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The BARRISTER

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The Barrister.

VOL. II. TORONTO, NOVEMBER, 1896. No. 11

EDITORIAL.

Turning Up New Ground.

This is our second article under the above caption. In our first, which appeared last month, it will be remembered that we spoke at some length in general terms upon the unsatisfactory conditions governing the legal profession in Ontario. In this article we will commence to be specific. The governing body of the Law Society of Upper Canada is an elective one. The law provides that every lawyer in good standing shall be allowed to vote at the election of Benchers, and that the thirty gentlemen who get the most votes shall be elected. The result of this is to make the Benchers what is called a responsible body; inasmuch as those who elect them can vote them out in the event of their rule not being satisfactory. Now, it is manifest that it is not possible for electors to judge of the conduct of their representatives unless they are allowed to be present at their deliberations or have free access to their official acts. The Benchers, nevertheless, adopt a course which makes it impossible for their constituents to get more than an occasional glimpse at what is going on. Their deliberations are conducted behind closed doors. The curtain is drawn so close that one will sometimes wonder what can be the awful goings on which are so zealously covered up. You may go and ask the secretary of the society, a most estimable and gentlemanly official, but he will politely tell you that he is not allowed to reveal what goes on; he is not allowed to allow you to peruse the minutes of the meetings; and that no one is allowed to be present at meetings of the Benchers. The secretary, however, is sometimes allowed to give out any news that from its very nature must be given a semi-publicity. For instance, when four new examiners were appointed, it being necessary that

these four gentlemen themselves should be apprised of the fact, the secretary was allowed to tell a representaive of *The Barrister* about it. We were then told by the secretary that the Benchers did not allow a report of their proceedings to be given to any paper except *The Canada Law Journal*, and that even that paper could get no report except one made out by the secretary of the society itself. *The Canada Law Journal* are paid for the publication. This, we think, is a matter that the lawyers of Ontario should know of. We had thought that the principle here so grossly outraged was one which men like Hampden had won centuries ago. There is no difference between this and the Star Chamber of Charles the First. The objections to such a state of affairs are so obvious, the principles trampled upon so venerable and so universally accepted, that we will not take up space to argue the question. The question is really not debatable. We simply lay the matter before our readers.

* * *

Settling Criminal Prosecutions.

The case of the treasurer of the city of Guelph brings to mind a subject which the good of this country demands should be given prompt treatment at the hands of the proper authorities. There is a great deal involved in this matter. The treasurer of a municipality embezzles upwards of $10,000. He is prosecuted in the usual way, but interminable delays immediately crop up, connived at by the prosecution and defence in order to allow of negotiations to be made for a settlement. Surely there must underlie all this a strange misconception of the object of the administration of justice. However, to return, after many conferences and reports to the City Council, and much straining on their part to frighten the friends of the accused into paying as large a part of the shortage as possible, they succeed in getting back $10,000 even. Then the learned counsel hie to the Court room, and with much formality the prisoner pleads guilty. Counsel for the prosecution "understand" that the prisoner has made very substantial restitution, and has already been some weeks in jail. A light sentence is humbly asked, and it is piously suggested that the prisoner has had a severe lesson. The Court looks severe and serious. There is strength of purpose, not to be swerved by considerations for high social position, written in every line of the Court's countenance. One can feel it in the atmosphere that there is one law in that Court for rich and poor, high and low. Judgment: three months' imprisonment.

We would not make such an outcry in this case were it not

that a fashion has sprung up of settling cases on the same basis all over the country. It is scarcely necessary to dwell on the considerations which make such a system odious to fair-minded men, and dangerous in the extreme to the interests of society. We think very few of our readers cannot call to mind cases of the same kind which have occurred in their districts. In one county town in Ontario we know of an instance worth mentioning. A young man, the son of a deceased Q.C and M.P., as his third or fourth offence, broke open the iron bars of a liquor shop, and then got through the window and made off with three or four bottles of liquor. The magistrate sent him up for trial. He then elected for a speedy trial by the County Judge. He pleaded guilty and was let off. Within a few weeks he robbed a clothes line, was put in prison, from which he effected an escape, not being caught for several days. In the same town another and more glaring case could be mentioned, but the above will be sufficient. The *Toronto World* has, in a neat and comical rhyme, shown what a burlesque is made of justice in such cases. The lines intimate that a prisoner, whose guilt was beyond question, was about to take poison, which had been secreted in his cell. But his lawyer advised delay "as he might get a trial at Guelph."

RECENT ENGLISH DECISIONS.

IN RE THE DUNLOP TRUFFAULT CYCLE AND TIRE MANUFACTURING COMPANY (LIMITED).

[KEKEWICH, J.—Chancery Division—10TH NOVEMBER, 1896.

Company—Prospectus—Misrepresentation—Repudiation of contract—Subsequent payments in respect of shares—Rectification of register.

This was a motion to rectify the register of a company by removing therefrom the name of the applicant on the ground of misrepresentation in the prospectus, and for the return of £250 paid in respect of shares.

On the receipt of the prospectus on May 18, 1896, the applicant, relying entirely on the name "Dunlop," and that "Charles Dunlop, Esq.," appeared at the head of the directors, sent in a request for 500 shares, and paid £62 10s. as deposit. Charles Dunlop was a steam-printer, and in no way connected with the cycle business. There was in the prospectus a marginal note in red saying that the company was "self-contained and in no way connected with the Dunlop Pneumatic Tire Company (Lim.)." A few days afterwards a case was decided by Chitty, J., a report of which appears *ante* at p. 235 of this volume of *The Barrister*, in which the company was restrained in an action by the Dunlop

Pneumatic Tyre Co. (Lim.) from using the name "Dunlop," on the ground that it had been chosen to create confusion in the mind of the public, and to make them believe that there was a connection between the two companies. Thereupon the applicant wrote repudiating the shares and claiming a return of the money. On May 27, pending a reply to this letter, and on the advice of a banker, the applicant paid a further sum of £62 10s. in respect of the shares, being 2s. 6d. per share on allotment. The letter of repudiation was acknowledged by the secretary of the company, who said it would be laid before the directors. On June 20 the applicant paid a further sum of £125, according to the terms of the prospectus. The secretary of the company stated that a letter of June 6 was sent in reply, declining to accede to the repudiation, but the applicant denied all knowledge of this letter. The applicant subsequently saw a paper stating that other shareholders were taking proceedings, and a solicitor was consulted, and notice of motion to rectify the register given on July 13. The question was whether there had been a misrepresentation entitling the applicant to repudiate the contract, and, if so, whether the applicant, by the further payments made by her and by her conduct had not waived the misrepresentation and adopted the contract.

W. C. Renshaw, Q.C., and E. S. Ford, for the motion.

R. Bramwell-Davis, Q.C., and G. Hart, for the company.

Kekewich, J., held that the applicant had been in fact deceived by the word "Dunlop," and was entitled to repudiate the contract; but that the subsequent payments and the want of promptness in taking active proceedings debarred the applicant from the claim to be removed from the register and from now repudiating the shares.

* * *

POTTLE v. SHARP.

[LINDLEY, L.J., SMITH, L.J.—Court of Appeal—28TH OCTOBER, 1896.

Injunction—Teacher—Dismissal—Irregular appointment—"De facto" managers.

Appeal from a decision of Chitty, J., sitting as vacation Judge.

In 1883 the plaintiff was appointed mistress of a school. At this time there were no managers of the school properly constituted under the deed by which its affairs were regulated, and the plaintiff's appointment was made by the de facto managers. In 1896 the de facto managers gave her notice to quit, and she now asked for an injunction to restrain them from interfering with her in the execution of her duties. She contended that the original defect of her appointment had been cured by lapse of time, and that now she could only be dismissed by managers appointed in accordance with the terms of the deed.

Chitty, J., refused the motion, and the plaintiff appealed.

E. Cutler, Q.C., and H. Lynn, for the plaintiff.

D. L. Alexander, Q.C., and J. G. Faweus, for the managers.

Their Lordships dismissed the appeal with costs. They said that the question was, with whom had the plaintiff contracted? She had contracted with the de facto managers, and part of the bargain was that she should

be liable to dismissal on three months' notice from the managers for the time being. The persons entitled to give notice had done so, and there was nothing to find fault with.

