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THE ways of the Local Legislature are past finding out. It would be not unreasonable to suppose that when an Act had been discovered among the productions of any given session amending any of the consolidated statutes, and the enquirer after statutory truth had carefully perused such amending Act, he might peacefully conclude that he had "got on to" all such amendments made in such session. Let him take heed to his ways, however, for among the Acts of the session just concluded we find three different Acts containing amendments of the Ontario Insurance Act: sec. 106 is amended by chap. 30; sections 109 and 127 by chap. 31; and sec. 137 by chap. 32. Truly this may be called "harassing legislation." Another small joke, for we do not wish to be considered deficient in humour, is perpetrated by chap. 17, which by sec. 6 gives to 51 Vict., c. 13, new a subsection 3 to section 15, and then by sec. 10 enacts that "subsection 3 of section 15 is hereby repealed." The old subsection 3 of section 15 had clearly been repealed by sec. 6, so this other subsection 3 of sec. 15 must of course refer to the new one created by that section—a clear case of legislative infanticide.

AN esteemed correspondent in Ottawa writes us as follows in regard to Law Reform amongst that progressive people, the Japanese:

"Mr. Torn Hoshi, a barrister of Tokio (Yeddo), Japan, spent very recently ten days in Ottawa. I had the pleasure and profit of a private interview with him. He is a short, thick-set, middle-aged man of courteous manners and pleasing countenance, and speaks English correctly, but not fluently. He was educated in law at the Middle Temple, England, and now displays his professional 'shingle' in Tokio, Japan. He belongs to the Samurai or gentry, and was entitled to wear two swords, before the abolition of this custom some eight years ago. His object in visiting Canada was to become acquainted with our political institutions and legal systems. He stated to me that Japan had adopted a civil and criminal code of laws, prepared by a Mr. Boissonade, and based on the French codes, but modified by an interjection of Japanese customary law. The codes of commerce and procedure are in preparation; they will be framed after the English, German, and French laws. Inasmuch as, after the establishment of a direct steamship line between British Columbia and Japan, Ontario will be placed in commercial and legal relationship to the two countries of Quebec

and Japan, both using French law to a great extent, would it not be wise to endow a chair of French law, or better, of General Jurisprudence in the Law School at Toronto. Even if an Ontario lawyer was certain never to have a Japan or Quebec case, he would be much the better lawyer for a knowledge of the Code Napoleon and of the procedure in the Courts in the Province of Quebec."

As the curriculum of the proposed Law School must soon take definite form, our correspondent's suggestion is timely. We fear that comparative jurisprudence receives too little attention in Canada; but whilst we are obliged to our correspondent for his suggestion as to "a chair of French law at Toronto," we think there is quite enough French-ism in Quebec without bringing it further west. Not at present, thank you!

THE EFFECT OF PAYMENT AS A BAR TO THE STATUTE OF LIMITATIONS.

IT has been generally assumed in this province that the effect of payments on account of principal or interest due on simple contract debts as a bar to the Statute of Limitations, is unaffected by the statute (R.S.O., c. 123) requiring acknowledgments of debts to be in writing. It may be that the assumption is well founded; at the same time, in arriving at this conclusion, we believe a very important fact has been lost sight of, which at all events is, to say the least of it, calculated to cast some little doubt on the correctness of the generally received opinion. That fact is this: that in Lord Tenterden's Act, 9 Geo. 4, c. 14, the effect of payment is expressly saved, the proviso in that Act being as follows: "Provided always that nothing herein contained, shall alter, or take away, or lessen, the effect of any payment of any principal or interest made by any person whatsoever;" but this proviso in not to be found in the Ontario Act, R.S.O., c. 123.

