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The BARRISTER

A. C. MACDONELL, D.C.L., Editor.

CONTENTS.

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21	.63	7.56	34	.76	9.12	47	1.60	19.20
22	.64	7.68	35	.78	9.36	48	1.90	22.80
23	.65	7.80	36	.80	9.60	49	2.20	26.40
24	.66	7.92	37	.82	9.84	50	2.50	30.00
25	.67	8.04	38	.84	10.08	51	2.60	31.20
26	.68	8.16	39	.86	10.32	52	2.70	32.40
27	.69	8.28	40	.90	10.80	53	2.85	34.20
28	.70	8.40	41	.95	11.40	54	3.00	36.00
29	.71	8.52	42	1.00	12.00			
30	.72	8.64	43	1.10	13.20			

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The Barrister.

VOL. III. TORONTO, FEBRUARY, 1897. No. 2

EDITORIAL.

Arbitration.

Ontario legislation is very apt to follow that of England in matters pertaining to the administration of justice. In addition, many of our fads and fancies are fashioned after English precedent. This is rather to be expected. Usually the result of following this lead is advantageous to us. It is apparently just as well at times to let the other fellows' boat break the ice; or, as Cardinal Wolsey charged his faithful Secretary, Cromwell — "Say that Wolsey—that once trod the ways of glory, and sounded all the depths and shoals of honour—found thee a way, out of his wreck, to rise in; a safe and sure one, though thy master missed it. Mark but my fall, and that that ruined me."

The sudden rise and just as rapid collapse of a certain department of arbitration among "the men of London" ought to prove a profitable object lesson to our Ontario legislators. We have had the pleasure of perusing a very practical and vivacious paper, written by Mr. C. H. Pickstone, a Solicitor of Radcliffe Bridge, England, published in the *American Law Review* for January-February, entitled, "The Fallacy of Compromise and Arbitration." This article was reprinted by our American contemporary from the London, England, *Law Times*. The learned author, in a most readable article, decapitates the already defunct "Infant English Chamber of Commerce." When all England, particularly London, was arbitration-mad in 1891, the late Chief Justice Coleridge hazarded this significant suggestion :—"It may be—I do not say it is so—that the men of London may prefer to have their causes settled quietly and inexpensively by some sensible and honourable man, who knows the nature of the business and may be trusted, to the enormous expenditure and endless delay which

often follows the litigation of questions in courts of law." This statement from the late Lord Chief Justice may fairly be regarded as the foundation upon which "the men of London" stood in their endeavours to oust the jurisdiction of the Queen's Courts in certain matters of dispute. The entire failure and complete collapse of this endeavour is now agreed upon by all, even by those who have been, and still are, the most earnest advocates of arbitration.

The key note of Mr. Pickstone's article is perhaps best expressed in the following passage, taken from it:—

"But the most striking refutation of the efficacy of arbitration, and its strongest condemnation, is that it never satisfies either party. No one who has studied the faces issuing from a law court—whether it be the great tribunal of justice in the Strand, or the humblest of County Courts—can fail to distinguish the victors; their beaming countenances and animated conversation betray them, and I know of no more exuberant joy than that of the litigant who has successfully vindicated his right against another's might. But let an observer study the faces that emerge from the arbitration room, and what does he see? Instead of the beaming countenance of a victor and the plucky, grin-and-bear-it air which in my experience has ever been characteristic of the Englishman fairly beaten, there emerge two crestfallen and utterly woe-begone individuals, endeavouring to look pleasant, though obviously consumed with a devouring longing to swear. And why? Because neither side has won—no "side" ever wins in the arbitration room."

Truth, as well as Providence, is always on the side of the strongest battalions, and after all the world is, or certainly should be, governed by logic. The world wearies of middlemen, for we soon tire of explanations for the solutions of vexed questions, and forget apologists. The *via media*, alluring as is its direction, imposing as are its portals, is after all, only what Londoners call a blind alley, leading nowhere.

It has been said that an Englishman's creed is compromise; it can be said with greater truth that his *bête noir* is extravagance.

It is true that the spurs of the arbitration advocates in England have been applied to the broken-winded sides of the arbitration steed; but all to no avail, for there the Queen's Bench still holds first place in the hearts of the people; the preservation of this relationship between the law and the people rests with the profession.

In Ontario we have experienced our full share of arbitration mania. Let us profit by English experience. Every question, apart from its serious aspects, has its ludicrous side, and arbitrations in this Province, and especially in the city of

Toronto, quite apart from the loss, delay and dissatisfaction experienced by all parties thereto, are only too frequently simply, to use slang, "button-bursting farces." The crowning act of absurdity was the appointment, practically by the city, of a City of Toronto Arbitrator under the recent Act. Arbitrations almost invariably result in an even division of the combined, well-blended and thoroughly mixed rights and wrongs of both parties—both parties usually appeal, or believe they have a just right of appeal; an arbitration here, as elsewhere, is much more expensive than a lawsuit.

And is almost invariably more protracted. It is indeterminate, injudicial, and wholly inadequate to exhaust or satisfy the believed rights of either party. Let us in Ontario not go too far upon the thin ice of this experiment. The Courts of the Province are speedy, and justice is not more expensive than is compatible with a fair and learned adjudication upon the subject. No question of bias can be raised against the judicial arbiters of complaints. A litigant gets a clear-cut verdict. He wins or loses according to the evidence he adduces; a finding is speedily reached; he pays for what he gets, or what he strove to attain. Arbitrations, although beaming with simplicity, are in reality more technical than lawsuits. A not uncommon termination of a long and expensive arbitration is only the commencement of a litigation to set aside, vary, or increase the award, or to refer it back to the arbitrator, to say nothing of the numerous technical objections which are daily raised in our courts to the enforcement of an arbitrator's finding.

There is a vast and extensive desire abroad on the part of those interested in the application of the principle of compromise among individuals to extend the fallacy of the arbitration idea. We desire to remind these persons that the maxim *boni judicis est ampliare jurisdictionem* was probably invented to comfort the conscience when judges were paid by fees on the cases brought before them. It is characteristic of a good general to extend the area of the country he can hold and plunder.

* * *

Vexatious Actions.

The Imperial Vexatious Actions Act, 1896 (59 & 60 Vict. c. 51), was not passed before it was necessary. A similar Act in Ontario would be a move in the right direction. We are ripe for the passage of such a measure. Every Assize list contains cases that should never have been brought; actions are begun in the hope of obtaining settlement money; writs are frequently issued and published in the sensational portion of the daily papers, with a view to coercing parties into the payment of money

to secure a discharge from foundationless claims, or from trifling and frivolous actions. Probably the first case to come before the Courts under the English Act was that of *In Re Chaffers, Ex parte The Attorney-General*, reported at page 44 of this number of *The Barrister*. In this case it was proved by affidavits that the respondent, who was sought to be enjoined from bringing any further actions, had, between January, 1891, and December, 1896, instituted 48 actions against the Lord Chancellor and other Judges, the Speaker and officials of the House of Commons, the Solicitor for the Treasury, and the Trustees of the British Museum. The actions were mainly brought for slander, conspiracy to defeat justice, assault, refusal to receive a petition in the House of Commons, and wrongful exclusion from the reading room of the British Museum. The respondent had failed in 47 actions, and no costs had been obtained from him. In one action he succeeded on a claim for £1, for work done in copying an affidavit for the use of the Solicitor to the Treasury. It is scarcely necessary to say that an order was granted, prohibiting the respondent from instituting any legal proceeding either in the High Court or any other Court without leave of the High Court or a Judge thereof in accordance with the Act.

The Supreme Court of Iowa has recently rendered a very democratic judgment in the case of *Nix* v. *Goodhill*, 93 Iowa, which, in the result, works out a relief in damages on somewhat parallel lines to the prohibition awarded in the English Act. The Court, in this case, holds that an action will lie against one who maliciously and without probable cause garnishees the exempt earnings of his debtor, knowing them to be exempt, with the purpose of harassing the latter's employers, and thereby compelling them to pay the debt out of such exempt money in order to avoid discharge. Addison on Torts says that "whoever makes use of the process of the Court, not warranted by the exigency of the writ or the order of the Court, is answerable to an action for damages for an abuse of the Court process."

The judgment of the Iowa Court is based upon the following extract therefrom, which certainly commends itself to civilization and common sense:

"The authorities all agree that the unlawful use of the process must be malicious, and without probable cause, as in actions for malicious prosecution. In truth, an abuse of a legal process partakes of the character of a malicious prosecution, the only possible distinction being that one is the malicious prosecution of a suit, and the other the malicious use of a process issued in aid of a proceeding, either pending or determined. And it may be well

questioned whether such a distinction actually obtains. As a rule, a proceeding, such as was had in this case, is instituted for the purpose of enabling the plaintiff to utilize the process of the Court maliciously, and hence the malice in fact attaches to the very institution of the suit, giving it the obnoxious characteristics of a malicious prosecution."

