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DIARY FOR APRIL.

3. Sun..... *6th Sunday in Lent.*
4. Mon.....C. C. term begins. C. C. sittings for trial of non-jury cases begin, except in York.
8. Fri.....*Good Friday.* Holiday H. C. J.
9. Sat.....County Court term ends. Lord Bacon died, 1626, æt. 66.
10. Sun.....*Easter Sunday.*
11. Mon.....*Easter Monday.* Holiday H. C. J.

TORONTO, APRIL 1, 1887.

THE Government at Ottawa has at length appointed a judge to the position created in 1885 by the 48 Vict. cap. 13. The choice has fallen on Thos. Robertson, Q.C., a leading member of the Hamilton Bar. Mr. Robertson was called to the Bar in 1852 and has for many years enjoyed a good share of business, especially at *nisi prius*, in his own city and the surrounding country. We join with his many friends in wishing him a long and useful career in his new sphere of duty.

PROVINCIAL LEGISLATION — ITS QUALITY AND QUANTITY CONSIDERED.

ERE these remarks are in print, we shall again have the Legislative Assembly of this Province, and soon after the Parliament of the Dominion, busily at work framing laws. The constant devising of amendments to existing laws, or altogether new ones, is considered so necessary a part of the duty of those bodies, that they would probably be thought to have demonstrated that they have no longer any reason for existence, if they should pass a session without a more or less bulky volume of statutes being issued at its close to attest their industry and usefulness.

It may very well be doubted, however, whether the continuous stream of legislation which they pour forth is, after all, such a vital necessity for our well being, or worth the somewhat costly price we pay for it. It has certainly, for some time past, been a work requiring no small amount of time to attempt to keep *au courant* with the statute law of the Dominion and the Province. Before Confederation, the task was not so difficult, as we had then but one legislative machine to watch: now we have two, and by the time a statute has been amended three or four times, as is not infrequently the case, the state of the law upon the particular subject is generally involved in an amount of obscurity, through which the legal profession has to grope with considerable caution.

Whilst repudiating any thought of imputing base motives, it is vain to expect, so long as men are human, that gentlemen who draw several hundreds of dollars a year for their attendance in the halls of Parliament, would ever be able to see that their annual attendance could be safely dispensed with; on the contrary, they would naturally feel that the safety of the constitution would be imperilled, unless for seven or eight weeks in each year they should engage in wordy wars, and give their assent to statutes as to some of which nine-tenths of them know nothing about.

Before long, the idea may force itself upon the people at large, that this mode of annual legislation, compared with the expense which it involves, is a luxury

which a comparatively poor country like this might very reasonably curtail without the slightest injury to the body politic.

It is quite right and proper that the Governments of the Province and of the Dominion should annually render to Parliament an account of their stewardship. It is equally necessary that the representatives of the people should retain a control over the annual expenditure; but we do not think it by any means follows that it is equally necessary that every session should be marked by a fresh batch of statutes.

Let any one take up the statutes of the Province from year to year, and he will see how very few statutes passed in any one session are of such a pressing importance that they could not just as well have been passed a year or two later without any injury whatever to the public by the delay.

In the neighbouring republic this plethora of legislation is also being felt, and in one of the States efforts are already being made to secure biennial sessions of the State Legislature in place of annual sessions; and we think it has already become a matter for serious consideration in this Province, whether a resort to some such expedient is not desirable in order to cut down the present lavish expenditure on legislation.

The present mode of payment of the members of our Legislative Assembly is a direct incentive to them to spin out the session with interminable wrangles about questions upon which the vote of the House is known to be foregone before they are opened. Bills are introduced to make a show of diligence, and a host of them are annually slaughtered in the concluding scene of the session, when the allotted time having been spent, every one is in a hurry to get off and end the farce.

It is not to be wondered at that a system of constantly tinkering statutes is resorted to. The Municipal Act is no sooner consolidated than half a dozen statutes are brought in to amend it in various particulars. That is an Act which every member in the House feels competent to deal with. Other statutes fare almost as badly. As regards questions affecting any other branch of law or the procedure of the courts, nine-tenths of the members might as well be at their farms or behind their counters for all the good they are. Sometimes they may prove a positive evil by rashly foisting crude amendments into carefully drawn measures, thereby rendering them defective or obscure.

We are of opinion that it would be a a great saving of money, and a great improvement in our system of making laws in this Province, if there were a session of the Assembly for general legislative purposes only once in every three years, and that at other times the Assembly should confine itself to passing the public accounts and estimates, and other matters connected with the financial affairs of the Province, and that, in the interval between the legislative sessions, a legislative committee should sit from time to time as might be necessary, for the purpose of carefully considering and devising all such new laws or amendments of existing laws as might be submitted to them, and putting them in such a shape as would in their judgment warrant their passage by the Legislature.

In order to provide for a case where there might be urgent and pressing need for legislation before the ordinary period arrived, it might be ordained that such legislation could take place, provided the legislative committee reported in favour of immediate action.

As to the composition of the legislative committee we have suggested, we think it would be desirable that it should not be confined to members of the House, because

it is undeniable that many persons not members of the House are far better qualified to discharge the duties that would be expected of such a committee than any committee composed exclusively of the members of the House would be. Our opinion is that the committee should partake more of the character of the committee now sitting to revise the statutes; their functions would not be legislative, but purely deliberative, and it would be far more economical to pay the members of such a committee a reasonable sum for their services than to waste it in paying for the annual attendance of a horde of men who do no practical good by their attendance.

The idea of a legislative committee is by no means novel. Fifty years ago, in his answer to the Real Property Commissioners, Mr. James Humphreys, an eminent lawyer of that day, said that he was a great advocate for an institution in the nature of a committee of justice, or some such body to report upon defective justice, and to make periodical revision of the law. The same idea is reiterated by M. Laurent, Professor of the University of Gand, in a preface prefixed to Doutre and Lareau's "Histoire Generale du Droit Canadien." M. Laurent's proposal is that a Council of State should be formed, to which the most distinguished magistrates, advocates and professors should be summoned; that they should deliberate during ten years on all projects for amendment of the law; that they should communicate them to the Superior Courts of Justice, and deliberate anew upon the observations presented by the magistrates; that they should invite public discussion and criticism, and at the end of every ten years present to the legislative body the modifications in the law they deem necessary. He concedes that the Legislature should have the power of amendment; but any amendment, he thinks, should be first submitted to a new discussion by the Council of State before its being finally passed. Were some such system of law-making to prevail, many curious incongruities which we see in statute law might be avoided, and certainly English law, instead of presenting the appearance of a vast system of patchwork, would in ime constitute a congruous and harmonious system of jurisprudence.

