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DIARY FOR OCTOBER.

17. Sat.....County Court and Surrogate Term (York) end.
18. *Sun*.....*20th Sunday after Trinity.*
21. Wed.....Battle of Trafalgar, 1805.
23. Fri.....Lord Monck, Gov.-General, 1861. Lord Lansdowne, Gov.-General, 1883.
24. Sat.....Sir J. H. Craig, Governor-General, 1807.
25. *Sun*.....*21st Sunday after Trinity.* Battle of Balaclava, 1854.
27. Tues.....Sittings of Sup. Court. Primary Examinations.
28. Thur.....Graduates seeking admission to Law Society to present papers.
31. Sat .....Hallow E'en.

TORONTO, OCTOBER 15, 1885.

A CORRESPONDENT calls attention in language apparently none too strong to an act of the Ontario Legislature passed last session in the interests of the lumbermen on the Ottawa. If there is any explanation to be given for such exceptional legislation it would be well that it should be given. At present it has a very fishy appearance.

RECENT ENGLISH DECISIONS.

The *Law Reports* for September comprise 15 Q. B. D. pp. 313-402, and 29 Chy. D. pp. 749-892.

NEGLIGENCE—VENDOR CONSIGNING GOODS IN DEFECTIVE TRUCK—LIABILITY OF VENDOR TO SERVANT OF VENDEE.

Taking up first the cases in the Queen's Bench Division, we have the decision of a Divisional Court composed of Grove and Smith, JJ., in *Elliott* v. *Hall*, 15 Q. B. D. 315, which was an action brought to recover damages for injuries sustained by the plaintiff through the negligence of the defendant. The circumstances of the case were these: the defendant was a colliery owner, and consigned coals to the plaintiff's master in a truck rented by the defendant from a waggon company. Through the negligence of the defendant's servants, the truck was allowed to leave the colliery in a defective state. In consequence of the defect in the truck, injury was occasioned to the plaintiff who was employed by the consignee in unloading the coals and had got into the truck for that purpose. The Court held that the defendant was liable. The principal point in the case is thus stated by Grove, J.:

"It is contended that there is no duty because there was no contract with the plaintiff; but the plaintiff was acting as the servant of the company with whom the contract was made, and the defendant must have known that the buyers would not unload the coal themselves, and that their servants would do so. Under these circumstances it seems to me clear that there was a duty not to be guilty of negligence with regard to the state and condition of the truck."

LARCENY BY INFANT BAILEE.

A very full Court, composed of Coleridge, C.J., and Cave, Day, Smith and Wills, JJ., were called upon to determine in the *Queen* v. *McDonald*, 15 Q. B. D. 323, whether an infant over fourteen years, who had fraudulently converted to his own use goods which had been delivered to him by the owner under an agreement for the hire of the same, could be guilty of larceny. The contention for the prisoner was that the offence depended on the existence of a contract of bailment; that being an infant he could not make such a contract, and could not therefore be guilty as a bailee under the Imp. Stat. 24 & 25 Vict. c. 96, s. 3 (see 32 & 33 Vict. c. 21, s. 3, D.), and he could not be guilty at common law, because the owner had given him legal possession of the goods. But the Court were unanimously of opinion that to constitute him a bailee within the meaning of the statute it was unnecessary that he should be able to bind himself by a contract of bailment. The fact that there is usually a contract, express or implied, to restore the goods bailed, they held, was not of the essence of bailment, which simply consists in the delivery of an article upon a trust or condition; but rather a contract that arises out of the bailment, and that an infant might be a bailee, though not bound by any contract, express or

implied, to restore the goods bailed. As Lord Coleridge put the case:—

"He is guilty of the offence, not because he has broken a contract which he was incapable of making, but because, being capable of becoming a bailee of these goods, and having become one, he dealt with the goods in such a manner as, by the terms of the Act, to render him guilty of the crime of larceny."

Doubts having been raised as to the correctness of this decision, the case was subsequently re-argued before Lord Coleridge, Grove and Denman, JJ., Pollock, B., Field, J., Huddleston, B., Manisty, Hawkins, Mathew, Cave, Day, Smith, and Wills, JJ., when it was announced that a majority of the judges were of opinion that the conviction was right.

MORTGAGE—FIXTURES—DRIVING BELT OF MACHINERY.

In *Sheffield* v. *Harrison*, 15 Q. B. D. 358, the Court of Appeal, approving *Longbottom* v. *Berry*, 5 Q. B. 123, held that a leather belt used for driving machinery on mortgaged property was part of the machinery, which, as fixtures passed, to the mortgagee, without the necessity of his registering any bill of sale.

AGENT BETTING FOR PRINCIPAL—ACTION BY PRINCIPAL TO RECOVER FROM AGENT MONEY WON BY BETTING.

The Court of Appeal in *Bridger* v. *Savage*, 15 Q. B. D. 363, while affirming Coleridge, C.J., overrule *Beyer* v *.Adams*, 26 L.J., Chy. 841, and hold that when a man employs another to bet for him, and the agent accordingly bets and wins, and receives the money, the principal may recover from the agent the money so received, notwithstanding that, by Impl. Stat. 8 & 9 Vict. c. 109 sec. 18, all contracts by way of wagering are null and void. The ground of the decision is thus stated by Bowen, L.J.:—

"Now with respect to the principle involved in this case, it is to be observed that the original contract of betting is not an illegal one, but only one which is void. If the person who has betted pays his bet he does nothing wrong; he only waives a benefit which the statute has given him, and confers a good title to the money on the person to whom he pays it. Therefore when the bet is paid the transaction is completed, and when it is paid to an agent it cannot be contended that it is not a good payment for his principal. If not, how monstrous it would be that the agent who has received money which belongs to his principal, and which he received for his principal, and only on that account, should be allowed to say that the payment was bad and void. The truth is that the contract under which he received the money for his principal is not affected by the collateral contract, under which the money was paid to him."

The rule, therefore, is established by this case, that when an agent receives money for his principal under a void contract, he cannot set up the invalidity of the contract under which the money was paid, as a defence to an action by the principal for the money so had and received.

MARINE INSURANCE—CONCEALMENT BY INSURER OF A MATERIAL FACT.

Tate v. *Hyslop*, 15 Q. B. D. 368, is an important decision by the Court of Appeal, affirming the judgment of a Divisional Court of the Queen's Bench Division, on a question of mercantile law. The action was brought to recover on certain policies of marine insurance. At the time of effecting the insurance, which included risks to crafts and lighters, it was known to the plaintiff that the underwriters charged a higher rate of premium when the insurance was "without recourse to lightermen" (which meant where the lighterage was to be done on the terms that the lightermen were not to be liable as common carriers, but only for negligence) than they charged when there was such recourse, and the lightermen were liable as common carriers. At the time of effecting the insurance the plaintiff had an arrangement with a lighterman to do all the plaintiff's lighterage on the terms that he was only to be liable for negligence. This arrangement the plaintiff did not communicate to the underwriter. The loss occurred whilst the goods insured were on the lighters. The question for the Court was whether the concealment of the arrangement with the plaintiff's lighterman invalidated the policy; and the Court held that it did. The rule of law on which the Court proceeded is thus laid down by Bowen, L.J.:—

"It is established law that a person dealing with underwriters must disclose to them all the material facts that are known to himself and not to them, or, at all events, are facts which they are not bound to know. What are material facts has been defined by authority. It is the duty of the assured to communicate all facts within his knowledge which would affect the mind of the underwriter at the time the policy is made, either as to taking the contract of insurance, or as to the premium on

which he would take it. The materiality of the fact depends upon whether or no a prudent underwriter would take the fact into consideration in estimating the premium, or in underwriting the policy. The rule has been laid down over and over again and is to be found in *Ionides* v. *Pender*, 9 Q. B. 531, and other cases."

PRINCIPAL AND AGENT—CUSTOM OF STOCK EXCHANGE CONFLICTING WITH STATUTE.