Where property is exempt from execution, a levy upon it is unwarranted. An execution against a judgment debtor requires the officer serving the same to satisfy the judgment and interest out of the property of the debtor subject to execution, and seeking to satisfy the judgment out of property not subject to execution is an unwarrantable act, which, if done maliciously and without probable cause, constitutes a malicious abuse of a legal process. Where a party directs a garnishment knowing of the exemption, with the intent to unlawfully subject such exemption to the satisfaction of his claim, by annoying and harassing the employer so that he will discharge the debtor unless he pays the debt out of his exempt earnings, there is plainly an unlawful use of the process, and just as plainly a flagrant abuse of it. It is no excuse that the execution, to which the garnishment was auxiliary, was valid, and that what was done "was in excess of that which was warranted."

The large number of writs of summons issued in Ontario is out of all reasonable proportion to the small number of actions possessing any merit which go to trial. A tally of the number of actions that are annually dismissed for want of prosecution would reveal a startling amount of foundationless and vexatious litigation. These actions are injurious to the credit of merchants and others against whom they are taken. Who is to blame for this? We will not pretend to answer the question, but if process by way of contempt against the person or damages against the purse were imposed, this class of litigation would be speedily blockaded.

* * *

The Law Society Funds, and the Law School.

We have just received a copy of the Statement of Revenue and Expenditure of the Law Society of Upper Canada for the year ending 31st December, 1896. For various reasons the revenue has been smaller than that for the year 1895, and the expenditure larger. Here are the figures:—

1895.	REVENUE.	1896.
$58,212.50.		$51,083.30.
	EXPENDITURE.	
$57,965.51.		$65,874.84.

From these figures it will be observed that the deficit for the year just closed is indeed startling. It is generally believed by the members of the profession that each

year yields a surplus; the truth is apparently quite the reverse. The Law School, which was established at great expense, cost the Law Society last year some $4,000 or $5,000 in excess of the income derived from it. Why should the profession, unaided, establish and conduct a most useful branch of the higher education in the Province? The Ontario Government should at least assist the Law Society. A suitable grant should be applied for at once. In fact it should have been obtained before the Law School was founded.

* * *

Modernizing the Law of Divorce.

Drake v. *Drake* is the heading of an interesting case, the report of which comes to us in a recent number of the far away published Australian *Law Times*. The case, being one of wife against husband, might, we venture to suggest, more fittingly be entitled *Duck* v. *Drake*. The action was one for divorce, and the Australian Court finds that although the mere wrongful denial of conjugal intercourse does not of itself constitute desertion, because it is quite consistent with the maintenance of the matrimonial relation in every other respect; that such denial, however, is an element in the offence, and may, when assisted by other facts, afford evidence more or less cogent from which the required conclusion may be drawn, and that if a husband wrongfully and intentionally has brought to an end an existing state of co-habitation, he may be held to have deserted his wife, although they may have continued to occupy the same house, thereby entitling the latter to a decree of divorce. Without desiring to comment on the result arrived at in this case, we may be permitted to congratulate ourselves upon the fact that we have no dissolution of Marriage Court in Canada.

* * *

The Value of a Colored Boy's Life.

The New Jersey *Law Journal* reports a recent case of *Miller* v. *Camden & Atl. R. R. Co'y*, which was an action against the railway company to recover damages for the death of a colored boy, occasioned by the negligence of the defendants. The defendants admitted liability to respond in damages, and the sole inquiry before the jury, and in the Court above, was directed to the amount that ought to be assessed. The boy had been industrious and efficient in aiding his family. He kept a bank for his savings, and it was admitted that he was a boy of promise and good character, and had been killed by the admitted negligence of the defendants' servants. A verdict of $2,500 was awarded by the jury to the plaintiff, who was the boy's father. The New Jersey Supreme Court subtracted the probable expenses of keeping the boy from what he

might reasonably be expected to earn and required the plaintiff to elect between accepting a reduced verdict for $1,500, or taking a new trial. In a recent issue of *The Barrister*, when referring to a certain piece of class, or more correctly speaking, color legislation, on the part of our American cousins, we made a quotation which commences thus :—

"Mislike me not because of my complexion," etc., etc.

RECENT ENGLISH DECISIONS.

In re MAULE. CHESTER v. MAULE.

[LINDLEY, L.J., SMITH, L.J., RIGBY, L.J.—Court of Appeal.—JAN. 23.

Practice—Appeal Court — Copies of material documents—Costs.

Appeal from the decision of Kekewich, J.

Their Lordships, in the course of the hearing of the appeal, said that it was impossible for them to perform their duty unless each member of the Court was supplied with a copy of every material document. A Judge could not construe a will unless he had a copy of it before him. It was suggested that taxing-masters were chary of allowing the costs of copies where the estate was small; but it must be understood by solicitors that each member of the Court must have a copy of material documents, and their Lordships would take care that the taxing-masters were made acquainted with these requirements.

* * *

COBURN v. COLLEGE.

[Queen's Bench Division—JAN. 13.

Solicitor—Action to recover bill of costs—Actual cause of action—Limitation Act, 1623 (21 Jac. I., c. 16), s. 3.

This was a non-jury action, tried before Charles, J., brought by a solicitor against a former client to recover fees for work done and money expended as solicitor. The defendant pleaded the Statute of Limitations. The question was, at what date did the cause of action accrue? Shortly, the facts were as follows: In May, 1889, a litigation in which the plaintiff acted for the defendant ended, and the work was completed. On June 4, 1889, the defendant wrote to the plaintiff for his bill, and on June 7 left England for Australia. On June 12, 1889, the plaintiff delivered his bill, duly signed within section 37 of 6 & 7 Vict. c. 73 (which enacts that no action for the recovery of fees, etc., shall be brought by a solicitor till the expiration of one month after he shall have delivered a signed bill), at the defendant's address. The defendant remained in Australia till the year 1896, when he returned to England. On hearing of his return the plaintiff, on June 12, 1896, issued his writ in the present action. The point, therefore, was, did the cause of action accrue in May, 1889, when the work was completed?—in which case the action would be barred by the statute; or did it accrue one month after the delivery of the bill of costs on June 12, 1889?—in which case the statute would not run, since the defendant was abroad when the cause of action accrued.

Charles, J., held that the cause

of action accrued when the work was completed in May, 1889, and that the plaintiff's action was barred by the statute. The cause of action was the doing of the work, and, in the absence of express authority, not the doing of the work plus the delivery of the bill of costs, plus the expiration of one month's time limited by section 37 of 6 & 7 Vict. c. 73.

Judgment for the defendant.

* * *

High Court of Justice.

In re STEVENS. COOKE v. STEVENS AND EMERSON.

[NORTH, J.—Chancery Division.—JAN. 21, 22, 23, 26.

Executor—Acceptance of office—Acting — Delay in probate — Loss of interest— Wilful default.

A testator, who died in 1882, made a will appointing Stevens, Emerson and Sewell executors.

On July 25, 1883, Emerson, who was a solicitor, attended at an insurance office in which the testator was insured, arranged for a "letter to be signed by the executors" as to the disposal of the insurance money, and made an entry to that effect in his bill of costs against the estate.

On July 28, 1883, in pursuance of such arrangement, a letter signed by Stevens, Emerson and Sewell was sent to the insurance office, requesting them to pay the money to a certain bank.

The insurance office wrote to Emerson in reply, acknowledging the receipt of the letter "signed by yourself and your executors," but declining to pay the money before probate. Emerson did not repudiate the imputation of executorship. The will was ultimately proved by Stevens alone on October 15, 1889, and the insurance was paid. Owing to the delay in payment about £150 interest was lost to the estate.

This was an action by a beneficiary under the will against Stevens and Emerson as executors, asking for an account on the footing of wilful default. The day after delivery of statement of claim, Emerson renounced probate. No objection was taken to the non-joinder of Sewell as a defendant.

F. W. E. Everitt, Q.C., and J. G. Butcher, for the plaintiff.—First, the renunciation is invalid, as Emerson has acted as executor. Secondly, the delay in proving caused the loss of interest and was wilful default.

C. Swinfen Eady, Q.C., and Christopher James for the defendants.—First, Emerson only acted as solicitor to the executors. Secondly, the delay in proving is not wilful default. There was no loss of capital. Possibly there may be a claim for breach of trust in losing the interest, but it is not wilful default.

North, J., held that Emerson had acted as executor in the matter of the policy, so that his renunciation was invalid. As to wilful default, his Lordship pointed out that the insurance company would have paid the money and got a good receipt from the executors before probate. No loss of capital had occurred. The loss of interest was too remote a result of the delay in proving the will to constitute wilful default. The plaintiff was only entitled to common account.

BOWEN v. PHILLIPS.

[KEKEWICH, J.—Chancery Division—12TH JANUARY, 1897.

Executor—Bankruptcy—Misappropriation of assets—Injunction to restrain from acting as executor—Application by co-executor.