We have not far to look for defects in the present English method of law making. Only the other day a case came before the Privy Council from South Africa, in which the construction of a statute was involved, which was so worded that if its literal wording had been followed, the whole scope and object of the statute would have been defeated. (See *Salmon* v. *Duncombe*, 11 App. Cas. 627, *ante* p. 45.) Even the English Parliament itself is sometimes found napping. For instance, the Intestates' Estates Act, 1884 (47 & 48 Vict. c. 71, s. 4), provides that when a person dies without an heir and intestate in respect of any real estate . . . *whether devised or not devised to trustees by the will of such person*, etc., the law of Escheat shall apply.

To come nearer home, we might take the recent Devolution of Estates Act as an illustration. The Act aims at working a radical change in the law of property. The interests it affects are vast and important. The subject was one fitted to demand the most careful attention, not only with regard to the principle on which the Act is based, but also with regard to its effect on the previously existing law. But so far from the statute bearing evidence of any such broad and comprehensive consideration, it has all the appearance of a "hand to mouth" piece of legislation; a crude attempt to blend two utterly irreconcilable principles of law. In fact this statute reminds us very much of the man at the circus who dazzles the vulgar by essaying to ride two steeds

at the same time. The Legislature has in this Act, planted one foot on the law of personalty and the other on the law of realty, and tried to make both steeds go the same way; but one is an old horse of very cumbersome gait, with all sorts of odd tricks and peculiarities, and the other is a young and skittish thing, all for going ahead, and it will be no wonder if the attempt to go round the ring on two such steeds at the same time should lead to curious results. This was clearly a subject which would have been far better dealt with by a legislative committee, than by the heterogeneous elements of which the House of Assembly is composed.

Another piece of recent legislation, involving important changes, was also one entirely beyond the competence of the Legislature to deal with it intelligently. We refer to the Judicature Act. We remember being present when some of the provisions of that statute were passing through the committee of the whole. About four persons were actually taking any interest in the matter, most of the members were absent, the rest of those present were entirely indifferent, and might just as well, and better for the country, have been in Hong Kong for all the practical use they were. And yet the country was paying the eighty-five gentlemen who took no interest in the matter about $500 a day for their services.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT OF CANADA.

Ont.] [March 1.

BALL v. CROMPTON CORSET CO.

Patent—Infringement of—Mechanical equivalent—Substitution of one material for another.

In a suit for the infringement of a patent, the alleged invention was the substitution, in the manufacture of corsets, of coiled wire springs, arranged in groups and in continuous lengths, for India rubber springs previously so used. The advantage claimed by the substitution was that the metal was more durable, and was free from the inconvenience arising from the use of India rubber caused from the heat from the wearer's body,

Held, affirming the judgment of the Court of Appeal for Ontario, 12 Ont. App. Rep. 738, FOURNIER and HENRY, JJ., dissenting, that this was merely the substitution of one well-known material, metal, for another equally well-known material, India rubber, to produce the same result, on the same principle in a more agreeable and useful manner, or a mere mechanical equivalent for the use of India rubber, and it is consequently void of invention, and not the subject of a patent.

Appeal dismissed.

Tassels, Q.C., and *Akers*, for appellants.

Maclennan, Q.C., and *Osler*, Q.C., for respondents.

Ont.] [March 4.

WHITING ET AL. v. HOVEY ET AL.

Company—Directors of—Assignment of property by, for benefit of creditors—Ultra vires—Change of possession—R. S. O. c. 119—Description of property assigned.

An assignment by the directors of a joint stock company of all the estate and property of the company to trustees for the benefit of

the creditors of the company is not *ultra vires* of such directors, and does not require special statutory authority or the formal assent of the whole body of shareholders.

Quære.—Is such an assignment within the provisions of the Chattel Mortgage Act of Ontario, R. S. O. c. 119?

Where such an assignment was made, and the property was formally handed over by the directors to the trustees, who took possession and subsequently advertised and sold the property under the deed of assignment,

Held, that if the assignment did come within the terms of the act, its provisions were fully complied with, the deed being duly registered, and there being an actual and continued change of possession as required by section 5. In such deed of assignment the property was decided as, "All the real estate, lands, tenements and hereditaments of the said debtors (company) whatsoever or wheresoever, of or to which they are now seized or entitled, or of or to which they may have any estate, right, title or interest of any kind or description with the appurtenances, the particulars of which are more particularly set out in the schedule hereto, and all and singular the personal estate and effects, stock in trade, goods, chattels, right and credits, fixtures, book debts, notes, accounts, books of account, choses in action, and all other the personal estate and effects whatsoever and wheresoever, etc."

The schedule annexed specifically designated the real estate, and included the foundry erections and buildings thereon erected, and including all articles such as engines, etc., in or upon said premises.

Held, that this was a sufficient description of the property intended to be conveyed to satisfy sec. 23 of R. S. O., c. 119. *McCall* v. *Wolff* (May 12, 1885, unreported) approved and followed.

Appeal dismissed.

Robinson, Q.C., and *W. M. Hall*, for the appellants.

McMichael, Q.C., *S. H. Blake*, Q.C and *H. McK. Wilson*, Q.C., for the respondents.

Ont.] [March 14.

SHOOLBRED'S CASE.

Company—Winding up Act—45 Vict. c. 23 (D.) —Appointment of liquidator under—Notice of appointment under sec. 24—Order set aside for want of.

It is a substantial objection to a winding up order appointing a liquidator to the estate of an insolvent company under 45 Vict. cap. 23, that such order has been made without notice to the creditors, contributories, shareholders or members of the company as required by section 24 of said act, and an order so made was set aside, and the petition therefor referred back to the judge to be dealt with anew.

Per GWYNNE, J., dissenting, that such an objection is purely technical and unsubstantial, and should not be allowed to form the subject of an appeal to this court.

Appeal allowed.

Cassels, Q.C., and *Walker* for appellants.

Bain, Q.C. for respondents.

P. Q.] [March 14.

WHEELER ET AL. (Defendants in the Court below), Appellants, and BLACK ET AL. (Plaintiffs in the Court below), Respondents.

Actio confessoria servitutis—Building of barn over alley subject to right of access to drain—Aggravation—Art 557, C.C.

By deed dated August 22, 1843, P. D. sold to one J. B. a certain property in the town of St. John, P.Q., with the right of draining the cellar or cellars of the said property by making and passing a good drain through the lots the said Pierre Dubeau has and possesses . . . and beneath the alley now left open and between the several houses belonging to the said Pierre Dubeau, and the said deed of sale establishing the said servitude was duly registered by a memorial thereof, October 6, 1843.

The respondents having subsequently acquired said property, by their present action against the appellants, owners of the servient land, prayed that the said appellants' property be declared to have been, and to be still, subject to said servitude, and that the appellant

be ordered to demolish a portion of a large barn, constructed by them over said drain, which, they claim, tended to diminish the use of the servitude and to render its exercise more inconvenient. The appellants, on the present appeal, contended that inasmuch as the barn was built on wooden posts there was no solid floor in the barn, and the drain could be raised up and repaired just as well, if not better, as outside of the barn, there was no change of condition of the servient land contrary to law.

