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ACCORDING to our usual custom, there will be no semi-monthly number issued during the months of July, August and September. There is a growing desire to make long vacation as real as possible, and a very sensible thing it is to do so.

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THE new Governor-General of Canada, Lord Stanley, of Preston, was formally sworn into office by Chief Justice Ritchie, of the Supreme Court of Canada, at Ottawa, on the 11th inst. An address was presented to the Governor-General by the mayor and corporation of the city of Ottawa. The occasion was an unusually brilliant one. We hope that the sojourn of Lord Stanley in Canada will be a thoroughly enjoyable one for His Excellency, and that the people of this country will look back, after his departure, with as pleasant recollections of his administration as they have of the administration of any of his predecessors.

DURING the past year we referred to an anomaly in the law with regard to bail where a grand jury had found a true bill for felony, and the Crown refused to proceed at the sittings of oyer and terminer at which the true bill had been found. No judge in such a case can grant bail without the consent of the Crown on the ground that he cannot know on what evidence the grand jury have found their bill; whilst, in cases of committal for trial by magistrates, a judge can grant bail, because he can, from the evidence taken by the magistrates on the preliminary investigation, decide whether the prisoner should be admitted to bail. Several learned judges expressed their regret at this state of the law; among them the late Chief Justice Moss, the present Chief Justice of the Common Pleas, Sir Thomas Galt, the late Mr. Justice O'Connor, and to-day, Judge McDougall has to express his regret that in extradition cases, where he would be inclined to accept bail, he is obliged to doubt if he has jurisdiction to do so. The Extradition Acts in force say, in effect, that the proceedings in cases shall be assimilated as far as possible to cases under Criminal Procedure Acts. Under those Acts the judge being only an extradition judge, and his only duty being to decide whether a *prima facie* case (should the alleged offence have been committed in Canada), has been made out and not to weigh evidence. The power to rectify these leaks in criminal law rests with the Dominion Parliament, and we call the attention of the Department of Justice to the fact that amendments could be made in the interests of justice, which have been overlooked in the recent revising of the Statutes of Canada.

## PROGRESS OF THE TORRENS SYSTEM OF REGISTRATION.

IN a former number we made some reference to the operation of the Land Titles Act, and the Report of the Master of Titles for the year 1887, presented to the Legislative Assembly at its recent session, enables us to refer more in detail than we then did to the progress which has been made in developing this system of registration of titles. From this report we learn that in the city of Toronto and county of York a very gratifying advance has been made in the amount of land brought under the Act. The volume of business in each year since the Act came into force shows a steady increase. During the first six months of its operation 46 applications were made for registration, of which only 6 were granted, the value of the property registered being $60,250. In the following year, 44 applications were made; 42 applications were granted, and the value of the property registered was $983,189. In 1887, 51 applications were made, 49 were granted, and the value of the property registered was $1,105,929, making the total number of first registrations up to the end of 1887, 99, and the total value of the property registered, $2,149,368. This, we are inclined to think, is a very satisfactory showing, and says a good deal for the confidence of the public in the advantages of this new system of registration. The fees received in the office during the past year, amounted to $4,307.51, so that there is every prospect of the office of the Master of Titles being very shortly entirely self-sustaining.

Most of the property brought under the Act was intended to be laid off into building lots and placed upon the market, and the proprietors have, no doubt, experienced the manifold advantages the Torrens System presents for handling property of this character effectively, avoiding as it necessarily does so much of the delay and expense which the old system involves.

The idea of registration with a "*possessory title*" merely, does not appear to be acceptable. During the past year no applications were made for registrations on that plan. We suppose people who register, do not see any great advantage in going through all the bother and expense of registration, to find out that, after all is done, their title is still open to question. Naturally enough, if they register their titles at all, they wish to get the full benefits of registration. The only likelihood of registration with a "*possessory title*" becoming popular, is when the fees for that mode of registration shall have been reduced to the smallest possible amount. We do not see why any contribution to the assurance fund should be exacted on any such registration. In such cases the benefits of registration are purely prospective, no present blots or difficulties in the titles are removed; in fact, the title is, to all intents and purposes, just the same after, as it was before registration. The only advantage offered is, the prevention of further difficulties arising in the title, by interposing an official scrutiny on all subsequent dealings with the property. These future benefits should be paid for by fees on future transactions as they arise, and should not be charged for, it seems to us, at the time of the first registration.

The learned Master of Titles very properly draws attention to the heavy expense of advertising. The regulation of charges for advertising in the *Gazette* is, we presume, in the hands of the Government, and so far as advertisements in that paper are concerned, we should think there ought to be no difficulty in cutting them down so as to make them less a burthen. There appears to us to be a slight discrepancy between the report and the schedule attached, for while the report gives the figures above stated, as the total number of applications granted, the schedule appears to show that 138 applications have been granted.

The effect of the extension of the Torrens System to the outlying districts will be watched with interest. We have reason to believe that a large number of titles are being registered, and it is to be hoped that the Government has taken care to appoint careful and efficient administrative officers, so that the new system may not suffer from any want of care in its administration.

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## *THE VALUE OF WOMEN.*

WOMEN, whether taken piecemeal or in the whole, whether young or old, are and have long been of uncertain value, and the source to those interested in them of revenue of variable amounts. Slavery is a dead issue, so we are not alluding to the value of the gentler sex in that state, nor, indeed, to their indirect value in a state of matrimony or maternity. In England, early in this enlightened century, a man sold his wife, a child, and some furniture, for eleven shillings sterling; in the same year a butcher sold his spouse by auction, on a market day in Hereford, for one pound four and a bowl of punch; while a few years later another wife was disposed of, at the market-cross at Knaresborough, for sixpence and a quid of tobacco. (*Morning Herald*, March 11th, 1802, and April 16th, 1802; *Morning Post*, October 10th, 1807.) And, as we understand it, the records of Arapahoe County, Col., show that in May, 1882, in consideration of $75, "and the further valuation of one yellow dog," John Howard sold, devised and quitted claim unto John Doe all his right, title and interest to and in his wife, Rebecca Howard, together with all and single the improvements and hereditaments therein and thereon.

But nowadays it is not necessary to sell one's life's partner, or infant prodigy, to make money; to speak figuratively, to do so is to kill the goose that lays the golden eggs; all that is requisite now is to arrange matters so that the wife or bairn tumbles in the street, or is injured by a railway train, or hit, or hurt, by some one who has means at his command. We wish to consider what money may be made by the fair sex, not by preaching nor practising, not by selling nor teaching, not by telephoning nor caligraphing, but by what will occur in the best regulated families, namely, accidents and negligences.

Touching a woman's face against her will is an expensive luxury. Miss Cracker was awarded by the Wisconsin courts $1,000, against the Chicago and North-Western Railroad Company, because a conductor had presumed so to mis-

conduct himself as to salute her on her cheeks. (36 Wis. 657.) There is no record of any man being given damages against a woman for such an assault; and yet those who delve into statistics say that as many men are kissed by women as there are women kissed by men. It might be advisable for railway companies to employ all their homely conductors on their freight trains, giving their handsome ones the run of their passenger coaches; for the kiss of an Adonis, for the nervous shock produced by the contact of his Cupid-shaped lips, or the sweet titillations caused by his neatly curled mustachios, could not be such an aggravated assault as the rough kiss of one *monstrum, horrendum, informe.*

The habit of expectorating in every direction is a vile one, and may become an expensive one; we would that it always was punished with many fines and penalities. Cuspidors may be costly, but it is sometimes cheaper to use them. A man, or at least a curiously forked radish with bandy legs, and a mind as crooked and ugly as his legs, used a lady's face for a spittoon upon one occasion, and for that insulting act he had to pay $1,200, the jury awarding that sum and the judges thinking it not unreasonable; and so say we. This was in Wisconsin. In Illinois, another being, yclept a man, had had the pleasure of giving $1,000 for spitting in a gentleman's face in public. The jury showed a praiseworthy discrimination in charging more for the defilement of a lady's face than for that of a man. (61 Wis. 450; 63 Ill. 553.)

The judges of the land apparently think more highly, and are more careful of the faces of ladies than of their heads, for in Illinois it was decided that $1,700 was too much to make a man pay for hitting a woman on the cranium with a hatchet. The court tried to cover up its lack of gallantry by saying that she had been very provoking and had not been hurt much. (87 Ill. 242.) The woman had evidently blown up the man before his blow came down on her.

In old days, in England at all events, the money value of a pair of shoulders and back was not high, however valuable they might have been æsthetically or socially; that was Mrs. Dudley's experience. She tried to drive under an archway nine feet nine inches in height while sitting upon the top of a coach eight feet nine inches from the ground; not unnaturally there was a difficulty in her doing this the first time she attempted it, and she was permanently injured about the parts named, and for these hurts she received only one hundred pounds. (1 Camp. 167.) Each vertebra of a lady's spine is very valuable, although she has quite a number of them, and the spine as a whole—weak as it often is—has frequently been a source of great revenue, especially to those who have travelled. Mrs. Fry, a substantial British matron, jumped three feet off the top step of a railway carriage to the ground, and thereby jarred her vertebræ. The jurymen to whom she appealed ordered the railway company, because the car had not been stopped in a proper place, to pay her £500; and the judges to whom the company complained of the jury's valuation, agreed with the jurors of our Sovereign Lady the Queen, and enforced the verdict. (18 C. B. N. S. 225.) In the Province of Ontario, Mrs. Elizabeth Toms got $1,000 out of a town for an injury to her spine; the first jury wanted to give her $750, the next said $2,000, but the court deemed $1,000 the correct thing. Mrs. T.'s horse had shied at some new boards on a

bridge and backed up against the railing, which, breaking, let her fall into the water below. In Illinois, Miss Herz was allowed to keep $7,500 as compensation for a fracture of her lowest vertebra, which produced paralysis; the accident was caused by a fall through a defect in a sidewalk. A school ma'am, Parks by name, got $8,958 for a permanent injury to her spine. And down South, a lady was allowed by the court $6,000 against a street-car company for degeneration of the spinal cord induced by a fall, caused by the negligence of the driver, when she was alighting. (37 U. C. R. 100; 87 Ill. 541; 88 Ill. 373; 35 La. Ann. 202.)

Miss Sweely fell, in the town of Ottawa, because of the wretched state of a sidewalk. Her arm was so injured that the muscles gradually wasted away, until she completely lost the use of it; and the shrivelling up was accompanied by incessant pain. She sued the town, and the jury gave her $3,200, and the court thought that none too much. And, where the arm of a juvenile, of the immature age of five, was so fractured that it was permanently disfigured, though the court considered $6,600, the award of a New York jury, far too great, yet the railway company that caused the injury was ordered to pay $3,000 as compensation. A Massachusetts lady was badly used up in a railway accident; she lost one arm, and the other was rendered useless; her health and memory were impaired, and she was thenceforth in constant pain. The jury who investigated her injuries, considered her form divine very valuable, and awarded her $10,000 damages. The railway company thought this sum out of all proportion to the value of other bodies and arms, and so craved from the court a new trial, and they got it. The second jury had a still higher opinion of Mrs. Shaw, the lady in question, or, at least, of those parts of her that were injured and gone, than the first jurymen, and gave her $18,000 damages. Again the unfortunate company (which, though it had no soul to be damned, still had shareholders to damn) rushed to the court for relief, and the judges, doubtless older men and more cognisant of the vanity and frailty of women than the jurors, ordered a new trial. Again a dozen men weighed in the balances of their minds, suspended on their oaths, the sighs and the tears, the aches and the pains, the lost bones and flesh, of the persistent but now sadly defective woman; and these good men and true said that $22,500 would be the right amount to give for compensation. The court then gave way, declining to interfere any further, and the poor company had to submit. What these jurymen would have valued the whole of Mrs. Shaw at, when in her prime, heaven only knows. She must have been a *rara avis.* (65 Ill. 432; 50 N. Y. Super. Ct. 220; 8 Gray, 45.)

