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THE Right Honorable Sir John Alexander Macdonald, Q.C., D.C.L., LL.D., K.C.M.G., G.C.B., a member of Her Majesty's Privy Council, sometime Minister of Justice, and for thirty-four years the first Minister of the Crown in Canada, died at Ottawa on Saturday, June 6th.

So heartfelt, spontaneous and full have been the countless tributes to his memory from all parts of the British Empire and elsewhere, that there would seem to be nothing left for us to do but record the sad loss Canada has sustained in the death of the greatest of her sons.

A learned lawyer, with a ready mind and retentive memory, deeply versed in constitutional law; a far-seeing and wise statesman; genial and large-hearted, whom to know was to love; with a knowledge of human nature to a degree surpassed by no man of his time; capable of inspiring the confidence and affection of all classes; with an attractive power, irresistible though unexplainable, and, in that respect alone, not merely wielding an immense influence over his own political supporters, but often disarming his opponents; with no selfish aim, save the ambition to be a leader among men, which, *facile princeps*, he was; not without his faults and failings (for none are perfect, and the supposed exigencies of party politics may have left some blots on the page), but a man who would have been a great man in any part of the Empire; above all, to be remembered as one who passionately loved his country, with unswerving faith in the destiny of Canada, devoting his life and powers to what he considered her best interests—living and dying in harness, and in her service—such was the man who was on Thursday, June 11th, laid to rest at the old city of Kingston, amid the sorrow, not merely of his own land, but of all parts of the Empire, and of his Queen, whose loyal subject he ever was.

Great as is the loss the Dominion has sustained, it would be a poor tribute to his memory for us to call his loss irreparable, for *he* believed in the Canada whose future he so largely moulded, and she has still many sons who love her well. May it be that those who shall succeed him will work as faithfully and loyally for her welfare as he has done.

IN a humorous yet pertinent letter to the London *Times*, Mr. Inderwick suggests that the judges of the Divorce Division, in cases in which it seems to them just and reasonable to do so, be empowered to disregard the restraint on anticipation by which dishonest women are enabled to avoid satisfying their just debts. Experience shows that this is the purpose for which the restraint on anticipation

is employed much more often than the original intention of preventing the undue influence of the husband. Were this power, suggested by the writer of the letter, given to all the courts, substantial justice would, we think, be the result.

By an Act passed at the last session of the Legislative Assembly, referred to in another column, provision was made for a second Junior Judge for the County of York. An appointment to this position has been made in the person of Mr. F. M. Morson, who has already had considerable experience in the duties he is expected to perform, having for some time past presided at the sittings of the Division Courts. We congratulate Mr. Morson on his appointment, and we feel that those litigants who desire a rapid despatch of business will not be disappointed in that respect, at least, by the new appointment.

A POINT of law, an outcome of the genius of Edison, must necessarily be decided in the near future. Brought up in one of the lower courts of New Jersey, the case was settled before even this lower court had passed upon it. A boarding-house keeper sued a boarder for having spoken into a phonograph words calculated to injure her in business. The plaintiff claimed that it was publication of a slander. We are compelled to differ from our esteemed contemporary, *The Central Law Journal*, which thinks it impossible that words mechanically reproduced could be classified as either written or spoken. Leaving aside the question of libel—and might it not surely be argued that the defendant committed the spoken words into writing—we do not understand that the mere fact that a mechanical instrument repeated the actionable words discharges the defendant from the result of his deliberate act.

WHEN a litigant in the United States has sufficient pertinacity to carry his case to the Supreme Court of that country, it would appear that the chances are he will have to wait some considerable time before the final adjudication. One important case on the list to be tried by this Court, which now stands adjourned until October, has been three years waiting to be heard. It is very evident that there is a necessity for the recent Act of Congress providing for the creation of Appellate Courts, which will to some extent relieve the pressure. In England the aspect is but little brighter. In two cases in which judgment has recently been delivered by the House of Lords, no less period of time than two years and three months has elapsed since the decision of the Court of Appeal. Surely it is but tardy justice that compels a suitor to wait several years before his case is even heard.

WHERE a parent or guardian of an infant, or a stranger, enters into possession of an infant's land, when does his possession cease to be that of a bailiff? The Queen's Bench Divisional Court say, in *Kent* v. *Kent*, 20 Ont. 445, that the

possession does not become wrongful even after the infant has attained his majority, and that when a person is once in as bailiff, he cannot divest himself of that character, except by going out of possession or receipt of rent and delivering up such possession or receipt to the owner or those acting under him. In arriving at this conclusion, the Court relied on the cases of *Wall* v. *Stanwick*, 34 Chy.D. 763, and *In re Hobbs*, 36 Chy.D. 553. Both of these cases are decisions of a single judge of first instance, and are opposed to at least three decisions of appellate courts of this Province: first, the case of *Re Taylor*, 28 Gr. 640, which was not referred to, and which was a decision on rehearing of the late Court of Chancery; secondly, *Hickey* v. *Stover*, 11 Ont. 106; and thirdly, *Clark* v. *McDonnell*, in the C.P. Division, not yet reported, both of which latter cases were referred to. It appears to us that it is contrary to the comity which should prevail amongst the different Divisions of the High Court for one Divisional Court to refuse to follow the decisions of other branches of the Court of co-ordinate jurisdiction, and to follow in preference the dicta of English judges of first instance, for it will be observed, on reference to the English cases above referred to, that in neither of them was the point in question actually decided. *Lyell* v. *Kennedy*, 14 App. Cas. 437, which was also referred to, was not a case of infancy at all, but the case of one who had avowedly entered into possession for the benefit of the heirs of the last owner, whoever they might prove to be, and who had kept a separate account of the rents and otherwise shown that his possession was that of trustee. After the lapse of twelve years he claimed possession for his own benefit, and the House of Lords held that he had by his own acts shown that he had entered as trustee for whoever might turn out to be rightfully entitled, and it was impossible for him to divest himself of that character. But it appears to us that is a very different case to one where, merely by reason of the infancy of the true owner, the law imputes a character to the possession different from that which the party in possession himself intended to assume.

In *Moore* v. *Bank B.N.A.*, 15 Gr. 319, Mowat, V.C., in discussing English decisions which were in conflict with decisions of our own courts, laid down the rule that the latter must be held to be the law of the Ontario Court until either a contrary rule is asserted by our own Court of Appeal, or receives the express sanction of a higher court in England. This is a good working rule, and it seems to us a pity it is not acted on.

At the recent session of the Legislature a statute was passed (54 Vict., c. 18) some provisions of which effect material modifications in the Devolution of Estates Act. By the recent decisions of the Court of Appeal in *Martin* v. *Magee*, (see *ante* p. 316), and of Falconbridge, J., in *Re Wilson*, 20 Ont., it seemed very probable that the Devolution of Estates Act would be interpreted by the courts in accordance with what may well be presumed to have been the intention of the Legislature in passing it; which we take to be, in the first place, to make the succession to land the same as that to personalty, and, secondly, in all cases to secure the rights of creditors by making the title of land of a deceased owner

come through his personal representative. Having by the Devolution of Estates Act established, as we conceive, these two fundamental principles, the Legislature has now, by the Act we have referred to, introduced a discordant principle by enabling the next of kin or devisees to take immediately from the deceased as formerly, instead of derivatively through his personal representative. It is hardly to be wondered at if so great a change in the law as was effected by the Devolution of Estates Act should be accompanied at first by some little friction. People would not all at once appreciate the change effected thereby, and their being familiar with the old system might at first lead them to think the change effected by the new law as productive of hardship—entirely forgetful of the real and substantial benefits of the Act. It can hardly be doubted that the giving of the personal representative power to wind up the whole estate is an immense boon to the public and a great saving of expense. Neither can it be doubted that if the principle of requiring a title to be deduced through a personal representative were maintained in all cases, it would in the long run tend greatly to the simplification of titles. These benefits were further enhanced by the security which the Devolution of Estates Act afforded to creditors in insuring the due application of all assets of their debtor, whether real or personal, in payment of his debts. These benefits are manifest and obvious, and ought not, it appears to us, to have been jeopardised by any such considerations as appear to have induced the passage of the Act of last session. We understand it has been considered a hardship to require the next of kin or devisee to obtain a deed from the personal representative, and for the purpose of saving this trumpery expense the Legislature appears to have been unfortunately induced to accede to a piece of legislation which, we fear, will prove a very costly remedy for a very insignificant complaint.

The first section of the Act provides that "real estate not disposed of or conveyed by executors or administrators within twelve months after the death of the testator or intestate shall, at the expiration of the said period, be deemed thenceforward to be vested in the devisees or heirs beneficially entitled, as such devisees or heirs (or their assigns, as the case may be), without any conveyance by the executors or administrators, unless such executors or administrators, if any, have caused to be registered in the registry office, or Land Titles office where the land is under The Land Titles Act, of the territory in which such realty is situate, a caution under their hands that it is or may be necessary for them to sell the said real estate or part thereof under their powers and in fulfilment of their duties in that behalf; and in case of such caution being so registered, this section shall not apply to the real estate referred to therein for twelve months from the time of such registration, or from the time of the registration of the last of such cautions, if more than one are registered."

The interpretation of this section by judicial decision we predict will prove a very costly business.

First and foremost among the questions to arise is whether or not the section is retrospective in its operation. Many very solid reasons, we believe, may be assigned in favor of the negative. To hold it retrospective would be to divest personal representatives of a considerable portion of the assets of the estate in

their hands for not registering a caution which there was no law enabling them to register. For example, a testator may have died in 1887; yet, according to the Act, if retrospective in its operation, in 1888 the land would have become vested in the devisee because within twelve months from the testator's death no caution had been registered, which until this Act was passed there was no power enabling the personal representative to register. It will be observed that no time is limited after the Act coming into force for registering cautions relating to the estates of persons who have been dead more than twelve months before the passing of the Act; and at the same time no caution is effective unless it is registered within twelve months after the death of the deceased owner. At the same time, the statute is so ambiguously worded that it is susceptible of an *ex post facto* operation. Furthermore, the question must arise: is the Act confined to cases where there is an actual legal personal representative *in esse*, or does it extend to cases where executors have renounced, or have not taken probate, or where no letters of administration have been granted?

It may also be noted that although the last sentence in section 1 inferentially seems to assume that more than one caution may be registered, yet the Act contains no explicit provision enabling any caution to be registered after the lapse of twelve months from the death of the testator or intestate. It will therefore become a serious question with personal representatives, whether their power to deal with the realty of a deceased person can by any possibility be extended beyond two years at the very furthest from their testator's or intestate's death.

The Act, though it vests the land in the devisee, or "heir at law beneficially entitled," is silent as to whether or not he is to take free from the claims of creditors; neither does it exonerate a personal representative from liability in respect of such land, which has, under the Act, become vested in the devisee or "heir beneficially entitled."

