## DIARY FOR JULY.

1. Thur..Long Vacation begins. Dominion Day.
4. Sun....Sixth Sunday after Trinity.
5. Mon....County Court Terms (except York) begin. Heir and Dev. sitt. begin.
7. Wed...General Simcoe, first Lieutenant-Governor of Upper Canada, 1792.
8. Thur..Cyprus ceded to England. 1878.
10. Sat.. ..County Court Term ends.
11. Sun.. ..Seventh Sunday after Trinity.
14. Wed...W. P. Howland, first Lieutenant-Governor of Ontario, 1868.
15. Thur. Manitoba entered Confederation, 1870.
18. Sun. ..Eighth Sunday after Trinity.
20. Tues...Heir and Devisee sittings end.
23. Fri. ...Union of Upper and Lower Canada, 1840.
24. Sat. ..Canada discovered by Cartier, 1534.
25. Sun. ..Ninth Sunday after Trinity.
26. Mon...Jews first admitted to House of Commons, 1858. Dr. Robitaille, Lieutenant-Governor of Quebec, 1879.
29. Thur..First Atlantic Telegraph laid, 1866.
30. Fri. ...Government of Upper Canada removed from Niagara to York, 1793.

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Canada Law Journal.

*Toronto, July, 1880.*

Why does not some industrious young man in the profession make an Index to the Revised Statutes? That which goes under that designation at the end of the second volume is almost as bad as that attached to the old Consolidated Statutes. We are inclined to think that a really good Index, either to *each* volume or to the whole, one to be bound up with each, would sell well. We would instance, as a good model of an Index, that prepared by Mr. Gibson for Mr. O'Brien's Division Court Manual.

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We publish, in another place, the very able and elaborate judgment of Mr. Justice Taschereau, in the case of *Angers* v. *The Queen Insurance Co.*, on the powers of the Local Legislature as to direct and indirect taxation. The judgment was given by Mr. Taschereau, whilst sitting in the Court of Queen's Bench for Quebec; but, although the case has gone to the Privy Council, this exhaustive exposition of the law on the subject discussed (as remarked by the Master of the Rolls in L. R. 3 Appeal Cases) has not yet been reported. Mr. James Bethune has kindly called our attention to it and sent us a copy of the judgment, which we gladly publish, as it has frequently been asked for by the judges. It was originally written in French, and has been translated by Mr. Duval, Reporter to the Supreme Court.

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The opinion is freely expressed by Chancery men that another Judge is required on the Equity Bench. It is no exaggeration to say that the work done by each Equity Judge is about double that which devolves upon each of the

members of the Common Law Courts. The special work in Chancery is undoubtedly increasing, and the cases are much more ponderous and complicated than those which arise at Law. The result of the pressure of business is such that the sittings at Toronto are now being held during weather in which it is a positive "cruelty to animals" to work. While we hear of applications being made in the Provinces for an increase to the judiciary, there is none in which an addition is more required in the interests of the public than in the Court of Chancery for Ontario.

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Many times have suitors blessed the Judge who invented the "Peremptory List." The theory of this list is that the Judge enters on it, for trial each day, so many cases as, in his judgment, amounts to a fair day's work, and which, if tried, would be a fair day's work. By this means counsel and suitors and witnesses know what is expected by the Court, and are ready accordingly. But the strange spectacle has lately been seen of a Judge so voracious of work as to inscribe twenty cases on the list as the smallest per diem allowance which will satisfy his appetite! Of course it is almost impossible to have all the people concerned in twenty cases waiting each day. Better abolish the list altogether than make a mockery of it.

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The same learned Judge has, during the Toronto Assizes, commenced his work at half-past eight in the morning. This is also charming in theory during the hot weather. The great orators and the little speechifiers of ancient Greece charmed or wearied their Athenian audiences as the sun began to light up the Parthenon. The learned and energetic Judge alluded to feels, doubtless, that he is not only following, but setting a good example. It is one of the dispensations of Providence that counsel, as soon as they go on the Bench, forget what manner of men they were. It does not occur, for example, to the Judge, who breakfasts quietly at an hotel and then saunters to the Court House, free from care of household or client, that such cares were, in previous years, also his unhappy portion. It is, of course, very jolly for lawyers to "get up the night before" to attend to these minor matters before Court, and it is good for them to try and look pleasant when their houses, their clients and their offices have been neglected, but some of them are stupid enough to grumble about it, and say they won't stand it, &c. This, however, is all nonsense, they will be Judges themselves some day, and then they will take it out of some one else, and so it will be all right on an average.

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## *PUNCTUATION IN ITS LEGAL ASPECT.*

The "Treatise on Punctuation" by a thorough-bred pointer which Tom Hood projected in his imagination would, if an actuality, have small claims upon the attention of the lawyer. He, it is generally believed, is superior to these cabalistic contrivances in the way of stops in order to shorten and elucidate his sentences. "*Jurisconsultus non curat de verbibus*" was the pithy maxim of the sage Accursius, and it has been adhered to with great fidelity by the race of lawyers from his day to the present and *a fortiori* by conveyancers. Joshua Williams, in his first book for the use of students in conveyancing, says not without commendable pride "the reader will be struck with the stiff and formal style which characterizes legal instruments, but the formality to be found in every properly drawn deed has this advantage that the

reader knows at once where to find any portion of the contents. Throughout the whole not a single stop is to be found, and the sentences are so framed as to be independent of their aid, for no one would wish the title to his estates to depend on the insertion of a comma or a semi colon. The absence of stops renders it next to impossible, materially to alter the meaning of a deed without the forgery being discovered." Lord St. Leonards said (when Lord Chancellor of Ireland) "In wills and deeds you do not ordinarily find any stops; but the Court reads them as if they were properely punctuated": *Heron* v. *Stokes*, 2 Dr. & War. 98.

There is, however, one class of instruments in particular, those namely which are testamentary in character, where marks of punctation such as the introduction of capital letters or other marks indicating where a sentence or clause was intended to begin, parentheses and the ordinary stops may be taken into consideration by an inspection of the original document: see the observations of Vice-Chancellor Wood in *Oppenheim* v. *Henry* cited in the note to *Walker* v. *Tipping*, 9 Hare, p. 102. This is permissible even in wills of pure personalty where the probate is conclusive as to what the words of the will are (*Langston* v. *Langston*, 2 Cl. & Fin. 240, and *Havergal* v. *Harrison*, 7 Beav. 49); but the appearance of the original may, nevertheless, affect the sense and assist the construction in doubtful cases.

It is true that Sir William Grant declined to resort to this means of aiding the construction in *Sanford* v. *Raikes*, 1 Mer. 651, where he said, "the decision cannot depend on the grammatical skill of the writer of the will in the position of the characters expressive of a parenthesis. It is from the words and from the context, not from the punctuation that the sense must be collected." But other judges in later cases have not disregarded this means of ascertaining the testator's meaning, and have been influenced in their judgment by what appeared in the way of punctuation and structural arrangement on the face of the original document: see by Knight Bruce, V. C. in *Compton* v. *Bloxham*, 2 Coll. 210; and *Morrall* v. *Sutton*, 1 Phil. 538 by Parke, B.; and by Wood, V. C., in *Milsome* v. *Long*, 3 Jur. N. S., 1073. In *Gower* v. *Towers*, 26 Beav. 81 it is noticed that the word "And" began with a capital letter in the probate. In *Childs* v. *Elsworth*, 2 De G. M. & G. 679, Lord Cranworth said, "We have caused the original will to be examined, and it appears that the whole gift in question is written continuously as one sentence and is closed with a full stop." In *Gauntlett* v. *Carter*, 17 Beav. 589, the Master of Rolls placed a good deal of reliance upon the position of marks of punctuation, observing that he did not see how he could reject the commas, and that it seemed to him that the stops were inserted by the testator and were intentional. In an American case, *Arcularius* v. *Sweet*, 25 Barb. S. C. 405, the judge said, "Punctuation may, perhaps, be resorted to where no other means can be found of solving an ambiguity; but not in cases where no real ambiguity exists except what punctuation itself creates." It was contended in that case that a semi-colon made all the difference in the meaning, but the Judge said, "a single dot over a comma so easily inserted by mistake or design and so difficult, if not impossible in most instances, of proof or disproof, can never be allowed to overturn the natural import of the written words." And in *Manning* v. *Purcell*, 24 L. J. Ch. 523 (note), Lord Justice Knight Bruce said that even in wills of personalty Judges in Chancery were not bound to confine

their attention to the probate, but might as he had known Lord Eldon repeatedly do, look at the original will in the testator's handwriting with a view to see whether anything there appearing, as for instance, the mode in which it was written, how "dashed and stopped," could guide them in the true construction to be put upon it. (S. P. but not so fully given in 7 De G. M. & G. 55.)

Punctuation is not allowed to throw light on the printed statutes in England as pointed out by Romilly, M.R., in *Borrow* v. *Wadkin*, 24 Beav. 330, where the question was whether a comma was to be placed at the top of the word "aliens" so as to mark a genitive, or between it and the next word; because in the Rolls of Parliament the words are never punctuated, and accordingly, said the Judge, very little is to be learned from the original statute, and he had to gather the meaning from the context. In the case already cited from 25 Barb., Roosevelt, J. refers to an extraordinary case where the powers of the Federal Government depended on a comma and parties divided on a semi-colon. One side read in the Constitution that Congress should have power "to lay taxes to pay (*i. e.* in order to pay) the debts and provide for the common defence and general welfare; the other that the powers given were independent, 'to lay taxes,' 'to provide for the general welfare,"' &c. The semi-colon interpretation was finally withthrown and the written words and natural sense prevailed over "stops."

## *LAW SOCIETY.*

### Easter Term, 43rd Victoria.

The following is the resumé of the proceedings of the Benchers during this Term, published by order of Convocation :—

Monday, May 17th, 1880.

The Minutes of last meeting were read and approved.

The report of the Examiners on the examinations for call to the Bar was received, read, and approved.

The report of the Secretary as to the papers of the candidates was read.

Messrs. Delahay, Stewart, Gundry, Shannon, Deacon, Brophy, Carey, Walkem, and Muir were called to the Bar.

The report of the Examiners on the examinations for admission as Attorneys was received, read, and approved.

The report of the Secretary as to the papers and service of the candidates was read.

Ordered, that Messrs. Deacon, Delahay, Stewart, Morphy, Radcliffe, Waddell, Kerr, Hatton, Orr, and Case do receive their certificates of Fitness.

Ordered, that the cases of Messrs. Carey, Proudfoot, Hewson, Curran, Boultbee, Brophy, McMahon, Munro, and Eakins be referred to the Committee on Legal Education for report.

The report of the Examiners on the Intermediate Examinations was received and read.

Ordered, that the examinations of Messrs. Riddell, Cassels, Gausby, McCaul, McAdams, Kean, Dickinson, McKenzie, McDonald, Leeming, Robertson, Mabee, Land, Delaney, Carroll, McLean, Wilson, Mills, Cameron, Foy, Davis, Beardmore, Drought, Haight, Cameron, E. R. Taylor, McLean, Cavell, and Williams be allowed them as their first intermediate examination.

Ordered, that the examinations of Messrs. Campbell, Jones, Johnston, Hastings, Nelson, McBeth, Marsh, Macdonald, W. A. Bitzer Hough, Matheson, Ritchie, Mowat, Brouse, Scholefield, Macdonald, George Henderson, Luscombe, Graydon, Masson, Sanderson, Justin Dexter, Sherry, McMeans, Armstrong, Cahill, Lane, Morphy, H. B. McLaurin, and Spotton, be allowed them at their second intermediate examinations.

The report of the Committee on Discipline on the cases of Messrs. Hastings, Porter and Hooper was received, read and adopted.

The petition of J. Boultbee in reference to his examination for call was refused.

The petition of J. J. Stephens in refer-

ence to his annual certificates was referred to Finance Committee, with power to act.

The report of the Committee of Legal Education on the Primary Examinations was received and read.

Ordered, that the following gentlemen be admitted as students-at-law and articled clerks :

GRADUATES.

Robert Peel Echlin, W. H. W. Daley.

MATRICULANTS.

Alexander B. Shaw, Leonard H. Patten.

JUNIORS.

Douglas Alexander, Paul Kingston, Theophilus Bennett, E. W. J. Owens, A. J. Flint, and Donald Macdonald.

ARTICLED CLERK.

W. D. Scott.

The report of the Committee on Legal Education on the petitions of Ghent Davis, Leonard Harstone, Frederick Rogers, A. W. Ford, and A. W. Orr, was received, read, and adopted.

Mr. Becher moved that the Discipline Committee be requested to consider and report upon the powers of Convocation to deal with students-at-law and articled clerks who may appear to have been guilty of improper conduct.—Carried.

A letter from the Sheriff of Wentworth was laid before Convocation.

Ordered, that it be filed and laid before Convocation in the event of the person referred to in it applying for admission to the Society.