The only remaining case to be noticed in the Queen's Bench Division is that of *Perry* v. *Barnett*, 15 Q. B. D. 388, a decision of the Court of Appeal. The action was brought by a broker to recover the price of certain bank shares purchased at the defendant's request. The plaintiffs were stock-brokers, living at Bristol, and the defendant had instructed them to purchase for him shares in the Oriental Bank, a joint stock banking company, on the London Stock Exchange. The plaintiffs gave directions accordingly to their London agents, brokers on the London Stock Exchange, who purchased the shares in the usual way, without having in the contract the distinguishing numbers of the shares specified, as required by the Impl. Stat. 30 & 31 Vict. c. 29, which invalidates contracts not complying with this provision, there being a custom on the London Stock Exchange to disregard the provisions of that Act; but of this custom the defendant was ignorant. By the rules of the Stock Exchange, the Stock Exchange does not recognize in its dealings any other persons than its own members, who are liable to be expelled if they do not carry out contracts, and no application to annul a contract can be entertained by the committee of the Stock Exchange—unless upon a specific allegation of fraud or wilful misrepresentation. Before the settling day the Oriental Bank closed its doors, and the defendant repudiated the contract; but the committee of the Stock Exchange refused to annul the contract and, therefore, the plaintiffs completed it, and paid the price of the shares. The defendant did not know that, by the usage of the Stock Exchange, the purchasing broker was bound to perform a contract for the purchase of bank shares though void at law. Under the above-mentioned Act, Bowen, L.J., at p. 397, says:—

"The question is narrowed to this. Is a man who employs a broker to deal in a particular market bound to know a usage there to make an invalid, instead of a valid contract, and a usage, according to which, when he has ordered one thing he is expected to take another thing? It would not be reasonable, I think, to hold that a person is bound by such a usage, unless beforehand he was told or had knowledge of it. Such a usage, when applied not to brokers, but to strangers who are ignorant of it, is inconsistent with the contract of employment."

COVENANTS RUNNING WITH LAND—ROAD—DEDICATION.

Turning now to the cases in the Chancery Division we come to *Austerberry* v. *Oldham*, 29 Chy. D. 750, a decision of the Court of Appeal, which, although it turns to some extent on statutes of merely local operation, nevertheless also establishes a principle of sufficient general interest to warrant a notice of it in these columns. One A. by deed conveyed for value to trustees in fee a piece of land as part of the site of a road, intended to be made and maintained by the trustees, under the provisions of a contemporaneous trust deed (being a deed of settlement for the benefit of a joint stock company, established to raise the capital for making the road); and in the conveyance the trustees covenanted with A., his heirs and assigns, to make the road, and at all times keep it in repair, and allow the public to use it subject to the payment of tolls. But A. and his assigns were to have free use of the road. The piece of land so conveyed was bounded on both sides by other lands of A. The trustees made the road and afforded access to A.'s adjoining lands. A. afterwards sold his adjoining lands to the plaintiff, and the trustees sold the road to the defendants, a municipal corporation, both parties taking with notice of the covenant to repair. The defendants' corporation declared the road in question a public highway, and by virtue of an Act of Parliament the same thereby became "a highway repairable by the inhabitants at large," and the defendants claimed to assess the plaintiffs for sewering, draining, and paving the road. The plaintiff brought the action against the corporation and trustees, claiming a declaration that they were not entitled to recover from the plaintiff any sum for keeping the road in good repair, and to restrain the defendant corporation from enforcing payment; or, in the alternative, a declaration that the trustees should indemnify the plaintiff out of the purchase money they had received against the charges for keeping

the road in repair. It will thus be seen that one of the principal questions raised was as to the effect of the covenant to repair the road contained in the original conveyance, and how far it was binding upon the subsequent owners of the land reserved, and of the roadway respectively. The Court were unanimously of opinion that the covenant to repair did not run with the land and did not bind the subsequent owners of the roadway, nor was the plaintiff as owner of the adjoining land entitled to enforce it. Cotton, L.J., says, at p. 773:—

" . . . Undoubtedly where there is a restrictive covenant, the burden and benefit of which do not run at law, Courts of Equity restrain any one who takes the property with notice of that covenant from using it in a way inconsistent with the covenant. But here the covenant, which is attempted to be insisted upon on this appeal, is a covenant to lay out money in doing certain work upon this land; and that being so in my opinion—and as the Court of Appeal has already expressed a similar opinion in a case which was before it—that is not a covenant which a Court of Equity will enforce; it will not enforce a covenant not running at law when it is sought to enforce that covenant in such a way as to require the successors in title of the covenanter to spend money, and in that way to undertake a burden upon themselves."

The plaintiff's action was therefore dismissed against all the defendants.

MORTGAGE—FUND IN COURT—PRIORITY—STOP ORDER.

The case of *Re Holmes*, 29 Chy. D. 786, is a decision of the Court of Appeal affirming Bacon, V.-C., and was a contest for priority between two encumbrancers on a fund in Court; the second encumbrancer took his encumbrance with notice of a prior encumbrance; he, however, obtained a stop order against the fund, which the first encumbrancer did not. It was nevertheless held, that the second encumbrancer was not entitled to priority.

PRINCIPAL AND AGENT—DIRECTOR—MISFEASANCE.

The decision of the Court of Appeal in *Re Cape Breton Co.*, 29 Chy. D. 795, may be read in connection with the recent case in our own Court of Appeal of *Beatty* v. *North-West Transportation Co.*, 11 App. R. 205. In 1871 F. and five other persons purchased certain coal areas for £5,500, which were conveyed to G. as trustee for them without disclosing the trust. In 1873 a company was formed for the purpose of purchasing these areas and other property. F. was one of the directors, and as such he concurred in effecting a purchase from G. for £12,000 cash and £30,000 in fully paid-up shares, without disclosing that he, F., was a part owner. In 1875 the company was ordered to be wound up. In 1878 two schemes were submitted to a meeting of contributories, one for repudiating the purchase of the coal areas, and the other for adopting the purchase and selling the property. The latter scheme was adopted, and the property was sold at a heavy loss. A contributory then took out a summons to make F. liable for misfeasance as a director in allowing the company's seal to be affixed to the contract for purchase from G. Pearson, J., dismissed the application, holding that though the company would have been entitled to rescind the contract, yet as rescission had become impossible no relief could be given against F. That as F. when he purchased was not a trustee for the company, he could not be treated as having purchased on behalf of the company at the price he gave, and, therefore, was not chargeable with the difference between the price at which he bought and the price paid by the company; and that he could not be charged with the difference between the price paid by the company and the value of the property when the company bought it, as that would be making a new contract between the parties. Cotton and Fry, LL.J., agreed in affirming this decision, but Bowen, L.J., dissented. Cotton and Bowen, LL.J., are not very clear as to whether they treat the relation existing between a director and shareholders as that of trustee and *cestui que trust*, or principal and agent. Fry, L.J., plainly asserts the relation to be that of principal and agent, as do Burton and Osler, JJ.A., in *Beatty* v. *North-West Transportation Co.* Fry, L.J., says, at p. 812:—

"I think that the case is one in which the adoption of the contract by the principal puts an end to any further rights against the agent. It appears to me that to allow the principal to affirm the contract, and after the affirmance to claim, not only to retain the property, but to get the difference between the price at which it was bought and some other price, is, however you may state it, and however you may turn the proposition about, to enable the principal, against the will of his agent, to enter into a new contract with the agent, a thing which

is plainly impossible, or else it is an attempt on the part of the principal to confiscate the property of his agent, on some ground which, I confess, I do not understand."

Dealing with the claim to recover the profits as having been made surreptitiously, he says:—

"It appears to me that the answer to that is this, that whatever the profits are, and however they are to be measured, those profits result, not from the original contract, but from the affirmance of the contract by the principal, and that therefore the profits which are made by the agent are neither clandestine nor surreptitious."

BILL OF EXCHANGE—SPECIFIC APPROPRIATION OF GOODS —STOPPAGE IN TRANSITU.