Motion by the plaintiff, as one of the executors of a will, to perpetually restrain the defendant, his co-executor, from receiving or collecting any part of the outstanding personal estate and effects of his testator; and also from receiving or collecting the rents of the freehold estate, or letting or managing the same, or interfering with any part of the testator's estate and effects.

By his will the testator devised and bequeathed all his real and personal property to his wife for life, and, after her decease, as therein mentioned; and he appointed the defendant and the plaintiff executors of his will. The ground of the application was that the defendant had become bankrupt since the death of the testator, and had misappropriated part of the testator's estate. No receiver was asked for, and the question was whether the Court had jurisdiction to grant the injunction.

J. W. Greig, for the motion, referred to *Utterson* v. *Mair*, 2 Ves. 95 (1793); *Gladdon* v. *Stoneman*, 1 Madd. 143 (note) (1815); *Rex* v. *Simpson*, 1 W. Bl. 458 (1764); and "Williams on Executors," 9th edit. vol. 2, p. 187.

No counsel appeared for the defendant.

Kekewich, J., said that there was jurisdiction to make the order. The defendant would be restrained in the terms of the notice of motion from acting as executor until the trial of the action or further order.

* * *

KIRKHAM v. ATTENBOROUGH.

KIRKHAM v. GILL.

[41 S. J. 141.

Sale of goods Act, 1893, sec. 18, rule 4.

K. was a manufacturing jeweller, and sent goods to Winter "on sale or return." Some of these goods Winter pawned, and after his death K. sued the pawnbrokers to recover the goods.

Held, that by pawning the goods Winter had "done an act adopting the transaction," and consequently the property then passed to Winter; that the pawnbrokers had a good title; and that K.'s only remedy was to sue Winter's estate for the price of the goods. (Esher, M.R., and Lopes and Rigby, L.JJ., reversing Grantham, J.)

* * *

LANE v. COX.

[102 L. T. 220; 41 S. J. 142.

House let with defective staircase.

Cox was landlord of a house let to a weekly tenant; neither landlord nor tenant had agreed to do any repairs. The tenant employed Lane to remove some furniture; and while Lane was doing this he was injured by the staircase breaking beneath him. Evidence was tendered that the staircase was defective and unsafe in its construction at the time the defendant let the house.

Held, that the landlord was not liable to a person employed by th tenant for damage caused by the defective and unsafe condition o the staircase—for, as the landlo

owed him no duty, there could be no negligence. (Esher, M.R., and Lopes and Rigby, L.JJ., affirming Russell, L.C.J.)

* * *

DENNIS v. FORBES.

[41 S. J. 144.

Employers' Liability Act, 1880.

A foreman engineer is not a workman within this Act. (Wills and Wright, JJ.)

* * *

Re ROBERTS. KNIGHT v. ROBERTS.

[42 S. J. 210.

Administration—Wilful default.

If an executor omits to enforce payment of a debt for several years, whereby it becomes statute-barred, an account will be decreed against him on the footing of wilful default. (Byrne, J.)

* * *

In re CHAFFERS. *Ex parte* THE ATTORNEY-GENERAL.

[Queen's Bench Division—JANUARY 25.

Habitual and persistent institution of vexatious legal proceedings—Vexatious Actions Act, 1896 (59 & 60 Vict. c. 51).

Motion by the Attorney-General.

This was an application by the Attorney-General for an order under the Vexatious Actions Act, 1896, prohibiting the respondent, Alexander Chaffers, from instituting any legal proceedings without leave of the High Court, or of some Judge of the High Court, on the ground that the respondent had habitually and persistently instituted vexatious legal proceedings within the terms of section 1 of that Act. The facts were set out in two affidavits, in which it was shown that the respondent, between January, 1891, and December, 1896, had instituted forty-eight actions against the Lord Chancellor and other Judges, the Speaker, officials of the House of Commons, the Solicitors for the Treasury, and the Trustees of the British Museum. The actions were mainly brought for slander, conspiracy to defeat justice, assault, refusal to receive a petition to the House of Commons, and wrongful exclusion from the reading room of the British Museum. The respondent had failed in forty-seven actions, and no costs had been obtained from him. In one action he succeeded on a claim for £1 for work done in copying an affidavit for the use of the Solicitor to the Treasury. Another action against a Judge was still pending.

The Attorney-General (Sir R. E. Webster, Q.C.) and H. Sutton supported the motion.

Corrie Grant (assigned by the Court) appeared for the respondent.

The Court (Wright, J., and Bruce J.) held that the Vexatious Actions Act, 1896, though not retrospective in so far as it did not operate upon any past proceedings, clearly applied to a case such as the respondent's, and was plainly intended to prevent similar proceedings, in future, and that looking at the number of the actions, their general character and their results, there was good ground for holding that the respondent had habitually and persistently instituted vexatious legal proceedings.

Order prohibiting the respondent from instituting any legal proceedings either in the High Court or any other Court without leave of the High Court or a Judge thereof.

Solicitors: The Solicitor to the Treasury, for the applicant; the Official Solicitor, for the respondent.

* * *

CLARK v. PETROCOCKING.

[41 S. J. 142.

Interlocutory injunction.

The Court will not grant an interlocutory injunction to restrain defendant from selling his oil in such a way as to mislead the public into the belief it is plaintiff's oil, unless (1) the injury would practically be irreparable, or (2) the injury is serious and it is shown that the defendant may be unable to pay damages. (Russell, L.C.J., and Lindley and Smith, L.JJ.)

OSGOODE HALL NOTES.

The Law School.

The Law School will close on April 15th, and the annual examinations will begin on Tuesday, April 27th, and will last until May 15th. The examinations in the first year will last four days; the second year's examination lasts nine days, and the final year eleven days. We give the time table in another column. The results will be announced on Wednesday, June 3rd.

* * *

The Osgoode Cricket Team will likely be reorganized in connection with the school, and will affiliate with the Athletic Association.

* * *

Application forms for the May examinations must be filed with the Secretary of the Law Society by May 1st. Those writing in the first year, residing outside the city, must send $1 with their applications. Final year men must deposit $160 fees before writing on their examination.

* * *

Monday, April 19th, will be the last day for filing the necessary papers for admission next term to the Law Society. Tuesday, May 11th, will be the first day of Easter term. All articles of clerkship should be executed before that day.

* * *

A meeting of the Examiners was held on Friday, February 12th, at Osgoode Hall. The time table was drawn up and it was decided to have pseudonymns instead of numbers. The practice of candidates writing their own names on the papers is thus abolished.

* * *

Things are quiet in and around the Law School; which marks the approach of the annual examinations. The school will re-open again for the Fall term on Monday, September 27th.

* * *

FIRST YEAR.

Tuesday, April 27th. Pass—Forenoon, Contracts; Honours—Afternoon, Contracts.

Wednesday, April 28th. Pass—Forenoon, Real Property; Honours—Afternoon, Real Property.

Thursday, April 29th. Pass—Forenoon, Common Law; Honours—Afternoon, Common Law.

Friday, April 30th. Pass—Forenoon, Equity; Honours—Afternoon, Equity.

SECOND YEAR.

Tuesday, May 4th. Pass—Forenoon, Criminal Law; Honours—Afternoon, Criminal Law.

Wednesday, May 5th. Pass—Forenoon, Real Property; Honours—Afternoon, Real Property.

Thursday, May 6th. Pass—Forenoon, Contracts; Honours—Afternoon, Contracts.

Friday, May 7th. Pass—Forenoon, Torts; Honours—Afternoon, Torts.

Saturday, May 8th. Pass—Forenoon, Equity; Honours—Afternoon, Equity.

Monday, May 10th. Pass—Forenoon, Constitutional History and Law; Honours—Afternoon, Constitutional History and Law.

Tuesday, May 11th. Pass—Forenoon, Personal Property; Honours—Afternoon, Personal Property.

Wednesday, May 12th Pass—Forenoon, Evidence; Honours—Afternoon, Evidence.

Thursday, May 15th. Pass—Forenoon, Practice; Honours—Afternoon, Practice.

THIRD YEAR.

Tuesday, May 4th. Pass—Forenoon, Contracts; Honours—Afternoon, Contracts.

Wednesday, May 5th. Pass—Forenoon, Evidence; Honours—Afternoon, Evidence.

Thursday, May 6th. Pass—Forenoon, Criminal Law; Honours—Afternoon, Criminal Law.

Friday, May 7th. Pass—Forenoon, Equity; Honours—Afternoon, Equity.

Saturday, May 8th. Pass—Forenoon, Real Property; Honours—Afternoon, Real Property.

Monday, May 10th. Pass—Forenoon, Constitutional History and Law; Honours—Afternoon, Constitutional History and Law.

Tuesday, May 11th. Pass—Forenoon, Construction of Statutes; Honours—Afternoon, Construction of Statutes.

Wednesday, May 12th. Pass—Forenoon, Commercial Law; Honours—Afternoon, Commercial Law.

Thursday, May 13th. Pass—Forenoon, Private International Law; Honours—Afternoon, Private International Law.

Friday, May 14th. Pass—Forenoon, Torts; Honours—Afternoon, Torts.

