 1892, before the maturity of the notes, Bradburn executed a chattel mortgage to the defendant, conveying his chattels, including the horse

in question, of which he was in actual possession; and having made default and absconded, the defendant took possession under his chattel mortgage, and sold thereunder.

The plaintiffs thereupon brought an action for wrongful conversion and for the value.

C. A. Jones for the plaintiff.

D. Burke Simpson for the defendant.

DARTNELL, J.J.: "When the buyer is, by the contract, bound to do anything as a condition, either precedent or concurrent, on which the passing of the property depends, the property will not pass until the condition is fulfilled, even though the goods may be actually delivered into the possession of the buyer." Benjamin on Sales, s. 320.

"There is nothing to prevent the parties from coming to an agreement that the property shall be transferred when, and not till, certain conditions have been performed. When the agreement is of that nature, the law fulfils the intention of the parties." Blackburn on Sales, 174.

These principles were followed in *Walker* v. *Hyman*, 1 A.R. 345, which stands as an authority, unless affected by the Conditional Sales Act, 51 Vict., c. 19. In the case cited, BURTON, J., observes: "There is a hardship upon the defendant, but the remedy must be sought from the legislature, if such a course of dealing is deemed to be against public policy." "The Chattel Mortgage Act provides that 'when ownership changes without change of possession, a public record of the transaction shall be kept.' It was not intended to embrace cases like the present, where a change of possession takes place without a change of ownership. Any such exclusion, however desirable it may seem, must be the work of parliamentary, not judicial, legislation." *Per* Patterson, J.A., in *Walker* v. *Hyman*, 345, *supra*.

See also *Joseph Hall Manufacturing Co.* v. *Hazlett*, 8 O.R. 465; 11 A.R. 749; *Polson* v. *Degeer*, 12 O.R. 375.

It now remains to be considered whether the Conditional Sales Act of 1888, which came into force on 1st January, 1889, has effected any change in the law as it stood at that date.

It is admitted that the documents in question, and upon which the plaintiffs rely for title, were not registered in the office of the Clerk of the County Court, and the defendant contends that this is a defect which would make the agreement void as against the defendant, a subsequent mortgagee.

In answer, the plaintiffs' contention is that the Act only extends to manufactured goods.

In order to give force to the defendant's contention, the Act must be read as enacting that "All receipt notes, hire receipts, and orders for chattels where the condition of the bailment is such that the possession of the chattels should pass without any ownership therein being acquired by the bailee until the payment of the purchase or consideration money or some stipulated part thereof," in order to be valid against subsequent purchasers and mortgagees in good faith for valuable consideration, must be evidenced in writing, and filed within ten days of the execution; but exception is to be made in the case of "manufactured goods or chattels which, at the time possession is given to the

bailee, have the name and address of the manufacturer, bailor, or vendor of same, painted, printed, stamped or engraved thereon, or otherwise plainly attached thereto."

The bailment is required to be in writing, signed by the bailee or his agent.

S. 6 exempts household furniture (except pianos or organs, or other musical instruments) from the operation of s. 1, which section is also not to apply when the vendors file a copy of the document evidencing the agreement in the manner therein prescribed.

This statute is in derogation of the common law, and therefore must be construed strictly. "It is not to be presumed that the legislature intended to make any innovation on the common law further than what it has specified and plainly pronounced." Dwarris on Statutes, p. 564.

It has been stated that the Act, as first introduced, was applicable to all conditional sales; but that, at the last moment, it was so amended as to apply only to manufactured goods. It is to be noted that the marginal note to s. 1 reads: "Conditional sales of manufactured goods, when to be valid."

It is manifestly impossible to comply with s. 1. in the case of an animal. S. 6 may, and probably does, give the manufacturer, bailor, or vendor of a chattel of any kind, the right to register the document evidencing the bailment; but the legislature has fallen short of providing that such registration shall be constructive notice, or the want of it invalidate the conditional sale "as against subsequent purchasers or mortgagees, without notice in good faith for valuable consideration."