In *Phelps* v. *Comber*, 29 Chy. D. 813, we have a decision of the Court of Appeal affirming the judgment of Bacon, V.-C., on a question of mercantile law. A firm at Pernambuco received orders from persons there, to purchase goods in New York. They instructed a Liverpool firm to procure the goods, and the Liverpool firm employed B. as their agent at New York. B. purchased the goods and shipped them to Pernambuco, and sent the bills of lading to the firm there, and he drew bills on the Liverpool firm to pay for the goods, but not for the precise amounts of the shipments. B. advised the Liverpool firm of the bills. and with the advice forwarded a statement of his account. To each bill was attached a counterfoil headed, "Advice of draft," and containing particulars of the bill with the words, "Against shipments per (naming the vessel) please protect the draft as advised above." The Liverpool firm accepted the bills and detached the counterfoils which they retained. The plaintiffs were holders of the bills for value. On the 10th June, 1879, the Liverpool firm having stopped payment, B. telegraphed the Pernambuco firm, "Having pledged documents and shipments (naming vessel) hold proceeds for P. & Co. (the plaintiffs)." The ship arrived on the 11th, but the bills of lading had been previously delivered to the purchasers of the goods. The plaintiffs brought the action against the Pernambuco firm, claiming to have the bills paid out of the proceeds of the goods, as having been specifically appropriated to meet the bills, and also relying on the telegram as amounting to a stoppage *in transitu*. But Bacon, V.-C., held that there had been no specific appropriation of the goods to the payment of the bills, and that the telegram was not effectual to stop the goods *in transitu*, and the Court of Appeal affirmed this conclusion, distinguishing the case from *Frith* v. *Forbes*, 4 D. F. & J. 409, on the ground that the memorandum attached to the bills was not sent to the consignees of the goods, and the Court of Appeal adopt the language of James, L.J., in *Robey* v. *Ollier*, L. R. 7 Chy. 698, where he says:—

"I am not prepared to say that merely because a bill of exchange purports to be drawn against a particular cargo it carries a lien on that cargo into the hands of every holder of the bill."

The telegram was held to indicate no intention on the part of B. to stop the goods *in transitu*, but merely a direction to deal with the proceeds, which he had no right to give.

ALTERATION OF ORDER AFTER ITS ISSUE.

Blake v. *Harvey*, 29 Chy. D. 827. which involves a question of practice, is a decision of the Court of Appeal, reversing Kay, J. A motion having been made before a chief clerk, who occupies a position somewhat analogous to that of our Master in Chambers, he pronounced the usual order for an account and foreclosure. The defendants objected to the direction for foreclosure, and the plaintiff assenting, the order was drawn up for an account only, and was passed and entered in that form. When the parties came before the chief clerk to proceed with the reference, he refused to proceed, because the order was not drawn up as he had pronounced it, and subsequently the registrar, at the instance of the chief clerk, without any order or summons, altered the order by adding the usual direction for foreclosure. The defendants then moved to strike out the additions. Kay, J., held the order wrong in either form, and stayed all proceedings under the order as altered, and gave the plaintiff leave to make further application to a judge in chambers for a proper order. The defendants appealed, and the appeal was allowed. Fry, L.J., says:—

"I think the course taken as to this record was entirely irregular. The records of the Court ought not to be altered, except in the manner provided in the Rules. Mr. Justice Kay thought he should do justice by staying proceedings under the order, but as the record was altered in an unauthorized way, the right course, in my opinion, would have been to

direct it to be restored to its proper form by striking out the unauthorized additions which we now do."

WILL—CONSTRUCTION—"SURVIVING."

The Court of Appeal, in *Re Benn, Benn* v. *Benn*, 29 Chy. D. 839, were called on to determine the proper construction of a will whereby a testator devised to each of his children an estate for the life of that child, with remainder to the children of that child; and in case any or either of the testator's children should die without leaving any child or children, him, her or them surviving, then the estate to which their child or children respectively would have been entitled under the will if living, were devised to the testator's *surviving* children for their respective natural lives, and after their deceases their respective shares were devised to their respective children. There was no gift over on the death of all the testator's children without leaving issue. C., one of the testator's children, died without leaving issue. Some of the other children survived him, others had died leaving children living at C.'s death. The question was whether the brothers and sisters of C., who actually survived him, and their respective children were alone entitled to his share, or whether the children of the brothers and sisters who had predeceased him were also entitled to participate in it. Kay, J., held that the word "surviving" must be construed literally, and that therefore only the brothers and sisters who actually survived C. and their children were entitled, and this conclusion was confirmed by the Court of Appeal.

BILL OF EXCHANGE—SPECIFIC APPROPRIATION OF GOODS FOR PAYMENT OF BILL.

Brown v. *Kough*, 29 Chy. D. 848, to which we now come, is a decision of the Court of Appeal. The question involved in it is somewhat similar to that discussed in *Phelps* v. *Comber*, which we have noted *ante*, p. 349. A bill of exchange on its face contained a direction "to charge the same on account of cheese per *Britannic* and lard per *Greece* as advised;" the drawers, on the same day as the bill was dated wrote to the drawee a letter of advice enclosing bills of lading for the cheese and lard, and informing the drawee that as against these they had drawn on him in favour of the payee at sixty days' sight. The drawers having suspended payment the drawee refused to accept the bill; but on the arrival of the consignments in England the drawee took possession of, and realized them, and claimed to retain out of the proceeds a balance due on the general account between him and the drawers. The payee of the bill then brought the present action, claiming the right to be paid the amount of the bill out of the proceeds of the consignments, in priority to all other persons, on the ground that the bills of exchange amounted to a specific appropriation of the goods to meet the bill. But the Court of Appeal agreed with Chitty, J., that the bill had not that effect. Fry, L.J., quotes with approval the remark of Mellish, L.J., in *Rober* v. *Ollier*, L. R. 7 Chy. 699, where he says:—

"The indorsement of a bill gives only a right to the bill, and I do not think any mercantile man would suppose, because he saw in the bill the words 'which place to account of cargo A," that he was to have a lien on that cargo. A mercantile man who is intended to have a lien on a cargo expects to have the bill of lading annexed; if there is no bill of lading annexed, he only expects to get the security of the bill itself."

STATUTE OF LIMITATIONS—PAYMENT OF INTEREST—ENTRY AGAINST INTEREST.

Whatever may be thought of the morality of Statutes of Limitations, there can be no doubt they are sometimes made use of to defeat honest claims. *Newbould* v. *Smith*, 29 Chy. D. 883, is an instance of this. The action was brought in 1884 on two mortgages for foreclosure. The mortgagor set up the Statute of Limitations. As to one of the mortgages, which was by deposit, there was no evidence of payment of interest since 1866, except an entry in the books of the deceased mortgagee of £50, as paid in 1878 by the mortgagor as rent and interest, the mortgagor at that time having parted with his equity of redemption. As to the other mortgage, it was established that the solicitor for the mortgagor had paid interest to the mortgagee, and that it had been taken into account between the mortgagor and his solicitor up to 1866; and that from that time the solicitor continued to pay the interest, but no proof could be adduced that he acted as agent for the mortgagor, or that the latter had furnished the money. Upon this state of facts it was held by North, J., that the entry in the deceased mortgagee's books, though, as an acknowledgment of money received, it was against

the interest of the person who made the entry, yet as it would prove the revival of a debt then barred, it was for his interest, and therefore could not be received on behalf of his representatives; and that, even if receivable in evidence, it would not support the plaintiff's case; and as to the payment of interest on the second mortgage, in the absence of proof that the mortgagor authorized or adopted the payments made by the solicitor, they were insufficient to take the case out of the Statute of Limitations. The learned judge concludes his judgment thus:—"Although I think it clear that the mortgage debt has never been paid, yet having regard to the time that has elapsed since any payment or acknowledgment was made, the plaintiff's claim fails and the action must be dismissed with costs." It is certainly somewhat alarming to find that interest may be regularly paid on a mortgage, and notwithstanding that the mortgagee may be barred of recovering the principal, unless he has taken care to preserve evidence that the person paying the interest was duly authorized to do so by the mortgagor.

TRUSTEES—INVESTMENTS—UNCONTROLLED DISCRETION.

