DIARY FOR JULY.

1. Tues...Dominion Day. Long Vacation begins.
6. Sun. ..4th Sunday after Trinity.
7. Mon...Heir and Devisee sitt. begin. Co. Court Terms (ex York) begin. Gen. Simcoe first Gov. of U. C., 1792.
8. Wed...Treaty with Turkey. Cyprus ceded to England, 1878.
12. Sat. ..County Court Terms (ex York) end.
13. Sun. ..5th Sunday after Trinity.
14. Mon. ..W. P. Howland, first Lieut.-Gov. of Ontario' 1868.
15. Tues...Manitoba entered Confederation, 1870.
19. Sat. ..Quebec capitulated to English, 1629.
20. Sun. ..6th Sunday after Trinity.
22. Tues...Heir and Devisee sittings end.
23. Wed...Union of Upper and Lower Canada, 1840.
24. Thur..Canada discovered by Cartier, 1534.
25. Frid. ..Battle of Lundy's Lane, 1813.
26. Sat. ..Jews first admitted to House of Commons, 1858.
27. Sun. ..7th Sunday after Trinity.
30. Wed...First English newspaper published, 1588.

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Canada Law Journal.

Toronto, July, 1879.

The second edition of Mr. Henry O'Brien's *Division Courts Manual*, which has been announced for some time past as being in course of preparation is now ready. The first edition of this work, which was published some thirteen years ago, was favourably received by the profession, and we trust that this new edition, which the author has endeavoured to render as complete and useful as possible, may not be less fortunate than its predecessor.

The Digest is approaching completion. Part XVI ends with Trover, and it is said that two more numbers will complete the work. All will be glad to see it finished and none more so than the weary compilers. If any one wishes to ascertain how near he can come to the pattern of the patient patriarch, let him try his hand at making a Digest. The editors will at least have the satisfaction of knowing that their work has been done in a most satisfactory manner.

Very few judges possess the courage of Lord Justice Bramwell. In an appeal from Fry, J., involving technical questions upon old rules of practice in equity, after the Master of the Rolls, and James, L. J., had given reasons for reversing the decision of the judge of first instance, Bramwell, L. J., concurred in the following remarkable manner: "I have sat here to-day and listened to things which I do not think I ever heard of before, and therefore I may safely say I am of the same opinion and for the same reasons." *Luke* v. *South Kensington Hotel Co.*, 27 W. R. 517.

A grave and important question was lately submitted for decision to the Supreme Court of Illinois. In a trial for larceny, the judge limited the counsel on both sides to the space of five minutes for their respective arguments to the jury. The Court above, on error being brought, held that this was an unreasonably short time, and that the counsel for the prisoner was quite justified in declining to make any attempt to address the jury. The verdict was consequently reversed, and the cause remanded for a new trial: *White* v. *The People*, 8 Central Law Journal, p. 273.

PRIVATE RIGHTS AS AGAINST PUBLIC WRONGS.

Where a crime has been committed detrimental to the commonwealth, it is the duty of every man to prosecute, appear against, and bring the offender to justice. A prosecution for such a crime is a proceeding for the benefit of the public. Till the rights of the public have been vindicated by a prosecution for the public offence, the law does not recognise the rights of any individual particularly injured by the commission of the crime. No agreement or compromise between such an individual and the culprit, which involves the abandonment of criminal proceedings, is valid; nor can any such agreement form the basis of a civil action. In every case wherein an offence of a public nature has been committed, any agreement to abstain from instituting a prosecution in respect of it, or to forbear proceeding with a prosecution already begun is illegal, and contrary to public policy. In *Williams* v. *Bayley*, L. R. 1 H. L. 220; the law is admirably stated by Lord Westbury. "You shall not make a trade of a felony. If you are aware that a crime has been committed you shall not convert that crime into a source of profit or benefit to yourself. If men were permitted to trade upon the knowledge of a crime and to convert their privity to that crime into an occasion of advantage, no doubt a great legal and moral offence would be committed. That is what the old rule of law intended to convey when it embodied the principle under words which have now passed somewhat into desuetude, namely *misprision of felony*."

The Courts uniformly refuse to entertain cases based on agreements, the consideration for which, in whole or in part, appears to be the stifling of a prosecution for an offence of a public nature. It is not essential to induce the Court to hold its hand that a crime should have been incontestably committed—it is enough if the acts and conduct of the parties indicate that each of them has been acting on the assumption that a crime had been, in fact, committed. In such a case, the persons so dealing would be held estopped from alleging the contrary of that which was the foundation of the bargain: *per Palles*, C. B., in *Rourke* v. *Mealy*, L. R. Ir. 4 C. L. D. 166.

The result is more difficult of attainment where it appears uncertain whether or not an offence of a public nature had been committed. But if there are reasonable grounds for suspecting the fact of the crime, then the better opinion seems to be that, inasmuch as the public have an interest in ascertaining the truth and in having the accused person (if guilty) brought to trial, any agreement to abstain from prosecuting would be illegal: *per Coltman, J.*, in *Ward* v. *Lloyd*: 6 Man. & Gr. 789.

If a prosecution has been in fact instituted, any bargain for money or other consideration to end it is illegal; apart from the question whether a crime has been or has not been committed, and apart also from the question of the exis-

tence of reasonable and probable cause of the guilt of the defendant. This is on account of the criminal law having been actually set in motion; and then a duty arises from the individual to the State that nothing shall be done to intercept the course of criminal justice. In such a case it is of no consequence whether the person accused is innocent or guilty of the crime charged. To borrow the forcible language of Lord Denman: "if innocent, the law was abused for the purpose of extortion; if guilty, the law was eluded by a corrupt compromise, screening the criminal for a bribe": *Keir* v. *Leeman*, 6 Q. B. 308.

Of course, a mere threat of criminal proceedings, if there be no reasonable and probable cause for their institution, will not operate to avoid a compromise based on the relinquishment of such proceedings; though the party threatened may have a right to relief under another head of jurisprudence, if there has been duress, coercion, or intimidation.

The same principle also applies where the crime is itself of such a nature as to involve pecuniary loss to an individual, as, for example, in cases of embezzlement and forgery. In such a case the policy of the law is that the injured person cannot maintain his suit for the money demand until he has done his best to bring the guilty person to justice. This duty is sufficiently discharged if the person injured has preferred a bill of indictment which has been thrown out, or not proceeded with at the suggestion of the presiding judge, and he is thereupon remitted to his civil remedy: *Ex parte Ball, In re Shepherd*, 27 W. R. 563.

This last case we have cited is the most recent and perhaps the most instructive upon this subject. Bramwell, L. J., discusses most elaborately the reasons alleged for the opinion that the felonious origin of a debt is in some way an impediment to its enforcement, and fails to find a satisfactory solution in any of them. Baggallay, L. J., proceeds upon grounds hitherto recognised as sufficient, namely that the civil remedy is suspended only till public justice has been satisfied as laid down in *Dudley & West Bromwich R. R.* v. *Spittle*, 1 J. & H. 14. See *Reid* v. *Kennedy*, 21 Gr. 86.

Baggallay, L. J., also holds that the doctrine of suspension does not apply where the offender has been brought to justice at the instance of another person injured by a similar offence, or in which prosecution is impossible by reason of the death of the culprit, or of his escape from the jurisdiction before a prosecution could have been commenced by the exercise of reasonable diligence.

But upon this last point Bramwell, L. J., observed: "I am not sure that the law may not turn out to be this: that if the man goes abroad, and so the prosecution becomes impossible, that is the misfortune of the creditor, and he must wait till he comes back again. However that may be, there seems no doubt that when the crime has been committed in a foreign country, and the fruits of it are brought to this country, civil proceedings may be taken for their recovery in our Courts forthwith." This question arose in *The Merchants Express Company* v. *Morton*, 15 Gr. 274, and the present Chancellor then held that, in such a case, the reason of public policy that there must be prosecution to conviction, or acquittal, before a civil action could be maintained, did not apply. As observed by Wilson, J., in *Topence* v. *Martin*, 38 U. C. R. 411, the suspension of the civil remedy is a matter of local policy, and the courts of our country are not bound to vindicate the dignity of the foreign law.

PROPOSED ALTERATIONS IN THE LAW OF MASTER AND SERVANT.

There are at present four bills before the Imperial Parliament for extending the liabilities of public companies and other employers to their servants for injuries arising from accidents caused by the negligence of fellow servants. One is introduced by the Attorney General and may be termed the Government bill. The others are introduced by private members. The four bills were discussed in a paper read by Mr. Joseph Brown, Q. C. at a meeting of the Social Science Association, which is reprinted at length in the English *Law Journal* for May 31st, ult.

After mentioning the fact that the present law, which does not allow a claim against the master or employer in respect of such injuries, unless he has been guilty of carelessness in the selection of the servant who caused the mischief—has, of late years, been loudly complained of as unjust by those who put themselves forward as representing the working classes, Mr. Brown proceeds to discuss whether and how far the proposed alterations are just and expedient. The most sweeping bill is introduced by Mr. Macdonald, the well-known "working-man's candidate." It begins (sec. 1) by sweeping away altogether any defence founded on the doctrine of common employment in the same service, or on the fact that the injured servant of his own free will incurred the risk. His bill extends, moreover, even to domestic servants. This bill, Mr. Brown argues, is unjust: firstly, because it punishes employers where they are absolutely free from blame, apparently because they can afford to pay damages, while the doer of the injuries probably could not, which, he justly observes, is about as equitable as the story of a certain judicial functionary, before whom a young man was summoned for a debt, which he was unable to pay, but the creditor suggesting that the debtor had a rich aunt, the Judge is reported to have made an order for payment upon the aunt; secondly, because it very often punishes employers for accidents which arise solely from the disobedience or neglect of the men themselves; thirdly, because it alters, without consent, the express or implied terms on which the workmen were engaged. It might also, says Mr. Brown, prove highly impolitic by removing the stimulus to carefulness, and to habits of providence and forethought among the working classes.

At all events the Parliamentary Committee appointed to enquire into the subject, in their report in the year 1877, condemned Mr. Macdonald's proposal. It is on this report apparently that the Attorney-General's bill is based. The effect of this bill is to make the owners of railways, mines, manufactories, and "other works," liable to their own workmen for injuries caused by the neglect of any "servant in authority," which is defined as including all persons employed to manage the whole or any part of the works, but to exclude all others. This, too, Mr. Brown argues is unjust, as making the master liable for what he did not order and could not prevent, and for what is done by the manager, not in fulfilment of his duty, but in violation of it: moreover the employment of an experienced manager is to the advantage of the workmen themselves, and to the public, besides being often a necessity: and the managers are generally so well paid as to be quite able to meet the consequences of their own default. Nor again have the proprietors of mines, railways and large concerns any need of an additional stimulus to the careful selection of their managers.