Held, affirming the judgment of the court below, that on the evidence the building of the barn in question aggravated the condition of the premises, and therefore that the judgment of the court below ordering the appellants to demolish a portion of their barn covering the said drain in order to allow the respondents to repair the drain as easily as they might have done in 1843 when said drain was not covered, and to pay $50 damages, should be affirmed.

GWYNNE, J., was of opinion that all appellants were entitled to was a declaration of right to free access to the land in question for the purpose of making all necessary repairs in the drain as occasion may require, without any impediment or obstruction to their so doing being caused by the barn which had been erected over the drain, and that the action for damages was premature.

Appeal dismissed with costs.

Robertson, Q.C. for appellants.

Geoffrion, for respondents.

P. Q.] [March 14.

L'ASSOCIATION PHARMACEUTIQUE DE LA PROVINCE DE QUEBEC v. WILFRED E. BRUNET.

Quebec Pharmacy Act, 48 Vict. (Q.) ch. 36 s. 8—Construction of—Partnership contrary to law—Mandamus.

Held, affirming the judgment of the court below, that section 8 of 48 Vic. ch. 36 (Q.), which says that all persons who, during five years before the coming into force of the Act, were practising as chemists and druggists in partnership with any other person so practising are entitled to be registered as licentiates of pharmacy, applies to respondent, who had, during more than five years before the coming into force of the said act, practised as chemist and druggist in partnership with his brother and in his brother's name, and therefore he (respondent) was entitled under section 8 to be registered as licentiate of a pharmacy.

Appeal dismissed with costs.

Archambault, for appellants.

Geoffrion, for respondent.

P. Q.] [March 14.

PARISH OF ST. CESAIRE v. MACFARLANE.

Municipal debentures—Future conditions—Municipal code, art. 982.

Held, that a debenture being a negotiable instrument, a railway company that has complied with all the conditions precedent stated in the by-law to the issuing and delivery of debentures granted by a municipality is entitled to said debentures, free from any declaration on their face of conditions mentioned in the by-law to be performed in future, such as the future keeping up of the road, etc., art. 982, Municipal Code, FOURNIER, J., dissenting.

Appeal dismissed with costs.

Geoffrion, for appellants.

O'Halloran, Q.C. for respondent.

P. E. I.] [March 14.

SHERREN v. PEARSON.

Statute of Limitations—Title to land—Possession for twenty years—Isolated acts of trespass—Not sufficient to oust owner.

In an action of ejectment the defence was that the land in question was a part of the defendant's lot, and, if not, that the defendant had had possession of it for over twenty years, and the plaintiff's title was consequently barred by the Statute of Limitations. In support of the latter contention evidence was given of cutting lumber by the defendant and those through whom he claimed on the land, but these alleged acts of possession only extended back some seventeen years, with one exception, which was that of an uncle of the

defendant who swore that he had cut every year for thirty-five years. The defendant, however, swore that this uncle had nothing to do with the land. The jury found for the plaintiff.

Held, affirming the judgment of the Supreme Court of Prince Edward Island, that these acts of cutting lumber were nothing more than isolated acts of trespass on wilderness land, which could not effect an ouster of the true owner, and give the defendants a title under the Statute of Limitations.

Appeal dismissed.

Hodgson, Q.C., for the appellants.

Davies, Q.C., for the respondents.

[March 14

FAIRBANKS ET AL. (Plaintiffs), Appellants, v. BARLOW ET AL. (Defendants), and O'HALLORAN (Intervenant), Respondents.

Pledge without delivery—Possession—Rights of creditors.

B., who was the principal owner of the South-Eastern Railway Company, was in the habit of mingling the moneys of the company with his own. He bought locomotives which were delivered to and used openly and publicly by the railway company as their own property for several years. In January and May, 1883, B., by documents *sous seing privé*. sold ten of these locomotive engines to F. *et al.*, the appellants, to guarantee them against an endorsement of his notes for $50,000. B. having become insolvent, F. *et al.*, by their action directed against B., the South Eastern Railway Company, and R. *et al.*, trustees of the company under 43 & 44 Vict. ch. 49, Q.C., asked for the delivery of the locomotives, which were at the time in the open possession of S.-E. Ry. Co., unless the defendants pay the amount of their debt. B. did not plead. The S.-E. Ry. Co. and R. *et al.*, as trustees, pleaded a general denial, and during the proceedings O'H. filed an intervention, alleging he was a judgment creditor of B. notoriously insolvent at the time of making the agreement.

Held, affirming the judgments of the courts below, that as the transaction with B. only amounted to a pledge not accompanied by delivery, F. *et al.*, the appellants, were not entitled to the possession of the locomotives as against creditors of the company, and that in any case they were not entitled to the property as against O'H., a judgment creditor of B., an insolvent. The action was therefore rightly dismissed and intervention maintained.

Appeal dismissed with costs.

Church, Q.C., and *Nicolls*, for appellants.

O'Halloran, Q.C., for respondents.

COURT OF APPEAL.

Co. Ct. Carleton.]

SEABROOK v. YOUNG.

Pleading—Trespass—Title to land.

Under the system of pleading in the High Court and in County Courts under the Judicature Act, Rules 128, 146, 147, 148, 240, where a material fact is alleged in a pleading, and the pleading of the opposite party is silent with respect thereto, the fact must be considered as in issue. And where in an action of trespass for pulling down fences and for mesne profits the plaintiff alleged his title at the time from which he claimed to recover the mesne profits: and the defendant, in his statement of defence, denied that he committed any of the wrongs in the plaintiff's statement of claim mentioned, and denied that he was liable in damages or otherwise on the alleged causes of action.

Held, that on these pleadings the title to land was expressly brought in question, and the jurisdiction of the County Court thus ousted. The defendant was not estopped from raising the question of jurisdiction at the trial, because of his omission to file an affidavit under R. S. O. c. 43, s. 28, that his pleading was not pleaded vexatiously, nor for the mere purpose of excluding jurisdiction; such an omission was a mere irregularity for which the plea might have been set aside, but it could not operate to confer jurisdiction where the plea raised the question of title.

The statement of claim presented a cause of action within the jurisdiction, and the defendant could not have demurred; it depended

upon his pleading whether the jurisdiction would be ousted, and therefore Rule 189 did not apply to prevent the raising of the question of jurisdiction at the trial. It was contended that the defendant was estopped from disputing the plaintiff's title by his admissions and by reason of the plaintiff having recovered a judgment in ejectment against the defendant's tenants; but the plaintiff's claim was for damages for pulling down fences and for mesne profits for a period of five or six months prior to the date of the ejectment, and the admissions of title did not go further back than the ejectment.

Held, that the judgment against his tenants was evidence against the defendant, but that the title was really in question, and necessary to be proved in respect of the period for which mesne profits were claimed prior to the ejectment.