The only case remaining to be noticed in the Chancery Division is *In re Brown*, *Brown* v. *Brown*, 29 Chy. D. 889, in which certain trustees (who were also executors) having an uncontrolled power of investment of moneys of an estate, before the commencement of an action to administer the estate, had in exercise of this power invested moneys of the estate in the purchase of bonds of a foreign government, bonds of a colonial railway company, and shares of a bank on which there was a further liability. The chief clerk, in taking the accounts of the testator's estate, disallowed the trustees the moneys applied in the purchase of the bonds and shares. But Pearson, J., although holding that the investments in question ought not to be retained, nevertheless, as the trustees had acted *bona fide* and no loss had resulted to the trust estate, allowed the sums which had been laid out in making the investments.

SELECTIONS.

LAND LAW REFORM.

The letter of Mr. Davey, Q.C., on the subject of the reform of the land law is of great interest and importance. Not only is it the letter of an able lawyer and conveyancer, but of a man who in the natural course of events may be expected to have the opportunity of carrying his ideas into effect. Mr. Davey appears to look forward in the future to a system of registration of titles, and he justly points out that the difficulty of obtaining a land register lies in the transition from the present complicated system of settlements to the simplicity of registered indefeasible titles. It is not clear whether Mr. Davey means the proposals which he makes to take the place of a land register, for which we must wait until matters have simplified themselves, or whether he considers that a land register could now be introduced. A general requirement of compulsory registration would do much injustice, because much land in the country is held on titles which would not bear investigation, although the holders have a good possessory title. On the other hand, too much stress must not be laid on the advantages of what is called the free transfer of land. The worst use to which you can put land is constantly to change its owners. The use of land is in cultivating it, and not in buying and selling it. It is true that the cost of transferring land is excessive when compared with the cost of transferring other property. This is generally attributed to the wickedness of lawyers; but its cause is, first, the complication of the law of real property, which requires time and care to apply to particular titles; and, secondly, the stamp, the cost of which is popularly supposed to go into the yawning pocket of the lawyer, but which, in fact, goes to the Exchequer. Mr. Davey's proposals are not complete, as he looks forward to an ideal as to the present practicability of which he does not give his opinion, but the suggestions which he makes of immediate changes of the law deserve, so far as they go, to be considered one by one. The first suggestion is to abolish primo-

geniture in case of intestacy. Probably there will be little opposition to this proposal; although many will not agree with Mr. Davey's reason for supporting it. He says that "where the State makes a will for a man it should do that which a prudent person actuated by moral considerations would do." Is it not rather that the State should make such a will as it considers most for the advantage of the State that a man should make? The *rationale* of primogeniture was the keeping of landed property together. Opinions now differ as to the soundness of this policy, and if there is any general feeling that real property ought to be distributed instead of being kept together, there is no strong reason why it should not. The proposal, however, would re-open the Statute of Distributions. According to that statute, if the wife die intestate everything goes to the husband, and there are other provisions which would become more important when applied to realty. Mr. Davey, as appears from the bill which was brought in by him, and to which he refers in his letter, would not apply them bodily, but a revision of the statute in its application to real property would give rise to a very heated controversy, which it would be most undesirable to arouse. Everyone would consider himself competent to take part in the fascinating occupation of giving away other people's property, and no two persons would agree how it should be done. The difficulty about abolishing primogeniture is not that people care very much about it—to the majority of us it is a matter of indifference; but we are accustomed to it, and it would be difficult to find a general agreement upon a substitute. Upon the principles of the change there could be no valid reason why any distinction should be drawn between real and personal property; and yet most Englishmen would shrink from applying the Statute of Distributions, which was drawn on the assumption that real property would go to the heir, bodily to the inheritance of land. The extension of the Thellusson Act, so as to prohibit accumulations altogether, will probably not meet with much objection. It has no special connection with the question in hand, as the Act applies equally to realty and personalty, and it cannot be supposed that Mr. Davey when he refers to "rents and profits" does not include the income of personal estate. Mr. Davey's next suggestion is to repeal the statute *De donis*, and thereby abolish the estate tail. We suppose he would do something more than abolish the statute, because, by merely so doing, he would revive the operation of a grant to the heirs of the body as a conditional grant, the condition of which was satisfied, so that the land might be sold, on the birth of heirs of the body. What Mr. Davey means is to turn estates tail into estates in fee-simple subject to a gift over on death under the age of twenty-one. This raises the question whether it is expedient to destroy estates tail; and the same question is raised in regard to Mr. Davey's last proposition — namely, to abolish the power of creating life interests. Mr. Davey would enable a testator to give a life estate to his widow only. This concession would seem to let in others. If a testator for his widow, why not a testatrix for her widower, and why not an intending wife for her children? If life estates are abolished in the case of realty, they must also be abolished in the case of personalty. It would be absurd, to insist, for example, that the terms of an ordinary marriage settlement should not be affixed to land but may be to personalty. The effect would be to depreciate the value of land in a way not intended by the promoters. The question, therefore, raised by Mr. Davey is whether property ought to be allowed to be tied up for a life; and the answer which he gives is that it ought not. We are able to see that in the case of land the abolition of life interests would simplify titles and be a long step towards an effective system of registration, but to make such a change with such an object would be to sacrifice substance to form. The expeditious buying and selling of land is not such an object that people should be forbidden from prudently making provision for the future. In order to substantiate his case, Mr. Davey ought to show that it is for the general benefit of society that property of all kinds should change hands as quickly as possible, and that its accumulation either in the hands of individuals or families should everywhere be discouraged. This may be true; but we doubt whether at present it obtains general assent.

It will be seen that Mr. Davey, in dis-

cussing land law reform, is necessarily led into the discussion of the laws of property. The only points discussed in his letter, in which the law is different as to land and as to other things, are primogeniture, administration, and estates tail. As to the first of these, there is practically a general agreement, or, at least, an indifference to change, so far as the principle is concerned; but there are difficulties in carrying it out. The proposal that the executor and the administrator shall be the real as well as the personal representative of a deceased person has often been made, and nearly as often approved. There is no reason why this change should not be made apart from the others, and any lingering difference there may be between the liability of the realty and personalty of a deceased person for his debts abolished once for all. The change would be convenient, and a great saving of expense and friction. With regard to the abolition of estates tail, Mr. Davey would probably not think the change worth while unless life estates in land were abolished too; and life estates in land, as we have seen, involve life estates in personalty. The estate tail is used by persons desirous of founding or maintaining a family, and is the basis of the property of the peers and squires of the country. The drawbacks which it possesses in the way of defrauding creditors and keeping land out of the market are now very slight. Possibly it may be capable of further amendment in these respects; but care should be taken that it should not be abolished simply because it may be obnoxious to the envy of certain rather clamorous persons. Mr. Davey's statement in regard to tenants for life, that their interest is "to take as much out of the land and put as little into it as possible, reckless of bad cultivation, deterioration, and impoverishment," is not confined to tenants for life in the technical sense. After all, no one can be practically more than a tenant for life, and the less land is allowed to be settled the less will be the interest taken in it and the inducement to treat it well.—*Law Journal.*

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT.

From Exchequer Court.]

WINDSOR AND ANNAPOLIS RAILWAY COMPANY (*Appellants*), AND THE QUEEN AND THE WESTERN COUNTIES RAILWAY COMPANY (*Respondents*).

Petition of right—Agreement with Government of Canada for continuous possession of railroad—Construction of—Breach of, by Crown in assertion of supposed rights—Damages—Joint misfeasor—Judgment obtained against—Effect of, in reduction of damages—Pleading—37 Vict. ch. 16.

By an agreement entered into between the Windsor and Annapolis Railway Company and the Government, approved and ratified by the Governor-in-Council, 22nd September, 1871, the Windsor Branch Railway, N. S., together with certain running powers over the trunk line of the Intercolonial, were leased to the suppliants for the period of twenty-one years from 1st January, 1872. The suppliants under said agreement went into possession of said Windsor Branch and operated the same thereunder up to the 1st August, 1877, on which date C. J. B., being and acting as Superintendent of Railways, as authorized by the Government (who claimed to have authority under an Act of the Parliament of Canada, 37 Vict., ch. 16, passed with reference to the Windsor Branch, to transfer the same to the Western Counties Railway Company otherwise than subject to the rights of the Windsor and Annapolis Railway Company), ejected suppliants from and prevented them from using said Windsor Branch and from passing over the said trunk line; and four or five weeks afterwards said Government gave over the possession of said Windsor Branch to the Western Counties Railway Company, who took and retained possession thereof. In a

suit brought by the Windsor and Annapolis Railway Company against the Western Counties Railway Company for recovery of possession, etc., the Privy Council held that 37 Vict. ch. 16, did not extinguish the right and interest which the Windsor and Annapolis Railway Company had in the Windsor Branch under the agreement of 22nd September, 1872.