The other two bills may be distinguished as Mr. Brassey's, and Earl de la Warr's, and are sufficiently similar to be considered together. These bills not only embrace the provisions of the Government measure, but go a good deal further, for they apparently embrace not only managers, but even foremen or overseers,—in fact, any one who gives orders to the men. Besides the objections already enumerated which apply also to these two bills, Mr. Brown urges that a foreman is really a fellow-servant, working with and among the men, who can always complain of any carelessness on his part. Both of these bills, moreover, make the employer liable for all injuries to a workman arising from defective works, machinery, plant, etc., thus putting it in the power of a malicious man discharged from the employer's service, to wreak his vengeance by doing some secret injury to a machine, so that it should break down or explode and injure the men, all of whose claims would fall on their master. The present law, says Mr. Brown, rightly treats such cases as unavoidable accidents, and holds the employer blameless, whether the injury happens to a stranger or to a passenger or a servant, provided always that every care was used in selecting, constructing and examining the engine or machinery which caused the accident (*Skerritt* v. *Scallan*, 11 Irish Reports, C. L. 389). In conclusion, Mr. Brown refers to a paper read by him before the Social Science Association, in June 1878, in which he advocated a system of compulsory insurance against all accidents of workmen employed in hazardous trades, to which both employers and workmen should contribute—a system which has been tried in Germany with the best results, and has been adopted in England by the largest and best managed mining and railway companies.

Such appear to be the main points of the paper we have been considering. In these days of Californian Constitutions, when men not only "make haste to get rich," but appear sometimes to think that to rob those who are rich already is no crime, it is well that the *justice* of measures bearing on the relation of employer and employed, as well as their expediency should be considered temperately point by point. And that this should be done, if national wrong-doing is to be avoided, is in no way less necessary on this side of the Atlantic, than in England.

LAW SOCIETY.

Easter Term, 42nd Victoriæ.

The following is the *resumé* of the proceedings of the Benchers during Term, published by order of Convocation :

Monday, May 19th, 1879.

The minutes of previous meeting were read and approved.

The Report of Examiners of Candidates for Call was received, read and adopted.

The Report of the Sub-treasurer was read as to the regularity of the proceedings of the Candidates for Call, finding that, of the gentlemen who passed, the following, namely, Messrs. N. D. Beck, John Morrow, G. E. Miller, T. T. Rolph and L. A. Olivier are in the usual course.

Ordered, That they be called to the Bar.

The above named gentlemen attended and were called accordingly.

Ordered, That the cases of J. C. Ross, E. Coatsworth, W. J. B. Read, M. G. Cameron and T. S. Jarvis, be referred to the Legal Education Committee for report.

Ordered, That the case of A. B. Klein be referred to a select committee for report.

Messrs. Benson, Irving and Robertson, appointed such committee.

The report of the Examiners on the Examination for Admission as attorneys, was received and read.

The report of the Sub-treasurer on their articles was read, finding that of the gentle-

men who have passed, the papers of Messrs. N. D. Beck, J. A. Williamson, John Morrow and E. J. Beaumont, are in the usual course.

Ordered, That they receive certificates of fitness.

The cases of Messrs. Read, Walsh, Claxton, Millar and Coatsworth, who had also passed, were referred to the Legal Education Committee for Report.

The report of the Examiners on the Intermediate Examinations was received and read.

The Sub-treasurer reported that all those who had passed their first Intermediate Examination as Students-at-Law and Articled Clerks had passed at the proper time.

Ordered, That their Examinations be allowed.

The Sub-treasurer reported that, of those who had passed their second Intermediate Examination, all except Charles Egerton Macdonald, who passed as a Student-at-Law, and Robert Miller had passed at the proper time.

Ordered, That their Examinations be allowed.

Ordered, That C. E. Macdonald's Examination be allowed him as a Student-at-Law only.

Ordered, That the case of Robert Miller be referred to the Committee on Legal Education for report.

The Report of the Committee on Legal Education was received and read.

Ordered, That the following gentlemen be entered on the books as Students-at-Law:—John Dickinson, B.A.; John McLaurin, B. A.; Antoine Philippe Eugene Panet, B.L.; Charles Reginald Atkinson, George McCullough, George William Ross.

Ordered, That Andrew Joseph Clarke be allowed his Examination as an Articled Clerk.

The Report of the Committee on Legal Education on the reference to arrange for the printing of the minutes, was received, read and adopted, and the Secretary ordered to communicate the substance to Messrs. Rowsell & Hutchison.

The Report of Mr. Hodgins, on the reference to him of arrangements with Government as to heating and lighting Osgoode Hall, was received, read and adopted.

A letter from Mr. Justice Osler, dated 8th March, resigning his seat as a Bencher on his appointment as a Judge of the Court of Common Pleas, was read.

Ordered, That a meeting of the Bench be specially called for the last Friday of this Term for the election of a Bencher in his stead.

Ordered, That Mr. Cameron's notice as to the writing up of the Parchment Rolls of the Society, stand till the 20th instant.

Ordered, That Mr. Crombie's notice as to the consolidation of the Rules of the Society, stand till the 20th instant.

Mr. Hodgins gave notice that at, the next meeting of Convocation, he would move the following additional Rule in the order of proceedings for the first and other business days of Convocation—"Second reading of draft rules."

Mr. Robertson gave notice that he would, at the next meeting, move that it be an order of Convocation that the members of the Bench in future appear in Convocation in their gowns.

Mr. Hodgins gave notice of motion, for the 20th instant, That the printing of the Journals of Convocation be referred to a standing committee, to be appointed during Easter Term each year, at the same time as the appointment of the other standing committees of Convocation.

Mr. Bethune gave notice of motion, for the 20th instant, to confirm the appointment of Mr. Rolph as Chamber Reporter, notwithstanding that he was not called to the Bar at the date of such appointment.

Tuesday, May 20th, 1879.

The Report of the Special Committee on the case of Mr. A. B. Klein was received, read, and adopted.

The Report of the Legal Education Committee on the cases of Messrs. Welsh, Read, Claxton, G. E. Millar, Coatsworth, Ross, Jarvis, Cameron, and Robert Miller, was received and read, and ordered for immediate consideration.

Mr. Becher moved the adoption of the Report, saves as regards Mr. Claxton's case

and so much of Mr. Read's case as related to his certificate of fitness. Carried.

Mr. Read moved, That the report as to Mr. Claxton be amended, by allowing his second intermediate examination and his certificate of fitness. Carried.

Mr. Becher moved, That the report as to Mr. Read be amended, by allowiug his second intermediate examination and his certificate of fitness. Carried.

The Report of the Legal Education Committee on the cases of Messrs. Ede, Carey, Reddick, Scott, Lawson, Butler, Wallace, McDougall, Grayson, Sayers and Meyer was received, read, and considered.

Mr. Hodgins moved, That the Report be adopted, save as to the case of Mr. Ede, and that as to his case the report be amended, by allowing his first intermediate examination and his certificate of fitness. Carried.

Ordered, That Messrs. Scott, Lawson, Butler, Wallace, McDougall, Grayson and Sayers be allowed their examinations as articled clerks on payment of the usual articled clerks' examination fee.

Messrs. Ross, Coatsworth, Jarvis and Klein were called to the Bar.

Mr. Becher moved, That Mr. Stephen Richards be appointed to the seat on the Bench vacated by his own absence. Carried.

Mr. Crombie moved, That the Hon. E. Blake, Æmilius Irving, D. B. Read, Thomas Hodgins, John Crickmore, and the mover, be a Committee to examine and report on the Rules and Regulations of the Law Society of Upper Canada, and the resolutions and standing orders of Convocation, and to draft consolidated rules, regulations and orders, to be submitted to Convocation next Term. Carried.

Mr. Cameron moved that a Committee of the Bench be appointed to superintend the writing-up and completion of the Parchment Roll of the Society, and that Messrs. Read, Hodgins, Crickmore and the mover be such Committee, with authority to provide such clerical assistance to the Secretary as may be necessary for the purpose. —Carried.

Mr. Hodgins moved that the following be inserted as an additional, and the last, rule in the Order of Proceedings for the first and other business days of Convocation :— "Second reading of draft rules."—Carried.

Mr. Robertson moved, That it be an order of Convocation that the members of the Bench in future appear in Convocation on the first and second days of meetings in each term in their gowns.—Carried.

Mr. Hodgins moved that the printing of the journals of Convocation be referred to a Standing Committee, to be appointed during Easter Term each year, at the same time as the appointment of the other Standing Committees of Convocation.—Carried.

Mr. Hodgins, on behalf of Mr. Bethune, moved that the appointment of Mr. Rolph as Chamber Reporter be confirmed, notwithstanding that he was not called to the Bar at the date of such appointment.—Carried.

Mr. Irving gave the following notice for the next meeting of Convocation :—That whenever any County Council shall provide, free of charge, proper accommodation in the Court House of the said County, or Union of Counties, for a local law library, and whenever the members of the legal profession resident in such county have become incorporated under the provisions of the General Act for the Formation of Literary Associations, and have subscribed a fund or procured a Municipal Grant, or by donation of books for the purpose of such library, any sum not less than $750, the Law Society of Ontario shall grant to such local Library Association a sum equal to one-third of the amount subscribed, but not to exceed to any one Association the sum of $500, and to all such Associations the Law Society shall furnish, by way of further grant, the Ontario Reports and the Supreme Court Reports as published.

Mr. Hodgins moved that the Chairmen of the several Standing Committees and the Treasurer be appointed a Select Committee to strike the Standing Committees for the ensuing year, and that they do submit the names proposed for such Committee on Saturday, the 24th instant.—Carried.

Mr. Mackelcan gave notice, That he would move on the last Friday of Term a

resolution providing that steps should be taken to secure the establishment of some satisfactory system for the receiving at Osgoode Hall of orders for copies of short-hand writers' notes in common law cases and for the delivery, through some officer at the Hall, of the copies required of such notes.

Mr. Hodgins moved, that the Secretary having stated to Convocation that there have been several thefts of books from the library recently, it be ordered that the subject be referred to the Library Committee for investigation, and report.

Saturday, 24th May, 1879.

This being the day for the election of Treasurer according to the provisions of the statute, and no quorum being present, the Hon. Edward Blake continues Treasurer by law for the ensuing year.

The Treasurer, no quorum being present, adjourned the meeting of Convocation to half-past 10 o'clock in the forenoon of Tuesday morning next.

Tuesday, 27th May, 1879.

The minutes of the meeting of May 20th, and the minute made on May 24th, were read and approved.

The Report of the special Committee appointed to strike Standing Committees was received, read and adopted.

The report of the Finance Committee, dated May 26th, was received, read and adopted.

Ordered, that 1,000 copies of this Report be printed and distributed to the Profession.

The Report of the Committee on Reports, dated May 27th, 1879, was received, read and adopted.

Mr. Ponton was called to the Bar.

Mr. Irving moved, that his notice on the subject of County Libraries be referred to the Select Committee already appointed on that subject, and that the Treasurer be convener of that committee.—Carried.

June 6th, 1879.

