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DIARY FOR APRIL.

2. Sun... *Palm Sunday.*
3. Mon.. Co. Ct. term begins. Co. Ct. sitt. without Jury (ex-York) begin.
4. Tue... Census commenced, 1881.
5. Wed... Canada discovered, 1499.
7. Fri... *Good Friday.*
8. Sat.... Sup. Ct. Act assented to, 1875. Co. Ct. Term ends.
9. Sun... *Easter Sunday.*

TORONTO, APRIL 1, 1882.

Nasmith v. *Manning*, 5 S. C. R. 417, can hardly be said to be a satisfactory decision. Mere numbers are not, of course, a test of the value of a judgment, but when it is found that a decision is adverse to the opinions of no less than three Chief Justices and Mr. Justice Gwynne, one's confidence in its soundness cannot but be somewhat shaken. The Judges in favour of the appellant were, Hagarty, C. J., Gwynne, J. (when in the C. P. and afterwards as a Judge of the Supreme Court), Moss, C. J., and Ritchie, C. J. Against this array of legal luminaries are found, Burton, Morrison and Patterson, JJ. A., and Fournier, Henry and Taschereau, JJ. S. C. It is not surprising to learn, without intending any disrespect to the majority Judges, that a contemplated appeal to the Privy Council was arrested by a compromise.

WHEN speaking recently of the legislation of last Session, a few words were inadvertently dropped out of a sentence, changing the sense. Chapter 20 of the statutes referred to extends the operation of the Fire Insurance Policy Act to interim receipts and verbal contracts for insurance. It was chapter 20 of 44 Vict. that made the Insurance Policy Act applicable to Mutual Companies.

In addition to the Acts referred to in that article, attention may be called to chapter 7, which applies certain sections of the Division Court Act of 1880 to the Districts of Nipissing, Muskoka, Parry Sound and Thunder Bay. The statute also makes provision for the appointment of deputies in the absence of clerks and bailiffs, and directs clerks to give notice to plaintiffs of the return of ***nulla bona*** on any execution issued on a transcript of judgment.

A novel publication reaches us from the publishers of the *Albany Law Journal*, called the Index-Reporter. It is to be published monthly, and is a cross between a digest and and an index, and is intended to contain a note of all cases reported during the month preceding publication, in the various courts of England, Ireland, and America. It purposes to collect and arrange all these decisions as fast as they appear. The reference to the contents of each case is of course very short, but, so far as we can see is sufficiently full to give a good idea of the points decided. It does not pretend to be a rival of the digests, being intended rather as auxiliary to them, and to give "a comprehensive glance at the whole field of adjudication for the preceding month." The idea is a good one, and if well carried out cannot fail to be very useful in these busy days. It should have a ready sale at the small annual charge of $5.00.

We are indebted to the veteran Law Clerk of the House of Commons, G. W. Wicksteed, Esq., Q. C., an old and valued friend of this journal, for a copy of his classified table of public general statutes of Canada, wholly or partly in force at the end of the session of 1881, with notices of those repealed,

expired, or effete. Whatever Mr. Wicksteed does is well done. But not merely are we glad to see his handiwork on this occasion for its own intrinsic merits and usefulness, but because these tables of his seem to foreshadow some work on the consolidation of the statutes applicable to the Dominion. Mr. Cockburn has a herculean task before him which should be pushed forward with energy. We confess what with conflicts between federal and provincial rights, questions of jurisdiction without end, disputes as to boundaries, and consolidation of laws perpetually changing, one feels for this youthful Dominion much the same as for the traditional "young ducks whose troubles are just beginning."

MR. Z. A. LASH, Q. C., who some time since succeeded Mr. Hewitt Bernard, Q.C., Deputy Minister of Justice, has resigned his position, and enters again the active practice of his profession. He will be much missed in Ottawa, but will be welcome in Toronto. He was a very efficient public servant, discharging with fidelity and satisfaction the responsible duties of his office. There are few positions harder to fill with advantage to the public and usefulness to the Chief Minister, than that of Deputy Minister of Justice, and every day, as constitutional questions come to the front, there is greater need for a first-rate man ; whilst, of course, in such a position the best lawyer would be practically useless if he were not also a courteous, intelligent and prompt man of business, in whose discretion and ability his chief would have implicit confidence. The man who worthily fills the place of Mr. Bernard *(facile princeps* in the position he occupied) and Mr. Lash, will be one hard to find.

We speak of Canada being a much governed people, with its nearly two dozen "estates of the realm." But we have not heard of a much more judged district then at present presided over by Mr. Justice McCreight, at Cariboo. A correspondent states that there is an adult population of 19, to be looked after by a full fledged, and we believe, learned and competent judge of the Supreme Court, who has been banished from the capital, and divorced from the rest of the court. During the past year, his work is said to have consisted of trying some ten County Court cases. One could almost suppose that this high average of suits to the population, was brought about by the learned judge setting this seething population by the ears, just "to keep his hand in." The government, however, on the Pacific coast do things in a peculiar way. Take another example. Instead of the judges making their own rules of practice, as is usually the case, the Attorney General, under the name of the Lieut.-Governor in Council, takes the task upon himself. If he attended to his own sphere of labour, and let the judges attend to theirs, things would probably be better done

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The changes now being effected in connection with Osgoode Hall Library, are, like all great revolutions, accompanied by considerable suffering to those accustomed to the old order of things. The removal of some of the tables to the room down stairs would no doubt be generally welcomed, provided the gentlemen who are in the habit of doing office work on these tables, were sufficiently closely attached to them to go with them. The unfortunate thing is that the tables go, but a great proportion of the gentlemen in question appear to remain ; and we fear it will be very difficult to extend the eliminating process beyond the tables themselves, unless a room be found up-stairs for the benefit of those who have such work to do. It must be, no doubt, extremely inconvenient to have to go up-stairs to the library whenever it is necessary to refer to a book on practice, or to a volume of the reports. It is disappointing too, to find that although clerks do not "follow tables,"—though

it would be expedient that they should do so,—yet tables follow Benchers', when it would be, we venture to think, very desirable that they should not do so. Thus those who hoped that the old Benchers' rooms would henceforth afford a quiet corner for real study are apparently doomed to be "crushed again," as Lady Jane says in "*Patience.*" So far as we can gather, the intention of the Benchers with reference to these two rooms, is to use them as a test of how much the profession will *stand.*

ADMINISTRATION OF JUSTICE IN BRITISH COLUMBIA.

IN our number of January 16th, under this heading we had reached a point in the judicial history of British Columbia at which all the County Court work was sought to be compulsorily imposed by the Province on the Supreme Court Judges, which had been previously only conferred upon them by a clause in an old B. C. ordinance, as a discretionary power which they might and did use in cases of emergency. The County Court laws and system remain unchanged, running parallel and side by side with the Supreme Court system.

As we understand it, under the existing County Court laws, the Dominion could at any time appoint as many County Court Judges as it chose, for what districts it liked, and these could at this moment enter at once and discharge all the County Court duty of that very interesting but persistent Province, and relegate the Supreme Court Judges back to their Supreme Court duties alone.

The five—we believe that is the number,—at all events all the County Court Judges were pensioned off at two-thirds of their actual salaries, and it was done in a handsome manner too, which ought to count one for us with our fair sister, and no doubt will. But instead of the ordinary plan of replacing them by as many, or even a somewhat reduced number of lawyers as County Court Judges, the Province, or the Governor-General, or both combined, or some authority, we cannot quite tell what increased the number of Supreme Court Judges from three to five by the elevation to the Bench of two gentlemen out of the B. C. Bar.

Surely Canada might be supposed to exclaim, the waters that run down from Alaska must wash the shore of a happy and contented people in B. C.! They have an ample amount of learned and experienced judges; one single court in the country which combines in itself all possible jurisdictions in one, which is not divided in any way by fancy courts, or sub-courts, or side courts. Like the Utopian courts we read of in the poets, the Pacific Columbians have their one court for everything—"*teres atque rotundus*,"—one set of judges for all laws, all people and all occasions. They must surely be contented and happy now. Not quite, as we shall presently see.

A fashion seems to have set in about that time for codifying laws and enacting "great and comprehensive measures." It was *de rigueur* to unify conflicting institutions. And the B. C. Government appears to have caught the soft infection in a form decidedly peculiar, which probably, with some of our readers, will evoke a smile. This Bill was the result. It was ushered in with a great flourish of trumpets by the Lieutenant-Governor of that day in a speech from the Throne as a measure which should "reconcile conflicting jurisdictions" in B. C., abolish the hardships "suitors necessarily experienced in being driven from one court for the relief they sought to another." The fact was, as the B. C. statutes plainly show, that such conflicts in that Province were impossible, as there had always been but *one* Supreme Court, uniting in itself all jurisdictions, and having for a long series of years but one judge, who could not well conflict with himself. We wonder if the Legislature ever heard of the multitudinous bird that in the perplexed

brain of Lord Dundreary was thought to "flock by itself."

Now there were good principles in the Bill which the Judges heartily supported, and had previously advocated, for it gave statutory force to several rules of law which had long been already acknowledged by the Courts, and added a very important statutory rule that where Common Law and Equity conflicted the latter should prevail. The common lawyers were propitiated by commencing the action by writ of summons. The statement of case did duty for a declaration, and thenceforward the statement of reply and all the subsequent proceedings went on under the same rules and with the same, or nearly the same practice as a Bill in Equity. Two or three clauses would have done all that was useful or necessary.