We have not been able to find any case in which this variance between the Ontario Act and the English Act has been discussed. Not very many cases on the effect of payment, upon the revising of the Statute of Limitations, have been reported in our Courts; and in all of these to which we have referred, it seems to have been assumed that the Acts were identical. Thus in *Ball* v. *Parker*, 39 U.C.Q.B. 488, Harrison, C.J., says, "Since the passing of C.S.U.C., c. 44 (which is the same as 9 Geo. 4, c. 4, commonly called Lord Tenterden's Act in England) nothing after the lapse of six years will revive the debt except part payment, or an acknowledgment in writing signed by the party chargeable thereby." This case went to appeal (see 1 App. R. 593), but there also the judges assumed that the statute had made no difference in the effect of payment; and in *Boulton* v. *Burke*, 9 O.R. 80, and *Tilley* v. *McIntosh*, recently before Armour, C.J., (not yet reported) both Counsel and the Court seem to have assumed that such was the case. Prior to Lord Tenterden's Act, payment on account was regarded as a species of acknowledgment of the debt, and it was on this

ground that it stopped the running of the statute. As the law then stood, three might be acknowledgments in writing, and acknowledgments by parol, and acknowledgments by the act of payment on account. The effect of the English Act is undoubtedly to render parol acknowledgments insufficient, and to make it necessary that all acknowledgments, other than by payment, shall be in writing, signed by the party to be charged, but it expressly continues the former effect attributed by the Courts to payments on account.

It may be argued in favour of the generally received opinion as to the effect of the Ontario Act, that as it declares that "no acknowledgment or promise *by words only* shall be deemed sufficient," it impliedly saves the effect of payments, because, it may be said, payments are not acknowledgments by "words only," but acknowledgments by an act, viz., the act of paying money, and, therefore, not within the words of the statute. Some of the other sections of the Act also seem to favour the assumption that payments may have the effect of barring the statute; for example, section 4 provides that payments on account of a bill of exchange or promissory note shall not be deemed sufficiently proved by an indorsement of payment made by, or on behalf of, the person to whom the payment is made. This may be said to imply that if payment can be otherwise proved, as, for instance, by the testimony of a witness who saw the payment made, that that would be sufficient to bar the statute. The second and third section also appear to assume that payments may operate as a bar of the statute. In section 2 it is provided that payments by one of two or more joint contractors, or executors, or administrators shall not affect the others; and section 3 enacts that if it appears at the trial that the plaintiff is entitled to succeed as to one joint contractor, executor, or administrator, by virtue of a payment made by him, judgment may be given in his favour as to that defendant, though he may fail as to the others. But on the other hand it may not unreasonably be argued that these provisions are not inconsistent with requiring that payments on account to be of any avail must be evidenced by writing signed by the payer.

It may, however, be correct that a payment on account has, under our statute, the same effect as in England; at the same time the omission of the proviso in our statute, of the clause which appears in the English Act, saving the effect of payment, is significant, and we are inclined to think the fact of its omission has hardly received the consideration which it deserves, either from the Bar or the Bench.

ESTATES TAIL.

THE third section of the Devolution of Estates Act (R.S.O., c. 108) which defines the classes of real estate which are to devolve on the personal representative, it may be observed, does not include estates tail, either general or special, in its operation. It is confined to "estates of inheritance in fee simple, or limited to the heir as special occupant," whether corporeal or incorporeal, and it is only such estates of freehold that, under section 4, devolve on the personal representative of a deceased owner. Estates tail, general and special, therefore,

existing on the 1st of July, 1886, are left to the operation of the law as it existed prior to that date; and on the death of the tenant in tail the heir in tail will be entitled to succeed, and the personal representative of the deceased tenant will have no right in the land. But in case any then existing estate tail is barred, can it be re-entailed? Or in other words, can an estate tail be created since the 1st July, 1886? By the 10th section of the Devolution of Estates Act it is provided that, "In the case of a person dying after the first day of July, 1886, his personal representatives for the time being shall, in the interpretation of any statute of the Province, or in the construction of any instrument to which the deceased was a party, or in which he was interested, be deemed in law his heirs and assigns, unless a contrary intention appears."