The minutes of last meeting were read and approved.

The Report of the Legal Education Committee of the 31st May, on the cases of G. H. Smith, G. Wornall Wilson, Lendrum McMeans, F. W. Garvin, and others; R. Miller and E. N. Lewis, was received, read, considered clause by clause, and the first five clauses were adopted. To the seventh clause Mr. Cameron moved in amendment that the allowance of the Second Intermediate Examination of E. N. Lewis be suspended and that the case be referred back to the Committee on Legal Education with a view to their giving Mr. Lewis an opportunity of making a statement of the facts before they report a final decision.—Carried.

The report as amended was adopted.

Mr. Hoskin, chairman of the Discipline Committee presented the report of that Committee on the reference of the petition of Mrs. Barker. The report was received, read and adopted.

Mr. Irving, Chairman of the Library Committee presented the report of that Committee dated 6th June, which was received, read and adopted.

Ordered, That the Finance Committee apply to the Government for the accommodation for telegraphic purposes suggested in the report.

Letters from Mr. Vankoughnet and Mr. Harman (Reporters) of 5th June, with their communication to the Chairman of the Reporting Committee, dated May 26th, on the subject of an increase to their salaries, were received and read.

As Convocation had already dealt with the matter this Term, the subject of these letters could not then be considered.

Mr. J. K. Kerr, Q. C., was elected a Bencher to fill the vacancy in the Bench caused by the appointment of Mr. Justice Osler.

Mr. Mackelcan moved, That, in order to enable practitioners to obtain without unreasonable delay and inconvenience, copies of the short-hand writers' notes of trials in Common Law cases, some officer of the Courts or member of the staff of short-hand reporters should be required to have a room in Osgoode Hall, and to keep there a record of the names and addresses of all short-hand writers employed as reporters, and of the times when, and places where they are so employed, and such officer or reporter

should be required to attend at his office in Osgoode Hall, every day during each Term, and during the week before the commencement of each term, to receive orders for, and deliver copies of short-hand reporters' notes, and should also arrange for the receiving and forwarding at all other times, of letters addressed to him at Osgoode Hall respecting such notes, and should attend to and answer all such communications, and do all that might be required for the obtaining and delivering, or transmitting of copies of such notes.

That a copy of this resolution be transmitted to the Attorney-General, who is respectfully requested to take the matter into his consideration at his earliest convenience.

Mr. Hodgins moved in amendment, that Mr. Mackelcan be appointed a Committee to represent to the Attorney-General the difficulties at present existing with reference to procuring notes from the short-hand reporters, with a view to the adoption of some scheme for removing these difficulties.

Mr. Maclennan gave notice that he would move at the next meeting of Convocation, that the salaries of the reporters be henceforth payable and paid monthly instead of quarterly.

Monday, June 24, 1879.

The minutes of last meeting were read and approved.

The Report of the Legal Education Committee on the cases of Messrs. Lewis, Hall, Shannon, Maxwell, McMeans, Scott, and Mortimer was received and adopted.

The report of same Committee recommending that in future a fee of two dollars should be payable on the presentation of every petition to the Benchers for special relief was received and adopted.

The report of the Discipline Committee on the case of a member of the Society charged with the improper removal of a book from the library was received and adopted.

The report of the Library Committee, dated 24th June, as to the abstraction of books from the library, was received and adopted.

The report of the Select Committee on aid to county libraries was received and read, considered clause by clause, amended, and adopted, as below :—

REPORT OF SELECT COMMITTEE ON AID TO COUNTY LIBRARIES.

To the Benchers of the Law Society, in Convocation :—

The Select Committee appointed "to enquire as to the practicability and expediency, and, if found practicable and expedient, to report a scheme for aiding in the establishment and maintenance of branch libraries in the county towns, for the use of the courts and profession," to which Committee was referred the proposed motion of Mr. Irving on the same subject, beg leave to report as follows :—

1. The Committee met on eleventh June, A. D. 1879. Present—The Treasurer, Mr. Irving, and Mr. Hodgins, and came to the following conclusions :

2. The establishment and maintenance of county libraries is a subject of very great importance to the profession, the courts and the public. From the necessity of the case, the country practitioners do not derive the same measure of advantage from Osgoode Hall library which is obtained by the Toronto bar ; and although the annual fees paid by the profession are now more than compensated by the reports provided for them, yet the profession generally has a just claim to consideration in the appropriation of the surplus revenues derived from other sources.

It is on these grounds expedient to aid in the proposed object.

3. The report of the Finance Committee of twenty-sixth May last, showing a considerable estimated surplus of revenue over expenditure, there is no difficulty, on financial grounds, in carrying out a plan for moderate aid to county libraries ; but it would be prudent, in view of the large fixed charges, the fluctuating character of the income, and the possibility of other demands, to limit the guaranteed yearly expenditure by the Society to a sum well within the estimated available surplus.

4. There is no impracticability on other grounds in aiding in the object referred to.

5. Any scheme for the purpose should promote, as far as possible, a just distribution of the aid in proportion to the local contributions to the same object ; and should involve a limitation of the maximum of aid, which would at once ensure its fair share to each county desirous of establishing a library, and prevent too great a drain on the resources of the Society.

6. The Committee find that, according to the last law list, the practitioners in each

county or united counties number as follows :—

Algoma and Thunder Bay	4
Brant	17
Bruce	22
Carleton	46
Essex	16
Elgin	15
Frontenac	21
Grey	24
Halton	13
Hastings	43
Huron	32
Haldimand	10
Kent	20
Lennox and Addington	9
Lambton	14
Lanark	13
Lincoln	24
Leeds and Grenville	15
Middlesex	59
Northumberland and Durham	34
Norfolk	18
Oxford	28
Ontario	27
Peel	10
Peterborough	20
Prince Edward	6
Prescott and Russell	4
Perth	31
Renfrew	14
Simcoe	37
Stormont, Dundas and Glengarry	18
Toronto	260
Victoria	21
Wentworth	75
Wellington	45
Welland	14
Waterloo	18
York	7

Making a total of 1104. Of these, so far as the Committee can estimate, about 1,020 are actually engaged in practice. To ascertain the estimated number it would, therefore, be necessary to reduce the number above given by an average of about eight per cent. Toronto and York (numbering 267) as having full use of Osgoode Hall library, and Carleton (numbering 46) as being allowed access to the Parliamentary library, may be excluded from the calculation. This would reduce the number to 791; deducting 8 per cent., there remain 728 practitioners, more or less, likely to avail themselves of a proper scheme.

7. The Committee propose the following scheme :—

(1) That a standing committee be formed, to be called The County Libraries Aid Committee, to which shall stand referred all correspondence on the subject, and which shall have power, subject to the directions of convocation, to work the scheme as far as the Society is concerned; the Finance Committee retaining its control over expenditure.

(2) That the practitioners in any county or union of counties may form a library association, under chapter 168 of the Revised Statutes of Ontario, by the name of "the (name of county town or the county, or union of counties) Law Library or Law Association."

(3) That it shall be provided by the constitution of the Association, that—

(*a*) The trustees thereof shall hold all the books thereof on trust, in case of the dissolution or winding up of the Association, or the disposal of its property, to satisfy and repay to the Law Society all sums advanced by the Society to the Association.

(*b*) That a room for the custody and use of the books, and proper arrangements for their custody, shall be provided, if possible, in the Court House.

(*c*) That the books shall be for the use of the judges of the county and of those practitioners who become members of the Association and pay the prescribed annual and other fees, and also for the use, during Courts and hearings before the Master in Chancery, of the judges and of all members of the profession residing out of the County.

(*d*) That the prescribed annual and other fees shall not exceed for those practitioners who do not keep offices in the county town one-half of the amount fixed for those who do keep offices in the county town.

(*e*) That at least one-half of the said fees and the whole of the aid at any time granted by the Law Society shall be applied in the purchase, binding and repairing of books for the library.

(*f*) That the Association shall make an annual report to the Law Society, shewing the state of its finances, and of its library, with such other particulars as may be required by the Standing Committee.

(4.) That the Association shall transmit to the Law Society proof of its incorporation and a copy of its declaration and by-laws containing the above provisions, and proof of the condition of its funds and library; and proof that it has acquired a suitable room therefor, with such other particulars as may be required by the Standing Committee.

(5.) That the Standing Committee being satisfied that the conditions above named have been complied with, may report thereon to the Finance Committee; stating the amount to which on the principle hereinafter stated the Association is entitled, and thereupon the Finance Committee may authorize payment thereof.

(6.) That, it being expedient (with the view of encouraging the formation of the libraries), to grant more liberal aid during the early years after their institution, the

grant in aid from the Society shall be for the initiatory or first grant, an amount double the amount of the contributions in money actually paid, or of the value of books actually given, from all local sources, such grant, however, not exceeding a maximum sum of six dollars for each practitioner in the County or union of Counties; and for each of the first, second, and third years an amount double the amount of the fees actually paid by such practitioners to the Association, such grant, however, not exceeding a maximum sum of $4 for each such practitioner; and for each of the fourth and fifth years an amount equal to the amount of the fees so actually paid; such grant, however, not exceeding $4 for each practitioner, and that after the end of five years, by which time the working of the scheme will have been tested by practical experience, the whole question be open for reconsideration.

(7.) That such annual grant be payable on the 31st day of December in each year next after the termination of the fiscal year of the Association, provided the required reports and information have been supplied on or before the first day of the said month of December; and that in case of default the grant be not payable for three months after such reports or information have been supplied.

(8.) That the Standing Committee shall report to Convocation on the first day of Hilary term in each year on their operations for the previous year.

(9.) The Committee in conclusion desire to point out that the maximum charge on the funds of the Society under the proposed plan, even on the improbable supposition that libraries will be formed in all the Counties named would be for the initiatory grant $4,368, and for the subsequent yearly grants $2,912, irrespective of the slight yearly increase in the number of practitioners. This would be considerably in excess of the annual expenditure on the library at Osgoode Hall.

Edward Blake,
Chairman.

June 17th, 1879.

Mr. Hodgins moved the suspension of Rule 8.

Mr. Hodgins moved that the following rule be read a first time, namely:—That branch law libraries for the use of the Courts and the profession be established in each county town, on the conditions contained in the scheme above set forth.

Mr. Hodgins moved, That the rule be read a second time. Carried.

Mr. Irving moved, That the following gentlemen be appointed the County Libraries Aid Committee, namely—Messrs. Hoskin, Kerr, Miller, Robertson, Meredith, Hector Cameron, and Benson.

Mr. Robertson moved, that 1,000 copies of the Report and Rule as to County Libraries be printed and distributed to the profession. Carried.

A letter from the telegraph operator, asking for leave of absence during the long vacation, was referred to the Finance Committee.

A letter from the assistant in the library, asking for leave of absence, was referred to the Library Committee.

The Secretary laid before Convocation the bill of costs of the Solicitor of the Society, which was referred to the Finance Committee, with power to act.