Saturday, May 15th. Pass—Forenoon, Practice; Honours—Afternoon, Practice.

The results will be published on June 3rd.

The time table pleases all, and the students are thanking Mr. Hoyles for his activity in getting the programme out so early.

* * *

The Benchers met in convocation on Feb. 1st and 12th. There were present: Mr. Æmilius Irving in the chair; and amongst the Benchers in attendance were noticed Messrs. B. B. Osler, Q.C., Charles Moss, Q.C., A. B. Aylesworth, Q.C., W. R. Riddell, E. W. Edwards, Hon. S. H. Blake, Q.C., M. O'Gara, Q.C., George C. Gibbons, Q.C., Richard Bayley, Q.C., A. Wilkes, Q.C., Colin McDougal, Q.C., Edward Martin, Q.C., A. Bruce, Q.C., B. M. Britton, Q.C., Dalton McCarthy, Q.C. C. H. Ritchie, Q.C., A. H. Clarke, Q.C., G. F. Shepley, Q.C., George H. Watson, Q.C., H. H. Strathy, Q.C., John Hoskin, Q.C. Much routine business was transacted. The question of the finances raised a good deal of discussion, but

all the reports of committees were adopted. The first deputation of students to address convocation in living memory appeared before the Benchers on Tuesday, Feb. 1st. There was a very full attendance of Benchers from outside the city. The deputation consisted of Mr. T. L. Church, Mr. D. A. Joe McDougal, Mr. R. A. Burbidge and Mr. W. D. Henry, Directors of the Osgoode Amateur Athletic Association, to ask for a grant for the association. The deputation was introduced to convocation by Mr. Charles Moss, Q.C., Mr. C. H. Ritchie, Q.C., and Mr. Martin, Q.C. Messrs. Church and McDougal acted as spokesmen. Mr. Church was the first speaker, and outlined the history of the Association and explained its objects; he also dwelt on the recent revivals of student societies about the law school and the good effects therefrom. Assistance was necessary to place lacrosse and football teams in the field and carry out the objects of the tennis, rowing, hockey and association football clubs. There was not a cent in the treasury and grounds were urgently needed. He asked for $400 to awake Osgoode sports up. Mr. Joe McDougal, the popular ex-Varsity Rugby football coach, followed and dwelt on the necessity for aid. The Association needed $400 to start and revive sport. He dwelt on the disbursements for which the money was required, and said "Osgoode" had to have a football team or it would be unable to hold its head up among the other colleges. The officers of the Association had been working like Trojans, and he believed they had the entire student body at their back in their efforts to stimulate Osgoode sports. The Benchers then took the deputation in hand and put the spokesmen of the deputation through a lengthy cross-examination, Hon. S. H. Blake, Q.C., leading. In answer to Mr. Bruce, Q.C., of Hamilton, Mr. Church stated the Association were not pressing the question of the gymnasium at present. Money was needed to give the Association a start. Mr. McDougal told Mr. Blake the Association was the central association of the Osgoode tennis, hockey, football and other clubs and had to supply these clubs with finances. All Osgoode's clubs were federated and controlled by the Athletic Association. In answer to Mr. Blake, Messrs. McDougal and Church gave a rough statement of what was to be done with the money, grounds were to be got, debts were to be paid, playing materials were to be bought for the different clubs, a rink was to be built, etc. At the request of Mr. Blake the Association filed a detailed statement of the finances of the Association prepared by Mr. David Mills, of London, the Association's treasurer. It showed that $600 was required to restore Osgoode sports, of which the Benchers were asked for $400. In reply to Mr. Martin and Mr. Blake, the deputation stated that the Association only came before convocation to ask for their co-operation in starting the venture, as the gate receipts after this year would render the Association self-sustaining. The treasurer informed the deputation that their representations would be taken into "serious consideration." Most of the outside Benchers, it is said, favor aid to the Association, as many of the students from outside Toronto pass through the school unknown to one another owing to lack of class societies and sports at the Hall.

The Athletic Association will hold a field day at Rosedale on or about October 1st next.

* * *

The Literary Society meetings have closed for the session of 1896-7.

* * *

A mock trial will be held in Convocation Hall on Wednesday, February 24th. There will be dancing afterwards. The trial is under the auspices of the Osgoode Legal and Literary Society. Tickets are 50c. Obtain tickets from the committee, which consists of Messrs. J A. Macdonald (chairman), A. C. Macdonell, E. H. McLean, W. E. Burns, C. A. Moss, T. L. Church, W. T. White, J. T. C. Thompson and others.

* * *

A mass meeting was held in the Law School on Tuesday, February 2nd, in reference to the 3rd year group picture. Mr. T. L. Church presided, and Mr. Clarry acted as secretary. On motion of Messrs. W. H. Moore and Harvey German, it was decided to accept the offer of Mr. F. Lyonde, photographer, King street west, to take the class picture. Copies of the group will cost $1.50 each, and cabinets may be had at the same time for the reduced rate of $2.50 and upwards per dozen. The principal and staff of the Law School have kindly consented to join in the picture, which promises to be a good one.

* * *

The sub-committee of the Osgoode Amateur Athletic Association having in charge the drill shed grounds problem has been pushing the question vigorously. The members have worn out a good deal of shoe leather over the problem. The members of the committee waited on the finance committee of convocation on Tuesday, the 26th day of January, and secured the co-operation of convocation. The Mayor, the Benchers, the military authorities, the Militia Department, and the city members of Parliament have all promised their co-operation to have the grounds sodded this spring. The students' should remember Mr. Æmilius Irving, Q.C., for his kind help in this matter. Mr. Irving, has spent hours to try and get the students' requests granted, and has read up well the complicated matter connected with the closing of Osgoode Street and the drill shed problem, much to the assistance of the sub-committee. He has met the grounds committee of the Association several times, and the question will be settled through his efforts and those of the energetic students on the committee, so that Osgoode may hope to have next fall one of the best Rugby grounds in the country. The students' thanks are also due to President A. C. Macdonell of the Literary Society, Col. Otter, the Benchers, and Messrs. John Ross Robertson, M.P., Wm. Lount, Q.C., M.P., E. F. Clarke, M.P., E. B. Osler, M.P., for their great and kind assistance in the matter.

* * *

Osgoode will amalgamate with the Argonaut Club and place a couple of crews in the boats. It is expected a cheap rate will be obtained with the club for Osgoode students. A score of law students have for years been active members of the Argonaut.

* * *

The complete list of the Board of Directors of the Osgoode Amateur Athletic Association is as follows:—

Third year representatives — Messrs. D. A. J. McDougal, T. L. Church, C. A. S. Boddy. Second year representatives — S. S. Sharpe, David Mills and H. A. Burbidge. First year representatives—R. F. McWilliams, J. G. Merrick and W. Ridout Wadsworth. Literary Society—President A. C. Macdonell, E. H. McLean and B. A. C. Craig. Association Football Club—Capt. W. E. Burns. Lacrosse Club—Capt. C. W. Cross. Tennis Club—Capt. Medd. Hockey Club—Capt. W. D. Henry. Rugby Football Club—Capt. A. C. Kingstone.

The Association officers, to hold office until March, 1898, are: President, Mr. D. A. "Joe" McDougal; Vice-President, Mr. T. L. Church; Secretary, Mr. H. A. Burbidge; Treasurer, Mr. David Mills.

* * *

The Barrister has been the medium for the expression of student opinion at the Law School for some time past. We only want to claim our just due when we say that *The Barrister* has done much to bring about the revival of everything at Osgoode this year. In one of our first numbers in an article written by one of our staff we were the first to dream of the drill shed lawn for a practice field. This idea was conceived when we observed the failure of our football teams for want of a practice ground. We always spoke in support of an athletic association, formation of various clubs of a sports character, encouragement of rowing, foundation of a journal, abolition of moot courts, a field day at Rosedale, a Bar and annual Law School dinner, adoption of pseudonymns in examinations, revival of Osgoode's sometimes languid literary society, inter-collegiate debates, mock trials, mock parliaments, one pass subject a day in examinations, prizes for public speaking, and other things. *The Barrister* has lived to see nearly all of its suggestions carried out.

* * *

University students who graduate in May next and intend to study law should file the necessary admission papers, along with the fee, $1, on or before Monday, April 19th. Forms can be had from Mr. McBeth at Osgoode Hall.

RECENT UNITED STATES CASES AND NOTES OF CASES OF INTEREST.

BARKER v. CENTRAL PARK N. & E. R. R. CO., 550.

Railroad company—Street railway—Reasonableness of rules—Tender of fare.