From this section it seems clear, that under a limitation to a man "and his heirs," the personal representatives of the grantee who dies after the 1st of July, 1886, would be entitled, in the event of his dying without having conveyed away the land in his lifetime. But suppose in addition to the word "heirs" the words "of his body" are added, will the word "heirs" in that connection be taken to mean the personal representative? or will the introduction of the words "of his body" be taken to indicate "a contrary intention" within the meaning of section 10? Possibly some help may be obtained in arriving at a conclusion by reference to R.S.O., c. 100, s. 4, which provides that in deeds or other instruments executed after 1st of July, 1886, no words of limitation at all are necessary for the limitation of an estate in fee simple, or fee tail, general or special, and that the word "heirs," or "heirs of the body," or "heirs male," or "heirs female of the body" need not be used for the creation of an estate tail general or special. It is sufficient in order to create an estate tail to use the words "in tail," or "in tail male," or "in tail female," according to the limitation intended. This section appears to indicate that, notwithstanding the Devolution of Estates Act, which also came into operation on the 1st of July, 1886, estates tail may still be created, otherwise there would be no object in making this provision. It being thus apparent that estates tail may still be created, it seems to follow that where technical words are used, which, according to the common law, would create an estate tail, those words must be still so construed, and the additional words so used must be held to imply "a contrary intention," which would prevent the word "heirs" having, in that connection, the meaning of "personal representatives."

But though it would seem probable that an estate tail may still be created by either deed or will, it may be well to notice that when the estate tail is created by will, the devisee will not, as formerly, be entitled to take the estate immediately from his testator; the devise in tail cannot prevent the devolution of the estate in the first place upon the personal representative, who, after due administration of the estate, would no doubt be bound to convey it, if not required for the satisfaction of debts, to the devisee in tail according to the tenor of the devise.

We have always thought, and still think, that the exemption of estates tail from the operation of the Devolution of Estates Act was a great mistake. The palpable injustice of so doing is apparent the moment the subject is seriously

considered. An owner of an estate tail, as we all know, except in certain exceptional cases, has as complete dominion over his estate as an owner in fee simple, and by the execution of a formal deed he may, in most cases, at any time effectually convert his estate in fee tail into a fee simple. An owner of such an estate may contract a large amount of debts on the faith of his having this estate, for creditors are not usually very particular in inquiring the precise technical interest their debtor may have in property, of which, to all outward appearances, he is the absolute owner. Such a man dies without barring the entail, and the result is that the property devolves on the heir in tail, and the creditors have no right to follow it. That, we do not think, is a very satisfactory state of affairs; it appears to be simply a device sanctioned by law for enabling a man to obtain credit by false appearances, and then to withhold his property from liability to the claims of his creditors.

CONTEMPT OF COURT IN CANADA.

THE decision of the Supreme Court of Canada in the case of *Queen* v. *Howland* (reported in 11 O.R. 633, and in 14 A.R. 184), or rather the written reasons of the judges, copies of which are now before us, places the law of contempt of court upon a very clear, and we venture to think, very satisfactory footing.

The facts of the case were very simple. The editor of this journal acted as solicitor for Mr. Howland in some *quo warranto* proceedings which were taken against him after his first election as Mayor of Toronto, in 1886. He had also acted as chairman of Mr. Howland's committee during the mayoralty contest. On March 23rd, 1886, Mr. Dalton, Master in Chambers, gave judgment declaring Mr. Howland not to possess the requisite property qualification. On March 24th an article appeared in the *Mail*, expressing the view that Mr. Howland had made a bad blunder in running for Mayor when not properly qualified. On March 26th Mr. O'Brien gave notice of appeal from Mr. Dalton's decision, and also wrote the letter to the *Mail* newspaper, which was published in that paper on the 27th, and was the *fons et origo mali* in these contempt proceedings. On March 29th Mr. O'Brien, as solicitor for Mr. Howland, wrote a letter to the solicitors of the relator, notifying them that it was Mr. Howland's intention to abandon the appeal, and on the same day he served upon them a formal notice of abandonment. Upon the same day, also, and after receiving this letter and notice, the relator served a notice of motion to commit Mr. O'Brien for contempt of court in writing and causing to be published the letter to the *Mail while the proceedings were still pending*.