Mr. Maclennan moved, that the salaries of the reporters be, after the 1st of October next, payable monthly, instead of quarterly, subject to the production of the usual certificate of the Editor. Carried.

Mr. Hodgins moved, That Mr. J. K. Kerr's name be substituted for that of Mr. Leith as a member of the Committee on the Journals of Convocation. Carried.

The Library Committee's report of the 24th June as to the tenders for the new descriptive catalogue, was received, read and adopted.

SELECTIONS.

THE LAW OF EVIDENCE AND THE SCIENTIFIC INVESTIGATION OF HANDWRITING.

(Concluded.)

Thus, an alleged forged agreement was brought into court, in which it was admitted that the body of the instrument was written by the party claiming under it, while the signature, it was contended, was in the handwriting of one member of the firm, against which the claim was made. There were quite a number of witnesses who testified to the belief of the genuineness of the signature, one of them being a so-called expert, while as many from the same data gave a contrary opinion. I found upon an examination

of the document, that the anatomy of the handwriting of the signature was quite different from that of the alleged signer, while the signature itself and the writing in the body of the paper agreed in this respect, that is as to its principles of structure; one party writing in what I call the looped style, that is, making a looped letter whenever practicable, while the other, in every case where it was possible to do so, avoided any such form of letter.

In a case in a commercial house where an embezzlement to a considerable amount was discovered, the alterations which were made in order to conceal the fraud were seen to be *fac similes* of the handwriting of one of the two clerks who kept the books. These alterations, however, might have been made by the other clerk, he imitating the handwriting of the first, in order, in case the fact was discovered, to clear himself by casting suspicion upon his fellow clerk. The question thus submitted without other testimony would seem to rest for its decision upon a comparison of the handwriting alone. This, as I have already shown, might work the greatest injustice in a case like the present, confounding the innocent with the guilty. The altered words and figures were to all appearance, in every respect like the handwriting of one of the parties, as before stated. Upon examining the principles upon which they were formed, a perfect correspondence was seen to exist here also, while upon a similar examination of the writing of the other clerk a very marked difference was observable, and much of this difference could only be seen through the aid of the microscope; hence I felt warranted in coming to the conclusion that the alterations were the work of the clerk whose handwriting they so closely resembled. It is possible, perhaps, to imitate a handwriting by the very means and the very manner in which the original was executed. But this would, of course, necessitate the use of the microscope in the first place, and a good deal of after practice in order to its successful accomplishment If it should occur in a given case and there should be no other means of detection, the expert would have no right to come to a conclusion, as it would in such a case be no better than guessing. I use the word "conclusion" in this paper in the sense of a necessary consequence, that is, to the mind of the expert. And under these conditions he might perhaps be allowed to state his conclusions to the jury, but not in this case or any other, without at the same time being called upon to give the grounds of such conclusions.

Another case which took place in an adjoining state, still further illustrates the value of this method of examination, and also of that usually resorted to in such cases. This case involved the forgery of five separate notes, all purporting to be endorsed by one party, this endorsement alone giving them any value. This gentleman, the alleged endorser of the note, was quite aged, and wrote a very fine, tremulous hand; viewed by the unaided eye the imitation appeared almost perfect, and was sworn to by those persons whom the law recognises as competent witnesses in such cases. On making a magnified copy of this signature, I found that the tremulous appearance of the letters was due to the fact that they were made up of a series of dashes standing at varying angles to each other, and further, that these strokes thus enlarged, were precisely like those constituting the letters themselves in the body of the note which were acknowledged to have been written by the alleged forger of the signature. Upon the introduction of this testimony, the criminal withdrew the plea of not guilty and implored the mercy of the court.

In reviewing these cases it will be seen that any number of competent witnesses, and a majority of them I do not doubt, perfectly honest in their opinions or guesses, can be got to testify on either side of the question, well illustrating the value of this class of testimony.

"The teller in a bank is a competent witness when he has paid the checks of the party whose handwriting is involved in the question, provided he has not paid forged checks purporting to have been made by such party; this renders him incompetent." He would be competent, however, no matter how many such checks he may have paid, provided he has seen the party write once, and then only his name.

An expert may be called upon to testify as to which writing was made first in cases where the pen strokes are seen te cross each other. This is sometimes a most important matter, as upon such testimony the decision of a case may wholly depend.

In two recent cases, the possession of property to the amount of more than half a million dollars was determined by such a fact. From the investigation which I have made, I cannot doubt that in nearly all the cases of this kind, as well as where the age of documents has been decided, or the testimony in regard to this fact at all influenced, by their appearance alone, even when a magnifying glass has been used, that such decision has been based entirely upon guessing. In one of the cases referred to above, the signatures were written with different inks, the letters in one crossing the other. The question to be decided was the order of sequence in the writing. To the unaided eye, and under the use of magnifying glasses also, one ink showed very clearly over the other, and had I been obliged to decide the question on such data alone, I could have come to but one conclusion, and this, as it proved, would have been the wrong one.

I was able to demonstrate the facts in the case by wetting a piece of paper with a compound which acts as a solvent of ink, and then pressing this paper upon the writing in question, whereby a thin layer of ink was transferred to the prepared paper, at once settling the matter in dispute by showing which was the superposed ink.

As a result of my experience in this case, I was led to make a series of experiments with reference to determining this one fact, though, as in all such cases, others came up which helped to determine still others.

I took for the purpose of my experiment ten of the most common kinds of ink found in the market, and drew a series of lines, three in number, with each kind of ink, across a sheet of paper. This was followed by a similar series drawn diagonally across the first, thus forming a hundred points of crossing, and placing each kind of ink above and also under all the others. In thirty-seven cases out of the hundred, the eye, with or without the glass saw the under ink as if it were on the surface; in forty cases nothing could be decided in this respect; the balance told the truth of the matter. By the other method, that is, by the use of the solvent, the true facts could be made plain in every one of these cases. This experiment, as will be seen, was made with ten kinds of ink more or less differing from each other in colour and in chemical composition, and it certainly proves that all such testimony, as I have said, has been thus far no better than guess work.

But suppose the same kind of ink is used in a given case, here other methods of investigation must be resorted to.

The question may be determined as I was able to determine a similar one in the case of the *City of Chicago* v. *Gage et al.*, where the first strokes of the pen, forming channels as it were, and disturbing the size on the paper, allowing the ink in the crossing lines to flow to some distance in these channels, thus causing there a double thickness of ink which was clearly visible to the naked eye. There may be circumstances in these cases preventing this outflow of ink; or if it does take place, so mingling the ink in the crossing lines as to hinder the fact from being seen. Again it might be determined by settling the question of age by chemical and other means applied to the writing itself.

If all these resources fail us we can then, under the rulings of the court, resort to the usual method of forming an opinion through the process of guessing.

In a case where the validity of a note depended upon the fact whether the words and figures constituting the date of the endorsement were written at the time with the other words of the endorsement, I was able to decide the question by showing that they were not only more recent, but that they were written with a different kind of ink. The party swore that after having written the words constituting the assignment of the paper, he noticed that he had not dated it, and that he "then and there, with the same pen and with the same ink wrote the date over the other words." I was able to confirm my conclusions in this case,

through experiments for ulterior purposes, by means of the photographic process. I had a photographic copy of the writing made in order to compare it with that on the inside of the instrument. The photograph not only copied the forms of the letters in this case, but it also took notice of the difference in colour of the two inks, thus confirming the accuracy of my own deductions.

The photograph is able to distinguish shades of colour which are inappreciable to the naked eye; thus, where there is the least particle of yellow present in a colour it will take notice of the fact by making the picture blacker, just in proportion as the yellow predominates, so that a very light yellow will take a deep black. So, any shade of green, or blue or red, where there is an imperceptible amount of yellow, will print by the photographic process more or less black; while either a red or blue, verging to a purple, will show more or less faint, as the case may be. Here is a method of investigation which may be made very useful in such cases, and which will give no uncertain answer. Indeed, its testimony may be said to amount to a demonstration. Greenleaf, in his work on Evidence, vol. 1, sec. 1, says, "none but mathematical truth is susceptible of that high degree of evidence called demonstration, which excludes all possibility of error." In spite of this dictum I have used the word demonstration several times in this paper, and as I hold that scientific testimony which does not amount to a demonstration, should (in that class of cases susceptible of scientific accuracy), have little weight in a court of justice, I wish to bring it to a still further test. In a paper involving some thousand dollars, an alteration had been made, which, as was alleged, entirely changed the direction in which the property was intended to be bestowed by the maker of the paper. The alteration was admitted, but was sworn to as having been made by the original party immediately after writing the paper, he himself being dead at this present time, and the only living witness being the one so attesting.

This witness swore that the party "then and there," as in the case before quoted, "made the alteration at the same time and with the same pen and ink with which the other portion of the paper was written;" he added that "there was only one kind of ink in the room at the time." Upon examination I found that all of the paper, with the exception of that part where the alteration was made, was written with an ink composed of nut-galls and sulphate of iron, while the other ink was made of analine and Prussian blue. Does it not amount to a demonstration that the whole paper could not have been written with one and the same kind of ink? This is certainly in accordance with the received definition of the word *e. g.*, demonstration, the exhibition of one truth as the consequence of another, &c.

The proof of the age of a document which is sought to be established by the appearance of the paper is, if possible, less reliable than by the comparison of the handwriting by the ordinary methods. I have repeatedly examined papers which have been made to appear old by various methods, such as washing with coffee, with tobacco-water, and by being carried in the pocket near the person, by being smoked and partially burnt, and in various other ways. I have in my possession a paper which has passed the ordeal of many examinations by experts and others, which purports to be two hundred years old, and to have been saved from the Boston fire. The handwriting is a perfect *fac simile* of that of Thomas Addington, the town clerk of Boston two hundred years ago, and yet this paper is not over two years old.

It will thus be seen that in my opinion, under the present rulings of the courts, there is no species of evidence less to be relied upon in regard to the genuineness of documents than that furnished by the (superficial) examination of the documents themselves, and that this is wholly due to the methods of examination, and not in the least degree inherent in the nature of the subject itself. Such are the iron rules which govern these investigations, and so unwilling are scientific men in most instances to subject themselves to the ignorance and bigotry of unprincipled lawyers, that they avoid, as far as possible, having anything to do with such matters, and therefore the name "expert" has got to mean anything

other than what the term implies. Witnesses, if dishonest, will be governed by their interests; if honest and ignorant, by their prejudices; and thus, of course, both classes testify on the side which employs them, and as they can only give an opinion, which opinion at best is merely a guess, a trial merges itself into a thing of management, in which the most skilful strategist gains the victory. The jury are instructed "to weigh the evidence," and as they have no philosophers' scales in which mountains could be balanced against atoms of sense with which to perform the act, each party strives to make it appear that he has the greater weight of evidence on his side; hence the imposition of high-sounding titles: and, as I have noticed before, the introduction of all that class of management which strives to make the lesser reason appear the greater, and thus impose on the jury. If the witness chances to be both intelligent and honest, the condition of things is no better; for, as I have shown before, he can only give a mere guess in any case under the existing methods in some of the courts.