On a petition of right being filed by suppliants, claiming indemnity for the damage sustained by the breach and failure on the part of the Crown to perform the said agreement of the 22nd September, 1872, the Exchequer Court of Canada (GWYNNE, J., presiding) held that the taking the possession of the road by an officer of the Crown under the assumed authority of an Act of Parliament was a tortious act for which a petition of right did not lie.

Held, on appeal to the Supreme Court of Canada (STRONG and GWYNNE, JJ., dissenting)—The Crown by the answer of the Attorney-General did not set up any tortious act for which the Crown claimed not to be liable; but alleged that it had a right to put an end to the contract, and did so, and that the action of the Crown and its officers being lawful and not tortious they were justified. But, as the agreement was a continuous, valid and binding agreement to which they had no right to put an end, this defence failed. Therefore the Crown, by its officers, having acted on a misconception of or misinformation as to the rights of the Crown, and wrongfully, because contrary to the express and implied stipulations of their agreement, but not tortiously in law, evicted the suppliants, and so, though unconscious of the wrong by such breach, became possessed of the suppliants' property. The petition of right would be for the restitution of such property and for damages.

Prior to the filing of the petition of right, the suppliants sued the Western Counties Railway Company for the recovery of the possession of the Windsor Branch, and also by way of damages for moneys received by the Western Counties Railway Company for the freight or passengers on said railway since the same came into their possession, and obtained judgment for the same, but were not paid. The judgment in question was not pleaded by the Crown, but was proved on the hearing by the record in the Supreme Court of Canada to which an appeal on said cause had been taken and which affirmed the judgment of the Supreme Court of Nova Scotia.

Held, Per RITCHIE. C.J., and TASCHEREAU, J.—That the suppliants could not recover against the Crown, as damages, for breach of contract, what they claimed, and had judgment for, as damages for a tort committed by the Western Counties Railway Company, and in this case there was no necessity to plead the judgment.

Per FOURNIER and HENRY, JJ., that the suppliants were entitled to damages for the time they were by the action of the Government deprived of the possession and use of the road to the date of the filing of their petition of right.

Henry, Q.C., and *McCarthy*, Q.C., for appellants.

Lash, Q.C., for respondents.

From Quebec.]

PICHE v. THE CITY OF QUEBEC.

29 & 30 Vict. cap. 57, secs. 20 and 21 — By-law in pursuance thereof—Validity of—Commercial traveller—Arrest of, for selling without license—Action for illegal arrest—Evidence—Amendment of pleadings by Supreme Court of Canada.

By 29 & 30 Vict. cap. 57, secs. 20 and 21 the City Council of Quebec was authorized to make any by-law to compel any transient merchant or trader, his agents, clerks or employés, or any person selling in the city by samples, to take out a license, and for a violation of the by-law to arrest any such person. On the 12th October, 1866, a by-law was passed, fixing the license fee at sixty dollars, and giving power to the recorder to impose a fine, not exceeding two hundred dollars, to any person convicted of contravening the by-law. One P., a commercial traveller for a firm in Montreal, was taking orders in Quebec for his firm, and had a small screw in his hand as a sample, when he was arrested by a policeman, and brought to the station. He subsequently paid the license, and brought an action against the corporation, complaining of the false and illegal

arrest and imprisonment. The corporation by their plea justified the arrest upon the ground that P. had openly committed a breach of the by-laws and municipal regulations in force, by selling by sample, and without having first obtained a licence.

Held (affirming the judgment of the Court below), HENRY, J., dissenting, that there was sufficient evidence of a breach of the by-law to justify the arrest.

Per STRONG and FOURNIER, JJ.—That the Court would permit an amendment of the pleadings, which would adapt the allegations of the parties to the case as disclosed by the evidence viz.: That P. was following the occupation of a transient merchant or trader, without a license in the city of Quebec, at the time of his arrest.—(HENRY, J., dissenting.)

Appeal dismissed with costs.

MacLaren, for appellant.

Pelletier, Q.C., for respondents.

ATTORNEY-GENERAL OF CANADA v. BANK OF MONTREAL.

Municipal taxation—Property leased to and occupied by the Crown exempt from.

Held (reversing the judgment of the Court below), that property situated in the city of Montreal, being under lease to the Crown, and occupied by officers and servants of the Crown for public and military purposes, is exempt from municipal taxation by the corporation of Montreal.

Appeal allowed with costs.

Church, Q.C., for appellant.

Roy, Q.C., for respondent.

SWEENEY v. BANK OF MONTREAL.

Stock held in trust—Purchase of by a bank—Effect of—Mandatory and pledgee, obligations of a—Action to account—Arts. 1755, 2268, C.C. (P.Q.)

S. brought an action against the Bank of Montreal, to recover the value of stock in the Montreal Rolling Mills Company, transferred to the bank, under the following circumstances. S.'s money was originally sent out from England, to J. R., at Montreal, to be invested in Canada for her. J. R. subscribed for a certain amount of stock in the Montreal Rolling Mills Company, as follows: "J. Rose in trust" without naming for whom, and paid for it with S.'s money. He sent over the certificates of stock to S., and subsequently paid her the dividends he received on the stock. Becoming indebted to the Bank of Montreal, R. transferred to the manager of the bank as security for his indebtedness, some 350 shares of the Montreal Rolling Mills Company, and the transfer showed on its face that he held these shares "in trust." The Bank of Montreal then received the dividends credited to them to J. R., who paid them to S. J. R. subsequently became insolvent, and S. not receiving her dividends, sued the bank for an account.

Held (reversing the judgment of the Court below), STRONG, J., dissenting, that there was sufficient to shew that J. R. was acting as agent or mandatory of S., and the Bank of Montreal not having shewn that J. R. had authority to sell or pledge the said stock, S. was entitled to get an account from the bank, Arts. 1498 and 2268, C.C.

Appeal allowed with costs.

Kerr, Q.C., for appellant.

Laflamme, Q.C., and *Robertson*, Q.C., for respondents.

STANTON v. CANADA ATLANTIC RAILWAY COMPANY.

Judgment by Court of Appeal quashing interim injunction—Not appealable.

In this case on the 1st of September, 1883, Mr. Justice Torrance, of the Supreme Court for Lower Canada, ordered the issue of a writ of injunction, returnable on the 30th day of October then next, enjoining the respondents and certain other persons named from issuing or dealing with certain bonds, until otherwise ordered by the said judge of Court thereof.

About the 13th of November, 1883, the Canada Atlantic Railway Company presented a motion to quash the injunction. On the 13th December following, Mr. Justice Matthieu, of the Supreme Court, declared that the said writ of injunction had been issued without reason *sans cause*, and suspended it until the final adjudication of the action on the merits.

Both the appellants and respondents appealed from this judgment to the Court of Queen's Bench (appeal side), which Court on

the 21st of January last rendered judgment quashing the injunction absolutely.

On the 9th of February following, the appellants gave notice of their intention to appeal to the Supreme Court of Canada, and on the 19th of February presented a petition to Mr. Justice Monk, one of the judges of the Court of Queen's Bench, for the allowance of the appeal. On the 20th of February, Mr. Justice Monk rendered judgment, refusing to allow the appeal on the ground that the judgment quashing the writ of injunction was not a final judgment, and "notwithstanding the offer and sufficiency of the security."

On the 27th of February last, the appellants by their attorneys, served notice of their intention to move before a judge of this Court, to be allowed to give proper security to the satisfaction of this Court, or of a judge thereof, for the prosecution of their appeal to this Court, notwithstanding the refusal of the Court below to accept said security, and notwithstanding the lapse of thirty days from the rendering of the judgment from which they desired to appeal, and further to obtain an extension of time for settling the case in appeal.