Messrs. Johnston, McLean, Scott and Lemon were called to the Bar.

Mr. Britton moved that the chairmen of the several Standing Committees, and the Treasurer be appointed a select committee to strike the standing committees for the ensuing year, and that they do submit the names proposed for such committees on Saturday next.—Carried.

Tuesday, May 18th, 1880.

The minutes of last meeting were read and approved.

Messrs. Grant, Robinson and McLaren were called to the Bar.

The Committee on Legal Education report on the petition of Mr. Lougheed, recommending that he be allowed his examination in the Law School as his second Intermediate Examination Report—adopted.

The same Committee recommend that no action be taken on the petition of Francis Jones.—Report adopted.

The same Committee recommend that the intermediate examination passed by James Henry, as a Student-at-law, be allowed him as an articled clerk.—Adopted.

The same Committee recommend that Mr. Carey's certificate of fitness be issued to him on his filing the certificate and affidavit proving his service with Mr. Blackstock.—Report adopted.

The same Committee recommended that in the case of Mr. C. E. Hewson, the rule as to service under articles being effectual only from the date of the Primary Examination, be dispensed with, and that he receive his certificate of fitness.—Report adopted.

The same Committee recommended that certificates of fitness be issued to Messrs. Curran and Boultbee.—Report adopted.

The same Committee recommended that in the case of Mr. Jas. W. Brophy, the filing of his articles be allowed as sufficient, and that the rule as to service being effectual only from the date of the primary be dispensed with, and that he receive his certificate of fitness.—Report adopted.

The same Committee recommended that Mr. Eakins receive his certificate of fitness, on his filing a proper certificate from Mr. Mulock.—Report adopted.

Ordered, that certificates of fitness issue to Messrs. Carey, Hewson, Curran, Boultbee, Brophy and Eakins, in accordance with the report of the Legal Education Committee.

The report of the Finance Committee, recommending the erection of an Examination Hall, and the introduction of additional telephone service, was received and read, and ordered to be considered at the next meeting of Convocation.

The matter of J. Malcolm Munro was referred to the Legal Education Committee, with a request that the Committee furnish Mr. Robertson, of Newmarket, with a copy of Mr. Munro's declaration, in order that he may reply to the same if he so desire.

The Legal Education Committee reported in the case of Mr. Proudfoot, recommending that the rule of the Society as to the Primary Examination be dispensed with as in Ede's case, and that he receive his certificate of fitness.—Report adopted.

Ordered, that Mr. Proudfoot receive his certificate of fitness.

Saturday, May 22nd.

The Minutes of last meeting were read and approved.

The report of the Special Committee to strike Standing Committees was received, read and adopted, as follows :—

Easter Term, 1880.

*To the Benchers of the Law Society in Convocation :—*

The Select Committee to strike Standing Committees recommend that the following be the names of the gentlemen in the repective Standing Committees of the Society up to Easter Term, 1881.

FINANCE.

James Bethune, John Crickmore, E. Martin, James A. Miller, D. B. Read, Stephen Richards, L. W. Smith.

LIBRARY.

James Bethune, Hector Cameron, Thos. Ferguson, Æmilius Irving, Francis Mackelcan, Dr. McMichael, Stephen Richards.

REPORTERS.

James Bethune, Byron M. Britton, Hector Cameron, Francis Mackelcan, James Maclennan, Dalton McCarthy, Edward Martin.

LEGAL EDUCATION.

Thos. M. Benson, John Crickmore, Thos. Ferguson, Alex. Leith, John Hoskin, Thos. Robertson, L. W. Smith.

DISCIPLINE.

Thos. M. Benson, John Hoskin, James Maclennan, Dr. McMichael, Stephen Richards, Thomas Robertson, Arthur S. Hardy.

JOURNALS OF CONVOCATION.

Byron M. Britton, Hector Cameron, Thomas Ferguson, John Hoskin, Æmilius Irving, J. K. Kerr, James Maclennan.

COUNTY LIBRARIES.

Thos. M. Benson, Hector Cameron, John Hoskin, J. K. Kerr, W. R. Meredith, J.A. Miller, Thomas Robertson.

John Crickmore,
*Chairman.*

Messrs. Fitzgerald and Andrews were called to the Bar.

The Report of the Legal Education Committee recommending that Messrs. C. H. Ivey, Charles R. Irvine, and R. W. Armstrong, be entered on the books of the Society as graduates, was received and read.

Ordered, That C. H. Ivey, Charles R. Irvine and R. W. Armstrong, graduates of universities, be entered on the books as Students-at-law.

The Report of the same Committee recommending that Mr. Lefroy be excused his second intermediate examination under the special circumstances of his case, was received, read and adopted.

Moved by Mr. Read, seconded by Mr. Mackelcan, That Mr. Blake be re-elected Treasurer for the ensuing year.—Carried.

The Report of the Legal Education Committee on the case of Mr. Munro was received, and read, recommending that he be granted his certificate of fitness.

Report adopted.

Ordered, That Mr. Munro receive his certificate of fitness.

A letter from Mr. J. C. Hamilton, referring to the passage way to the Master's offices was read.

Ordered, That the Secretary write to the Attorney-General, requesting him to direct that the proposed arrangement be carried out.

The report of Mr. Robinson, the Editor of the Reports, was received, read and referred to the Reporting Committee.

The Report of the Finance Committee, presented at last meeting and ordered to be considered to-day, was brought up.

1st. The clause as to Examination Hall was adopted, and the Committee directed to procure a plan and estimate of the cost.

2nd. The clause as to increased telephone service, was adopted.

Mr. Maclennan for the Chairman of the Library Committee, moved, that the Librarian and his Assistant be granted leave of absence, the Librarian for two weeks and

his assistant for three weeks during the long vacation.—Carried.

Mr. Read moved, That Mr. Crickmore, the Chairman of the Legal Education Committee, be appointed representative of the Law Society in the Senate of the University of Toronto until the end of Easter Term, 1881.—Carried.

Mr. Crickmore gave notice that, at the next meeting of Convocation, he would move, that the option to take German for the Primary Examination contained in the former curriculum be continued till after next term.

Mr. Blake gave notice that, at next meeting of Convocation, he would move for the appointment of a committee to consider and report a plan for the establishment of scholarships in connection with the Intermediate Examinations.

Mr. Read gave notice that, at the next meeting of Convocation, he would move that the Report of the Select Committee in favour of the abolition of the Law School, adopted by Convocation, be printed in the Journals.

Friday, June 4th.

The Minutes of last meeting were read and approved.

The letter of Mr. Prescott, asking for information as to what an English attorney would be required to do in order to be admitted as an attorney, and called to the Bar in Ontario, was read.

Ordered, That Mr. Prescott be referred to the Rules of the Society, and informed that it is contrary to the practice of Convocation to consider cases before they come before it in regular course.

The Report of the Committee on Reporting as to the printing of the Reports of the various Courts, and recommending that the edition of the Reports be increased to 1,350 copies, and that the number of copies of the Supreme Court Reports purchased by the Society for distribution, be increased to 1,350, and further recommending that no change be made at present in the existing arrangements for the publication of the Reports was adopted.

Mr. Read moved that the report of the Select Committee in favour of the abolition of the Law School be printed in the Journals.—Carried.

Mr. Crickmore moved that the option to take German for the Primary Examination contained in the curriculum be continued up to and inclusive of next Michaelmas Term.—Carried.

Mr. Blake moved that a Select Committee, composed of Messrs. Crickmore, Robertson, Leith, Richards, Mackelcan, Martin, Maclennan, McCarthy, and the Treasurer, be appointed to consider and report a plan for establishing Scholarships in connection with the Intermediate Examinations, the Committee to have power to consider the expediency of abolishing the Special Scholarships.—Carried.

Mr. Robertson gave notice that he would, at the next meeting of Convocation, move that the rules for the Call of Barristers in special cases, under 39 Vic. cap. 31, sec. 1, be amended

1st. By striking out sub-section 1 of section 4 of rule 2, and that sub-section 2 of section 1 of same rule be amended so as to cover and include all attorneys, solicitors or writers, of at least five years' standing.

2nd. By amending rule 3, so as to make the fees payable by such candidates for Call to the Bar, in addition to the ordinary fees payable for admission and for Call, three hundred dollars ($300).

3rd. That rule number 2 for the admission of attorneys and solicitors in special cases, under 39 Vic. cap. 31, sec. 2, be so amended as to make it competent for any Barrister to be admitted as an attorney and solicitor without any further examination as to fitness, &c.

Mr. Mackelcan moves that Mr. Maclennan, Mr. McCarthy, Mr. Bethune, and the mover, be appointed a Committee to confer with the Attorney-General and the Judges upon the subject of short-hand reporting, and the subject of the cost of short-hand writers' notes, and further to urge upon the Attorney-General that the parties should not be required to pay for the copies of evidence furnished to the Judges in Common Law cases, but only for such copies as they may order for their own use. —Carried.

Convocation adjourned.

## Charge of Judge Gowan.

The following charge of His Honour Judge Gowan to the Grand Jury, at the late June Sessions of the County of Simcoe, will be read with interest by many; especially so as it discusses the recent legislation of the House of Assembly on several subjects of a legal nature.

His Honour, after referring to the state of the Calendar, said:—

### DRUNKENNESS AND CRIME.

It is sad to know, taking a long retrospect of thirty-eight years of judicial life, that nearly two-thirds of the criminal cases which came before me were traceable to the use of intoxicating drinks, provided under the shadow of the law, and I every day perceive more clearly what I have often before said, in one form or another—the intimate connection between drunkenness and crime; in fact, that habitual drunkenness almost invariably leads to the commission of crime.

I think that the efforts of earnest men in the cause of temperance have done something to diminish the evil incident to, and it would seem inseparable from, the traffic in intoxicating drinks. There is certainly some change in public sentiment; but sustained effort is as needful as ever, till such a healthy public feeling on the subject is formed as will justify more stringent enactments for the personal restraint and penal control of the drunkard and for securing effective responsibility and punishment in the case of those who tempt their fellow-creatures to crime, or for abolishing altogether the traffic in intoxicating drinks.

### RECENT LEGISLATION.

I avail myself of this occasion to direct attention to some of the statutes passed at the last session of the Provincial Legislature.

There are several Acts relating to municipal law, all of which will require to be carefully examined by those to whom the administration of the municipal law is confided, for the alterations and amendments made in the old law are numerous and important, though, for the most part, in matters of detail.

### TAX EXEMPTION.

In respect to the assessment law, I may observe that a very decided inroad will be found to have been made upon exemptions from municipal assessment, affirming, it would seem, that the principle upon which the privilege is based is unsound and inapplicable to our condition. The action of the Legislature gives some hope that the day is not far distant when the present *forced benevolence* in favour of certain officials, religious bodies, and church officers, will be abolished altogether.

### INSOLVENT LEGISLATION.

In consequence of the repeal of the Insolvent Act, it became necessary to devise some means of securing to creditors, with as little delay and cost as possible, a fair division of an insolvent debtor's property. A very carefully prepared Act, having this object in view was also placed on the Statute Book, and I think it will serve to a great extent the objects aimed at. But the subject is a difficult one to deal with, the Province having only limited powers of legislation in respect to the matter.

### LANDLORD AND TENANT.

Lodgers and boarders were often subjected to great loss and injustice by the exercise of the landlord's power to levy a distress on their goods and chattels for arrears of rent due to the superior landlord by his immediate lessee or tenant. This has been remedied by another Act of last session, and by a simple process, provided for in the Act, the lodger or boarder will now, on just terms, be able to save his property from sale for arrears of rent.

### THE DIVISION COURT EXTENSION.

Every change connected with the Division Court is of interest to the general public, seeing that for the collection of debts and otherwise, some two hundred persons resort to them for every two persons who use the Superior Courts; and although the claims of the former may be small in amount, they are relatively as important as the large claims of the more wealthy suitors in the Superior Courts. One of the Acts of last session effects very important alterations in the law relating to the Division Courts, and I wish to direct attention to some of its provisions. It is now thirty-nine years since Division Courts were established in this Province, and they have grown steadily in public favour, if one may judge from the largely increased jurisdiction conferred upon them. Those most familiar with the working of these courts believed that the highest limit for safe and efficient working had been reached; but the Legislature, in the face of strong and unbiased testimony to that effect have been brought to think otherwise, and doubled the jurisdiction in respect to certain money demands, and increased it by fifty per cent. in cases of *tort*. I hope it may not be found that this will impair the value and usefulness of the courts to those who will chiefly use them, promoting

only the interests of the few at the expense of the many. I have myself great misgivings as to the general result of the large increase working benefit. I am bound to say, however, that the measure has been so framed as to obviate as far as seemed practicable, the drawbacks of a mixed jurisdiction in courts of summary procedure.