I am, therefore, of opinion that the defence cannot be successfully sustained.

Judgment for plaintiff for $50.

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [Feb. 13.

ALLISON v. MCDONALD.

Partnership—Joint and several promissory note—Discharge of collateral security—Principal and surety—Release of surety—R.S.O., c. 122, ss. 2, 3, 4.

The plaintiff took from the two partners in a mercantile firm a joint and several promissory note for money lent, and as collateral security a mortgage upon certain partnership property. During the currency of the note the partnership was dissolved, and one of the partners, who had taken the equity of redemption in the mortgaged property as part of his share of the partnership

assets, induced the plaintiff to discharge the mortgage, the note being then overdue and unpaid. The plaintiff had no notice or knowledge of an alleged agreement between the partners that the other partner, the defendant, should only be liable as surety for the payment of the money.

Held, that the defendant was liable to the plaintiff. R.S.O., c. 122, ss. 2, 3 & 4, cast no duty on the plaintiff to preserve the collateral security for the benefit of the defendant.

Aylesworth, Q.C., for the plaintiff.

Wallace Nesbitt for the defendant.

Div'l. Court.] [Feb. 13.

HENDERSON v. BANK OF HAMILTON.

Jurisdiction—Redemption action—Foreign lands—Locus standi of plaintiff—Application of statute law of foreign country.

The defendants, an incorporated banking company, having their head office in the Province of Ontario, took from a customer a mortgage upon certain lands in the Province of Manitoba as security for an indebtedness which arose in Ontario. The plaintiff, who also resided in Ontario, subsequently recovered a judgment for the payment of money against the mortgagor in a Manitoba court, and registered a certificate of it against the mortgaged lands. By the Con. Stat. Man., 1880, c. 37, s. 83, the effect of the registration was to make the judgment a lien and charge upon the lands. The plaintiff brought this action to redeem the mortgaged lands.

Held, that the court had jurisdiction to entertain the action, and was bound to apply the law of Manitoba to determine whether the plaintiff had the right to redeem; and in determining that the registration of the judgment gave the plaintiff that right under the Manitoba statute was not giving an extra-territorial effect to the judgment.

Mabee for the plaintiff.

J. J. Scott for the defendant.

STREET J.] [March 4.

SCOTT v. SUPPLE.

Will—Construction—Specific devise of incumbered land—Exoneration from incumbrance—Devolution of Estates Act—Distribution of estate.

The testatrix, who died in 1891, specifically devised to her grandson a part of her land, which was incumbered. To the plaintiff she gave a legacy of $5000. The remainder of her estate, consisting of personalty and other lands, she did not dispose of or in any way refer to in her will, except in this clause: "I hereby charge my estate with payment of all incumbrances upon the said lands at the time of my death."

Held, that the residue of the estate was charged with the mortgage debts, to the exclusion of the land specifically devised.

Such residue was to be treated as one fund and as if it were all personalty, under s. 4 of the Devolution of Estates Act, R.S.O., c. 108; and out of it the

debts, including the mortgage debts upon the land specifically devised, were first to be paid, and then the legacy; the balance, if any, to go to the heirs-at-law and next of kin.

J. H. Burritt for the plaintiff.

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

BOYD, C.] [March 16.

OSBORNE *v.* THE CORPORATION OF THE CITY OF KINGSTON.

R.S.O., c. 102—Non-appointment of officers thereunder—Words "owner," "occupant," "land"—Destruction of weeds.

The words "owner" or "occupant," used in R.S.O., c. 202, do not include the municipality or the municipal council of the locality, nor does the word "land" therein include street or highway.

The rights of persons injuriously affected by the growth of weeds must be measured by the terms of that statute; and when no officers have been appointed pursuant to its provisions charged with the duty of seeing the cutting and destruction of the weeds, no action will lie by the owner of property against the corporation for damages, or to compel them to destroy the weeds.