* * *

ERNEST v. THE LOMA GOLD MINES COMPANY.

[LINDLEY, L.J., SMITH, L.J.—Court of Appeal—4TH, 10TH NOVEMBER, 1896.

Company — Meeting — Voting — Show of hands—Proxies—Companies Act, 1862, s. 51—Proxy paper—Validity—Date of meeting filled in after signature—Stamp Act, 1891, s. 80.

Appeal from a decision of Chitty, J., L. R. (1896) 2 Chanc. 572.

By the articles of the company every motion made at a general meeting was to be decided in the first instance by a show of hands, and a poll might be demanded by three members; every member was to have one vote for every share that he held in the company, and votes might be given either personally or by proxies given to members. The plaintiff, a shareholder, claimed that resolutions for voluntary liquidation passed under section 51 of the Companies Act, 1862, at an extraordinary general meeting, and confirmed at a subsequent meeting, were invalid, on the ground that members present by proxy were not counted on the show of hands at the first meeting; and further, that at the subsequent meeting proxies were admitted in which the date of the meeting had been inserted by the secretary after signature by the members.

Chitty, J., decided against the plaintiff on both points, and he appealed.

Ashton Cross for the appellant.

E. W. Byrne, Q.C., and E. W. Stock, for the company.

Their Lordships dismissed the appeal, holding that section 51 was founded on the assumption that voting would be conducted by show of hands in the usual manner. The words "present in person or by proxy" were governed by the previous sentence, "such members of the company for the time being entitled, according to the regulations of the company, to vote as may be present." Those regulations were based on the supposition that the usual course would be followed; and it would be contrary to the universal practice to count in a show of hands persons present by proxy, or to count the member holding the proxies more than once, however many persons he might represent. The decision in *In re Bidwell Brothers*, 62 Law J. Rep. Chanc. 549; L. R. (1893) 1 Chanc. 603, was erroneous, and must be overruled. On the other point, their Lordships said that the proxies were properly stamped and the dates were filled in before they were used. The statute did not say that if the date were left out and afterwards inserted by a person authorized to do so the vote was lost.

* * *

REGINA v. JOHN KING.

[HAWKINS, CAVE, GRANTHAM, LAWRANCE AND WRIGHT, JJ. — Crown Case Reserved.—7TH NOVEMBER.

Criminal law — Evidence — Admissibility—False pretences — Opinion upon letter sent to prosecutor—Indictments for larceny and false pretences upon same facts.

In this case the principal question was whether on a prosecu-

tion for false pretences the person who has received a letter containing the false pretence may be asked what opinion he formed from the letter.

No counsel or party appeared.

The Court held that the question was admissible.

Hawkins, J., said the case sent up to them was somewhat diffuse, but the point was clear. The facts were these: At the midsummer quarter sessions of the peace holden at Huntingdon for the county of Huntingdon on June 30, 1896, John King stood indicted with various charges of misdemeanour—to wit, of obtaining goods by false pretences, of attempting to obtain goods by false pretences, and of obtaining credit for such goods by false pretences or other fraud—under 32 & 33 Vict. c. 62, s. 13, the counts in such indictment numbering in the whole forty, to all of which the defendant pleaded "Not guilty." He paused there for a moment to say that it was a scandal that a man should be put to trial on forty counts at once. They pointed to several distinct charges, and it was impossible that a person could be tried on four or five separate charges at once without being prejudiced by the fact that there were so many. When on circuit he had met with one indictment containing ninety-nine counts in a bankruptcy matter, and was informed of one which had been presented containing 114 counts. Such a thing might not be illegal, though it was improper, and it might well be reasonable for the counsel for the prisoner to apply for a separate trial on each charge. The counts here were many of them hopelessly bad. The first count was this—that the defendant unlawfully, knowingly, and designedly did falsely pretend to Robert William Shackleton and others, trading as the Dairy Supply Company (Ltd.), that he (the said John King) was then carrying on business as a farmer or dairyman, and did then require two Bessemer steel milk churns for use in the said business, by means of which false pretences the said John King did then unlawfully obtain from the said Robert William Shackleton the two churns with intent to defraud. The second and third counts dealt with other materials obtained by similar false pretences. The other counts were immaterial for the present point, which was whether the following question to and answer by Robert Shackleton were admissible—viz., what opinion he (witness) formed as to the position and occupation of the defendant on the receipt by him of a letter in which appeared the expression that "the churns were required for home use," and of which the following is a copy, and which was received by him in answer to a communication addressed by him to defendant: "Earith, Hunts, September 5, 1895. The two six-gallon milk churns on order do not require name on them, as they are only required for home use. Yours truly, John King." Upon behalf of the prisoner the objection was taken that such question was inadmissible upon the ground that the meaning and construction of such letter was a question for the jury, and quoted as his authority the dictum laid down in *Regina* v. *Cooper*, 46 Law J. Rep. M. C. 219; L. R. 2 Q. B. Div. 510. The Court overruled such objection, and permitted the witness to reply. The reply was, "I thought the defendant was either a farmer or a dairyman." A similar reply

was given in regard to another case, and the jury convicted the prisoner. The defendant was thereupon sentenced to three years' penal servitude on the first charge, to a like period of three years on the second charge, such sentences however to run concurrently, and on the third charge he was ordered to be imprisoned for twelve calendar months with hard labour, this last sentence to run concurrently with the former sentences.

Now, was that evidence wrongly admitted? After due consideration he had come to the conclusion that the evidence was admissible, although not necessarily conclusive. In a charge of false pretences it was necessary to show—(1) that the pretence was made; (2) that the person to whom it was made believed it to be true; (3) that the goods were obtained by means of the pretence. The question was whether the person to whom the pretence was made believed it, and he saw no other method of proof than by asking him what was his honest opinion of the letter. That answered the first question left to the Court. The prisoner must therefore undergo his sentences. And on this head the learned Judge said there was some misapprehension current as to the effect of a ticket-of-leave. If any person out on ticket-of-leave was convicted of an offence and sentenced before his time of penal servitude had expired, he was bound after the expiry of his fresh sentence, to undergo the remanet sentence, his license being forfeited. In such a case a Court had no power to make the new sentence run concurrently with the remanet sentence. If, therefore, it seemed a hardship that a man should suffer a sort of double punishment for the one offence, the Judge should take into consideration the result of the sentence when passing it. There was another question raised in the case. The defendant was at the same sessions tried upon a separate indictment for having feloniously stolen, taken, and carried away certain goods and chattels, the property of one James Wordley, trading as Nicholson & Wordley, which goods and chattels formed the subject of counts Nos. 10, 11 and 12 of the indictment on which he had been previously convicted for obtaining credit for such goods and chattels by fraud. That was a trial that ought not to have taken place at all. It was against all principles of criminal law that a man should be twice put in danger for the same offence. Moreover, the goods which were obtained by him by false pretences were alleged to be stolen by him. The two indictments were inconsistent. That part of the sentence must be quashed. Practically it would make no difference to him, because the sentences were concurrent, and he would be undergoing his three years' penal servitude, but so far as it was any relief to him he had the benefit of the judgment of the Court.

Cave, J., concurred. The evidence was not only admissible, but necessary, and the case of *Regina* v. *Cooper*, cited for the prisoner, showed it. Six counts would have been quite enough to contain all the charges laid.

Grantham, J., and Lawrence, J., were of the same opinion.

Wright, J., concurred that the evidence was admissible, but for the purpose only of showing

whether the prosecutor believed the statement made, and not as to whether the words were capable of bearing the meaning put on them.

* * *

RE LUMLEY, EX PARTE HOOD-BARRS.

[T. 630; L. J. 487; W. N. 90.—In the Court of Appeal.

If property is given to a married woman "without power of anticipation," but is not expressed to be for her separate use, does the restraint attach?

Yes, since the property in these days, though not expressed to be for the woman's separate use, is her separate estate by virtue of the Married Women's Property Act, 1882, and by section 19 of that Act the restraint attaches and prevents the property being disposed of. So held by the Court of Appeal, distinguishing *Stogden* v. *Lee*, (1891) 1 Q. B. 661, where the case did not fall within the 1882 Act.