But there is a view of the subject very important in relation to credit. A very large number of the transactions with rural dealers do not exceed the highest limit of the new jurisdiction, and there may be some danger in submitting certain written contracts to adjudication in tribunals where "good conscience" is admitted as a rule for decision of legal rights; at all events there will be a certain amount of uncertainty, and one can understand that purely "commercial paper," for amounts under the new jurisdiction may lose something of its value in the eyes of commercial men. It may not be an evil if thereby the credit system is reduced; but on the other hand there may be the temptation to run a liability beyond $200, merely for the purpose of bringing the promise within the range of the Superior Courts, where unbending strictness in legal decisions prevails, and the power of juries is restricted.

### THE APPOINTMENTS OF DIVISION COURT OFFICERS.

The duty of appointing the officers of the Division Courts was, from their institution, committed to the Judges, who were in a position to personally examine candidates for office, as to their educational fitness, and to know something as to their moral character. During the thirty-six years in which I performed the duty, ninety-four officers were appointed as clerks and bailiffs, some of them on promotion from one office to another, and I can say that with *very* few exceptions, better men or more faithful and efficient officers in the position could not be found. In all these years on four occasions only had I to exercise ths power of removing clerks. A very large number have died in the service, some few resigned, and of my first appointments, in 1843, only three persons are now living.

The Act of last session changes the mode of appointment. The Lieut.-Governor now appoints clerks and bailiffs. The duty of appointing and selecting fit persons, with the care and promptitude necessary will be found no easy task under this centralization of the appointing power, for the Division Court officers are a numerous body, some-630, and scattered all over the Prrovince.

### TENURE OF OFFICE.

Some uneasiness, I learn, is felt amongst officers, in respect to the security of their position, now that the appointment is "political." I believe there is no ground for any uneasiness—that an arbitrary exercise of the power of removal by Government is just as improbable now as under the old law. In "a paper" addressed to the officers of my Judicial District, published many years ago, when the judge had the power of appointing and removing clerks and bailiffs, I said:—

"The letter of the statute makes the tenure of the office for both clerk and bailiff during the '*pleasure*' of the judge; but an office connected with the administration of justice ought at least practically to be upon a more certain tenure, and while willing and able to peform the duties required of him, faithfully, discreetly, and in the mode prescribed, every officer should be able to feel assured that his position was secure. These, my early formed and known sentiments, need no repetition to convince officers in this county that the exercise of my '*pleasure*' will not be bottomed on caprice. But I hold the power of removal as a trust, and may not decline to exercise it when inability or misbehaviour in office is made to appear to my satisfaction."

This, the only just principle, will, I am persuaded, guide Governmental action, whatever irregular influences may be operative; indeed, the Government have beforehand recognised it *on the face of the measure* in a very prominent way, giving by *express* provision, in effect, a better tenure than before, "misconduct or incompetency" being the grounds to warrant a dismissal from office.

### FURTHER LEADING PROVISIONS OF THE ACT.

I cannot now enter into the full particulars of the Act, but I may refer to some more of the leading provisions. An appeal is given in cases for amounts over $100—fees to professional agents may be allowed in such cases, and provision is made for the creation of a jury fund by a small fee levied on suitors. This last will be felt as some hardship in the Courts where jurors are not desired by suitors, but I presume it was thought to be the best plan that could be devised for the compensation of jurors.

### SUBSTITUTIONAL SERVICE.

There is also another provision making substitutional service sufficient where a debtor evades personal service or absconds. These are good provisions, and are calculated to save unnecessary costs to suitors

### A PROVISION AS TO FEES.

There will always be a difficulty in the proper adjustment of remuneratiou by fees; in some Courts officers receiving more than

a fair compensation for the duty, in others not enough. This the Government have, I think, wisely met in the new law by requiring the amount received for fees, in excess of a fair remuneration, to be paid into the Provincial Treasury. But the requirement involves much work in keeping accounts and in returns to Government by all, even more work than was necessary before stamps were done away with. Clerks are allowed nothing for this extra work—not even the small quarterly fee allowed by Government for similar returns as to stamps. This certainly is not reasonable, and may well be complained of, especially in view of the fact that books, forms and stationery are not supplied to Clerks by Government; the cost of them coming out of the officer's own pocket, when not supplied by the County.

JUDGMENT DEBTORS.

A good deal has been said against what are called the "Judgment Summons clauses" of the Division Court Act, I must think in ignorance of their scope and intention; for rightly used and administered they are very valuable provisions. They certainly give no sanction to "imprisonment for debt." The object of the law, as I put it in a public address to the Courts in 1851, when the Statute came into force, is this:—The powers given are for the discovery of property withheld or concealed, the enforcement of such satisfaction as the debtor is able to give, and for the punishment of fraud. The debtor willing to give up his property to his creditors, ready to submit his affairs for inspection, and who has acted honestly in a transaction, although he may not be able to meet his engagements, has nothing to fear from the operation of this law. It is the party who has been *guilty of fraud* in contracting the debt, or who will not apply means in his power towards liquidating it, or who secretes or covers his effects from his creditors, that the law looks upon as a criminal, and who may, but only on the order of a Judge, be imprisoned as punishment for his misconduct.

I have had a long experience in the working of this law, and I would be sorry in the interest of justice and fair dealing to see it removed from the statute book. Judging from my own experience, I would say that there is no foundation whatever for the charge that debtors are harshly dealt with under these clauses, for in this large county *only twenty-three commitments have occurred under this Act for the last seven years*, and not an average of four commitments per year since 1861, in this, the largest and, with the exception of York, the most populous jurisdiction in the Province. It may be that creditors sometimes hastily resorted to the remedy by Judgment Summons, causing unnecessary trouble and irritation to poor debtors. This was an evil, and the new Act very properly deals with it, placing certain wise restrictions on the indiscriminate use of the process by creditors, thus preventing abuses of the kind.

DIVISION COURT INSPECTION.

This Act also creates a new office in connection with the Division Courts—that of Inspector, with a salary not exceeding $1,400 yearly, and having certain specified duties assigned to him. Under our Division Court system there are in the Province some three hundred Clerks acting separately and independently in the discharge of numerous and complicated duties of detail; it is not easy, therefore, to secure an exact compliance with all the duties prescribed by statute and rules without a general inspection of some kind, and my impression is that an intelligent and discreet inspector of some kind may be of much use in this way. Time, however, will show whether the office will answer the ends for which it was created—will test the experiment, whether a success or otherwise.

OTHER CHANGES.

An appeal from the decision of Magistrates under the Master and Servants' Act was formerly to the Sessions. By this Act it will now be to the Division Court. The County Judge is the presiding officer in both Courts, but the change will, in my opinion, effect a great saving to parties both in time and expense. This Act also contains other useful provisions for the administration of the law in the Division Courts.

THE GRAND JURY QUESTION.

The question of the abolition of the Grand Jury has. it is satisfactory to know, attracted considerable attention, and is now being discussed in this and the other Provinces of the Dominion; and I notice that a gentleman long familiar with the administration of the criminal law has laid before Parliament a measure on the subject. It is well that the matter should be fully considered before legislation takes place, especially as some difference of opinion prevails. I retain the opinion I have so often expressed, that Grand Juries may, with safety and with great benefit to the administration of criminal justice, be abolished, and that all that is necessary to retain of their functions may be better and more economically performed by *responsible* agents of the Crown. But I do not purpose enlarging at this time upon what has been already said; indeed, able writers in the public press have taken the matter up and

little has been left to say in the way of reply to those who wish things as they are, that has not been already well said in the public press.

The matter is now before the public. I have obtained the object I aimed at in addressing Grand Juries, which was not to draw out an expression of opinion from the particular body addressed. I merely availed myself of these occasions, hoping to direct public attention to what I believed to be a great defect in the criminal law, which a long experience has convinced me required reform—a reform that could be economically, easily and safely accomplished.

## SELECTIONS.

### *PRESUMPTIONS IN CRIMINAL CASES.*

#### PRESUMPTION OF INTENT.

(*Continued from p.* 143.)

Now, in no one of the four cases above given does the intent square with the execution, yet of what are called malicious killings these categories constitute a large proportion. Taking them in connection with negligence, we may say, therefore, that in only a small proportion of offences does the offender execute that which he really intends. It is not generally true, therefore, but generally false, that an act is intended by its perpetrator.

Does this again, land us in scepticism? Because we have to reject the proposition that all offences are intended, are we to sweep out of existance the entire category of malicious crimes, and say that there is no way in which a malicious crime can be proved? So far from this being the case, the rejection of the false proposition here criticised leads us to the only logical and just way in which malice can be established. It undoubtedly imposes higher intellectual labour on bench and bar, and requires from them higher intellectual gifts than did the old system by which malice was at the outset assumed. It undoubtedly is an easy thing to say, "he did it, therefore he did it maliciously and intentionally." But it is an untruth in many cases, and in all cases is a *petitio principii;* sometimes leading to bad pleading, causing men to be indicted for the wrong crime instead of the crime really committed; sometimes oppressing innocent men, by throwing the burden of proof on them, when the burden is really on the other side; sometimes producing acquittals because the jury feel that the assumption is an outrage on common sense, as when they are told that shooting a tame fowl, with intent to steal, when the ball glances and strikes B, whom the assailant did not see and had no reason to imagine to be in the neighbourhood, is shooting at B, "with intent the said B, feloniously, wilfully, and of malice aforethought, to kill and murder." The only logical and right way is to indict a man for what he really does. If he is trying to steal a tame fowl, then he is indictable for an attempt at larceny. If he kills a man negligently when trying to steal the fowl, then he is indictable for negligent homicide. And when he is indictable for an intentional and malicious act, then the conclusion is to be reached by a canvassing of all the circumstances of the case. No two cases are precisely alike. There is no rule which fits absolutely even two cases. We must put all the facts together, and examine whether from them by free logic, we can infer malice. The process is not deductive, but inductive. It is determinable not *a priori* by any postulate of positive jurisprudence, but, after the evidence is in, by inference from all the circumstances of the case. The question, therefore, is one of fact for the jury, to be adjusted by the law of sound reasoning, not by technical jurisprudence to be absolutely pronounced by the court. Yet, while for the jury, and, in the sense above stated, a question of fact, it is also a question of law in its most comprehensive sense, of the law of iuductive proof. And to this law, as pouring its light upon all the circumstances of the case, should the attention of counsel be turned in their argument, and of the courts in their charge.

#### FALSIFICATION OF EVIDENCE.

In the days of Sir Elijah Impey, an English merchant in India was sued on a promissory note. "It is forged," said he to his attorney. "Never mind," was the reply, "We will make it all right." The client gave the attorney a list of witnesses who would prove the forgery, and went into court expecting to hear them called. To his surprise, his counsel, after

the plaintiff's case was closed, pulled out a release. "But the release"—so the client afterwards objected to his attorney —"was never given to me; I never heard of it before." "That is true," was the reply, "but the shortest way was to meet the plaintiff on his own ground, so we forged the release." It is unfortunate that in our criminal courts there is a class of lawyers who are unscrupulous enough to seize upon any defence that is available, no matter how false they may know it to be. That there are witnesses also ready to swear to any defence, when they do not run the risk of prosecution for perjury, is illustrated by the hangers-on who can be counted upon to offer and to swear to straw bail. It would be unjust, therefore, to impute to the client that which may be the entire work of the counsel. We have no right to infer guilt, even if false testimony is brought into court knowingly by counsel.

But we must remember that there are many cases in which such testimony may come in without the complicity of either client or counsel. We have already noticed instances in which perjury has been deemed by the witness committing it, a point of honour. Lord Cockburn, in his Reminiscences, notices several trials in which high-minded Scotch lords, who would scorn an untruth themselves, looked upon it as a matter of course that their retainers should come into court to swear to whatever might help their chief. But in many cases where false testimony is rendered, even this extent of connivance cannot be imputed. A man is to be tried on a capital crime. It is natural to suppose that among those whose being is wrapt up in his, there may be someone ready to sacrifice himself, if it need be, for the rescue; someone like the Scotch servant, who would "rather trust his soul to God than his master to the Whigs." Yet this may be without any complicity on the part of the person on trial.

It should be remembered, also, that speculations, implicating others in a crime, may be thrown out conjecturally by persons themselves entirely innocent. For some days before the arrest, last summer, of Castine Cox, a series of letters appeared in the newspapers, suggesting various persons as guilty, and one or two witnesses were ready to testify to facts, grossly exaggerated, if not fabricated, implicating the husband of the murdered woman. Where these speculations and fabrications the work of a person seeking in this way to divert attention from himself? So far from this being the case, the speculations were thrown out as guesses, something in the way in which answers to conundrums are published; and nothing would better illustrate the falsity of the presumption now before us, as a general rule, than the laughter with which the whole community would greet an attempt to charge the author of one of these communications on the ground that throwing the police on a false track is a presumption of guilt on the part of those by whom the luring device is concocted. So far as concerns those who concocted fabrications implicating the husband of the murdered woman, we have here simply illustrated the fact that there may be gratuitous and volunteer perjuries for a prosecution, as well as gratuitous and volunteer perjuries for a defence. Men may perjure themselves for notoriety, or for merely the witness fees and allowances attendant on a summons to testify in a contested prosecution.