Nurse Jones stumbled on a broken board in the sidewalk, fell and fractured her right wrist so that she could not mix up the food for her little darlings, or do her duty in a proper manner in that state of life in which she had been placed; therefore the city of Chicago had to pay her $1,000. As much as $4,700 has been allowed for the loss of a hand; but then, women's small finger-tips have eyes. (66 Ill. 349; 71 Ga. 406.) Doubtless ladies have ofttimes valued the hand of a man at a higher figure, and for broken hearts feminine, caused by vanished hands masculine, have recovered heavy sums from susceptible jurors, but this $4,700 was received by one of the fair for the loss of her own hand.

Ladies who have had their nether limbs injured have, according to the records of the courts, been rather unlucky in their actions for damages; perhaps because the style of dress in vogue among mature women hides from view these most useful appendages, thus inducing judges and jurors to consider that the kind of upright possessed and used by the females of the *genus homo* is immaterial. A dog, at a railway station, took part of the leg of Mrs. Smith between his lips and teeth and nipped it. The jury gave her a verdict of £50 against the railway company; but the court would not let her keep even that small *solatium*, holding that the company was not guilty of negligence in allowing the canine to be on their premises. (L. R. 2 C. P. 4.) A Canadian woman, while walking through a town, in that the season when the wind wails for the summer dead, fell and broke her leg, just above the ankle. The jury who sat on her case assessed the damages against the town at $800; but a new trial being ordered, the second jury deemed $150, besides the amount of the doctor's bill, all she was entitled to. A Massachussets lady spiritualist, however, recovered $5,000 against a railway company that broke her leg, and the court would not interfere to assist the company in getting the amount lessened. Perchance, this one used spirits on the jurors and thus got them high. A master in Louisiana had only to pay $1,000 for his servant's negligence in driving a waggon against a woman, fracturing her thigh, shortening one leg, and causing her to be confined motionless for six weeks. (25 C. P. Ont. 420; 27 *Ib.* 129; 109 Mass. 398; 36 La. An. 966.) And yet, men's lower limbs are valued high. One man, who had his thigh broken in two places, got $7,000; another, in Kansas, got $12,000 for injuries which necessitated the amputation of his leg; while one in New York got that handsome sum for an injury which only kept him in bed six weeks, suffering great pain, and away from his business several months, and left him lame. In Iowa the courts considered that for keeping a man of fifty-two in bed for a month and a half, and shortening one leg only two and a half inches, $8,000 was not too much to pay; but, in Illinois, $10,000 was held to be too much for shortening the leg of a man, of three score and ten years old, a couple of inches. (64 Ia. 568; 33 Kan. 298; 64 Barb. N.Y. 430; 61 Ia. 452; 12 Ill. App. 561.) Verily, judges and juries seem to discriminate against women on this point; perhaps it would be well for legislatures to interfere and fix the price of legs, as they used to fix the prices of wheat or scalps.

In Canada, when the population was smaller than it is now, men valued the legs of their fellow-men at a fancy figure; a bachelor got a jury to give him a verdict of nearly $25,000, for the loss of one of his, and a few other hurts. The judges, however, interfered and sent the matter back for another jury to sit upon. This was well matched in Montana, where a foot was valued by a jury at $20,750; but the court considered that at least $10,000 too much. (5 U. C. C. P. 127; 5 Mont. 257.) In Texas, at times, children's legs are rated as high as children's lives are in the North. One of Simpson's bairns, aged twelve, recovered $3,500 from the Houston & Texas Railway, which had crushed her leg so that it was permanently injured; and that was exactly the same sum that a New York jury gave against the New York Central for the killing of a little damsel of thirteen summers. (60 Tex. 103; 34 Hun. N. Y. 80.)

Women who have had their time wasted through injuries that have been inflicted upon them, and have thus been prevented getting their usual earnings, while entitled to good compensation therefor, must not expect to get a fortune out of the guilty party. Mrs. Langley was laid up by an accident, and was deprived temporarily of earning $9 a week, as was her wont. Twelve jurymen, with that lavish liberality often noticeable in people who are not spending their own money, offered her as compensation $6,000 of the money of the railway company that hurt her, but the judges intervened and said that was far too large a sum. And where a railway company carried a lady of the name of Marshall beyond the station at which she wished to alight, and she had to pay $1.50 to reach her desired haven, and lost three hours of her valuable time in getting there, the judges would not let her keep the $750 which the jurors of Missouri in their ardor and gallantry gave her. Too much, the impassive judges said. Yet in such a case the fair claimant may, to influence the verdict of the jury, show that there was no conveyance to be had at the place where the railway left her, that she had to walk several miles, over dusty roads, spending several hours tramping through the night; that she got wet crossing a creek, was chased by dogs, and otherwise frightened, and so with heat, and wet, and fright, and fatigue, was made sick. (48 N. Y. Super. Ct. 542; 78 Mo. 610; 94 Ind. 179.)

What sums sad and sorrowing survivors have received when women have been killed is too mournful a subject to touch upon just now.

R. VASHON ROGERS.

## *COMMENTS ON CURRENT ENGLISH DECISIONS.*

*Law Reports* for May continued.

MARITIME COLLISION—NEGLIGENCE IN BOTH SHIPS—DAMAGES FOR LOSS OF LIFE—LIABILITY OF OWNERS—LORD CAMPBELL'S ACT.

Turning now to the appeal cases, the first is *Armstrong* v. *Mills*, 13 App. Cas. 1, in which the House of Lords affirm the decision of the court, which is reported as *The Bernina*, 12 P. D. 58, noted *ante* vol. 23, p. 143. It may be remembered that the action was brought to recover damages under Lord Campbell's Act for the loss of life occasioned by the collision of two steamships, the *Bushire* and *Bernina* The collision occurred through the negligence of the masters and crews of both vessels, one of the deceased persons was a passenger, and the other, one of the crew of the *Bushire*, neither of whom had anything to do with the negligent navigation. The Court of Appeal held that the deceased persons were not identified in respect of the negligence with those navigating the *Bushire*, and that their representatives were entitled to recover the whole of the damages against the *Bernina*, the admiralty rule as to half damages in case of collision not being applicable to actions under Lord Campbell's Act. This decision the Lords affirmed, overruling, as the Court of Appeal had done, *Thorogood*

v. *Bryan*, 8 C. B. 115, and *Armstrong* v. *Lancashire & Yorkshire Railway Company*, L. R. 10 Ex. 47. The theory that a passenger upon a public conveyance becomes so far identified with the owner and his servants that if any injury results from their negligence he must be considered a party to it, is now completely exploded.

PRACTICE—IMPRISONMENT FOR DEBT—JUDGMENT SUMMONS—ORDER FOR COMMITMENT OF DEBTOR—DEBTORS' ACT, 1869 (32 & 33 VICT. C. 62), S. 5. (R. S. O. c. 51, s. 240).

In *Stoner* v. *Fowle*, 13 App. Cas. 20, the House of Lords reversed the decision of the Court of Appeal reported as *Reg.* v. *Judge of Brompton County Court*, 18 Q. B. D. 213. Judgment was recovered in a county court and an order made for the payment of £20. Default having been made in payment, a judgment summons was taken out, and the judge having heard evidence and being satisfied as to the defendant's means, made an order to commit him for ten days, but directed that the warrant be suspended if the debtor paid instalments of £4 a month, the first payment to be made in fourteen days. It was held by their Lordships that the order was in reality an order for commitment in respect of the past default in payment of the £20, and not an anticipatory order for commitment in respect of any future default, and that being so, the order was valid under the Debtors' Act, 1869, (32 and 33 Vict. c. 62), s. 5, (see R. S. O. c. 51 s. 240).

RAILWAY COMPANY—COMMON CARRIERS—PASSENGERS' HAND-LUGGAGE—DELIVERY TO PORTER—NEGLIGENCE.

*The Great Western Railway Company & Bunch*, 13 App. Cas. 31, is an instance of the pertinacious way in which railway companies are prone to litigate cases. The sole cause of action was the loss by Mrs. Bunch of her Gladstone bag, which she left in charge of a railway porter at a station for a few minutes while she went to meet her husband and get her ticket for a train about to start. Ten minutes afterwards she returned to the platform, and the Gladstone bag had disappeared. The Court of Appeal held the railway company liable (17 Q. B. D. 215), and the House of Lords affirmed the decision. Mrs. Bunch may congratulate herself that her protracted law suit has had a more successful issue than did that of Mr. Jackson (3 App. Cas. 193), who lost not only his thumb, but his case as well, with all the enormous costs it must have involved; had all the learned law lords, however, been of the same opinion as Lord Bramwell, Mrs. Bunch might have been in a similar position to Mr. Jackson.

INFANT—MARRIED WOMAN—POST NUPTIAL SETTLEMENT—INFANTS' SETTLEMENT ACT (R. S. O. C 44, S. 32).

*Seaton* v. *Seaton*, 13 App. Cas. 61, is a case which was known in the courts below as *Buckmaster* v. *Buckmaster*, in which the Court of Appeal (35 Chy. D. 21), held that neither the sanction of the court nor the effect of the *Infants' Settlement Act* (R. S. O. c. 44, s. 32), could make a post nuptial settlement of the wife's reversionary interest in personalty binding on her, and that no acts of ac-

quiescence and confirmation could have that effect unless they amounted to an actual disposition by her, of the property (while discovert), to the trustees of the settlement. This decision we noted *ante* vol. 23, p. 249, and it is now affirmed by the House of Lords. In short, the case establishes that the *Infants' Settlement Act* merely removes the bar of infancy, but does not enable an infant married woman to make a valid conveyance of property, which she could not validily convey if she were not an infant.

ILLEGAL TRANSACTION—RATIFICATION BY LIQUIDATORS.

*La Banque Jacques Cartier* v. *La Banque D'Epargne de Montreal*, 13 App. Cas. 111, is an appeal from the Court of Queen's Bench for Quebec, in which the Judicial Committee came to the conclusion, overruling the court below, that the liquidating authorities of a bank in liquidation have no power to ratify or acquiesce in a transaction, so as to render the bank liable to pay a debt it never owed.

PRACTICE—VERDICT OF JURY.

In *Commissioner of Railways* v. *Brown*, 13 App. Cas. 133, the Judicial Committee decided that when there is evidence on both sides properly submitted to a jury, and the verdict of the jury is not unreasonable, nor unfair, nor dissented from by the judge who tried the case, it ought not to be set aside, and the decision of the court below setting aside a verdict, under such circumstances as being against the weight of evidence, was reversed.

INCORPORATION OF RAILWAY CO.—VALIDITY OF MUNICIPAL BY-LAW—CONDITIONS PRECEDENT—34 VICT. C. 48 (O.)—37 VICT. C. 43 (O.).

*The Grand Junction and Midland Railway of Canada* v. *Peterborough*, 13 App. Cas. 136, is a decision of the Judicial Committee on an appeal from the Court of Appeal of this Province. The action was brought by the railway company, to compel payment of a bonus, which had been authorized to be paid to the company by by-law. The defendants contended *inter alia* that the by-law was invalid. 2. That the plaintiffs were not the company referred to in the by-law. 3. Non-performance of conditions precedent. The Judicial Committee dismissed the appeal, holding that the by-law was valid, and that the company was by virtue of 34 Vict. c. 48 (O.), and 37 Vict. c. 43 (O.), entitled to the benefit of the by-law, but, that owing to the non-performance of the conditions precedent, the company was not entitled to recover, and the judgment of the Court of Appeal of Ontario, dismissing the action, was consequently affirmed.

ACTUAL TOTAL LOSS—SALE OF SHIP BY COURT—SALE FOR LESS THAN SALVAGE—DERELICT.