Co. Ct. Carleton.]

HOUSTON v. MCLAREN.

A lease from the defendant to the plaintiff under the Short Forms Act contained the usual covenant by the plaintiff, the lessee, to keep up fences, but the defendant, the lessor, undertook and agreed "to build the line fence between the premises hereby demised and the farm of D. M., should the same be required during the currency of the lease."

It appeared by the evidence that there was no line fence between the farms, but that there was a fence upon D. M.'s land about twenty-four yards south of the boundary line. The plaintiff alleged that this fence was out of repair, that the defendant would not mend it, and that in consequence damage had been done to his crops by cattle, and he contended that the condition "required during the currency of the lease" was fulfilled by the fence on D. M.'s land being out of repair.

Held, affirming the judgment of the court below, that no liability could accrue under the defendant's covenant until something occurred to disturb the state of things existing at the time the lease was made, and that the covenant was designed to meet such a contingency as D. M. refusing to allow entry on his land to repair the fence or requiring the line fence to be built.

Semble, per HAGARTY, C.J.O.—That the plaintiff's covenant to keep up fences applied to all then existing fences used for the protection of the farm, and would be properly applicable to the fence on D. M.'s land so long as it remained as it then was; but

Per BURTON and PATTERSON, JJ.A.—The plaintiff's covenant would only extend to fences on the demised premises.

C. P. Div.]

SCOTT v. CRERAR.

Libel—Evidence.

On the trial of an action for a libel contained in an anonymous letter circulated among members of the legal profession in the city of H., charging the plaintiff with unprofessional conduct, no direct evidence was given to shew that the defendant was the author of the letter, but the plaintiff relied upon several circumstances pointing to that conclusion. The judge at the trial refused to admit some of the evidence tendered.

Held, reversing the judgment of the Common Pleas Division, 11 O. R. 541, that evidence of the defendant being in the habit of using certain unusual expressions which also occurred in the letter, was improperly rejected; but

Semble, a witness could not be asked his opinion as to the authorship of the letter; and

Per BURTON, J.A.—Evidence of literary style on which to found a comparison, if admissible at all, is not so otherwise than as expert evidence.

Q. B. Div.] [March 15.

KNIGHT v. MEDORA.

Division Courts—Prohibition—Jurisdiction.

The judgment of the Q. B. D. 11 O.R. 138, refusing to order prohibition to a Division Court, was affirmed on appeal on the ground that the title to land was not brought in question; but

Held, per PATTERSON and OSLER, H. A. (disagreeing with the court below, and affirming *Mead* v. *Creary*, 8 P. R. 374, 32 C. P. 1), that the notice under 48 Vict. c. 14, s. 1, amending 43 Vict. c. 8, s. 14, disputing the jurisdiction, is

only required when a suit otherwise of the proper competence of the Divisional Court has been brought in the wrong Division, and the want of such notice cannot give the Divisional Court jurisdiction if the title to land is brought in question.

MILLER v. CONFEDERATION.

The refusal of the court below to order a new trial by reason of disagreement of the judges (11 O. R. 120) was affirmed.

HAGARTY, C.J.O., *hesitante* as to granting a new trial, on the ground of the discovery of fresh evidence.

GRAY v DUNDAS.

The judgment in the court below, reported 11 O. R. 31-, was unanimously affirmed by this court, and the appeal therefrom dismissed with costs.

KNIGHT v. MEDORA.

The judgment of the Q. B. D., reported 11 O. R. 138, was, on appeal to the court, unanimously affirmed, and the appeal therefrom dismissed with costs.

From Boyd, C.]

MITCHELL v. GORMLEY.

Partnership—Sale by partner of undivided share.

The plaintiff and defendant jointly purchased land with the object of selling it again at a profit, the plaintiff having an undivided one-third interest, and the defendant the remaining two-thirds.

The defendant formed a syndicate of eight persons, of whom he himself was one, to which he turned over his two-thirds interest at a profit. There was no agreement between plaintiff and defendant restraining either from disposing of his share.

Held, affirming the judgment of BOYD, C., that assuming the plaintiff and defendant to have been partners as dealers in real estate bought on speculation to be sold at a profit, no part of the partnership property had been alienated or taken from the purposes of the partnership; and, therefore, the plaintiff was not entitled to participate in the profit made by the defendant on the sale of his undivided share.

DICKEY v. MCCAUL.

Sale of goods—Conversion.

The defendant could not be held liable for a conversion of the goods in question by reason of his having joined in a bill of sale of them, and having accepted and assigned a mortgage for the balance of the purchase money thereof, no other act of interference with them on his part being shown, they never having been in his possession or control, and he never having had the power to deliver up or retain them, so as to make a demand upon him and refusal by him evidence of conversion, he having acted in the sale of the goods only as the agent and by the authority of another.

The plaintiff, J. I. D., could not maintain an action for the conversion of the property in question; for, assuming that it was the property of those under whom he claimed, which was one of the matters in controversy, it did not become vested in him till after the alleged conversion. Nor could the plaintiff, J. D., maintain the action, he never having had the actual possession of the property, but a mere right as receiver appointed by the court to obtain the custody of it, if it belonged to those whom he represented, which would not support the action, though it might form the ground of a special application to the court for a mandamus, or attachment, or other appropriate relief.

QUEEN'S BENCH DIVISION.

Full Court.]

MURPHY v. CITY OF OTTAWA AND DOYLE.

Municipal corporation—Contract in writing for construction of sewer—Contractor and sub-contractor—Master and servant—Interference by corporation through inspector—Joint wrong doers—Liability—Compensation.

The corporation of the city of Ottawa contracted with defendant, Doyle, by agreement in writing to lay down sewer pipes on certain streets in the city of Ottawa, and by their inspector the corporation exercised superintendence over the work as it progressed.

Doyle employed one McCallum to engage workmen and oversee the work. McCallum engaged Murphy, the husband of the plaintiff.

During the progress of the work the sides of the sewer caved in through the faulty and negligent shoring of the walls of the sewer, thereby causing the death of Murphy.

Held, that under the evidence the corporation were not liable; that no recovery ought to have been had against either of the defendants, as there was no evidence from which it could have been reasonably inferred that the deceased was ignorant of the dangerous character of the work he was engaged in, and that he had quite as much knowledge and means of knowledge of its dangerous character as his master, and with such knowledge voluntarily engaged in it. But as defendant Doyle had not moved against the verdict found against him it was therefore allowed to stand.

Held, also, that the corporation by their inspector had not so interfered with the conduct of the work by the deceased as to assume personal control over the deceased within the opinion of Gifford, L.J., in *Stephens* v. *Police Commissioners*, 3 Court of Sessions Cases, 535.

Held, also, that the action, being founded on the relationship of master and servant, both defendants could not be held liable, and that the plaintiff, by retaining her judgment against Doyle, had elected to treat the wrongful act or omission as his, and could therefore have no recourse against the corporation.