But we still have to consider the case of a person charged with crime taking actual part in the concoction of a false defence. But does this necessarily imply guilt? Mr. Bentham, in arguing in the negative, appeals to a well-known story in the Arabian Nights. A little hunchback is accidentally choked by swallowing a fish bone. His host, finding him dead, places him at the door of a neighbouring chamber. The inhabitant of this chamber, opening the door and finding this unwelcome encumbrance deposited there, gives the body a kick, and is shocked, on returning to the spot a few minutes after, to find the hunchback dead. To ward off suspicion from himself, he takes up the body and places it in front of chamber number two, where a similar scene is shortly afterwards enacted. Quite a number of operations of this kind are gone through with, each successive occupant endeavouring to shift, in this way, suspicion from himself on his

neighbour. It may be questioned whether most innocent men, whom suspicion lowers, would not do pretty much the same thing. A man of cool sagacity would undoubtedly say, "This thing implicates me. I will confront the difficulty at once. I will court investigation, exposing to the proper authorities all the facts." But most persons would say, "Here is an ugly thing, which will only expose me to trouble and misconception. I will get rid of it in the best way I can." And, in point of fact, there is no trial for crime in which the law does not invite, in the shape of admitting all relevant hypotheses inconsistent with the hypothesis of guilt, argument, if not evidence, of this very class. It may be probably false, for instance, that a man found murdered committed suicide. It may be probably false that A, B, or C committed the offence. But it is relevant to put in any facts from which it might be argued that the deceased's death was by suicide, or through the agency of A, B, or C. The preponderance of evidence may be against those hypotheses; but nevertheless, false as they may be, it is the duty of counsel to present them to the court, and unless they are disproved beyond reasonable doubt, an acquittal follows. Of course, to suborn perjury is in itself an indictable offence: but to put in evidence, facts in themselves true, or believed to be true, from which a relevant hypothesis, however erroneous, may be argued, is proper for those charged with the defence of a criminal case. And again, unless actually concerned in the concoction of false testimony, how can counsel know that any testimony is false? And how can counsel know that any hypothesis, the verification of which would solve the case, is untrue, though there be a preponderance of evidence against it?

Yet there are many cases in which the getting up of a false defence seriously prejudices, as it ought to prejudice, a man charged with crime. For a man with the gallows before him to snatch at any straw, is but natural. But when a fraudulent defence is proven, then it is natural to say, "this is all of a piece." Of this class is the Tichborne case, in which the manufacture of perjury to affect the jury was part of a system with the manufacture of false proofs of identity to affect those to whom the claimant presented himself on his re-appearance in England. In the same line falls the Webster case. There was no strong presumption of guilt to be urged against Dr. Webster from the mere facts that he wrote letters to the newapapers suggesting various theories to account for the disappearance of Dr. Parkmam. But there was a deep shadow cast on him by the fact that those letters were in a disguised hand; were covertly forwarded; and, on other grounds, seemed part of a system with an assassination, which, if not deliberately and cautiously planned, was, at least, deliberately and cautiously covered up. In such cases there is an inference of of guilt to be drawn from the fabrication of testimony. But it is an inference from the whole case. It does not flow from the assumption that fabrication of evidence by a defendant is always a presumption of guilt. This is not true. But the reasoning is, that in this particular case such fabrications are part of a consistent system of cumulative proof from which guilt may be inferred.

### FLIGHT OR FRIGHT.

Closely allied to the last presumption is the presumption so frequently given in old books, that from flight guilt is to be inferred. It was a very convenient presumption in cases in which the ruling powers wanted to humiliate an adversary, to confiscate his goods, and to get him out of the way. Bills of attainder were threatened, if the game was high; what we would now call "lynch law," if the game was low; and as the party threatened knew he would not have justice done to him, he fled. Few things strike us as more remarkable, in the English civil wars, than the way in which men charged with crime escaped, or hid themselves, to wait for a time when they could take advantage of a turning tide in order to become themselves prosecutors. From flight in such cases, guilt could not be inferred, for innocent as well as guilty fled. Even as late as the days of Charles II., Lord Clarendon, rather than face an imprisonment, fled to France, because he was conscious that, however good might be his defence, he

could not expect a fair trial. In our own times, and in our own country, we can readily imagine circumstances in which an innocent man, courageous as he might be, might wisely evade a prosecution until a temporary prejudice against him should be overcome. We have recently been told that juries in the federal courts, at least in the Southern States, sympathize in politics with the marshals by whom they are summoned; and that in the same jurisdiction, state juries share, by a coincidence equally remarkable, the politics of the sheriffs. If so, it would not be strange if even a man of strong nerves, but of politics hostile to the jury by which he is to be tried, should avoid by flight a storm which he may believe to be temporary. And if a man of strong nerves might naturally do this, why not a man with weak nerves? Could we argue that a negro suspected of crime is guilty because he hides himself in the woods from a pursuit which he feels will end in a summary execution after being condemned by a mob? Or, to take the converse, would we have regarded it an admission of guilt for a Southern leader of the secession school, when charged with larceny, for instance, with the prospect before him of trial by a jury exclusively of negroes, under a judge politically hostile, to have left the country until a system less hostile should be established? And may there not be many cases in which persons of cultivation may be so unstrung as to be unable to face a trial in which they fear they may not have an opportunity of being fairly heard? To say, therefore, that flight is always a presumption of guilt, is monstrous. Yet, at the same time, it is impossible to deny that, logically as well as juridically, flight by a defendant is always relevant evidence when offered by the prosecution; and that it is a silent admission by the defendant that he is unwilling or unable to face the case against him. It is in some sense, feeble or strong, as the case may be, a confession; and it comes in with other incidents, the *corpus delicti* being proved, from which guilt may be cumulatively inferred.

What has just been said applies equally to the inference derived from *fright*. Fright, or tremor, or confusion, or distraction, when a party is arrested, may be imputable to a cause very different from that of consciousness of guilt of the particular charge on which the arrest is based. We have cases on record in which men, when engaged in illicit errands, of a different type, have been arrested on charges of attempted larceny or burglary; and in which their confusion and anxiety when caught were regarded as indicating complicity in the offence with which they were charged, though, in fact, these emotions sprang from annoyance or dismay at being detected in an offence of another class. It is related of a dissolute English statesman, then in political disgrace, that, being visited by a person evidently disguised, there was a suspicion among the police that this visitor was a foreign emissary, whom it was treason to harbour. A search warrant was issued, and the house was entered. Its master, when he faced the officers, was in evident confusion. He begged that at least his own chamber should not be searched, and he did this with a distressed earnestness which convinced them that in that chamber they would find the person of whom they were in search. Of course this made them more eager, and they forced their way into the room. A person was there in bed. "I will show you enough to prove to you that this is not the man you seek," said Lord Bolingbroke, for it was his house that was entered. He uncovered enough of the body to show that it was that of a woman, keeping the head concealed so that she might not be identified. His anxiety and confusion when his house was entered sprang from his desire to protect himself and his paramour from detection in a disgraceful intrigue, not from the fact that he was harbouring the person against whom the warrants were directed.

But even supposing there is no separate sore touched, as in the last case, there are many persons whose nervous structure is such that, with them, confusion, if not prostration, is the consequence of a sudden charge of guilt. A very eminent American clergyman and publicist, one of the purest men our country has ever produced, died this autumn, at Berlin,

from paralysis, attributed, in a large measure, to the shock of a charge as untrue as it was scandalous. When the bill allowing defendants in criminal cases the aid of counsel was before the House of Lords, the young peer who had charge of it broke down in his opening speech. He recovered himself, however, and made his embarrassment a telling reason for the measure he was to advocate. "If *I* am confused in making *my* first speech," he said, "though this is a speech about another, what must it be with a man charged with crime, who knows that on what he says, and how he says it, his own life depends." Few, except the most hardened and desperate of men, can stand such a test without flinching. And, apart from this, we have to consider the horror often incident to the first hearing of the perpetration of a great crime. In a famous English case, Spencer Cowper, of a historical family, which has been represented with like eminence in literature, in law, and in politics, was charged with the murder of a young girl with whom he had been intimate, and whose affections he had, however innocently, won. Her drowned body was discovered near a sequestered place where he had, at her request, on the preceding evening, appointed an interview with her. Suicide, or homicide, was the question; and if homicide were established, the indications pointed to Cowper. Her body, still reeking with water, was brought to the house, and he was suddenly charged by her relatives, maddened with grief, with the fearful crime. He staggered with horror under the shock, and this was made one of the main points against him on the trial that followed. He was acquitted ultimately, though after a fierce struggle, as party feeling was enlisted in the trial, Cowper's relatives being leaders among the Whigs, and the Tories undertaking to assume that party influence was enlisted to secure his acquittal. But acquitted he was, and righteously; though it is said that afterwards, when on the bench, he dealt tenderly with men who, when on trial for their lives, were unmanned by the terrors of a trial.

Yet with all this, it is relevant to put in evidence, on the part of the prosecutors, the tremor or confusion, or prostration of the defendant when charged with the crime. In Dr. Webster's case very striking testimony to this effect was brought out, testimony that was no unimportant thread in the web of inferences in which he was inextricably enclosed. Calm and cool as he had been down to the period of his arrest, under this arrest he broke down. His legs seemed to refuse their support. The colour forsook his face. His tongue became parched. It is easy to conceive of such a condition in an innocent person charged with crime. It is easy to conceive of a person paralyzed with horror on such a charge, as is said to have been the case with Marie Antoinette when accused of a great wrong committed on her own son. It is easy to conceive of reason tottering under such a shock, as was the case with King Lear, when overwhelmed with his daughters' taunts. Yet, at the same time, tremor is one of the consequences of a conscience suddenly aroused to a sense of guilt and of impending exposure. It may be a consequence of other things. A man who is shown a gallows, and to whom it is said, "this is probably for you," may naturally fall into a tremor. But the fact that tremor may be an incident of other things than of consciousness of guilt does not make it irrelevant on trial.—*Criminal Law Review.*

## NOTES OF CASES

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

### *QUEEN'S BENCH.*

IN BANCO.

[May 22.

Ferguson v. Veitch.

*Seduction—Evidence of defendant's means—New trial.*

*Held*, following *Hodsoll* v. *Taylor*, L. R. 9 Q.B. 79, that, in an action for seduction, evidence as to defendant's means is inadmissible; and that evidence of the kind having been received, defendant was not to be prejudiced in his application for a new trial, because his counsel had, after having done his best to exclude the evidence, ex-

amined defendant on the same subject, with a view to disproving the estimate placed on his means.

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

*Creasor, contra.*

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Snarr v. Smith, Assignee.

*Sale of goods—Trover against assignee in insolvency—Absence of bill of sale—Change of possession.*

In trover for goods, against an assignee in insolvency. *Held*, following *In re Barrett*, in appeal, not yet reported, that the assignee may object to the absence of a bill of sale, on an alleged sale by the insolvent, just as an execution creditor or subsequent purchaser for value may do.

It was alleged that the plaintiff, who was living with his mother, gave the horses in question to her for his board, but no price was fixed for them, and they were kept at her house and used by the plaintiff as before. *Held*, that there was no sufficient change of possession to dispense with a registered bill of sale, and that the sale was void as against the assignee in insolvency of the plaintiff.

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

*Beaty*, Q.C., and *A. Cassels, contra.*

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## VACATION COURT.

Osler, J.] [June 8.

*Public schools—Dissolution of union sections—By-laws—Sufficiency of petition for.*

On an application to quash a by-law dissolving a school-union section, *Held*, that the Court will not go behind the assessment roll with a view to ascertaining whether the petition for the by-law has been signed by the required number of the assessed freeholders and householders of the school section.

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

*McMichael*, Q.C., *contra.*

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Osler, J.] [June 15.

Regina v. Frawles.

*R. S. O. ch.* 181, *ss.* 35, 39, 51, 73—*Liquor License Act—Conviction for third offence under s.* 35.

On a motion to quash a conviction, appealed to the County Court Judge in Chambers, an objection that the writ of *certiorari* was improperly directed to, and return made by, the Clerk of the Peace instead of the County Judge, was overruled.

*Held*, also, that there is no jurisdiction to convict beyond a second offence against sec. 35 of the Liquor License Act (R. S. O. ch. 181), and a conviction for a third offence under that section was quashed.

Observations on the different cumulative penalties for offences under ss. 35, 39, 43, 51 and 73 of above Act.

*Hodgins*, Q.C., for the Crown.

*Ogden, contra.*

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## CHANCERY.

Proudfoot, V.C.] [June 10.

Loughead v. Stubbs.