Langton, Q.C., for the demurrer.

Meredith, Q.C., *contra*.

FERGUSON, J.] [June 15.

BARNIER *v.* BARNIER.

Tenants in common—Ejectment—Ontario Judicature Act.

A tenant in common, in an action for the possession of land against a person in possession without any title, can recover judgment only for the possession of his share; and the Ontario Judicature Act has made no difference in this respect.

Douglas, Q.C., for the plaintiff.

John Reeve for the defendant.

Chancery Division.

FERGUSON, J.] [March 17.

BLIGHT *v.* RAY.

Mechanics' lien—Contract with verbal purchaser of land—Position of sub-contractors—"Privity or consent" of owner—R.S.O., c. 126, s. 2, s-s. 3.

Mechanics' lien proceedings.

A verbal agreement was entered into for the purchase of certain lands, it being understood that the purchaser would proceed to erect buildings thereon, which he accordingly did, procuring materials and work from the plaintiff and others. It was no part of the agreement that the purchaser should forfeit the

property on default of payment of the purchase money, and the purchaser became insolvent without having paid anything to the vendor.

Held, that there having been sufficient acts of part performance the purchaser had become the owner in equity of the lands, and, the plaintiff's lien attaching to his interest, the vendor could only after that hold the lands subject to the burden of the said lien.

Before the parties now claiming liens furnished work and material, they knew that the purchaser was in difficulties, but were informed by him that he intended to pay them out of the proceeds of an intended building loan to be made to him by a certain company, and, moreover, the vendor assured them that they need not be afraid of getting their pay, as it would be all right, although it was not contended that he actually guaranteed payment himself. He, however, urged them to go on with the work. The purchaser never obtained the intended mortgage loan from the company.

Held, that the work was done and the material furnished with the privity or consent of the vendor within the meaning of s-s. 3 of s. 2 of the Mechanics' Lien Act, R.S.O., c. 126.

Lennox for the defendant W. H. Ray.

Urquhart for the plaintiff and defendant Scott.

Practice.

STREET, J.] [March 3.

LANCASTER *v.* RYCKMAN.

Security for costs—Slander—52 Vict., c. 14, s. 1, s-s. 3—Disclosing defence—Cross-examination on affidavit—Counter-affidavits—Stay of proceedings.

In an action for slander brought under 52 Vict., c. 14, the defamatory words complained of imputing want of chastity to the plaintiff, an unmarried female, and also for an assault, the defendant moved under s-s. 3 of s. 1 of the Act for security for costs upon an affidavit which stated, among other things, that the defendant had a good defence on the merits, but did not disclose such defence.

Held, that the affidavit was not sufficient, for a *prima facie* defence must be shown; but the cross-examination of the defendant upon her affidavit might be read in aid of the affidavit itself; and counter-affidavits could not be received.

Held, also, that the stay of proceedings in the order made for security for costs should not apply to the count for assault.

Middleton for the plaintiff.

Aylesworth, Q.C., for the defendant.

Q.B. Div'l Court.] [March 4.

IN RE TOWN OF THORNBURY AND COUNTY OF GREY.

Arbitrators—Fees—Day's sitting—R.S.O., c. 53, schedules—Computation of time.

Upon the proper construction of the schedules to R.S.O., c. 53, arbitrators are not entitled to charge as fees for a day's sitting which extends beyond six

hours more than the maximum amount fixed by the schedules for a single day's sitting.

Armstrong v. *Darling*, 22 C.L.J. 149, overruled.

Decision of STREET, J., affirmed.

W. H. Blake for the town corporation.

C. J. Holman for the county corporation.

Div'l Court.] [March 4.

ARMSTRONG *v.* TORONTO RAILWAY COMPANY.

Discovery—Production of documents—Report as to accident—Names of witnesses—Privilege.

In an action for damages for personal injuries received by the plaintiff in a tramway car accident, as to which the conductor of the car had made a report to the defendants;

Held, that the portion of the report containing the names of the eye-witnesses of the accident was privileged from production.