Now, seeing that the appeal had been formally abandoned before the notice was served, it has always appeared to us that, apart altogether from the contents of the letter in question, this was a most impudent attempt on the part of the relator to justify his motion after abandonment of the *quo warranto* proceedings, and constitute himself the champion of the Court under circumstances in which he was no more interested than any other person, and as though the Court was not abundantly able to protect its own dignity without the assistance of his

intervention. The Supreme Court judgments entirely uphold this view, and treat the whole case, we venture to say, in a masculine way, which contrasts very favourably with the judgment of the judge of first instance, and that of the majority of the then Court of Appeal who sat upon the case.

In the first place, then, we would call attention to the fact that the Supreme Court have now placed the right of appeal in such a case as this beyond question, unless, indeed, the Legislature should interfere in what would be, in our opinion, the very mischievous manner suggested by Taschereau, J. The power to deal summarily with contempt is no doubt one which Courts should possess, but just because it is summary, its exercise should be most carefully hedged in and guarded, and in every case when it is exercised in respect to constructive contempt, such as was in question here, the right of appeal should be conceded. To a man of sensitive honour, whether a member of the legal profession or not, it is no light thing to be branded by a judge as having been guilty of contempt of court, and it is just those who have the strongest feeling of the duty of a good citizen to uphold the chosen dispensers of justice, who will feel the most bitterly such an imputation. We in Canada should be on our guard against that disregard of the rights and feelings of the individual, which is one of the worst among the many bad features of modern democracy.

Another matter of observation is that the Supreme Court altogether declined to accede to such a purely technical manner of treating this case as would regard it as of no consequence that the appeal, of which notice had been given, had been formally withdrawn before the relator made his application to the Court (vide 11 O.R., at pp. 641 and 644; 14 A.R., at pp. 196-7). On the contrary, Mr. Justice Gwynne says in his judgment: "That the letter could have no such tendency (viz., to interfere with the due administration of justice) after abandonment of the appeal of which notice had been served is admitted on the face of the order, which is the subject of the present appeal; but if for that reason the letter was innocuous when judgment was given upon the application to commit, it was equally innocuous when the motion was made, for the notice of abandonment had then already been served, so that the relator was then deprived of the ground upon which alone he invoked and persistently pressed for the interference of the Court." And Mr. Justice Strong in like manner, after referring to the dates, says: "When the notice of motion was served all proceedings by way of appeal had been abandoned, so that, as I hold, agreeing in that respect entirely with Mr. Justice Burton in the Court of Appeal, the respondent had no *locus standi* entitling him to make the motion which he did, treating the letter as a contempt as having a tendency to exercise an undue influence over the regular course of justice, inasmuch as all proceedings had reached a final termination. Agreeing again with Mr. Justice Burton, I do not think we are called upon to consider whether this letter was a contempt included in another class of such offences against the administration of justice, namely, as containing injurious reflections upon a judicial officer of the Court. The respondent has manifestly not based his motion on any such ground, and, even if he had, the matter was one with which he was not concerned, if I am right in holding that the proceedings in