As the matter reads to us, but for the Judges the Bill would certainly have had a decided tendency to create these conflicts, for as it at first stood the Judicature Bill divided the one Supreme Court into a number of separate courts called Divisions or Sides, with a special jurisdiction to each, and, judging from the Bill and the correspondence, the Bill made very careful preparations for inaugurating and perpetuating diversity of judicial views, and destroying rather than encouraging uniformity of decision. The Bill was handed to the Judges for their observations. They appear to have taken it in hand very heartily and vigorously, and in, it is said, the short space of four days altered it to what it is now, with the exception of two sections, 14 and 17, which they did not succeed in changing. The former of these, section 14, affected to make commissions of Oyer and Terminer and general gaol delivery unnecessary in trying criminals; that, they said, probably interfered with the criminal procedure. The latter, section 17, conferred on the Lieutenant-Governor in Council *exclusive* power to make Rules of Court to carry out the Act, for the holding of Assizes, Circuits, Chamber Practice, and relegating to them even the power of imposing taxes on suitors by way of fees; in fact, taking every authority over practice and procedure out of the hands of the Supreme Court Judges, who had held them from time immemorial, as a common law right, interfering with their costume, abolishing their long vacations, and even going so far as to require them to copy out minutes of evidence for suitors. The Judges, after remodelling all the Act, including two clauses 14 and 17, as nearly as possible according to the scheme laid down by the Local Legislature for adoption, next volunteered their services to draw up the Rules of Court by which the Act was to be carried out. In truth, the Judges throughout seem to have endeavoured to aid the authorities in their desire for the better administration of justice, though calling attention to and at last protesting against what they pointed out as calculated to defeat the very objects themselves at which the Legislature declared they aimed. One singular feature presented itself which could not have occurred in any other Provincial Legislature in the Dominion, that is, that there was only one lawyer, and has been only one for the last four years, in the B. C. Local House, and he combines in his own person the office and duties of Chief Commissioner of Public Works, Attorney-General and Premier, so that not only has there been no opportunity of debating, by professional men, in the House the legality or constitutionality of any Bill introduced in the Legislature, but here is the danger of undue pressure from supposed political necessities.

Under these circumstances it need scarcely be a matter of astonishment that some of the measures so passed, should fail to hold their own when exposed to the crucial tests of the Courts. Despite protests of the Judges, however, the act came into force, and it is out of the application of section 17 and some other Acts and sections we shall cursorily refer to, that the present contention in the B. C. Court has arisen.

The *Thrasher Case*, to which we have heretofore referred, brought these matters before the Court. It went to the Supreme Court at Ottawa, but was sent back from them expressly to obtain the opinion of a majority of the judges at Victoria, before that higher court would entertain their application to appeal. Upon an application being made by counsel to be heard by the full Court mentioned in the Judicature Act, and the Local Administration of Justice Act, 1882, the judges set to work to consult the "Rules" which had been made by the Lieutenant-Governor in Council, (the B. C. Government) to ascertain the earliest day at which the case in question could be heard, so as to forward the matter in appeal to Ottawa; preparatory, of course to going on to the Queen in Council. The Supreme Court Rules, 1880, had been enacted to have statutory force under sec. 32 of the Local Administration of Justice Act, 1881, but that also delegated at the same time an *exclusive* power to the Lieut.-Governor in Council, to make and vary new rules, or vary or amend the Supreme Court Rules of 1880, from time to time at discretion.

In the presumed exercise of this discretion, there was issued a copy of a report of the B. C. Committee of Council (and an Order in Council), as required by the Act, in which a full Court had been set for the 9th December in these words:—

Rule 400 (*i.e.* of the Supreme Court Rules, 1880) is hereby repealed, and the following substituted therefor:—

400 A.—A full Court shall consist of not less than three judges of the Supreme Court sitting together. An appeal shall lie to such Court (from specifying whatever may be appealed).

It then repeals a rule of the Supreme Court, and substituted the following therefor:—

401 A.—Sitting of the full Court shall be held in February, for the year 1881, on Monday the 19th December.

The *Thrasher Case* came on before three of the B. C. judges, the Chief Justice, Mr. Justice Crease and Mr. Justice Gray, on a motion for a new trial, but after the proceedings were opened, the hearing was adjourned out of defference to the presumed wish of the executive, until Monday, the 19th December last. On that day (Mr. Justice Robinson having died in the interval, of an accident in circuit, and Mr. McCreight being away in the mountains of Cariboo), the three remaining judges sat. It was then argued that they could not sit there, as a full Court, under rule 400 A., among other reasons for the following:—

1.—That the amendment of the Supreme Court Rules, 1880, was merely a copy of the Report of a Committee of Council, not an Order in Council, which by the construction of the statute was required.

2.—That had it been technically an "Order" in Council, it was ostensibly made in pursuance of sec. 32 of the B. C. Act of 1881, and was therefore invalid, as it professed to be in exercise of a power delegated to the executive, to repeal the Supreme Court Rules, 1880, which the legislature had by the same section erected into a statute. These led inevitably to the larger question which counsel formally raised.

3.—Can the Local Legislature of B. C. make rules of practice and procedure, or in any way interfere with the Supreme Court of B. C., or the judges thereof, under the B. C. Terms of Union, and the British North America Act, 1867: or delegate the power to any other body except the Supreme Court judges—and are not these judges the Common Law depositary of that power? The further argument of that question was adjourned to Thursday, the 5th of January last, to enable the Attorney General, to whom the points were new, to look into the case.

The tripartite questions were very fairly formulated by the Chief Justice, Sir Matthew B. Begbie, we are told, at the request and for the benefit of the Attorney General, very much to the following effect:—

1.—Has the Provincial Legislature power under the B. N. A. Act, 1867, to interfere in any way with the procedure in Superior, District, or County Courts?

2.—If they have such a power, can they exercise it directly, or only by the accustomed channels?

3.—If the Provincial Legislature have the power, and may exercise it by their own deliberation and vote, can they delegate the power to any other body, as is attempted to be done by s. 17 of the Act of 1879, and s. 32 of the Act of 1880. In other words—Are those sections constitutional?

(*To be continued.*)

RECENT DECISIONS.

We can now proceed to the February numbers of the Law Reports, which comprise 19 Ch. D. p. 61—p. 206, and 8 Q. B. D. p. 69—p. 166.

PRACTICE—CONDUCT OF PROCEEDINGS.

The first case, *in re Hopkins*, p. 61, has reference to a point of practice. Next of kin commenced an action for administration against an administrator *cum testamento annexo*, and obtained an order for the administration. Afterwards it became necessary for the said administrator, in his capacity as such, to institute a suit for administration of another estate, and he also obtained an order for administration. A short time after, he became bankrupt. The plaintiffs in the first action now applied for a receiver to be appointed of the estate of their testator, and also for liberty to themselves continue the second action. The Court of Appeal held both parts of the application should be granted, for (i.) whether the administrator's conduct had been fradulent or not, it was not fit that a man who is a bankrupt should continue to be a trustee without the consent of the *cestuis que trust*, therefore it was right a receiver should be appointed; (ii.) the administrator, having become bankrupt, could not be allowed to carry on a suit in which he was plaintiff; therefore the plaintiffs in the other action or else the receiver must carry it on, but the conduct of an action is now never given to a receiver.

CONTRACT—"UNAUTHORIZED" BUT NOT "ILLEGAL."

In the next case, *in re Coltman*, p. 64, the Court of Appeal held that where the trustees of a Friendly Society had loaned money on a promissory note of a non-member, this, although unauthorized by the Act, was not rendered illegal thereby; and since it was not competent to the makers of the note to allege by way of defence that the payees had no authority to lend the money, the trustees could recover against the estate of one of the makers, who had died. Jessel, M. R., observes, p. 69,—"There is nothing in the Act which directly or indirectly prohibits the lending on personal security, beyond the fact that it gives the trustees no authority to do so, and that their doing so would therefore be a breach of trust. I cannot find anything in the Act which could prevent all the members from effectually authorizing a loan on such security, though a mere majority could not do so. There is, therefore, nothing that I can find in the Act of Parliament which makes the loan illegal."

BAILOR AND BAILEE—JUS TERTII.

In *ex parte Davies*, p. 86, after the filing of a liquidation petition, an auctioneer took possession of the chattels comprised in a bill of sale, on the instructions of the holder thereof, and advertised them for sale. The intended sale was, however, stopped by an injunction, and the trustee in bankruptcy asserting his claim, the auctioneer, on his instructions, advertised the goods as for sale by his order. The sale took place, and the auctioneer having received notice from the holder of the bill of sale not to pay the proceeds over to the trustee, refused to do so. The trustee now applied to the Court of Bankruptcy for payment to him. The Court of Appeal held

the auctioneer was estopped from denying the title of the trustee. "I am of opinion," said Lush, L.J., "that when a person in such a position, knowing of two adverse claims to goods, elects to take the part of one of the claimants and sell the goods as his, he is estopped from afterwards denying that claimant's title. * * * * In the present case the auctioneer deliberately elected to sell the goods for the trustee, with full knowledge of what the title of the adverse claimant was." "As a general rule," said Jessel, M.R., "a bailee of goods cannot dispute the title of his bailor. There are, no doubt, cases in which goods have been taken from a bailee by a third party, who claimed them by title paramount, and, if there has been no fault on the part of the bailee, it has been held that this is a good excuse to him against his bailor. An illustration of this in the old case of *Shelbury v. Scotsford*, Yelv. 22. * * * * But in order that the bailee may be able to avail himself of such a defence, he must himself have been in no default. * * * He (the auctioneer) has by his own act precluded himself from setting up the adverse claim of the bill of sale holder."

BILL OF SALE—CONSIDERATION.

In *ex parte Rolph*, p. 98, the Court of Appeal held that a bill of sale of chattels was void as against the trustee in liquidation of the assignor, inasmuch as the consideration was not truly stated in the deed, as required by Imp. 41-42 Vict., c. 31, s. 8 (cf. R. S. O. c. 119, ss. 2, 5); since (i.) part of the consideration named was not paid to the assignor but only agreed to be paid on his behalf; as to which Jessel, M.R., said, p. 102—"The consideration was so much money then paid by the lender to the borrower, and a covenant or agreement by him to pay a further sum at a future day to some one else, and that ought to have been stated in the deed;" (ii.) even if this part of the consideration named were taken to have been paid to the assignor, it was not paid "at or before the execution" of the deed, as therein stated, but was in fact paid a week after the date of the deed.

WITNESS—REFUSAL TO ATTEND.