We presume an omission to register a caution when one might be registered will render the personal representative liable as for a *devastavit*. But that liability can hardly attach to him when he is precluded by the Act from doing so.

The distinct violation of the fundamental principle upon which the Devolution of Estates Act is based by the recent Act we think is to be regretted. The paltry grievance which it was designed to alleviate is as the dust in the balance compared with the serious difficulties which the Act is likely to create.

By enabling the next of kin to acquire title without the intervention of the personal representative, a premium is offered to them to conceal from the personal representative the real assets of the deceased. This may be very easily done in many cases where a man dies intestate, or makes no specific disposition of his property by his will. He may die entitled to lands of which his next of kin may be well aware, but of which his personal representative may know nothing. The next of kin or devisee henceforward will have a distinct advantage in concealing from the deceased person's personal representative all the information they possess as to his realty, in the hope that the year may elapse without his discovering it, whereupon, by the operation of this Act, it will vest in them without his intervention, and they can thenceforward deal with it as their own.

The best thing that the Legislature can do in regard to section 1 is to repeal it at the earliest moment at its next session, or at all events put it in such a shape that it will not be a perpetual tax on all the land owners in the country in the shape of law suits to find out what it means.

For our own part, we should think it very unsafe to accept a title which depended on the operation of section 1, and should think, notwithstanding its provisions, that a conveyance from the personal representative should be required.

PROVINCIAL LEGISLATION OF 1891.

The session of the Legislative Assembly just closed has not produced the same quantity of legislation as is its wont. The number of original and amending acts is considerably less than that of last year.

The local member who considers it his duty to place himself on record by making some harmless amendment to an existing act has not been as energetic this session as hitherto.

In another column we discuss the effect produced on the Devolution of Estates Act by c. 18, an Act respecting the Sale of Real Estate by Executors and Administrators.

By an amendment to The Public Lands Act, it is no longer necessary for the Crown to expressly reserve to itself mines, minerals, and mining rights when the land is granted for agricultural purposes.

Considerable amendments have been made to The General Mining Act. The price of mining lands has been increased, and a royalty has been imposed upon silver, nickel, and nickel and copper, of three per cent., and all other ores are liable to a similar tax at a rate to be determined. No small amount of dissatisfaction has already been expressed in regard to placing a royalty on nickel, and it is yet to be seen whether the tax will or will not be prejudicial to the mining interest.

An important section has been added to the Judicature Act, by which a judge of the court in which an action is brought to recover damages for bodily injuries, or the referee if the action is tried before one, may order the injured person to be examined by a medical practitioner, who is to be selected by the judge, and may afterwards be a witness at the trial, unless the trial judge shall otherwise direct. This section has been added in consequence of the disadvantage at which a defendant is put in such a case, as evidenced, among other decisions, by *Reily* v. *City of London*, 14 P.R. 171. The English "Regulation of Railways Act," 1888, 31 & 32 Vict., c. 119, s. 26, had already provided for this in the case of a railway accident, but no similar statute was hitherto to be found on our statute books. This would appear to legalize what was previously an assault, which we might, perhaps, better describe as an assault by Act of Parliament.

A provision is made by c. 12, in appeals to the Court of Appeal from the County Courts, allowing appeal books to be type-written, and making it unnecessary to insert therein copies of the exhibits.

The gradual equalization of business in the different divisions of the High Court has produced c. 13, whereby one of the judges of the Chancery Division may be detached therefrom; and it is also provided that in the case of a vacancy occurring in that division, each division shall in future consist of the same number of judges. As a matter of fact, the amount of business now done at the Chancery circuits is considerably less than that done at the assizes. The Chancery Sittings throughout the country are continued in order to answer a very important purpose in the interior economy—or rather emolument—of its judges; but if a proper and adequate method of paying them could be attained, it would be no longer necessary to have judges travelling on circuit to towns where there are very few causes to try, when the Common Law judges are often unable to clear the docket.

On page 161 *ante* we referred to the provision being made by the Legislature for a second junior judge for the County of York, and for the simultaneous sittings of the County Court, Court of General Sessions, and Division Courts. This measure has now become law and an appointment has been made. The Act provides for weekly sittings of the Division Courts in the City of Toronto during the greater part of the year, monthly hearing of judgment summonses, and bi-monthly trials in jury cases.

C. 16 provides that every Justice of the Peace shall within three months of his appointment, or before the first of August next if already appointed, take the oath of office and qualification, and in default of his so doing his commission is then *ipso facto* cancelled.

The Act respecting Trustees and Executors (R.S.O., c. 110) is amended by "The Trustee Act, 1891," which is in effect the English Trustee Act of 1888. By it a trustee, unless expressly forbidden by his trust deed, may invest in terminable debentures or debenture stock of any society or company authorized to loan on real estate which has a paid-up stock of half a million dollars, a reserve fund of not less than 25 per cent. of its paid-up capital, and the market value of whose stock is at a premium of 25 per cent., and which has during the preceding ten years paid a dividend of six per cent. on its ordinary stock. S. 30 of R.S.O., c. 110, nominally repealed, which authorizes similar investments in the debentures of building societies, is re-enacted, qualified by certain restrictions as to reserve fund, market value of stock, and amount of dividend, somewhat less onerous than those just specified. Every society or company of the class first above mentioned, before its debentures become an authorized investment under this Act, must obtain an order of the Governor in Council (*sic*) approving thereof—a restriction which is apparently deemed unnecessary in the case of building societies. S. 9 embodies the case law and practice both in England and Canada as to a trustee not being liable when an investment is made not exceeding one-half the value of the property when the valuation is made by a person reasonably believed to be an able, practical valuer, and s. 10 makes statutory the case law (*vide In Re Salmon Priest* v. *Uppleby*, 42 Chy. D. 351) that where a trustee lends more than the authorized amount on any legitimate security, he shall only be liable to make good the amount advanced in excess of what was

proper. This Act is intended as an enabling one to trustees; but being also retroactive, we may expect to hear of it again.

The Act respecting Assignments and Preferences next undergoes some amendments, the Legislature (to use the words of Mr. Justice Osler in *Gibbons* v. *McDonald*, 18 A.R. 159, "having failed to express themselves intelligibly" on this subject) have finally, after numerous amendments, given up section 2 in disgust and substituted therefor a new section. The manifest intention of this section is to get over the recent decision in the Supreme Court in *Molsons Bank* v. *Halter*, 18 S.C.R. 88, where it was held that the word "preference" means a voluntary preference, that is to say, a spontaneous act of the debtor, and that a mere demand is sufficient pressure by a creditor to take away from a conveyance, transfer, or mortgage, the character of an unjust preference.

It will be noticed that the words "or which have such effect," which were introduced into the repealed section with the evident intention of abolishing the doctrine of pressure in all cases, have been omitted from subsection 1 of the section substituted for the repealed section, which deals with transfers made with intent to defraud, hinder, delay, or prejudice creditors, so that it will still be necessary to prove in such cases the intent in the minds both of the transferor and the transferee.

Subsections (*a*) and (*b*) of section 1, which deals with "effect," apply only to cases of unjust preferences, and enact that the intent shall be presumed if the "transaction has the effect of giving a preference," provided an action is brought within sixty days or the debtor assigns within that time, "whether the same be made voluntarily or under pressure." So that the doctrine as to pressure as revived by *Molsons Bank* v. *Halter* has not been interfered with unless an action to impeach the transaction is brought within sixty days or the debtor assigns within that time.

It is doubtful whether this last attempt of the Legislature will prove more effective than their previous efforts to place the indolent creditor on the same footing as his more energetic brother; and we cannot help feeling that it would be well if the Legislature would take advantage of the act enabling the Court to entertain an action for the declaration of the validity of any statute, to ascertain the exact extent of their power to legislate on this much-debated and most important subject.

Among the original acts passed we find The Woodman's Lien for Wages Act, which facilitates the filing and enforcement of liens by workmen for labor done on logs in the districts of Algoma, Thunder Bay, and Rainy River.

By c. 23, the Society of Friends, or Quakers, are enabled to solemnize marriages according to their own rites, and all marriages thus solemnized previous to this act are declared to be and have been valid. In the Salvation Army, male commissioners and staff officers duly appointed by the society, are authorized to perform the ceremony.

Important amendments, interesting principally to medical practitioners, are made to The Ontario Medical Act.

By c. 30, The Chartered Stenographic Reporters' Association of Ontario is incorporated.

By c. 34 the law of directors' liability is made more stringent. It also provides for the right of directors who have become liable under the act to recover contribution from co-directors.

C. 38, An Act respecting Loan Companies. This act is substantially a re-enactment, with certain changes and additions, of those sections of The Companies Act (Dom.) which relate to loan companies (R.S.C., c. 119, ss. 86-103). Previous to the passing of this act, loan companies might be incorporated either by the Act respecting Building Societies or the Joint Stock Companies Act. The former of these being found too restrictive and the latter not sufficiently so, this present act was the result. It is to be noted that the Ontario act applies only to loan companies which may hereafter be incorporated, and that it does not apply to companies incorporated under the Act respecting Building Societies, unless expressly mentioned.

The Municipal Act, of course, comes in for its share of amendments, which will this year fill fourteen pages of the Statute Book. The amendment of most general interest is section 35, which does away with the effect of the much canvassed case of *Cumberland* v. *Kearns*, 18 O.R. 151; 17 A.R. 281, by enacting that charges on land for local improvements shall not, except as to arrears, come within the scope of the ordinary vendor's covenant against encumbrances. The wording of the section is clumsy, and might lead one to suppose that it is intended also to overrule *Re Graydon and Hammill*, 20 O.R. 199, in which it was held that, as between vendor and purchaser, before the completion of the contract, local improvement rates are encumbrances which the vendor is bound to remove. Possibly such was the intention of the draughtsman—the use of the words "vendor or person agreeing to sell" seems to point to an uncompleted contract rather than to one which has been completed by conveyance—but we think that it will be found that *Re Graydon and Hammill* is still law.

The Drainage Trials Act provides for the appointment of a referee for the purpose of The Ontario Drainage Act and ss. 569 *et seq.* of The Municipal Act. Mr. B. M. Britton, Q.C., of Kingston, has been chosen to fill the position. As the referee has, in effect, all the powers of a judge, it would seem to us that it is open to question whether the Legislature is not again acting *ultra vires*. The fact that he is called a referee does not any the less constitute him a judge.

C. 52 imposes a penalty for the destruction of the plant called Ginseng, the cultivation and care of which for medical purposes has become quite an industry in some places.

By c. 55 the Public Schools Acts are consolidated. An Act respecting Truancy and Compulsory School Attendance is taken principally from the old Public Schools Act. C. 57 consolidates and revises the High Schools Act. The remaining statutes do not seem to call for any special mention.

COMMENTS ON CURRENT ENGLISH DECISIONS.

(Notes on the May Numbers of the Law Reports—continued).

AGREEMENT IN RESTRAINT OF TRADE, REASONABLENESS—INTENTION OF PARTIES.