the *quo warranto* case had terminated, but it was for the Court, on the publication being brought to its notice, if it considered the letter a contempt, to have interfered *ex officio*, and called the appellant to account for his contumacious conduct." Mr. Justice Gwynne further quotes with approval the words of Lord Justice James in *Plating Co.* v. *Farquharson*, 44 L.T.N.S. 389, that applications such as this are in themselves a contempt of court, because they tend to waste the public time. And we may supplement this from the words of Chitty, J., in *Metropolitan Music Hall* v. *Financial Times*, printed *in extenso* in *Pump Court* for March 6th of this present year: "The Court ought, when it sees the case is one in which the party is not *bona fide* trying to assert the law of contempt, but is merely seeing if he cannot make the respondent pay some costs, it ought not to encourage him to come to the Court;" and he made the applicants in that case pay the costs. We may add that their Lordships may almost be said to laugh out of Court the suggestion that under any circumstances the decision of the judge in chambers could have been influenced by the letter in question, pointing out what we should have supposed obvious enough, were it not for the decision of the learned judge of first instance, that there is a great distinction in such matters between a case which is pending before a judge, and one which is to come before a jury.

Now, to come to a consideration of the letter to the *Mail*, on the supposed improper character of which the judgments below are based, it may be remembered that the impropriety was supposed chiefly to be in that paragraph of it in which, after laying down the law, as he and the other Counsel advising Mr. Howland had supposed it to be, and referring to a decision of the late Chief Justice Richards, Mr. O'Brien proceeds as follows:

"You may naturally ask, why then was the decision the other way? This question I am unable to answer. The delivered judgment affords no answer. The arguments addressed were simply ignored, and the authority relied on by us, so far from being explained or distinguished, was not even referred to. This is eminently unsatisfactory to both the profession and the public—an officer of the Court overruling the judgment of a Chief Justice, who, above all others in our land, was skilled in matters of municipal law."

Now, in the first place, the judges of the Supreme Court call attention to a point almost, if not entirely, ignored in the judgments reversed, viz.: that the letter had no reference to facts or evidence, but to a dry question of law; and secondly, and this is of considerable general importance, they by no means agree that the letter went beyond the lines of legitimate criticism. The judge of first instance (Proudfoot, J.) says (11 O. R. 643) that it amounted "simply to a charge that Mr. Dalton was not a proper person to discharge the duties of his office. It not only affects this particular case, but who can tell how much it would diminish confidence among hundreds of suitors whose interests come before him weekly for consideration?" This, he says, was improper, at all events, coming as it did, from a solicitor who had acted for one of the parties in the *quo warranto* proceedings; and the prevailing judgment of the Court of Appeal appears to take the same view (14 A.R., at p. 189).

We are glad that, fortified by the judgments of the highest Court in the land, we can now say with confidence that it is open to anyone, whether a solicitor or

not, to criticize the deliverance of Judges, provided, of course, that the criticism is temperately worded, and is not made under such circumstances as to improperly influence a pending case.

In the present case it was held that the letter in question was in no sense a contempt of court, and that the criticisms contained therein were such as might properly be made.

This is what Mr. Justice Gwynne says with regard to it, and we quote his words as a complete vindication so far as any impropriety is concerned:

"This much may, I think, be said of the letter, that whether the reasoning, upon which the soundness of the learned Master's judgment was impugned, be sound or otherwise, and whether the authorities and references by which the writer essayed to support his argument, when properly understood, gave weight to his argument, or had the contrary effect, the whole tenor of the letter nevertheless appeared upon its face to be, as it was intended to be, an argument calling in question a judgment delivered upon purely legal grounds, and that on a motion to commit the writer of the letter as guilty of contempt of court upon any public grounds, as that the letter contained any calumnious interpretation of, or as a personal attack upon the integrity of the judge, or as having a tendency to bring him or his judgments into contempt with the public, there could not have been found, I think, in modern times at least, any precedent for entertaining such an application upon such grounds, upon like material; and certainly none of the authorities which were relied upon by the relator in the present case would have had any application in such a case." And the same learned judge also says: "Mr. O'Brien's letter, which stated his reasons for thinking the qualification to be good, and the Master's judgment to be erroneous, could in no conceivable manner prejudice the relator's case unless the matter of the letter could be construed to have a tendency to interfere with the due administration of justice in a Court of Appeal in the event of the Master's judgment being brought before such a Court, by appeal. A suggestion that it could have such a tendency as offering by implication a grave insult to that Court, would seem to partake of contempt of court, more than anything in the letter complained of, which, as a legal argument, appears to have been, in the opinion of the Court of Appeal for Ontario, exceedingly weak, defective, and inconclusive, but whether the argument be weak or strong the suggestion that this argument, stamped as it was with the infirmity that it expressed merely the legal opinion of the solicitor of the party against whose contention the judgment had been rendered, might have a tendency to taint, obstruct, or interfere with the due administration of justice in the Court of Appeal, in the event of the matter being brought before that court, is a preposterous proposition for which there is no foundation, and in my opinion it cannot be, and should not have been entertained:" and with him concurred Fournier, J., while Ritchie, C.J., and Strong and Taschereau, JJ., express no manner of dissent, but on the contrary, all agreed that the appeal should be allowed with costs.