*Cosman* v. *West*, 13 App. Cas. 160, is an appeal to the Judicial Committee, from the Supreme Court of Nova Scotia. The action was upon policies of insurance on a ship and freight, as for a total loss. The ship had been abandoned by the crew in a sinking condition, having been purposely scuttled by them, but had been subsequently taken possession of by salvors, and towed into port,

and ordered to be sold by order of the Admiralty Court, and at the sale realized less than the sum allowed for salvage. Their Lordships reversed the decision appealed from, and held that assuming the possession by salvors of a derelict vessel to be only a constructive total loss, yet the subsequent sale constituted an actual total loss, of both ship and cargo, and that it was not necessary to constitute a total loss, that the ship and cargo should have been actually annihilated; it was sufficient to constitute such a loss; that by an adverse valid sale, and legal transfer, the owner's right of property and possession has been transferred to a purchaser, in consequence of a peril insured against.

NEGLIGENCE—NERVOUS SHOCK RESULTING FROM FRIGHT—DAMAGES TOO REMOTE.

The only other case to which we think is necessary to draw attention is *Victorian Railway Commissioners & Coultas*, 13 App. Cas. 222. This was an appeal from the Supreme Court of Victoria. The action was brought to recover damages for negligence under the following state of facts: The gate-keeper of the defendant's railway company had negligently invited the plaintiff to drive over a level crossing, when it was dangerous to do so. An actual collision with a train was avoided, but the plaintiff claimed damages for physical and mental injuries sustained by the fright, and the jury assessed damages therefor; but the Judicial Committee was of opinion that such damages were too remote, and not a natural and reasonable result of the defendant's act, and the appeal was consequently allowed, and the action dismissed.

# Reviews and Notices of Books.

The most recent of the Text-Book Series of the Blackstone Publishing Company, of Philadelphia, is "Leading Cases in Equity," by Thomas Brett, with notes on American cases by F. S. Dickson. This is a valuable addition to the series.

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*A Compendium of the Law of Torts, specially adapted for the use of Students.* By HUGH FRASER, M.A., LL.M., of the Inner Temple, Barrister-at-Law. London: Reeves & Turner.

This little book claims to be nothing more than rough notes of the outlines of the author's lectures delivered at Liverpool and Newcastle-upon-Tyne. It was compiled, in the first instance, with the object of assisting those of the author's own pupils, who wished to enter on the wider course of study indicated in his lectures. It is clear and concise in its statements, the topics treated of are well arranged, and the numerous references to cases, and to other works dealing at large with each subject under discussion, will prove helpful in obtaining more detailed information on any point of inquiry than can be given in an outline.

*The Bills of Sale and Chattel Mortgage Acts of the several Provinces of the Dominion of Canada, with Introduction and exhaustive Notes.* By JOHN A. BARRON, Barrister-at-Law. Second edition. Toronto: Carswell & Co.

The first edition of this book is so well known that it is scarcely necessary for us to do more than call attention to the fact that a second one has been issued. The portion of the work relating to the law of Ontario is based on R. S. O. 1887, c. 125, but it contains also some other Statutes of the Province, and of the Dominion, which affect bills of sale and chattel mortgages. The advantages of having this treatise brought down to the present date are manifest. The law of the other Provinces of Canada is also given. The annotations are exhaustive, and we are safe in saying that this edition will meet with even a more favourable reception from the profession than the former. The appendix of forms is a useful feature of the work.

Type, paper, printing, and general appearance reflect credit on the publishers.

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*The Mechanics' Lien Act, being the Revised Statute of Ontario* (1887), *chapter* 126. *With Annotations and additional Forms of Proceedings thereunder.* By GEORGE SMITH HOLMESTED, of Osgoode Hall, Barrister-at-Law, and Registrar of the Chancery Division of the High Court of Justice for Ontario. Toronto, 1888, pp. xiii. 166.

Mr. Holmested has chosen an appropriate time for the publication of this compact and comprehensive little work on a difficult and important subject. Some years ago, when the Mechanics' Lien Act was of recent date, and had not been to any great extent illustrated by judicial decisions, he published a smaller work on the subject, which was found of considerable value by the profession, and has been frequently quoted with approval in the Reports. Since that time the Legislature has been busy in amending and extending the original legislation, the courts have been still busier in interpreting, not always to their own satisfaction or in harmony with each other, the complicated enactments by which our provincial Solons have endeavoured to safeguard the rights of labour which are so dear to them, and the result has been a state of things which rendered it highly desirable that a fresh attempt should be made to furnish the profession with "light and leading" in what are confessedly dark and thorny places. For such an attempt, the recent consolidation of the various statutes on this subject in one Act supplied a convenient basis, and Mr. Holmested has done wisely in deferring the publication of his work until such a basis could be secured. The form chosen by him is that which has been so much in vogue with our Canadian legal writers, viz., a reproduction of the Act with annotations following each section. Much labour and research have evidently been expended in these annotations, which are characterized by clearness of statement and fulness of reference, and if the reader is sometimes left in doubt as to the means of reconciling conflicting

decisions, he has the satisfaction of finding that materials have been afforded him for forming an opinion of his own, while points of conflict and difficulty have been brought into clear relief, and sometimes (though this is not always possible) a path of safety pointed out. In this connection we may refer to the remarks made on *Makins* v. *Robinson*, *McVean* v. *Tiffin*, and other cases bearing on the effect of prior registration as between owners, mortgagees, and lien-holders (pp. 8, 9, 10, 56 and 57), which will be found to contain a valuable and suggestive discussion of what is perhaps pre-eminently the *vexata quaestio* of Mechanics' Lien Law. The author, though he speaks with caution on this point, seems to agree with the view expressed by Mr. Armour in his work on Titles (p. 166), that the line taken by recent decisions is more favourable to the owner and mortgagee as against the lien-holder than the intention of the Legislature. If such be the case, we cannot say that we regret it. Mr. Holmested refers (p. 3), to an American case as establishing the proposition that, "when a lien attaches, the statute, being remedial, is to be liberally construed," but on a point of this kind we should have preferred a reference to such *dicta* of our own judges, as, for example, those which speak of this "remedial" statute as being "very oppressive upon the owners of property," and, "however equitable in intention, calculated to make one man pay another man's debt": *McPherson* v. *Gedge*, 4 O. R. 259, 261. Most persons, with the possible exception of Knights of Labour in the workshop and the Legislature, will agree with Mr. Justice Patterson in thinking that this Act should be construed "so as not unnecessarily to increase its unavoidable interference with the power of an owner to deal with his property, or of an incumbrancer to benefit by his security": *Bank of Montreal* v. *Haffner*, 10 O. R. 602.

There will be found in the work under review references to many English and American authorities, and to all important decisions in our own courts on the matters treated of, including some which are not reported, and such recent cases as *Reinhart* v. *Shutt*, and *Wanty* v. *Robins*, which though they had not appeared in the reports at the time of publication, are noted wherever appropriate. One feature which will be found particularly useful by the practitioner is the appendix of additional forms of proceedings. This appendix contains 35 pages, embracing a variety of forms which cannot fail to be of the greatest service, the value of which is further enhanced by a number of foot-notes on points of practice. In conclusion, we may say that this little book is well-printed and tasteful in appearance, doing credit in these respects to the author's publisher, who is apparently the author himself, and that it possesses the additional merit of a full and well-arranged index.

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# Notes on Exchanges and Legal Scrap Book.

DETACHED COUPON.—A case which turned on the right of a passenger to present a coupon detached from the ticket-book in payment of his fare has been decided by the Supreme Court of Massachussetts: *Boston and M. R. Co.* v. *Chipman*. The ticket-book originally contained one hundred such coupons, and on each was printed the words, "Not good if detached," and on the cover of the book, "Coupons are to be detached by or in the presence of the conductor, and will be accepted for passage only when accompanied by this ticket." The defendant refused to exhibit his ticket-book or to pay his fare in any other manner than as aforesaid. At the trial he offered to prove that it was customary for conductors to receive coupons without seeing the ticket-book, but the evidence was excluded. The court held that the contract was a reasonable one, that there was no evidence that the company had rescinded or waived any of the terms or conditions of the contract, and they were, therefore, entitled to judgment.

SUBROGATION TO RIGHTS OF MORTGAGEE.—In *Scriven* v. *Hursh*, decided by the Supreme Court of Michigan, H. made a mortgage on certain of his lands to J.; afterwards he made a second mortgage on the same lands to G., in which the first mortgage was recognized. This second mortgage was foreclosed. To save the redemption, the mortgagor, who had conveyed the premises to his wife, borrowed money of the first mortgagee, and as his wife's agent, under a power of attorney, mortgaged the property to him for the entire sum included in both the first and second mortgages. The wife knew and approved of this. The third mortgage was bought by S., who gave full value for it and who also paid the taxes on the land. This mortgage was subsequently declared to be void, on the ground that the husband had exceeded his authority in executing it. It was held that S., as against a purchaser of the land from the wife with notice, was entitled to be subrogated to the rights of the second mortgagee to the extent of what he had paid for the mortgage and laid out in taxes.

IN *Walker* v. *Grand Rapids Flouring Mill Company*, in the Supreme Court of Wisconsin, the defendants were a corporation and the owners of a flouring mill. A. agreed, for a certain consideration, to repair the mill and put in new machinery. The plaintiffs sent a machine to A., consigned to themselves and in the care of another, to have it tested. The machine was secured to the floor, and connected with the main shafting of the mill by means of belts and pulleys. The defendants had notice that the machine was the property of the plaintiffs, and had paid nothing for it. It was not sold to any one, and no agreement had ever been made by the plaintiffs with any one for its sale. It was contended on

behalf of the defendants that because the machine was entrusted to A., and he placed it in the mill of defendants under a contract to put such a machine there, the plaintiffs should not be allowed to set up a claim to the ownership of the machine. There was nothing to show that the position of the defendants was in any way prejudiced by the claim of the plaintiffs, for the former never paid anything. It was held that the machine had not become annexed to the building so as to become a part thereof or to lose its identity, and the plaintiffs were not estopped from recovering for its conversion by reason of having entrusted it to the care of another person.

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TESTAMENTARY ECCENTRICITIES.—The following notes of peculiar wills appear in the *English Law Journal*: A few days since was chronicled the case of a hard-hearted uncle who left his nephew a fortune on condition that he should never indulge in his favourite occupation of "reading newspapers." Many will pity the legatee, but few would refuse "landed estate, houses, and money in the funds," even though fettered by such a selfish condition. As the subject of testamentary eccentricities is a generally amusing and instructive one, permit us to give our many readers a few remarkable instances of the whimsicalities of testators. An American lawyer once made a very thoughtful bequest, thus: "I am informed there is a society composed of young men connected with the public press, and, as in early life I was connected with the papers, I have a keen recollection of the toils and troubles that bubbled then, and ever will bubble, for the toilers of the world in their pottage cauldron, and, as I desire to thicken with a little savoury herb their thin broth, in the shape of a legacy, I do hereby bequeath to the New York Press Club, of the city of New York, 1,000 dollars." A few such "windfalls" for our own Newspaper Press Fund would be very acceptable. Palgrave's "House of Commons" contains a note of a very curious bequest. It is to the effect that many years ago a large estate was left to Mr. Asgill upon condition that he should undertake to pay not one of the debts which the owner of the estate had left behind him. Mr. Asgill was an M.P. He took possession of the property, called the creditors together, read the will, and told them he would obey it strictly. He kept his word.