* * *

RE COCKS, COCKS v. CHAPMAN.

[S. J. 715; T. 625; L. J. 486; L. T. 373; W. N. 90.—Court of Appeal.

When a will directs trust funds to be invested in real securities, and at the testator's death some of the moneys forming part of the trust estate are so invested, will the trustees be liable for a loss arising from a subsequent depreciation in the value of the securities should they omit to realize them?

Not unless, in failing to realize, they were guilty of wilful default. Said Lindley, L.J., "There is no rule of law which compels the Court to hold that an honest trustee is liable to make good loss sustained by retaining an authorized security in a falling market, if he did so honestly and prudently, in the belief that it was the best course to take in the interest of all parties."

* * *

TOTTENHAM URBAN DISTRICT COUNCIL v. WILLIAMSON & SONS.

[L. J. 467.—Court of Appeal.

Can a local authority apply for an interim injunction to restrain a nuisance?

The Court of Appeal (Esher, M.R., Kay and Smith, L.JJ.), held, that Mr. Justice Stirling's decision in *The Wallasey Local Board* v. *Gracey* was correct, and that a local authority cannot apply for an interim injunction to restrain a nuisance unless they obtain the sanction of the Attorney-General, or they can allege special damage.

* * *

HOOD-BARRS v. HERIOT.

[L. T. 300; S. J. 667.—Court of Appeal.

If judgment is taken against a married woman, can discovery in aid of execution under Ord. XLII. R. 32, be obtained.

The Court of Appeal (Smith and Rigby, L.JJ.) held that in such a case the Court had no jurisdiction under that rule to subpœna a witness. It was admitted, on the authority of *Irwell* v. *Eden*, 18 Q. B. D. 588, that under that rule only the debtor could be examined; but in the case of married women it was contended—but fruitlessly—that as the judgment was against the estate, and not against the debtor, the rule did not apply, and that anyone could be examined.

SCRAPS OF LEGAL SMALL TALK.

Odds and Ends of Law.

The football season, with its concomitants, the great white chrysanthemum and the long-haired students, has provoked an interesting *obiter dicta* from His Hon. Judge Morson, second Junior Judge of York county. Some Rugby football players hired the lacrosse grounds in Toronto for $100 for a championship game. Several creditors of the lacrosse club had a legal contest for the money, and Judge Morson remarked in giving judgment: "I suppose this all means that a lot of thugs were up there lying on a football, imagining they were playing football." Though the game is far from being gentle, and is sometimes positively dangerous to life and limb, it should be remembered that it is only dangerous to those who wittingly and voluntarily enter into it. It also happens that those who indulge in the game are rather the reverse of thugs, being generally from the higher classes of society.

* * *

The old beliefs in witchcraft, like the ghost in the play, "will not down." On 23rd July a Prof. Freimann was arrested at Tamworth, New South Wales, for that he did unlawfully pretend, from his skill and knowledge in certain occult and crafty science, to discover where and in what means certain gold was supposed to have been stolen, and that a certain gold mine at Nundle would turn out all right if the complainant, Ernest Garibaldi Hoskins, would sink another fifty feet. The prosecution is under 9 Geo. II. c. 5, s. 4, which provides: That if any person shall pretend to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or undertake to tell fortunes, or pretend, from his or her skill or knowledge in any occult or crafty science, to discover where or in what manner any goods or chattels supposed to have been stolen or lost may be found, etc.

Upon this information the accused was committed for trial.

* * *

Witchcraft is also playing a part in a case brought by a Mrs. Oles against the *Pittsburg Times*. The newspaper published an article declaring that the neighbors of the plaintiff, a woman, said she was a witch and had bewitched a little boy. The paper circulated among people who believed in witchcraft. Held, that the article is a libel and actionable.

* * *

There is reason to believe that virtue does not always go without its reward. The case of *Hamar* v. *Sideway*, tried in New York, is an authority on the point. A young man entered into a contract with his uncle by which the uncle promised him $5,000 if he should till he was 21 abstain from drinking liquor, using tobacco, swearing, and playing cards or billiards for money. The old fellow died, and though the youth had bravely forborne from the forbidden fruits in the terms of the contract, the uncle's estate refused to whack up the $5,000. The young

man, feeling he had earned the money, brought suit and succeeded.

* * *

After the hot summer just passed our readers will no doubt sympathize with the plaintiffs in *Cecil* v. *Green*, some colored people who tried to purchase soda water in a drug store in Illinois, but were refused because they were colored. They failed, however, in an action for violation of civil rights, as it was decided that a drug store is not a "place of public accommodation and amusement."

* * *

The poet Gray has spoken of "The dark unfathomed depths of ocean." He little thought when he wrote of the oysters and the law suits which would get down among them "at the bottom of the sea." In New York it has just been held that a tenant in an oyster bed is entitled to take natural oysters therefrom notwithstanding the fact that in so doing he must slightly disturb oyster shells and seed oysters which his co-tenant has placed on the bed after dredging the land.

* * *

A puzzling but characteristic case has arisen in Pittsburg out of the everlasting divorce proceeding. The Judge had signed the decree for divorce but it had not been "handed down." At this moment, before it was handed down, the defendant (husband) seems to have been killed in a railway accident. The giddy lady wants to bring an action for damages, and contends that she was not divorced, as the decree was only signed but not handed down.

* * *

The Queensland Law Association has succeeded in having the Courts suspend a solicitor for six months for inducing a taxing officer to read an affidavit in a sense that he knew the deponent had not intended. He must pay all the costs.

* * *

One of the best known society ladies of Trenton, N.J., has just done something truly theatrical. She had a great aversion to the stringing of trolley wires on her street and determined to stop it. One evening the company were planting the posts from which the wires were to be strung. On that same evening the lady was giving a dance, and attired in full evening dress she went on to the street and stood in the hole dug for a pole in front of her house, and thus prevented the men placing one pole. An action arose over it and she failed. However, she attained notoriety.

* * *

We learn from an exchange that in a contest over a will in New York, it was sought to show that the testator was too feeble-minded to make a will. It was shown in support of this that he used frequently in playing poker to forget to ante. It was elicited, however, that he never forgot to take his winnings, and the Court thought the old man knew what he was about.

* * *

Alimony for Second Husband. —A somewhat peculiar case was decided recently by Judge Badger of the Court of Common Pleas, at Columbus, Ohio. Several years ago a wife secured a divorce and $300 alimony. Two days later she married again, and dying very soon after, left her husband as her only heir. The alimony not

having been paid he brought suit first against his wife's husband, who filed a demurrer, which the Judge overruled, and entered judgment against the defendant for the amount claimed.

HUMOUR OF CANADIAN BENCH AND BAR.

Action for damages for non-repair of highway. Mr. O——, Q.C., is cross-examining a small parson, who gave evidence as to the hole in the roadway which occasioned the accident:

"You are not a very good witness in a case of this kind."

"Why not, Mr. O——?"

Mr. O——.—"Why, because you keep your eyes on things above rather than below."

"I certainly should, Mr. O——."

"However, perhaps this is the case when you are walking over holy ground."

* * *

Evidence was being taken as to the value of certain water privileges, and photograps were put in of the *locus in quo*. The fall in question was only some few inches, but the photographer's art had improved on it. Counsel wishing to magnify the descent of water, and the consequent value of the right to use it, holds up the picture and remarks: "Why, my Lord, it is a perfect cataract." C. M. ——, Q.C., in his dry way, replies: "On investigation, my Lord, the cataract will be seen to be in my learned friend's eye."

* * *

On argument before Court of Appeal in the case of the *City of Toronto* v. *The Toronto Street Railway Co.*, to compel the company to have conductors on bob-tail cars, counsel cited many statutes. The Chief Justice—"You have forgotten one Act." The counsel—"What is that, my Lord?" The Chief Justice—"The Short Forms of Conveyances Act."

* * *

On a motion before O'Connor, J., counsel opened the matter at great length. His Lordship expressed a difficulty in understanding what was being moved for. Counsel—"It is what they call in Chancery 'speaking to the minutes.'" His Lordship—"Hours, you mean."

THE VOICE OF LEGAL JOURNALISM.

Extracts from Exchanges.