Mills v. *Dunham* (1891), 1 Ch. 576, was a motion to restrain the defendant from violating an agreement in restraint of trade. The defendant had been in the plaintiffs' employ, and had bound himself that in the event of the termination of the employment he would not, either on his own account or on the account of any employer, "call upon, directly or indirectly solicit orders from, or in any way deal or transact business with" any one who had while the employment was in force been a customer of the plaintiffs. The defendant contended that this agreement was too wide in its terms, and would prohibit the defendant from calling upon the plaintiffs' customers to solicit orders in any other trade in which he might engage. But Chitty, J., was of opinion that the restraining clauses must be construed by reference to the whole agreement, from which it was apparent that it was intended merely to prohibit the defendant from calling on the plaintiffs' customers to solicit orders in any trade similar to that which the plaintiffs were then carrying on, and he granted an injunction accordingly, which was affirmed by the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.).

SOLICITOR AND CLIENT—LIEN ON FUND, EXTENT OF—SECURITY, TAKING, EFFECT OF—WAIVER OF LIEN.

In re Taylor (1891), 1 Ch. 590, one or two points of interest to the profession are determined: as to the nature and extent of the lien to which solicitors are entitled to on the papers of their clients in their hands, and as to the effect on the lien of taking security for their costs. In the present case the solicitors delivered an account to their client claiming a balance due to them of £81, and for which they claimed a lien on the client's papers in their hands. The balance only included one item of £20 for costs, the rest was made up of sums advanced by the solicitors to or on behalf of the client. The client claimed delivery of the papers on payment of the sum of £20, for which alone, it was contended, any lien existed. Stirling, J., thought the lien existed for the whole balance, but he was overruled by the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.), who held that a solicitor's lien only exists in respect of his costs, charges, and expenses, which are the subject of taxation or moderation by the taxing officer. It subsequently appeared that the solicitors had taken a promissory note for the balance due them, and had not expressly reserved their lien; and this was held by the Court of Appeal to amount to a waiver of the lien altogether.

WILL—CONSTRUCTION—CONDITION, "RETURN TO ENGLAND"—VENDOR AND PURCHASER—CONDITIONS OF SALE—RIGHT TO RESCIND, "NOTWITHSTANDING PREVIOUS LITIGATION."

In re Arbib & Class (1891), 1 Ch. 601, was an application under the Vendors and Purchasers Act, in which the construction of a will was involved. The testator appointed F. E. Bucknall one of his executors and trustees, "if and when he shall return to England," and devised his estates to his trustees upon the trusts of the will. F. E. Bucknall was residing in Australia, but eight years after

the testator's death returned to England and remained six months for the benefit of his health, when he went back to Australia, where he had ever since resided, having taken no part in the execution of the trusts, and without having proved the will. The other trustee named in the will, in exercise of a statutory power, appointed another person co-trustee with himself under the will, and they together contracted to sell part of the trust estate to the purchaser; and the question was whether they could make good title in the absence of F. E. Bucknall. North, J., held that they could not, as there had been a substantial compliance with the condition, and that Bucknall had therefore become a trustee. He therefore ordered the vendors to refund the deposit and pay the respondents' costs of investigating the title. The vendors appealed, and on the appeal claimed the right to annul the contract, in the event of the Court upholding the decision of North, J., under a condition of sale which enabled them to do so, "notwithstanding any previous negotiation or litigation"; but the Court of Appeal (Lord Coleridge, C.J., and Lindley and Kay, L.JJ.) affirmed the decision of North, J., and also held that the vendors could not annul the contract after there had been an actual judicial decision on the question of title, as it was then too late to exercise the power of annulling the contract, because the term "litigation" was not equivalent to "judicial decision." As Kay, L.J., puts it, it means "litigation pending, not litigation decided adversely to them."

MARRIED WOMAN—COSTS ORDERED TO BE PAID BY MARRIED WOMAN, LIABILITY OF SEPARATE ESTATE FOR—MARRIED WOMAN'S PROPERTY ACT, 1882, S. 1, S-S. 2, S. 19 (R.S.O., C. 132, S. 3, S-S. 2 S. 20).

Cox v. *Bennett* (1891), 1 Ch. 617, was an application by trustees who had obtained an order for payment of costs against a married woman, in an action instituted by her against them without a next friend, for leave to retain the costs out of a sum of money in their hands to which the married woman was entitled, as arrears of income due her, and which was her separate property. The question was whether this fund was answerable for the costs of the proceedings in question, it not having been in the trustees' hands when those proceedings were commenced, and there being a restraint on anticipation. Kekewich, J., held that the trustees were entitled to deduct their costs out of the moneys in question, and the Court of Appeal (Lindley and Kay, L.JJ.) affirmed his decision.

PRACTICE—AFFIDAVIT—DESCRIPTION OF DEPONENT AS "GENTLEMAN"—RULE 528 (ONT. RULE 605).

In re Dodsworth, Spence v. *Dodsworth* (1891), 1 Ch. 657, Chitty, J., explains the effect of *Re Orde*, 24 Ch.D. 271. According to his view of that case, it does not decide that an affidavit in which the deponent is described as "gentleman" cannot be filed, but that it is for the Court to say, having regard to the nature of the application in which the affidavit is used, whether that description is sufficient for the purpose of enabling it to weigh the value of the deponent's evidence. In *Re Orde* the affidavit was one of fitness of a proposed trustee, and the Court then held the description too vague and refused to receive it.

ANCIENT LIGHTS—CROWN PROPERTY VESTED IN TRUSTEES—PREROGATIVE OF CROWN—PRESCRIPTION ACT (2 & 3 W. 4, C. 71), SS. 1, 2, 3.

Perry v. *Eames* (1891), 1 Ch. 658, may be here briefly referred to as showing that the Crown is not bound by the Prescription Act (2 & 3 W. 4, c. 71), and therefore ancient lights cannot be acquired by prescription as against property of the Crown, even though it be vested in trustees. Since R.S.O., c. 111, s. 36, which prevents the acquisition of such rights even as between subject and subject, the case has not much application in Ontario.

INFANTS—GIFT TO CLASS FOR LIFE, CONTINGENTLY ON ATTAINING TWENTY-ONE.

In re Jeffrey, Burt v. *Arnold* (1891), 1 Ch. 671, a testator had directed his trustees to hold the proceeds of the sale of his residuary estate on trust to pay certain annuities, and subject thereto on trust for such of his grandchildren as should attain twenty-one, the shares of those of the grandchildren born in the testator's lifetime being settled on them for life with remainder to their children. A surplus of income after payment of the annuities remained in the hands of the trustees, and the question for North, J., was, who was entitled; some of the grandchildren had attained twenty-one and some had not. The learned judge held that those of the grandchildren who had attained twenty-one were entitled to the surplus income to the exclusion of the rest, and as the others came of age they would be let in to participate in the future surplus income, as it accrued after they had attained twenty-one.

CHARITABLE BEQUEST—WATERWORKS MORTGAGE—PURE OR IMPURE PERSONALTY—MORTMAIN.

In re Parker, Wignall v. *Park* (1891), 1 Ch. 682, a testatrix had bequeathed for charitable purposes a mortgage held by her made by a municipal body, whereby the latter, in exercise of their statutory powers, had mortgaged to the testatrix, "her executors, administrators, and assigns, such proportion of the rents, rates, and waterworks which by the said Acts" were authorized, as the principal sum bore to the whole sum borrowed, to hold until the principal sum and interest should be paid and satisfied. Stirling, J., held that the mortgage was in substance a mortgage of the general undertaking, and did not confer upon the testatrix an interest in land within the Mortmain Acts, and therefore that the mortgage was pure personalty and the bequest was valid.

ANNUITY—LIFE ANNUITY CHARGED ON LAND—SALE OF LAND—RIGHT TO RECEIVE VALUE OF ANNUITY—DEATH OF ANNUITANT BEFORE COMPLETION OF SALE OF LAND.

In re Mabbett, Pitman v. *Holborrow* (1891), 1 Ch. 707. By her will a testatrix bequeathed certain annuities for life which were charged upon real estate. The trustees were empowered to sell the real estate and out of the proceeds purchase Government annuities for the annuitants. The trustees sold, and before the sale was completed one of the annuitants died. After the sale had been completed, but before the Government annuities had been purchased, another annuitant died. The question Kekewich, J., had to decide was whether the representatives of the deceased annuitants were entitled to be paid the amount necessary to purchase

the Government annuities. As regards the representatives of the annuitant who had died before the sale was completed he held they were not entitled, but that the representatives of the annuitant who had survived the completion of the sale were entitled. The will contained a clause against the annuitants being allowed to accept the value of their annuities, but this was held to be void, there being no gift over.

LIQUIDATOR, LIABILITY OF—COMPANY, WINDING UP.

In *Knowles* v. *Scott* (1891), 1 Ch. 717, the status of a liquidator of a company being wound up came up for consideration. The action was brought by a shareholder of a company being wound up against the liquidator, to recover his proportion of the surplus assets of the company. It was admitted that there was no precedent for the action, and Romer, J., held that it could not be maintained, because a liquidator is not a trustee, but rather an agent of the company, and therefore not liable to a third part for negligence apart from misfeasance or personal misconduct. The plaintiff's remedy was, in the opinion of the learned judge, by application to the Court in the winding-up proceedings.

Notes on Exchanges and Legal Scrap Book.

PRINCIPAL AND SURETY, HUSBAND AND WIFE.—Where a wife mortgages her land to secure a debt of her husband, he joining in the mortgage: *Held*, that an extension of time given him in which to pay said debt, without the wife's consent, releases the land. *Barrett* v. *Davis*, 15 South-West Rep. 1011.