Barker v. *Central Park N. & E. R. R. Co.*, 45 N. E. Rep. 550, decided by the Court of Appeals of New York, was an action for assault wherein it appeared that plaintiff tendered a five-dollar bill to defendants' street car conductor in payment of a five-cent fare, stating that it was the only money he had with him, and that the conductor refused to change it, and ejected him. It was stipulated that defendants had a rule (not brought to plaintiff's notice) requiring conductors to furnish change to the amount of two dollars, but there was no rule forbidding conductors to make change for a larger amount. There was no evidence of a custom on the part of the plaintiff or the public of

tendering to defendant five dollars in payment of a five-cent fare, and receiving the change; but plaintiff testified that on a former occasion, and on another line, he had offered a five-dollar bill for his fare and that it had been changed for him. It was held that the tender was unreasonable, as a matter of law. The only case cited as holding for the plaintiff was *Barrett* v. *Railway Co.*, 81 Cal. 296, 22 Pac. Rep. 859. As to that case the New York Court says that "we agree with the learned Supreme Court of California that a passenger upon a street railroad is not bound to tender the exact fare, but must tender a reasonable sum, and the carrier must accept such tender and furnish change to a reasonable amount; but we cannot assent to the conclusion that a tender of five dollars is a reasonable sum. It is quite possible that there existed local reasons for the decision in California, as the judge writing the opinion suggested that the five-dollar gold piece was practically the lowest gold coin in use in that section of the country."

* * *

HOGARTH v. POCASSET MANUFACTURING CO.

The Supreme Court of Massachusetts has just given decision in two cases affecting the use of trap doors, the plaintiffs in each case being employees who sustained personal injuries by falling through trap-door openings. Ellen Hogarth, in her suit against the Pocasset Manufacturing Company of Fall River, testified that she did not know of the trap door, though she passed over it many times a day. The Court affirmed a verdict for $1,150, given in her favour. Fremont Young, in his suit against Oliver A. Miller, of Brockton, testified that he did not know of the trap doors. The Court held that the defendants' duty did not extend to give notice or warning that the doors were open to one who knew that they were liable to be so at any time, and judgment for the defendants was sustained.

* * *

STATE v. GERHARDT.

A statute prohibiting any other business except the sale of cigars and tobacco to be carried on in a room in which intoxicating liquors are sold under a license, and prohibiting any device for amusement or music therein, and also requiring such rooms to be closed and locked during prohibited hours and days, is sustained in *State* v. *Gerhardt* (Ind.) 33 L. R. A. 313, on the ground that such provisions and all similar conditions imposed by the Legislature in the exercise of its police power must be deemed to be consented to by a person who accepts a license.

* * *

OMAHA'S CURFEW LAW ILLEGAL.

Judge Baker, of the Omaha District Court, has declared the curfew ordinance, passed by the Council last March, to be illegal. The only arrest made under this ordinance was that of Ross Crone, a boy about 8 years old. He was convicted in the Police Court. A motion to dismiss the case on the ground that the ordinance was unconstitutional was argued before Judge Baker, and in passing on the motion the Judge said that under the statutes a Justice of the Peace or Judge of any minor Court cannot sentence any person under the age of 16 years for the commission of any crime.

"It seems to have been the intent of the Legislature," said the Judge,

"that persons under the age of 16 years shall not be imprisoned in a city or county jail. If the Judge of a minor court finds a prisoner guilty of a crime he must send the person and the papers to the District Court. If the Judge of the Court finds that the defendant is a proper subject for the Reform School he must send him there; if he finds to the contrary the defendant must be discharged."

* * *

VOSS v. WAGNER CAR PALACE CO.

Sleeping-car companies — Liability for baggage.

The Apellate Court of Indiana has recently held that the duty of the porter of a sleeping-car to take charge of the passenger's baggage, and to assist in removing it from the car at its destination, being, under the rules of the particular company, within the scope of his employment, he is not to be regarded as a mere gratuitous bailee; and, therefore, when the porter of a sleeping-car, in pursuance of his customary duties, took charge of a passenger's baggage, for the purpose of removing it from the car at the passenger's destination, and it was lost or stolen through the negligence of the company's employees, the company was liable therefor: *Voss* v. *Wagner Palace Car Co.*, 44 N. E. Rep. 1010 (on rehearing), affirming 43 N. E. Rep. 20.

* * *

WITTY v. SOUTHERN PAC. CO.

Reward—Public officer — Deputy sheriff.

It is the duty of a deputy sheriff, when specific information is conveyed to him that a felon is at a particular place within his jurisdiction, to take measures for his prompt apprehension; and he cannot claim that an arrest thus effected was made in his private capacity, so as to entitle him to a reward offered by private parties for the arrest: *Witty* v. *Southern Pac. Co.* (Circuit Court, S. D. California), 76 Fed. Rep. 217.

A public officer is not entitled to a reward offered for services which lie in the line of his duty; any agreement to compensate him for doing that is void, as against public policy; and his performance of the services, though according to the terms of the agreement, creates no contract between him and the person who offers the reward. This rule has been applied to constables, policemen, sheriffs, deputy sheriffs, watchmen, customs officers, and overseers of the poor.

* * *

VEGELAHN v. GUNTNER.

Injunctions—Conspiracy to injure business—Patrolling.

The Supreme Judicial Court of Massachusetts has recently held, in accordance with the universal current of decision (unaffected by the objurgations of well-meaning but impractical theorists), that a continuing injury to property or business may be enjoined, though it be also punishable as a crime; and that consequently the maintenance of a patrol of two men in front of the plaintiff's premises, in furtherance of a conspiracy to prevent, whether by threats and intimidation, or by persuasion and social pressure, any workmen from entering into, or continuing in his employment, will be enjoined, though such workmen are not under contract to work for the plaintiff: *Vegelahn* v. *Guntner*, 44 N. E. Rep. 1077. Field, C. J., and Holmes, J., dissented.

McCANN v. KENNEDY.

Negligence—Temporary and transitory danger.

The Supreme Judicial Court of Massachusetts has recently decided that a workman on a building, who fell and was injured as a result of stepping on a joist that had just been sawed nearly through by another workman who had left it for a moment, could not recover from his employer for the injury, since "it would be impracticable to require employers to warn their men of every such transitory risk, when the only thing the men do not know is the precise time when the danger will exist." *McCann* v. *Kennedy*, 44 N. E. Rep. 1055.

* * *

JAMES PEASE (APPELLANT) v. HATTIE BARKOWSKY (APPELLEE).

[SMITH, ABNER, J.—Appellate Court. Illinois, First District—Appeal from Circuit Court.

Husband and wife—The law will closely scrutinize transaction by which the wife claims product of joint labour.

Husband and wife. The law scrutinizes wife's claim to joint property. Labour and skill of husband, bestowed on wife's separate property, advanced by her to establish him in trade or business, liable for husband's debts.

S., a servant, obtained a judgment against the husband of appellee for services, and levied upon the fixtures and stock of a saloon, which wife, appellee, claimed as her separate property. The proof showed that the saloon license was issued to H. Barkowsky, upon bond signed "H. Barkowsky," the husband making the signature; that the judgment was for wages for work done about the saloon and in driving a beer waggon, the wife testifying that she hired S.—that he worked for her, but assigning no reason for not paying him, and S., on the other hand, testifying that he was employed by appellee's husband, who was proprietor, and to whom he accounted for sales, the husband having very much to do with running the saloon, etc. Held, that under such evidence, the law will carefully scrutinize the transactions by which the wife claims the fruit of the joint labour.

Husband's skill and labour is property, and cannot, as against creditors, be appropriated to the wife, though bestowed on the separate money or property advanced by the latter.

A man's labour and skill, in any trade or branch of business, is valuable capital, and it is unlawful for him to appropriate the results of that labour and skill to the exclusive use of the wife as her separate property, as it would be to thus appropriate his money to the detriment of his creditors. If the wife advances her separate money or property to enable the husband to carry on any trade or business, although in her name, and by his labour and skill he contributes materially to increase the capital stock, such increase does not become the separate property of the wife, but is subject to the claims of the husband's creditors, and if so interwoven with the original capital of the wife as to make identification impossible, the wife cannot reclaim her property, but the transaction, as to creditors, will be regarded a loan by the wife to the husband for the purpose employed.

THE VOICE OF LEGAL JOURNALISM.

Extracts from Exchanges.

The Successful Practice of Law.

In a recent interview about the practice of law to-day and the probabilities and requisites of success, Hon. John F. Dillon said:

"The successful practice of the law in modern times requires very much more than a mere technical knowledge of the practical affairs of the world. Most cases do not present mere abstract legal problems, but concrete problems—what is the best thing to do—which involves a knowledge of business usages and of the practical affairs of life.

"Successful lawyers are hard-working machines, and unless they have a good physical constitution they will fail of eminent success. No lawyer can succeed, or long succeed, unless, in addition to the requisite intellectual qualities, he has also the requisite moral qualities.