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EVIDENCE IN FORGERY.—A case of a practical test in evidence is *State* v. *Henderson*, 29 W. Va. 147, a prosecution for forgery, where witnesses, acquainted with the genuine signature in question, were permitted to write one of its letters in presence of the jury, as they thought it was made, and the jury were permitted to compare it with the simulated signature. The court said: "The objection urged to this is, that it is a comparison of handwriting by the jury, which it is alleged is not allowable, and the following authorities are cited: *Rowt* v. *Kile*, 1 Leigh, 216; *Burress'* case, 27 Gratt. 946; *Clay* v. *Alderson*, 10 W. Va. 50. It is true, as these cases hold, that it is not allowable to lay other proved but not admitted specimens of the party's handwriting before the jury for the purpose of

permitting them to judge by a comparison thereof with the signature in question, whether the said signature is not genuine. But here no such thing was permitted. The jury was not asked to compare different signatures of Leonard with his name signed to the alleged forged receipt. The witnesses were only asked to write an 'L' as they thought Leonard wrote it, so that the jury could the better understand the testimony. If a jury do not have a clear idea of the location of a place where an act is alleged to have been done, no one doubts the right of a party to have a witness describe the place, and by a word painting of it and its surroundings make its location clear to the minds of the jury. What objection then can there be to the permitting of the witness to make in the presence of the jury a diagram of the place to enable the jury the better to understand the witness? There can then be no valid objection to the permitting of the witnesses in their attempt to describe how Ebenezer Leonard wrote the letter 'L' to illustrate their meaning by writing the letter themselves, so that the jury could see whether or not it was in fact different from the alleged simulated 'L.'"—*Albany Law Journal.*

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RIGHT OF TRAVELLING ON ICE.—The Supreme Judicial Court of Maine, in *Woodman* v. *Pitman et al.*, reported in the *American Law Register*, decided that neither the right of travelling upon the ice of a river affected by the tide, nor the right of taking ice therefrom, is an absolute property right in any person. Both are natural or common rights, belonging to the public at large. Though such rights are theoretically open to all, those persons who first take possession of them are entitled to their enjoyment without interference from others, such rights being the subjects of qualified property by occupation. Each right is relative or comparative, and, when conflicting with the exercise of the other right, is itself to be exercised reasonably. What would be a reasonable exercise of the one or the other, at any particular place, must depend largely upon the benefits which the people at large are to receive therefrom. The right of passage over the ice for general travel is not the paramount right at such a place as the Penobscot River at Bangor, and for some distance below, where the great body of the ice is annually harvested for the purposes of domestic and foreign trade; the traveller's privilege at such place being of trifling consequence compared with other interests conflicting with it, and beset with difficulty and danger during the ice-cutting season. It is the duty of those who appropriate to their use portions of a public river for ice-fields to so guard their fields, after they have been cut into, as not to expose to danger any persons who may innocently intrude upon them. Although the defendant may have been in fault in leaving his ice-field unprotected against accident, yet, where the plaintiff's servant, knowing the customs of ice-gatherers, wilfully left the usual driven track, and drove over a bank of snow by the side of the defendant's ice-field, knowing that he was going upon an ice-field, and that it was dangerous to do so, he was guilty of contributory negligence, and the plaintiff cannot recover for injuries to his property.

BOOKS OF ACCOUNT AS EVIDENCE.—In *Missouri Pac. Ry. Co.* v. *Johnson*, Texas Supreme Court, April 27, 1888, it was held that where the plaintiff and his clerk testify that one or the other of them weighed the wheat taken in at plaintiff's elevator, and set down the correct weight in the "scale-book," from which tickets were torn off and given to the farmers, and from the stubs correctly transcribed the weights into the day-book, such book is admissible in evidence to prove the amount of such weights, the "scale-book" being lost. The court said: "The introduction of shop-books as original evidence of indebtedness grew out of the necessity of affording small shop-keepers and dealers who keep no clerks the means of proving their accounts. Not being allowed to testify at common law in their own cases, they were permitted to introduce their books of original entries in order to establish the items of their claim, after having sworn to their correctness, and proved by the testimony of disinterested persons who had dealt with them that their books were correctly kept. As to what are books of original entry there has been some diversity of opinion among the courts. It seems, however, pretty well established that the first permanent records of the transaction by the creditor are to be deemed original entries if made within a short time after the transactions themselves, although the item may have been previously entered, as a temporary assistance to the memory, upon some slate, book, paper, or other substance not intended to be preserved. In an old case this court admitted the rule generally recognized in the courts of this country, but strongly animadverted upon it as a dangerous innovation of the principles of the common law, and refused to extend it in case of a merchant's account beyond such articles as are usually sold by a merchant in course of his business. *Cole* v. *Dial*, 8 Tex. 347. It is usually confined to accounts for labour performed, or to goods sold by regular dealers in merchandise. Since the passage of the statute which permits parties to testify in their own cases there is less reason for the extension of the doctrine than before existed. But we are of the opinion that so much of the account from the books introduced in this case as pertained to the wheat shipped from McKinney was admissible on a different ground. The witnesses as to these transactions testified of their personal knowledge. They swore, in substance, that they weighed the wheat, or saw it weighed, and that the weights were correctly set down in the scale-book, and correctly entered in the account-book from the scale-book. Such entries as were not made by the one were made by the other, and each testified that the entries made by him were correct. We think this was legitimate evidence, tending to establish that the weights shown in the book of accounts were correct. A witness who takes a memorandum of a transaction, and copies it himself, is certainly competent to prove the copy if the original be lost. If he takes down a correct statement of the weights of small parcels of grain, and adds them up, and enters them in an account-book at the end of each day, as appears to have been done in this case, he ought to be able to say whether the entries last made are correct or not, and we do not see why he should not be permitted to testify to the fact. If he knows that the numbers were correctly set down in the original memorandum, and correctly added, and the sum or sums correctly

entered in a book of accounts, the conclusion is inevitable that the last entry correctly represents the total. It may be that, as a general rule, if a witness, after refreshing his memory from a contemporaneous writing, can speak from his memory, the writing is not admissible in evidence. But if the writing be an account consisting of a mass of figures, he may refer to the paper if he knows it is correct, and testify from it; and we see no reason why it should not be introduced—not as original evidence, but as showing distinctly the specific account to which he has testified. *White* v. *Ambler*, 8 N. Y. 170; *Insurance Co.* v. *Weide*, 6 Wall. 680; Abb. Tr. Ev. 321. Here it was proved that the accounts which were offered from the books consisted of entries made from the scale-book at the end of each day's transaction, and that the scale-book had been lost or destroyed; and we are, therefore, of the opinion that the book was properly admitted as tending to prove the weights of the wheat which was shipped from McKinney."—*Albany Law Journal.*

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LIMITS OF THE PRIVILEGE OF PUBLIC WRITERS.—In the Queen's Bench Division, on April 18, before Baron Huddleston and a special jury, Samuel Peters, Secretary of the "Workmen's National Association for the Abolition of Foreign Sugar Bounties," sued Charles Bradlaugh, M.P., to recover damages for having, on December 3, 1887, falsely and maliciously printed and published of and concerning him in the *Times* newspaper the words following: "I had, from my place in Parliament, offered to prove that leading Conservatives, including Lord Salisbury, had given cheques to promote the meetings of the unemployed which had preceded, and, as I believe, aided in the riots of Trafalgar Square. I am ready directly Parliament meets, to trace several cheques signed by leading members of the Conservative party, including one signed by the Marquis of Salisbury, some of which were payable to S. Peters, all of which I believe passed through the hands of S. Peters, and which were used in connection with the so-called fair trade meeting of the unemployed which preceded the riotous meetings in Trafalgar Square." The defendant pleaded privilege and justification. Baron Huddleston, in summing up, explained to the jury that anything which reflected upon the character of any one, if written and published, constituted a libel, and proceeded to trace the law relating to libel before and after Fox's Act. They, therefore, would have to look at the words of the libel and say whether or not they bore the construction put upon them by the plaintiff. No doubt it was right that public writers should be allowed some extent of comment, and it would not be right to be too nice on such points. But the facts commented upon must be true. The first question was, therefore, Was this statement of the defendant's true? If it was, then Mr. Bradlaugh was entitled to say that it was privileged. But so long as he continued to administer the law he would most strenuously uphold that it was no defence in an action for libel for the defendant to say, "Oh! I *bona fide* believed what I wrote was true," when the words reflected upon the plaintiff's character. The learned judge referred to *Campbell* v. *Spottiswoode*, 32 Law J. Rep. Q. B. 185, as a case that was always recognised and fol-

lowed by our courts. If they were satisfied that the imputation was true, Mr. Bradlaugh's contention of honest belief might avail, but if not, no amount of such sincerity would avail him. Having cautioned the jury against political bias, the learned baron proceeded to observe that at the time in question there had been public meetings held in Trafalgar Square, and Mr. Bradlaugh wrote the letter complained of, and it was published in the *Times* of December 3, 1887. The learned judge asked the jury whether they thought the libel as set out in the pleadings supported the meaning put upon it by the plaintiff, and constituted a grave charge against him. If it did, then were they satisfied that the charges were substantially true? He did not think that anyone could say, whatever his politics, that there was any harm in the plaintiff associating with others and raising subscriptions in order to ventilate their particular grievances. That was what Peters said he was doing. But Mr. Bradlaugh asserted in the letter in question that this was not so, and that funds subscribed for that object had been diverted from their legitimate source. Lord Salisbury's cheque, as to its object, could not have been a more charitable one. The suggestion was that cheques of the leading Conservatives, including Lord Salisbury, had been used to organize sham meetings. After the evidence, Mr. Bradlaugh entirely withdrew the charges so far as they related to Lord Salisbury. The other cheque traced, viz., Mr. Bates's for £10, was shown to have been used for quite as charitable an object. So both these cheques disappear. But then there was the other cheque of Mr. Norris, M.P., for £5, which Mr. Peters said had been given him towards the association. Where, then, has it been shown that Mr. Peters had had cheques from leading Conservatives, etc., as stated in Mr. Bradlaugh's letter? If, therefore, they were of opinion that Mr. Bradlaugh had failed to establish the truth of his statements, the only other question for them was that of damages. In dealing with it they must look at all the circumstances of the case; and alluding to the fact of Mr. Bradlaugh declining to act upon the suggestion thrown out at the adjournment, and when his case had—so far as Lord Salisbury was concerned—completely fallen to the ground, he reminded the jury that by so acting Mr. Bradlaugh had aggravated his offence. Mr. Bradlaugh had called for Mr. Peters's subscription-book in connection with the Sugar Bounties Association, and he had looked into it, and felt bound in fairness to say that he found therein the names of very eminent men—Conservatives and Liberals—as subscribers. The learned judge then referred to the article published by Mr. Bradlaugh in the *National Reformer* of February 28, 1888, in which Mr. Bradlaugh asserted that he was prepared to prove that Peters had received a large number of cheques from leading Conservatives, all of which had passed through Mr. Peters's hands. How had he proved this, or did his own account of the matter justify him in making such grave charges? The jury, without retiring, and after fifteen minutes' consideration, found a verdict for the plaintiff for £300 damages. Mr. Baron Huddleston gave judgment for the plaintiff for £300, granted a certificate for a special jury, and declined to stay execution.—*English Law Journal.*

## DIARY FOR JUNE.

3. Sun.....*1st Sunday after Trinity.*
4. Mon....Lord Eldon born, 1751.
5. Tues ...Maritime Court sits.
9. Sat.....H. C. J. sit. end. L. S. Easter Term ends.
10. Sun.....*2nd Sunday after Trinity.*
11. Mon....York C. C. sit. for motions begin.
12. Tues ...Gen. Sess. and C. C. sit. for trial except in York.
15. Fri. ....Magna Charta signed, 1215.
16. Sat.....York C. C. sit. for motions end.
17. Sun.....*3rd Sunday after Trinity.*
18. Mon....Battle of Waterloo, 1815.
20. Wed....Accession of Queen Victoria, 1837.
22. Fri. ....Longest day. Slavery declared contrary to law of England, 1772.
24. Sun.....*4th Sunday after Trinity.* St. John Baptist.
25. Mon....Sir M. C. Cameron died, 1887.
28. Thur. ..Coronation of Queen Victoria, 1838.
29. Fri. ....St. Peter.