*Pleading—Demurrer—Husband and wife—Parties.*

An inchoate dowress, who joins with her husband in an agreement for the sale of an estate, that the husband shall pay off a proportion of the incumbrance, and that he shall convey free from incumbrances, is a necessary party to a suit for specific performance of the agreement.

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Blake, V. C.] [June 18.

Sayles v. Brown.

*Altering document—Bona fides.*

A mortgagee executed a statutory discharge which was incorrectly dated and his agent in good faith and in order to make the instrument conform to the intention of the mortgagee altered the date; which alteration was under the circumstances immaterial, and, as altered, the document stated correctly what was intended by the parties to it. Under these circumstances a bill impeaching the validity of such discharge was dismissed with costs.

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Blake, V. C.] [June 18.

Galbraith v. Duncombe.

*Executors—Trustee—Setting aside money for special purpose—Principal and surety.*

One of several executors appropriated and set apart certain moneys of his testator to answer the trusts of the will, which moneys were afterwards paid by him to the solicitor

of the guardian of the infants, who made default in payment over of the same, and the amount never reached the hands of the guardian. *Held*, that the moneys by the act of setting apart had become, in the hands of the executor, impressed with the trusts of the will and he could not properly pay the same to the guardian, nor could the guardian properly receive the amount; and, although the fund never reached the hands of the guardian so as to render her surety liable to make good the amount, yet under the circumstances the guardian was personally responsible for the money so paid to her solicitor, and a decree to that effect was pronounced with costs; though as against the surety the bill was dismissed with costs.

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Spragge, C.] [June 21.

Jellett v. Anderson.

*Ferry, disturbance of.*

The plaintiff was the lessee of a ferry from the Town of Belleville to Ameliasburgh, Ameliasburgh being a township running in a westerly direction opposite Belleville, to the head of the waters of the Bay of Quinte, a distance of ten or twelve miles, the lease providing for only one landing place on each side. *Held*, that this was a sufficient grant to the plaintiff of a right of ferryage to and from the two places named; and that the defendant having started a ferry some two miles west of Belleville, running to a point nearly opposite, in the Township of Ameliasburgh, was such a disturbance of the plaintiff's franchise as entitled him to a declaration of the right to the exclusive use of the ferry, together with an account of profits made by the defendant, and the costs of the suit.

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Spragge, C.] [June 21.

Macaulay v. Kemp.

*Will—Costs of contesting.*

The rule, that if there exist "sufficient and reasonable ground, looking at the knowledge and means of knowledge of the opposing party to question either the execution of a will or the capacity of the testator, or to put forward a charge of undue influence or fraud, the losing party may properly be relieved from the costs of the successful party," acted upon in a case where the testator had, to several persons, spoken approvingly of the conduct of the plaintiff, a son of a deceased mother, and had expressed himself in such a manner as induced the plaintiff and others to believe that he would become a beneficiary under his uncle's will, instead of which his name was not mentioned in the will which had been prepared at the house of the widow of another brother of the testator, where he had for some time been residing, and was taken ill and died, although at the hearing the plaintiff's case entirely failed in proof.

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Spragge, C.] [June 21.

Briggs v. Lee.

*Pleading—Demurrer—Mechanic's lien—Lapse of time.*

In a suit instituted by a party who had furnished materials for the erection of a warehouse to the contractor for building the same, it appeared that more than ninety days had elapsed from the time the materials were delivered before the bill to enforce the claim therefor, under the Mechanic's Lien Act, had been filed, and no registration of the alleged lien had been effected: a demurrer for want of equity was allowed with costs.

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Spragge, C.] [June 21.

Graham v. Stevens.

*Specific performance—Costs.*

In a suit, at the instance of a vendor of land for the specific performance of an agreement to sell, the defence raised was that the land was agreed to be conveyed free from incumbrances, but the same was subject to a mortgage, and, therefore, that a good title could not be shewn. The report of the Master stated that the price agreed to be paid for the land was $3,500; that $1,800 was due on the mortgage, and that the purchaser had paid only $100 on account of his purchase, "and that the non-completion of the contract (was) attributable to the desire of the purchaser to recede from the contract." The Court, on further directions, made a decree ordering defendant to specifically carry out the agreement and pay to the plaintiff the general costs of the case.

# CANADA REPORTS.

## *QUEBEC.*

### QUEEN'S BENCH.

Angers *pro* Regina, *Appellant*,

AND

The Queen Insurance Co., *Respondents.*

*Powers of Provincial Legislatures—Insurance —Trade and Commerce—Direct or indirect taxation.*

Appeal from the Superior Court of Quebec.

In this case the Attorney-General Angers had filed an information against the Queen's Insurance Company to compel them to pay the penalties which were imposed under a Statute of the Province of Quebec for not affixing a stamp to a policy of insurance, which they had issued in Quebec. The filing of the information was merely to try the question of whether the Statute was within the power of the Provincial Legislature. The Superior Court held that the Statute was *ultra vires* because it assumed to interfere with the subject of insurance, which that Court regarded as a branch of trade and commerce, and also because it imposed an indirect tax for the benefit of the Province. This judgment was upheld by the Court of Queen's Bench, and amongst other opinions delivered was the following. The case was carried by the Attorney-General to the Privy Council, and the judgment there given will be found in L. R. 3 Appeal Cases, p. 1090.

Taschereau, J.—By the Act of the Legislature of Quebec, 39 Vict. ch. 7, entitled "An Act to compel assurers to take out a License," it is enacted that "every assurer carrying on in the Province any business of assurance, other than that of marine assurance exclusively (or business of assurance against accidents, for a period less than 30 days—40 Vict. ch. 6) shall be bound to take out a license, in each year, from one of the revenue officers, the price of such license to consist in the payment to the Crown for the use of the Province, at the time of the issue or delivery of any policy of assurance, and at the time of the making or delivery of each premium, receipt or renewal, respecting such assurance, of a sum computed at the rate of three per cent. as to assurance against fire, or of one per cent. as to other assurances, for each hundred dollars, or fraction of one hundred dollars of the amount received as premium, or renewal of assurance, and such payment was to be made by means of adhesive stamps, equivalent in value to the amount required, to be affixed on the policy of assurance, receipt or renewal." Any person who shall not comply with the provisions of this Act is made liable for each contravention, to a penalty not exceeding fifty dollars, or in default of payment, unless the person be a corporation, to imprisonment not exceeding three months. The Act further declared that policies of assurance, premium, receipts or renewals, not stamped as required by the Act, could not be invoked, and are to have no effect in law, or in equity, before the Courts of this Province.

By the 122nd section of "The Quebec License Act," which is made applicable to the above Act, 39 Vict. ch. 7, by its 9th section, the Governor-in-Council may at any time, for sufficient cause in his discretion, revoke and annul any license thus granted to any Insurance Company, and by the 124th section of the same Quebec License Act, a fee of one dollar is payable to the revenue officer for every license given by him.

Had the Legislature of Quebec the power to pass this Statute? This is the abstract question, submitted for our decision in this cause and the only matter of dispute between the parties.

In England, Parliament is omnipotent. The power of Parliament is absolute and supreme, and Hallam (Const. Hist., vol. 3, p. 193) has not hesitated to say that "the absolute power of the Legislature, in strictness, is as arbitrary in England as in Persia." In this country it is very different. Since Confederation, both the Federal Parliament and the Local Legislatures have limited powers.

It is true that the Federal Parliament has a quasi sovereignty. Its jurisdiction is far greater than that of the Local Legislatures, but there are subject matters over which it has no jurisdiction. They are those matters, which, by the British North America Act, are left without any concurrent jurisdiction in the Federal Parliament, to the jurisdiction of the Local Legislatures.

The latter have only such powers as are specially assigned to them, and which are by exception taken from the Federal and given to the Local Legislatures.

Let us examine, therefore, whether, under the distribution of the Legislative Powers

given by the Imperial Statute, the Legislature of Quebec could pass this Statute, imposing a tax on assurance companies and compelling them to take out a license?

The 91st section of the Imperial Act enacts that "It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects, by this Act, exclusively assigned to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section it is hereby declared that (notwithstanding anything in this Act), the exclusive Legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated that is to say (*inter alia*):

2nd. The regulation of trade and commerce. 3rd. The raising of money or system of taxation, and any matter coming within any of the classes of subjects enumerated in this section, shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act, assigned exclusively to the Legislature of the Province." This refers to the Federal Parliament. In dealing with the powers of the Legislatures of the Provinces, the 92nd section declares that "In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated that is to say (*inter alia*):

* * * * *

"2nd. Direct taxation within the Province in order to the raising of a revenue for Provincial licenses," *i. e.* sub-sec. 9, shop and saloon purposes, for raising a revenue for provincial, local and municipal purposes.

The other parts of these sections have no bearing upon the present case.

The determination of this question depends entirely on the construction to be put on sub-sections 2 and 9 of the above 92nd section of the Imperial Statute.

The Federal Parliament has the general power to make laws in relation to all matters, excepting only such matters as are by the 92nd sec. specially put under the control of the Local Legislatures. The Local Legislatures, on the contrary, have power to make laws only in relation to matters specifically and nominally put under their control by section 92. In order to ascertain whether any given subject matter is under the jurisdiction of one of the legislative bodies, created by the Imperial Statute, it is sufficient to refer to the 92nd section and see if by that section the subject matter is or is not put under the control of the Provincial power. If not it comes within the legislative authority of the Federal Parliament, even if not one of the classes of subjects specially enumerated as being specially reserved for that Parliament by the 91st section of the Act.

This proposition was not contested by the learned counsel whose duty it has been to contend, in favour of the constitutionality of this Act, but it is on the 92nd section that he relies, to prove that the Legislature of Quebec had the legislative authority to pass this Statute. He contended that it might be possible to consider the taxes imposed by 39 Vict. c. 7, as a direct tax. Then, under the 2nd sub-section of section 92, which gives the power of direct taxation to the Legislatures of the Provinces this Act is unimpeachable. But should it be declared that the duties imposed were not a direct tax, then the Act is constitutional, he says, because it is authorized by the 9th sub-section which gives to Local Legislatures the control of "Shop, saloon, tavern and other licenses."

As to whether the duties imposed on the Assurance Companies constitute a direct or an indirect tax, I will state without hesitation that, in my opinion, they constitute an indirect tax. It is a stamp duty, which has been imposed by the Legislature on policies of assurance and renewal receipts respecting such policies and nothing else. That it ought to be considered a stamp duty or a license does not make any difference as it is in both cases an indirect tax.

"On peut ranger sous deux chefs principaux (says J. B. Say, an author of great repute on Political Economy) les différentes manières qu'on emploie pour atteindre les revenus des contribuables. Ou bien on leur demande directement une portion du revenu qu'on leur suppose, c'est l'objet des *contributions directes;* ou bien on leur fait payer une somme quelconque sur certaines consommations qu'ils font avec leur revenu; c'est l'objet de ce qu'on nomme en France les *contributions indirectes.*"

After stating what are *direct taxes*, the same author says: "Pour asseoir les contributions indirectes et celles dont on veut frapper les consommations, on ne s'informe pas du nom du redevable, on ne s'attache qu'au produit. Tantôt, des l'origine de ce produit, on réclame une part quelconque de sa valeur, comme on fait en France pour le sel. Tantôt cette demande est faite au moment où le produit franchit les frontières (les droits de douanes). Tantôt c'est au moment où le produit passe de la main du dernier producteur dans celle du consommateur qu'on fait contribuer celui-ci (en Angleterre par le stamp duty, en France

Par l'impot sur les billets de spectacles). Tantot le gouvernement exige que la marchandise porte une marque particulière, qu'il fait payer, comme le controle de l'argent, les timbres des journaux. Tan tot il frappe non la marchandise elle-même mais l'acquittement de son prix, comme il le fait par le timbre des quittances et des effets de commerce. Toutes ces manières de lever les contributions se rangent dans la classe des *contributions indirectes* parceque la demande n'en est addressée à personne directement, mais au produit ou à la marchandise frappée de l'impot" [Say, Economie Politique, pp. 521, 523].

All our text writers and jurists agree in giving the definition of *indirect taxes* in the same language as that I have just cited. I will only add two others—Favard de Langlade et Merlin. The former says: "On appelle contributions indirectes les contributions établies par la loi sur les choses dont l'usage est ordinaire dans les habitudes de la vie. Elles sont indirectes en ce qu'elles ne portent nominativement sur auçun contribuable, qu'elles ne sont acquittées que par le consommateur, quelqu'il soit, ou celui qui veut user et qu'il suffit de ne pas consommer ou user pour n'y être pas assujetti. Ainsi, par exemple, celui qui ne se sert pas de papier timbré et n'use pas de tabac est sur de ne payer aucune partie des droits établis pour le timbre et sur les tabacs. Il en est de même pour toutes les branches des contributions indirectes" [Favard de Langlade, Repert. V. Contributions Indirectes].