As to the objection made on behalf of the respondent that this was an appeal on the subject of costs only, and with reference to the remark of the learned Chief Justice of the Court of Appeal on the argument that the whole matter

seemed to him of little moment being merely a question of costs, we may refer to the words of Mr. Justice Strong: "Then it is said that this is merely an appeal on a question of costs. This objection also appears to be wholly untenable. The proceeding to commit for contempt is of a penal and quasi-criminal character. The order complained of contains, in the first place, a distinct adjudication that the appellant has been guilty of a contempt of court, and it then proceeds (waiving other punishment) to inflict what is in substance, if not in form, a penalty or punishment by ordering the appellant to pay costs. The adjudication that the appellant, a solicitor and officer of the Court and moved against in that quality, has been guilty of a contempt is, by itself, an appealable judgment, and would have been so even if it had not (as in fact, however, it has) been followed by sentence. As Mr. Blake forcibly urged, the order under appeal affixes to the appellant as a professional man, a stigma from which he is entitled to be relieved if he has been found guilty upon insufficient evidence or for insufficient reasons. Again, by ordering him to pay costs as a consequence of this conviction, the Court inflicts upon the appellant a punishment which, if not so in name and form, is yet in substance and effect, a fine for his contempt. There can be no analogy between an appeal from such an order as this, and one from a decree or order in an ordinary case relating to property or private rights which is confined to an adjudication as to costs to be paid by one party or the other. The authorities to this effect are clear and entirely support what is said on this head in the judgment of Mr. Justice Burton in the Court below."

The same learned Judge also says in regard to the letter in question: "The letter certainly does allege that the learned Master had pronounced an erroneous decision, but it does not contain any imputation that such alleged error proceeded from any improper motive."

Their Lordships fully and freely concede that Judges are no more protected from fair criticism than other servants of the public, and that, as Mr. Justice Gwynne puts it, whether such and such a writing is a contempt of court or not "is an issue which for its determination calls for a judgment not rendered in the exercise of an arbitrary discretion of the Court to which the question of law is submitted, but rendered in accordance with the principles of law and justice equally as any other point of law in an action, suit, or judicial proceeding is submitted."

Let it not be supposed that this journal or its editor would so far depart from their past record as to wish to derogate in any way from the legitimate dignity of the Bench. It is, however, a melancholy fact that no body of men can, especially in a comparatively small community as ours still is, be trusted to exercise power over the persons or property of others, except under well-guarded rules of law, and subject to rights of appeal. Judges are no exception to this rule, and while we would, in a proper case, be their most ardent supporters in resisting improper strictures directed against them, especially if they were defending the position of the Bench against some powerful public journal, we think that in this case Mr. O'Brien may claim to have done a public service in not having dropped this matter until it was placed by the highest Court of the Dominion in a more satisfactory position than that in which it was left by our Provincial Courts.