I have said that the present unreliability of this class of testimony is not inherent in its nature, but under proper rulings, scientific witnesses (and these alone should be employed where the investigation is of a scientific nature), would be able to give absolutely reliable testimony in many cases, and where they were not able to do so they would state the fact, and thus remove all elements of guessing from this class of evidence. Further, the scientific witness should be allowed, indeed, should be obliged, as I have said before, to show and explain as far as possible the methods by which he arrives at his results. Thus, where a paper had been wet by a solution of tannic acid, for a fraudulent purpose, it was easy to show the fact by touching the yellowed paper with a solution of sulphate of iron, when the trick was at once made evident by the dark discolouration of the spot where the fluid was applied. The opinion of experts, and all who saw this paper, was that the writing was very recent, on account of its fresh appearance, this very freshness being the result of the washing with tannic acid. Thus also in a case of *tromp-d'œil* in a French court; the ring or border of paste which had previously united the two papers could at once have been brought in view by washing the paper with a solution of iodine. It seems that in the French courts every manipulation or experiment necessary to elucidate the truth in the case, even to the destruction of the document in question, is allowed, the court as a matter of precaution being first furnished with a certified copy of the same.

In the many cases of the alleged fraudulent papers put in my hands for examination, I have rarely found any insurmountable difficulty in coming to a conclusion, such conclusion being based upon the principles which I have set down as requisite in my opinion, to be acted upon in all this class of testimony. As in cases involving blood examinations, each case must be investigated by itself alone, as in almost every case new facts present themselves. Still general principles may be laid down so that with the aid of the microscope and other necessary instruments, and chemical re-agents, one may be prepared to solve this class of questions with almost unerring certainty, or at least to avoid coming to any wrong conclusions. Thus it will be seen that as I view the subject, this important class of testimony in all its phases, as now managed in the courts, so far from furthering the ends of justice, is more calculated to favour the wrong-doer; that there is no inherent necessity of such a condition of things, either in the nature of the subject itself, or in the present state of scientific knowledge; but that the fault is wholly due to the practice of the courts, which are governed in this respect, in most cases, by tradition and precedent rather than by logical reasoning or scientific deduction.

R. U. Piper, *in Am. Law Journal.*
Chicago, Ills.

WHAT IS A PROMOTER?

The duties and liabilities of the promoter of a company have of late years so rapidly developed, that he may now be considered fully created as a legal entity, subject always to his infancy being

blighted by Courts of Appeal; and the history of his birth and growth may be clearly traced. In the beginning, the promoter, like the world, was legally without form and void, and he did his best to cover himself with darkness. It was to the interest of those persons who represented him in the flesh to assert his insignificance. He loudly protested that he was nobody; he was not a director, trustee, or agent of the company; he had never put himself forward in any shape or form; and, if he ever had any existence entailing tangible duties, they all disappeared when the company was formed, as the chrysalis disappears when the butterfly spreads its wings. If he was anything at all, it was an honest capitalist who advanced money when no one else was able to do so, and who did a great deal of work for a very reasonable percentage. All this was very plausible; but still the hard fact remained that, while every one else had lost money over the company, the promoter alone had made money. This gave shareholders some confidence in the strength of the law to make promoters disgorge. Still, there were many legal difficulties in the way. Equity was thought more likely to assist the shareholder than Common Law: but in Lincoln's Inn there was a respectable body of opinion that the promoter would never be held to fill a fiduciary relation to the company. Men who have since risen to the bench thought that the doctrines of trusteeship had so far become stereotyped, as not to admit of this new development. The Courts, however, early began to decide against the promoter. Not only did they clothe him with the duty of the highest degree of good faith, but they pronounced him a trustee. The word was fatal. Calling a man a trustee is giving a dog a bad name; and it is a mercy to hang him at once. The promoter, when attacked, was not only deprived of his magnificent profits, but was even stripped of his commission; and in one case it became a question, when the company offered its promoter, out of charity, a reasonable remuneration in its own statement of claim, whether the Court would sanction such a compounding with the evil one.

The case of the *Emma Silver Mining Company* v. *Lewis & Son*, decided last week, is the latest of the series of cases in which the war has been carried into the promoter's camp. It may be said to be the apex of the pyramid, of which the *New Sombrero Company* v. *Erlanger*, 48 Law J. Rep. Chanc. 73, is the base, *Bagnall* v. *Carlton*, 47 Law J. Rep. Chanc. 30, is the middle. The Sombrero case decides that a promoter is in a fiduciary relation to the Company, thus finally putting an end to the doubts which have been expressed on the point. This relation being established, the Court of Appeal decided in Bagnall's case that it involves the restoration to the company of the promotion money which has been intercepted out of the subscribed capital. Thirdly, the Common Pleas, in the Emma Mine case, held that there is no legal definition of a promoter; but that if a man has contingent interest in the subscribed capital of a company when formed, and does anything to help along its formation, or the subscription to its shares, a jury may well find him to be a promoter. The consequences of that relation had already been applied by Mr. Justice Denman to the case of the Messrs. Lewis. His decision, on further consideration, is reported in the April number of the *Law Journal Reports*, and may be looked upon as a further application of Bagnall's case. We have thus the three questions dealt with—Is a promoter a trustee? is he liable for profits? and who is a promoter?

Practically, perhaps, the third of these questions is as important as any. Most who have had anything to do with companies would rather be sure that they have not made themselves promoters at all, than run the risk of having it proved that they have done something which promoters ought not to do. In order thoroughly to understand the Emma Mine case, it is necessary to know the history of the action. It was an action claiming damages against the Messrs. Lewis for conspiring with the vendor of the mine to palm it off on the company at an excessive price. It also claimed 5,000*l.*, being the value of 250 shares given by the vendor to the Messrs. Lewis. Upon the question of conspiracy the jury were divided in opinion; but they found

that the Messrs. Lewis were promoters of the company, and, as such, ought to repay the 5,000*l.* with interest. This explains how the question of promotership, which is an issue usually determined by a judge, came to be submitted to a jury. The jury being doubtful on the question of conspiracy, the damages in respect of which would have been very great, naturally had little difficulty in assisting the company to recover what had been taken out of the pockets of the shareholders and put into those of Messrs. Lewis; but the question for the Court was, whether there was evidence on which the verdict could be founded. Messrs. Lewis, there was no doubt, had agreed with the vendor to do all they could to assist him in the promotion of a company to buy the mine; but there was equally no doubt that the plaintiff company, as a legal entity, had, in fact, been formed independently of their help. They had introduced the vendor to two mining agents; but neither of these agents had been able to undertake the formation of the company, which was ultimately brought out under the auspices of Mr. Albert Grant. It was, therefore, fairly argued that the grounds on which promoters had been held to fill a fiduciary relation in the Sombrero case were not satisfied in this case; the grounds assigned for the relation in the Sombrero case being that Messrs. Erlanger had in their hands the moulding of the company, the framing of the memorandum and articles of association, of the prospectus and so on. The Messrs. Lewis did none of these things; so that it must now be taken to be the law that it is not essential to the character of promoter that the form and fortunes of the company should be in his hands. On the other hand, Messrs. Lewis were referred to in the prospectus as possessed of knowledge about the mine, and they had answered questions from intending shareholders in a manner likely to induce subscriptions. They were, moreover, in full possession of knowledge about the mine and about the reports which had been made upon the mine which, if disclosed, was not likely to advance the purchase of the property, and which they did not disclose either to the company or intending shareholders. Further, they had so far acted in concert with the vendor as perhaps to make him their agent in preparing the constitution of the company. The judgment of the Court studiously avoids basing the decision on any one of these facts or series of facts. It cannot be said that conduct conducing to the taking of shares is in itself sufficient to constitute a promoter. Still less can it be said that keeping silence in respect to material facts known to the alleged promoter is enough. Neither has it been laid down what form of authority will constitute promotion through an agent. All that the decision comes to is that these facts are material to be considered; and the matter is left just in that position of uncertainty which will be most frightening to persons who have been mixed up with companies to their own profit, and most encouraging to shareholders who have made bad bargains. He would be a bold man who should advise any person who has made money out of a company that he will not be held to have been a promoter. Juries are inclined to find in favour of companies in such cases, and the judges are disinclined to disturb such findings; while there is absolutely no exhaustive definition of what amounts to a promoter. —*Law Journal.*

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED IN ADVANCE, BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

From Chy.]

Armstrong v. McAlpine et al.

Will—Construction of.—

The testator devised the use and control of all his property, real and personal, to his wife until his two sons W. and H. were 21 or until the property should be disposed of as thereinafter mentioned. He then gave the north half of his farm to W. to be possessed by him when of the full age of 21, and directed him to pay certain pecuniary legacies to three of his daughters. He gave

H. the south half at the full age of 21 years, and directed him to pay pecuniary legacies to two of his daughters. The will then proceeded in the following language, "also my two sons, H. and W. above named, give my beloved wife a comfortable support or the sum of ten pounds annually, during her natural life, said support or annuity to commence at the time my said younger son H. shall possess his share of said property. I also will, that my above named sons W. and H. do not sell or transfer the said property without the written consent of my said wife, during her life."

Some years after attaining his majority, H. mortgaged to the defendant McAlpine, without his mother's consent, and having made default in payment the land was advertised for sale. The widow thereupon filed her bill, praying for a declaration that H. had no power to sell, transfer or mortgage without her consent in writing, and for an injunction to restrain McA. from selling or dealing with it to her prejudice.

A decree was made by V. C. declaring that, according to the true construction of the will, H. had no power to sell, transfer or mortgage the land during the plaintiff's life, without her consent in writing.

Held, reversing the decree, without deciding whether such a restraint upon alienation without a gift over was effectual, because the plaintiff had no right to require its determination, and if adverse to her contention such an opinion would not bind the heirs, that she had no indefeasible right to reside upon the land and thereby prevent its alienation, for there was the option of paying her an annuity in money; and the mortgage did not interfere with her right to this payment as a charge upon the land.

As the defendant offered to give the plaintiff a decree for a charge on the land, if that were necessary, she was ordered to pay the costs up to and inclusive of the decree, and the appellant was refused the costs of the appeal, as he did not take the objection which was given effect to in his reasons of appeal.

Boyd, Q. C., for the appeal.
O'Leary, contra.

Appeal allowed.

From C. C. York.]

Imperial Bank v. Beatty.

Promissory note—Double stamping—Necessity for replication setting up double stamping under 37 Vic. cap. 47.

Action on promissory note—Pleas.—1. Note not properly stamped when made.—2. Stamps not properly cancelled.—Issue on pleas.—*Held*, that under cap. 47 of 37 Vict., evidence as to the innocence of the holders and as to the time when they first acquired knowledge of the defect in stamping, and of double stamping as soon as they acquired knowledge, should have been received without a special replication of double stamping, this being, under the statute, matter to be shown to the satisfaction of the *Court or judge*, and, therefore, not requiring to appear upon the record and not being for the consideration of the jury.—*Held*, also that though such a replication is not necessary, it would be proper, the pleas constituting only a conditional defence.