THE bar of Missouri will, perhaps, object to the imputation conveyed by the reporter in the syllabus to the case of *State* v. *Jones*, which, though strictly accurate, is somewhat startling. It reads: "Under Rev. Stat. Mo. 1889, s. 2170, providing that where the judge refuses to allow a bill of exceptions, it may be signed by 'three by-standers who are respectable inhabitants of the State.' An attorney employed in the case is not a competent signer." We are glad to learn, from a study of the opinion, that the want of competency does not necessarily arise from a denial of respectability to attorneys as a class—a discovery which will, no doubt, be comforting to them.—*Central Law Journal.*

ADEMPTION—Probably the legal presumption that a gift by a father to one of his children of any large sum of money in his lifetime is intended as an ademption *pro tanto* of what he has left to that one by his will frequently frustrates the father's intention; and the decision of the Court of Appeal in *Lacon* v. *Lacon* (Notes of Cases, *ante* p. 62), reversing that of the Court below, will be hailed with general satisfaction. It may be remembered that Sir E. Lacon was the owner of twenty-one twenty-fourth shares in a brewery business. By his will he

bequeathed those shares to three of his sons, of whom E. was one, providing that, except E., they should not be allowed to take any part in the management of the business. After the date of the will, E., who had been employed in the business for some time at a salary, asked for an increase of it. His father would not grant him this, but gave him, on a reconstitution of the partnership, two shares therein. E. resisted the theory of ademption on the ground that he had purchased the shares, giving his services in exchange and as the consideration for them; and, further, that the presumption of ademption did not even *primâ facie* arise in the case of property of this kind. Mr. Justice Romer disagreed with him on both grounds; but he has been successful in the Court of Appeal. The leading case on this subject is *Ex parte Pye*, 18 Ves. 140, and in the notes on that case in White and Tudor's "Leading Cases" (6th edit., vol. ii., p. 364) will be found many cases showing the strong presumption there is in the eyes of the law, that a gift of a large sum of money to a child is intended by a person in *loco parentis* as an ademption *pro tanto* of any money bequeathed to that child in a will previously made. But we do not generally regard as a gift anything which we have paid for, and what difference can it make that we have not used the medium of exchange, but have given our services instead of a money payment? E.'s two shares were really bought by him, and, therefore, were put out of the power of his father's will. The Court of Appeal seem further to have left open, for the decision of some future leading case, the question whether the presumption of ademption can be applied to shares of this kind.—*Law Journal.*

IMPERSONAL TRUSTS.—In the earlier as well as the latest edition of "Lewin on Trusts," it is stated in general terms that "a trust must be for the benefit of some *person or persons*, and if this ingredient be wanting, as in a trust for keeping up family tombs, the trust is void." The high authority of the learned author, however, appears to be the chief, if not the only, foundation for this proposition. No less than ten cases are, indeed, cited in support of it, but most of these will be found to be cases in which, as in *Lloyd* v. *Lloyd*, 21 Law J. Rep. Chanc. 596; 2 Sim. (N.S.) 255, trusts were attempted to be created without any limit of time, for the repair of family tombs, not forming part of the fabric of the church; while in another case referred to, *Thompson* v. *Shakespear*, 29 Law J. Rep. Chanc. 140, 276; Johns. 612; 1 De G. F. & J. 399, the testator gave property for the formation of a merely private museum, also without any limit of time. Not being charitable trusts, these bequests were clearly void on the ground of perpetuity. In *Thompson* v. *Shakespear* there was the additional circumstance that the trust was also void for uncertainty, but the ground of perpetuity was mentioned by Lord Hatherley in his judgment, and commenting on the cases in *Rickard* v. *Robson*, 31 Law J. Rep. Chanc. 897; 31 Beav. 244, Lord Romilly says: "*Lloyd* v. *Lloyd*, and the other case of *Thompson* v. *Shakespear*, show that a gift merely for the purpose of keeping up a tomb or building which is of public benefit, and only an individual advantage, is not a charitable use, but a perpetuity." These cases, therefore, so far from establishing the proposition for which they are

cited, seem to us to tell in reality the other way. Another class of cases in which a trust has been held valid, though it can hardly be said to be for the benefit of any person or persons, is where provision has been made for the maintenance of favorite animals after their owner's death. Thus, in *Mitford* v. *Reynolds*, 17 Law J. Rep. Chanc. 238; 16 Sim. 105, a testator gave the remainder of his property, "after deducting the annual amount that will be requisite to defray the keep of my horses (which I will and direct be preserved as pensioners)," to the Government of Bengal for a charitable purpose; and the order on further consideration contained a declaration that the provision for the maintenance of the testator's horses was good. The point was probably uncontested. The next case of the kind—*In re Dean; Cooper Dean* v. *Stevens*, 58 Law J. Rep. Chanc. 693; L.R. 41 Chanc. Div. 552—came before Mr. Justice North in 1889. There a testator charged his land with an annuity of £750, to be paid to his trustees during fifty years from his death if any of his horses or hounds should so long live, and declared that the trustees should apply the money in their maintenance, and Mr. Justice North held the trust a valid one. His judgment, which is a valuable statement of the law, begins as follows: "It is said that there is no *cestui que trust* who can enforce the trust, and that the court will not recognise a trust unless it is capable of being enforced by some one. I do not assent to that view. There is not the least doubt that a man may, if he pleases, give a legacy to trustees upon trust to apply it in erecting a monument to himself, either in a church or in a churchyard, or even in unconsecrated ground, and I am not aware that such a trust is in any way invalid, although it is difficult to say who would be the *cestui que trust* of the monument. In the same way I know of nothing to prevent a gift of a sum of money to trustees upon trust to apply it for the repair of such a monument. In my opinion such a trust would be good, although the testator must be careful to limit the time for which it is to last, because, as it is not a charitable trust, unless it is to come to an end within the limits fixed by the rule against perpetuities, it would be illegal. But a trust to lay out a certain sum in building a monument, and the gift of another sum in trust to apply the same to keeping that monument in repair, say for ten years, is, in my opinion, a perfectly good trust, although I do not see who could ask the Court to enforce it. If persons beneficially interested in the estate could do so, then the present plaintiff can do so; but, if such persons could not enforce the trust, still it cannot be said that the trust must fail because there is no one who can actively enforce it." On the other hand, as lending some support to the general proposition quoted at the commencement of this article, we may refer the reader to the observations of Lord Eldon in the well-known case of *Morice* v. *The Bishop of Durham*, 10 Ves. 522, 539, and also to the actual decision in *Brown* v. *Burdett*, 52 Law J. Rep. Chanc. 52; L.R. 21 Chanc. Div. 667, where an eccentric testatrix devised a house to trustees with specific directions to block it up for the term of twenty years, putting only a housekeeper in occupation, and subject thereto to hold it in trust for a devisee in fee, and Vice-Chancellor Bacon, saying he must "unseal this useless, undisposed-of property," held that there was an intestacy for the term. The case, however, was argued on the footing that there was no disposition by

will of the property within the Wills Act, s. 3, and the law of trusts does not seem to have been taken into consideration. We think, on the whole, that if the general proposition to which we have referred is to be retained, it must be taken to be subject to the two exceptions we have stated; also that it deserves consideration, whether the general propositions and these exceptions can consistently stand together.—*Law Journal.*

SLANDER.—Our reports for May contain two interesting cases on the subject of slander, both coming before the public with the *imprimatur* of the Court of Appeal upon them. In *Pittard* v. *Oliver*, 60 Law J. Rep. Q.B. 219; L.R. (1891) 1 Q.B. Div. 474, a guardian of the poor was charged with slandering the late clerk to the guardians in the presence of newspaper reporters, by describing him "as a man who for years had been robbing public money," and referring to his conduct as "the defalcations of an unfaithful servant." These words were used at a meeting of guardians on the question as to whether a sum should be paid to the plaintiff in settlement of his claim against the board. This claim was eventually sent to a referee in an action brought by the plaintiff against the guardians, who found in favor of the plaintiff for the whole amount claimed by him. Thereupon this action was brought, and the jury found "that the words were spoken honestly in the discharge of a public duty, without malice, but carelessly," and gave the plaintiff a verdict for forty shillings damages. Upon further consideration, Mr. Justice Mathew held that the occasion on which the words were uttered was privileged, and gave judgment for the defendant. The plaintiff appealed. It was conceded that the occasion would have been privileged if there had been no reporters present, as it was the duty of the guardians to discuss the conduct of their servants. In Mr. Odger's "Digest of the Law of Libel and Slander," 2nd edition, p. 197, cases of qualified privilege are grouped under three heads: "(1) Where circumstances cast upon the defendant the duty of making a communication to a certain other person, to whom he makes such communication in the *bonâ fide* performance of such duty; (2) where the defendant has an interest in the subject-matter of the communication, and the person to whom he communicates it has a corresponding interest; (3) fair and impartial reports of the proceedings of any Court or of Parliament." The guardian's words were well within either class (1) or class (2), as it was his duty to communicate the fact that the person whose claim they proposed thus to compromise had been cheating them, if he sincerely believed it, to his brother-guardians, and he and they had a corresponding interest in the subject-matter of the communication. The privilege is said to be qualified by that learned author, as it may be taken away if the communication is uttered maliciously, and it has not, therefore, the absolute privilege of a judge of the High Court or a barrister. The simple question for the Court was as to the effect of reporters being present, seeing that the defendant had no moral obligation to make the communication to them, and had no common interest with them in the subject-matter of the communication. Lord Esher distinguished this case from the cases where the confidential privi-

leges had been held lost by the mode in which the communication, otherwise privileged, had been made, namely, on a postcard or in a telegram, and decided that the guardian had not lost his privilege through the presence of the reporters. The rest of the Court came to the same decision, though Lord Justice Fry suggested that it would be well for guardians to hold discussions of this kind in private.

The second case is that of *Speight* v. *Gosnay*, 60 Law J. Rep. Q.B. 231, where the defendant uttered defamatory words about the plaintiff which were not actionable unless special damage was proved. The plaintiff's mother repeated them to the plaintiff, and she told them to a man to whom she was engaged, and who, she alleged, broke off the engagement in consequence. She then sought to make the defendant liable in damages for the slander which he had uttered. The curious point to observe is, that the plaintiff herself was part of the chain by which the slander got to her lover, and "every repetition of a slander is a wilful publication of it, rendering the speaker liable to an action" (Odgers, p. 162). In *Parkins* v. *Scott*, 31 Law J. Rep. Exch. 331; 1 Hurl. & C. 153, Baron Bramwell said: "Where one man makes a statement to another, and that other thinks fit to repeat it to a third, I do not think it reasonable to hold the first speaker responsible for the ultimate consequences of his speech. If I make a statement to a man, I know the consequences of making it to him when I make it; but if I do not desire, and do not authorize the man to whom I make it to repeat it, but he does it, am I to be liable for the consequences of his so doing?" The learned baron might have added an *à fortiori:* Am I to be liable when the slandered person herself brings about the catastrophe by repeating the defamation, when she might have kept silence on the subject? In that case a wife repeated to her husband some vile abuse which another woman had uttered to her, with the result that he would no longer live with her. The Exchequer Division, holding that there was no moral obligation on the wife's part to repeat it, held that the original slanderer was not liable. The Court of Appeal in the recent case came to a similar conclusion. "Here the words," said. Lord Justice Lopes, "were untrue, and the mother must have known that they were untrue, and there could not be any obligation either on the mother or the daughter to repeat them to Galloway" (the lover). His lordship also pointed out that there were four classes of cases where the original slanderer could be made liable for the repetition of the slander, viz.: (1) Where he authorized the repetition, (2) where he intended it, (3) where the repetition was the natural consequence of the uttering, and (4) where there was a moral obligation on the person to whom he uttered it to repeat it. This case fell within none of those classes.—*Law Journal.*

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

MICHAELMAS TERM, 1890.