And Merlin, Repert. V. Contributions Indirectes, says: "On distingue deux sortes de contributions, les contributions directes et les contributions indirectes. Les contributions directes sont établies directement sur les personnes. Les contributions indirectes sont, suivant la définition qu'en donne la loi en forme d'instruction du 8 Janvier, 1790, tous les impôts assis sur la fabrication, la vente, le transport et l'introduction de plusieurs objets de commerce et de consommation, impots dont le produit, ordinairement avancé par le fabricant, le marchand, ou le voiturier, est supporté et indirectement payé par le consommateur. C'est aussi à cette classe qu'appartiennent les droits sur les tabacs, sur les cartes à jouer, sur le sel, sur les boissons, &c., &c." See also Demeunier, Economie Politique, vol. 3, V. Impots.

There cannot be, in my opinion, a shadow of a doubt that the duties imposed on the Assurance Companies by the Legislature of Quebec, let them be called licenses or stamp duties, come distinctly within the definition given by the French authors, and should be classed in the category of indirect taxes.

If I now examine the English authors, I also find it impossible to declare that these duties on the Assurance Companies fall into the category of direct taxes.

"Taxes are either direct or indirect," says Mill. "A direct tax is one which is demanded from the very persons who it is intended or desired should pay it. Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another, such as the excise or customs . . . Most taxes on expenditure are indirect, but some are direct, being imposed not on the producer or seller of an article, but immediately on the consumer." (2 Mill, Pol. Econ. p. 415.) See also same volume, pp. 432, 458, 465, 466.

"A direct tax operates and takes effect independently of consumption or expenditure; while indirect taxes affect expenses or consumption, and the revenue arising from them is dependent thereon." 3 Smith's Wealth of Nations, pp. 3, 11 (10th Ed.) Taxes on operation, and those on commodities, are put in the same category. See Macdonnell—A Survey of Political Economy, p. 346. See also 2 Smith's Wealth of Nations, by Rogers, pp. 413, 466, and McCulloch's Principles and Practical Influence of Taxation and the Funding System, pp. 1 and 242.

In the United States the distinction between direct and indirect taxes is made upon the same principles as those upon which the French and English authors above cited make it.

Hilliard—Law of Taxation, par. 60—says, a license on particular pursuits is an indirect tax.

In the case of *Loughborough* vs. *Blake*, 5 Wheat. 517, Chief Justice Marshall, speaking of the celebrated duties which were the immediate cause of the American rebellion, says, "Neither the Stamp Act nor the duty on tea were direct taxes."

In the case of *Veazie* vs. *Ferms*, 8 Wall. 533, "A direct tax was held to be solely a tax either upon land or its appurtenances, or upon polls."

In *Pacific* vs. *Soule*, 7 Wall. 433, an income tax on the premiums, assessment, and dividends of an Insurance Company, were held not to be a direct tax, but a duty or excise.

The duties imposed by the Legislature of Quebec on the Assurance Companies, seem very much to be an indirect tax on the premiums. Moreover, cannot these duties be said to be excise.

What is excise? "Excise is the name given to the duties or taxes laid on certain articles produced and consumed at home; but exclusive of the duties on licenses, auctioneers and post horses, &c., &c., are in-

cluded in the Excise duties." (Wharton Law. Lex. V. Excise.) M'Culloch's Dict. of Commerce, V. Excise, gives its definition in very much the same terms—"As a part of excise, the rates of duties on licenses are included as upon auctioneers, brewers, &c., &c." (M'Culloch on the Principles and Practical Influence of Taxation and the Funding System, p. 242.) And at p. 321, "The licensing of lotteries is also a mode of raising a revenue by indirect taxation." In fact, all authors agree in placing excise duties in the category of indirect taxes.

Another author, in the United States, says: "Taxes are usually divided into direct and indirect. The former includes assessments made upon the real and personal estate of the tax-payer, upon his income, or upon his head, the latter comprises duties upon imports and exports, excises, licenses, stamp duties, and the like." (Ripley's Amer. Cyclopedia, V. Taxes.) It would seem that even in the British North America Act, the legislator did not consider that licenses were a direct tax. Had it been the intention to consider licenses as a direct tax, it would not have been necessary, after having given to the Local Legislature, by sub-sec. 2, the power to impose direct taxes, repeated in the 9th sub-sec. that the right to impose licenses on certain subjects was also within the legislative authority of the Provincial Legislatures. Does not the Act in so many words declare that the Local Legislature will have power to impose direct taxation, but as to indirect taxation, it is limited to imposing "shops, saloons, tavern, auctioneer, and other licenses."

I may add that in the case of *Regina* v. *Taylor*, 36 U. C. Q. B. 217, all the Judges composing the Court of Queen's Bench, as well as those of the Court of Error and Appeal, to wit: C. J. Draper and Richards, and Justices Morrison and Wilson, Strong, Burton, and Patterson, were of opinion that a license to be paid for by a brewer, or by a person to sell by wholesale, was an indirect tax. In the present case the character of the tax seems to me still more clearly established to be an indirect tax. For all these reasons, I am of opinion that the tax imposed on the Insurance Companies is not a direct tax, and, therefore, that under subsection 2 of the 92nd section of the British North America Act the Local Legislature had no power to impose it. On this point there is no difference of opinion amongst us.

Moreover, I do not think I am mistaken if I state that it was not on the 2nd sub-section that the Legislature relied in order to pass this Statute in reference to Insurance Companies, or that they supposed that by this Act they were for the first time imposing a direct tax in the Province of Quebec. The 9th paragraph of the 92nd section is alone relied on, I think, as giving the Legislature authority to pass this Statute. This is the sub-section which gives to the Local Legislatures control over "shop, saloon, tavern, auctioneer, and other licenses, in order to the raising of a revenue for provincial, local, or municipal purposes." And it is principally in the words "and other licenses" that the power to impose this tax on Insurance Companies is said to exist.

Let us see if by the words "and other licenses" the legislative provincial authority is thereby so very much enlarged.

It is clear on the simple reading of the Quebec Act, that the formality of taking out the license was thought of in order that the intended legislation would come within the authority of this 9th paragraph of the 92nd section of the Imperial statute. Nevertheless it is a "stamp duty" that has, in reality, been created. For, although there is a penalty of $50 imposed in case of policies, or renewal receipts, issued without the required stamps affixed, yet we do not find any penalty imposed if an Insurance Company does not take out the license.

If the defendant Company in the case, The Queen's Insurance Co., had affixed stamps on its insurance policies, it would not have been subjected by the statute to any penalty for having refused or neglected to take out a license from the revenue officer.

The Act, it is true, enacts that each company shall take out a license, but this license is not for the purpose of the raising of a revenue for provincial, local, or municipal purposes." The dollar which is charged, or the cost of, or price of the license, is a fee which is paid personally to the revenue officer. Now, by the express terms of the Imperial Statute, it can only be for the raising of a revenue, for provincial, local, or municipal purposes, that a license may be imposed.

If, as in the present case, the license does not raise any money for any of these purposes, the Legislature of the Province has no power to impose it, and the statute imposing it must be declared *ultra vires*.

An Insurance Company need not take out any license, and thereby will not be subject to any penalty under this Statute, provided the policies and renewal receipts have stamps affixed—the object of the legislation has been attained. How can it be said that in such a case the license has produced a revenue when it is not even in existence?

I say, therefore, that by the express terms of the Imperial statute a license can be imposed only in order to raise a revenue. Here, on the face of the statute under consideration, the license which the companies are to take out cannot and could not pro-

duce a revenue. The result is that this legislation is not authorized by the Imperial Statute.

I will now consider this case in its most favourable light for the Provincial Legislature—it is by admitting that the duties imposed are really license duties payable in stamps, on the transactions of the Insurance Companies.

Let us see whether the Legislature of Quebec had authority to pass such a law. First, can insurance companies be comprised in the words "and other licenses" which follow the words "shop, saloon, tavern, auctioneer," in sub-section 9 of section 92 of the Imperial Act. That is the question. A well-known rule of construction of statutes will solve this question. It is the rule which declares that "general words will be restrained to things of the same kind with those particularized." Under this rule it cannot be contended that Insurance Companies are comprised in the three words "and other licenses" of the Imperial Statute, for it cannot be said that they are *ejusdem generis* as "shop, saloon, tavern, auctioneer," which precede the words "and other licenses." This rule has been adopted in the United States as well as in England, and it has been held that a statute which speaks of auctioneers, &c., and all other trades, avocations, or professions whatever, does not include lawyers: Sedgwick Cons. of Stat. and Cons. Law. This rule is based on common sense, which naturally leads one's mind, to think first of the most important subjects comprised in a subject matter with which it may be occupied. Is it reasonable to think that the legislator would have enumerated specially "shop, tavern," &c., and would have left Insurance Companies as being comprised in the words "and other licenses." If it had been intended to give to the Provincial Legislature authority to license insurance companies, would they not have been specially mentioned? No doubt they would have been named the first of all.

And what would naturally have struck the mind of the Legislature at the time, in order that they might be unintentionally omitted, is that Insurance Companies by law were then obliged to take out licenses: 23 Vict. ch. 33, 1860; 26 Vict. ch. 43, 1863. (See also 38 Vict. ch. 20, and 40 Vict. ch. 42).

They are much more important than "shop, tavern, &c.," which have keen particularly mentioned, and the Legislature cannot have intended by adding the words "and other licenses" to have included in these words, the power to tax institutions or industrial concerns which are so much superior to those mentioned immediately preceding these words.

This was the view taken in the case of the *Archbishop of Canterbury*, 2 Coke's Rep. 46. "A Statute treating of persons or things of an inferior rank, cannot by general words be extended to those of a superior." This rule is applicable to every section of an Act, unless the contrary appears from the context of the whole Act. Now, by referring to the Imperial Statute, I find in reading the whole Act, that far from being unable to make the application of this rule to this section, it is evident, more especially so by referring to the 91st section, which regulates the legislative powers of the Federal Parliament (a clause to which I will more particularly refer hereafter) that the words "and other licenses," mean and are intended to include "and other licenses of the same kind, *ejusdem generis*." In the case of *Sandiman* v. *Breach*, 7 B. & C. 96, it was held, "Where general words follow particular words, the rule is to construe the former as applicable to the things or persons particularly mentioned." See also Dwarris 656, and Maxwell on Statutes 297.

Another consideration which strikes my mind is that if Insurance Companies are comprised in the words "and other licenses" then the banks, railroad companies and express companies are also comprised in these words, and if all these large companies could be compelled to take out licenses, then the Provincial Legislature would have power to impose stamp duties on promissory notes, bank shares, cheques, and on every ticket issued by a railroad company, and on bills of lading signed by express companies. The Legislature would also have the power to compel notaries to take out licenses, and to impose a stamp duty on each and every deed they would pass. In fact the power to tax indirectly would be unlimited. With the words "and other licenses," a stamp duty could be imposed on all things that might be made subject to the taking out of a license.

The revenues of the local governments could thereby be largely increased, and direct taxation would, no doubt, be avoided for a long time.

Can the Constitution have intended this? I do not think so, and in support of my opinion I will take the liberty of referring to the history of our Constitution, and of citing two or three extracts from the discussion which took place in our Parliament, at the time of the debates on Coufederation. It is well known that, although the British North America Act is an Imperial Statute, it was on the Quebec resolutions previously adopted, that the Act was founded, and that the important debates on this project took place in Canada. It is true that numerous alterations were made in England to the resolutions passed by the Canadian Legislature; but when I compare

the resolutions with the Imperial Statutes, I find that the clauses having reference to the distribution of legislative powers between the Parliament of the Dominion and the Local Legislatures, were not materially altered. So that what was said in the Canadian Parliament on these clauses may be considered as applicable to the sections of the Imperial Act now under consideration.

At page 94 of the Debates on Confederation, one of the speakers, after having spoken in reference to the subsidy to be given by the Federal Government to the Local Governments, adds: "If this, from any cause does not suffice, the Local Governments must supply all deficiencies from direct tax on their own localities." And at pp. 384, 385 another speaker seems also to be clearly of opinion that the sources of revenue for the Province of Quebec were to be under Confederation those which existed at that time, and previously, and that the only mode of increasing the revenues would be by direct taxation. At pp. 67, 68, 69, a third speaker, is very clear and unambiguous language on this point, the fact that this person was at the time Minister of Finance for Canada adds very much weight to his remarks, when the question under consideration was to provide for the financial position of the Provinces under the proposed scheme. I will give the following extracts:

"I now propose, sir, to refer to the means which will be at the disposal of the several Local Governments to enable them to administer the various matters of public policy which it is proposed to entrust to them.