In *Whitworth's* case, p. 118, the Court of Appeal affirmed the proposition that the only possible ground on which a witness, summoned under the order of the Court to attend and be examined, can base a refusal to attend and answer proper questions, is that the Judge had no jurisdiction to order him to attend. "It may be disagreeable to him to be obliged to attend, but the performance of the duties entailed upon us as members of civilized communities is not always agreeable."

MORTMAIN ACT.

In re Robson, p. 156, involved a very peculiar question arising in connection with the Mortmain Act, 9 Geo. II., c. 36. By various instruments executed at the same time, (i.) a settlor, after declaring some prior trusts, gave his wife power of appointment by will over £20,000, and covenanted to pay over the money to the trustees of the settlement within twelve months; (ii.) the wife by will appointed the £20,000 to trustees on trust to pay certain legacies, and the residue as she should by deed appoint; (iii.) the wife by deed-poll appointed the residue to charitable uses. The settlor survived his wife and died without having paid the £20,000. At his death part of his estate consisted of impure personalty, viz.: £350 secured by a legal mortgage, and £13,700 secured by an equitable mortgage; and part of his estate consisted of pure personalty, which however did not suffice for payment of the £20,000. The question was whether the impure personalty could be resorted to for payment of the charitable dispositions in the wife's will. The Court of Appeal held that it could. Jessel, M.R., says, p. 160—"Though the deed seems to have remained in the man's possession, he was liable to pay this money within twelve months. * * * It was no doubt a debt created without value, but still it was a debt, and, as the law now stands, a debt for all purposes. * * * Within the twelve months he might have called in the mortgage and have received the money, and, that being so, it seems to me that there is no

objection to paying that debt after his death out of his assets, real and personal. * * * * There is nothing devoted in any shape to land or to an interest in land, or kept out of the power of alienation which it was the real object, or one of the real objects, of the statute to keep always in view, and, looking at the nature of the transaction, there is no ground whatever upon which this debt can be refused payment out of the assets." He then proceeds to review at great length, and distinguish *Jeffries* v. *Alexander*, 8 H. L. C., 594, and observes that there were there two circumstances, absent from the present case, and which were treated as the real grounds of the decision, viz.; (*a*) the testator's assets were almost entirely real, and he knew that the charities could not be provided for except out of the real assets; (*b*) the form of the instrument was such that no action could be brought upon it in the lifetime of the settlor, and it only provided for payment if he thought fit. It may be added that in this case of *in re Robson* the Court also held that a direction to hire rooms, the charity in question being for the purpose of providing poor women with rooms, did not bring the gift within the Mortmain Act (p. 166).

TIME—"FORTHWITH."

Ex parte Lamb, p. 169, shows that when an act is required by a statute or a rule of Court to be done "forthwith," the word "forthwith" has not a fixed and absolute meaning, but must be construed with reference to the objects of the rule and circumstances of the case.

SPECIFIC PERFORMANCE.

The next case, *Burrow* v. *Scammell*, arose out of circumstances "of somewhat unusual occurence" p. 180. Defendant agreed to let and plaintiff to take certain business premises for one year, with option of having a longer term at the end of it. The plaintiffs went into possession, and expended money on alterations, but when, at the end of the year, they expressed a wish for a longer term, it was found that the defendant was only entitled to one moiety of the premises, the other being vested in her son, a minor. The mistake of the defendant was perfectly innocent. The plaintiffs claimed (i) specific performance to the extent of the defendant's interest, with proportionate abatement of rent: (ii) an enquiry as to damages. Bacon, V. C., granted the former relief, but refused the latter. He in this acted on the principles laid down by Lord Eldon in *Mortlock* v. *Buller*, 10 Ves. 292, which he says is now to be treated as settled law, viz. that under such circumstances as these,—"If the vendee chooses to take as much as he can have, he has a right to that, and to an abatement, and the court will not hear the objection by the vendor that the purchaser cannot have the whole." The V. C. also observes,—"It cannot be disputed that Courts of Equity have at all times relieved against honest mistakes in contracts, where the literal effect and specific performance of them would be to impose a burden not contemplated, and which it would be against all reason and justice to fix upon the person who, without the imputation of fraud, has inadvertently committed an accidental mistake; and also where not to correct the mistake would be to give an unconscionable advantage to either party. But no case has been referred to, nor, as I believe, can be found, in which the mistaking party has sought for, or could derive any advantage beyond the mere relief from the burden. * * * * To refuse the relief they (the plaintiffs') claim would leave them without protection, and probably expose them to considerable loss, and this for no other reason than that the defendant has made a mistake. The defendant would acquire the right of determining the possession of the plaintiffs at her mere will, and it would confer upon her an advantage wholly unconscionable and inconsistent with the terms of her contract." As to the claim for damages the V. C. said that he found no damage had been sustained beyond the sums which the plaintiffs must

have laid out under any circumstances in advertisements and the matters connected with their business, and "you cannot anticipate damages."—p. 180.

WILL—"SURVIVOR OR SURVIVORS."

In the next case, *in re Horner's estate*, a testator left his estate to trustees to pay the income to his four chilrden during their lives, and, in the event of any one or more of his said children dying without leaving children who should attain twenty-one, then he directed that the share of such of them so dying should be in trust for the "survivor or survivors" of his said children during their lives, and after their deaths, their respective shares should be in trust for their respective children, and the heirs, executors, administrators, and assigns of such children. There was no gift over. Hall, V. C. held, that the words "survivor or survivors" must be so read, and not as "other or others," so that the issue of a child, who had predeceased the other three children of the testator, were excluded from inheriting the shares of the said other three children on their dying without issue. He said that looking at all the authorities and all the opinions expressed by the judges, he thought he ought to hold that when the sole circumstance to be relied upon is the fact of a gift to survivors for life with remainder to children, the word "survivors" must have given to it its natural and ordinary meaning,—although in *Lucena* v. *Lucena*, L. R. 7 Ch. D. 255 the M. R. calls this a manifestly absurd view leading to manifestly absurd consequences. In the course of the judgment *Wake* v. *Varah*, L. R. 2 Ch. D. 348 is cited, where Baggalley, L. J., held that where there is a gift over on a total failure of issue, the word "survivors" must be read "others."

NUISANCE—REVERSIONER.

In *Cooper* v. *Crabtree*, p. 193, the plaintiff was owner in fee of a cottage, which was let to a weekly tenant. He alleged against the defendant (i.) trespass, in that the defendant had erected on his land a hoarding on poles, etc.; (ii.) nuisance, in that the poles and hoarding produced a constant rattling and creaking noise, and thus caused an intolerable nuisance to him and his tenants. Fry, J. held (i.) plaintiff failed as regarded the trespass, for—"it is familiar law that an action of trespass cannot be brought by any person except the person in possession:" (ii.) plaintiff failed as regarded the nuisance, for it was necessary for him to show either actual injury to the reversion, or that the erection was of such a permanent nature as to be necessarily injurious to the reversion. "Perhaps in substance these two things are the same," p. 198. He had shewn neither. As a recent case in our courts of alleged nuisance arising from noise we may refer to *Hathaway* v. *Doig*, 28 Gr. 461: 6 App. 264.

WILL—COUSINS.

In the last case in this number, *in re Bonner*, p. 201, the testator made by his will an anxious provision for his "second cousins." As a matter of fact, at the date of the will he had no second cousins, nor had he any at his death; but he had no less than eleven first cousins once removed living at the date of his will. Chitty, J., followed *Slade* v. *Fooks*, 9 Sim. 386, in holding that "on a fair consideration of the will with reference to the facts as proved," the first cousins one removed were entitled.

We can now proceed to the February number of the Q. B. Div., comprising 8 Q. B. D. p. 69-166. Curiously enough, however, there appears to be only one case in this number requiring notice here, viz.: *Rosenburgh* v. *Cook*, p. 161, those cases referring to practice contained in it having been already noticed among our Recent English Practice Cases.

VENDOR AND PURCHASER—SALE OF POSSESSORY TITLE.

In *Rosenberg* v. *Cook* the Court of Appeal decided that, where a vendor sold land described in the particulars as "freehold building land," and the purchaser did not object to the title until after the time limited by the conditions of sale, although notified by

the conditions of sale of the conveyance under which the vendor held,—viz. a void conveyance from a railway company,—the purchaser forfeited his deposit on refusing to complete, notwithstanding that the vendor had only a bare possession, and was assuming to sell by a right similar to that of a disseisor or trespasser. Jessel, M. R. says,—"The title of a disseisor is in this country a freehold title, and therefore, although the vendor had a very bad title, and a title liable to be defeated, he had still a title good against all the world, except against those who might be proved to have a better one. * * * The simple fact is that the vendor had a possession in this case, so that a fair sale of that possession is perfectly good." And Brett, L. J. adds,—"If the defendant had had nothing, or if he had had only a revocable license or easement, then, as he professed to sell freehold land, what he professed to sell would not correspond with that which the plaintiff bought." Two of the judges also observed that it was not necessary to decide whether or not the vendor had sufficient possession to ripen into a title under the statute of limitations, though they were of opinion that he had.

The March numbers of the Law Reports are now reached, comprising 8 Q. B. D. p. 165-318; and 19 Ch. D. p. 207-310, the former of which we propose to review in part in our present issue.

ACTION FOR MALICIOUS PROSECUTION.