The following is a *résumé* of the proceedings of Convocation during the above term:—

The following gentlemen were called to the Bar, viz.:

November 17th—Thomas Dykes Law, with honors and gold medal; John Bell Holden, with honors and silver medal; and John James O'Meara, Edward Bayly, John Reeve, William McBrady, William Mackay, James John McLennan, Charles Joseph McCabe, Edward Samuel Blake Cronyn, Arthur Clayton Sutton, Arthur Ferrier Wilson, Arthur Gordon Smith, William Yorke, John Joseph Hughes, Robert Baldwin, Ernest Willey McIntyre, Thomas Walter Horn, John Henry Dunlop, John McEwen, Charles Perly Smith.

November 18th—William Patrick McMahon.

The following gentlemen were granted certificates of fitness as Solicitors, viz.:

November 17th—J. B. Holden, T. D. Law, E. Bayly, W. McBrady, E. S. B. Cronyn, J. J. Hughes, W. J. Kidd, M. O. Johnston, A. G. Smith, W. Mackay, J. J. Maclennan, J. McEwen, H. W. Steward, H. A. Simpson, W. A. Smith.

November 18th—W. P. McMahon, C. J. McCabe.

" *22nd*—A. Weir, W. L. Morton.

" *23rd*—C. P. Smith.

December 6th—R. Baldwin, E. W. McIntyre.

" *30th*—J. F. Macdonald, P. H. Bartlett.

The following gentlemen passed the Second Intermediate Examination, viz.:—W. S. Morden, C. H. Glassford, A. Bicknell, M. P. McDonagh, J. H. Madden, M. H. McLaughlin, P. A. Malcolmson, W. H. P. Walker, A. L. Malone, J. A. Oliver, F. D. Boggs, C. Pierson, O. Watson, C. J. Lucy.

The following gentlemen passed the First Intermediate Examination, viz.: W. H. Perry, A. E. Shaunessy, J. E. Day, J. M. Pike, J. N. Fish, F. C. Cooke, H. I. Lyon, A. Cowan, M. J. McFarlane, F. C. Kerby, H. M. McConnell, C. G. Powell, J. B. Quinton, G. S. Henderson, F. W. Hall, E. McMartin, C. E. Gillan, H. W. Maw, J. J. Coughlin.

Monday, November 17th.

Convocation met.

Present—The Treasurer, and Messrs. Britton, Christie, Hoskin, Irving, Proudfoot, and Purdom, and in addition, from 11 a.m. to adjournment, Messrs. Ferguson, Foy, Kingsmill, Mackelcan, McCarthy, Moss, Murray, and Osler.

The minutes of last meeting were read and approved.

Mr. Kingsmill, from the Select Committee on Honors and Medals, reported that Messrs. T. D. Law and J. B. Holden are entitled to be called with honors, and that Mr. Law is entitled to receive a gold medal and Mr. Holden a silver medal.

Ordered for immediate consideration, adopted, and ordered accordingly.

The memorial of the Osgoode Legal and Literary Society was read and received.

Ordered for immediate consideration.

Ordered to be further considered when the Report of the Building Committee is taken up.

The letter of Mr. H. R. Hardy was read and received.

Ordered, that the letter be referred to the Reporting Committee, with instructions to report on question involved.

Mr. Hoskin, from the Discipline Committee, presented a report on the case of Mr. F——, to the effect that a *prima facie* case for enquiry had been shown.

Ordered, that the report be considered on 28th inst.

Mr. Hoskin also presented a report on the cases of Messrs. T—— and B——.

Ordered for consideration on the 28th inst.

Mr. Irving gave the following notice of motion:—That he will move at the next meeting that a committee be appointed to consider and report upon a system whereby Benchers not residents of Toronto may be paid the expenses of their attendances at meetings of Convocation, or of committees of which Benchers are members. The Committee to be composed of Messrs. Morris, Moss, Murray, Shepley, Foy, Kingsmill, Ferguson, McCarthy, Robinson, and Irving.

Tuesday, November 18th.

Convocation met.

Present—The Treasurer and Messrs. Foy, Fraser, Irving, MacDougall, Moss, Osler, and Robinson, and in addition, from 11 a.m. to adjournment, Messrs. Bruce, Ferguson, Kerr, Kingsmill, Lash, Martin, Murray, and Purdom.

The minutes of last meeting were read and approved.

Mr. Moss presented the Report of the Legal Education Committee.

The Report was ordered for immediate consideration and adopted.

The petition of certain students, praying for an additional supply of text-books, was received and read.

Ordered, that the petition be referred to a Special Committee composed of Messrs. Moss, Kingsmill, Lash, Martin, Bruce, Osler, Irving, Ferguson, and Shepley.

A letter from Mrs. M. Bennett was received and read.

Ordered that it be referred to the Discipline Committee to report whether a *prima facie* case for enquiry is shown.

Mr. Moss presented a Report from the Building Committee.

The Report was ordered for immediate consideration.

The Report was considered and adopted.

The petition of the Osgoode Legal and Literary Society was taken up, and it was

Ordered, that it is not possible to acquire an interest in the Parliament Buildings or U. C. College grounds for the purposes of an athletic club, and that it is not expedient to undertake the erection of a gymnasium in connection with the new Law School building.

Mr. Martin presented the Report of the Inspector of County Libraries, and moved that Mr. Winchester's fee for inspection of $150 be paid.—*Carried.*

Saturday, November 22nd.

Convocation met.

Present—The Treasurer and Messrs. Ferguson, Foy, Irving, and Moss.

The minutes of last meeting were read and approved.

Mr. Moss presented the Report of the Legal Education Committee.

The Report was ordered for immediate consideration, adopted, and ordered accordingly.

The order for the consideration of Mr. Moss' motion as to legislation was adjourned to the next sitting of Convocation.

Friday, November 28th.

Convocation met.

Present—Messrs. Britton, Ferguson, Foy, Hoskin, Lash, Mackelcan, McMichael, Meredith, Murray, and Smith.

In the absence of the Treasurer, Dr. Larratt W. Smith was appointed chairman.

The minutes of last meeting were read and approved.

Mr. Hoskin, from the Discipline Committee, in the case of Mr. F——, reported that a *prima facie* case had been shown.

Ordered, that the case be referred to the Committee for investigation and report.

In the case of Mr. R——, reporting that a *prima facie* case had not been shown.

In the case of Mr. W., reporting that the complaint had been withdrawn, and recommending that no further action be taken by the Committee pending the criminal proceedings taken by the complainants.

In the case of Mr. B., reporting the withdrawal of the complaint.

The Report in the case of Mr. T. was read and received.

Ordered, that further consideration be postponed till the last day of Term, and that Mr. T. be notified through his counsel to attend before Convocation at 11 a.m. on that day.

The Report was read and received, ordered for immediate consideration, and adopted.

A letter was read from Mr. Dickson Patterson, stating that the portrait of Sir Wm. Campbell had been completed, and enclosing his account for $250.

The petition of the Osgoode Legal and Literary Society was read, asking permission to have an "At Home" in the building once a year.

Ordered, that it be deferred till next meeting, on 6th December.

Saturday, December 6th.

Convocation met.

Present—The Treasurer, and Messrs. Bruce, Ferguson, Hardy, Hoskin, Irving, Kerr, McCarthy, Mackelcan, McMichael, Martin, Morris, Moss, and Murray.

Ordered, that the reading of the minutes of the last meeting be postponed.

Mr. Hoskin presented a report in the case of A.M.T., stating that Mr. T.'s counsel has been unable to find his client.

Ordered, that further consideration of the Report be adjourned to the third sitting day of next Term.

Ordered, that Mr. T. be notified through his counsel that Convocation will take action in his case on that day, when he will be at liberty to attend Convocation.

The petition of the Osgoode Hall Lawn Tennis Club, asking that the Law Society provide a suitable dressing-room and an annual grant of fifty dollars to the funds of the club, was refused.

Mr. H. R. Hardy's letter of 5th December was read.

Ordered, that the grant of $100 for Legal Chart of Ontario be continued for 1891.

Mr. Murray, from the Finance Committee, reported that the extra expenditure of the year had involved an overdraft of $1,242, and moved that they be authorized to sell debentures to a limited amount.

Ordered, that the Committee be authorized to sell debentures to such an amount as will leave the cash balance at the close of the year about $1,000.

Tuesday, December 30th.

Convocation met.

Present—The Treasurer, and Messrs. Bruce, Cameron, Ferguson, Foy, Guthrie, Irving, Kingsmill, Lash, Macdougall, Mackelcan, McMichael, Martin, Meredith, Moss, Murray, and Osler.

The minutes of the meetings held on November 28th and December 6th were read and approved.

Ordered, that the use of the hall, Convocation room, Benchers' room, students' reading-room, cloak room, and consultation rooms, be allowed to the Osgoode Legal and Literary Society for four musical and literary entertainments in each year, under arrangements to be submitted to the approval of a Special Committee to be named by Convocation.

Ordered, that the Literary Society be allowed the use of all the rooms, including the library, for one "At Home" to be held in the winter of 1891, under arrangements to be submitted to the approval of a Special Committee to be named by Convocation.

Ordered, that Messrs. Murray, Mackelcan, Lash, Foy, and Osler, be appointed a Select Committee to act under the two foregoing resolutions.

Ordered, that the salary cheques for month of December be dated on 31st December.

Mr. Osler, from the Reporting Committee, recommended that the Official Law List for 1891 be published as of the 1st of March, in the same form as last year, and that Mr. H. R. Hardy be requested to edit the same.

The Report was adopted and ordered accordingly.

Mr. Moss presented the Report of the Law School Building Committee.

The Report was ordered for immediate consideration, and adopted.

Mr. Irving, from the Special Committee on the subject of Students' Text-books, reported that there are now in the library a considerable number of sets of each of the prescribed text-books, and that no increase should be made to the supply of text-books now furnished, and the Committee cannot recommend that the number of books be increased.

The Report was ordered for immediate consideration and was adopted.

The letter of Mr. A. MacMurchy, enclosing a copy of Mr. G. M. Gardner's notice of intention to apply to the Legislature for an Act, was read.

Ordered, that it be referred to a Select Committee, composed of Messrs. Hoskin and Irving, to take the proper action.

The letter of T. F. Lyall, on the subject of his intention to apply for legislation, was read.

Ordered, that it be referred to Messrs. Hoskin and Irving.

Ordered, that it be referred to the Legal Education Committee to prepare and submit to the Attorney-General for consideration legislation in the sense of authorizing Convocation to call to the Bar any solicitor in good standing who has been practising the profession for ten years prior to the first day of July, 188- on such terms as to examination as may be fixed by Convocation in each case, or by general rule, and on such terms as to special fees as may be fixed by Convocation by general rule.

Ordered, that it be referred to the Legal Education Committee to consider and report on the first day of next Term whether, and if so, on what terms, graduates of the Royal Military College should be admitted and called to the Bar on more favorable conditions than ordinary students and clerks.

Mr. J. F. Smith's letter, as to the presentation of some volumes of the Canadian Almanac, was read.

Ordered, that his kind offer be accepted with the thanks of Convocation.