"Integrity in the broadest sense, as well as in the most delicate sense of the term, is an indispensable condition to success in the law. Intellectual qualifications, fitness and integrity will not alone insure success. The successful lawyer must also have industrious habits. The successful lawyer is the lawyer who works and toils. He must have a genius for work. These are fundamental conditions. But all these exist and yet fail to bring any marked success, because success comes from a happy combination of physical and intellectual qualities, including will, power of decision, moral qualities, integrity and saving common sense, so that the advice which the lawyer gives shall be seen to be wise; that is, the advice he gives shall be practically demonstrated to be wise, as shown in the results. The modern client wants good results."—*The Law Student's Helper.*

* * *

We have heard much of late about the "living wage." The living wage has difficulties of its own, but its difficulties are accentuated when mixed up with that mysterious thing known as "social position." Can an ex-colonel, for instance, keep up his dignity on £360 a year? This was the problem which was recently exercising the mind of the Court of Appeal sitting in bankruptcy. It arose in this way. The ex-colonel had become a bankrupt, and the registrar had made an order under section 53 of the Bankruptcy Act for putting aside £40 a year out of his pension for payment of his creditors, or rather his creditor, for there was only one, for £250. Now, the ex-colonel's pension, net, was only £406, he had a wife and child, and he appealed against the impecuniosity to which the order reduced him. We are all familiar with the remarkable adaptability of the elephant's trunk. It can tear up a tree or pick up a pin.

The versatility of the Court of Appeal is hardly less. It can resolve profound questions of real property law, it can unraval knotty sections of Acts of Parliament, and with the same ease it can pronounce on the propriety of an ex-colonel's house-rent, the reasonable amount of his family washing-bills,

and his need of change of air. Taking all these things into consideration, the Court did not see its way to cutting down the pension by £40. True, an ex-colonial judge (*In re Huggons*) had had to keep up his dignity on £300 a year; but one case is no guide for another—so the Court said. In time the petitioning creditor will be paid, and in the meanwhile let us trust he will feel a glow of patriotic pride at the thought that the credit of the British army is being suitably maintained.—*The Law Journal.*

* * *

There was a striking increase in the number of legal publications during the past year. No fewer than 182 law books were published in 1896, as against ninety in 1895. The total number of books was 6,573, so that law may claim to occupy a thirty-sixth part of the field of literature. In 1894 as many as 149 law books were published, as against fifty in 1893, but this great increase was due to the Finance Act and the Local Government Act, both of which produced a large number of explanatory works. It is not so easy to explain the still larger number published last year. One hundred and thirty-two were new works, while fifty were new editions. The busiest month for the law publishers was October, fifty-two books being then issued. The highest number in any other month was nineteen.—*The Law Journal.*

* * *

An incident in the breach of promise case which recently engaged the attention of the Lord Chief Justice and a special jury is worthy the consideration of legal reformers who desire the abolition of pleadings. A witness was called by counsel for the defendant to prove that the plaintiff was unchaste. No suggestion of unchastity was made in the pleadings, though the charge was put forward in the particulars, and the evidence was, at the instance of the Lord Chief Justice, withdrawn. If the necessity for documents—whatever name be given to them—stating the issues had been abolished, this withdrawal would not, we may suppose, have taken place, and the plaintiff would have been called upon suddenly to meet a most serious allegation. The inevitable result would have been an adjournment of the trial to enable the plaintiff to meet the evidence so sprung upon her—a course involving no little expense as well as delay. The incident is a demonstration of the necessity of defining the issues in a case. Whether the definition be embodied in pleadings or contained in documents bearing another name is immaterial. To dispense with it would be to increase the delay and the expense of legal proceedings.—*The Law Journal.*

* * *

The Rules provide that no communication is to be made to a jury of the fact that money has been paid into Court. We have often asked ourselves the question, what is to happen if the fact is blurted out? Mr. Justice Kennedy had to deal with the matter last month, for, in the course of his opening, counsel (a Q.C. too) stated that the defendant had paid money into Court, though he did not say how much. His Lordship discharged the jury and had the case tried by a fresh jury on another day. In connection with this comes the point—ought the jury to be told

how much the plaintiff claims for damages in his statement of claim? Last Michaelmas sittings counsel stated that his client claimed so much (stating the amount). Mr. Justice Hawkins said this was improper, stopped the case, and directed that it should be transferred from his list to that of another judge. We confess we do not quite see the force of this, but, perhaps, practically, his Lordship was right, as the amount of the claim might be used by the jury as a basis for their calculation. There is a growing tendency to simply claim damages in the statement of claim without stating any amount, and, perhaps, this is the better plan.—*The Law Student's Journal.*

* * *

One High Office in the United States Which Few Men Have Held.

The office of Chief Justice of the Supreme Court of the United States was established by the constitution concurrently with the office of President; but while the Presidency has been open to all native-born citizens above the age of 35, the office of Chief Justice of the Supreme Court, bestowed usually upon men of mature, if not advanced, years, has been held, in fact, by seven persons only since the foundation of the Government. There have been more than three times as many Presidents.

John Jay of New York was the first Chief Justice of the Supreme Court. He was appointed by Washington in 1789. Judge Jay was at that time only 44 years of age. When he attained the age of 50 he resigned and retired to private life. He died thirty-four years later—in 1829. The second of the Supreme Court Chief Justices was John Ellsworth, of Connecticut. He was 54 years of age when appointed and served until 1801, when he resigned, resignations from public office being somewhat more frequent at that time than now. His successor was John Marshall, of Virginia, who was 46 years of age when he assumed this post by appointment of President John Adams; he held it uninterruptedly for thirty-four years, until his death, in 1835. Andrew Jackson appointed his successor, Roger B. Taney, of Maryland, who held the office until his death, in 1864. Judge Taney was 59 years of age when appointed, and 87 at the time of his death.

No Chief Justice of the Supreme Court, perhaps, had more intricate questions to determine or to vote upon in that tribunal than Judge Taney, and his tenure and that of Chief Justice Marshall stretch over nearly one-half of the history of the United States as a nation. Chief Justice Taney's successor was Salmon P. Chase, of Ohio, who had previously been Secretary of the Treasury, and was 56 years of age when appointed. He served for nine years, dying in 1873. Mr. Chase was appointed by Abraham Lincoln, and it is a part of the political history of their day that Mr. Chase was himself a candidate for the Presidency, and had hoped to defeat Mr. Lincoln for the renomination and to succeed him; and later, in 1868, it is known that Mr. Chase was a candidate for the Democratic nomination for the Presidency, though he had been one of the founders of the Republican party. Chief Justice Chase was succeeded in 1873 by President Grant's appointment of another Ohio man, Morrison R. Waite, who was 57 years of age when appointed

and served until 1888, when he was succeeded by the present Chief Justice, Melville W. Fuller, appointed by President Cleveland. Mr. Fuller is a native of Maine. He was, when appointed, 55 years of age, and will be 64 on Feb. 11 next. He is the seventh of the Chief Justices of the Supreme Court, and has served, thus far, a briefer term than any of his predecessors since Chief Justice Ellsworth.

In addition to the Chief Justices who have served, several men have been nominated for the office, but rejected by the Senate, which has confirmatory power. The office of Chief Justice is by many citizens more highly coveted than that of the Presidency. The labour is less, the responsibility much smaller, the tenure longer, and the honor an exalted one.—Worcester (Mass.) *Spy*.

* * *

How the United States Supreme Court Arrives at Its Decisions.

Each Justice is furnished with a printed copy of the record and with a copy of each brief filed, and each Justice examines the records and briefs at his chambers before the case is taken up for consideration. The cases are thoroughly discussed in conference. The discussion being concluded—and it is never concluded until each member of the court has said all that he desires to say—the roll is called and each Justice present participating in the decision votes to affirm, reverse or modify, as his examination and reflection suggests. The Chief Justice, after the conference and without consulting his brethren, distributes the cases so decided for opinions. No Justice knows at the time he votes in a particular case that he will be asked to become the organ of the court in that case; nor does any member of the court ask that a particular case be assigned to him. The opinion when prepared is privately printed and a copy placed in the hands of each member of the court for examination and criticism. It is examined by each Justice and returned to the author with such criticisms and objections as are deemed necessary. If the objections are of a serious kind the writer calls the attention of the Justices to them that they may pass upon them. If objections are made to which the writer does not agree they are considered in conference and are sustained or overruled as the majority may determine. The opinion is then reprinted and filed. It follows that when an opinion is given out from the United States Supreme Court the public has a right to take it as expressing the deliberate views of the court as a whole, and not of some one or some few members.

* * *

The *New York Law Journal* calls attention, by way of criticism, to the recent English decision in *South Staffordshire Water Co.* v. *Sharman*, on the subject of the rights of the finder of lost chattels the owner of which cannot be found. It appeared in that case that the defendant, while cleaning out, under the plaintiff's orders, a pool of water on their land, found two gold rings in the mud at the bottom of the pool. He declined to deliver them to the plaintiffs, but failed to discover the real owner. In an action of detinue it was held that the plaintiffs were entitled to the rings, the legal conclusion of the court being that the possessor of land is personally entitled, as against the finder,

to chattels found on the land. This broad doctrine, it seems, is not in harmony with several authorities on the subject. In *Hamaker* v. *Blanchard*, in the Supreme Court of Pennsylvania, 90 Pa. 377, it appeard that a domestic servant in a hotel found in the public parlor a roll of bank bills. The finder immediately informed the proprietor of the hotel, who suggested that the money belonged to a transient guest, and received it from the finder to hand to the guest. It was afterwards ascertained that the guest in question did not lose the money, and upon demand by the finder the proprietor refused to return it to her. The finder accordingly brought *assumpsit* for the money and was held entitled to recover.