Hicks v. *Faulkner*, p. 167, being the argument of a rule for a new trial, on the ground of misdirection in an action of malicious prosecution, contains a long and instructive judgment of Hawkins, J., upon the nature of such an action, of which the following summary, framed for the most part in the actual words of the learned Judge, appears to give the drift:—To succeed in an action for malicious prosecution, the plaintiff must allege and establish two things: (i.) absence of reasonable and probable cause, and (ii.) malice. The affirmative of these allegations is upon him. Failing to establish *both* of them, he fails altogether. (i.) Reasonable and probable cause may be defined to be—"(*a*) An honest belief in the guilt of the accused, (*b*) based upon a full conviction, (*c*) founded upon reasonable grounds, of the existence of a state of circumstances, (*d*) which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed." The question of reasonable and probable cause depends in all cases, not upon the actual existence, but upon the reasonable *bona fide* belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of—no matter whether this belief arises out of the recollection and memory of the accuser, or out of information furnished to him by the accused. And the distinction between facts proper and fit and admissible as evidence to establish actual guilt, and those required to establish a *bona fide belief* in guilt, should never be lost sight of in considering cases of alleged malicious prosecution. Many facts admissible to prove the latter would be wholly inadmissible to prove the former; (ii.) as to malice, though it is true as a general proposition, that want of probable cause is evidence of malice, this general proposition is apt to be misunderstood. In an action for malicious prosecution the question of malice is an independent one—of fact purely—and altogether for the consideration of the jury, and not at all for the judge. The malice necessary to be established is not even malice in law such as may be assumed from the intentional doing of a wrongful act (see *Bromage* v. *Prosser*, 4 B. & C. 255, per Bayley, J.); but malice in fact—*malus animus*—indicating that the party was actuated either by spite or ill-will towards an individual, or by indirect or improper motives, though these may be wholly unconnected with any uncharitable feeling towards anybody. Want of rea-

sonable cause is for the judge alone to determine, upon the facts found for the jury; as evidence of malice it is a question wholly for the jury, who, even if they should think there was want of probable cause, might nevertheless think that the defendant acted honestly and without ill will, or any other motive or desire than to do what he *bona fide* believed to be right in the interests of justice—in which case they ought not to find the existence of malice. Thus although it is an anomalous state of things that there may be two different and opposite findings in the same cause upon the question of probable cause—one by the jury and another by the judge—such is at present the law.

NEW TRIAL—VERDICT AGAINST EVIDENCE.

In *Solomon* v. *Bitton*, p. 176, the Court of Appeal held that the rule on which a new trial should be granted on the ground that the verdict was unsatisfactory as being against the weight of evidence, ought not to depend on the question whether the learned judge who tried the action was or was not dissatisfied with the verdict, or whether he would have come to the same conclusion as the jury, but whether the verdict was such as reasonable men ought to have come to.

WINDING UP—SET OFF.

In the *Ince Hall Mills Co.* v. *Daylas Forge Co.*, p. 179, the question for decision, stated broadly, was, whether in an action brought by a limited company in the course of compulsory winding up by the court for the recovery of the price of the goods delivered by the company *after* the commencement of the liquidation, but in execution of a contract entered into before liquidation, it is competent to the defendant to set off against this debt a debt due to him from the company incurred prior to the liquidation. Watkin William J. held that the set off was not allowable. He said the rights of the parties depended upon whether the debts which were sought to be set off one against the other, were mutual debts between the same parties and in the same interest; and he held they were not. For from the moment of the winding up the company is stopped as an independent going concern; every transaction entered into by it from that moment is void, unless sanctioned by the court; and if it be allowed by the court to continue to carry on its business and enter into or complete transactions, it does so in a new interest and a new capacity, and solely for the purpose of winding up its affairs in the interest of its creditors and shareholders, except in one class of cases having no application to the present, viz., where transactions *bona fide* executed and carried out between the petition and the winding up order may in the discretion of the court be ratified and confirmed. While the practical effects of the defendants' contention would be that the company by a transaction which is void, unless sanctioned and ratified by the court, would be paying one creditor in full out of the assets of the insolvent company in preference to the other creditors.

LARCENY—MONEY DEMANDED WITH MENACES.

In *Reg.* v. *Lovell*, p. 185, the court for C. C. R. followed *Reg.* v. *M'Grath*, L. R. 1 C. C. R. 205, in holding that when A. obtains money from B. by menaces, A. is guilty of larceny, even though some money be owing to A. from B. for work done.

SOLICITOR—UNQUALIFIED PRACTITIONER.

In the next case *Abercrombie* v. *Jordan*, p. 187, the Court of Appeal held that an unqualified person who acts as a solicitor commits an offence against 6-7 Vict. c. 73, s. 2 (R. S. O. c. 140, s. 1) though he acts in the name and with the consent of a duly qualified solicitor. The offender here was an accountant, who, so far from being a solicitor's clerk, as he described himself, really so to speak employed the solicitor in question, C., and carried on business jointly with him, transacting sometimes with C. and sometimes alone various matters which it was alone competent to a solicitor to transact, generally using the name of C. and Co., but sometimes not, and

not always with the knowledge or express sanction of C.

The cases immediately following the last mentioned one, are on questions relating to the Borough Franchise and Lodger Franchise in England, occupying p. 195—p. 262, and are rather of political than legal interest, and need not be further noticed here; while we must postpone our review of the remaining contents of this number, as also of the March number of the Chancery Division until our next issue.

REPORTS.

RECENT ENGLISH PRACTICE CASES.

(Collected and prepared by A. H. F. LEFROY, ESQ.)

FOWLER v. BARSTOW.

Imp. O. 11, r. 1; Ont. Rule No. 45.

Motion to discharge order for service of writ out of jurisdiction.

Defendant, in moving to discharge such an order, may shew by affidavit that no cause of action has arisen against him within the jurisdiction.

Nov. 30—C. of A., 51 L. J. N. S. 103.

JESSEL, M. R., after referring to the practice in the above matter before the Judicature Act, and pointing out that both at Common Law and in Equity, the practice was to allow the defendant to put in a conditional appearance, and then to file such an affidavit, said:—

"That being so, the practice as to the admissibility of affidavits to contest the question whether or not the cause of action arose within the jurisdiction was the same both in Courts of Equity and Courts of Common Law; and consequently it is still the practice. Therefore the affidavit is admissible for this purpose. I must not be supposed to decide that the affidavit is admissable to contest the merits of the action. It is not the proper time to try the merits of the action. It is the proper time to try whether the action should be heard in England or in some other country. The question of *forum* is the only question to be tried."

BAGGALLAY, L. J., said in the course of his judgment:—"I quite think that, upon an application to discharge such an order as was made in this case, an affidavit may be made for the purpose of shewing that the Court had no jurisdiction to make an order; but I do not think, as at present advised, it ought to go beyond that unless there were some case of gross fraud or perjury or something of that kind. In ordinary circumstances the affidavit ought not to go beyond the mere fact of shewing there is no jurisdiction to make an order. It may well be that, in order to make a sufficient affidavit for that purpose, it is essential, in some respects, to deal with the merits of the case."

LUSH, L. J. said:—"The difference of procedure was this: The plaintiff, under the C. L. Proc. Act, issued his writ at his own peril; and when he came to act upon it and to apply to the Court to allow him to proceed on the service of his writ, then arose the question whether the cause of action accrued within the jurisdiction or not; and although the question arose at that different stage, it was then open to the defendant to contest the matter upon evidence—upon counter affidavits. The Judicature Act requires leave to be given before the writ is issued at all, which I think is a very great improvement. * * * In each case the practice is the same. * * * In the first instance the order is necessarily *ex parte*, and for this reason: if the person is a party residing abroad, you could not serve a writ upon him out of this Court, because that would be an affront to the sovereign of the country; and therefore you must issue the order *ex parte*, leaving it to the defendant to come in to apply to set aside that order.

NOTE.—*The Imp. and Ont. rules are virtually identical.*

HORNBY v. CARDWELL.

Imp. Jud. Act, 1873, *s.* 24 *(sub-s.* 3*) and s.* 49; *O.* 16, *r.* 18; *O.* 55, *r.* 1.—*Ont. Jud. Act*, *s.* 58 *(sub-s.* 4*), s.* 32.—*Rules No.* 108. 428.

Third party—Costs—Appeal.

Judgment having been given in a certain action against the defendant, who, in his pleadings, claimed from H., who had been made a third party under Imp. O. 16, r. 18 (Ont. Rule No. 108), the amount of the judgment and the costs of defending the action. H. demurred to the claim for costs, but the Divisional Court overruled the demurrer, and ordered H. to pay all the costs of the action. *Held*, H. having been properly made a third party, the costs of all the pro-

ceedings were in the discretion of the Court, within Imp. O. 55 (Ont. Rule 108), so that there was no appeal by reason of Imp. s. 49 (Ont. s. 32) from the order dealing with these costs.

Dec. 20—C. of A. 51 L. J. N. S. 89.

JESSEL, M. R., after remarking that it was never intended that there should be such a demurrer as this, viz., a demurrer to so much of the relief asked for as includes those costs,—since that is not a separate cause of action, but only a statement of the relief claimed,—went on to consider the question of jurisdiction, and said :—

The words of the section (Imp. s 24, sub-s. 3. Ont. s. 16. sub-s. 4) upon which he (the third party) relied are—"with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant." Now that provision does not relate to costs, but to the same rights in respect of the defence against such a claim. It was agued that before the Jud. Act, the third party could not have been made a party to the action between the plaintiff and defendant, and that therefore his rights are interfered with, because he had a right not to be made a party at all. This, however, is a confusion between respective legal rights and a particular mode of procedure—that is, it is entirely a confusion between rights of property, which are vested rights, and rights in legal procedure. * * * If he (the third party) is made a party, he would not be exempted from costs which were incurred before he was made a party ; for he may be liable to costs from the very beginning of the action. The result, therefore, is that a third party is a party to the cause, and is liable to the discretionary power of the court over costs. * * * It is therefore no answer to say that the discretion may be exercised wrongly. It may be that the third party ought not to be made a party at all, but the answer to that is that he may appeal from such an order, and if there is a *prima facie* case showing that he ought not to be made a party, he will be dismissed from the action."

BRETT, L. J., in the course of a long judgment, said :—"It seems to me that under these rules and orders, there may be a question between defendant and third party which turns out to be in common as between all the parties, and if that be clear, then the third party ought not to be made a third party ; but if *prima facie* there is a question which turns out to be in common, then the third party ought to be made a third party. * * * Now what is the practice? It seems to me that the third party can be brought in, although there may be questions which are not in common between him and the plaintiff. Supposing that to be so, it would not be just or right to make the third party pay costs as between the plaintiff and defendant. The question is whether, if such a wrong were done, the third party has a right to appeal. I should, with the greatest reluctance, feel bound to construe the rules so that, if such an injustice did happen, there should be no appeal. But even if that accident were to happen, it seems to me that the third party is a party to the cause within the rules. If that be so, then the question is whether the court is at liberty to circumscribe the ordinary reading of Imp. O. 55. (Ont. rule 428) as the discretion of the court over costs. I cannot see my way to do so. If therefore any such injustice, which happily has not been the case here, should happen, there would be no remedy. As regards the demurrer, it is clearly frivolous to demur to a claim for damages."