McCarthy, Q.C., for motion.

Lount, Q.C., and *Marsh*, contra.

DUNKIN v. COCKBURN.

Timber limits—Rights of licensees—Free grants.

Owners of timber limits have no right by statute or order in council after the issue of patent to haul their timber or logs over the uncleared portion of any land not covered by their timber license and originally located as a free grant.

Kerr, Q.C., and *Paterson*, for motion.

McCarthy, Q.C., and *Falconbridge*, Q.C., contra.

STRATTON v. CITY OF TORONTO.

In an action for damages for injury caused by negligent driving, it appeared that a servant of the defendants, on his way for a wrench for which he had been sent for the purpose of shutting off the water from a street hydrant which had burst, without the knowledge or consent of the defendants, wrongfully took posses ion of a horse and buggy belonging to the defendants' City Commissioner, and therewith caused the injury complained of.

Held, that the defendants were not liable.

F. Wright, for plaintiff.

McWilliams, contra.

THE QUEEN v. YOUNG.

Canada Temperance Act—Police magistrate.

Defendant was convicted at the town of Perth by and before the police magistrate for the south riding of the county of Lanark for selling, in the said town of Perth, intoxicating liquor, contrary to the Canada Temperance Act, 1878.

The authority of the police magistrate was derived from a commission appointing him police magistrate for the south riding of the county of Lanark, as constituted for the purposes of representation in the Legislative Assembly of Ontario.

The same magistrate had been a few weeks previously, by a separate commission, appointed police magistrate for the north riding

of the said county of Lanark; and the said north and south ridings together comprised the whole of the territorial limits of the county of Lanark as constituted for municipal purposes and no more.

The town of Perth was situate wholly within the said south riding.

Held, that the said magistrate was not a police magistrate for the county of Lanark within the meaning of the 103rd section of the Canada Temperance Act, 1878; and that Lanark was not a county having a police magistrate within the meaning of the said section.

Held, further (ARMOUR, J., on this point dissenting), that the said police magistrate was not a police magistrate for the town of Perth within the meaning of the said section; and that Perth could not, in virtue of the said commission appointing a police magistrate for the south riding of the county, be held a town having a police magistrate.

Per ARMOUR, J.—Perth was, under the circumstances, a town having a police magistrate, and the said police magistrate had, therefore, in this case, jurisdiction to convict.

Johnston, for the Crown.

Aylesworth, contra.

Rose, J.]

SIMPSON v. CORPORATION OF VILLAGE OF HUNTSVILLE.

Municipal corporation — Negligence — Accident occurring prior to organization of municipality —49 Vict. ch. 55—Non-liability—Pleading.

To an action by plaintiff against defendants for an accident to plaintiff on 11th April, 1886, caused by slipping on a sidewalk of defendants covered with snow and ice, negligently allowed to accumulate thereon by defendants, and being otherwise defective and negligently out of repair for a long time to the defendants' knowledge, and which it was their duty to keep in repair, defendants pleaded that the village of H. had not at the date of the accident been organized according to the terms of 49 Vict. c. 55, incorporating said village, and could not have any officers or servants, and could not be and was not guilty of negligence by reason of anything done or omitted previous to or at the said date of said alleged accident.

Held, on demurrer, a good defence.

Patterson, for demurrer.

Arnoldi, contra.

Full Court.]

RE MACDOUGALL.

Solicitor—Annual certificates.

A solicitor who allows his name to be used as a member of a firm of solicitors in proceedings before the courts, although not a partner in regard to profits of the firm, is a practising solicitor within the meaning of R. S. O. cap. 140.

M., a solicitor of the court, allowed his name to be used by the firm of M. M. & B. in the usual advertisements and business cards of the firm. Proceedings in the courts were carried on by the firm of M. M. & B. M. did not participate in the profits of the firm.

Held, notwithstanding this, that he was liable to be suspended for practising without having taken out an annual certificate from the Law Society.

ARMOUR, J., dissenting.

Reeve, Q.C., and *W. Read*, for the motion.

F. Macdougall, contra.

REGINA v. PIERCE.

Criminal law—Conviction for bigamy.

The prisoner was convicted under 32 & 33 Vict. c. 20, s. 58, of bigamy. The first marriage was contracted in T., the second in D., in the U. S. of America.

Held, that it was incumbent on the Crown to charge and prove that the prisoner, at the time of the commission of the offence, was a subject of Her Majesty, resident in Canada, and that he had left the same with intent to commit the offence.

The learned judge directed the jury that if the prisoner was married to his first wife in Toronto, and to the second in Detroit, they should find him guilty of bigamy.

Per WILSON, C.J.—The indictment did not sufficiently charge the offence; and

Quære, whether the trial should not have been declared a nullity.

The learned judge withdrew from the jury the question of "leaving with intent."

Held, a misdirection.

Johnston, for the Crown.

Bigelow, contra.

McMULLEN v. POLLEY.

Mortgagor and mortgagee—Authority of solicitor acting for both to receive mortgage money.

M. applied to one McM., a solicitor, for a loan of $6,200 on his land. McM. got one P. to advance the money. He then drew the mortgage, which was executed by M. and wife, and left with him until P. came to pay the money. P. subsequently called on McM., and upon his registering and delivering over the mortgage paid him the money. McM. after this told M., on his calling on 6th March, that P. had not been able as yet to get the money. On M. stating that he needed $400 at once McM. gave him his own cheque for that sum. M. swore that this was as a loan, and was subsequently repaid. On the 2nd April McM. absconded without having accounted for the $6,200. After he left, two receipts were found among his papers, signed by M. and dated 6th March, for $400 and $8,936, as money received from McM. on account of the P. mortgage, and a memo., from which it appeared that $205.55 had been paid out of the mortgage money by McM. to discharge execution debts of M.'s which he had instructed McM. to settle.

Held, that it must be shown that either express or implied authority was given McM. by M. to receive the money to justify P. in paying it to him; that his possession of the mortgage with an indorsed receipt did not give such authority, but that there was evidence of authority to receive to his own use out of the mortgage money when paid the above three sums, sufficient to entitle P. to hold the mortgage as a security to that extent.

Britton, Q.C., for motion.

Walkem, Q.C., contra.

CLARKSON v. TORONTO STOCK EXCHANGE.

Stock Exchange.