Law Reform in Australia.

Mr. Higgins, M.L.A, has moved for the appointment of a Royal Commission for the purpose of holding an enquiry which may result in law reform. Every lawyer knows that this step has not been taken a moment too soon. If there is one fact patent to the profession it is that litigation, though undoubtedly of

diminished volume, partly on account of the bad times, is in greater measure waning every year through the just dread of intending litigants to become the sport and pastime of our long-winded procedure and the unhappy arrangements of our Courts. For this the Judges have been in the main to blame. When the Parliament rejected, some years ago, their crude amendments of the Judicature Rules, they forthwith pettishly abstained from further attempts, and have assiduously spent the July vacation, an arrangement (as was supposed) originally meant for discussing law reform, as a supplementary holiday.—*The Australian Law Times.*

* * *

Lynch Law.

It is gratifying to the profession, and laymen as well, to know that the bench, the bar and the juries of the country are giving the attention to the question of lynch law that it has so long demanded, and are dealing such punishment to the perpetrators of this crime as will cause a halt of these self-appointed executioners. Judge John C. Anderson of Alabama has set a precedent that others would do well to follow. In his recent charge to the grand jury of Marengo county, Ala., the Judge very forcibly and in no unmeasured terms told the jury the duty devolving upon them as jurors and citizens.—*The American Lawyer.*

* * *

An Ornamental Husband.

In proceedings by creditors to reach the income of a trust fund held for a married woman, where it appeared that her able-bodied husband was "entirely supported, clothed, and furnished by his wife from her income as a gentleman of leisure," the Court says: "He is not to be considered a mere useless ornament," and approves a conclusion by a referee that "the luxury of supporting and furnishing spending money for an able-bodied husband in sound health ought to be denied the wife for the benefit of creditors who have furnished her with clothing."—*Washington Law Reporter.*

* * *

Law Reform Again.

Surely the charge of extravagance may fairly be brought against the proposal, to which attention has lately been directed, that every County Court should be made a branch of the High Court. The adoption of this proposal would involve a considerable increase in the remuneration of County Court Judges, because it would be ridiculous to suppose that lawyers of the necessary standing and capacity would undertake the performance of High Court duties for a salary of £1,500 a year. An increase of £1,000 would be as little as could reasonably be given, and as there are more than fifty County Court Judges in the country, the proposed change would involve, even after taking into account the reduction that would gradually be effected in the number of Judges in the Royal Courts of Justice, a further expenditure on Judges' salaries of an amount not far short of £50,000. But this would not be the whole of the additional expense—not even, perhaps, the greater part of it. If all County Courts were given unlimited jurisdiction and made branches of the Supreme Court it would be

necessary to provide each Court with a proper share of that administrative machinery now attached to the Royal Courts of Justice.—*Law Journal, Eng.*

* * *

The Briefless Barrister.

A Brighton paper says that the briefless barrister was much in evidence at the Brighton Quarter Sessions last month. The prisoners numbered five, and the barristers fifteen. Despite this scarcity of work for counsel, the clerk of the peace was relentless enough to read the "Proclamation against Vice." No wonder that the barristers cannot bear to listen to this powerful deterrent to crime, and remain out of Court until the reading of the document is completed. After all, briefs were not so scarce as might appear, for the Crown is very solicitous for counsel. For instance, one of the accused was indicted for three small thefts and another for two. Hence five counsel were retained—one for each case.—*From Law Notes.*

* * *

Kissing as a Crime.

The Secretary of State for India has just issued a solemn order in council dismissing from the service of the Anglo-Indian government one of the principal medical authorities at Madras, a military surgeon named Clarence Smith, enjoying the equivalent rank of brigadier-general, for merely having requested a kiss.

The surgeon-general was a married man possessed of incumbrances in the shape of grown-up children, and the lady to whom he offered this salute had a husband. She might not have said anything about it had the surgeon-general been sober, but when he made this offer he had been dining not wisely, but too well, and instead of breathing love he breathed of odor of brandies and sodas.—*Chicago Law Journal Weekly.*

* * *

Mr. Cock, Q.C., has confided to a representative of the Press his views on the Bar as a profession. He stated that a young man going to the Bar should be prepared to support himself for at least five years independently of his profession, and referred to a Judge now on the Bench who waited quite ten years before he got a single brief. According to Mr. Cock, it is not merely talent and ability that are required at the Bar, but rather a combination of qualities. The Bar is by no means overcrowded with men who have the qualities necessary for the work. This is proved by the men who conduct all the big cases. A good voice, a good temper, and a good memory are among the chief qualities which Mr. Cock considers necessary for success at the Bar.

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The state of the Bar is the subject of an article in the *National Review*. The writer sets himself the task of disillusioning the young university men who think that their scholarship and their eloquence will give them the prizes of the profession. "You are a great man here," said a great, though brutal, lawyer to a young don at Oxford, who announced his intention of adding the law to his conquests, "but at the Bar you'll be dirt." This was more practical advice than young dons often have the good luck to receive.—*Law Journal, Eng.*

OSGOODE HALL NOTES.

The Bar of Toronto—both senior and junior—will, without doubt, enthusiastically support the students of the Law School in the dinner which is set for the 16th December. The fact that the event will take place in Convocation Hall will give historic interest to the occasion; and the list of expected guests shows that there will be a great variety of good speeches. Mr. Justice Falconbridge has most kindly consented to act as chairman, and Messrs. Edgar, Fitzpatrick, Mulock and Sifton are all expected to attend, as well as the members of the Dominion House for Toronto. The toast list will be, of course, especially appropriate to the profession. An energetic committee is at work perfecting every detail, and the low price at which the tickets have been placed ($2 for barristers, $1 for students) puts them easily within reach of all. It is seldom that the bar have opportunity of attesting their unity, but on this occasion both bar and students will unite in the bonds of legal brotherhood.

BOOK REVIEWS.

A book that will be appreciated by the many who are now engaged in studying the early history of the settlement of our own province and of Canada, as well as by politicians and by members of the legal profession, is "The Ontario Boundary," edited by John P. Macdonell (Toronto: The Carswell Co., Ltd. 1896. $1). Those who would be familiar with our constitution will also find this work useful, while every man of business can while away with profit an hour while engaged in its perusal. The main portion of the volume is taken up with a verbatim report of the argument before the Privy Council in July, 1884, on the question of the ownership of the large area of land then known as the "Disputed Territory." The argument does not take the form of a dry legal dissertation by counsel, but is enlivened by the comments of the Privy Councillors, who, throughout the argument, took a most lively interest in the case, and at times the proceedings seem very like a conversation between three or four or five gentlemen. This adds a very important touch of life to the argument, and enables one to follow with ease and certainty the claims advanced by the different parties. The editor has carefully annotated every reference, and the appendices contain a careful historical outline of the rival operations of the French and of the Hudson's Bay Company in settling the north and west of Canada. A very complete map shows the claims of both Ontario and the Dominion, based both upon occupation and upon the natural conformation of the country, and in his preface the editor shows concisely how much of Ontario's triumph is due to Sir Oliver Mowat.

Kingsford's Landlord and Tenant.

A Manual of the Law of Landlord and Tenant, by R. E. Kingsford, B.A., LL.B., follows out pretty accurately the lines laid down for it in its preface.

The book is intended more particularly for laymen, though it is also expected to be of use to the legal profession.

In it the author lays down the law in a clear and simple manner, not purposing to make every man in this respect his own lawyer, but rather to point out the difficulties that beset the uninitiated who tries to tread alone the thorny paths of landlord and tenant law. The book ought certainly to be a very useful one to outsiders, for it is written in a style calculated not to confuse them, and which may be easily understood even by the uneducated. To the profession also, especially to the country solicitor, removed from libraries and reports, it may be recommended as being a very handy manual of the law; though there is this drawback to it, that the authorities for the author's statements are not quoted as they usually are in text books.

The author has taken pains to carry the law down to the latest statutes and decisions, and this is the only text book, we apprehend, containing The Landlord and Tenant Act of 1896.

It contains some really valuable information as to the rights and liabilities of lodgers, and the duties of lodging-house keepers; a branch of the law which is not, we think, very generally known in the profession; and there are some very well drawn forms included, which should be of aid both to the solicitor and lay conveyancer.