COTTON, L. J., said :—"Under Imp. O. 55 (Ont. rule 428) the court is to have discretion over costs as between all parties to the action ; and the third party having been properly served with a notice under the Jud. Act and rules, has therefore become a party to that action. It is true that Imp. O. 55 says "subject to the provisions of the Act," and we must therefore consider whether these words prevent the third party from being made liable to pay these costs, if before the Jud. Act, he could not have been made liable. Now Imp. s. 24, sub-s. 3 (Ont. s. 16. sub-s. 4) only refers to any right which the third party might have had to defend himself against any claim in another action, but not as regards costs in any action in which he is brought before the court. The Jud. Act only alters the form of procedure, and the third party is still liable to pay such costs as he would have been liable to pay if the old form of procedure had been followed. Here he has been made liable as a matter of procedure to the costs of an action to which he has been made a party. I am of opinion that the true construction of these rules is that they were intended to enable the court in dealing with proceedings in which a third party who has been brought in has raised an allegation, to make that party pay the costs

which have been incurred by reason of that allegation. I am therefore of opinion, without going into the question whether or not a proper discretion has been exercised, that the court has power to deal with the costs of these proceedings as well between the original parties, as between them and the third party. There may be cases in which the discretion might be exercised so as to cause hardship, but we must not, for that reason, cut down the general effect of the power."

NOTE.—*Imp. Jud. Act, 173, s. 24, sub. s. 3. and s. 49 are identical with Ont. Jud. Act s. 16. sub-s. 4. and s. 32 respectively. Imp. O. 16. r. 18 and Ont. r. 108 are virtually identical, except that the former says the notice shall be "stamped with the seal with which writs of summons are stamped." Imp. O. 55, r. 1. and Ont. r* 428 *are identical.*

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT.

P. E. I.]

REID ET AL. v. RAMSAY.

Appeal—Judgment on demurrer not a final judgment—Motion to quash—42 Vict., cap. 39, sec. 3.

In an action for false imprisonment, the defendants (appellants) justified the imprisonment under a judgment entered up in the Supreme Court, and an execution issued thereon. The plaintiff replied that the execution was issued in blank, and that the execution issued without a præcipe therefor ever having been filed.

To both of these replications the defendants below demurred, and rejoined in addition to the fourth replication that forthwith upon the issuing of the writ, a præcipe therefor had been filed; to which rejoinder the plaintiff below demurred.

Judgment was subsequently rendered for the plaintiff on all the demurrers. The defendants appealed to the Supreme Court, and the printed case contained the reasons for judgment, and the following extract from the minutes of the prothronotary of the entry of the judgment delivered by the court :—

"Demurrer argued, 30th October last, when the court took time to consider. The Chief Justice now gives judgment for the plaintiff on all the demurrers."

Held, that the case did not show that a judgment had been entered up on the demurrer, and even if entered up, that the action having been instituted in a superior court of common law, such judgment would not have been a final judgment, from which an appeal would lie within the meaning of the Supreme and Exchequer Court Act, or of the Supreme Court Amendment Act of 1879.

Appeal quashed.

Peters, for respondent.

Thompson, Q. C., for appellants.

EXCHEQUER COURT.

Taschereau, J.] [March

RE PETITION OF RIGHT.

Petition of right—Breach of notarial contract—Representations.

On the 14th of July, 1875, the government of Canada, through one Louis Morin, advertised for tenders for the removal of steel rails from the harbour of Montreal to the Rock Cut at Lachine.

The suppliant tendered for the contract according to the advertisement, and suppliant's tender being accepted, a notarial deed of contract was entered into and executed. The contract provided *inter alia* that "the said party of the second part, hereby undertakes to remove and carry for the Government of the Dominion of Canada, all the steel rails that are actually, or that will be landed from sea-going vessels on the wharves of the harbour of Montreal, during this season of navigation, and deliver and lay on the ground the said steel rails, at the place commonly called Rock Cut, on the Lachine Canal, subject to the terms and conditions hereinafter mentioned.

By his petition of right, the suppliant alleged a breach of the contract by the Crown, and Morin that, acting for the Crown, represented to the suppliant, that some 30,000 tons of rails would have to be removed, and that under such representations the suppliant entered into the contract.

The amount claimed was $10,000.

Held, that under the terms of the contract, the suppliant was entitled to have the removal of *all* the rails landed in Montreal during the season of 1875, and the Government having had five thousand tons of these rails removed by another party, were answerable in damages for the breach of contract.

Held, also, that the representations made by Morin, as agent of the Crown, as to the probable quantity to be landed were unauthorized, and having been made previous to the written contract, could not be said to form part of said contract.

Hall and *Ferguson*, for suppliant.
Hogg, for the Crown.

QUEEN'S BENCH DIVISION.

IN BANCO, MARCH 9.

REGINA V. CHUTE.

Indecent assault—Subsequent conduct—Evidence.

Evidence of subsequent conduct of a prisoner on trial for indecent assault was held admissible, as shewing the character of the assault, and as, in fact, part of the same offence with which the accused stood charged.

Irving, Q.C., for the Crown.
No one appeared for the prisoner.

GANANOQUE V. STIMDEN.

Principal and surety—Discharge of surety.

The contract of suretyship is avoided by a representation which is false in fact, and by which the surety has been induced to become surety, though he who made it believed in its truth.

Britton, Q.C., for plaintiffs.
McMichael, Q.C., contra.

WADE V. KELLY.

Sale by insolvent—Delay of creditors—Change of possession.

A. being unable to pay his creditors parted with his property to his father, taking his notes therefore, the father being conscious of his son's embarassments, but there being no purpose to defraud creditors. The possession of the goods was not changed, nor was there any bill of sale filed. *Held*, that the sale to the father was void as against creditors both as not complying with the Chattel Mortgage Act and as being by an insolvent, the object being to delay, though with no intention to defraud creditors.

Robinson, Q.C., and *Douglas*, for the rule.
Mackelcan, Q.C., contra.

STEERS V. SHAW.

Wild lot—Statute of Limitations.

A surveyor, many years before action, ran a blazed line between plaintiff's and defendant's lots. Along portions of this line a fence was built, and the parties cut and otherwise acted as owners on either side of and as far as this line. It appeared by plaintiff's evidence that it was his intention to question defendant's ownership as soon as he could find the correct line, but he had not interferred with him. It having been found that the evidence of defendant's possession as far as the blind line was sufficient to extinguish plaintiff's title. The finding was *held* right. ARMOUR, J., dissenting.

McMahon, Q.C. and *Douglas*, for plaintiff.
Atkinson, contra.

BATE V. MACKEY.

Bond in replevin—Proceedings stayed on equitable grounds.

B. and C. had timber limits adjacent to those of defendant, but the line between the two was not defined owing to defective description in the licenses. Some 216 pieces of timber were cut within a line run as the boundary of defendant's limits under direction of the Crown timber agent, and defendant replevied them. He did not, however, succeed in his action, by reason of defect in his license, as to 175 pieces, and B. and C. were awarded a judgment of return of these. Having had the replevin bond assigned to themselves, they transferred it to plaintiff, who sued thereon, and though the Court considered that the cutting had been upon what was intended to be granted to defendant, with some appearance at the same time of title thereto on B. and C.'s part. *Held*, that B. and C. were entitled to the

damages sustained by the replevin proceedings, as the condition of the bond had been broken; that the bond was assignable under the statute, and plaintiff was entitled to recover; but as the Court could exercise its equitable jurisdiction of interfering in a case of the kind, a stay of proceedings was ordered on defendant's paying B. and C.'s outlay in cutting and moving the timber up to the replevin proceedings, to be reduced, however, by a set off found in defendant's favor in this action.

Robinson, Q.C., for plaintiff.

Bethune, Q.C., contra.

HAYWOOD v. HAY.

Obstructing sheriff—Conviction under 32-33 Vict. c. 32—Attachment.

The Sheriff of Oxford, in executing a writ of replevin, was obstructed by the defendants, who rescued the goods. On complaint of the Sheriff's officer they were summarily tried before a Police Magistrate and fined under 32-33 Vict. c. 32, by which it is declared that any person discharged or convicted in such a case shall be released from all further or other criminal proceedings for the same cause. A motion afterwards made by the plaintiff to attach the same parties for contempt, was discharged, but without costs.

Robertson, Q.C., for the motion.

Bethune, Q.C., contra.

TRERICE v. BIRKETT.

Sale of shares in vessel—Seizure—Right of surety to co-surety's security.

On a sale of certain shares in a vessel, the purchasers, being unable to pay in money, got O. to give his note, endorsed by them, in favour of the vendor, when O. procured a bill of sale to himself. Vendor having got the note cashed by a bank had to pay it in the end. *Held*, in interpleader between vendor and an execution creditor of O., (ARMOUR, J., dissenting,) that the purchasers became the principal debtors to the bank, and the vendor and O. sureties, and that when the note was paid vendor was entitled to the 24 shares transferred to O. as indemnity against liability on the note.

McCarthy, Q.C., and *Creelman*, for plaintiff.

Robinson, Q.C., contra.

SHEPHERDSON v. MCCULLOUGH.

Boundary—Statute of Limitations.

One R., in 1836, laid out a township into concessions; in front of every alternate concession he left an allowance for road, and a side-road at every 6th lot. Upon the "blind line," between the concessions which abutted, he placed a stake at each side-road. The defendant was the grantee from C., the patentee, of the W. ¼ of a certain lot, and the plaintiff became the grantee of the E. ¾. Plaintiff and defendant, some years after, employed a surveyor, one L., to find the correct line between them. He started from R.'s stake, and ran from it. A clearing was made by the proprietors up to this line on either side, and a fence erected along it, but not across the lot. Plaintiff told defendant that any timber of his falling on plaintiff's portion must be removed by the defendant. Plaintiff had another survey made a couple of years before action, which placed the line several chains further west than his line; and on this line a fence was put up by plaintiff, and by the defendant taken down. *Held* (ARMOUR, J., dissenting) that there was abundant proof of possession by defendant of the land which had L.'s line as its bound, and as it was long enough to give him title by statute, the verdict in his favour would not be set aside.