R. Martin, Q. C., for respondent.
Shepley, for appellants.

From Chy]

Beatty v. Haldane.

Suit against administrator pendente lite.

A bill having been filed in the suit of *Wilson* v. *Wilson* to set aside the will of J. W., one H. was appointed administrator *pendente lite* after proceedings to rehear a decree setting aside the will. The decree was affirmed, after which a prior valid will was proved by the present plaintiffs J. W. and C. B. as executors, the latter having also been an executor under the former will and one of the plaintiffs in *Wilson* v. *Wilson*, on the 16th March, 1877. In Oct., 1876, before the order upon rehearing, an order was made that H. should pass his accounts as administrator, and a report was made on the 5th March, which determined the result of his dealings with the estate. Shortly afterward the plaintiffs J. W. and C. B. filed a bill against H. and D. solicitor for the plaintiffs in the former suit, charging that H. employed D. as his legal adviser in all matters connected with the estate; that D. received large sums of

money which he did not hand over for a long time; that on passing H.'s accounts the Master referred to the taxing officer for moderation of D.'s bill of costs, and refused to allow C. B. to appear on the inquiry; that at the procurement of D. another solicitor was appointed to represent H.; that he did not oppose the allowance of many objectionable items, and that H. had received sums of money for which he had not accounted, and prayed that the accounts and bill of costs might be opened up and that the defendants might be ordered to pay into Court such sums as may have been overpaid or wrongly allowed.

The proceedings in which the costs complained of were incurred had not been sanctioned by the Court, and were undertaken by H. upon his own responsibility.

Held, that an administrator *pendente lite* is amenable by a suit in equity and that H. was liable to account to the plaintiffs.

Held, also that the plaintiffs were right in not having proceeded by petition in the suit of *Wilson* v. *Wilson* in which J. W. was not a party, and C. B., though a party, did not represent the beneficiaries under the will first.

Held, also that the bill must be dismissed as against D., for if H. had improperly paid him costs out of the estate, H. was liable and there was no privity between D. and the plaintiffs.

Maclennan, Q. C., and *Haverson*, for the appellant.

Spencer, for defendant Donovan.

Donovan, for defendant Haldane.

From C.P.]

Austin v. Gibson.

Principal and surety—Giving time to principal—Discharge of surety.

The testator, who was surety in a covenant for the payment by the defendant, Scott, of a sum of money, died, leaving a will by which he appointed Scott and the other two defendants executors. After his death, Scott, on his own behalf, made various payments on account of the debt, and being unable to pay the balance, some $1,152, when due, he got the plaintiff to take his promissory note therefor payable in three months, Scott having arranged with his bankers to discount this note on which plaintiff got the money. When the note matured, part of the amount was paid by Scott and the balance renewed by another note of Scott's endorsed by the plaintiff as before, the last renewal being for $618, which amount the plaintiff sought to recover in this action against the defendant as executor in the deed of suretyship. In the dealings between plaintiff and Scott as to the promissory note and various renewals, no reference was made to the estate of the surety nor to the deed—and the co-executors of Scott had no knowledge or notice of such dealings.

Held, affirming the judgment of the Common Pleas, that the dealing between plaintiff and Scott had the effect of releasing the liability of the estate of the surety—notwithstanding that Scott was at the time of such dealing one of the executors of the surety.

Spencer for the appellant.

MacKelcan, Q.C., for the respondent.

Appeal dismissed.

From Q. B.]

Rooney v. Rooney.

Trinity Term—Sittings of the Court dispensed with—When rules nisi to be made—Power of Court.

Held, affirming the judgment of the Common Pleas, that when the Court has dispensed with its sittings during Trinity Term, motions for new trials in cases, tried at the summer assizes at Toronto, need not necessarily be made during the first four days of Trinity Term, as under section 13 of R. S. O. c. 39., unless judgment has been entered, such a motion may be made at any time during vacation (which includes Trinity Term) to a single Judge sitting for the Court.

McMichael, Q.C., for the appellant.

Haverson, for the respondent.

Appeal dismissed.

From Q. B.]

In re Yeomans et Ux. and the Corporation of the County of Wellington.

Property abutting on highway — Raising highway—Injuriously affected—Compensation, 36 Vict. c. 48, sec. 373, O.

Held, affirming the judgment of the Queen's Bench, that the owners of property abutting upon a public highway are entitled to compensation from the municipality under the Municipal Act, 36 Vict. c. 48, sec. 373, for injury sustained by reason of the municipality, having for public convenience, raised the highway in such a manner as to cut off the ingress and egress to and from their property abutting upon the highway, which they had formerly enjoyed, and to make a new approach necessary.

The cases upon the subject reviewed.

C. Robinson, Q.C., for the appellant.

Cattanach, for the respondent.

Appeal dismissed.

From Q. B.]

Frey v. Wellington Mutual Insurance Co.

Fire Insurance.

The 52nd section of the Mutual Fire Insurance Companies' Act, under which the defendants were incorporated, provides that "in case of loss or damage, the member shall give notice to the secretary forthwith, and the proofs, declarations, evidences and examinations called for by or under the policy must be furnished to the company within 30 days after said loss, and upon receipt of notice and proof of claim as aforesaid, the board of directors shall ascertain and determine the amount of such loss and damage—and such amount shall be payable in three months after the receipt by the company, of such proofs."

Held, affirming the judgment of the Queen's Bench, that the above section does not prevent an action being brought before the expiration of the three months where the directors have refused to pay the claim; its object being to afford that period for payment without suit where the directors choose to determine the amount.

C. Robinson, Q.C., for the appellant.

Bowlby, for the respondent.

Appeal dismissed.

From Q. B.]

McQueen v. Phœnix Insurance Co.

Fire insurance—Assignment—Non-ratification of.

The defendants' agent issued an interim receipt to the plaintiff on the 19th Nov., 1877, for 30 days and on the 28th November the plaintiff assigned to one M., in trust for his creditors the insured property —which was destroyed by fire on the 15th January, 1879. The policy issued after the fire. It appeared that when the assignment was made the defendants' agent was expressly notified thereof and assented thereto and stated that no notice to the company was necessary.

[No application was made under section 41 of the Mutual Insurance Companies' Act, to ratify the insurance to the alienees, but the policy issued in the terms of the application to the plaintiff.

Held, reversing the judgment of the Queen's Bench, that the plaintiff was not entitled to recover, as the notice even if given to the company, would only be notice that the property had been alienated, which under section 41 rendered the insurance void.

Bethune, Q.C., for the appellant.

C. Robinson, Q.C., for respondent.

Appeal allowed.

From Q. B.]

Parsons v. Standard Ins. Co.

Insurance—Prior insurance.

Where an applicant for insurance in answer to the question "What other insurances, if any, and in what office," replied shewing four existing insurances of $2,000 each; but, by mistake, mentioned the name of the Canada Fire & Marine instead of the Provincial Insurance Company.

Held, reversing the judgment of the Queen's Bench, that under the 8th statutory condition, the policy was void.

After the issue of the policy the insured allowed one of the above policies to drop, and substituted another in a different company for a similar amount.

Held, that the policy was avoided by the non-communication of the insurance.

Bethune, Q.C., for the appellant.

H. Cameron, Q.C., for the respondent.

Appeal allowed.

From Q. B.]

Marrin v. Stadacona Ins. Co.

Insurance—Loss, if any, payable to third party—Cancellation—Right of insured to recover.

The plaintiffs effected an insurance with defendants; loss, if any, payable to H., as security to H., for any balance of account that might be due him.

Held, affirming the judgment of the Queen's Bench, that H., in the absence of authority, by or on behalf of the plaintiffs, had no authority to surrender the policy for cancellation.

C. Robinson, Q.C. (*H. J. Scott* with him), for the appellants.

Ferguson, Q.C., for the respondents.

Appeal dismissed.

From Chy.]

Deacon v. Driffil.

Insolvency—Sale by mortgagee—Right to prove for deficiency.

The plaintiff, who was mortgagee of lands of an insolvent, obtained against the assignee the usual decree for sale, with a special direction that in case of a deficiency he should be at liberty to prove against the estate for such deficiency on such deficiency being certified by the Master.

Held, (reversing the decree of Proudfoot, V.C.) that under the Insolvent Act of 1875 the plaintiff could not prove for such deficiency.

Ferguson, Q.C., for the appellant.

W. Mulock, for the respondent.

Appeal allowed.

From Chy.]

Shaw v. Crawford.

Lunatic's estate—Final order of foreclosure—Effect of—Committee—Security.

Held, affirming the judgment of Spragge C., on the authority of the cases of *Gunn* v. *Doble*, 15 Grant, 655, and *McLean* v. *Grant*, 20 Grant, 76, that a sale by a mortgagee, who has obtained a final order of foreclosure of real estate of a lunatic valid on its face, cannot be questioned by reason of some prior formal defect discovered a number of years after the sale.

The objection in this case was that the alleged committee of the lunatic's estate had acted and executed the mortgage in question without having first given security.

Held that the Act, 9 Vict. ch. 10, which provided for security being given only extended to cases where the Committee was appointed by the Master, and not as here by the Court, the Court having a discretionary power to authorize a committee to act before giving security.

Held, also that security was only against the misapplication of the personalty and the rents and profits of the realty, and was not directed against a mortgage executed under the authority of the Court.

Held also that the requirements of the statute, as to security, were only directory, and that a failure to comply therewith would not invalidate acts done by a person appointed and assuming to act as committee during a long series of years and who never disputed his appointment or liability, but on the contrary admitted both in the most unequivocal manner.

The bill in this case was filed against the representatives of one C. the purchaser, the T. & L. Co. the mortgagees, and H. the committee.

Held, under the circumstances and for the reasons fully set out in this case, that in any event the bill was properly dismissed against the T. & L. Co. and H. and that it was also properly dismissed against the representatives of C.

From Q. B.]

Johnston v. Western Insurance Co.

Fire insurance—Pleading—Condition precedent—Ascertainment of loss.

The declaration alleged that defendants covenanted that, subject to the conditions endorsed on the policy sued on, they would pay to the assured all such immediate loss or damage not exceeding $2,000 as should happen by fire during the currency of the policy, and averred generally a performance of those conditions. The defendants pleaded that one of those conditions was, that payment of such loss need not be made by the defendants until 60 days after the same should have been ascertained and proved, and that at the commencement of the ac-

tion the alleged loss had not been ascertained and proved.

Held, reversing the judgment of the Queen's Bench, that it clearly appeared from the plea, that the condition was a condition precedent, and that it was not necessary for it to point out how the loss was to be ascertained and proved.

Gordon for the appellant.

Spencer for the respondent.

Appeal allowed.

QUEEN'S BENCH.

VACATION COURT.