Mr. Moss, seconded by Mr. Irving, moved,

That Convocation records its regret at the death, on the 10th day of December, 1890, of James Henry Morris, M.A., Q.C., a member of Convocation since Easter Term, 1884, and its deep sense of the loss sustained by his associates.

That a copy of this resolution be suitably engrossed and forwarded to his family—*Carried.*

Ordered, that Mr. Proudfoot be added to the Library Committee in place of the late Mr. Morris.

Ordered, that a special meeting of the Benchers be called for the first day of Hilary Term next, to appoint a Bencher to fill the vacancy caused by the death of the late Mr. Morris.

Convocation adjourned.

J. K. KERR,
Chairman Committee on Journals.

DIARY FOR JUNE.

1. Mon.....First Parliament in Toronto, 1797.
4. Thur.....Lord Eldon born, 1751.
5. Fri.....Battle of Stony Creek, 1813.
6. Sat.....Easter Term ends. Sir John A. Macdonald died.
7. Sun.....*2nd Sunday after Trinity.*
8. Mon.....County Ct. Sitgs. for Motions in York. Surrogate Ct. Sittings. First Parliament at Ottawa, 1866.
10. Wed.....County Ct. Sittings for trial, except in York.
11. Thur.....St. Barnabas. Lord Stanley Governor-General, 1888.
14. Sun.....*3rd Sunday after Trinity.*
15. Mon.....Civil Assizes at Toronto. Magna Charta signed, 1215.
16. Tues.....Battle of Quatre Bras, 1815.
18. Thur.....Battle of Waterloo, 1815.
19. Fri.....Battle of Blenheim, 1704.
20. Sat.....Accession of Queen Victoria, 1837.
21. Sun.....*4th Sunday after Trinity.* Longest day.
22. Mon.....Slavery declared contrary to the law of England, 1772.
24. Wed.....Midsummer day. St. John Baptist.
25. Thur.....Sir M. C. Cameron died, 1887.
28. Sun.....*5th Sunday after Trinity.* Coronation of Queen Victoria, 1838.
29. Mon.....St. Peter.
30. Tues.....Jesuits expelled from France, 1880.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [February 4.

LONEY *v.* OLIVER.

Damages—Measure of—Breach of agreement to convey land—Loss of bargain previously made.

In an action for damages for breach of an agreement by the defendant to convey land to the plaintiff, the plaintiff alleged that, by reason of the breach, certain other persons, to whom he had agreed to sell the land, refused to carry out their agreement with him, and he lost the sale and was deprived of a profit. It appeared that the plaintiff's agreement to sell was prior to his agreement with the defendant, and that the defendant had no notice or knowledge of the prior agreement.

Held, that the plaintiff could not recover; for the damages claimed for the loss of the sale did not naturally flow from the breach of the defendant's agreement. If damages were recoverable at all, the true measure would be the increased value of the land at the time of the breach over the amount of the purchase money; but no evidence was given of any such damages, and evidence of the bargain that the plaintiff made with the other persons, before he bargained with the defendant, was not evidence relevant to this inquiry

J. W. McCullough, for the plaintiff.
Moss, Q.C., for the defendant.

MR. DALTON.] [February 19.
MACMAHON, J.] [March 19.
Div'l. Court.] [May 21.

REGINA EX REL MCGUIRE *v.* BIRKETT.

Municipal corporations—Controverted municipal elections—Interest of mayor-elect in contract with corporation — Unsettled money claim — Master-in-Chambers, jurisdiction of to try election case—Rule 30—51 Vict., c. 2, s. 4—Constitutional law—Powers of provincial legislature.

The defendant had a contract with the corporation of a city for the supply of iron up to the end of 90, but on the 26th November, 1890, he wrote informing the corporation that he withdrew from his contract, and enclosing his account up to date.

On the 9th December, 1890, the then mayor of the city notified the defendant that he would be held responsible for any expense the corporation would be put to in consequence of his refusal to fulfil his contract.

On the 15th December, 1890, the city council adopted a resolution cancelling the defendant's contract and releasing him from any further obligation in connection therewith. At the same meeting a notice of reconsideration was given, which by the rules of the council had the effect of staying all action on the resolution until after reconsideration. There was no reconsideration and no subsequent meeting of the council till the 7th of January, 1891, previous to which the defendant had been elected mayor for 1891. At the time of his election his account above mentioned had not been paid.

Held, by the Master-in-Chambers, that the resolution had no direct effect to release the defendant from liability under his contract, either at law or in equity; and whether or not the resolution was to be considered in force, it did not touch the account, the existence of which unpaid was sufficient to invalidate the election, under the other circumstances of the case.

The election was therefore set aside; but although the relator had notified the electors of the objection to the defendant's qualification, the seat was not awarded to the candidate having the next largest vote, on account of the resolution of the council, which taught the electors to disregard the relator's warning, and a new election was ordered.

Held, by MACMAHON, J., that the Master-in-Chambers had, by the combined effect of Rule 30, 51 Vict., c. 2, s. 4, all the powers of a judge to determine the validity of the election of the defendant, and that his determination was final; and it was within the competence of the provincial legislature to clothe the Master with such powers.

Held, by the Divisional Court, following the principle of the decision in *Re Wilson* v. *McGuire*, 2 O.R. 118, that the provincial legislature had power to invest the Master with authority to try controverted municipal election cases.

Aylesworth, Q.C., and *Latchford*, for the relator.

J. H. Macdonald, Q.C., for the defendant.

Irving, Q.C., for the Attorney-General for Ontario.

Practice.

Chy. Div'l Court.] [March 26.

TOOTHE *v.* FREDERICK.

Arrest—Application for discharge—Rule 1051 — Discretion—R.S.O., c. 67, s. 1—Intent to quit Ontario—Intent to defraud creditors.

An application under Rule 1051 to discharge from custody is an original proceeding, independent of the order to arrest, and the judge to whom it is made is invested with a very large discretion.

If the Appellate Court has doubt as to the proper result of all the evidence, that doubt should lead in favor of personal liberty.

Our statute, 22 Vict, c. 96 (now R.S.O., c. 67, s. 1), differs from the original, the Imperial Act 1 & 2 Vict., c. 110, and was expressly enacted so as to restrain the freedom of those only who were believed to be contemplating fraud as against their creditors; under it, it cannot be said that a person indebted, without substance, who contemplates removing from Ontario to better his condition, is leaving with intent to defraud creditors; two things must concur before the statute operates: the quitting of Ontario, and an intent thereby to defraud creditors.

Robertson v. *Coulton*, 9 P.R. 18, observed upon.

Upon the evidence in this case, the Court was not satisfied that the defendant had any intention to flee the country at the time of his arrest, or that there was such dealing with his property as was within the meaning of the statute, and affirmed an order of a Judge-in-Chambers discharging him from custody.

Aylesworth, Q.C., for the plaintiff.

W. R. Meredith, Q.C., for the defendant.

MEREDITH, J.] [May 19.

IN RE WILSON.

Infants—Maintenance — Interest on funds in hands of trustees—Order for application of—Jurisdiction—Summary application—Judge-in-Chambers—Evidence—Safeguards.

Under the will of their father two infants were entitled each to a sum of $500, which trustees were directed to invest at interest until the infants should be of full age, and then to pay to them.

Held, that a Judge-in-Chambers had jurisdiction, upon a summary application, to make an order authorizing the trustees to apply the interest for the maintenance of the infants; but such an order should not be made except upon the clearest and most satisfactory evidence; as much evidence, at least, as is required upon an application for the sale of infants' lands for their maintenance should be required, and the like safeguards against deception and mistake should be insisted upon.

Purdom for the applicant.

F. W. Harcourt for the official guardian.

ROSE, J.] [May 23.

ROGERS *v.* KNOWLES.

Arrest—Intent to quit Ontario—Intent to defraud creditors—Absence of assets in Ontario.

Application to discharge the defendant from arrest under an order, upon the ground that the defendant was not at the time of the making of the order about to quit Ontario with intent to defraud his creditors,

Held, that there was no sufficient ground for keeping the defendant in custody, as upon the

evidence it could not be concluded that he intended to quit Ontario for the purpose of defrauding his creditors.

If a man has no assets, his leaving the country affords no evidence in itself of any intention to defraud creditors; or, in other words, if a debtor's remaining in the province can be of no assistance to his creditors in recovering their debts, his leaving the province cannot by any possibility be a fraud upon such creditors.

Toothe v. *Frederick*, *ante*, followed.

C. C. Robinson for the plaintiffs.

D. Urquhart for the defendant.

STREET, J.] [June 1.

MOODY *v.* CANADIAN BANK OF COMMERCE.

Judgments—Set-off—Assignment for benefit of creditors—Order for entry of judgment—R.S.O., c. 124, s. 23.

After recovery of judgment by the defendants against the plaintiff for a debt and costs, the plaintiff recovered judgment against the defendants in a separate action for damages for malicious prosecution and costs. Before the verdict for damages was actually given, the plaintiff executed an assignment to a trustee for the benefit of his creditors of the amount of any verdict which he might recover, but this assignment was not delivered until after the verdict had been rendered and an order for the entry of judgment upon it made by the trial judge.

Held, that at the time the assignment was delivered the claim to damages had become a judgment debt, and, as such, a debt which should be set-off under the principle of s. 23 of R.S.O., c. 124; and, upon the application of the defendants, an order directing a set-off was made.

Lash, Q.C., for the defendants.

Aylesworth, Q.C., for the assignee.

Appointments to Office.

COUNTY COURT JUDGES.

County of Essex.

Henry Theophilus Waring Ellis, of the town of Windsor, in the Province of Ontario, Esquire, and of Osgoode Hall, Barrister-at-law; to be Deputy Judge of the County Court of the county of Essex, in the said Province of Ontario.

County of Peel

James Fleming, of the town of Brampton, in the Province of Ontario, Esquire, and of Osgoode Hall, Barrister-at-law; to be Deputy Judge of the County Court of the county of Peel, in the said Province of Ontario.

County of Wentworth.

William A. H. Duff, of the city of Hamilton, in the Province of Ontario, Esquire, and of Osgoode Hall, Barrister-at-law; to be Deputy Judge of the County Court of the county of Wentworth in the said Province of Ontario.

County of York.

Frederick Montye Morson, of the city of Toronto, in the Province of Ontario, Esquire, and of Osgoode Hall, Barrister-at-law; to be a Junior Judge of the County Court of the county of York, in the said Province of Ontario, with the style and title of the Second Junior Judge of the county of York.

Frederick Montye Morson, Esquire, the Second Junior Judge of the county of York, in the Province of Ontario; to be a Local Judge of the High Court of Justice for Ontario.

LOCAL REGISTRAR.

United Counties of Stormont, Dundas, and Glengarry.

John Angus McDougald, of the village of Alexandria, in the county of Glengarry, Esquire, to be Local Registrar of the High Court and Clerk of the County Court in and for the United Counties of Stormont, Dundas, and Glengarry, in the room and stead of Alexander E. McDonald, Esquire, deceased.