We think, however, that perhaps the best piece of advice offered to the layman throughout the whole book is contained in the following lines: "But when persons find themselves in the situation of being either landlord or tenant, under the circumstances which create either of these tenancies, they had much better consult a solicitor at once."

The price of this little volume is so low as to permit its being placed in the hands of all who require it, and we prophesy for it a successful issue.

RECENT ONTARIO DECISIONS

Important Judgments in the Superior Courts.

GUROFSKI v. HARRIS.

Fraudulent conveyance—Preferring one creditor over another—Conveyance previous to existence of plaintiff's judgment—Judgment for damages for libel

Judgment on appeal by plaintiff from order of a Divisional Court (Boyd, C., Robertson, J., MacMahon, J.), reversing judgment of Armour, C.J., at the trial and dismissing the action, which was brought by Julia Gurofski on behalf of herself and all other creditors of defendant Ettlestein Harris, to set aside a conveyance made by that defendant to defend-

ant Amelia King, his daughter, of a certain cottage and lot of land in the city of Toronto, on ground that it was fraudulent and void as against such creditors. The impeached conveyance was made while an action of slander was pending at the suit of plaintiff against defendant Harris, of which defendant King was aware, in satisfaction of a bona fide pre-existing debt (as the Divisional Court found) to the extent of the full value of the land. The Court below held (27 O. R. 201), that the conveyance being attacked under 13 Eliz. c. 5, by one who became a creditor by judgment obtained in the action of slander three months after the conveyance, and there being no other creditors, the preferring of one creditor was no ground for setting aside the conveyance as fraudulent and void. Appeal dismissed with costs. F. E. Titus and Bradford for appellant. Watson, Q.C., for defendants.

* * *

Court of Appeal.

MCCREA v. MILLICAN.

[HAGARTY, C.J.O., MACLENNAN, OSLER AND BURTON, JJ.A.—10th NOVEMBER.

Will—Precatory trust—Power of appointment—Vesting absolutely or in trust.

Judgment on appeal by plaintiffs from judgment of Meredith, J., in action for construction of will of Alexander McCrea, deceased. The appellants contended that the testator's widow Martha, also deceased, did not take the property devised absolutely. The devise was "to her own proper use and benefit, to be managed and controlled by her during lifetime and to be disposed of by her according to her judgment at her decease, confiding in her as to act and so to distribute of the same money my children as in the sight of God"; and it was contended that a precatory trust had been created, and that a general administration of the estate of deceased should be directed, or that the widow had a power to apportion which had not been exercised by her will. Appeal dismissed with costs, the Court holding that, whether the estate was absolute and in fee or for life, with a power of appointment, no trust attached, and the result was the same. W. H. Blake for appellants. DuVernet for adult defendants. A. J. Boyd for infants.

* * *

MONTGOMERY v. CORBITT.

Fraudulent conveyance—Defeating creditors—Debts created after conveyance—Consideration "Family arrangement."

Judgment on appeal by defendants from order of a Divisional Court (Armour, C.J., Falconbridge, J., Street, J.), reversing judgment of Boyd, C., at the trial, which dismissed the action, and directing judgment to be entered for plaintiff setting aside the conveyance impeached by him as fraudulent. The conveyance in question was made by the defendant Samuel Corbitt to his son the defendant William Corbitt, and conveyed a farm of 40 acres within the town limits of Orangeville. The plaintiff obtained judgment against defendant Samuel Corbitt for $1 damages and about $400 costs in an action of slander, and placed a fi. fa. in the sheriff's hands, but all this was more than eight months after the conveyance. The appellants contended that the conveyance was not made with the in-

tent of defeating any claim plaintiff might have, or the claim of any creditor, but as the completion of a family arrangement entered into previously. Appeal allowed with costs, and judgment of Chancellor restored with costs. Aylesworth, Q.C., and W. L. Walsh (Orangeville), for appellants. E. Myers, Q.C., for plaintiff.

* * *

RE QUEEN'S COUNSEL.

[HAGARTY, C.J.O., BURTON AND MACLENNAN, JJ.A., AND STREET, J.

The British North America Act—Jurisdiction of the Province—Appointment of Queen's Counsel by Lieutenant-Governor under the Great Seal of the Province.

Judgment upon stated case referred to Court of Appeal by the Lieutenant-Governor of Ontario in Council with regard to the power of appointment of Queen's counsel and of precedence or preaudience in the provincial Courts. By 36 Vict. c. 3 (O.), assented to 29th March, 1873, it was enacted that "it was and is lawful for the Lieutenant-Governor, by letters patent under the Great Seal of the Province of Ontario, to appoint from among the members of the Bar of Ontario such persons as he may deem right to be during pleasure provincial officers under the names of Her Majesty's counsel learned in the law for the Province of Ontario." This was consolidated in R. S. O. c. 139. The questions submitted for the opinion of the Court were as follows: (1) Whether, since 29th March, 1873, it has been and is lawful for the Lieutenant-Governor of Ontario, by letters patent, in the name of Her Majesty, under the Great Seal of Ontario, (*a*) to appoint from among the members of the Bar of Ontario such persons as he deems right to be during pleasure Her Majesty's counsel for Ontario; (*b*) to grant to any member or members of the Bar of Ontario a patent or patents of precedence in the Courts of Ontario. (2) Whether appointments of Queen's counsel and grants of precedence such as have been made since that date are and would be valid and effectual to confer on the holders thereof the office and precedence thereby purported to be granted. (3) Whether members of the Bar of Ontario from time to time appointed or to be appointed as aforesaid by the Lieutenant-Governor of Ontario, by letters patent in Her Majesty's name, under the Great Seal of Ontario, to be Her Majesty's counsel in Ontario, and members of the Bar of Ontario, to whom from time to time patents of precedence in the Courts of Ontario have been or may be granted by the Lieutenant-Governor of Ontario as aforesaid, in conformity with the limitations of R. S. O. c. 139, have or shall become entitled to such precedence in the Courts of Ontario as have been or may be assigned to them by such letters patent, after the several persons or classes referred to in the 3rd, 5th and 7th sections of that statute. (4) Whether the position as to precedence in the Courts of Ontario of the remaining members of the Bar of Ontario not comprised within the classes referred to in the said 3rd, 5th and 7th sections, and not holding patents issued by the Lieutenant-Governor of Ontario, conferring on them the office of Queen's counsel for Ontario, or granting to them precedence in the Courts

of Ontario, is, as between them and those holding such patents, and, as between themselves, in the order of their call to the Bar of Ontario. (5) In case the answer to any of the said questions be in the whole or in part negative, or in case an affirmative answer shall appear to the Court not to be a complete exposition of such matters involved, then what is the true state and condition of the matters involved in such questions? All the members of the Court agreed that the first four questions should be answered in the affirmative. The main ground of the decision is that the Queen is a material part of the governing power of the province. The case of *Lenoir* v. *Ritchie*, decided by the Supreme Court of Canada, has been overruled by the Privy Council decision in *Maritime Bank* v. *Receiver-General*. Burton, J.A., expressed the opinion that the Lieutenant-Governor has exclusive power to appoint Queen's counsel in the provincial Courts. Maclennan, J.A., was of opinion that the office is a civil right in the province. Street, J., was of opinion that the Lieutenant-Governor had exclusive power to appoint in the provincial Courts, and the Governor-General exclusive power in the Dominion Courts. Irving, Q.C., for the Attorney-General for Ontario. H. J. Scott, Q.C., for the Minister of Justice for Canada.

* * *

PENHALE v. PENHALE.

[BOYD, C., 16TH OCTOBER.

Interim alimony—Effect of plaintiff having means of her own, and of her apparently having married for money.

W. H. Blake, for plaintiff, appealed from order of Local Judge at St. Thomas refusing plaintiff interim alimony, while allowing her disbursements, and also refusing costs of motion. The learned Local Judge based the reasons for his judgment upon what he considered the conduct of the plaintiff in apparently marrying for money, and neglecting her husband afterwards, and also because she had property of her own. J. J. Warren, for defendant, contra. Appeal dismissed, with costs to defendant in any event.