Hagarty, C. J.] [April 25.

Petition of Right—Contract with the Dominion before Confederation—Liability.

A petition of right set out an agreement made in 1866 between the petitioners and the Queen, represented by the Commissioner of Public Works of Canada, for the performance and completion by 1st September, 1877, of the carpenter's work required on certain additions to the Provincial Lunatic Asylum, at Toronto, and complained that, owing to the delay in proceeding with the other work which the said Commissioners promised to have done in time, they were delayed and unable to finish their work before July, 1878, and thereby put to great expense. They then alleged that their work was performed under the superintendence and control of the Commissioner of Public Works for Ontario, and for the sole benefit of and paid for by that Province, and that by an arbitration held under sec. 142 of the B. N. A. Act in 1870, the said Asylum became the property of Ontario.

Held, that the Province of Ontario was not liable.

Edgar and Cartwright for the Queen.

W. McDonald, contra.

Hagarty, C. J.] [May 23.

Boustead v. Jeffs.

Promissory note—Stamps—Pleading.

Declaration on promissory note. Plea—that note was not properly stamped, and that plaintiff, the endorsee, did not pay double duty as soon as he acquired knowledge. Replication, admitting that plaintiff had not paid duty as soon as he acquired the knowledge that it had not been paid, and alleging that it was through error or mistake that he became holder with such knowledge, and as soon as he discovered the error he paid the double duty.

Held, replication bad for not tendering proper issue.

A similar replication to the third plea held sufficient, because the plea did not allege in terms that duty had not been paid.

Semble, that plaintiff might have the protection of the statute under a traverse.

Bigelow for the demurrer.

Akers, contra.

Hagarty, C. J.] [May 2.

Re Ontario Bank and Foster.

Banking Act of 1871, *s.* 25—*Application for order awarding shares—Writ executed in Quebec by bailiff and not by sheriff—Sale in execution in Montreal of shares of bank whose head office is in Toronto.*

Upon an application by the Ontario Bank for an order under s. 25 of the Banking Act of 1871, adjudicating and awarding shares,

Held, that an execution from the Supreme Court of Montreal may be validly executed by a sworn bailiff of that Court, instead of by the Sheriff, under s. 19 of the Banking Act.

Also, that a sale in execution in Montreal may be made of shares of a bank whose head office is in Toronto.

Falconbridge, for the bank.

Holman, for the purchaser at bailiff's sale.

Osler, J.] [June 10.

Hubbard v. The Union Fire Insurance Company.

Arbitration—Presence of parties—Invalidity of award.

One H. insured his stock of teas, &c., and sustained a loss by fire. In accordance with the statutory condition, an agreement was entered into referring the ascertainment

of the total loss to L. and C., and a third person to be appointed by them if they thought fit, the appraisement and estimate by them or any two of them to be binding on the parties. L. and C. appointed M. as third arbitrator. After the closing of the evidence and several meetings by the arbitrators, M. having drawn the document set out below produced it at a meeting of the arbitrators and read it as *his* decision. This was in M's. own handwriting. At the next meeting a document formally drawn up by the Company's solicitors was produced and signed by M. but for some reason it was abandoned. At this meeting the arbitrators permitted the manager and inspector of the Company to be present and to take part in the discussion as to the amount of the award and the fixing of the costs. The next day L. and M. met and, after adding a clause reducing the amount mentioned in the document prepared by M. by $53.75, portion of a former award as to partial loss, signed the said document and published it as an award.

Held, that permitting the officers of the Company to be present and take part in the deliberations of the arbitrators was such improper conduct as to render the award invalid.

Held, also, that the said document written and signed by M. and expressed throughout in *the first person* and as his decision alone, and without any expressions therein to shew it to be the decision of L., although signed by L., could not be upheld as the award of two arbitrators.

Clendenan for application.

A. C. Galt, contra.

COMMON PLEAS.

IN BANCO.

[June 5.

Reynolds v. Corporation of Ontario.

This was a rehearing of the judgment of Cameron, J., in this case, reported in 29 C. P. 488.

The Court affirmed the judgment.

Hector Cameron, Q. C., for the plaintiff.

Robinson, Q. C., and *H. J. Scott* for the defendant.

[June 5.

Regina v. Bonter.

Criminal Law—Assault—Competency of prisoner to give evidence in his own behalf,—40 Vict., c. 18, D.

The prisoner was indicted for that he did make an assault on one R., and him the said R. did beat, wound and illtreat with a club on and about his head and other parts of his body, and thereby thus occasioned R. great actual bodily harm, so that his life was greatly despaired of.

Held, that the prisoner could not be deemed to be on his trial for a common assault only, so as under 40 Vict., c. 18, D., to make him a competent witness in his own behalf.

Wallbridge, Q. C. for the prisoner.

J. G. Scott, Q. C. for the Crown.

[June 5.

Regina v. Stitt.

Criminal law—Supplying noxious thing with intent to procure abortion—33, 34 Vict. cap. 20, sec. 60, D.

The prisoner supplied a pregnant woman with two bottles of Sir James Clarke's female pills, with instructions to take twenty-five pills at a dose, and it would procure a miscarriage, but if taken as directed in the wrapper on the bottles—namely, one pill night and morning, and increasing the dose to four pills a-day, it would have a contrary effect. It was proved that the pills contained oil of savin, and that a bottleful, consisting of from three to four dozen pills, would contain about four grains, which would probably be sufficient to procure an abortion; that oil of savin in any dose was a most dangerous thing to give to a pregnant woman, and was given in such cases to procure abortion.

Held, under the circumstances, there was a supplying of a noxious thing within the meaning of the Act, 33, 34 Vict. cap. 20, sec. 60, D., to procure an abortion.

McMichael, Q.C., for the prisoner.

J. G. Scott, Q.C., for the Crown.

[June 5.

TURCOTTE ET AL. v. DAWSON.

Foreign judgment—Action on—Appearance—Effect of fraud.

In an action on a judgment recovered in the Province of Quebec—*Held*, that an appearance entered to the action in the Quebec Court must be deemed to be equivalent to personal service, so as to preclude the defendant from entering into the merits of the original cause of action.

The defendant pleaded herein that, after the entry of such appearance, the defendant gave to the plaintiff, and the plaintiff accepted a mortgage in satisfaction and discharge of the action and of all damages and costs in respect thereof, and that afterwards the plaintiff, without any notice to, or knowledge by, defendant, contrary to good faith and in fraud of defendant, proceeded with the action and recovered the judgment now sued upon against the defendant.

Held, that this was a good plea, and the evidence in support of it should have been received.

It appeared that from this judgment one of the defendants in Quebec had appealed, and that the appeal was still pending.

Quære.—Whether during the pendency of such appeal this action would lie.

A verdict having been entered for the plaintiffs, the Court granted a new trial.

McMichael, Q.C., and *S. G. Wood*, for the plaintiffs.

Ferguson, Q.C., and *J. R. Roaf*, for the defendant.

CANADA PERMANENT LOAN AND SAVINGS CO. v. PAGE.

Mortgage—Proof of execution—R. S. O. ch. 111, sec. 56.

In ejectment, the plaintiffs, in proof of a mortgage under which plaintiffs claimed title, produced the registered duplicate original thereof with the registrar's certificate endorsed thereon—*Held* that under R. S. O. ch. 111, sec. 56, this was prima facie evidence of the due execution of such mortgage.

Beverley Jones, for the plaintiffs.

Frank J. Joseph, for the defendant.

VACATION COURT.

[June 6.

WRIGHT v. CREIGHTON.

Arbitration—Adding parties—R. S. O. ch. 49.

In ejectment the plaintiff claimed as assignee of one M. of a mortgage made to him by one C.; the defendant claimed under a deed from M. and by possession. He also set up a payment to M. of the mortgage of which he was the holder; and an offer to redeem on being notified of the amount due. At the trial the cause was, by consent, referred to an arbitrator; the order of reference providing, amongst other things, that the arbitrator should have all the powers of a judge at *nisi prius* as to adding parties. After the reference had been entered upon it was discovered that, previous to the assignment of the mortgage to the plaintiff, it had been assigned to one R., who had assigned to E. W. and J. W., the latter being the husband of the plaintiff. On consents of E. W. and J. W. being filed to have their names added as co-plaintiffs, the arbitrator, after notice to the defendant, made an order adding them as such parties. On motion to set aside the order, but without it being made to appear that the defendant was in any way prejudiced or that any injustice was done him:

Held, by OSLER J., that under the order of reference and the Administration of Justice Act, 30 Vict. c. 8, R. S. O. c. 49, the arbitrator was authorized to make the order adding the parties.

Aylesworth for the plaintiff.

B. E. Bull for the defendant.

CHANCERY.

COLVER v. SWAYZE.

Proudfoot, V. C.] [June 14.

Fraudulent conveyance—Parties—Demurrer

Although it would seem that, in this Province, every bill by a creditor against the assets of a deceased debtor, whether so expressed or not, should be taken to be on behalf of all the creditors, and that it is the duty of personal representatives, in every case where a deficiency of assets is apprehended, to ask for a general administration, and if they do not ask for it, it

would be the duty of the Court to direct it; and although there may not exist any cogent reason for requiring the bill to be in that form in this country, still the practice of the Court here having been uniform in following the English rule it would now require the decision of a higher tribunal to alter it. The same reasoning which requires that, in proceeding against a living debtor, a creditor without a lien must sue on behalf of all others applies with equal force where the suit is against the representatives of a deceased debtor.

Longeway v. *Mitchell*, 17 Gr. 190, observed upon and followed.

Bolton v. Bailey.

Proudfoot, V. C.] [June 14.

Will, Construction of—Gift to a class—Lapsed legacy.

A testator, after sundry bequests and devises, amongst others an estate for life in all his lands to his widow, devised the same lands to trustees upon trust, within two years after the death of his widow, to sell and dispose thereof, to execute deeds and to give receipts, &c., and "after the sale of my said real estate I give and bequeath the proceeds of such sale or sales to my nephew, G. B., son of my brother Joseph, and to the following children of my brother George (naming them) equally share and share alike, male and female, without exception, when they respectively attain the age of twenty-one, to them, their heirs and assigns; and in the event of any of my legatees dying before getting their share or portion as aforesaid leaving child or children, in such case the child or children of any so dying shall inherit the share of the deceased parent." One of the nephews died during the life-time of the widow without issue.

Held, That there was no bequest of anything until the sale had taken place; that the bequest was one of personalty, not of realty; that no interest vested in such deceased nephew, as he did not live till the time of sale; that the gift was not a gift to a class; and, there being no residuary clause in the will, that the share of such deceased nephew lapsed and passed to the next of kin of the testator, and not to the legatee of the nephew.

COMMON LAW CHAMBERS.

Masuret v. Lansdell.

Mr. Dalton.] [May 25.

Interpleader—County Court writs—Costs.

Several executions from different County Courts having been placed in the Sheriff's hands on an interpleader application to the Superior Court. *Held*, that all costs, including those of the Sheriff, should be taxed on the County Court scale.