POLICE MAGISTRATE.

County of Dundas.

George Samuel Hanes, of the village of Iroquois, in the County of Dundas, Esquire, to be Police Magistrate in and for the said village of Iroquois, *pro tempore*, without salary.

ASSOCIATE CORONERS.

County of Lambton.

Charles Richard Charteris, of the village of Florence, in the county of Lambton, Esquire, M.D., to be an Associate Coroner within and for the said county of Lambton, in the room and stead of Myers Davison, Esquire, M.D., deceased.

County of York.

William Henry Taylor, of the village of Bradford, in the county of Simcoe, Esquire, M.D., to be an Associate Coroner in and for the county of York.

DIVISION COURT CLERKS.

District of Muskoka.

William Rutherford Tudhope, of the village of Gravenhurst, in the district of Muskoka, Gentleman, to be Clerk of the Second Division Court of the said district of Muskoka, in the room and stead of J. H. Jackson, resigned.

United Counties of Northumberland and Durham.

Henry Elliott, of the village of Osaca, in the county of Durham, one of the United Counties of Northumberland and Durham, Gentleman, to be Clerk of the Fourth Division Court of the said United Counties of Northumberland and Durham, in the room and stead of John Hunter, resigned.

DIVISION COURT BAILIFFS.

County of Essex.

Aurele Pacaud, of the town of Windsor, in the county of Essex, to be Bailiff of the Seventh Division Court of the said county of Essex, in the room and stead of Andrew Botsford, deceased.

United Counties of Leeds and Grenville.

James Peter Lawrence, of the village of Spencerville, in the county of Grenville, one of the United Counties of Leeds and Grenville, to be a Bailiff of the Tenth Division Court of the said United Counties of Leeds and Grenville, in the room and stead of H. E. Lawrence, resigned.

County of Lincoln.

James F. Carter, of the village of Beamsville, in the county of Lincoln, to be Bailiff of the Fourth Division Court of the said county of Lincoln, in the room and stead of F. B. Rodgers, resigned.

United Counties of Northumberland and Durham.

Luke Berry, of the village of Warkworth, in the county of Northumberland, one of the United Counties of Northumberland and Durham, to be Bailiff of the Ninth Division Court of the said United Counties of Northumberland and Durham, in the room and stead of David Robertson, resigned.

United Counties of Prescott and Russell.

Martin Costello, of the village of L'Original, in the county of Prescott, one of the United Counties of Prescott and Russell, to be Bailiff of the First Division Court of the said United Counties of Prescott and Russell, in the room and stead of George Gale, resigned.

County of Welland.

Elston Priestman, of the township of Wainfleet, in the county of Welland, to be Bailiff of the Second Division Court of the said county of Welland, in the room and stead of Vernon H. Robinson, resigned.

COMMISSIONERS FOR TAKING AFFIDAVITS.

City of Melbourne, Australia.

Frederick Elliott Grant, of the city of Melbourne, in the colony of Victoria, Esquire, Solicitor; to be a Commissioner for administering oaths in the Supreme Court and in the Exchequer Court of Canada.

City of Montreal.

Charles Robson Black, of the city of Montreal, in the Province of Quebec, Esquire, to be a Commissioner for taking Affidavits within and for the said city of Montreal, and not elsewhere, for use in the Courts of Ontario.

Ambrose Leonard Kent, of the city of Montreal, in the district of Montreal and Province of Quebec, Esquire, to be a Commissioner for taking Affidavits within and for the said city of Montreal, and not elsewhere, for use in the Courts of Ontario.

Alphonse Turcotte, of the city of Montreal, in the district of Montreal and Province of Quebec, Esquire, to be a Commissioner for taking affidavits within and for the said city of Montreal, and not elsewhere, for use in the Courts of Ontario.

COUNTY OF YORK LAW ASSOCIATION LIBRARY.

Latest additions:

British Columbia Law Reports.

Canada Gazettes, 1841-1868, 34 vols.

Congdon, F. T., Digest of the Nova Scotia Reports, Toronto, 1890.

Emden, A., Digest of English Reports for 1890, London, 1891.

Exchequer Reports of Canada, vol. 1, first part of vol. 2, Ottawa, 1891.

Foote's Private International Jurisprudence, London, 1891.
Harris, S. F., Criminal Law, 5th edition, London, 1889.
Houston, Wm., Documents of the Canadian Constitution, Toronto, 1891.
Nova Scotia Reports, 1834-1889, 23 vols.;
Northwest Territories Reports.
Quebec Statutes, 54 Vict., 1891.
Schouler, J., Domestic Relations, 4th edition, Boston, 1889.
Sebastian, L. B., Trade Marks, 3rd edition, London, 1890.
Shearman, T. G., and Redfield, A., Negligence, 4th edition, New York, 1888.
Simpson, A. H., Infants, 2nd edition, London, 1890.
Widdifield, C. H., Taxation of Costs, Toronto, 1891.

Law Students' Department.

EXAMINATION BEFORE EASTER TERM: 1891.

CERTIFICATE OF FITNESS.

Taylor on Equity.

Examiner: A. W. AYTOUN-FINLAY.

1. What must be shown in order to entitle a party to equitable relief in the case of a lost deed?

2. An intending testator directs a will to be made by which a considerable sum of money is bequeathed to A.

Just before the hour fixed for the execution of the will, the intending testator dies.

What relief, if any, will be granted in equity to A.?

3. What must be shown in order to support a family compromise, which apparently imposes unequal terms upon the parties?

4. Where there is an alleged mistake in a will, what is the essential condition upon which a court of equity has jurisdiction to correct it?

5. Property is devised to A., a widow, conditioned that the devise shall become inoperative in the event of the devisee remarrying. How far is this a valid condition?

6. A., the guardian of B., an infant, executes a deed of conveyance of land belonging to B. to C. B. knows the facts but he says nothing, and signs the deed of conveyance as a witness. Is B. estopped by his apparent acquiescence?

7. A., a widow, is dowable of an estate, but prior to her dower being set out by metes and bounds, a considerable amount of timber is cut down on the estate and sold.

Has A. any claim to relief on this ground, and, if so, what relief?

8. In what cases, if any, will possession of land, contracted to be sold, be deemed a part performance where the vendee is tenant to the vendor?

9. A testator bequeaths property to his wife. What must be shown in order to put her to her election of dower or bequest?

10. How far is the judgment of arbitrators conclusive—

(a) In matters of law?

(b) In matters of fact?

Benjamin on Sales.

Examiner: A. W. AYTOUN-FINLAY.

1. Up to what time has a bidder at a sale by auction a right to retract his offer?

2. No price has been fixed by the parties on a sale of goods. What price will be implied by law, and how is the estimation of the actual amount arrived at?

3. An agreement is made for the sale of growing crops, being:

(*a*) *Fructus industriales;*

(*b*) Unsevered *fructus naturales.*

How do the provisions of the Statute of Frauds apply in each case?

4. Explain the legal acceptation and meaning of "delivery," "acceptance," and "receipt," as used in the Statute of Frauds.

5. A. bargains in advance for all the peas raised by B. on his farm, A. supplying sacks to B. in which to put the peas. B. puts a certain portion of his crop in A.'s sacks and weighs them. How far is this a *delivery* of these peas?

Hawkins on Wills.

Examiner: M. G. CAMERON.

1. What is the general test of an equivocal description in a will? Give an example.

2. A. by will directed that the balance of his personal property, consisting of notes and other securities for money, be given to B. and C., and if there should be any effects possessed by him at the time of his decease, that the same might

be divided equally in value between D. and E., share and share alike. At the time of his decease, A. owned 100 acres of land; would the land pass under this devise? Explain.

3. A. by will bequeaths Whiteacre to B., his widow, to divide among C. and D., his children, as she shall think proper. B. dies without making any selection. Is the gift void? Explain.

4. A. by his will makes a gift to the children of his daughter B. B., who died prior to the date of the will, left no children, but left grandchildren then living. Will they take? Would it make any difference if B. had been living and had no children but only grandchildren at the date of the will?

5. A. by will bequeaths the interest of a fund to B. for life, and after his decease to C. without condition. What interest does C. take? Explain.

Armour on Titles, Statute Law, and Pleading and Practice.

Examiner: M. G. CAMERON.

1. When, if at all, will the taking of possession be considered as a waiver of objection to title?

2. Set out in detail what a solicitor's abstract of title should show.

3. A. conveys a parcel of land to B. The conveyance, which is duly registered, contains a recital of a mortgage previously made by A. to C. upon the same land. The mortgage is unregistered. What, if any, are C's, the mortgagee's, rights against B.'s? Explain.

4. Where it is necessary to produce and prove an original instrument, when will the production of a certified copy thereof be accepted as sufficient evidence?

5. When is a power of attorney revocable, and when, if at all, is it ever irrevocable?

6. What is meant by taking the account with rests?

7. When, if at all, will a judge on appeal from the decision of a Master reverse his finding on a question of fact?

8. A testator dies on the 1st June, 1890. Within what time may a legatee or next of kin bring an action for the administration of his estate?

9. When, if at all, will a defendant in an action of seduction be entitled to particulars of the times and places of the alleged seduction?

10. A mortgage provides that in default of payment of the interest thereby secured, the principal thereby secured shall become one and payable. Default in payment of the interest is made. Can the mortgagee proceed for the recovery of the principal and interest? What, if any, are the rights of the mortgagor?

Flotsam and Jetsam.

A COUNTRY laird, who had lately been elected to the office of justice of the peace, meeting a clerical gentleman on horseback, attempted jocularity by remarking that he was more ambitious than his Master, who was content to ride upon an ass. "They canna be gotten noo," said the minister, "for they're a' made justices o' the peace."—*Ex.*

WOULDN'T COMMIT HIMSELF.—A county judge sends us the following answer, given in one of his courts by a witness in a case being tried: "He brought it around, so as to give one to understand that he meant you to believe that he might want such a stick." Would we be wrong in assuming that this answer, standing alone, was not considered evidence of such a distinct and positive character as clearly and without doubt to establish the liability of the defendant for the "stick"?

HIGHLAND WITNESSES.—A bevy of Highland witnesses in homespun thronged the Parliament House corridors one day last month, and in Court each was giving his own ideas about a march dyke. One of them was asked whether a certain place was east or west of the said march dyke; and for long the canny Celt was puzzled to say. The question was more than once repeated. "Dear me!" exclaimed the advocate, testily, "can't you answer? Was it east or west of the dyke?" "Well, sir," replied the witness, slowly and with much deliberation, "it would just be very nearly half way." We remember another Highland witness in a right-of-way case some years ago, similarly hesitating over a simple question, until counsel lost patience. "Now, sir, do you understand me?" "Yes." "Then can't you give me a rational answer to the question?"