* * *

ELLIS v. TOWN OF TORONTO JUNCTION.

[BOYD, C., 21ST OCTOBER.

Police magistrate's salary—Power of municipality to reduce or abolish.

Judgment upon special case in action by the police magistrate for the town of Toronto Junction to recover alleged arrears of salary as magistrate, the plaintiff contending that defendants had no power to reduce or abolish his salary. Held: (1) That plaintiff is not entitled by his commission, and by law, to a salary apart from the acts of the Council, but he is entitled to fees only; (2) that the acts of defendants did not entitle plaintiff to a continuance of salary, but defendants could free themselves therefrom by resolution, as they did; (3) that defendants, in the circumstances, can refuse to pay any salary, irrespective of the number of the population of the town; (4) that plaintiff is not entitled to recover anything. Raney for plaintiff. Going (Toronto Junction) for defendants.

ROBINSON v. DUNN.

[BOYD, C., 19TH OCTOBER.

Libel—Erroneous report by mercantile agency—Want of care in getting information.

Judgment in action for libel tried at London, in which the jury found a verdict for $25 damages. The trial Judge reserved the question of privilege, and now decides that there is none. The report published by the defendant (the conductor of a mercantile agency) of which plaintiff complained was derived from one Mowatt, upon whom defendant's traveller called. Mowatt's evidence was as follows: "He asked about our friend Robinson. I said he had a suit lately, and there was some pretty tall swearing." There was nothing to shew that the traveller and the witness were speaking about plaintiff, and in point of fact the suit and swearing were referable to another Robinson. The report did not lose by transmission and appeared in the confidential report of defenadnt. Held, that want of reasonable care in collecting information by agencies like defendant's is evidence of malice which destroys the privilege. Judgment for plaintiff for $25 with costs.

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MUNRO v. ORR.

[MEREDITH, C.J., ROSE AND MACMAHON, JJ.—8TH OCTOBER.

Mortgage covenant—Printed form of mortgage with blanks not filled up—Parol understanding.

Aylesworth, Q.C., and G. P. Deacon, for defendant, appealed from judgment of Robertson, J., who tried the action at Toronto, in favour of plaintiff, for $400 and interest and costs in an action upon the covenant for payment contained in a mortgage deed, brought by the assignee of the mortgage. The defence was that the mortgagee agreed to look to the land only for the amount of the mortgage, and represented to the defendant that he was not to be personally responsible for the mortgage money. The mortgage deed was upon a printed form, and the spaces left to be filled up by the personal pronoun indicating the party covenanting were left blank. One of the grounds of appeal was that at the trial evidence of similar transactions by the mortgagee had been improperly rejected. Worrell, Q.C., for plaintiff, contra. Appeal dismissed with costs.

* * *

HALL v. TRUSTEES OF UNION SCHOOL SECTION TWO OF STISTED.

[FERGUSON, J., 12TH OCTOBER.

Duty of school trustees to provide accommodation—Children whose "parents or guardians" reside in section—Dr. Barnardo pauper children—54 Vic. c. 55—R. S. O. cc. 142 and 137.

Judgment in action tried at Bracebridge. The plaintiff, Frederick Hall, a boy of 13, resides in defendants' school section with his next friend in the action, George Spiers, under the provisions of a "boarding-out undertaking," by which Spiers agreed to take the plaintiff, "recently an inmate of one of Dr. Barnardo's homes, and at present under the guardianship of the manager of said homes," and to bring him up as one of his (Spier's) own family; to secure his regular at-

tendance at school, etc. There are in the school section in question fifteen boys, all boarding out in the same way. The schoolhouse for the section was built several years ago, and was so constructed that it contained seating accommodation for 52 pupils. This continued and was the condition during 1895, and the plaintiff attended the school during that year. In October, 1895, the inspector visited the school and intimated that there were too many pupils for one teacher, and that the desks were too close together to conform to the departmental regulations. In consequence of this a change was made by removing ten two-seated desks, which reduced the accommodation to 32 pupils. In 1895 there were 46 children between 5 and 16 whose parents or guardians were resident in the school section, besides the 15 Barnardo boys. According to 54 Vict. c. 55, s. 40, s.-s. 3, it is the duty of school trustees to provide adequate accommodation for two-thirds of the children between the ages of 5 and 16, "whose parents or guardians are residents of the school section." This action was brought to compel defendants to admit plaintiff as a pupil. It was not shown that Spiers had been appointed guardian of plaintiff according to R. S. O. c. 142, or R. S. O. c. 137, or otherwise. Held, that the word "guardians" in the statute is not used in a colloquial or any other than its legal sense, and in that sense Spiers is not the guardian of plaintiff. Action dismissed with costs. Coatsworth for plaintiff. Shepley, Q.C., for defendants.

RE McKEGGIE AND FRASER.

[ROSE, J., 13TH OCTOBER.

Vendor and Purchaser Act—Sufficiency of description—Effects of words "more or less."

T. W. Howard, for J. C. McKeggie and others, the vendors, moved on petition for an order under the Vendor and Purchaser Act disposing of a question of title arising upon the sale of a parcel of land on Little Richmond street, in the city of Toronto, by the petitioners to John Fraser, the respondent. The land was described in the conveyance to the petitioners by metes and bounds, and as commencing at a distance of 140 feet 3 inches from the west side of Bathurst street, whereas the point of commencement of the land intended to be conveyed is at a distance of 144 feet 8 36-100 inches from the west side of Bathurst street. Hodge, for the purchaser, contended that the description was insufficient. Order declaring that the description was sufficient to pass the lands intended to be conveyed. No costs.

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CANTANCHE v. ROYAL OIL CO.

[BOYD, C., 20TH OCTOBER.

Conversion — Married woman plaintiff—Agency of husband—Estoppel — Effect of husband making conveyance of wife's property.

McCarthy, Q.C., for defendants, appealed from judgment of Junior Judge of County of York in favour of plaintiff in action for conversion brought in the

County Court and tried with a jury. The plaintiff is a married woman. On 10th October, 1895, she and her husband gave up their house in Breadalbane street, in the city of Toronto, and warehoused their household furniture with one Rawlinson, who gave a receipt for the goods to the husband and in his name alone. This receipt was transferred on 23rd October to defendants, and the tr .nsfer noted in the books of Rawlinson. Then the husband gave a chattel mortgage upon the goods to defendants, who sold them when the mortgage became in arrear. The plaintiff claimed the furniture as her own, and brought this action for conversion. The jury found that the goods were the property of plaintiff, and that she did not know that her husband was dealing with them as his own. Defendants contended that plaintiff intrusted goods to her husband, and was estopped from saying they were hers. L. F. Heyd, for plaintiff, contra. Appeal dismissed with costs.

* * *

ROSEBOROUGH v. ROLLAND.

[BOYD, C., 23RD OCTOBER.

Costs—Replevin proceedings—Return of goods after motion for security—Rule 1100.

W. Davidson, for plaintiff, appealed from order of local Judge at Sault Ste. Marie in action of replevin and for damages for slander and assault, dismissing application for security without costs. Under Rule 1100 the Judge directed notice to be served. The defendant in the meantime returned the goods. Upon return of the motion the Judge in dismissing it refused to allow any costs. Masten, for defendant, contra. Held, that the litigation as to replevin had succeeded, and case within *Knickerbocker* v. *Ratz*, 16 P. R. 30, 191. Appeal allowed and order made that costs be to plaintiff in cause so far as replevin action concerned. Costs of appeal to plaintiff in any event.

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MOOREHOUSE v. KIDD.

[STREET, J., 23RD OCTOBER.

Contribution among co-sureties—Neglect to enforce security given by debtor to his sureties—Depreciation in value.