Masson for plaintiff.

Creasor for defendant.

COMMON PLEAS DIVISION.

IN BANCO, MARCH 10.

O'DOHERTY v. THE ONTARIO BANK.

Husband and wife—Separate equitable estate—R. S. O. ch. 125, sec. 2, 5.

A husband, not being in debt or engaged in or contemplating engaging in business, bought certain land and stock from one C., the purchase money comprising nearly all the property the husband had, and procured C. to make the conveyance thereof direct to the wife, who had been married to her husband in 1860, without any mariage contract or settlement; and the wife mortgaged the property to the plaintiff. In an interpleader action between the plaintiff and the defendants, subsequent execution creditors of the husband:

Held (OSLER, J., dissenting), that the property in question was the wife's equitable separate estate, and was not effected by secs. 2 and 5 of the R. S. O. ch. 125.

The plaintiff was therefore held entitled to recover.

McCarthy, Q.C., for the plaintiff.

J. K. Kerr, Q.C., for the defendants.

BECKETT V. JOHNSTON.

Sale of land for taxes—Assessment, invalidity of—Sec. 155 of Assessment Act, 1868—*Township Clerk—Right to purchase.*

Ejectment by plaintiff under a tax deed, as the assignee of the tax purchaser, who was the township clerk. The sale was for the taxes alleged to be due for the years 1871 and 1872. The land was described on the assessment roll for 1871 as the "S. pt. 12, 53 acres," and for 1872 as "S. E. pt., lot 12, 53 acres." Parts of lot 12 were owned respectively by F. and C., and part laid out as a village, and it appeared that the land, whether taken as the south or south-east part, included parts respectively of F. and C.'s land, which was already assessed against them, and also certain of the village lots.

Held, that the plaintiff's bill failed; for that the assessment was invalid, and that the defect was not cured by sec. 155 of the Assessment Act of 1868.

Held also, that the purchase by the township clerk was a voidable transaction.

J. B. Clarke for the plaintiff.

Bethune, Q.C., for the defendants.

MCLAREN V. CANADA CENTRAL RAILWAY CO.

Fire, loss by—Negligence—Contributory negligence—Evidence—Findings of jury.

In an action against the defendants, a railway company, for negligence, whereby the plaintiff's lumber caught fire from one of the defendant's locomotives and a large quantity thereof was burnt, the jury found that the fire which caused the damage came from the defendant's locomotive, from imperfection or structural defect in the smoke-stack, by reason of the cone being too close to the netting, and the bonnet rim not fitting to the bed so completely as it should have done. They further found that the plaintiff was not guilty of contributory negligence by reason of his piling his lumber on the defendants' ground, with their consent, within a short distance of the track, and not having sufficient means at hand for extinguishing fires should they occur.

Held, that the evidence set out in the case, fully supported the findings of the jury; that as to finding that the cone was too close to the netting, it could not be supported by the evidence if it meant that it in consequence acted prejudicially to the netting, but that the finding meant that the cone was too high above the bonnet rim and so too close to the netting, and in consequence the sparks deflected from it instead of being sent above the bonnet bed or below it, and thus escaped from the stack; and also that although the finding that the bonnet rim did not fit so completely as it should, was in a sense indefinite in not stating thereby sparks could or did escape, this was covered by the other findings.

The question as to the bonnet rim fitting the bed was not put to the jury until after they had rendered their verdict and answered the other questions, and after the learned Judge had been moved for judgment upon those answers, but it was done while all the parties and their counsel were present, and before the jury had left the court room.

Held, that the question was properly put to the jury.

McCarthy, Q.C., and *Creelman*, for the plaintiffs.

Bethune, Q.C., and *Walker* (of Ottawa), for the defendants.

WOODWARD V. SHIELDS.

Adding parties—Judicature Act, rule 90—Costs.

Action by plaintiffs for $460, as assignees under an assignment from the assignee in insolvency, of the estate of W. and A., who had become insolvent in 1879. At the trial the learned Judge held that under the circumstances, set out in the case, this amount did not pass to the plaintiffs under the assignment to them, but if at all belonged to the insolvents; but refused to add the insolvents as co-plaintiffs, because the defendant was not in a position to know whether he had a defence as against them. During the sittings, the defendant having had sufficient time to acquaint himself of his rights, and showing no

defence, the Court, under the Judicature Act, rule 90, directed the insolvents to be added and judgment to be entered for the plaintiffs for the amount claimed, but under the circumstances without costs.

Reeve, for the plaintiff.

Tilt, for the defendant.

RUSSELL V. THE CANADA LIFE ASSURANCE COMPANY.

Insurance — Warranty — Adding pleas.

Action on a policy of insurance. By the terms of the policy, the declaration signed by the assured and the relative papers were made the basis of the contract, with a proviso that in case of any fraudulent or wilfully untrue material allegation being contained in the said declaration, or if it should thereafter appear that any material information had been wilfully withheld, or that any of the matters set forth had not been truly and fairly stated, then the policy should be void. The application contained a number of questions and answers, and at the foot was the declaration above mentioned, whereby the assured declared that to the best of his knowledge and belief the foregoing statements and other particulars were true, and that if any untrue averment had been intentionally made in the declaration or in the replies to the company's medical adviser in connection therewith, the policy should be void. To the questions in the application as to name and residence of usual medical attendant, and for what serious illness had he attended him, the assured untruly answered, none; and to the question by the medical adviser "as to what other disease or personal injury, and from whom have you required professional assistance, and how long is it since you last required such assistance," the assured untruly answered, none.

Held, that the answers to the questions were warranties, and by reason of their untruth the policy was void.

The pleas setting up these defences were added at the trial, and after the trial had been in progress for some time. The action was commenced before the Judicature Act came into force, but the trial was thereafter.

Held, that whether under sec. 8 of the A. J. Act or Rule 128 of the Judicature Act, the pleas were properly added.

Bethune, Q.C., for the plaintiff.

McCarthy, Q.C., and *Bruce* (Hamilton) for defendants.

Osler, J.]

ALLAN V. CORPORATION OF AMABEL.

Municipal Corporations—Statute labour—Non-resident lands.

Held, that a Township Council can provide for the performance of work upon the roads of their township to the extent of the commutation tax charged in respect of non-resident lands, and for payment therefor out of the general funds of the municipality before such tax has been received from the County Treasurer; and that such work is not necessarily restricted to be performed in any particular statute labour division.

George Kerr, for plaintiff.

J. K. Kerr, Q.C., for defendant.

CHANCERY DIVISION.

CRUSO V. BOND.

Mortgage—Acceleration clause—Foreclosure—Election.

In an action of foreclosure upon a mortgage which contains a clause by which the principal falls due upon default made in payment of any instalment of interest, if the plaintiff claims the benefit of this clause and calls in the whole mortgage debt, he is bound by his election, and must accept principal, interest and costs when tendered.

Eddis, for plaintiff.

Moss, Q.C., for defendant.

SMITH V. DOYLE.

Fraudulent conveyance—Unsatisfied judgment—Statue of Limitations.

An action to set aside a conveyance as fraudulent as against the creditors of the grantor, a judgment debtor, will lie at any time within twenty years from the recovery of the unsatisfied judgments.

Donovan, for plaintiff.

O'Donohoe, Q.C., for defendant.

O'GRADY V. MCCAFFREY.

Tax sale—Unpatented lands—Subsequent Crown grant—Improvements under mistake of title.

When unpatented land is sold for arrears of taxes, the purchaser takes only the interest of the

person assessed, and that subject to the right of the Crown to grant the fee simple to whomsoever may be found entitled thereto.

A person in possession of land under a mistake of title, cannot be allowed for improvements made by him after litigation commenced with him concerning the title.

Maclennan, Q.C., for plaintiff.

Beaty, Q.C. and *Lees*, Q.C., for defendant.

FLETCHER v. RODDEN.

Mortgage—Foreclosure—Recovery of land—Statute of limitation.

The remedy by way of foreclosure or sale in mortgage suits, is a proceeding to recover lands within the meaning of R. S. O. cap. 108, sec. 4.

Therefore, when a suit to foreclose a mortgage was commenced ten years and eight months after the date of the default in payment, and the plaintiff claimed payment of the mortgage debts, possession and foreclosure,

Held, that the only relief to which the plaintiff was entitled, was judgment upon the covenant for payment.

C. *H. Ritchie*, for plaintiff.

Moss, Q.C., for defendant.

MCDOWALL v. PHIPPEN.

Mortgage sale—Growing crops, purchaser's right to.

Upon default made in payment of a mortgage, the mortgagee has the unquestionable right to take possession of the property in the state in which it then is as to crops, and to hold the whole as his security.

Therefore, were land was sold under a decree of the Court of Chancery made in a mortgage suit without any reservation of crops,

Held, that the purchaser took all that the mortgagee could beneficially hold possession of, and was entitled to the growing crops mature and immature, no severance of the same having taken place.

P. McGregor, for plaintiff.

Moss, Q.C., for defendant.

CHAMBERS.

Mr. Dalton, Q.C.] [Feb. 2.

CORNISH v. MANNING.

Time, computation of—Execution—Summons.

A defendant was served on the 22nd December, and a *fi. fa.* was issued on the 10th January.

Held, that the *fi. fa.* was not issued too soon, and might have been issued on the 9th January.

Held also, that in the computation of time in this case Sunday counts.

The ten days for appearance mentioned in the writ of summons includes the day of service.

Holman for plaintiff.

H. J. Scott for defendant.

Osler, J.]

IN RE ELLIOTT.

Solicitor—Taxation—Costs.

Where an order has been made referring a solicitor's bill for taxation, and directing the attorney to refund what, if any thing, has been over paid, it is proper to obtain a subsequent express order for payment of the balance found due by the Master's report.