F. and L., brokers, in partnership, were each members of the Toronto Stock Exchange, being each the owner of one seat at the Board. They assigned to the plaintiff for the general benefit of creditors in December, 1884. The Toronto Stock Exchange, by their by-laws, provide that in case of a member becoming insolvent and not procuring a release from his creditors within a named period, the Exchange shall have power to realize the seats by sale, and the proceeds in such case are to be applied first, in payment of fines and dues to the Exchange, secondly, in payment of claims arising out of Stock Exchange transactions of creditors being members of the Exchange, and thirdly, the balance, if any, to be paid to the insolvent or his legal representative. The seats of F. and L. were sold under the by-laws of the Exchange, and the proceeds remained in the hands of the Exchange. Certain members of the Toronto Stock Exchange claiming to be creditors of F. and L. prior to their insolvency for debts arising out of Stock Exchange transactions, filed claims under the by-laws prior to the sale of the seats. The plaintiff, on the other hand, claimed to be entitled to the seats and to the moneys arising from their sale under the assignment to him for the benefit of creditors. All parties concurred in the sale of the seats subject to their respective rights. This action is brought by the plaintiff as assignee, for the benefit of creditors of F. and L. against the Toronto Stock Exchange for payment to him of the moneys realized from the sale of the seats.

Held, first, that it was competent to the Toronto Stock Exchange to pass the by-laws in question, giving the preference to the claims of the Exchange, and to claims of members of the Exchange for debts arising out of Stock Exchange transactions; secondly, that the plaintiff is the legal representative of the insolvents and entitled to the payment to him of the balance of the moneys arising from the sale of the said seats after payment of fines and fees due to the Exchange and claims of creditors, members of the Exchange, arising out of Stock Exchange transactions; and thirdly, that the by-laws of the Exchange do

not provide any means for ascertaining or deciding any contest as to what deductions may properly be made from the proceeds of sale of the said seats, and that it is proper to refer this matter for enquiry to the Master.

Arnoldi, for motion.

Ritchie, Q.C., contra.

JORDAN v. DUNN.

Will — Construction — Conditions precedent and subsequent — Validity of.

Testator, after granting to his wife a life estate in certain land, devised the same to his son, subject to the following conditions:

First, that he abstain totally from intoxicating liquors and card playing; secondly, that he be kind and obedient to his mother; thirdly, that he be known among his friends as an industrious man ten years after the death of his mother.

Held, (1) that the three conditions were conditions precedent up to the time of the mother's death, and that conditions one and three were conditions subsequent for ten years after the mother's death.

(2) That either the use of intoxicating liquors or the playing of cards would be a breach of the first condition.

(3) That the first condition was not valid, and was too vague or indefinite for trial or adjudication by the court; and having been broken, the son's title failed in so far as the condition was precedent, and was forfeited in so far as the condition was subsequent.

Semble, That conditions two and three were valid, and not too vague or indefinite for trial or adjudication by the court.

Lash, Q.C., and *R. Cassels*, for motion.

Osler, Q.C., contra.

CHANCERY DIVISION.

Full Court.] [March 5.

REGINA v. FEE.

Canada Temperance Act, 1878, *s.* 123—*Defendant compellable to answer—Criminating questions —Jurisdiction of Divisional Court.*

This was a conviction under the Canada Temperance Act, 1878, whereby the plaintiff was adjudged to pay a fine for selling liquor unlawfully. Being brought up on *certiorari* before FERGUSON, J., sitting in court, it was quashed (no cause being shewn, and no one appearing to support the conviction) on the ground that the defendant had been obliged to give evidence of his own criminality. After the order to quash had been issued an application was made on the part of the Crown to open up the matter on the ground that instructions had been given to shew cause, but that through inadvertence default had happened. The judge was disposed to accede to the application (if there was jurisdiction to do so), and, with a view of having the whole matters in controversy investigated, sent the application to be disposed of by the Divisional Court.

Held, (1) That the right of rehearing which existed in matters of a criminal nature such as the present, before the Judicature Act, is not interfered with by that Act, and applied to the present case, and if there was jurisdiction to apply to a single judge to quash the conviction, there was jurisdiction in the Full Court to reconsider his decision.

(2) On the proper construction of the Canada Temperance Act, 1878, s. 123, a defendant is compellable when called as a witness to answer questions, even though tending to criminate himself.

Order quashing the conviction reversed. No costs.

T. D. Delamere, for the Crown.

A. H. Marsh, for [illegible]

Full Court.] [March 5.

HOLMES v. MURRAY.

Will—Devise—Republication of will by codicil—Mortmain—R. S. O. c. 216—38 Vict. c. 75 O.

Judgment herein, noted *supra* 418, reversed, and the devise to the charity held to be good.

Per BOYD, C.—Though by the statute now in force the will is to speak from the death of the testator, unless a contrary intention be expressed, that does not change the date when the will was made, which is the sole point under the statutes which validate these bequests to religious bodies. The codicils do not revoke, but confirm the charitable disposition of the testator shewn at the time he made the will, but the source of the bounty does not spring from the last codicil but from the original will.

PROUDFOOT, J.—There is no doubt that for some purposes the will is drawn down to the time of republication or confirmation, as for instance, under the old law, to let in after acquired property. But in cases affecting real estate it has been held that if the will be made before the Statute of Charitable Trusts, and confirmed afterwards, or made more than six months before the death of the testator and confirmed afterwards, that the devise is good; and these decisions govern the present, and the devise to the charity is good.

McKay, for the plaintiffs, the trustees.

Maclennan, Q.C., for the appellants.

Full Court.] [March 5.

HATTON v. BERTRAM.

Will—Construction—Passing of after acquired property.

Judgment, noted *ante* p. 92, affirmed with costs.

Per BOYD, C.—The word "now" in the devise of Walkerfield, which I now reside upon," should not be allowed to control the other parts of the will, and is not sufficient to oust the effect of the statute by virtue of which the will is to speak from the death. The after acquired property in connection with Walkerfield was intended to pass by the will to the trustees, and by the will they were to hold "Walkerfield" for the use and benefit of the testator's daughter.

Moss, Q.C., for the plaintiffs.

Lash, Q.C., and *E. D. Hall*, for the adult defendants.

Maclennan, Q.C., for the infant defendants.

Ferguson, J.] [March 10.

RE MURRAY AND KERR.

Vendor and purchaser—Representation of rents in advertisement—Compensation—Heating—Taxes.

K. purchased certain property at auction which had been advertised. Among the representations made in the advertisement was one that it "at present rents for $11.60." After the sale the purchaser applied for compensation on two grounds: (1) that the landlord was bound to heat the building for the tenants, and the cost of which was not included in the $11.60; and (2) on the ground that the $11.60 did not include the taxes.

Held, that he was entitled to compensation on both grounds, and a reference was ordered to ascertain the amounts.

E. T. English, for the vendor.

Hoyles, for the purchaser.

Ferguson, J.] [March 16.

RE HAGUE, TRADERS' BANK v. MURRAY.

Judgment against executor—Conclusiveness of—Notice of dishonour.

The Traders' Bank and Central Bank in September, 1886, obtained judgments against T. M., the executor of W. H., deceased, upon certain promissory notes endorsed by W. H., which fell due after his death and were dishonoured. In December, 1886, the Traders' Bank obtained an administration order for the administration of the estate of W. H., and in the course of proceedings in the Master's office the two banks brought in their judgments as proof of their claims against the estate.