# Reports.

## *DIVISION COURTS.*

[Reported for the CANADA LAW JOURNAL.]

### THIRD DIVISION COURT, COUNTY OF ELGIN.

BELL TELEPHONE CO. *v.* PENNINGTON.

*Distress for rent—Exemptions from seizure—Refusal of bailiff to seize through a mistaken view of the law—Insufficient levy—Second seizure where the first insufficient—Replevin—Detention a good seizure.*

Replevin for a telephone which was loaned on hire by the plaintiffs to Cox & Co., brokers, at St. Thomas. Cox absconded, and left the rent of the premises, about $50, unpaid. The defendant, as landlord of Cox & Co., instructed the bailiff to seize the goods on the premises, including the telephone, for the rent due. The bailiff seized and sold goods to the value of $31, but refused to seize the telephone, thinking he had no right to do so. The landlord detained it, claiming a lien on it for the unpaid rent.

*Held*, (1) that the telephone was liable to seizure, and that the defendant was not prejudiced by the refusal of the bailiff to seize it.

(2) That where, through no fault of the landlord, a sufficient levy cannot be made at first for unpaid rent, he may distrain again.

(3) That, in the circumstances, the detention of the telephone by the landlord was a good seizure.

[HUGHES, Co. J.—St. Thomas, May 30.

The plaintiffs loaned, on hire, one of their operating instruments to Cox & Co., the tenants of the defendant, of certain rooms and premises in the city of St. Thomas, in which Cox & Co. carried on their business. Cox absconded, and the rent due to the defendant was left unpaid, for which he distrained, issuing his warrant to H. Thornton, his bailiff. Upon the distress certain goods were seized. The telephone was then upon the premises, but it was not included in the distress and sold, as it might have been. The defendant's warrant directed the bailiff to distrain the goods which were liable to distress for rent in the demised premises, but made no exemption of the instrument in question in this action. The goods seized under the warrant were not sufficient, when sold, to pay the rent due. The bailiff supposed that it was illegal to seize the instrument, and he told the defendant that he would not seize it, though the defendant urged, and the warrant required, him to do so. The telephone was not included in the inventory or appraisement; but that was owing to the mistaken view of the bailiff that it was not distrainable, and not from any abandonment by the defendant himself. The rent due and unpaid amounted to $50, and only $31 or $32 was realized. The defendant knew that the bailiff had not seized the telephone, but he still claimed the right to distrain, and he held it for the balance of rent remaining unpaid. It was in his possession on the demised premises when the plaintiffs sent for it, and when, in about ten days afterward, it was replevied. The plaintiffs sent to the defendant to demand their instrument, but the latter refused to deliver it up, on the ground, as he said, that he had a lien upon it for the balance due upon the rent distrained for.

The plaintiffs contended (1) that they are entitled to succeed because there is no evidence that the instrument was seized; but, on the contrary, the evidence shows that it was not. (2) That seizure only could justify a detention of goods on the demised premises. (3) That there could be no lien for rent unless the landlord's rights were actively exercised and enforced by seizure. (4) That as against a stranger to the distraint (as the plaintiffs were) the landlord's proceedings must be strictly regular. (5) That the defendant has established nothing beyond an intention to seize, and that the instrument was not liable to seizure at the time the warrant was issued. *Williams* v. *Grey*, 23 U. C. C. P. 568, was cited in support of the plaintiffs' contention.

HUGHES, Co. J.—The Statute 17 Car. II. c. 7, s. 4, provides that "in all cases where the value of the chattels distrained shall not be found to be of the full value of the arrears distrained for, the party to whom such arrears are due, his executors or administrators, may from time to time distrain again for the residue of the said arrears."

It is laid down that there is nothing more clear than that a person cannot distrain twice for the same rent, for, if he has had an opportunity of levying the amount of the first distress, it is vexatious in him to levy the second, unless there be some legal ground for adopting such a course.

It is also laid down, with as much certainty, that if a man seize for the whole sum that is due to him, and only mistake the value of the goods seized, which may be of uncertain or imaginary value—as pictures, jewels, racehorses, etc.—there is no reason why he should not afterwards complete his execution by making a further seizure. See *Hutchins* v. *Chambers*, 1 Burr. 579; 1 Wm. Saund. 201, n. 1.

In this case there was no hardship or oppression in what was done by the landlord—the tenants were the only ones who could complain of that, if there had been any such, and they had absconded. I do not see that the landlord in any sense split up the entire sum due to him, and distrained for part at one time and for the other part at another time. That would have been oppressive. On the contrary, he evidently acted (and, I think, properly so) under the supposition that all the goods in the demised premises, including the telephone, were liable to seizure as and for the distress for rent, and it was the mistaken view of the law by the bailiff who made the distress, that the telephone of the plaintiffs was not seized and sold with the other chattels. The defendant ordered him to carry out the warrant of distress and seize the telephone, and the bailiff refused, supposing that it was not restrainable, or that it was exempt from such a seizure. As I have already said, there was nothing oppressive in the acts of either the landlord or his bailiff. The first was insisting upon his full rights and nothing more, and, only for the bailiff's mistaken view of the law, the intrument would have been sold with the other chattels, but there it remained. It cannot be very well urged that because of this mistake, or because there was no actual formal seizure made in the first instance, that therefore the detention of the instrument by the defendant afterwards was illegal.

I think the defendant had a right to detain the instrument under the circumstances. I think he *bona fide* detained it for the balance of rent in arrear, as he had a right to do. *Cramer* v. *Mott*, L. R. 5 Q. B. 357, is in point; *Wood* v. *Nunn* is a leading case on this point, 5 Bing. 10. In that case the defendant, a landlord, to whom rent was in arrear, hearing that a machine was about to be removed, entered on the premises, and, laying his hand on it, said, in the presence of the tenant and the plaintiff, who claimed property in the machine, "I will not suffer this or any of the things to go off the premises till my rent is paid." The plaintiff, however, carried the machine off, and the defendant afterwards seized it. It was held that there was a sufficient distress to entitle the defendant to the article in question, and several other cases, marked and cited in *Cramer* v. *Mott*, show that a mere detention is a sufficient distress.

Had the defendant here first made a distress, and then abandoned his seizure and distrained again, his case under the authorities would have been different, and would have precluded his justifiably detaining the instrument which is the subject of this replevin.

The case *Williams* v. *Grey*, cited in argument, was altogether different in its facts and circumstances from the present. In that case the landlord had purchased a piano at the sale of his tenant's goods, on a distress by himself, for rent in arrear. It was held, in an action by a stranger, for the recovery of the piano, which belonged to him, and which the landlord had himself purchased, that the property never could vest and had not vested in the landlord by such a sale; and that he could not resist the claim of the stranger to the goods on the ground or pretence that he still had a lien for the rent. The court held that it seemed "impossible to consider the piano as remaining forever in his hands, as a pledge, or as being in any way in the custody of the law." In that case, too, the impounding was over, the piano had been removed to the landlord's (the defendant's) own house, and the distress was in every way at an end, which was not the case here.

The case of *Bagge*, appellant, v. *Mawley*, respondent, was not like the present (see 8 Ex. 641), because there the landlord after making a distress, although he had the right and opportunity to distrain, abandoned it and distrained a second time for the same rent. It was held that, as he had abandoned the first distress, without any sufficient excuse for so doing, the second distress was illegal.

In this case, although sufficient money was not made by the sale of the goods appraised and inserted in the schedule to pay the rent, the goods seized were never abandoned; on the contrary, the defendant held on to this instrument, insisting upon his right to hold it as and for a distress.

The principle upon which, as a general rule, a landlord cannot distrain twice, was not invaded in this case; there was no vexing of his tenant by the exercise upon two occasions of this summary remedy. It cannot be said that the distress was abandoned by the refusal of the bailiff to sell the instrument replevied, because the defendant held to it that he had a right to seize and sell that, with the other goods distrained. If he had concurred in the apprehension of the bailiff that the instrument could not be seized, and given it up to the plaintiffs, or some one else who claimed it, or handed it over to some creditor of Cox & Co. or their assignees, the case would have been different, and he could have had no right to distrain again.

It was held in *Quinn* v. *Wallace*, 6 Wharton 452, that the levy of one distress is a bar to another, unless the first prove insufficient, without the fault of the landlord.

In *Wallace* v. *Savill*, Lutw. 1536, it was held that the folly of the landlord in not performing an entire duty and fully exercising his right of distress, precluded him from distraining for part of his rent at one time and for other part at another time; and so *toties quoties*, for several times, for that would be great oppression; that it was his duty to take a sufficient distress in the first instance, if property sufficient for that purpose was to be found on the premises; so that he should not come a second time to disturb the tenant in his possession.

This case was unlike any of the cases suggested, for although there were sufficient goods to seize that were seized to pay the rent, yet those actually seized, appraised and sold were not sufficient, and the defendant, under the seizure, had a right to have a second appraisement and to sell what remained unsold. There was no oppression, no irregularity, no harshness; there was no disposition to sell the instrument, but the rent was not paid. The value of the goods set forth and described in the inventory, which belonged to Cox & Company, was not sufficient to pay the rent. The bailiff was mistaken in the view he took of the law, and the defendant did what I think and hold he was justified in doing. He was not bound by the legal opinion of his bailiff as to his rights as a landlord, and I think, and hold, that the defendant properly refused to let the instrument replevied go, until the balance of rent should be paid, which, under the authorities cited, amounted to a legal seizure.

I therefore order judgment to be entered for the defendant, with a return of the goods replevied, or payment of the balance of rent due the defendant, with costs of distress and of this suit.

## Early Notes of Canadian Cases.

### *SUPREME COURT OF JUDICATURE FOR ONTARIO.*

### HIGH COURT OF JUSTICE FOR ONTARIO.

#### *Queen's Bench Division.*

Full Court.] [May 21.

REGINA *v.* AMBROSE AND WINSLOW.

*Canada Temperance Act—Conviction—Jurisdiction of police magistrate—Place where offence committed—Question of fact—Statute not proved to be in force—Certiorari—Want of jurisdiction to be shown affirmatively—Joint conviction—Imprisonment of one defendant for default of the other—R. S. C. c.* 178, *ss.* 87-88.

The defendants were convicted by the police magistrate of the town of Peterborough of selling intoxicating liquor in that town, con-

trary to the provisions of the Canada Temperance Act. It was contended that only the contract for sale was made in Peterborough, but that the actual sale took place in Port Hope; there was no conflict of evidence; the magistrate held upon the undisputed facts that the sale was in Peterborough. Upon a motion to quash the conviction,

*Held*, that the question where the sale took place was one of fact, and the magistrate having found, as shown by the conviction, that the defendants had sold intoxicating liquor in Peterborough, the court could not review his decision.

*Held*, also, that the defendants were not entitled to a *certiorari* to remove the conviction on the ground that the Act was not proved to be in force in Peterborough, because on their application for the *certiorari* they did not show affirmatively that the Act was not in force there. But

*Held*, that the conviction was bad and must be quashed, because in the award of punishment it was directed that each of the defendants should pay half the fine and costs, and that in default of distress the defendants should be imprisoned, and under such award one of the defendants having paid his half of the fine and costs might be imprisoned for the other's default; and this defect was not cured by ss. 87 and 88 of the Summary Convictions Act, R. S. C. c. 178.

*W. R. Riddell*, for defendants.

*Watson*, for magistrate.

*Delamere*, for complainant.

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Divisional Court.] [May 23.

BRADY *v.* SADLER.