Judgment in action tried without a jury at Ottawa. The plaintiff, the defendant, and one Loucks, were co-sureties for E. R. Moorhouse, the plaintiff's brother, for payment of a debt due to one McLaren. The principal failed to pay the debt, and plaintiff and Loucks paid it. The amount paid was $1,600, of which plaintiff paid $900 in cash in September, 1891. The remaining $700 was raised by Loucks and plaintiff upon their own note, upon which both are still liable, but which Loucks is to pay as between plaintiff and himself. The interest upon the $1,600 to the present time amounts to about $500. The defendant has paid nothing. This action is to recover from the defendant his proportion of amount, which plaintiff has paid, with interest. At the time the three sureties became bound to McLaren, the debtor gave them, by way of indemnity, a mortgage upon lands in Manitoba, already incumbered. When plaintiff and Loucks paid

the debt the mortgage deed passed into plaintiff's custody. Defendant being called upon by plaintiff for his contribution towards the amount paid to McLaren, instead of paying, insisted that plaintiff should proceed upon the security and realize it, or hand over the mortgage deed to him (defendant) in order that he might take proceedings upon it. Plaintiff refused to take either course, giving as his reason his dislike to being a party to turning his brother, the debtor, out of house and home. At the time defendant made this request the mortgaged property was sufficient to cover both the first incumbrance and the sum paid by the sureties; but at the time this action was begun it had become so depreciated as to be insufficient to cover the first mortgage. Held, that defendant was not relieved from liability by plaintiff's neglect or refusal to sell the mortgaged property. Plaintiff, having paid the debt to McLaren, stood in McLaren's place as a creditor of defendant: *Re Parker*, (1894) 3 Chy. 400. The depreciation in the value of the security was not due to any act of the plaintiff, and he was under no obligation by contract or otherwise, to defendant to take proceedings to realize it at any particular time. Defendant was entitled to the benefit of the security upon payment to plaintiff and Loucks of the amount of their advances; or without making such payment he might probably have instituted proceedings to have the security realized. Judgment for plaintiff for $266.66 with interest from September, 1891, and costs of action.

WILLIAMS v. FERRIS.

[MEREDITH, C.J., FALCONBRIDGE AND MACMAHON, JJ.—7TH NOVEMBER.

Agreement to give security—Enforcement after insolvency and against other creditors.

W. H. P. Clement, for defendant Cochrane, appealed from judgment of Street, J., at the trial in favour of plaintiff. Action by A. R. Williams, of Toronto, against A. Ferris & Co., of Sudbury, and F. Cochrane, the assignee, for the benefit of creditors of that firm to enforce an agreement by the firm to give a mortgage upon their factory building at Sudbury as security for the price of a boiler and engine and machinery sold by plaintiff to the firm. The agreement was made in December, 1894, but the mortgage was never given, and the firm assigned to defendant Cochrane in July, 1895. The trial Judge declared plaintiff entitled to a mortgage as prayed, and ordered defendants to pay the costs of the action, finding that the building in question was a tenant's fixture. The appellant contended that if the building was a part of the freehold, there was no memorandum in writing to satisfy the Statute of Frauds, and if it was a chattel, the agreement should not be enforced against creditors, under the Bills of Sale Act. J. H. Macdonald, Q.C., for plaintiff, contra. Appeal dismissed with costs.

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MAY v. LOGIE.

[HAGARTY, C.J.O., MACLENNAN, BURTON AND OSLER, JJ.A.—10TH NOVEMBER.

Will—Devise—Construction of elliptical phrase.

Judgment on appeal by plaintiff from judgment of Meredith, J. (27 O. R. 501), dismissing with costs an action brought by plaintiff claiming under the heirs-at-law of William Pidgeon, against defendant, claiming under an alleged devise in his will to his widow, to recover possession of certain lands in the village of Mimico, in the county of York. The will was as follows:—"It is my will that as to all my estate, both real and personal, whether in possession, expectancy, or otherwise, which I may die possessed of, my wife Elizabeth, and I hereby appoint my said wife Elizabeth to be executrix of this my will." The trial Judge held that this was a devise to the wife of all the testator's real estate in fee. Appeal dismissed with costs, the Court holding that the words used by the testator were sufficiently intelligible, though elliptical, to be construed as passing the estate to the wife. J. A. Donovan for appellant. J. M. Clark and Shepley, Q.C., for defendant.

* * *

McCAUSLAND v. HILL.

[HAGARTY, C.J.O., MACLENNAN, OSLER AND BURTON, JJ.A.—10th NOVEMBER.

Covenant not to engage in business—Subsequent acting as servant for another in such business.

Judgment on appeal by defendant from the judgment of MacMahon, J., at the trial at Toronto, in favour of plaintiffs in action brought by the Cobban Manufacturing Company, McCausland & Sons, and Hobbs & Son, to restrain defendant from engaging in the buying, selling, and dealing in plate glass contrary to a restrictive covenant contained in an agreement made in 1893, between the three plaintiffs and "The Toronto Plate Glass Importing Company," under which name Hill, the defendant, and one Ferguson then carried on business. After this agreement Hill and Ferguson became insolvent, and made an assignment for creditors. Hill's wife, and one Pearson, bought the assets from the assignee, and continued the business under the same name, "The Toronto Plate Glass Importing Company," with Hill, the defendant, as a servant of the firm, and began to deal in plate glass. The trial Judge held that this was a breach of the covenant, and gave judgment for plaintiffs, for an injunction and $200 damages. The majority of this Court held that the action lay at the suit of plaintiffs, but that no actual substantial damages were proved. Hagarty, C.J.O., dissenting, held, that plaintiffs had no right of action; that the cause of action was vested in the company formed by the different plaintiffs. The judgment of the Court is that the appeal is dismissed, but the judgment below varied by striking out the award of damages. Question of costs further reserved. Biggs, Q.C., and Lewis, Q.C., for appellant. Ritchie, Q.C., and Ludwig, for plaintiffs.

* * *

THOMPSON v. THOMPSON.

[MEREDITH, C.J., 4TH NOVEMBER.

Husband and wife—Property purchased by joint earnings—Creation of trust—Money gained by crime and prostitution.

J. MacGregor and R. G. Smyth for plaintiff. C. Millar and W. N. Ferguson for defendant. Action to have it declared that

plaintiff is the owner or equally entitled with the defendant to a house and lot in the city of Toronto, which stands in the name of the defendant, the plaintiff having, as she alleged, advanced moneys to assist in purchasing the same. The plaintiff formerly lived with defendant as his wife, and both were pickpockets or thieves. The plaintiff is now serving a term in the Kingston penitentiary under a conviction for larceny, and was brought up to give evidence under a habeas corpus ad testificandum. On cross-examination she said that the moneys which went into the house were obtained by her through crime. The learned Chief Justice found upon the evidence that the case was not made out. Judgment dismissing the action with costs.

* * *

REGINA v. LORRAINE.

[BOYD, C., MEREDITH, J., 4TH NOVEMBER.

Criminal law—Lottery—Section 205 (b), Criminal Code—"Property" and specific property—Works of art.

Judgment on motion by defendant to make absolute a rule nisi to quash a summary conviction of defendant by the police magistrate for the city of Toronto for selling a ticket in a lottery, contrary to s. 205 (*b*) of the Criminal Code. The conviction was for that defendant did "unlawfully sell and barter a certain card and ticket for advancing, lending, giving, selling, and otherwise disposing of certain property, to wit, pictures or one-half the stated value of each picture in money, by lots, tickets, and modes of chance. The deefndant contended that the evidence showed that no specific property was to be thus disposed of by chance; and that the evidence showed the case to be within the exception to distribution by lot of works of art. The phrase in the code is "disposing of any property," and the clause of interpretation as to property simply states that it includes "every kind of personal property." Held—That "property" in the code is not to be read "specific property." The essence of the enactment lies in the disposal of any property by mode of chance, and it would be an easy evasion if the statute could be got rid of by designating no particular thing, although the winner would be able to exercise his choice among the available prizes offered. *Taylor* v. *Smetten*, 11 Q. B. D. at p. 212; *Reg.* v. *Harris*, 10 Cox. C. C. 353; and *Commonwealth* v. *Wright*, 137, Mass., 250, followed. *Reg.* v. *Dodds*, 4 O. R. 390, distinguished. Held, also—That there was no lack of evidence to warrent the finding that money might be had instead of pictures by the winning tickets; and this element destroyed the privilege in favour of the dissemination of works of art, and let in the vulgar non-aesthetic aspect of chance-venture for money common to these lottery undertakings. Even if there was uncertainty in the getting of money on the tickets, it could only add to the precariousness of the whole transaction, and constitute another chance added to the excitement of the investor; see *Morris* v. *Blackman*, 2 H. & C. 912; the *State* v. *Shorts*, 3 Vroom (New Jersey), 398. Rule nisi

discharged with costs. F. A. Anglin for defendant. J. R. Cartwright, Q.C., for the Crown.