In *Bridges* v. *Hawesworth*, 7 Eng. Law and Eq. R. 424, it appeared that a person went into a shop, and, as he was leaving, picked up a parcel of bank notes, which was lying on the floor, and immediately showed them to the shopman. It was held that the facts did not warrant the supposition that the notes had been deposited there intentionally, they being manifestly lost by some one, and that there was no circumstance in the case to take it out of the general rule of the law, that the finder of a lost article is entitled to it as against all persons, except the real owner. In *South Staffordshire Water Co.* v. *Sharman*, Lord Russell distinguishes *Bridges* v. *Hawkesworth* on the ground that in the latter case it appeared that the bank notes were found in a public part of the shop to which the finder had rightful access, the circumstances being therefore substantially analogous to the finding of a lost article in a public place.—*The Central Law Jounal.*

"Trespassers will Be Prosecuted."

Two volunteers walked across a grass-field in August on their way to their rifle-range. In so doing they were trespassers, and trod the grass down to some extent, but did not damage the soil nor its vesture except by their footprints. But they were summoned before justices and convicted under sec. 52 of the Malicious Damage Act, 1861, of wilfully and maliciously committing damage, injury or spoil to or upon real property in a case not provided for by other sections of the Act. This conviction was quashed on January 24 by Mr. Justice Wright and Mr. Justice Bruce, on the ground that the damage proved must be to the "land," and not to the plants growing thereon, to fall within the section. The law is a little puzzling. When people pick uncultivated mushrooms they do not commit larceny, because the mushrooms are part of the land; whence the precaution of the modern farmer to scatter spawn on his fields and turn his mushrooms into cultivated plants. But when the same things are damaged they do not savour enough of the realty to fall within section 52. The result of the decision is to confine the owners of land merely walked over to actions for civil trespass, and to make the customary notices even more *brutum fulmen* than they were supposed to be. It is said that once a learned Judge had some experience on this subject, and that some years ago he had notices put up on his property, "Trespassers will not be prosecuted," with the result that he had to go to a County Court to get an injunction against persons who read his notice as an invitation.—*Law Journal.*

Important Case: The Social Purity Society and the Music Halls.

It will be remembered that at the meeting of the Licensing Committee of the London County Council last autumn Mr. Charles Cory Reed and Mrs. Edith Mary Reed, of the Social Purity Society, opposed the renewal of the license of the Oxford Music Hall on the ground, among others, that Miss Madge Ellis, the leading variety artiste of America, who was at the time starring at the Oxford, appeared on the stage of that hall with bare legs. The lady subsequently commenced an action for slander against the Reeds, claiming £500 damages. As it promised to be the first time in the history of British jurisprudence that a witness before a public body, was sued for slander contained in the evidence given to that body, the hearing of the case was looked forward to by the legal profession with great interest. The action has been settled, however, by the defendants agreeing to all the terms imposed by the plaintiff, including a public apology, the payment of all costs, and a sum of £75. In the apology signed by Mr. and Mrs. Reed they state that they "exceedingly regret that they should have made a statement which has caused annoyance to Miss Madge Ellis, and desire to withdraw their statement and express their sorrow that they should have given evidence upon this point, which they are now satisfied was incorrect."

RECENT ONTARIO DECISIONS.

Important Judgments in the Superior Courts.

Single Court.

Re WEBSTER ESTATE.

[STREET, J., 26TH JAN., 1897.

Appointment of new trustees—Chain of representation broken—Appointment of administrator de bonis non.

Judgment on petition for the appointment of a new trustee under a will, in place of the original trustees, who are dead. Held, that when the surviving executor died intestate, the chain of representation was broken, and the remaining estate can only be properly administered by an administrator, de bonis non, of the original testator, with the will annexed. *Re Merry*, 1 M. & K. 677. Petition dismissed.

* * *

Re McDONALD v. DOWDALL.

[THE CHANCELLOR, 26TH JAN., 1897.

Division Court — Prohibition — Splitting cause of action—Clark v. Barber, 26 O. R. 47, commented on.

J. E. Jones, for defendant Kirkland, moved for prohibition to the Sixth Division Court in the County of Lanark, upon the ground that the claim for $100 interest made in the action is part of a larger claim for principal and interest, and the action is therefore brought in violation of section 77 of the Division Court's action, forbidding

the splitting of a demand, citing *Re Clarke* v. *Barber*, 26 O. R. 47; and also upon the ground that the claim is upon an unsettled account involving an amount over $400. Masten, for plaintiff, contra. Order made for prohibition without costs, following *Re Clarke* v. *Barber*, with which, however, the Chancellor does not agree, because he deems it irreconcilable with such cases as *Dickerson* v. *Harrison*, 4 Pri. 282, and *Atwood* v. *Taylor*, 1 M. & G. 307.

* * *

Trial Court.

COLL v. TORONTO RAILWAY CO.

[ROBERTSON, J., 15TH FEB., 1897.

Damages against a railway corporation for wilful act of motorman in pushing a boy off car—Scope of employment—Liability of master for act of servant.

Judgment in action tried with a jury at the last Toronto Assizes, and brought by Dennis Coll, a newsboy, ten years of age, and by John Coll, his father, for damages for injuries received by the boy by being, as he alleged, pushed off a Yonge street car of the defendants by the motorman, whereby he sustained a permanent injury to his right foot. There was conflicting evidence as to whether he was pushed off the car or fell off without being pushed, and the learned Judge was of opinion that the weight of evidence was altogether in favour of defendants, and he so charged the jury, but they returned a verdict for the father for $103, and for the boy for $800. It was urged by the defendants that the judgment should, notwithstanding the verdict, be entered for the defendants, on the ground that the act of the motorman, in pushing the boy off, as found by the jury, was not within the scope of his authority or employment. The learned Judge discusses the question so raised and the authorities cited, and is inclined to the opinion that defendants cannot be liable, though he does not feel strong enough in that view to warrant him in depriving plaintiffs of the effect of the verdict. Judgment to be entered for plaintiffs after the expiration of one month for the amounts found by the jury with costs.

* * *

EBY v. O'FLYNN.

[FALCONBRIDGE, J.—12TH JAN., 1897.

Trustee for creditors—Breach of trust—Damages—Removal of trustee—Penalties under 52 V. c. 21, s. 20.

Judgment in action tried without a jury at Toronto. Action by the Eby, Blain Company, and Alexander & Anderson, suing on behalf of themselves and all other creditors of the estate of S. F. Weaver of the village of Ormsby, in the county of Hastings, an insolvent, against F. W. O'Flynn, trustee of the estate, for an injunction, account, disallowance of defendant's remuneration as trustee, and of disbursements improperly made, damages for breach of trust, the removal of the defendant from his office, and for a penalty under 52 V. c. 21, s. 20. The learned Judge finds that defendant has been guilty of certain breaches of trust, but acquits him of intentional fraud or wilful wrong-doing. Judgment requiring him to make good certain specific amounts and to pay the costs

of action, and upon his doing so no other relief to be granted against him. J. J. Scott (Hamilton) and J. Scott, for the plaintiffs. Aylesworth, Q.C., and F. E. O'Flynn (Belleville) for the defendants.

* * *

Divisional Court.

REG. v. QUINN.

[MEREDITH, C.J., ROSE, J., MACMAHON, J.—26TH JANUARY, 1897.

Quashing conviction — Proceedings beyond the jurisdiction of convicting magistrates—Absence of accused and of his solicitor when conviction made — Void conviction.

Judgment on motion by defendant to make absolute a rule nisi to quash summary conviction of defendant, a constable, by two justices of the peace for the United Counties of Stormont, Dundas, and Glengarry, for assaulting one of his men. Three justices originally sat, and adjourned after hearing the case, without naming a day to consult the County Crown Attorney as to whether the case was within section 53 of the Criminal Code. Subsequently two of them, who had received a letter from the County Crown Attorney, advising them that they must give judgment or lose their commissions, met at a time and place appointed by the prosecutor, and, in the absence of defendant, and without notice to him or his solicitor, delivered judgment convicting defendant of the assault charged, and inflicting a penalty, and directing him to pay the costs. Held, that this proceeding was wholly beyond the jurisdiction of the magistrates and was absolutely void. Rule absolute, quashing conviction, with the usual protection to the magistrates.

MARSHALL v. CENTRAL ONTARIO RAILWAY COMPANY.

[ARMOUR, C.J., FALCONBRIDGE, J., STREET, J.—26TH JAN., 1897.

Dismissal of servant—Action for wrongful dismissal and slander —Defence of drinking while on duty—What is action of dismissal of servant — Justified action of slander does not lie against corporation.