"It will be observed that in the plan proposed there are certain sources of local revenue reserved to the Local Governments, arising from territorial domain, lands, mines, &c., &c. In the case of Canada, a large sum will be received from these resources; but it may be that some of them, such as the Municipal Loan Fund, will become exhausted in the course of time. We may, however, place just confidence in the development of our resources, and repose in the belief that we shall find in our territorial domain, our valuable mines, and our fertile lands, additional sources of revenue far beyond the requirements of public service. If, nevertheless, the local revenues become inadequate, it will be necessary for the Local Government to have resort to direct taxation." It is evident the speaker was not of opinion that Local Legislatures would be able to dispense with direct taxation by means of license duties. Further on he says, "The House must now, sir, consider the means whereby these local expenditures have to be met. I have already explained that in the case of Canada, and also in that of the Lower Provinces, certain sources of revenue are set aside as being of a purely local character, and available to meet the local expenditure, but I have been obliged in my explanations with regard to Canada, to advert to the fact that it is contemplated to give a subsidy of eighty cents per head to each of the Provinces. In transferring to the General Government all the large sources of revenue, and in placing in their hands, with a single exception, that of direct taxation, all the means whereby the industry of the people may be made to contribute to the wants of the state, it must be evident to every one that some portion of the resources thus placed at the disposal of the General Government must, in some form or other, be available to supply the hiatus that would otherwise take place between the sources of local revenue and the demands of local expenditure."

By stating that "all the large sources of of revenue, with the exception of direct taxation, were to be transferred to the General Government," the speaker could not have had the intention of giving to the Local Legislatures the large powers of licensing which the Quebec Legislature claims to have in the present case.

No doubt, the Imperial Statute must, as any other statute, be construed by itself, and the opinions I have referred to are not legal authorities. But can we not look at them in order to interpret this statute? And it is to be borne in mind, in referring to the history of our Constitution, that these persons whose opinions I have cited formed part of the preliminary conference where the resolutions on Confederation were framed. Can it be said that a commentary of a law by the author of that law should have no weight?

In France, do we not continually see commentators and text writers, in order to construe the text of the Code Napoleon, refer to the speeches made by Cambaceres, Freiluard, Bigot de Preameneu, Comte de Portales and others made during the discussion of the subject in the Council of State, at the Tribune, and in the Legislative Assembly.

I, therefore, come to the conclusion that the Local Legislatures, under the Imperial Statute, have only authority and power to impose licenses on "shop, saloon, tavern, auctioneer and other licenses *ejusdem generis*, and that Insurance Companies, not being *ejusdem generis*, as shop, &c., cannot be subjected to an indirect tax imposed by Local Legislatures.

So far I have not taken into account the commercial character of Insurance Companies. I have tried to find in the Imperial Act a power given to the Local Legislatures, by way of exception, to impose *indirect taxes* by license duties on any industry, (commercial or non-commercial) occupation,

trade, profession, other than on "shop, saloon, tavern, auctioneers, and others of the same kind *ejusdem generis*, but I have not found such a power. It would not be necessary for me to add anything, for, as I have already remarked, I am of opinion, that as the power has not been given to the Local Legislatures, it comes within the legislative authority of the Federal Parliament, although, by section 91, it may not have been particularly and specially given. But I will go one step further, and taking into consideration that the respondents' company (and all similar companies) is a commercial company, and that its contracts are entirely of a commercial character. C. C. 24, 70. I find that by the Imperial Statute these companies and such companies, in express and clear terms, are subject to the legislative authority, and are under the exclusive control of the Federal Parliament. The 2 par. of the 91st section enacts, that the "Federal Parliament will have power to make laws relating to the regulation of Trade and Commerce." The Insurance Companies being commercial companies are therefore under the power of the Federal Parliament. It has not been contended by the Attorney-General of the Province of Quebec that the Federal Parliament had not legislative authority over thsse companies, but it was apparently urged that the Local Legislatures had a concurrent power, or rather, if I am not mistaken, it was admitted that the Local Legislatures could not regulate these companies, but that they had the power to oblige them to take out a license for the purpose of raising a revenue, and this was not *to regulate* them, and that in the present case it had not been the intention to *regulate* the trade of these companies, but the intention of the Legislature of Quebec was to raise a revenue. I am ready to admit that the intention of the legislature was to raise a revenue, but is not this legislation virtually "a regulation of trade and commerce," and in one of its most extensive and largest branches. First a duty is imposed on the companies to take out a license, and to be continually doing business under license. What is a license? It is a permit,—leave granted. What is the origin of the word? Undoubtedly *Licit licere*, to grant lease. Now, in order to grant leave you must have power to prohibit. He who can grant leave, must first of all have authority to prohibit it. Now, I am certain the Legislature of Quebec will not contend they have power to prohibit or prevent Insurance Companies from doing business in the Povince. It is true this legislation does not prohibit them, but it has imposed upon them certain conditions. The law says, "Before you can do any business in our Province you must first obtain our leave." Can it be said this is not regulating? The law also says, "If you do not comply with certain formalities your policies and your receipts will be null and void." Is this not regulating them, in fact is it not assuming the power to prevent them from doing business?

The defendant company has obtained from the Federal Government the license, the leave to do business in the Province of Quebec. In order to get the license they have deposited $15,000, and they have paid, and pay jointly with other companies, an annual tax to the Dominion of $8,000, and have complied with all the provisions of the Dominion Statute 38 Vict. c. 20. But it is contended that all this does not even give it authority to issue a single policy. The Province of Quebec steps in and says, "If under your license from Ottawa, you issue a single policy, or receipt, we enact they shall be null unless you submit to the conditions we impose upon you." They say, "We might, notwithstanding your license from Ottawa, expel you from the Province of Quebec, prevent you from carrying on your trade, but we will permit you, but on these conditions." I do not think the Province of Quebec has such powers, First, because they are not given by the 92nd section of the Imperial Statute, and consequently belong to the Federal Parliament; and secondly, because they are given specifically by the 91st section, under the words, "regulation of trade and commerce," to the central power. No doubt as it has been very properly remarked by the counsel representing the Attorney-General, a literal interpretation of these two sections would make them contradictory on some points.

The 91st section declares that the Federal Government shall have power to tax in every possible mode, and this includes direct taxation.

The 92nd section declares that the Local Legislature has exclusively the power of direct taxation. A literal interpretation of these two sections would make them contradictory. It has been stated somewhere that in order to reconcile these two sections, the word "exclusively" must be construed as referring to the Imperial power. I do not concur in this view, the word was taken in the resolutions on Confederation sent from Canada and it was certainly not the intention of referring them to the Imperial power. I prefer to admit that there is a contradiction in the letter of the Statute, and construe the sections as giving the power of direct taxation both to the central and local power, and this is in accordance with the well known rule "where a general intention is expressed in a Statute and the Act also expresses a particular in-

tention incompatible with the general intention, the particular intention shall be considered as an exception: " Per Best, C. J. in *Churchill* v. *Crease*, 5 Bing. 480-492. It is true that by the 91st section the Federal Parliament exclusively has the power to tax in every mode, but sec. 92 gives specifically to the Local Legislatures the power of direct taxation, then according to the above rule direct taxation must be considered by section 92 as being excepted from the monopoly given in general terms, by the 91st section to the Federal Parliament. The same rule is applicable to the construction of the other paragraphs of these two sections. Thus, although by the 91st section the Federal Parliament has the exclusive power of taxing in every mode, and of regulating trade and commerce, shop, saloon, tavern, auctioneer licenses and other licenses of the same kind come within the jurisdiction of the Local Legislatures, and that because the power is given specifically by the 92nd section, and *vice versa*, although the 92nd section gives the power of direct taxation and of indirect taxation by means of the licenses just mentioned the Federal Parliament has also the power of direct taxation and indirect taxation by means of said licenses, because the 91st section gives them the power specifically of imposing all kinds of taxes, which is one of the essential elements of sovereignty, and at the same time giving an exclusive control over the regulation of trade and commerce. The concurrent legislative authority over these subject matters by the Federal Parliament and the Local Legislatures can only exist as to direct taxation and the granting of "shop, saloon, tavern, auctioneer and other licenses, *ejusdem generis*. It is not however necessary for me to consider in this cause the different questions which may arise from the concurrent powers given to these legislative bodies, as I am of opinion for the reasons I have before given, that the licenses imposed on the insurance companies cannot be said to be a direct tax, and are not comprised in the words "shop, saloon, tavern, auctioneer, and other licenses."

It was stated on the argument that municipal taxes are somewhat in a similar position as these. Without wishing to express an opinion in one sense or the other, as to the constitutionality of any legislation relating to the municipal system I will say that it is quite possible that such legislation would come within a different class of subject matters and within certain other sections of the Imperial Statute, which I have had occasion to refer to. I allude to the 129th section which declares that the existing laws before Confederation in each Province, shall continue to remain in force, and gives power to the Dominion Parliament and to the Local Legislatures to repeal, alter or modify them according to their respective jurisdiction, as well as by paragraph 8 of the 92nd section which puts the municipal system under the control of the Local Legislatures. But I will repeat, it is not necessary for us to express any opinion on this portion of the Imperial Statute.

By this suit the Attorney-General for the Province of Quebec, *pro Regina*, claims from the Defendant's company a penalty of one hundred and fifty dollars for issuing three insurance policies without having affixed to them the stamps required by the Statute passed by the Legislature of the Province of Quebec. The Superior Court has decided that this Act passed by the Legislature of Quebec is unconstitutional and has dismissed the plaintiff's action. I am of opinion that this judgment ought to be confirmed.

# UNITED STATES REPORTS.

## SUPREME COURT OF MISSOURI.

Smith *v.* the St. Louis, Kansas City, and Northern Railway Company, Appellant.

*Continuation of note to this case from the "American) Law Review," from p. 173 ante.)*

§ 5. *Application of these Principles to Railway Service.*—From the foregoing principles it is obvious that it cannot be stated without qualification that "it is the duty of railroad companies to keep their road and works, and all portions of their track, in such repair, and so watched and tended, as to insure the safety of all who may lawfully be upon them, whether passengers, or servants, or others;" that "they are bound to furnish a safe road and sufficient and safe machinery or cars;" and that "the legal implication is, that the roads will have to keep a safe track, and adopt all suitable instruments with which to carry on their business." The court in the principal case was clearly right in disapproving these statements of doctrine, when taken literally and without qualification. So far from being an *insurer* of the safety of its servants, as the above language would indicate, a railway company is not even an insurer of the safety of its passengers.

It is to be observed, however, that this expression did not originate with Judge Wagner. It is found, in substance, in a celebrated judgment of Bigelow, C. J., of the Supreme Judicial Court of Massachusetts, in *Snow* v. *Housatonic R. Co.*, a case which has been much cited and followed by other courts. This case has never been understood as holding that a railway company is an insurer, as to its servants, of the safety of its roadway, rolling stock, and other instrumentalities. It simply meant to declare that it is under an obligation similar in kind, if not in degree, to its servants to that which the law imposes upon it as to its passengers. And there is manifest sense in

this. From the nature of case, a railway employé has no opportunity of knowing the exact extent of the risk he assumes when he enters the service. Generally speaking, he has neither the skill nor the opportunity to inspect a railway track several hundred miles in length, nor its numerous sidetracks, bridges and grounds, nor the numerous locomotives and cars, partly belonging to the particular company, and partly coming from other roads, which will be employed upon it. Suppose, for instance, a railway brakeman, out of employment, presents himself to the master-mechanic of a particular railway company for a "job." The master-mechanic, who is here in law the vice-principal of the company, knows that a bridge over which the brakeman will have to pass is dangerous; he knows that on some portions of the track over which he will have to pass the ties are rotten and the rails liable to spread; he knows that some of the engines are old, rickety and dangerous, and that some of the cars which are still in use are worn out and ought to be condemned. From the nature of the case he cannot inform the applicant of the exact extent of these dangers, and he takes him into the service of the company without apprising him of them. Now, it is to this state of facts, which is the usual state of facts which presents itself in such cases, that the language before quoted applies. The brakeman, on entering the service rightfully assumes that the railway company has not been so far wanting in ordinary social duty as not to have made reasonable provisions for the safety of its employés. And under such a state of facts it may well be said that the legal implication is that it has done this.

This is but an illustration of the fact that you cannot generalize any set of legal rules so as to make them apply in all situations. The law is not, and never can be made, an abstract science. Its rules must always be viewed in the concrete. They can never be divorced from the particular subjects to which they have been declared applicable. There is no better illustration of this than the very subject we are considering. A mechanic on entering service in a manufacturing establishment, where his practised eye may, in an hour, take in all the "seen dangers" of the service, may well be held to have accepted the risk of those dangers, when, for the reasons already stated, no such implication would arise in the case of one entering the service of a railway company.