*Crown patent—Construction of—Reservation of drowned lands—Use of bracket boards on mill-dam—Prescription—Evidence.*

A crown patent, issued in 1852, conveyed to the plaintiff, B., a tract of land "containing by admeasurement sixty acres, be the same more or less," and otherwise known as lot 9 in the 4th concession of the township of Ops, "exclusive of the lands covered by the waters of the S. river, which are hereby reserved, together with free access to the shore thereof for all vessels, boats and persons." The lot actually contained 200 acres, but the dry part was only sixty acres. Before the issue of the patent there was a certain mill-dam on the S. river, which raised the waters of the river and flooded a portion of lot 9; the plaintiffs did not object to the flooding of lot 9 by the dam, but brought this action to restrain the defendants from still further flooding the lot to the extent of about four acres, by the use of bracket boards upon the dam, which raised the water about a foot.

The two judges composing the Divisional Court agreed in reversing the judgment of PROUDFOOT, J., 13 O. R. 692, and in holding that the defendants had no prescriptive right to overflow the plaintiff's lands by means of the bracket boards, but disagreed as to the construction of the patent; as to which it was

*Held, per* ARMOUR, C.J., that the words in the grant "containing by admeasurement sixty acres, be the same more or less" did not control or affect the description of the land granted, that description being plain and unambiguous; that the words "exclusive of the lands covered by the waters of the S. river, which are hereby reserved," meant the waters of the river S. in its natural channel, the waters between its shores in its natural condition; and, therefore, that B. took under the patent not only the dry part of lot 9, but also the drowned land excluding the channel of the river, and the plaintiffs had established their title to the land upon which the water was penned back by the use of bracket boards upon the dam.

*Per* STREET, J.—The language of the description in the patent admits of two different constructions, and that should prevail which would make the quantity of land conveyed agree with the quantity mentioned in the patent; and, therefore, the patent should be construed as if it excluded all the drowned land both within and without the actual channel of the river; the extent of the drowned land being measured by reference to the height of the water as maintained by the dam without the bracket boards.

Remarks upon the admission of extrinsic evidence to aid in the construction of a Crown patent.

*Moss*, Q.C., and *H. O'Leary*, for the plaintiff.

*S. H. Blake*, Q.C., and *T. Stewart*, for the defendant.

Divisional Court.] [May 25.

BANK OF HAMILTON *v.* TAMBLYN.

*Chattel mortgage—Informality cured by taking possession—Insolvency of mortgagor—Prior seizure by mortgagees under execution—Preference*—48 *Vict. c.* 26, *s.* 2.

A chattel mortgage made by D. to McL. was given to secure a sum made up of debts due to McL. and two other persons; McL. made the usual affidavit of *bona fides*, asserting that the whole sum was due to him; no trust of any kind appeared upon the mortgage, though the intention was that McL. should hold it as trustee for the other two. The mortgage was filed within the proper time after its execution. McL. assigned the mortgage to the plaintiffs, who afterwards obtained judgment against D., and under the execution the sheriff seized the property covered by the mortgage. After this seizure the plaintiffs instructed the sheriff to withdraw, and then took and held possession of the property under the mortgage. The defendants placed writs of execution against the goods of D. in the hands of the sheriff after the plaintiffs had taken possession under their mortgage. D. was solvent when he gave the chattel mortgage, but insolvent when the plaintiffs took possession.

*Held*, that the fact that no trust was declared on the face of the mortgage was nothing more than an informality, and was cured by the taking possession before the rights of creditors had attached on the chattels; and neither the insolvency of the mortgagor at the time of taking possession nor the fact of the seizure under execution before taking possession affected the position of the plaintiffs.

*Held*, also, that the taking possession could not be viewed as a preference within 48 Vict. c. 26, s. 2.

*J. J. Scott*, for the plaintiffs.

*H. J. Scott*, Q.C., for the defendants.

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Full Court.] [May 28.

REGINA *v.* ABBOTT.

*Canada Temperance Act—R. S. C. c.* 106, *ss.* 2 *and* 103*b*—*Police magistrate for one of a union of counties—Jurisdiction.*

Having regard to the provisions of s. 103*b* of the Canada Temperance Act, R. S. C. c. 106, as interpreted by s. 2, an union of counties united for municipal purposes cannot be said to have a police magistrate by reason of one of the counties so united having one; and a conviction by one commissioned as police magistrate for the county of Dundas for an offence against the Act, committed in the county of Dundas, one of the united counties of Stormont, Dundas and Glengary, was quashed for want of jurisdiction.

*A. H. Marsh*, for the defendant.

*Delamere*, for the complainant.

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Full Court.] [May 28.

REGINA *v.* ROE.

*Canada Temperance Act—Police magistrate, jurisdiction of—County and town—R. S. C. c.* 106, *s.* 103*b*—*R. S. O.* (1887) *c.* 72, *s.* 11—*Information and summons—Irregularity.*

A person commissioned as police magistrate for the county of Huron, his commission not excluding the town of Wingham, and having also a separate commission as police magistrate for the towns of Clinton, Goderich, Wingham and Seaforth respectively, all being in the county of Huron, convicted the defendant at Wingham of an offence against the Canada Temperance Act, committed at Wingham, but upon an information taken and summons issued at Clinton.

*Held*, having regard to the provisions of s. 103*b* of the Canada Temperance, R. S. C. c. 106, and of R. S. O. (1887) c. 72, s. 11, that the magistrate had jurisdiction in the town of Wingham under his commission for the county, and had also jurisdiction under that commission to take the information and issue the summons at Clinton; and the fact that he described himself in the information and summons as police magistrate for the town of Wingham did not deprive him of the jurisdiction which he had as police magistrate for the county.

*Regina* v. *Young*, 13 O. R. 198, overruled.

*Quære*, whether the defendants could object to the regularity of the information and summons, he having appeared in obedience to the summons, and pleaded not guilty.

*Aylesworth*, for the defendant.

*Delamere*, for the complainant.

Full Court.] [May 30.

REGINA *v.* BACHELOR.

*Canada Temperance Act—Conviction—Information laid after defendant has left jurisdiction of magistrate—R. S. C. c. 178, s. 13, construction of.*

The words "being within the jurisdiction of such justice" in s. 13 of the Summary Convictions Act, R. S. C. c. 178, are to be read as referring to the time when the offence or act was committed, and not to the time when the information was laid; and an order *nisi* to quash a conviction for an offence against the second part of the Canada Temperance Act on the ground that, the defendant not being within the territorial jurisdiction of the convicting magistrate at the time the information was laid, having left such jurisdiction after the offence was committed, the magistrate had no jurisdiction to take such information nor to summon the defendant from without his jurisdiction, was discharged with costs.

*Mackenzie*, Q.C., for the defendant.

*Delamere*, for the complainant.

## *Common Pleas Division.*

SHEARD *et al.* *v.* LAIRD.

*Undue influence — Deed procured through threats, etc.—Setting aside.*

The defendant, a merchant and active business man, had endorsed a note for G. Subsequently G. made an assignment for the benefit of his creditors, and on defendant requiring security, G.'s wife gave defendant her note for the amount. She held some property which had been purchased by her husband and conveyed to her, which was to be sold and the note paid. G. sold the land, but instead of paying the note, absconded, leaving his wife. The defendant then went to Mrs. G., and by the use of abusive language and threats of criminal prosecution against her husband, and of exposure of herself and him in the papers, she being of delicate constitution, frightened her into procuring her mother (a very old woman in feeble health), influenced by the communication of the threats to her, to get the deed from her solicitor of a small property she owned—defendant giving strict injunctions not to inform the solicitor of the object, lest he should dissuade her—and to execute a deed to defendant, conveying the property absolutely to him, in payment of the debt, merely giving her back an informal memorandum evidencing her right to obtain a reconveyance on payment of the debt. At the same time he procured Mrs. G. also to execute the deed, which contained a clause barring dower she had in the land, and which was absolute and unconditional, and without any right to her to redeem. The deed was executed in the office of the defendants' conveyancer, without any one being present to advise plaintiffs.

*Held* (reversing the judgment of ARMOUR, J., at the trial), that the deed could not be supported as against the mother and must be set aside; and also, under the circumstances, as against Mrs G.

REGINA *v.* HAGERMAN.

*Criminal law—Forgery—Witness interested—Corroboration—R. S. C. c. 174, s. 218—Partnership.*

By sec. 218 of R. S. C. c. 174, "The evidence of any person interested, or supposed to be interested, in respect of any deed, writing, or instrument, or other matter given in evidence on the trial of any indictment or information against any person for any offence punishable under the 'Act respecting Forgery,' shall not be sufficient to sustain a conviction for any of the said offences, unless the same is corroborated by other legal evidence in support of such prosecution."

The prisoner was indicted for forgery in feloniously uttering a cheque signed by H. J. & Co. on the Quebec Bank, which he had altered from $400 to $1,400. The evidence in support of the forgery was that of J., who though a member of the firm when the cheque was made, had ceased to be such at the time of the trial, and who had been released by his partner from all liability, and disclaimed any interest in the cheque. There was some evidence of the liabilities of the firm to creditors, at the time of J.'s withdrawal.

*Held* (ROSE, J., dissenting), that J. was not a person interested, or supposed to be interested, within the meaning of the Act, and his evidence did not require corroboration.

O'SULLIVAN *v.* LAKE *et al.*

*Valuator—Liability of—Misdirection.*

The defendant L., who was a professional valuator, was employed by plaintiff to personally investigate the security offered for a loan on real estate, and to check the valuation of a local valuator. The said defendant visited the property and reported, in effect agreeing with the local valuator, that the property was worth considerably more than the amount proposed to be lent, and that the loan could be safely made for the sum proposed, for which report he charged, and was paid, a fee.

The loan was effected, and default having occurred in its repayment, the property was offered for sale, when it was found impossible to sell for anything like the mortgage money. In an action for negligence in valuing the property the jury found for the plaintiff. The judge at the trial directed the jury that the fact that the defendant did not obtain the opinion of other persons as to the value of land in the neighbourhood, was evidence of negligence.

*Held* (GALT, C.J., dissenting), this was misdirection.

It appeared from the evidence that the mortgagor had endeavoured to procure a loan for a similar amount on the same property from a company in which the defendant L. was a director, and that the loan was not effected, having been abandoned by the mortgagor. The judge at the trial, although he directed the jury that there was no evidence that the defendant had acted with intentional dishonesty, pressed upon their notice, with other observations, the enquiry: "Why was not the original transaction carried out?"

*Held* (per ROSE and MACMAHON, JJ.), that these observations tended to create a prejudice in the minds of the jury which was not warranted by the facts.

K., a respectable man living in the neighbourhood of the property, in his evidence valued the land at from $200 to $300 per acre, but the judge told the jury that K. was not in the land business, and had no knowledge of the value of the property.

*Per* ROSE, J.—The observations as to K. were a practical withdrawal of his evidence from the jury.

*Per* GALT, C.J. — There was evidence of negligence to go to the jury, particularly in defendant L. not making enquiries of others in the neighbourhood as to the value of the land.

A new trial was therefore directed.

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## *Chancery Division.*

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Boyd, C.] [April 26.

IN THE MATTER OF THE WINDING-UP ACT R. S. C. c. 129, AND THE CENTRAL BANK OF CANADA AND YORKE.

*Winding-up Act, R. S. C. c. 129—Deposit receipt—Promissory note—Contributory—Set-off.*

Y., in making a deposit on a government contract, gave a marked cheque on the Central Bank, which cheque was subsequently cancelled and a deposit receipt substituted therefor. The bank obtained Y.'s note for the amount as a voucher for, or to cover, the amount of the deposit receipt. The bank went into liquidation on December 3, 1887; and on January 20, 1888, Y., having been compelled by the Government to take up the deposit receipt and replace it with other security, took an assignment of it, and notified the bank.

On being threatened with a suit on the note, Y. filed a petition asking for leave to set up the deposit receipt against the note as a set-off.