W. R. Smyth for the plaintiff.

Bain, Q.C., for the defendants.

OSLER, J.A.] [March 6.

IN RE COSMOPOLITAN LIFE ASSOCIATION.

IN RE COSMOPOLITAN CASUALTY ASSOCIATION.

Costs—Company—Winding up—R.S.O., c. 183—Jurisdiction of County Court—Personal order against liquidator for costs—Rule 1256.

An order was made by a County Court, under R.S.O., c. 183, for the winding up of the companies, and a liquidator was appointed, who brought in a list of contributories. The contributories showed cause to their names being settled upon the list, and the court made an order in the case of each of them reciting that it appeared there was no jurisdiction to make the winding-up order and that all proceedings were irregular or null, and ordering that each contributory should have his costs of showing cause, to be paid by the companies and the liquidator.

Held, that if there was jurisdiction to make the winding-up order the contributories could not defend themselves by showing that it was irregular or erroneous; and if there was no jurisdiction all the proceedings were *coram non judice*, and there was no jurisdiction, the court being an inferior one, to order the liquidator or the companies to pay the costs.

And even if there was jurisdiction, in the circumstances of this case it should not have been exercised against the liquidator.

Rule 1256 does not apply to proceedings under the Winding-up Act, either by virtue of s. 34 of the Act, or otherwise.

Shepley, Q.C., and *B. N. Davis* for the appellants.

W. H. Blake for the respondents.

FERGUSON, J.] [March 7.

BANK OF HAMILTON v. ESSERY.

Judgment debtor—Examination of—Questions relating to disposition of goods of debtor after sale—Advice of counsel—Examiner's ruling.

Where the defendant had, before judgment against him, executed a bill of sale of his stock-in-trade, which had been registered;

Held, that upon his examination as a judgment debtor he was compellable to answer questions in respect to the dealings with such property after the date of the bill of sale; and that he could not shelter himself behind the advice of counsel.

Held, also, that notwithstanding that the examiner had ruled that the judgment debtor was not obliged to answer certain questions and that the ruling had not been appealed against, an order might be made directing the defendant to attend again for examination.

A. McLean Macdonell for the plaintiffs.

James Reeve, Q.C., for the defendant.

Court of Appeal.] [March 7.

BLAIR v. ASSELSTINE.

Revivor—Decease of plaintiff after verdict and before judgment—Assignment of verdict—Revivor in name of assignee—Action of tort—Appeal.

In an action for malicious prosecution, the jury found a general verdict for the plaintiff with damages. The defendant moved to set aside the verdict, etc., and, his motion being dismissed, gave security for the purpose of an appeal, after which the plaintiff assigned "the verdict or judgment" to his daughter, and died about three months later. No judgment had been entered, nor was there any order or direction of the judge for the entry of judgment. By an *ex parte* order, made on the application of the next friend of the plaintiff's daughter after his death, the assignment to her was recited, and it was ordered that the action should stand revived in her name.

Held, that the action could not be revived or continued by or against the daughter, she not being the assignee of a judgment, and the cause of action not being one capable of being assigned to her so as to sue for it in her own name; and the defendant's appeal could not be heard in the absence of the legal personal representative of the plaintiff.

Dougall, Q.C., and *Clute*, Q.C., for the appellant.

J. Parker Thomas for the respondent.

BOYD, C.] [March 14.

SMITH v. SILVERTHORNE.

Security for costs—Several plaintiffs—Only one in jurisdiction—Joint action.

Action by the widow, as dowress, and the children as heirs-at-law, of a deceased person, to recover possession of land alleged to be the property of the deceased.

Held, that the action was a joint one, and, although the plaintiffs other than the widow resided out of the jurisdiction, they could not be ordered to give security for costs.

D'Hormusgee v. *Grey*, 10 Q.B.D. 13, followed.

J. E. Jones for the plaintiffs.

J. M. Clark for the defendant.

BOYD, C.] [March 14.