It is under the influence of such considerations as these that we find a tendency on the part of several authoritative courts to hold railway companies, in respect to the safety of their employés, to a liability similar in kind, though not so strong in degree, as that which they are under to passengers on their trains. Thus, the Supreme Court of Pennsylvania has declared that a railroad company is under an obligation to keep a sound track for the safety of all persons who are transported over it, whether passengers or servants. This is deemed a direct and immediate duty, the non-performance of which will not be excused by the remote negligence of its servants, who fail to report its condition or to put it in repair. If the substructure carrying the rails is suffered to lie until it has becomes rotten and unsafe, this is deemed the negligence of the company itself, and not merely that of its servants. Casualty from such a cause is not one of the ordinary perils which presumptively every one incurs who takes service with the company. It is not likened to the breaking of a rail from mere accident, or from some cause immediately traceable to the negligence of another employé. Another court has said that duty of such a company is to furnish good, well-constructed machinery, adapted to the purpose for which it is used, of good material, and of the kind that is found to be most safe when applied to use; it is not required to seek and apply every new invention, but must adopt such as is found by experience to comcine the greatest safety with practical use.

The Supreme Court of Tennessee has said, speaking of the obligation of a railway company to its employés, "The general doctrine is, that in proportion to the importance of the business, and the perils incident to it, is the obligation of the company to see that the engines and apparatus are suitable, sufficient, and 'as safe as care and skill can make them;'" which, no doubt, expresses correctly the extent of their obligation to passengers, but not to their servants.

The Supreme Court of Illinois declares that the result of previous rulings is, not to hold these companies as insurers that their road, appurtenances, and instrumentalities are safe and in good condition, but that they will do all that human care, vigilance, and foresight can reasonably do, consistent with the modes of conveyance and the practical operation of the road, to put them in that condition to keep them so. "The duty owing by a railroad company," said Breese, J., "to the public, as well as to those in their employment, is that their road, and bridges and other appurtenances, shall be constructed of the best material, having in view the business to be done upon it. In their construction they should equal those of the best roads doing an equal amount of business, and the utmost care and vigilance [should be] bestowed upon keeping them in a safe condition. The law will not allow them to be out of repair an hour longer than the highest degree of diligence requires. And, further, it is their duty to keep a sufficient force at command, and of capacity sufficient to discover defects and apply the remedy. Neglecting to keep it in the best condition, if injury or loss occurs thereby, the companies will be liable, and they ought to be so liable. From this responsibility they cannot be relieved except by showing that the defect was one which could not be discerned or remedied by any reasonable skill or foresight." Accordingly, an instruction which leaves out of view this strong obligation, but places the liability of the company upon actual knowledge of the defective construction, is held erroneous. There may be cases where the question, whether it was the duty of a locomotive engineer to inspect the track, will be a question for the jury. It was so held where, in passing trains over the tracks of two other railroads, temporary rails had been laid down as often as required, of which the engineer of a construction train, who was injured in consequence of his engine running off the track at this point, had notice.

Such a company has been held responsible in damages to an employé for an injury resulting, without his negligence, from a tank or other appendage of the road, so negligently constructed as to subject the employé to unnecessary and extraordinary danger, which he could not reasonably anticipate or know of, and of which he, in fact, was not informed. But a railway company is under no legal obligation to build its bridges so high that a man may pass under them safely while standing upon the top of a box-car; and if one of its servants is killed or injured by being struck by such a bridge while standing upright on such a car or nearly so, he being acquainted with the height of the bridge, his misfortune will

be attributed to his own negligence, and not to the negligence of the company. On the same grounds, where the conductor of a freight-train was struck and killed by the projecting roof of a depot-building, and it appeared that the deceased had lived for many years at the place of injury; that he had for a long time been familiar with the road, passing over it daily; and it did not appear that any change had been made in the building or in the road since he became an employé on the road, it was held that there could be no recovery of damages. In entering upon the service the servant assumed the risk of the premises as he found them.

Where a railroad company so constructed a side-track that all trains coming from one direction, in order to switch cars upon it, were obliged to make what is known as the "*flying switch*," and a switchman employed at the station was killed in the night-time, in attempting, when signalled, to run from the station-house to the switch in order to turn it, the company was held liable, on the ground that it had been negligent in failing to establish proper rules and regulations for making the "flying switch," and in failing to provide the cars which were attempted to be switched with good and sufficient breaks and with the proper number of lights. Where a breaksman was killed in making what is known as a "flying switch," in consequence of the fact that a particular car had no ladder on it by which he could ascend to apply the break, it was held that the following instruction, fairly construed, was not in conflict with the rule which exacts of the master, in the furnishing of machinery, only reasonable or ordinary care: "It was the defendant's duty to provide cars with such appliances as are best calculated to insure the safety of the employés; and if a ladder on the end of the car, or a handle as described by the witness, would be a better protection to life than the car which produced the accident, then it would be the defendant's duty to furnish a car with such appliances." A fair construction of this language, under the circumstanses of the case, did not warrant the supposition that it exacted of the defendant the highest degree of skill and the procuring of the very best appliances, but rather those appliances which were reasonably best calculated to answer the end proposed, as compared with those which the company did furnish. In Tennessee it has been ruled, with obvious propriety, that a statute providing that "every railroad company shall keep the engineer, fireman, or some other person upon the locomotive always on the look-out ahead, and when any person, animal, or other obstruction appears upon the road, the alarm-whistle shall be sounded, the brakes put down, and every possible means employed to stop the train and prevent an accident," did not apply to the running of engines and trains about the depots and yards of railroads, nor did it have reference to the protection of the employés of a railroad when moving across the track in the discharge of their duties.

It is also incumbent upon railway companies to use ordinary prudence in making and publishing to their employés sufficient and necessary *rules and regulations* for the safe running of their trains, and for the government of their employés. For an injury to one of its employés, arising from the want of such regulations, such a company will be adjudged to pay damages. But it being impossible for a railway company to move its trains when being made up, or when broken up, according to a time-table, the omission to provide regulations as to the time of moving trains engaged in and about the freight and engine houses and depots of the company is not negligence. But it is practicable to prescribe in what manner engineers and conductors shall give notice of the approach of an engine, with or without cars, when trains are being made up or are moving about freight-houses, depots, or engine-houses; and, if proper precautions are not taken for the protection of life and limb from negligence by such engines and trains, a person injured, who is not an employé of the company, has just cause to complain, and is entitled to recover damages for any injury sustained by reason of the omission of the company to adopt such reasonable guards against liability to injury. But one who enters into the employ of the company with full knowledge that no provision has been made for protecting its servants against injury from moving trains or engines has no claim to recover damages if he sustains injuries by reason of the company omitting to make such provisions and regulations as prudence and a proper regard for the lives of others might require. Thus, where two railway companies were in the joint occupation of a station, and a servant of one of them, while engaged under a car on the siding, repairing it, was killed in consequence of another car being shunted against the car under which he was, and it was found that there had been no negligence on the part of any of the employés, but that the accident arose from the fact that the rules were defective, it was held that the company whose servants shunted the car must pay damages. And, where a railroad company constructs a side-track so that it has but one connection with the main track, in consequence of which all trains coming from one direction, in order to switch cars upon the side-track, must make what is known as the "flying switch," it has been held incumbent on the company, out of regard for the safety of its employés, to make and publish rules and regulations to be by them observed in this dangerous operation.

The subject under consideration may be illustrated by referring to a large class of actions brought for injuries received by railway brakemen in *coupling and uncoupling cars*. This duty, as is well known, is highly dangerous, even under favourable conditions. It is therefore obvious that the rule of ordinary care already stated would place the company under a degree of care, in providing its cars with safe apparatus for this purpose, which, applied to ordinary situations, would be denominated extraordinary. Yet it is held, even here, that such a company is not liable for an injury received by a brakeman in coupling cars having double buffers, simply because a higher degree of care is necessary in using them than is demanded in the use of those differently constructed. Nor is such a company obliged to discard cars of an old pattern simply because it is more dangerous to couple them to cars of a new pattern than it is to couple new cars to each other. In all these cases care must be taken to note the distinction between a vice common to a whole class of cars, with which the brakeman may be supposed to be familiar, and a vice peculiar to a particular car,—such as a defective draw-bar, of which the brakeman may have no knowledge.

# Law Society of Upper Canada.

OSGOODE HALL,

EASTER TERM, 43RD VICTORIÆ.

During this Term, the following gentlemen were called to the Bar. The names are placed in the order in which they stand on the Roll of the Society, and not in the order of merit.

Samuel Skeffington Robinson.
Alexander Grant.
Joseph Boomer Walkem.
Ebenezer Forsyth Blackie Johnstone.
Frank Fitzgerald.
George A. F. Andrews.
Thomas Stewart.
Henry Schuyler Lemon.
James Henderson Scott.
Eugene De Beauvoir Carey.
Gideon Delahay.
Gerald Francis Brophy.
William Henry Deacon.
Robert W. Shannon.
Daniel McLean.
Arthur William Gundry.
John Nicholson Muir.
John Brown McLaren.

On the 19th May the following gentlemen were admitted as Students-at-Law and Articled Clerks, namely :—

*Graduates.*

Robert Peel Echlin.
William Henry Wilberforce Daley.

*Matriculants.*

Alexander B. Shaw.
Leonard Hugh Patten.

*Junior Class.*

Douglas Alexander.
Paul Kingston.
Theophilus Bennett.
Edward W. J. Owens.
Albert J. Flint.
Donald Macdonald.

*Articled Clerk.*

William Duncan Scott.

And on the 22nd May the following gentlemen were admitted as Students-at-Law and Articled Clerks :—

*Graduates.*

C. H. Ivey.
Charles R. Irvine.
Richard Wallace Armstrong.

By order of Convocation, the option to take German for the Primary Examination contained in the former Curriculum is continued up to and inclusive of next Michaelmas Term.

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

*Primary Examinations for Students and Articled Clerks.*

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

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

*Articled Clerks.*

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

*Students-at-Law.*

Classics.

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

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

1881 { Xenophon, Anabasis, B. V.
Homer, Iliad, B. IV.

1881 { Cicero, in Catilinam, II., III., and IV.
Ovid, Fasti, B. I., vv. 1-300.
Virgil, Æneid, B. I., vv. 1-304.

Translation from English into Latin Prose.

Paper on Latin Grammar, on which special stress will be laid.

MATHEMATICS.

Arithmetic; Algebra, to the end of Quadratic Equations; Euclid, B. I., II., III.

ENGLISH.

A paper on English Grammar.

Composition.

Critical analysis of a selected poem:—

1880.—Elegy in a Country Churchyard and The Traveller.

1881.—Lady of the Lake, with special reference to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

English History from William III. to George III., inclusive. Roman History, from the commencement of the Second Punic War to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography: Greece, Italy, and Asia Minor. Modern Geography: North America and Europe.

Optional Subjects instead of Greek:—

FRENCH.

A Paper on Grammar.

Translation from English into French Prose—

1880.—Souvestre, Un philosophe sous les toits.

1881.—Emile de Bonnechose, Lazare Hoche.

*or* NATURAL PHILOSOPHY.

*Books.*—Arnott's Elements of Physics, 7th edition, and Sommerville's Physical Geography.

A student of any University in this Province who shall present a certificate of having passed, within four years of his application, an examination in the subjects above prescribed, shall be entitled to admission as a student-at-law or articled clerk (as the case may be), upon giving the prescribed notice and paying the prescribed fee.

## INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination, to be passed in the third year before the Final Examination, shall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery; O'Sullivan's Manual of Government in Canada; the Dominion and Ontario Statutes relating to Bills of Exchange and Promissory Notes, and Cap. 117, R. S. O., and amending Acts.

The Subjects and Books for the Second Intermediate Examination to be passed in the second year before the Final Examination, shall be as follows:—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing, (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law; Underhill on Torts; Caps. 49, 95, 107, 108, and 136 of the R. S. O.

## FINAL EXAMINATIONS.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Smith on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Harris's Principles of Criminal Law, and Books III. & IV. of Broom's Common Law, Lewis's Equity Pleading, Dart on Vendors and Purchasers, Best on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

FOR CALL, WITH HONOURS.

For Call, with Honours, in addition to the preceding:—Russell on Crimes, Broom's Legal Maxims, Lindley on Partnership, Fisher on Mortgages, Benjamin on Sales, Hawkins on Wills, Von Savigny's Private International Law (Guthrie's Edition), Maine's Ancient Law.

FOR CERTIFICATE OF FITNESS.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Smith on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

Candidates for the Final Examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

## SCHOLARSHIPS.

*1st Year.*—Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Haynes's Outline of Equity, C.S.U.C. c. 12, C. S. U. C. c. 42, and Amending Acts.

*2nd Year.*—Williams on Real Property, Best on Evidence, Smith on Contracts, Snell's Treatise on Equity, the Registry Acts.

*3rd Year.*—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Taylor's Equity Jurisprudence, Fisher on Mortgages, Vol. I. and chaps. 10, 11, and 12 of Vol. II.

*4th Year.*—Smith's Real and Personal Property, Harris's Criminal Law, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis's Equity Pleadings, Equity Pleading and Practice in this Province,

*The above changes shall be in force after next Easter Term.*

The Primary Examinations for Students-at-Law and Articled Clerks will begin on the 2nd Tuesday before Hilary, Easter, Trinity, and Michaelmas Terms.