"No, I cannot," said the Celt, with some warmth. "And pray, why not?" "Because I'm on my oath!"—*Journal of Jurisprudence.*

THE LAW AND THE LADY.—Patient man—"Suppose a woman makes it so hot for her husband that he can't live with her, and he leaves her, what can she do?" Lawyer—"Sue him for support." Patient man—"Suppose she has run him so heavily into debt that he can't support her, because his creditors grab every dollar as quick as he gets it, besides ruining his business with their suits?" Lawyer—"If for any reason whatever he fail to pay her the amount ordered, he will be sent to jail for contempt of court." Patient man—"Suppose she drives him out of the house with a flat-iron, and he's afraid to go back?" Lawyer—"She can arrest him for desertion." Patient man—"Well, I don't see anything for me to do but to go hang myself." Lawyer—"It's against the law to commit suicide, and if you get caught attempting it, you'll be fined and imprisoned. Ten dollars, please. Good-day."—*Irish Law Times.*

LITTELL'S LIVING AGE.—The numbers of *The Living Age* for the weeks ending June 6th and 13th contain The Rewards and Responsibilities of Medical Practice, *London Quarterly;* Italian Secret Societies, and Wit in the Pulpit, *Contemporary;* Legal and Constitutional Aspects of the Lynching at New Orleans, by JAMES BRYCE, M.P., *New Review;* Sarsfield: A Jacobite Rapparee, and Through Chinese Spectacles, *Temple Bar;* John Murray and His Friends, *Blackwood;* Memoir of John Murray, by Mr. GLADSTONE, *Murray's;* On Autographs, *Longman's;* Statesmen of Europe: France, *Leisure Hour;* The Mafia in Sicily, *Speaker;* The Secret of Delphi, *Spectator;* The Madeira of the Pacific, *Chambers';* Destruction of the Ancient Monuments of Egypt, *Academy;* The Body of Sir Francis Xavier, *Times of India;* with instalments of "In the Park," "La Bella," and "Sweet Nancy," and poetry. For fifty-two numbers of sixty-four large pages each (or more than 3,300 pages a year) the subscription price ($8) is low; while for $10.50 the publishers offer to send any one of the American $4.00 monthlies or weeklies with *The Living Age* for a year, both postpaid. LITTELL & CO., Boston, are the publishers.

Law Society of Upper Canada.

THE LAW SCHOOL,

1891.

LEGAL EDUCATION COMMITTEE.

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This notice is designed to afford necessary information to Students-at-Law and Articled Clerks, and those intending to become such, in regard to their course of study and examinations. They are, however, also recommended to read carefully in connection herewith the Rules of the Law Society, copies of which may be obtained from Principal of the Law School, Osgoode Hall, Toronto.

Those Students-at-Law and Articled Clerks, who, under the Rules, are required to attend the Law School during all the three terms of the School Course, will pass all their examinations in the School, and are governed by the School Curriculum only. Those who are entirely exempt from attendance in the School will pass all their examinations under the existing Curriculum of The Law Society Examinations as heretofore. Those who are required to attend the School during one term or two terms only will pass the School Examination for such term or terms, and their other Examination or Examinations at the usual Law Society Examinations under the existing Curriculum.

Provision will be made for Law Society Examinations under the existing Curriculum as formerly for those students and clerks who are wholly or partially exempt from attendance in the Law School.

Each Curriculum is therefore published herein accompanied by those directions which appear to be most necessary for the guidance of the student.

CURRICULUM OF THE LAW SCHOOL, OSGOODE HALL, TORONTO.

Principal, W. A. REEVE, M.A. Q.C.

Lecturers: E. D. ARMOUR, Q.C.
A. H. MARSH, B.A., LL.B., Q.C.
R. E. KINGSFORD, M.A., LL.B.
P. H. DRAYTON.

The School is established by the Law Society of Upper Canada, under the provisions of rules passed by the Society with the assent of the Visitors.

Its purpose is to promote legal education by affording instruction in law and legal subjects to all Students entering the Law Society.

The course in the School is a three years' course. The term commences on the fourth Monday in September and closes on the first Monday in May; with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's Day.

Students before entering the School must have been admitted upon the books of the Law Society as Students-at-Law or Articled Clerks. Admission is to be gained during Easter and Trinity terms only. The steps required to procure such admission are provided for by the rules of the Society, numbers 126 to 141 inclusive.

The School term, if duly attended by a Student-at-Law or Articled Clerk is allowed as part of the term of attendance in a Barrister's chambers or service under articles.

The Law School examinations at the close of the School term, which include the work of the first and second years of the School course respectively, constitute the First and Second Intermediate Examinations respectively, which by the rules of the Law Society, each student and articled clerk is required to pass during his course; and the School examination which includes the work of the third year of the School course, constitutes the examination for Call to the Bar, and admission as a Solicitor.

Honors, Scholarships, and Medals are awarded in connection with these examinations. Three Scholarships, one of $100, one of $60, and one of $40, are offered for competition in connection with each of the first and second year's examinations, and one gold medal, one silver medal, and one bronze medal in connection with the third year's examination, as provided by rules 196 to 205, both inclusive.

The following Students-at-Law and Articled Clerks are exempt from attendance at the School.

1. All Students-at-Law and Articled Clerks attending in a Barrister's chambers or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889.

2. All graduates who on the 25th day of June, 1889, had entered upon the *second* year of their course as Students-at-Law or Articled Clerks.

3. All non-graduates who at that date had entered upon the *fourth* year of their course as Students-at-Law or Articled Clerks.

In regard to all other Students-at-Law and Articled Clerks, attendance at the School for one or more terms is compulsory as provided by the Rules numbers 155 to 166 inclusive.

Any Student-at-Law or Articled Clerk may attend any term in the School upon payment of the prescribed fees.

Students and clerks who are exempt, either in whole or in part, from attendance at The Law School, may elect to attend the School, and to pass the School examinations, in lieu of those under the existing Law Society Curriculum. Such election shall be in writing, and, after making it, the Student or Clerk will be bound to attend the lectures, and pass the School examination as if originally required by the rules to do so.

A Student or Clerk who is required to attend the School during one term only, will attend during that term which ends in the last year of his period of attendance in a Barrister's Chambers or Service under Articles, and will be entitled to present himself for his final examination at the close of such term in May, although his period of attendance in Chambers or Service under Articles may not have expired. In like manner those who are required to attend during two terms, or three terms, will attend during those terms which end in the last two, or the last three years respectively of their period of attendance, or Service, as the case may be.

Every Student-at-Law and Articled Clerk before being allowed to attend the School, must present to the Principal a certificate of the Secretary of the Law Society shewing that he has been duly admitted upon the books of the Society, and that he has paid the prescribed fee for the term.

The Course during each term embraces lectures, recitations, discussions, and other oral

methods of instruction, and the holding of moot courts under the supervision of the Principal and Lecturers.

During his attendance in the School, the Student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance. As far as practicable, Students will be provided with room and the use of books for this purpose.

The subjects and text-books for lectures and examinations are those set forth in the following Curriculum :

FIRST YEAR.

Contracts.
Smith on Contracts.
Anson on Contracts.

Real Property.
Williams on Real Property, Leith's edition.

Common Law.
Broom's Common Law.
Kerr's Student's Blackstone, Books 1 and 3

Equity.
Snell's Principles of Equity.

Statute Law.
Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.

Criminal Law.
Kerr's Student's Blackstone, Book 4.
Harris's Principles of Criminal Law.

Real Property.
Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Deane's Principles of Conveyancing.

Personal Property.
Williams on Personal Property.

Contracts and Torts.
Leake on Contracts.
Bigelow on Torts—English Edition.

Equity.
H. A. Smith's Principles of Equity.

Evidence.
Powell on Evidence.

Canadian Constitutional History and Law.
Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

Practice and Procedure.
Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.
Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.

Contracts.
Leake on Contracts.

Real Property.
Dart on Vendors and Purchasers.
Hawkins on Wills.
Armour on Titles.

Criminal Law.
Harris's Principles of Criminal Law.
Criminal Statutes of Canada.

Equity.
Lewin on Trusts.

Torts.
Pollock on Torts.
Smith on Negligence, 2nd edition

Evidence.
Best on Evidence.

Commercial Law.
Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.

Private International Law.
Westlake's Private International Law.

Construction and Operation of Statutes.
Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law.
British North America Act and cases thereunder.

Practice and Procedure.
Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.
Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

During the School term of 1890-91, the hours of lectures will be 9 a.m., 3.30 p.m., and 4.30 p.m., each lecture occupying one hour, and two lectures being delivered at each of the above hours.

Friday of each week will be devoted exclusively to Moot Courts. Two of these Courts will be held every Friday at 3.30 p.m., one for the Second year Students, and the other for the Third year Students. The First year Students will be required to attend, and may be allowed to take part in one or other of these Moot Courts.

Printed programmes showing the dates and hours of all the lectures throughout the term, will be furnished to the Students at the commencement of the term.

GENERAL PROVISIONS.

The term lecture where used alone is intended to include discussions, recitations by, and oral examinations of, students from day to day, which exercises are designed to be prominent features of the mode of instruction.

The statutes prescribed will be included in and dealt with by the lectures on those subjects which they affect respectively.

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court, if not given at the close of the argument.

At each lecture and Moot Court the roll will be called and the attendance of students noted, of which a record will be carefully kept.

At the close of each term the Principal will certify to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student will be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series during the term, and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal will make a special report upon the matter to the Legal Education Committee. For the purpose of this provision the word "lectures" shall be taken to include Moot Courts. Examinations will be held immediately after the close of the term upon the subjects and text books embraced in the Curriculum for that term.

The percentage of marks which must be obtained in order to pass any of such examinations is 55 per cent. of the aggregate number of marks obtainable, and 29 per cent. of the marks obtainable on each paper.

Examinations will also take place in the week commencing with the first Monday in September for students who were not entitled to present themselves for the earlier examination, or who having presented themselves thereat, failed in whole or in part.

Students whose attendance at lectures has been allowed as sufficient, and who have failed at the May examinations, may present themselves at the September examinations at their own option, either in all the subjects, or in those subjects only in which they failed to obtain 55 per cent. of the marks obtainable in such subjects. Students desiring to present themselves at the September examinations must give notice in writing to the Secretary of the Law Society, at least two weeks prior to the time fixed for such examinations, of their intention to present themselves, stating whether they intend to present themselves in all the subjects, or in those only in which they failed to obtain 55 per cent. of the marks obtainable, mentioning the names of such subjects.

Students are required to complete the course and pass the examination in the first term in which they are required to attend before being permitted to enter upon the course of the next term.

Upon passing all the examinations required of him in the School, a Student-at-Law or Articled Clerk having observed the requirements of the Society's Rules in other respects becomes entitled to be called to the Bar or admitted to practise as a Solicitor without any further examination.

The fee for attendance for each Term of the Course is the sum of $10, payable in advance to the Secretary.

Further information can be obtained either personally or by mail from the Principal, whose office is at Osgoode Hall, Toronto, Ontario.