Thereupon the other creditors, by the solicitor appointed to represent them, asked leave to go into evidence to show that when the said promissory notes fell due and were

dishonoured, no proper notice of dishonour was given to T.M.

The Master ruled that the judgments were only *prima facie* evidence against the other creditors, and gave them leave to go into evidence as desired.

The banks appealed.

Held, the judgments were conclusive evidence as against the other creditors of the existence of the debt and the relation of debtor and creditor, though *semble* they would be only *prima facie* evidence against heirs and devisees.

S. H. Blake, Q.C., and *Lefroy*, for the appeal.

J. Reeve, contra.

PRACTICE.

Master in Chambers.] [April 13, 1886.

LEVY V. DAVIES.

Interpleader—Sale of goods under order—Levy of money under execution—Creditors' Relief Act, 1880—Costs.

A sheriff had seized goods under writs of *fi. fa.* in his hands, when the goods were claimed by a chattel mortgage. An interpleader issue was directed, and an order was made for the sheriff to sell the goods and pay the proceeds into Court, which was done. After the claim of the chattel mortgagee had been barred a question arose as to the distribution of the money in court.

Held, that the seizure under the writs, together with the conversion into money by the sheriff under the order of the court, and the final barring of the claim of the chattel mortgagee, constituted a levying of the money under the writs by the sheriff in the sense of sec. 5 of the Creditors Relief Act, 1880, and therefore that the money in court should be distributed rateably according to the provisions of that Act; but

Held, also, upon a construction of s. 35 of the Act, that the execution creditors who contested the chattel mortgagee's claim in the interpleader were entitled to add their costs of the interpleader to their claims if they did not recover them from the claimant.

Kappelle, for the sheriff and one execution creditor.

Watson, Holman, Aylesworth, Clement, George Bell, John Greer and *Wickham*, for the other execution creditors.

P. McPhillips, for the claimant.

C. P. Div. Ct.] [June 26, 1886.

Rose, J.] [March 1, 1887.

MACGREGOR V. MCDONALD.

Discovery—Affidavit of documents—Evidence on motion for better affidavit—Inspection of documents—Rule 234.

The plaintiff sought to compel the defendant, F. McD., to file a better affidavit of documents, and relied upon the affidavit of documents of a co-defendant, D. M. McD., and also upon an affidavit of F. McD., filed upon an interlocutory motion in the action, as shewing that she had in her possession a power of attorney and statements of account which were not set out or in any way alluded to in her affidavit of documents, wherein she stated that the documents set out were the only ones in her possession relating to the action. In the affidavit in the interlocutory motion F. McD. admitted that she had received the power of attorney and statements of account in question from D. M. McD., but not that she had them at the time of making her affidavit of documents.

Held, reversing the order of WILSON, C.J., in Chambers, that the affidavit of D. M. McD. could not be received to contradict the affidavit of documents of F. McD., and that her admissions relied upon were not sufficiently explicit, for it was not to be inferred in the face of her affidavit of documents that at the time of making it she still had the documents which were at one time received by her; and,

Per ROSE, J., upon a subsequent motion, the court having refused to order a better affidavit of documents, an application under Rule 234, made upon the same material for inspection of the documents in question on the former application, could not succeed.

MacGregor, for the plaintiff.

S. H. Blake, Q.C., and *Holman*, for the defendant, F. McD.

Rose, J.] [February 25.

SCOTT v. TOWN OF LISTOWEL.

LIVINGSTON v. TOWN OF LISTOWEL.

Assessment—Appeal—Service of notice—Fine—R. S. O. ch. 180, secs. 56, 59.

R. S. O. ch. 180, sec. 59, regulating appeals to the county judge from the Court of Revision as to the assessment of property, provides (sub-sec. 2) that the person appealing shall serve upon the clerk of the municipality within five days after the date limited by the Act for closing the Court of Revision a written notice of his intention to appeal (sub-sec. 3); that the judge shall notify the clerk of the day he appoints for hearing appeals; and (sub-sec. 4) that the clerk shall thereupon give notice to all the parties appealed against. Sec. 56, sub-sec. 19, provides that all the duties of the Court of Revision shall be completed, and the rolls finally revised, before the 1st day of July in each year.

The Court of Revision heard the appeals in question on the 10th June, 1886, and rendered judgment on the following day. Notices of appeal dated the 15th June, 1886, were served upon the clerk on the 19th; the Court of Revision sat until the 5th July; on the 15th July the clerk notified the judge that notice had been given of these appeals; and on the 16th July the judge notified the clerk of the day that he had appointed for hearing the appeals, and the clerk notified the parties.

Held, that the limitation in sec. 59, sub-sec. 2, should be construed to mean that notice of appeal should not be served after the expiration of five days from the closing of the Court of Revision; and also that the service in this case was within the five days, as the notices were in the hands of the clerk during the five days, and were acted upon by him; and further, that service prior to the expiry of the five days was good service.

Shepley, for the plaintiffs.

W. H. P. Clement, for the defendants.

Ferguson, J.] [March 10.

VANDERVOORT v. YOUKER.

Demurrer—Averment of malice—Inferred malice—Reasonable and probable cause of belief of larger amount due.

Y. issued a capias before judgment against V., and had him arrested. After the arrest V. tendered $90 in full of Y.'s claim, which was refused as not being sufficient. Y. then proceeded with his action, but failed to obtain a judgment for more than $90.

In an action by V. against Y., in which no malice was alleged, but claiming damages for wrongful arrest.

Held, on demurrer, that malice would not be inferred, because, so far as appeared from the pleadings, Y. had reasonable and probable cause for thinking that V. owed him more than $90, and as malice was not alleged the demurrer must be allowed with costs; leave to amend given.

Aylesworth, for the demurrer.

Lash, Q.C., contra.

C. P. Div. Ct.] [March 12.

BETTS v. GRAND TRUNK RY. CO.

Discovery—Production of documents—Railway accident—Report and evidence on investigation.

The plaintiff, in an action for damages for injuries sustained in a railway accident, sought to compel the defendants to produce a certain report of an investigation held by the defendants immediately after the accident, and the notes of evidence taken at the investigation. These documents, according to the evidence of H., an officer of the defendants, who was examined for discovery in the action, were not obtained for the solicitor of the defendants, nor for the purpose of being laid before him for advice, nor in view of any impending or threatened litigation, nor after litigation commenced, but "for the purpose of the management of the line;" "for our own purposes; it was not intended for a purpose of this kind" (*i.e.*, for use in legal proceedings). In answer to the question whether the defendants' solicitor was present at the investigation, H. said, "No; it would be entirely between the officers of the company." The affidavit of the

solicitor stated that the information was obtained that he might advise the defendants as to their liability for damages arising from the accident, and that it had been used for such purpose and no other. The defendants' affidavit of documents did not claim privilege for these documents, but denied the possession of any documents relating to the matters in question; but it was admitted that the affidavit of documents had been prepared under misapprehension of the facts, and that these documents were in the possession of the defendants.