*Held*, following *Ings* v. *Bank of Prince Edward Island*, 11 S. C. R. 265, that the maker of a note to the bank was a mere debtor and not a contributory, and that a debtor who is also a shareholder, and so a contributory, is not a contributory *quoad* the debt which arises out of an independent transaction, and for that reason, s. 73 of R. S. C. c. 129 does not apply to this case.

*Held also*, that the prohibition against acquiring debts for the purpose of set-off is limited to the case of contributories; as to debtors the law of set-off as administered by the courts is applicable as if the bank was a going concern, and following *Re the Moseley, etc., Coke Co., Barrett's Case*, 4 D. G. J. & S. 756, that the right of set-off virtually arose, not by rea-

son of dealings subsequent to the Winding-up order, but of dealings prior thereto, because the engagement was to give security to the satisfaction of the Government; and in taking up the deposit receipt and supplying better security he was only fulfilling that which he was obliged to do by a prior *bona fide* engagement.

*Snelling*, for the petitioner.

*Foster*, Q.C., for the liquidators.

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Boyd, C.] [April 9.

KIRK *et al.* v. BURGESS *et al.*

*Execution debtor—Lands on hand—Rents collected and applied to other purposes than payment of the plaintiff's judgment—Appointment of receiver to collect—Creditors' Relief Act, R. S. O. c.* 65.

The defendant was a judgment debtor, and had no goods and chattels, but was the owner of several houses subject to mortgages, and his agent was collecting the rents and applying the surplus thereof, after payment of the annual charges on the houses, to the defendant's use for other purposes than the payment of the plaintiff's judgment. In an application by the plaintiff for the appointment of a receiver to collect the rents, it was

*Held*, that a receiver should be appointed, but as the land was encumbered, such appointment should be without prejudice to the rights of the mortgagees, and following in *re Pope* 17 Q. B. D. 749, that although the ordinary remedies by way of execution are open, the court has power to award equitable execution in any and every case, when it is just or convenient so to do; and if the court sees that any good end will be served by appointing a receiver, it will so order.

*Held also*, that as the judgment debtor had appointed an agent who was collecting the rents and paying certain creditors, it was more equitable to have a receiver as an officer of the court collect and apply them for the benefit of the plaintiffs and other creditors entitled under the Creditors' Relief Act, R. S. O. c. 65.

*H. Cassels*, for the petitioner.

*Tilt*, Q.C., contra.

Boyd, C.] [May 9.

*Re* CROSKERY.

*Dower — Bar in mortgage — Equity of redemption—Surplus after sale.*

The owner of land in fee mortgaged it to a Building Society in fee. After this, he assigned his equity of redemption to the sheriff of the county of Huron, together with all his estate, for the benefit of his creditors. After the assignment, the mortgagees sold under the power of sale, and after payment off of their claim a surplus of $387.48 was left, which they sought to pay into court under the Trustees' Relief Act.

*Held*, on appeal from the Master in Chambers, that the claim of the wife of the mortgagor in respect to dower was of such a character that the mortgagees ought not to be put to the risk of determining whether it was, or was not, well founded, and were, therefore, entitled to pay the money into court.

*Smart* v. *Sorrenson*, 9 O. R. 640, and *Calvert* v. *Black*, 9 P. R. 255, commented on.

*Wm. Douglas*, for the mortgagees.

*Hoyles*, for the assignee for the benefit of creditors.

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## *Practice.*

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C. P. Divisional Court.] [May 26.

*In re* McLEOD *v.* EMIGH.

*Costs—Motion for Prohibition.*

By R. S. O. (1887), c. 52, s. 2, a successful party on an application for a writ of prohibition, is entitled to costs, and should be awarded costs, unless the court in the proper exercise of a wise discretion can see good cause for depriving such party of costs; and such party should not be deprived of costs unless there appear impropriety of conduct which induced the litigation, or impropriety in the conduct of the litigation. Under the circumstances of this case, reported 12, P. R. 450; the defendant was allowed costs of a successful motion for prohibition to a Division Court.

*Aylesworth*, for the motion.

*A. M. Grier*, contra.

Street, J.] [May 28.

VILLENEUVE *v.* WAIT.

*Writ of summons — Special indorsement — Judgment under Rule* 80.

The writ of summons was indorsed as follows: "The plaintiff's claim is for $213.90 balance due for sawing wood by the plaintiff for the defendant."

*Held*, not a sufficient special indorsement to admit of the plaintiff moving for judgment under Rule 80.

*H. Symons*, for the plaintiff.

*Aylesworth*, for the defendant.

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Court of Appeal.] [May 29.

MORTON *v.* MCCABE.

*County courts—Term motion—Time for making—R. S. O.* (1887), *c.* 47, *ss.* 29, 41—*Rule* 488.

Reading s. 41 with s. 29 of the County Courts Act, R. S. O. (1887), c. 47, and having regard to the provisions of Rule 488, it cannot be held that a party is restrained by s. 41 to move in term time, *i.e.*, during the first two days of the next quarterly sittings of the County Court, against the verdict or judgment at the trial; s. 41 limits a time after which a party has no right to move; but he may by force of s. 29 move before the judge in court, if the judge chooses to hear him, at any time after judgment has been given, and not necessarily at one of the usual fixed sittings of the court.

*Smith* v. *Rooney*, 12 U. C. R. 661, is not applicable to the existing law and practice.

*C. J. Holman*, for the plaintiff.

*G. Bell*, for the defendant.

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Q. B. Divisional Court.] [June 1.

GREEY *v.* SIDDALL.

*Venue—Convenience—Cause of action—Leave to appeal—Terms.*

The question for decision on an application to change the place of trial is, Where can the action be most conveniently tried? And where, in an action on a promissory note for the contract price of work done by the plaintiff in refitting a mill in the county of Middlesex, to which the defence was that the contract had never been carried out, the plaintiff had eight witnesses in Toronto or east of Toronto, and the defendant eight in Middlesex or west of Middlesex, upon the defendant's application to change the place of trial from Toronto to London, it was

*Held*, that London was the most convenient place for trial, and the venue was changed accordingly.

*Per* ARMOUR, C.J.—An action should be tried in the county where the cause of action arose.

Leave to appeal to the Court of Appeal was asked by the plaintiff, because it was of importance to him in other litigation to have the question of venue decided, and was granted upon his undertaking to pay the costs of both parties to the appeal.

*H. D. Gamble*, for the plaintiff.

*Shepley*, for the defendant.

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# Law Students' Department.

## *LOAN OF BOOKS TO STUDENTS BY THE LAW SOCIETY.*

TO THE EDITOR OF THE LAW JOURNAL:

*Dear Sir*,—I mark with pleasure the appearance of a letter in your journal subscribed "Lex," touching the very obnoxious requisition enforced by the Law Society, that a student must deposit $10 in order to procure books. Although the Benchers may not have been cognizant of the fact, it is still notorious that students are often put to great inconvenience and trouble to procure the necessary deposit; and, as "Lex" points out, the practice is wholly unnecessary, even though students might, which is unlikely, seek to purloin books when they have the opportunity. The Society has jurisdiction over their actions and could easily enforce the return of such books. The Benchers, on the other hand, protest that they are compelled to take such a course in order to protect themselves; but how fallacious and unfounded this is will be seen when we turn to the Toronto Public Library, as likewise to any public library, and see how, dealing with many

thousands of sometimes very questionable people and strangers, the Board have found by experience that a deposit of five cents, with the security of a ratepayer, affords them sufficient protection against delinquent book-borrowers. The Benchers may say the amount is small, but let them reflect that students are, as a rule, labouring under the rather serious difficulty of being unpaid for their services, and, moreover, many students are provided for by poor parents, mostly residing in the country, who find it a tax of no mean proportions to clothe and board their sons, without having to lock up a sum such as $10 for a useless and unwarranted purpose.

Law students are notable for their sobriety and studious habits, and I think the action of the Benchers in this matter displays a great lack of confidence in a portion of the Law Society, who are one day to become members of the Bar themselves. The result of this law has been that students, burdened on account of circumstances over which they certainly have no control, are forced into the rather unwholesome practice of borrowing.

In conclusion, let me hope that these complaints may come before the proper persons, permit me also to say that the abolition of the rule would be a benefit to the Benchers themselves, for it is well known that great trouble occurs from the students withdrawing their money, which is their right, when necessary, and then depositing it again.

POOR STUDENT.

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We now continue the questions asked at the English examination for call to the bar preceding Hilary Term, 1888.

### COMMON LAW.

*Pass Paper.*

*Q.*—7. X., the owner of a carriage, hires horses of a stable-keeper, who also provides a driver. Through negligence of the driver whilst driving X., a person walking in the road is injured. Can the latter recover in an action for damages against X.? Within what limits does the maxim *respondeat superior* apply, in cases of negligent driving by a servant?

*A.*—The injured person cannot recover in an action for damages against X., because the driver is not the servant of X. The stable-keeper, however, is liable, as being the employer of the driver (*Laugher* v. *Pointer*, 5 B. & C. 547; *Quarman* v. *Burnett*, 6 M. & W. 499).

The maxim *respondeat superior* applies in cases of negligent driving by a servant, only where the driver is actually the servant of (*i.e.*, appointed as such by) the person under whose orders he is acting at the time when the damage is done; and where, at that time, he is engaged on his employer's business, and is acting within the scope of his authority.

*Q.*—8. Can a person wrongfully in possession of land recover in an action for trespass to it? Is it always necessary, in order to maintain an action for trespass on or injury to land or buildings, that the plaintiff should be physically in possession thereof? If not, give your reasons.

*A.*—A person who is wrongfully in possession of land can recover in an action for trespass to it, if the defendant has, as against the true owner of the land, no right of entry thereon; because the possession of the land by the plaintiff is sufficient evidence of his title, as against a person who has no better title.

A person who is not in actual possession of land may nevertheless maintain an action for injury thereto, or to buildings thereon, if he has a right of property in the land (*e.g.*, where he is entitled in reversion subject to a lease for a term of years); provided the damage done is of such a nature as to prejudicially affect his estate or interest in the property.

*Q.*—9. What is the liability of an innkeeper for the loss of the property of a guest at an inn (*a*) at common law, (*b*) by statute? What is the liability at common law of a common carrier, and how is this affected by the Carriers' Act?

*A.*—(*a*) At common law, an innkeeper was liable for loss of the property of a guest at the inn, unless the loss was caused by the act of God, or the king's enemies, or by the negligence of the guest himself.

(*b*) By the Innkeepers' Act, 26 & 27 Vict. c. 41, an innkeeper is not liable for such loss (except the property be a horse or other live animal, or its gear, or a carriage) beyond the sum of £30, unless (1) the goods are stolen, lost, or injured through the wilful neglect or default of the innkeeper or his servant; or (2)

the goods are deposited with him expressly for safe custody, in which case he may demand that they may be placed in a sealed box or other receptacle; or (3) he refuses to receive the goods for safe custody, or by his default the guest is unable so to deposit them; or (4) he has omitted to exhibit in the hall or entrance of the inn a printed copy of that part of the Act which limits his liability as above mentioned.

By the common law, a common carrier was liable for loss or injury to the goods carried by him, arising from any cause except the act of God or the king's enemies, or some defect in the goods carried; unless he limited his liability by a contract made for that purpose with his customer. A notice limiting the carrier's liability, put up in his office, and shown to have come to the customer's knowledge, was formerly held to constitute such a contract; but the Carriers' Act, 11 Geo. IV. and 1 Wm. IV. c. 68, provides that no such notice shall have any effect. The common law liability of carriers was materially altered, however, by the Act last mentioned. Under this Act, a carrier is not liable for loss or damage to certain articles specified in the Act, when the value exceeds £5, unless the value be declared at the time when the goods are delivered to the carrier, and an increased charge, notified in the carrier's office, is accepted by him. The Act, however, does not protect the carrier when he does not properly notify or demand the increased charge; or when the loss of, or damage to, the goods arises from his own misfeasance, or the felonious act of his servant.