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CAVANAGH v. PARK.

[BURTON, OSLER AND MACLENNAN, JJ.A.—Court of Appeal.—10TH NOVEMBER.

Workmen's Compensation for Injuries Act—Sufficiency of notice—Pleading insufficiency.

Judgment on appeal by defendant from judgment of Boyd, C., in favour of plaintiff upon the findings of the jury in an action under the Workmen's Compensation Act for injuries sustained by plaintiff in the defendant's boiler factory while working at a rolling machine, by reason of an alleged defect therein. The plaintiff lost a portion of one foot. He claimed that the machine should have been guarded. The defendant contended that there should be a nonsuit or a new trial. A question as to the sufficiency of the notice given before action was also argued. Appeal dismissed with costs. Held, that the insufficiency of the notice could not be relied upon by defendant because notice of relying upon it was not given by defendant seven days before the trial, and pleading the insufficiency in the statement of defence did not comply with the statute. H. D. Gamble and H. L. Dunn for appellant. Pegley, Q.C., for plaintiff.

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ELLIOTT v. FENTON.

Trespass to land—Tenant in occupation and action by reversioner—Cutting away overhanging gable.

Judgment on appeal by defendants from judgment of Meredith, J., at the trial at Toronto, in favour of plaintiff, awarding him $1 damages and full costs in an action for trespass to land. The defendants, husband and wife, occupy a house owned by the wife, adjoining that of the plaintiff, in Dalhousie street, in the city of Toronto, and trespass complained of was the cutting off of an overhanging gable or cornice from plaintiff's house. The plaintiff's house is leased to and occupied by a tenant. Appellants contended that a reversioner cannot bring trespass; that plaintiff has shown no substantial injury; and that a declaration of plaintiff's rights cannot be made. Appeal dismissed without costs, Burton, J.A., dissenting. E. D. Armour, Q.C., for appellants. W. R. Riddell for plaintiff.

* * *

BROWNE v. O'DONOHOE.

[MACLENNAN, J.A.—Court of Appeal, Chambers—24TH OCTOBER, 1896.

Right to appeal—Judicature Act and Law Courts Act—Setting aside default judgment.

Masten, for plaintiffs, moved to quash appeal to this Court by defendant, upon the ground that no appeal lies, or at all events not without leave. Meek, for defendant, opposed motion, and moved for leave in case it should be necessary. The appeal was from an order of a Divisional Court dismissing an appeal from an order of a Judge in Chambers dismissing an appeal from an order of the Master in Chambers dismissing a motion by defendant, under Rule 796, to set aside judgment entered for plaintiffs by default of defence in an action of ejectment, and for leave to defend. Held, having regard to sections 72 and 73 of the Judicature Act,

1895, and the amendments to section 73 by the Law Courts Act, 1896, that the defendant has a right to appeal to this Court, but not without leave. In view of the following considerations leave should be granted. The omission to file the defence was a mere slip of the solicitor, and the application for relief was made promptly. No attempt was made to obtain judgment under Rule 739, but instead plaintiffs filed a statement of claim. On a motion for an injunction in a former action the Court had stayed proceedings under the power of sale in the plaintiff's mortgage, and had required an action for ejectment to be brought. Order made granting defendant leave to appeal upon payment of the costs of these motions (fixed at $12), and upon a deposit of $50 by way of security for the costs of the appeal.

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RE BENFIELD AND STEVENS.

[WINCHESTER, MASTER-IN-CHAMBERS, 3RD NOVEMBER, 1896.

Interpleader order—Parties out of jurisdiction—Funds in dispute payable out of jurisdiction.

Judgment on application for an interpleader order, by T. Benfield. Application opposed on behalf of Stevens on ground, among others, that parties are out of jurisdiction, and that therefore Court can make no final order against them. Held, that applicant being resident out of jurisdiction, as also Stevens; et al., and the fund in dispute being payable out of the jurisdiction, the Master has no authority to make an order directing Stevens & Co. to come within the jurisdiction and defend themselves as to their right to such fund. *Stevenson* v. *Anderson*, 2 V. & B., 407; *East and West India Dock Co.* v. *Littledale*, 7 Hare, 57; *Credits Grumdense* v. *Van Weede*, 12 Q. B. 171; *Weldon* v. *Gamond*, 15 Q. B. 622; *Re Busfield*, 32 Chy. D. 123; *Re Brandin*, 54 L. T. 128; and *Re Cliff* (1895), 2 Chy. 21, followed. Application dismissed with costs. Raney for applicant. J. Bicknell for Stevens and others. W. H. Biggar (Belleville) for Richardson.

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IRWIN v. TORONTO GENERAL TRUSTS COMPANY.

[OSLER, J.A.,—Court of Appeal, Chambers—24TH OCTOBER, 1896.

Security for costs—Poverty of plaintiff.

T. W. Howard, for defendants, moved for order requiring plaintiff to give security for the costs of his appeal to this Court from the judgment of the Trial Judge dismissing the action. G. G. S. Lindsey, for plaintiff, contra. Osler, J.A.—The appeal appears to be of a substantial and meritorious character. It comes to this Court direct from a single Judge, instead of being taken to a Divisional Court, where, under no circumstances, the appellant being the real actor, could security for costs have been required. The only ground relied upon in support of the motion is the poverty of the appellant. There is no other special circumstance. Taken by itself, I must hold, as I have always done, that this is not a special circumstance, or ought not to be held under our statute. The conditions of appealing which obtain here are so different from those in the English practice that the decisions there are no guide to us on this point—I mean with regard to the

ground of poverty. It is inconceivable to me that the Legislature could have intended that poverty alone should trammel an appeal to this Court, yet not to the Divisional Court, from the same judgmnt. Motion dismissed with costs to plaintiff in any event.

* * *

REGINA v HUTTON.

[BOYD, C., FERGUSON AND MEREDITH, JJ., 3RD NOVEMBER, 1896.

Cheese factory frauds—Skim milk—Effect of amendments (55 V. c. 53) to 51 V. c. 32.

Aylesworth, Q.C., for defendant, renewed argument of motion to make absolute a rule nisi to quash a summary conviction of defendant for supplying skimmed milk to a cheese factory. W. H. Blake, for the prosecutor, contra. By section 1 of 51 Vict. c. 32 (Ont.), an Act to provide against frauds in the supplying of milk to cheese or butter manufactories, it is provided that no person shall knowingly and wilfully sell, supply, bring or send to a cheese or butter manufactory to be manufactured, diluted or adulterated, or skimmed milk without distinctly notifying the owner in writing. By section 2 no person shall knowingly and wilfully keep back "strippings" without distinctly notifying, etc. By section 3, knowingly and wilfully selling or sending sour or tainted milk without notification, is prohibited. By section 7, for the purpose of establishing the guilt of any person under the first three sections, it shall be sufficient prima facie evidence to show that such person by himself, his servant or agent, sold, supplied, sent, or brought, to be manfactured, to any cheese or butter manufactory, milk substantially below the standard of that actually drawn from the same cow or cows within the then previous week. By section 1 of 55 Vict. c. 53, the former Act is amended by striking out the words "knowingly and wilfully" from sections 1, 2 and 3; and it is provided that sections 1, 2 and 3 shall not apply where the person charged with the offence proves to the satisfaction of the justice or justices of the peace that "the dilution or adulteration of the milk, or the keeping back of the strippings" was without his knowledge or privity, and contrary to his wish and intention; and that he was not aware of the "dilution, adulteration, or keeping back, as aforesaid, at the time or before so selling, etc., the milk." In this case the offence was the sending of skimmed milk to the factory, and defendant alleged that it was done by his servant without his knowledge. The Court held, however, that the fact of the omission from the amending Act or any reference to "skimmed milk," while it may have been by mistake of the draftsman, must be construed as showing that a man who sends skimmed milk to a factory, even though the skimming has been done without his knowledge or privity, is liable to the penalty provided by the Act. Rule nisi discharged without costs.

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