Held, that the court need not, under these circumstances consider whether the examination of H. could be received to contradict the affidavit of documents, but should look at the matter as if the documents had been set out and privilege claimed for them; and that upon the statements of H. and the solicitor the documents were not privileged and should be produced.

Wheeler v. *LeMarchant*, 17 Ch. D. 675, and *Westinghouse* v. *Midland Ry. Co.*, 48 L. T. N. S. 462, followed.

Aylesworth, for the defendants.

Shepley, for plaintiff.

C. P. Div. Ct.] [March 12.

DOBIE v. LEMON.

Judgment by default—Setting aside—Security—Disposal of property—Interest.

The plaintiff claimed $923.13, the balance of an account, and interest thereon, and signed judgment for default of an appearance upon the special indorsement of his writ of summons for $1,253.

The defendant moved to set aside the judgment, swearing that he had failed to enter an appearance owing to a misapprehension, denying positively that he owed the plaintiff anything, and alleging that he at one time owed him $250, but that it had been satisfied by the plaintiff taking one A. as his debtor instead of the defendant, and further, that if the debt had not been satisfied by A. it was barred by the Statute of Limitations. No affidavit was filed on behalf of the plaintiff verifying the debt, and the arrangement as to substituting A. was not denied. A local judge set aside the judgment, but only on the terms that the defendant should give security for or pay into court the sum of $250.

Held, that if upon an application by the plaintiff, under Rule 80 or Rule 324, for leave to enter judgment, such a defence had been sworn to, and such circumstances had appeared, the application would not have been granted, and payment into court of security would not have been exacted from the defendant as a condition of his being allowed to defend; there is no substantial difference between the case where a party seeks the right to defend before judgment signed, and the case where the judgment has been signed on account of a slip or misapprehension, and the defendant makes out a case, giving him the right to defend; and therefore terms should not have been imposed upon the defendant. The disposal by the defendant of his property liable to execution since the service of the writ of summons upon him was not a matter to disentitle him to relief that otherwise could not properly have been denied him.

Reumachs v. *Mesquita*, 1 Q. B. D. 418, followed.

Semble, if the defendant's statements were true the plaintiff would not have been entitled to interest on the amount of his claim, and the judgment would have been irregular.

Aylesworth, for the plaintiff.

C. J. Holman, for the defendant.

Boyd, C.] [March 14.

FRASER ET AL. v. JOHNSTON ET AL.

Jury notice—Equitable claims—Demurrer.

Where the plaintiffs claimed specific performance of a contract to supply them with milk for a cheese factory upon certain terms, and in the alternative damages, and the defendant asked for rectification of the contract, a jury notice was struck out.

Held, that where a party seeks equitable relief to which he is not entitled, the opposite party should, unless in a very clear case, demur, instead of attacking the pleading indirectly by asking to have a jury.

Bingham v. *Warner*, 10 P. R. 621, commented on.

Hoyles, for defendants.

Holman, for plaintiffs.

CORRESPONDENCE.

TAXING OFFICERS.

To the Editor of the LAW JOURNAL:

DEAR SIR,—I take the liberty, as an old subscriber to the LAW JOURNAL, to enclose you a "plaintive petition" in rhyme to those unfeeling gentry, the taxing-masters. Vigorous prose has hitherto failed to melt them in their ruthless butchering of our bills. They forget that they are not alone in the butcher business, and that in equity at least there should be a "mutual remedy." Let them paste this rhyming plaint in the crowns of their hats until, at least, the N. P. protects the manufacturers of costs like the manufacturers of cottons.

IN RE BUTCHER.

A plaintive petition to Taxing Officers generally by every solicitor with a young and growing family.

Thou who cents and dollars after
Cents and dollars lop'st away,
Often with unfeeling laughter,
From the bills that clients pay.
Faster goes the cash and faster,
Our insides with meat to fill;
Taxing Master, Taxing Master,
Tax, oh tax, my butcher's bill!

Oh! the price that beef and mutton
Cost me for my humble board!
Butchers never care a button
Veal that we can scarce afford.
When we lay it on like plaster,
Thou dost take the thick off still;
Taxing Master, Taxing Master,
Tax, oh tax, my butcher's bill!

Fish with meat hath risen in measure,
Poultry out of reach far fly;
Game is a forbidden pleasure,
Being e'en more than ever high.
Dearth of food 's a dire disaster,
Would thou could'st avert that ill;
Taxing Master, Taxing Master,
Tax, oh tax, my butcher's bill.

Berlin. JOHANN.

[Our plaintive friend forgets that judges who make tariffs and taxing masters who interpret them are no longer practising lawyers. Some of them who might be named were once known to be keen hands at a bill of costs, and outspoken on the subject of the "butcher knife." It is somewhat remarkable that when these persons retire on a salary they undergo a change in their views as to costs and what used to appear very reasonable becomes excessive. We suppose it is because "misfortune likes company."]

Law Society of Upper Canada.

OSGOODE HALL.

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. 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.

9. 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.

10. 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.

11. 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.

12. Articles and assignments must not be sent to the Secretary of the Law Society, but must be filed with either 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.

13. 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.

14. Service under articles is effectual only after the Primary examination has been passed.

15. 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 vear and his Second in the first six months of his third year. One year must elapse between First and Second Intermediates. See further, R.S.O., ch. 140, sec. 6, sub-secs. 2 and 3.

16. 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.

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

18. 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.

19. No information can be given as to marks obtained at examinations.

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

FEES.

Notice Fees	$1 00
Students' Admission Fee	50 00
Articled Clerk's Fees	40 00
Solicitor's Examination Fee	60 00
Barrister's " "	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 1887, 1888, 1889 AND 1890.

Students-at-law.

CLASSICS.

1887.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. I.
- Cæsar, Bellum Britannicum.

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, In Catilinam, II.
- Virgil, Æneid, B. V.
- Cæsar, Bellum Britannicum.

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.

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

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.

Critical reading of a Selected Poem:—
1887—Thomson, The Seasons, Autumn and Winter.
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.
1886 } Souvestre, Un Philosophe sous le toits.
1888 } Souvestre, Un Philosophe sous le toits.
1890 } Souvestre, Un Philosophe sous le toits.
1887 } Lamartine, Christophe Colomb.
1889 } Lamartine, Christophe Colomb.

or, NATURAL PHILOSOPHY.

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

ARTICLED CLERKS.

In the years 1887, 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidates, 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; 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.

Taylor 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. 1, containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris' 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 examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

Copies of Rules, price 25 cents, can be obtained from Messrs. Rowsell & Hutchison, King Street East, Toronto.