This was an interpleader application for the Sheriff of Norfolk. Several writs of *fi. fa.* from different County Courts had been placed in the sheriff's hands, and the present application was made in the Superior Court under R. S. O., ch. 54, sec. 12. Issues having been directed, *Smellie*, for the sheriff, asked Superior Court costs; the execution creditors and the claimant contended that all costs in the matter should be taxed on the County Court scale, although the application was made in the Superior Court, as all the writs had been issued out of County Courts.

Held, that the sheriff was entitled to County Court costs only, and that the costs of the issues directed should be taxed on the same scale.

Corcoran v. Robb.

Mr. Dalton.]

Libel—Plea of justification—Particulars.

In an action of libel the plaintiff alleged that the defendant had accused him in a newspaper article of having made false returns to the Government in his business of distiller. To this the defendant pleaded justification.

Held that the plaintiff was entitled to particulars of the defence intended to be set up under this plea.

Booth v. Walton.

Mr. Dalton.] [June 17.

Stay of execution—Set off of judgments.

The plaintiff Booth was engaged by the

defendant to manage a cheese factory. The defendant refused to pay the plaintiff's wages, alleging that the latter had been guilty of negligence in his duties, whereby the defendant incurred loss. The present action was then brought, and the defendant pleaded the above defence by way of set off. The judge at the trial ruled that such a claim was not a subject of set-off, and his ruling was upheld by the full Court. Walton then sued Booth in the County Court for damages caused by the alleged negligence.

Watson, for Walton, obtained a summons to stay execution in the suit of Booth v. Walton until the County Court action should be disposed of, on the ground that Walton would be entitled to set off any judgment he might recover in the latter suit against Booth's judgment. The affidavit stated that Walton was a man of means, while Booth was worthless, and that unless the set-off of judgments were allowed Walton would lose the benefit of any verdict he might recover. *Alliance Bank* v. *Holford*, 16 C. B. N. S., 460, was cited in support of the summons.

Marsh showed cause, and contended that the stay should not be allowed, as Walton had not yet proved himself entitled to damages, but was proceeding on a mere doubtful claim. He had not furnished the particulars of the alleged damages, but had simply made a general allegation of merits in the action brought by him.

Mr. Dalton followed the case above cited, and directed that the summons be made absolute if it be shown that the County Court case will be brought to a hearing in a week or ten days.

CHANCERY CHAMBERS.

Re Ross.

Proudfoot, V.C.] [May 28.

Administration—Master's office—Prima facie proof of claim.

In an administration suit McM. filed a claim in the Master's office against the estate for $11,000, and produced promissory notes signed by deceased for the amount of the claim. Of the whole claim of $11,000 a portion, $284.45, was not vouched by notes. McM. offered to allow his books, etc., to be inspected at his place of business. Upon the application of the representatives of the deceased, the Master at Barrie ordered the production of the books and papers of the claimant, which required the production of books and invoices extending over a period of ten or eleven years. On appeal from the Master's order, Proudfoot, V.C., held that the order should be reversed, the claimants undertaking to permit inspection as in their own affidavit, and producing the books referring to the item of $284.45. Appellants to have costs of appeal.

Mulock for appeal.

McDonald contra.

Referee] [June 3

Powell v. Peck.

Security for costs of appeal—Bond—Execution—Stay of.

The bond for $400 given under the provisions of sec. 26, c. 38, R. S. O., is a security for the costs of appeal only; in order to stay execution for the costs of the Court below further security must be given.

Black for appellant.

Beck for respondent.

Referee] [June 6.

Proudfoot, V. C.] [June 9.

London and C. L. and A. Co. v. Thompson.

Where a bill had been filed for foreclosure and the defendant, the official assignee of the mortgagor, absconded before the bill was served, an order was granted allowing substitutional service on one of two inspectors of the insolvent's estate.

Arnoldi for applicant.

To Correspondent.—We cannot publish the letter signed 'Wellington' as the writer does not give his name and address. The matter of it is hardly worth discussing.

Law Society of Upper Canada.

OSGOODE HALL,

HILARY TERM, 42ND VICTORIÆ.

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

WILLIAM EGERTON PERDUE.
ELGIN SCHOFF.
JAMES HAVERSON.
JOHN COWAN.
ERNEST HENRY EDEN EDDIS.
EDWARD SYDNEY SMITH.
JOHN GILBERT GORDON.
JOSEPH ALFRED WRIGHT.
CHESTER GLASS.
PETER VANCES GEORGEN.
JAMES PEARSON.
JOHN BISHOP.
FREDERICK WILLIAM BARRETT.
THOMAS WILLIAM HOWARD.
DANIEL BAYARDE DINGMAN.
JOHN INKERMAN MACCRAKEN.
JAMES DOWDALL.
JOHN HODGINS.
REGINALD GOUBLAY.

And as special cases under 39 Vic. cap. 31 :—

JOHN MACGREGOR.
WILLIAM JEX.
CHARLES MCMICHAEL.

And the following gentlemen were admitted as Students-at-Law and Articled Clerks :—

Graduates.

VILLEROI SWITZER.
HENRY LINCOLN RICE.

Matriculants.

JOHN PERCY LAWLESS.
THOMAS HADZOR MARSHALL.
RICHARD HENRY HUBBS.
JOHN ROBERTSON MILLER.
N. H. BEEMER.

Juniors.

STEPHEN FREDERICK WASHINGTON.
WILLIAM JOHN NORTHWOOD.
JOHN GRAHAM FORGIE.
SAMUEL THOMAS SCILLY.
DANIEL URQUHART.
LEVI THOMPSON.
DENIS JOSEPH MUNGOVAN.
THOMAS B. SHOEBOTHAM.
THOMAS YOUNG CAIN.
WILLIAM DICKINSON FARRELL MCINTOSH.
JOHN DICK HEPBURN.
DAVID KIRKPATRICK J. MCKINNON.
DAVID THORBURN SYMONS.
JAMES BICKNELL.
ARTHUR WELLINGTON BURK.
LESSLIE LIVINGSTON JACKSON.
CHARLES CREIGHTON ROSS.
ARTHUR EUGENE FITCH.
MATTHEW ELLIOTT MITCHELL.
ROBERT NOTMAN BALL.
GEORGE F. CAIRNS.
JAMES SIDNEY GARVIN.
GERALD BOLSTER.
ROBERT CHRISTIE.
NOBLE A. BARTLETT.
ARTHUR FRED. JAMES SPENCER.
WILLIAM GILBERT MACDONALD.
ARTHUR WILLIAM JOHNSON.

Articled Clerks.

WILLIAM HENRY GORDON.
HERBERT HENRY BOLTON.
GEORGE HOLMES ANDERSON.
HAROLD VICTOR BRAY.
EDWIN DUNCAN CAMERON.

PRIMARY EXAMINATIONS FOR STUDENTS-AT-LAW AND ARTICLED CLERKS.

A Graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such Degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his diploma or a proper certificate of his having received his degree.

All other candidates for admission as articled clerks or students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects :—

Articled Clerks.

Ovid, Fasti, B. I., vv. 1-300; or,
Virgil, Æneid, B. II., vv. 1-317.
Arithmetic.
Euclid, Bb. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography — North America and Europe.
Elements of Book-keeping.

Students-at-Law.

CLASSICS.

1879 { Xenophon, Anabasis, B. II.
Homer, Iliad, B. VI.

1879 { Cæsar, Bellum Britannicum.
Cicero, Pro Archia.
Virgil, Eclog. I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1880 { Xenophon, Anabasis. B. II.
Homer, Iliad, B. IV.

1880 { Cicero, in Catilinam, II., III., and IV.
Virgil, Eclog., I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1881 { Xenophon, Anabasis, B. V.
Homer, Iliad, B. IV.

1881 { Cicero, in Catilinam, II., III., and IV.
Ovid, Fasti, B. I., vv. 1-300.
Virgil, Æneid, B. I., vv. 1-304.

Translation from English into Latin Prose.

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

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.

Composition.

Critical analysis of a selected poem:—

1879.—Paradise Lost, Bb. I. and II.

1880.—Elegy in a Country Churchyard and The Traveller.

1881.—Lady of the Lake, with special reference to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

English History from William III. to George III., inclusive. Roman History, from the commencement of the Second Punic War to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography: Greece, Italy, and Asia Minor. Modern Geography: North America and Europe.

Optional Subjects instead of Greek.

FRENCH.

A Paper on Grammar.

Translation from English into French Prose—

1878 and 1880 } Souvestre, Un philosophe sous les toits.

1879 and 1881 } Emile de Bonnechose, Lazare Hoche.

or GERMAN.

A Paper on Grammar.

Musaeus, Stumme Liebe.

1878 and 1880 } Schiller, Die Bürgschaft, der Taucher.

1879 and 1881 } Schiller { Der Gang nach dem Eisenhammer. / Die Kraniche des Ibycus.

A student of any University in this Province who shall present a certificate of having passed, within four years of his application, an examination in the subjects above prescribed, shall be entitled to admission as a student-at-law or articled clerk; (as the case may be), upon giving the prescribed notice and paying the prescribed fee.

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination, to be passed in the third year before the Final Examination, shall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C.S.U.C. c. 12), C. S. U. C. caps. 42 and 44, and Amending Acts.

The Subjects and Books for the Second Intermediate Examination to be passed in the second year before the Final Examination, shall be as follows:—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law, C. S. U. C. c. 88, and Ontario Act 38 Vic, c. 16, Statutes of Canada, 29 Vic. c. 28, Administration of Justice Acts 1873 and 1874.

FINAL EXAMINATIONS.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Smith on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Stephen on Pleading, Lewis's Equity Pleading, Dart on Vendors and Purchasers, Best on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

FOR CALL, WITH HONOURS.

For Call, with Honours, in addition to the preceding:—Russell on Crimes, Broom's Legal Maxims, Lindley on Partnership, Fisher on Mortgages, Benjamin on Sales, Hawkins on Wills, Von Savigny's Private International Law (Guthrie's Edition), Maine's Ancient Law.

FOR CERTIFICATE OF FITNESS.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Smith on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

Candidates for the Final Examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

SCHOLARSHIPS.

1st Year. — Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Hayne's Outline of Equity, C. S. U. C. c. 12, C. S. U. C. c. 42, and Amending Acts.

2nd Year. —Williams on Real Property, Best on Evidence, Smith on Contracts, Snell's Treatise on Equity, the Registry Acts.

3rd Year.—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Taylor's Equity Jurisprudence, Fisher on Mortgages, Vol. I. and chaps. 10, 11, and 12 of Vol. II.

4th Year. —Smith's Real and Personal Property, Harris's Criminal Law, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis's Equity Pleadings Equity Pleading and Practice in this Province,

The Law Society Matriculation Examinations for the admission of students-at-law in the Junior Class and articled clerks will be held in January and November of each year *only*.