GROTHE *v.* PEARCE.

Appeal bond—Appeal to Court of Appeal—Parties to bond—Non-execution by some of the parties—Order dispensing with execution—Defects in bond.

An appeal bond for the purpose of an appeal by the plaintiffs to the Court of Appeal was drawn up with the names of all the plaintiffs as parties thereto, and was executed by the sureties and some of the plaintiffs in that shape, and an order was afterwards obtained dispensing with the execution of the bond by the other plaintiffs, except two, who had withdrawn from the appeal. The bond was also defective in the recital and condition.

Held, that the order should have been obtained before the execution of the bond, and that only those of the appellants actually executing it should have been named as parties to it; and the bond was set aside.

J. A. MacIntosh for the plaintiffs.

William J. [illegible]ston for the defendant.

FERGUSON, J.] [March 21.

ERETHOUR *v.* BROOKE.

Venue—Change of—Preponderance of convenience—Expense.

The decided cases have not yet entirely forbidden a change of the place of trial.

And where the cause of action arose in the county of Brant, the plaintiff and defendants residing therein, the defendants swore to thirteen material and necessary witnesses, all residing in the county of Brant and convenient to Brantford, the county town, and [illegible]as not disputed by the plaintiff that, if he had to call any witnesses at all, they would be persons residing at or near Brantford, the place of trial was changed by order from Hamilton, which was named by the plaintiff, to Brantford.

Held, that, although the difference in expense was not considerable, the great preponderance of convenience to witnesses and parties was in favour of Brantford.

Lynch-Staunton for the plaintiff.

W. H. Blake for the defendants.

Flotsam and Jetsam.

THE BRIDGE ACROSS THE NITH;

OR,

THE VILLAGE OF NEW HAMBURG *v.* THE COUNTY OF WATERLOO.

(20 A.R. 1.)

Two Municipal Councils with anxiety were filled
To know which of the two of them a certain bridge should build.
So to the law they did appeal, and then a case was tried,
In order that the court might soon this knotty point decide.
Now the whole case did turn upon the question of the plan
On which to take the river's width where this here bridge should span.
And first the judge who tried the case did in his judgment say,
"To ascertain the river's width this is the proper way:
From top of bank to top of bank on either side you take
The measure, and in doing this one hundred feet I make.
So for the plaintiffs now I give my judgment in a trice,"
And then the plaintiffs clapped their hands and said, "How very nice!"
But though he was an ample judge as ever you did see,
Still with his judgment the defence would not at all agree;
But to another learned court they did appeal the case,
And then the tables quite were turned, for this is what took place.
The judges of the latter court unanimously said,
"That where the river's highest mark most usually 's displayed
Is how you find the river's width, and, bearing this in mind,
The river 's not a hundred feet, and that is what we find.
So for defendants now we give our judgment in a trice."
Whereat defendants clapped their hands and said, "How very nice!"
But then the village councillors unhappy quite did feel,
And to another court they said that they would now appeal;
"And there," they said, "we'll get the law expounded very clear
By judges four of high degree, and none of your small beer."
And when these judges sat upon the case they were dismayed
To find what ign'rance of the law the other courts displayed,
For two were clear at freshet time the river's width you take,
And, if you did, a hundred feet and more 'twould surely make.
But then the other two did deal in this way with the matter,
And said, "The feelings of the court below we cannot shatter.
So we decide that they were right; and thus it will appear
That now the law upon this point is, like the mud, most clear;
Therefore the judgment of the court below we do affirm,
Because we don't agree, you see—at which you mustn't squirm."
So judgment for defendants was affirmed in a trice,
At which defendant's clapped their hands and said, "How very nice!"

Chorus by Village Councillors:

Oh, when we brought the suit about the bridge across the Nith,
We found the law, when hammered out, was very like a myth.
To tell us plain what is the law no court would deign to stoop;
But this, alas! we know full well, that we are "in the soup."