Judgment on motion by plaintiff to set aside nonsuit entered by Rose, J., in an action for wrongful dismissal and slander tried at Belleville, and for a new trial. The plaintiff was a road-master in the employment of defendants, and was dismissed on account of alleged drunkenness or drinking while on duty. It was shown at the trial that plaintiff, while on duty, went upon an engine of defendants' and accepted a drink of whiskey from the engine-driver. The slander alleged was the accusation of drunkenness. Plaintiff contended that upon the facts shown the dismissal was not justified, and the case should have been allowed to go to the jury. The court held during the argument that slander would not lie against a corporation. Judgment was now delivered as to the wrongful dismissal. Held, that plaintiff was, in drinking whiskey as and when he did while on duty, conducting himself in a way inconsistent with the faithful discharge of his duty to defendants, and in a manner which was prejudicial, or was likely to be prejudicial, to the interests of defendants, and they were therefore justified in discharging him from their service: and moreover in so doing he was concurring in the commission of a crime, and this also was such misconduct as justified his dismissal,

for section 293 of the Railway Act of Canada, 51 Vic., chapter 29, extends to the case of a servant of the company selling, giving, or bartering any intoxicating liquor to or with another servant of the company, and in this case the servant of defendants who gave the whiskey to plaintiff was guilty of a crime under this provision, and plaintiff, in receiving the whiskey, was concurring in the commission of it. Motion dismissed with costs. Clute, Q.C., for plaintiff. W. R. Riddell and Monro Grier for defendants.

* * *

REG. v. MACKEKEQUONABE.

[ARMOUR, C.J., FALCONBRIDGE, J., STREET, J.—10TH FEB., 1897.

Crown case reserved—Superstitious belief of pagan Indian—Sane person convicted of manslaughter although deceased believed to be an evil spirit—Conviction affirmed.

J. K. Kerr, Q.C., for the prisoner. J. R. Cartwright, Q.C., for the Crown. Case reserved by Rose, J., at the Rat Portage Assizes. The prisoner, a pagan Indian, was indicted for manslaughter. The evidence showed that he had shot a man, believing him to be a "Wendigo," or evil spirit. The trial Judge told the jury in his charge that the prisoner was not insane, but had a superstitious belief, which, however, did not justify him in taking human life. The jury found that the prisoner was sane and killed the deceased believing him to be a Wendigo spirit in human flesh, that could be killed by a rifle bullet, and returned a verdict of manslaughter, with a strong recommendation to mercy. The Judge sentenced the prisoner to six months' imprisonment, but reserved this case for the purpose of determining whether, upon the findings of the jury and upon his direction to them and upon the evidence, the prisoner was properly found guilty of manslaughter. The Court answered the question in the affirmative and affirmed the conviction.

* * *

D'IVRY v. WORLD NEWSPAPER COMPANY.

[ARMOUR, C. J., FALCONBRIDGE, J., STREET, J.—9TH FEB., 1897.

Security for costs—Party taking out precipe order for $200 bound by and cannot move to increase the amount.

H. M. Mowat, for the plaintiff, appealed from order of Meredith, J., in Chambers, affirming order of Mr. Cartwright, sitting for the Master in Chambers, refusing to require defendants to file a further and better affidavit on production in an action of libel. The manager of the defendant company objected to produce the file of their newspaper containing the alleged libellous matter, on the ground that such production might subject the defendant company or some officer or member thereof to a criminal prosecution. J. King, Q.C., for the defendants, contra. The Court held that the affidavit on production was made by the proper person; that he had the right to claim privilege and was entitled to it. Appeal dismissed without costs. In the same case J. King, Q.C., for defendants, appealed from order of Meredith, J., in Chambers, affirming order of Mr. Cartwright, sitting for the Master

in Chambers, dismissing motion by defendants for increased security for costs. The plaintiff being out of the jurisdiction, the defendants issued a præcipe order for security of costs, with which the plaintiff complied by paying $200 into Court. The referee in Chambers followed a case of *Trevelyan* v. *Myers*, 31 C. L. J. 284, and held that defendants were bound by their præcipe order, and could not have further security. H. M. Mowat, for the plaintiff, contra. Appeal dismissed without costs, the Court not seeing fit to overrule the case of *Trevelyan* v. *Myers*, or the prior case of *Bell* v. *Landon*, 9 P. R.

* * *

Court of Appeal.

SCOTTISH ONTARIO INVESTMENT CO. v. CITY OF TORONTO.

[MEREDITH, C.J., ROSE, J., MACMAHON, J.—26TH JAN., 1897.

Action for damage to elevator from impure water—Defence of "not guilty" by statute by a municipal corporation—Action for breach of contract and not in tort—Statutory defences not applicable and cannot be raised.

Judgment on appeal by defendants from judgment of Robertson, J., upon a special case submitted as to the right of the defendants to plead "not guilty" by statute. The action was for damages sustained by plaintiff by reason of sand and gravel in the water supplied to plaintiffs for the hydraulic elevator in their premises, known as York Chambers, in Toronto street in the city of Toronto. In consideration of the payment of a specified sum, as the plaintiffs allege, defendants agreed to supply them with pure water. The questions involved are whether the defendants are in the position of a justice of the peace, and can raise under the above plea, under R. S. O. ch. 73, secs. 1, 13, 14, and 15, the defences that the acts complained of in the statement of claim were not done maliciously and without reasonable or probable cause; that such acts were done by defendants in the execution of their office; that this action was not commenced within six months after acts complained of were committed; and that notice of action was not given within one month before action. Counsel contended that on the statement of claim, as drawn, the action was for a tort, and the plea proper. Held, that the plaintiffs' action, as set out in the statement of claim, was for breach of contract, and upon principle and authority no one of the statutory defences set up was applicable, or could be pleaded in such an action. *Corporation of Bruce* v. *McLay*, 11 A. R. 47; *Davis* v. *Mayor of Swansea*, 8 Ex. 808; and *Midland Railway Co.* v. *Local Board of Wittington*, L. R. 11 Q. B. 788, specially referred to. Appeal dismissed with costs. Fullerton, Q.C., and W. C. Chisholm for appellants. H. M. Mowat for plaintiffs.

DUTIES OF INNKEEPERS.

A novel and important question with regard to the duties of innkeepers was raised in a case which was decided in the Queen's Bench on Friday. It arose out of an action brought by a lady against

the proprietors of a Brighton hotel for unlawfully expelling her from their hotel. The plaintiff, it appears, went to the hotel in November, 1895, and remained there continuously till August 31st, 1896, on which day she went out for a short time, and on her return was refused admittance. It was not alleged that she had failed to pay her bill, or that there was not accommodation for her. The justification put forward on behalf of the proprietors of the hotel was that she was subject to certain delusions, and interfered with the comfort of the other inmates of the hotel, but the County Court Judge held that her conduct had not been sufficient to justify the hotel authorities in refusing to allow her to remain. He held, however, that as she had ceased to be a "traveller," having stated herself that she intended to remain at the hotel till it was burned down, the proprietors were not bound to allow her to remain. This decision was appealed against, and on behalf of the plaintiff it was argued that the common law obligation on an innkeeper to take in "travellers" was not limited, but that it extended to those who might more properly be called "guests"—that is, persons who had no immediate intention of travelling. It was also argued that if at a certain period in his stay a visitor lost the status of traveller, the innkeeper must at the same time lose the common law privileges which were correlative to the obligation to receive guests.

On the other hand, Mr. Asquith, on behalf of the defendants, maintained that the plaintiff's claim amounted to a claim of a sort of freehold interest in the hotel. Her position would be better than that of an ordinary tenant, as she would enjoy fixity of tenure, and her occupation would only be terminable by mutual consent. Justice Wright had no difficulty in holding that the obligation to receive a guest existed only in the case of a "traveller," and found for the defendants; but he said the question was one of considerable importance, and granted leave to appeal. The question may therefore be still further discussed. To the ordinary non-legal mind, which would decide a question of the kind by considerations of expediency and not by rules of law, the most remarkable feature of the case is, that it should require the united wisdom of a Judge and two Queen's counsel to dispose of a claim which on the face of it seems so absurd. That a man should have a right to remain in a hotel for life seems so ridiculous an idea that it is strange to find it seriously put forward in a court of justice. The truth of the matter is that the case is an illustration of the manner in which the law or rather its elucidation often lags behind the development of custom. In the olden times an inn was never considered anything but a temporary lodging. Men were known to express the desire to die in an inn, but no one was ever heard to wish to live there. There, perhaps, they found their warmest welcome, there did they love to take their ease, but permanent occupation was undreamt of. The result is that when the legal customs of those days have to be applied to the case of a lady who expresses the intention of staying in an hotel till it is burned down the whole machinery of the law has to be set in motion.—*Scotsman.*

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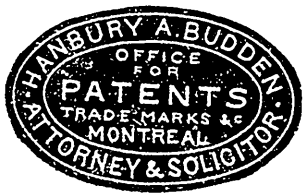

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