This motion came before Mr. Justice Henry, in Chambers, on the 5th March, who enlarged it into Court, and it was on the same day argued at length before the Court.

Held, that the judgment of the Court of Queen's Bench (appeal side), quashing the interim injunction was not appealable.

Motion refused.

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

Durham, Q.C., and *Gormully*, for respondents.

From New Brunswick.]

MACDONNELL ET AL. v. MCMASTER ET AL.

Deed executed, sealed and registered—Effect of—Rev. Stat., N. B. (4th series) ch. 96, sec. 33—Copy of deed—Admissibility of in evidence.

In an action of ejectment brought against respondents the appellants claimed title from H. McM. who conveyed to his son, R. McD., by deed dated June 18th, 1856. On 19th of April, 1869, R. McM. and U. X. mortgaged their interest in the land to appellants, and this mortgage was foreclosed and lands sold and purchased by P. S., who received a sheriff's title. H. McM., defendant in possession, by his plea claimed that he was tenant in common of the premises.

The deed was signed and sealed by H. McM. before two subscribing witnesses and was subsequently registered by one of these witnesses, another son of H. McM.

At the trial, in the absence of the original deed, a copy of the deed, certified by the registrar of deeds, was put in without objection as to the insufficiency of the affidavit required by the statute. There was no evidence of an actual delivery of the original deed by H. McM. to R. McM.

Held, that when the deed was executed and placed on record H. McM. parted with all control over the deed and vested the land in grantee, and respondent was estopped from denying the due execution of the deed to R. McM.

2. That the deed being admitted to have been registered, and a copy of the same admitted at the trial without objection, it was too late now to object to the admissibility of the copy.

Tupper, for respondents.

Chrysler, for appellants.

QUEEN'S BENCH DIVISION.

IN RE CLARK AND THE TOWNSHIP OF HOWARD.

Drainage by-law—46 Vict. ch. 18, sec. 588 (O.)—Validity of by-law—Costs.

A by-law which varies from the provisions of a statute in matters affecting the rights of property and of taxation is invalid. A by-law therefore defining the duties of inspectors of drains, enacting (1) That obstructions wilfully placed in drains should be removed by the parties placing them there. or at their expense, without regard to whether such parties owned the lands through or between which such drains were situate; (2) That if such obstructions were removed by the council the cost should, on completion of the work, be paid by the council—instead of enacting that it should be so paid only in the event of the party chargeable with the obstruction failing to do so; (3) That if paid by the council the amount

of such cost should be charged on the collector's roll against the lands of the party chargeable—instead of only against the party himself; (4) Because no appeal was provided for against such charging of such cost upon the collector's roll, was quashed with costs.

Aylesworth, for motion.

Pegley, contra.

REGINA v. RICHARDSON.

Criminal law—Conviction—Award of further imprisonment.

A conviction in this case for keeping a house of ill-fame held bad for awarding, after adjudication of a penalty by fine and imprisonment, further imprisonment in default of sufficient distress or of non-payment of the fine.

Held, also, this not a mere formal defect within sec. 30 of 32-33 Vict. ch. 32 (D.).

Held, also, that the effect of sec. 28 was not to take away the writ of *certiorari*.

Osler, Q.C., for motion.

J. G. Scott, Q.C., contra.

Wilson, C.J.,]

BANK OF HAMILTON v. HARVEY.

Non-negotiable promissory note—Right to recover—Pleading.

The statement of claim was that the defendant, being a director of a company, jointly with three, others made a promissory note payable to said company, with the intent that it should be used by the company upon the credit of the makers for the purposes of the company, and the company indemnified the maker against liability thereon; that the plaintiffs discounted the note for the company, and with the knowledge and consent of the defendant, paid the proceeds to the company, and the money was applied to the purpose of the company, and that after default in payment the defendant gave security to the plaintiffs against his liability upon the note.

Held, on demurrer, that the statement of claim was good, and that the plaintiffs were entitled to recover against the defendant upon the note, the non-negotiable instrument.

Muir, for demurrer.

E. Martin, Q.C., contra.

O'Connor, J.,]

REGINA v. NEWTON.

Conviction for keeping house of ill-fame—32-33 Vict. ch. 32—Forfeiture of fine—Further imprisonment.

Defendant was convicted under proceedings taken under 32-33 Vict. ch. 32, not 32-33 Vict. ch. 28, for keeping a house of ill-fame, but the conviction did not "adjudge" any imprisonment or any forfeiture of fine imposed.

Held, bad.

The conviction and warrant of commitment ordered defendant to be imprisoned for six months, and to pay within said period to said magistrate the sum of $100. without costs, to be applied according to law, and in default of payment before termination of said period, further imprisonment for six months.

Held, bad for uncertainty, in requiring the fine to be paid to the magistrate personally instead of the gaoler.

Aylesworth, for motion.

Capreol, contra,

CHANCERY DIVISION.

Ferguson, J.] [September 21.

MURRAY v. MALLOY.

Will—Devise—Statute of mortmain—Bequest of personalty to charitable institution to build a college.

J. M. died on August 9th, 1884, having made his will five days before, in which, after giving certain legacies, he provided as follows:—"I give and devise all my real and personal estate whatsoever and wheresoever, with the above exceptions, to the Lutheran Church, for the purpose of building a college in Canada and not elsewhere, and in his name." The Lutheran Church was not incorporated.

Held, that the devise of the realty and all personalty savouring of the realty was bad.

Held also, following *Giblett* v. *Fobson*, 3 M. & K. 517, that the bequest of the pure personalty was also bad; that a bequest of money or other personalty to any charitable institution to build or erect buildings taken by itself is within the Statute of Mortmain, and that the *onus* of showing that the intention of a testa-

tor was restrained within lawful limits is upon the party seeking to take the bequest out of the statute; and that the intention must appear absolutely certain and clear; and that land already in mortmain must be pointed out as the site for the building, or the words of the will must expressly exclude the application of the money given in the acquisition of land, which was not done in this case.

W. N. Miller, for the plaintiffs.

D. Black, for the Lutheran Church.

Middleton, for the executors.

MILLER v. CONFEDERATION LIFE INS. CO.

Cross-actions—Staying proceedings—Burden of proof.

On the 4th of February, 1885, the present defendants commenced an action in the Chancery Division against these plaintiffs to set aside a policy of insurance.

On the 13th of May, 1885, this action was begun to recover the amount of the policy, and on the 23rd of May the plaintiffs moved to stay proceedings in the former action.

Held, following the rule laid down in *Thomson* v. *S. E. R. Co.*; L. R. 9 Q. B. D. 320, that there is no hard and fast rule in cases of cross-actions that the one commenced last should be stayed. The Court should take the circumstances into consideration and exercise its discretion as to what is the fairest mode of settling the dispute, and give the conduct of the litigation to the party upon whom the substantial burden of proof rests,

Subsequently, on the 27th of June, 1885, the defendant in the first action moved for a stay of proceedings in it, and the Master made an order accordingly.

On appeal on October 12, BOYD, C., declined to interfere at present, as the action of *Miller* v. *Confederation Life* had been tried, a verdict given for the plaintiff. Otherwise, he stated, he would have followed *National Insurance Co.* v. *Egan*, 20 Gr. 469. He reserved leave to renew the motion if the verdict should be set aside and varied the order of the Master by consolidating the two actions.

Hoskin, Q.C., for Miller.

Cassels, for the Company.

PRACTICE.

Ferguson, J.] [June 30.

RE RYAN.

Toronto agents—Lien on fund in Court.

The Toronto agents of a deceased solicitor were held entitled to a lien on a sum of money in Court to the credit of this matter to which the solicitor was entitled for his costs to the extent of their unpaid agency bill of charges in this matter; and it was ordered that their bill should be paid out of the fund in priority to the claims of the other creditors of the solicitor.

Holman, for Thomas Johnston, a creditor.

W. A. Foster, for the Toronto agents.

Ferguson, J.] [October 1.

JAMIESON v. PRINCE ALBERT COLONIZATION CO.

Appeal—Rescinding order—Time—Rule 427, O. J. A.