Aylesworth for the solicitor.

Shepley for the client.

Mr. Dalton, Q. C.] [March 25.

OMNIUM SECURITIES CO. v. ELLIS.

Pleadings—Notices, service of.

Held, that pleadings and notices in suits in all cases must, in the absence of special arrangements, be served either upon the solicitors for the parties or their Toronto agents.

Aylesworth for the defendant.

H. Cassels for the plaintiffs.

COURT OF APPEAL.

From Chy.] [March 24.

JESSUP v. GRAND TRUNK RAILWAY.

Deed poll—Specific performance—Land acquired by railway on special condition.

The facts of this case are fully set out in 28 Grant, p. 583.

On appeal, the plaintiff's bill was dismissed with costs. The Court holding that the bargain

between the parties was in effect, that the company might have the land for nothing if they should place a station upon it. This they did, and thereby complied with the condition, but the Court did not think that they were compellable to keep the station there for ever, but that if such relief had been asked, re-possession would have been decreed to the plaintiff, the company having no ownership of the land, except in connection with the employment of the same for the designad purpose and could not use the said land for any other purpose.

Bethune, Q.C., for plaintiff.

S. H. Blake, Q.C., for defendants.

From C. P.] [March 24.

BIRKETT ET AL. V. MCGUIRE ET AL.

Principal and surety—Giving time—Partnership—Appropriation of payments.

The judgment of CAMERON, J., reported in 31 C. P. 430 (noted *ante infra*, vol. 17, p. 63), reversed. A partnership having been dissolved, one partner continued the business and assumed the debts of the firm, and, as between himself and the retiring partner, became the principal debtor, of which facts the plaintiff as creditor had notice. *Held*, that as the relationship was not originally one as between principal and surety, and not changed into a liability of that nature by the creditor, his giving time to, or taking a negotiable security from, the continuing, partner did not discharge the original co-debtor.

Discussion on the appropriation of payment in such case.

Bruce (Hamilton), for plaintiffs.

Mackelcan, Q.C., for defendant.

From Chy.] [March 24.

INTERNATIONAL BRIDGE CO. V. CANADA SOUTHERN RY.

CANADA SOUTHERN RY. V. INTERNATIONAL BRIDGE CO.

Junior Counsel—Tolls—Practice—Reference to Master.

The same points which had reference to the payment of tolls by the railway, for the use of the bridge being raised in both suits, they were argued together in the Court below, and the decree then made was now affirmed.

Junior counsel are not at liberty to take positions in argument, which conflict with the positions taken by their senior counsel. To require payment of tolls for the user of the bridge, is incident to the corporate powers of a corporation of the character of the International Bridge Co.

The contention that the tolls are already fixed by statute is not sustained by an examination of statutes of the Bridge Co.

The percentage yielded to the shareholders upon their capital expended upon the bridge and its approaches, and other expenses incidental to the undertaking, is too narrow a test to take of the reasonableness of the tolls, especially in the case of such a construction as the bridge in question, it was right that a sinking fund should be set apart to answer expenses occasioned from time to time by accidents to the bridge.

Where a question is directly raised by the pleadings, and is one of the principal grounds upon which the plaintiff comes into Court, and is proper for the decision of the Court, to refer it to the master would be to transfer to him a question which is distinctly presented to the Court for its decision, and upon which both parties have given evidence in order to the obtaining of the judgment of the Court upon it, and therefore questions of this nature should not be made the subject of a reference.

Crooks, Q. C. and *Cattanach*, for defendants.

S. H. Blake, Q. C. and *W. Cassells*, contra.

From Q. B.] [March 24.

FURLONG V. CARROLL.

Fire—Negligence.

The defendant, while working in his own field, threw a match, which he supposed he had extinguished, upon the ground, which set fire to some combustible matter. The fire could have been put out, but the defendant, after raking the materials together, left it to burn out, under the impression that he had confined it to one spot. After burning four or five days the fire communicated with the plaintiff's premises. The verdict of the jury was in favor of the defendant.

Held, reversing the decision of the Queen's Bench refusing a rule for a new trial, that the defendant was liable for the damage caused to the plaintiff, and a new trial was ordered without costs.

Meek, for plaintiff.

Bethune, Q.C., and *Deroche*, contra.

Spragge, C.] [March, 24.

LAVIN v. LAVIN.

Voluntary conveyance—Undue influence—Independent advice.

A conveyance of land from a man ninety years old to his son, was prepared on the instruction of the son. The deed recited that the grantee had agreed to pay his son $10 a month for his life, but no such agreement was in fact proved, and there was not any other consideration. It was shown that the deed had not been explained to the father, and the clerk who witnessed the execution of the conveyance could not say that he had read it over to him. There was not any direct fraud established, but the father was under the influence of the son, and had acted without advice.

Held, affirming the decision of the Court below, as reported, 27 Gr. 567, that under these circumstances the deed should be set aside.

O'Donohue and *Haverson*, for appeal.

J. H. Macdonald, contra.

From C. C. Oxford.] [March 24.

WILSON v. BROWN AND WELLS.

Remission to County Court for amendment—Discretion as to amending.

This Court having been of opinion that the record should be amended, remitted the cause to the Court below in order that the record might be so amended and a verdict entered for the plaintiff against B. alone (6 App. R. 411). The judge of the County Court, instead of entering such a verdict, ordered a new trial between the parties, who were to be at liberty to amend as they might be advised, so that B. might raise any defence which it was not considered necessary to raise in the action on the joint liability.

Held, that the direction of the County Court Judge as to the way he thought it right that the application to amend should be made was an exercise of his discretion with which this Court would not interfere.

McCarthy, Q.C., for the appeal.

Falconbridge, contra.

From Proudfoot, V.C.] [March 24.

DAVIDSON v. MAGUIRE.

Post nuptial settlement—Valuable consideration—Insolvency.

A marriage having been agreed upon between M. and the defendant, the father of the latter agreed to convey a lot to her as her marriage portion, if M. would erect a home upon it, which he intended building on land of his own. M. agreed to this proposal, and the marriage took place. During the following year M. put up a dwelling on the land of his father-in-law which was thereupon conveyed to the defendant; and two years afterwards M. became insolvent.

Held, affirming the judgment of the Court below, that the erection of the house by M. was the consideration for the conveyance of the land, and that the transaction could not be treated as a voluntary settlement; and there being no fraud in M. building in the manner stated, the dealings between them could not be impeached.

Bruce, for appellant.

Bethune, Q.C., contra.

From Q. B.] [March 24.

NEILL v. UNION MUTUAL LIFE INS. CO.

Life assurance—Unpaid premium.

One of the stipulations of a life policy was that, if any of the premiums should not be paid at the time limited therefor, the consideration of the contract between the Co. and the assured should be deemed to have failed, and the Co. to be released from liability thereunder. Another stipulation provided that, if an overdue premium was received, it would be upon the express understanding and condition that the party was in good health, and if the fact were otherwise, the policy should not be put in force by the receipt of the money. A check had been given for a quarterly premium, with a request to hold it for a short time as there were then no funds. Subsequently it was presented on several occasions, but without being paid. On the 21st of October funds were provided, but as it was after banking hours before the agent was informed of the fact the cheque was not presented, and the receipt had been returned by the agent. That night the assured was killed.

Held, affirming the judgment of the Court below (45 U. C. R. 593), that the policy lapsed the day after the premium became due; that payment alone could then revive it, and the facts did not establish payment or anything dispensing with it.

S. H. Blake, Q. C. and *G. H. Watson*, for plaintiff.

C. Robinson, Q. C. and *Mulock*, contra.

From C. P.] [March 24.

PAGE v. AUSTIN.

Sci. fa—Shareholder—Joint Stock Co.—Illegally issued stock.

The Ontario Wood Pavement Company, incorporated under 27-28 Victoria, ch. 23, with power to increase by by-law the capital stock of the Co. so soon as, but not before, the original stock was all allotted and paid up, assumed to pass a by-law increasing the capital stock before the original amount had been paid up. The plaintiff, who was an execution creditor of the Co., whose writ had been returned unsatisfied, instituted proceedings by way of *sci. fa.* against the defendant as holder of shares of the new or increased capital stock.

Held, that the by-law so passed by the Company being *ultra vires*, the alleged shares of the defendant had not any existence in law, and, therefore, that the plaintiff failed to establish that the defendant was a shareholder within the statute, and consequently was not entitled to recover; but the appeal being allowed on a ground not taken in the Court below or assigned as a ground of appeal, the Court refused the appellant his costs in appeal.

C. Robinson, Q.C., and *Maclennan*, Q.C., for appellant.

Bethune, Q.C., contra.

From Chy.] [March 24.

HODGINS v. ONTARIO LOAN CO.

Representation—Collateral contract.

When a loan company, in order to advertise the advantages of their institution, caused a document to be circulated among the public, the natural meaning of which was that a loan made at the fixed and uniform rate set down in the tables, might by a rule which distinguished the mode of dealing of the society from that of private capitalists, trustees or executors, be paid off at a time and on a scale different from the uniform rate at which the loan was formerly made, in case a contingency happened which made the borrower desire to pay it off, one contingency expressly mentioned being that which had arisen, viz., the means of repaying the loan and where the evidence shewed that the plaintiff became a borrower, and made his mortgage in reliance upon the representations made in the circular,—

Held, (affirming the decree of the Court below) that the plaintiff could insist on redeeming his mortgage according to the terms set forth in the circular, such right being sustainable either on the footing of the contract evidenced by the mortgage, the effect of which was to incorporate the rules of the society, while the evidence shewed that what was put forward in the circular as the rule of the society, was one of the rules referred to in the mortgage; or on the footing of a collateral and independant contract.

Held also, that, although the mortgage recited that the mortgagor was a member of the society, having subscribed for eighty-eight shares of the stock, which the society had agreed to pay him in advance on receiving that security therefor, etc, yet without express stipulation to that effect, the mortgagor could not be affected by rules made subsequently to the execution of the mortgage, even if he could under the system under which the operations of the society were carried on be considered a member when he had received the amount of his shares; but that at all events his liability could not be extended beyond the clear words of his contract, which did not point to any but the then existing rules.