*Q.*—10. Is there any distinction between malice in fact and malice in law? How is a wrong intent, when an essential element in a crime, to be proved? A prisoner is indicted for "setting fire to a mill, with intent to injure the occupier." Is it requisite for the prosecution to give any evidence other than the mere fact of setting fire to it, in order to convict? State your reasons.

*A.*—Malice in fact means a design or wish to do harm to a person. Malice in law means an intention to do an act which is forbidden by law; and the term is sometimes used in a wider sense, as including culpable negligence resulting in an illegal act or omission.

Where an act done is apparently a criminal offence, the wrongful intention may be inferred; for the law presumes that every man must contemplate the necessary consequences of his own act. But where an act is not apparently a crime, but may be so if done with a wrongful intent, evidence must be given of facts showing such intent, or from which it may be inferred. In the case put in the question, it would not be necessary to give any evidence to prove any fact other than setting fire to the mill; because injury to the occupier of the mill would be a necessary or probable consequence of the act (*R.* v. *Farrington*, Russ. & Ry. 207; Broom, C. L., Book 4, ch. 1).

*Q.*—11. Are the directors of a railway company liable for any and what criminal offence, if, owing to the fact of the permanent way being left, through negligence, out of repair, an accident happens causing death? Give your reasons.

*A.*—If it could be shown that the want of repair was the necessary consequence of the negligence of the directors, they would be guilty of manslaughter; but they would not be subject to any criminal liability if the death were caused through the negligence of workmen or others in the employment of the company.

*Q.*—12. Describe the proceedings at the trial of a prisoner on an indictment, mentioning any rules of evidence specially applicable in criminal cases.

*A.*—The proceedings commence with the arraignment of the prisoner. Assuming that on arraignment he pleads not guilty, the petty jury are thereupon sworn (subject to the prisoner's right of challenge), and he is given in charge to them. The counsel for the prosecution then opens his case to the jury, stating the principal facts to be proved, and calls and examines his witnesses, who may be cross-examined by the prisoner's counsel, and re-examined by counsel for the prosecution, on facts referred to in the cross-examination. On the close of the case for the prosecution, if the prisoner has witnesses, his counsel opens his case to the jury, calls and examines his witnesses, who may be cross-examined and re-examined, and then sums up his evidence; and the counsel for the prosecution replies on the whole case. But if no witnesses are called by the prisoner, the counsel for the prosecution addresses the jury for the second time at the

close of the case for the prosecution; after which, the prisoner's counsel addresses the jury. The judge then sums up, and the jury give their verdict, after which (if they find the prisoner guilty) sentence is passed; the prisoner (in cases of treason and felony) being usually asked, before sentence, if he has anything to say why sentence should not be passed on him. If there is any ground for moving in arrest of judgment, the motion must be made after verdict and before sentence is passed (Harris, Cr. L ed. 370, 400)

That the following are some of the principal rules of evidence applicable to criminal as distinguished from civil trials: That the prisoner is to be presumed to be innocent till the contrary is proved: that he is not to be convicted on the uncorroborated evidence of an accomplice; that a confession made by him is admissible in evidence, provided it was free and voluntary; that neither the prisoner nor his or her wife or husband can be a witness; that a dying declaration made by a person as to the cause of his death is admissible in evidence on a trial for the murder or manslaughter of such person; that evidence as to the prisoner's character is admissible under certain conditions. (See Harris, Cr. L., 3rd ed. ch. 17.)

## Appointments to Office.

### CROWN ATTORNEY AND CLERK OF THE PEACE.

*Muskoka and Parry Sound.*

A. A. Adair, Stratford, for the United Provincial Judicial District of Muskoka and Parry Sound.

### DIVISION COURT CLERKS.

*Lambton.*

Martin Wattson, Thedford, Sixth Division Court, *vice* Thomas Kirkpatrick, resigned.

*Bruce.*

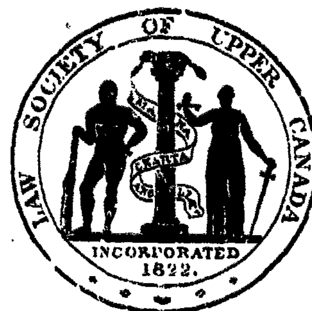
P. D. McInnes, township of Huron, Ninth Division Court, *vice* James McLeod, who has removed from the locality.

### BAILIFF.

*Middlesex.*

Henry Lockwood, township of Delaware, Fourth Division Court, *vice* James Fitzallan, eceased.

## Law Society of Upper Canada.




### CURRICULUM.

1. 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 on the Books of the Society as a Student-at-law, upon conforming with Clause *four* of this curriculum, and presenting (in person) to Convocation his Diploma or proper Certificate of his having received his Degree, without further examination by the Society.

2. A Student of any University in the Province of Ontario, who shall present (in person) a Certificate of having passed, within four years of his application, an examination in the Subjects prescribed in this Curriculum for the Student-at-law Examination, shall be entitled to admission on the Books of the Society as a Student-at-law, or passed as an Articled Clerk (as the case may be) on conforming with Clause four of this Curriculum, without any further examination by the Society.

3. Every other Candidate for admission to the Society as a Student-at-law, or to be passed as an Articled Clerk, must pass a satisfactory examination in the subjects and books prescribed for such examination, and conform with Clause four of this Curriculum.

4. Every Candidate for admission as a Student-at-law or Articled Clerk, shall file with the Secretary, four weeks before the Term in which he intends to come up, a Notice (on prescribed form), signed by a Bencher, and pay $1 fee; and on or before the day of presentation or examination file with the Secretary, a petition, and a presentation signed by a Barrister (forms prescribed) and pay prescribed fee.

5. The Law Society Terms are as follows:—

Hilary Term, first Monday in February, lasting two weeks.

Easter Term, third Monday in May, lasting three weeks.

Trinity Term, first Monday in September, lasting two weeks.

Michaelmas Term, third Monday in November, lasting three weeks.

6. The Primary Examinations for Students-at-law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity, and Michaelmas Terms.

7. Graduates and Matriculants of Universities will present their Diplomas and Certificates on the third Thursday before each Term at 11 a.m.

8. Graduates of Universities who have given due notice for Easter Term, but have not obtained their Diplomas in time for presentation on the proper day before Term, may, upon the production of their Diplomas and the payment of their fees, be admitted on the last Tuesday in June of the same year.

9. The First Intermediate Examination will begin on the second Tuesday before each Term at 9 a.m. Oral on the Wednesday at 2 p.m.

10. The Second Intermediate Examination will begin on the second Thursday before each Term at 9 a.m. Oral on the Friday at 2 p.m.

11. The Solicitors' Examination will begin on the Tuesday next before each Term at 9 a.m. Oral on the Thursday at 2.30 p.m.

12. The Barristers' Examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2.30 p.m.

13. Articles and assignments must not be sent to the Secretary of the Law Society, but must be filed with the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

14. Full term of five years, or, in the case of Graduates, of three years, under articles must be served before Certificates of Fitness can be granted.

15. Service under Articles is effectual only after the Primary Examination has been passed.

16. A Student-at-law is required to pass the First Intermediate Examination in his third year, and the Second Intermediate in his fourth year, unless a Graduate, in which case the First shall be in his second year, and his Second in the first seven months of his third year.

17. An Articled Clerk is required to pass his First Intermediate Examination in the year next but two before his Final Examination, and his Second Intermediate Examination in the year next but one before his Final Examination, unless he has already passed these examinations during his Clerkship as a Student-at-law. One year must elapse between the First and Second Intermediate Examination, and one year between the Second Intermediate and Final Examination, except under special circumstances, such as continued illness or failure to pass the Examinations, when application to Convocation may be made by petition. Fee with petition, $2.

18. When the time of an Articled Clerk expires between the third Saturday before Term, and the last day of the Term, he should prove his service by affidavit and certificate up to the day on which he makes his affidavit, and file supplemental affidavits and certificates with the Secretary on the expiration of his term of service.

19. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive Certificates of Fitness, Examinations passed before or during Term shall be construed as passed at the actual date of the Examination, or as of the first day of Term, whichever shall be most favourable to the Student or Clerk, and all Students entered on the books of the Society during any Term, shall be deemed to have been so entered on the first day of the Term.

20. Candidates for call to the Bar must give notice signed by a Bencher, during the preceding Term.

21. Candidates for Call or Certificate of Fitness are required to file with the Secretary their papers, and pay their fees, on or before the third Saturday before Term. Any Candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

22. No information can be given as to marks obtained at Examinations.

23. An Intermediate Certificate is not taken in lieu of Primary Examination.

## FEES.

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|---|---|
| Notice Fee | $1 00 |
| Student's Admission Fee | 50 00 |
| Articled Clerk's Fee | 40 00 |
| Solicitor's Examination Fee | 60 00 |
| Barrister's Examination Fee | 100 00 |
| Intermediate Fee | 1 00 |
| Fee in Special Cases additional to the above | 200 00 |
| Fee for Petitions | 2 00 |
| Fee for Diplomas | 2 00 |
| Fee for Certificate of Admission | 1 00 |
| Fee for other Certificates | 1 00 |

## *BOOKS AND SUBJECTS FOR EXAMINATIONS.*

### PRIMARY EXAMINATION CURRICULUM,

For 1888, 1889, and 1890.

*Students-at-Law.*

1888.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. IV.
- Cæsar, B. G. I. (1-33.)
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. I.

1889.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. V.
- Cæsar, B. G. I. (1-33.)

1890. { Xenophon, Anabasis, B. II.
Homer, Iliad, B. VI.
Cicero, Catilinam, II.
Virgil, Æneid, B. V.
Cæsar, Bellum Britannicum.

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

Translation from English into Latin Prose, involving a knowledge of the first forty exercises in Bradley's Arnold's composition, and re-translation of single passages.

MATHEMATICS.

Arithmetic: Algebra, to end of Quadratic Equations: Euclid, Bb. I. II., and III.

ENGLISH.

A paper on English Grammar.
Composition.
Critical reading of a selected Poem:—
1888—Cowper, The Task, Bb. III. and IV.
1889—Scott, Lay of the Last Minstrel.
1890—Byron, The Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

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.
1888 }
1890 } Souvestre, Un Philosophe sous le toits.
1889 Lamartine, Christophe Colomb.

*or* NATURAL PHILOSOPHY.

*Books*—Arnott's Elements of Physics, and Somerville's Physical Geography; *or*, Pecks' Ganot's Popular Physics, and Somerville's Physical Geography.

*Articled Clerks.*

In the years 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidate, as noted above for Students-at-law.

Arithmetic.
Euclid, Bb. 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.

RULE *re* SERVICE OF ARTICLED CLERKS.

From and after the 7th day of September, 1885, no person then or thereafter bound by articles of clerkship to any solicitor, shall, during the term of service mentioned in such articles, hold any office, or engage in any employment whatsoever, other than the employment of clerk to such solicitor, and his partner or partners (if any) and his Toronto agent, with the consent of such solicitors in the business, practice, or employment of a solicitor.

*First Intermediate.*

Williams on Real Property, Leith's edition; Smith's Manual of Common Law; Smith's Manual of Equity; Anson on Contracts; the Act respecting the Court of Chancery; the Canadian Statutes relating to Bills of Exchange and Promissory Notes; and Cap. 117, Revised Statutes of Ontario and amending Acts.

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

*Second Intermediate.*

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada, 2nd edition; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

*For Certificate of Fitness.*

Armour on Titles; Taylor's Equity Jurisprudence; Hawkins on Wills; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and Pleading and Practice of the Courts.

*For Call.*

Blackstone, Vol. I., containing the Introduction and Rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris's Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, the Statute Law, and Pleadings and Practice of the Courts.

Candidates for the Final Examination 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.

*Trinity Term*, 1887.