An *ex parte* order for the production of documents was made by the Local Master at Belleville on the 17th August, 1885, and an order was made by the same officer on the 9th September, 1885, refusing to rescind his former order. The defendants appealed from the latter order.

Held, that the appeal was in effect an appeal from the original order, as the result, if the appeal was successful, would be to rescind that order, and the appeal was therefore dismissed as too late under Rule 427, O. J. A.

Arnoldi, for the appeal.

Hoyles, contra.

Mr. Dalton, Q.C.] [October 1.

BOUGHTON v. THE CITIZENS' INSURANCE CO. ET AL.

Production of documents—Privilege—Letters containing references to solicitors' advice.

Letters, written to the defendant company at Montreal by a clerk who was sent to Toronto to investigate the plaintiff's accounts, and who, on his reporting, was instructed to

take the advice of the company's solicitors, and, if they approved, to have the plaintiff arrested, which letters were shown to have been written in anticipation of litigation, after consultation with the solicitors, and to contain references to their advice, were held privileged from production.

Semble, a party cannot make a second application for a better affidavit on production when he did not on the first application object to the non-production of the documents he seeks to have produced on the second.

George Macdonald, for the plaintiff.

Rae, for the defendants.

MANITOBA REPORTS.

NOTES OF RECENT CASES.

North-West Territories—Grand jury—Coroner's Inquest.

Appeal from N.-W. Territories. In the Territories it is not necessary that a trial for murder should be based upon an indictment by a Grand Jury or a coroner's inquest.—*Queen* v. *Connor.*

Mechanics' Lien Act—Assignment by contractor—Priority.

Held, 1. A sub-contractor is entitled to assert a mechanic's lien, even although the contract between the owner and original contractor provides that no workman should be entitled to any lien.

2. An assignee of the contract price for the erection of a building is not entitled to the money as against the lien of a sub-contractor, unless the owner has in good faith bound himself to pay the assignee.—*Anly* v. *Holy Trinity Church.*

Corporation—Libel—Malice.

The manager of one branch of the defendant company wrote certain letters to another branch, which might have constituted a libel on the plaintiff. There was no evidence that the corporation, or the directors, or the managing board authorized, or had any knowledge of the letters being written.

Held, that the defendants were not liable.

Quære, can a corporation be guilty of malice.—*Freeborn* v. *Singer Sewing Machine Co.*

Promissory note—Alteration—Recovery upon note in original condition—Variance in corporate name.

A company being indebted to the plaintiffs, the company's manager agreed to procure and deliver to the plaintiffs a note signed by some of the officers of the company. He delivered the note sued upon. It was proved that after the note had been signed, but before its delivery, the manager altered the note by inserting the words "jointly and severally." The plaintiffs were ignorant of this fact at the time.

Held, that the note might be sued upon in its original condition.

A note was made by filling up an engraved form. Between the words "after date" and "promise to pay" the space left for the words "I" or "we" was very small, and the words "jointly and severally" could not have been written in the space.

Held, that in such a case the mere fact that the words "jointly and severally" are plainly interlined by being written over the place where they are intended to be read, but in the same handwriting as the rest of the note, is not sufficient notice of an alteration.

A note was made payable to The Waterous Engine Works, but was declared upon as payable to the Waterous Engine Works Company, Limited.

Held, no variance.

The word "Limited" is no part of the name of a company incorporated under the Dominion Joint Stock Company's Act.—*Waterous Engine Works Company, Limited*, v. *McLean.*

CORRESPONDENCE.

LEGISLATION AND SAWDUST.

To the Editor of the LAW JOURNAL:

SIR,—It is a matter of surprise to me that among the many valuable comments which have appeared in your pages and elsewhere touching the legislation of the last session of our dear little Legislature, nothing has been said, so far as I am aware, about chapter 24, entitled an Act respecting Saw-mills on the Ottawa River. Don't you believe it, Sir. It is not an Act respecting Saw-mills. It is an Act respecting the Law of Injunctions. The sawdust in the Act is intended simply to be thrown in your eyes, and my eyes, and the eyes of the public, and prevent us seeing what an outrage this little Act is on some of the most venerable principles of the British law-giver. Henceforth, the law of Injunc

tions will be divisible into two parts: the law of Injunctions affecting Saw-mills on the Ottawa River, and the law of Injunctions not affecting Saw-mills on the Ottawa River. The intelligent student, who, guided by some knowledge of law and much intuition of natural justice, when asked to give the rule in Shelley's case, replied that it was the same as the rule in anybody else's case, for that the law was no respecter of persons, would be wrong now, hopelessly wrong. The law—our law—does respect persons; it respects persons who own Saw-mills on the Ottawa River.

Section 1 of this insidious little Act provides that when any person who, but for this Act would be entitled to the same, claims an injunction against the owner of any Saw-mill on the Ottawa River for any injury or damage, or for any interference with his rights by reason of the throwing of any saw-dust or other mill refuse into the said river, "the Court or judge may refuse to grant an injunction in case it is proved to the satisfaction of such Court or judge by the person against whom such injunction is claimed that having regard to all the circumstances, it is on the whole, proper and expedient not to grant the same." Let us stop here for a moment. Stop and admire! I was not aware that courts and judges were in the habit of granting injunctions where it was proved to their satisfaction to be under all the circumstances proper and expedient not to grant the same. "All the circumstances," therefore, either means nothing, or it means a great deal more than I, for one, think it ought to mean.

Let us continue our study of the section, and we shall see what it does mean: "and for that purpose shall take into consideration the importance of the lumber trade to the locality wherein such injury, damage or interference takes place, and the benefit and advantage, direct and consequential, which such trade confers on the locality and on the inhabitants thereof, and shall weigh the same against the private injury, damage or interference complained of."

In other words, Sir, this Act over-rides ruthlessly one of the grandest and most fundamental principles of British law, viz., that private rights prevail over public convenience; but what is perhaps worse, it over-rides that principle not in favour of everybody, but only of owners of Saw-mills on the Ottawa River. But let us read on. Section 2 provides that this law—save the mark!—shall "apply to pending suits as well as to suits which may be hereafter brought." Where is our public morality? Is civilization a failure? And is the Caucasian played out?

Surely this Act must have brought a blush upon the face of every honest man—nay, of every lawyer—in the House, as it did on that of

Your obedient servant,

MUTARE SPERNO.

ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

Solicitor and articled clerks.—*Law Journal*, England, May 30.

Mandamus and rule to justices.—*Ib.*

Set-off and solicitors' lien.—*Ib.*, July 11th.

Inferior courts and prohibition.—*Ib.*, July 18th.

Common words and phrases—

Decrepit—Movable property—Merchant—Necessaries for support and maintenance of family—Telegraph—Telephone—Shop.—*Albany Law Journal*, May 30th.

Summer—Manufacturer—Carriage—Corn—Tools.—*Ib.*, July 18th.

Branch railway—Traveller—Business or vocation—Harvest—Domestic use.—*Ib.*, July 27.

Delivery not always essential to a gift.—*Ib.*, June 6th.

Malicious prosecution of civil suit.—*Ib.*, August 15th, 22nd.

Married women traders.—*American Law Register*, June.

Contracts made on Sunday.—*Ib.*

Employés as fiduciaries of their employers.—*Ib.*, July.

Married woman with separate business employing husband as manager—Rights of creditors.—*Ib.*

Validity of *bona fide* voluntary conveyances by solvent debtors as against prior creditors.—*Ib.*, August.

The competency of witnesses as dependent upon their moral status.—*American Law Review*, May-June.

Contracts of married women.—*Ib.*

Police control of dangerous classes other than by criminal prosecutions.—*Ib.*, July-August.

Title to dividends: 1. As between shareholders and the corporation or its creditors. 2. As between successive absolute owners of shares.—*Ib.*

The competency of witnesses as dependent upon their mental status.—*Ib.*

Pardon and amnesty.—*Criminal Law Magazine*, July.

The English law reports.—*Law Quarterly Review*, July.