Bethune, Q. C., for appellant.

Street, for respondents.

From Chy.] [March 24.

MCCRAE v. WHITE.

Insolvency—Fraudulent preference.

The bill in this case was filed by the assignee in insolvency of one Depew, to set aside a mortgage made by the insolvent to the defendant on Oct. 30th, 1879, in contemplation, as it was said, of insolvency, whereby it was alleged that the defendant obtained an unjust preference over the other creditors.

The insolvency occured on the 21st of following February, nearly four months after the transaction now impeached, thus leaving the onus on the plaintiff.

The defendant was a private banker, who had been in the habit of discounting notes for the insolvent.

The evidence showed that some days prior to the execution of the mortgage impeached, the in

solvent had embarked in a new business, having been intrusted by his new creditors with some $4,000 or $5,000 worth of goods upon a representation that he had no available capital, but that he had experience in business; that he was shortly afterwards threatened with proceedings by a mortgagee of some property of his, which if persisted in, must have closed his business, and that in this emergency he applied to the defendant, who advanced him sufficient to meet the over-due interest, and gave an extension of his own claim, on notes held by him, at a reduced rate of interest: that the defendant intimated to him at the time that he would have to work very carefully.

The evidence also showed that the insolvent was a man of very sanguine temperament.

Held, (over-ruling the decision of the Court below) that the plaintiff had not satisfied the onus which was upon him, of showing that the mortgage was given in contemplation of insolvency, and the evidence leaving the matter in doubt, the complainant must fail, the general presumption of law being in favour of innocence and honesty.

Gibbons, for appellant.

J. H. Macdonald, for respondent.

LAW STUDENTS' DEPARTMENT.

THE OSGOODE LITERARY AND LEGAL SOCIETY.

The 18th public meeting of this society, was held in the new lecture room of the Osgoode Hall on the 7th of March last. The hall was crowded by an intelligent and highly appreciative audience, and the proceedings were of such a nature as to afford them excellent entertainment. Mr. D. B. Read, Q. C., occupied the chair, and associated with him on the platform was Dr. Smith, Q. C. The programme was opened by Mr. A. D. Keen reading Tennyson's new poem "The Scarlet Brigade" in a very pleasing style, and Mr. A. J. W. McMichael read Mark Twain's amusing experience at Niagara Falls. The debate was next in order, and was opened on the affirmative by Mr. A. S. Clark, supported by Mr. Duggan, while the negative of the question was sustained by Messrs. Nelson and Cook. The subject resolved, "that the mental faculties of women were inferior to those of men," proved a very interesting one, and was ably treated in a practical way by both sides. At the conclusion of the debate, the chairman reviewed the subject in a scientific manner, and after commenting upon the arguments, decided that the affirmative had the best of the discussion. Votes of thanks were then tendered to the chairman and Dr. Smith, who replied briefly, and the meeting adjourned.

At the regular meeting of the Society held on the 25th ult., the president, Mr. Isaac Campbell, occupied the chair. Mr. Gerald Bolster contributed to the literary part of the programme by reading a selection entitled "Nothing to Wear." The subject for discussion was whether "a representative should be bound by the will of his constituents." The affirmative of which the question was advocated by Messrs. Cavill and Murray, and the negative by Messrs. Morehead and A. J. W. McMichael. The chairman upon summing up the arguments, explained the position and duties of a representative to his constituents, with regard to the various questions discussed by the legislature, and decided in favour of the negative, and the meeting after transacting some general business adjourned.

ARTICLES OF INTEREST IN COTEMPORARY JOURNALS.

Ambiguous acceptances of offers.—*Gibson's Law Notes*, Jan. and Feb

Loss of goods by carriers.—*Irish L. T.*, Feb. 4.

The sales of poisons.—*Ib.*, Feb. 18.

Places within the betting houses act.—*Ib.*, Feb. 25.

Proof of means to pay.—*Central L. J.*, March 4.

Real estate agent.—*Irish L. T.*, March 17.

Innkeepers and their liabilities for the property of their guests.—*Ib.*

Woman as an office-holder and law breaker.—*Albany L. J.*, Feb. 11.

The value of oil paintings.—*Ib.*, Feb. 25.

Recent humorous cases of negligence.—*Ib.*, March 4.

Criminal law decoys.—*Ib.*, March 11.

Severability of insurance.—*Ib.*, March 27.

Use of family names in business.—*Ib.*, March 18.

Comments of a judge upon the evidence. *Central L. J.*, March 3.

Execution of deeds by agents.—*Ib.*, March 10.

Injury to parental feelings.—*Ib.*, March 24.

FLOTSAM AND JETSAM.

The following paragraph appears in the *Law Times* of last week, under the heading 'Legal News':—

THE BAR AT SHANGHAI.—Advices received at Plymouth from Shanghai report that the Woosung bar, off that place, which has proved the means of destruction of many a ship, is to be dredged out of existence.

Sincere sympathy will be felt with the members of this bar. No doubt their advocacy in shipping cases does not seem to have been very well received, and is even said to have ruined many a good ship; but ignorance of the rule of the road at sea is not uncommon among lawyers, and hardly deserves such summary treatment as dredging out of existence—some form, we greatly fear of keel-hau'ing.—*Law Journal.*

Law Society of Upper Canada.

OSGOODE HALL.

MICHÆLMAS TERM, 1881.

The following gentlemen were entered on the books of the Society as students :—

GRADUATES.

Alexander George F. Lawrence, Charles Julius Mickle, Herbert McDonald Mowat, George Edward Evans, John Calvin Alguire, Donald McDonald Howard, John Armstrong, David Alexander Givens.

MATRICULANTS OF UNIVERSITIES.

John R. Shaw, Lewis Elwood Hambly, Samuel McKeown, John A. McLean, Alonze Edward Swartout, William James Tremcear, Frederick George McIntosh, George Francis Burton, James Vance, William Cherry.

JUNIOR CLASS.

Oliver Kelly Frazer, Thomas Reid, Noble Dickey, William Edgar Raney, William H. Sibley, A. M. Taylor, Franklyn Montgomery Gray, Marriott Wilson, Robert Stanley Hayes, John H. Bobier, William Leaper Ross, Samuel H. Bradford, Andrew Dodds, Richard Henry John Pennefather, William Edward Lount, Claude Foster Boulton, William Whittaker, John Wesley Ryerson, Marshall Orla Johnston, John O'Neill, H. D. Folinsbee, Edmund Montagu Yarwood, George Albert Jordon, Neil J. Clarke, Albert Edward Beck, Thomas Brown Patton, Frank Morris Gowan, Edgeu William Tisdale, William Kenneth Cameron, Charles Henry Brydges, Horace Walpole Bucke, Edward Ernest Louis Pillsworth, John James Smith.

Herbert Dawson was allowed his examination as an Articled Clerk.

The following gentlemen passed their examination and were called to the Bar :

Rufus Shorey Neville, Ernest V. D. Bodwell, William Cayley Hamilton, Edward A. Peck, George William Begyon, John Henry D. Manson, Charles Crosby Going, Thomas Trevor Baines, Frank Marshall McDougall, Alfred Beverley Cox, Archibald James Sinclair, George H. Muirhead, Henry Yale, Sidney Wood, Newenham Parkes Graydon, James Russell, Archibald Stewart, Robert Cassidy, Victor Chisholm, William Humphrey Bennett, Frank Andrew Hilton, George Henry Smith, John Lawrence Dowlin, William Proudfoot, George Miles Lee, Daniel Fraser McWatt, Henry Boucher Weller, Nathaniel Mills ; the names are arranged in order of merit.

HILARY TERM, 1882.

The following gentlemen passed their examination and were called to the Bar :

Edwin Taylour, English Honors and Gold Medal ; Adam Johnston, Honor and Silver Medal ; Daniel Johnson Lynch, John Arthur Mowat, George James Sherry, Benjamin Franklin Justin, Thomas Ambrose Gorham, Charles Rankin Gould, James Lane, William James Cooper, Robert McGee, Henry Nason, William Johnston, Albert Edward Wilkes, George Frederick Jelfs, Henry Joseph Dexter, Stewart Masson ; the names are in order of merit.

The following gentlemen were called to the Bar under the Rules in Special Cases :—

Donald McMaster, Henry Gordon McKenzie.

The following gentlemen were entered on the books of the Law Society as students at law :—

GRADUATES.

Marcus Selwyn Snook, Stephen Johnston Young, Alexander Sheppard Lown, John Earl Halliwell, Patrick Macindoe Bankier.

MATRICULANTS OF UNIVERSITIES.

Nelson Sharp, Stephen Alfred Jones, Frank Burr Mosure, Edward Wesley Bruce, Robert Barry, Alexander Campbell Aylesworth, Thomas Hislop.

JUNIOR CLASS.

Willard Snively Riggins, Allan Napier McNab Daly, George Cooper Campbell, John Elliott, Alexander A. McTavish, John Dawson Montgomery, George Albert Lorcy.

Frank Ernest Coombe was allowed his examination as an Articled Clerk.

RULES

As to Books and Subjects for Examination.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

A Graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such Degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his Diploma, or a proper certificate of his having received his Degree. All other candidates for admission as Articled Clerks or Students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects :—

Articled Clerks.

1881.
- Ovid, Fasti, B.I., vv. 1-300 ; or Virgil, Æneid, B. II., vv. 1-317.
- Arithmetic.
- Euclid, Bk. I., II., and III.
- English Grammar and Composition.
- English History Queen Anne to George III.
- Modern Geography, N. America and Europe.
- Elements of Book-keeping.

In 1882, 1883, 1884, and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil at their option, which are appointed for Students-at-law in the same year.

Students-at-Law.

CLASSICS.

1882.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum, B. G. B. IV. c. 20–36, B. V. c. 8–23.
- Cicero, Pro Archia.
- Virgil, Æneid, B. II., vv. 1-317.
- Ovid, Heroides, Epistles. V. XIII.

1883.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum.
- Cicero, Pro Archia.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Heroides, Epistles. V. XIII.