Mistake of law as a ground of equitable relief.—*Ib.*

The position and prospects of the legal profession.—*Ib.*

The seizure of chattels.—*Ib.*

Justice in Egypt.—*Ib.*

Membership in stock exchanges or boards of trade, etc. Can such membership be transferred by judicial or legal process.—*Central Law Journal*, June 5th.

Real estate broker's rights to compensation.—*Ib.*, June 12th.

The rights of gratuitous passengers on railways.—*Ib.*, June 19th.

Guaranty and suretyship as applied to actions against makers and endorsers of promissory notes.—*Ib.*, July 3rd.

Limitations in insurance policies as to time of bringing suit.—*Ib.*, July 10th.

Excluding pupils from public schools.—*Ib.*

Proceedings *in rem* as affected by death of party.—*Ib.*, July 24th.

Libel—Newspaper privilege.—*Ib.*, July 31st.

Liability of municipal corporations for damages in grading highways.—*Ib.*, August 14th.

The law of auxiliary administration.—*Ib.*, September 4th.

Solicitors having the control of trust funds.—*Irish Law Times*, June 13th.

Fresh injury arising from original tort.—*Ib.*, July 18th.

The law of judicial notice.—*American Law Register*, September.

Obligation of companies, such as telephone companies, to give equal facilities with all, and agreements in derogation thereof, etc.—*Ib.*

School law—Authority of teacher—Refusal of scholar to obey illegal regulation.—*Ib.*

Proving an alibi.—*Crim. Law Mag.*, Sept.

Larceny—Possession of recently stolen property—A presumption of fact.—*Ib.*

Cy pres and lapsed legacies.—*Law Journal* (Eng.), September 5.

Posthumous charity.—*Ib.*, September 19.

FLOTSAM AND JETSAM.

A WOMAN was brought before a police magistrate and asked her age. She replied, "Thirty-five." The magistrate—"I have heard you have given that same age in this Court for the last five years." The woman—"No doubt, your honor. I'm not one of those females to say one thing to-day and another to-morrow."

"WHAT is the charge against this man?" asked the police judge, as an old negro was arraigned at the bar. "Drunkenness," replied a policeman. "Old man, you took more than one drink, didn't you?" "Took fifty, sah," "You were not drugged?" "No, sah." "Do you think that the officer had a right to arrest you?" "Yas, sah." "Are you a preacher?" "No, sah." "Did you ever steal a shanghai rooster?" "Many a one, sah." "You don't claim to be honest?" "No, sah." "You have sold your vote, haven't you?" "Yas, an' fur a powerful little money." "Are you going to get drunk again?" "Yas, sah." "This is a very remarkable man," said the police judge. "Here, old fellow, is a $10 bill. Such straightforwardness should be rewarded."—*Ex.*

ON behalf of James Bowen Barrett, solicitor, application was made before Mr. Justice Smith to release him from Holloway Gaol. A woman brought an action against a tramcar company for compensation for injuries, and Barrett was her solicitor. The jury could not agree, whereupon she brought another action, previously arranging with Barrett for half the damages, if she got a verdict, in addition to his costs. She obtained a verdict, with £250 damages. In accordance with the agreement, he retained half of these, besides taking his taxed costs. Thinking he had not suffered sufficient punishment, he applied for his release; but Mr. Justice Smith took a different view, and ordered him to be kept in prison till the 5th September. This is a caution to solicitors taking up cases on spec. It seems odd that it should so often be necessary to indicate that the law will not allow these bargains between solicitor and client. All a solicitor can claim is his bill of costs. *Pump Court.*

KING'S AND QUEEN'S COUNSEL IN ENGLAND.—In the year 1785 there appears to have been only 21 King's Counsel, 7 King's serjeants and 7 serjeants-at-law. In the Law List of 1805 there were 25 King's Counsel, 4 King's serjeants and 12 serjeants-at-law, and Wm. Alexander and Samuel Romilly, both King's Counsel, are described as equity draftsmen also.

In the year 1810 there were 31 King's Counsel, 5 King's serjeants and 14 serjeants-at-law. Of the King's Counsel, Sir S. Romilly, Garrow, Alexander, Fonblanque, and Anthony Hart are described as equity draftsmen; Sir Vicary Gibbs and Thomas Jarvis as special pleaders; Francis Hargrave and Hy. Martin as conveyancers.

In the year 1820 there were 33 King's Counsel, and of these Wm. Horne is described as an equity draftsman. There were 5 King's serjeants and 17 serjeants-at-law.

In the year 1830 there were 40 King's Counsel, 5 King's serjeants and 22 serjeants-at-law. Of the King's Counsel, Fonblanque is still described as an equity draftsman, as also is Tinney.

In the year 1840 there were 63 Queen's Counsel, 2 Queen's serjeants and 22 serjeants-at-law. C. T. Swanston, Q.C., is described as equity draftsman; and R. T. Kindersley, Q.C., as equity draftsman and conveyancer.

In the year 1850 there were 71 Queen's Counsel and 27 serjeants-at-law; in 1860, 114 Queen's Counsel, 1 Queen's serjeant and 30 serjeants-at-law; in 1870, 171 Queen's Counsel; in 1880, 173 Queen's Counsel. In the present year the number of Queen's Counsel is but little short of 200, and there are 11 serjeants-at-law.

Law Society of Upper Canada.

OSGOODE HALL.

EASTER TERM, 1885.

During this term the following gentlemen were called to the Bar, namely:—

Messrs. Donald Malcolm McIntyre, with honours and gold medal; Robert Smith, John Macpherson, William Edward Middleton, John Tytler, Robert William Evans, Robert Victor Sinclair, Ernest Joseph Beaumont, James Redmond O'Reilly, George Eldon Kidd, James Chisholm, Robert Ormiston Kilgour, William Avery Bishop, Francis Gilbert Lilly, Donald Macdonald, William Beardsley Raymond, Christopher Conway Robinson, Charles Creighton Ross, John Thomas Sproule, Arthur Byron McBride. These names are arranged in the order in which the candidates appeared before Convocation for call.

The following candidates were admitted as students-at-law, namely:—

Graduates—Alexander Gray Farrell, William Henry Williams, Herbert Read Welton.

Matriculants—Samuel Storm Martin, James Henry Cooper.

Juniors—J. A. Fleming, W. G. Richards, R. M. Graham, J. P. Dunlop, W. G. Green, J. D. Lamont, C. Stiles, J. H. Denton, W. J. Whiteside, S. B. Arnold, W. Kennedy, J. R. Layton, W. L. Hatton, W. J. Williams, H. Armstrong, H. W. Ross, R. G. Pegley, A. H. Wallbridge, M. K. Cowan, J. J. Drew, M. Murdoch, G. H. Muntz, C. E. Lyons and F. C. Hastings.

SUBJECTS FOR EXAMINATIONS.

Articled Clerks.

1884 and 1885.
- 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.

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

Students-at-Law.

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis. B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.

Composition.

Critical Analysis of a Selected Poem:—

1884—Elegy in a Country Churchyard. The Traveller.

1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

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.

1884—Souvestre, Un Philosophe sous le toits.

1885—Emile de Bonnechose, Lazare Hoche.

or Natural Philosophy.

Books—Arnott's elements of Physics, and Somerville's Physical Geography.

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.

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.

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 Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

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 Socity 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, six 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 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 year, 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.

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

PRIMARY EXAMINATION CURRICULUM

FOR 1886, 1887, 1888, 1889 AND 1890

Students-at-law.

CLASSICS.

1886. Cicero, Cato Major.
Virgil, Æneid, B. I., vv. 1-304.
Cæsar, Bellum Britannicum.
Xenophon, Anabasis, B. V.
Homer, Iliad, B. VI.

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. (vv. 133.)
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. (vv. 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:—
1886—Coleridge, Ancient Mariner and Christabel.
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, 1888, 1890 } Souvestre, Un Philosophe sous le toits.
1887, 1889 } Lamartine, Christophe Colomb.

or, NATURAL PHILOSOPHY.

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

ARTICLED CLERKS.

Cicero, Cato Major; *or*, Virgil, Æneid, B. I., vv. 1-304, in the year 1886: and 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.

Copies of Rules can be obtained from Messrs. Rowsell & Hutcheson.