IN *Mitchell* v. *Commonwealth*, Kentucky Court of Appeals, March 12, 1889, it was held that a cellar under a dwelling-house, though entered only from the outside, is within the statute of burglary. The Court said: "The evidence shows that the property was taken out of a cellar under the dwelling-house, there being no internal communication between them. It was necessary to go out of the house into the yard to enter the cellar. The door to it opens out into the open air. It had no fastenings, but could not be opened without the use of force. It is therefore now urged that the cellar was no part of the dwelling-house, and that the accused, if guilty, is only so of a trespass and petit larceny. There is a diversity of decision as to what does and what does not in law constitute a part of a dwelling-house. Some cases include all within the curtailage, and this, according to Blackstone, appears to have been the common-law rule; while others are made to turn upon the use. It has been said that burglary may be committed by breaking into a dairy or laundry standing near enough to the dwelling-house to be used as appurtenant to it, or into such outbuildings as are necessary to it as a dwelling. *State* v. *Langford*, 1 Dev. 253. Also by breaking into a smoke-house opening into the yard of a dwelling-house and used for its ordinary purposes. And cases are to be found holding that if an outhouse be so near the dwelling proper that it is used with it as appurtenant to it, although not within the same inclosure even, yet burglary may be committed in it. *State* v. *Twitty*, 1 Hayw. (N.C.) 102. It need have no internal communication with the dwelling proper to give it this character. In *Rex* v. *Lithgo*, Russ. & R. 357, the breaking was into a warehouse. There was no internal communication between it and the dwelling of the owner, but they were contiguous, inclosed in the same yard and under the same roof, and it was held to be burglary. Mr. East says: "It is clear that any outhouse within the curtilage or same common fence as the mansion itself must be considered as parcel of the mansion. * * * If the outhouses be adjoining to the dwelling-house and occupied as parcel thereof, though there be no common inclosure or curtilage, they may still be considered as parts of the mansion." 2 East P. C. 493. It is difficult to lay down any general rule upon the subject, owing to the nice distinctions to be found in some of the cases. It seems to us, however, that both the use and the situation should be considered. Can the place which has been entered, considering both its situation and use, be fairly considered as appurtenant to and parcel of the dwelling-house, or as the older writers say "a parcel of the messuage"? If so, then burglary may be committed by breaking into it. The dwelling-house of a man has peculiar sanctity at common law. It is his castle. The law intends its protection, because it is the family abode. The object is to secure its peace and quiet, and therefore the burglar has always been liable to severe punishment. The law throws around it its protecting mantle, because it is the place of family repose. It is therefore proper, not only to secure the quiet and peace of the house in which they sleep, but also any and all outbuildings which are properly appurtenant thereto, and which, as one whole, contribute directly to the comfort and convenience of the place as a habitation.

If this reasoning be correct, then any which are not so situated, or are not so used, should not be regarded as a part of the dwelling, although they may in fact be within the curtilage. If there for other distinct purposes, as for instance, a store-house for the vending of goods or a shop for blacksmithing, and the dwelling is equally convenient and comfortable without them, and they are not in fact a part of it as by being under the same roof, so that the breaking into them will disturb the peace and quiet of the household, then they should not be regarded as a part of it in considering the crime of burglary or the offence named in the statute. *Armour* v. *State*, 3 Humph. 379. If, however, an outhouse, having no internal communication with the dwelling proper, may be considered as so appurtenant to it that burglary may be committed therein, surely it would seem it should be so held as to a cellar under the dwelling, although there may be no means of internal communication between them. It is under the same roof. It is a part of the house in which the occupant and his family sleep. It is essentially part and parcel of the habitation. It is manifest, however, that the statute above cited includes it. It says: 'Or shall feloniously break any dwelling-house, or any part thereof, or any outhouse belonging to or used with any dwelling-house.' The language is quite sweeping; and it is clear it was the legislative intention, in enacting it, to embrace not only every part of the dwelling but every outhouse properly a parcel of and appurtenant to it. It at once strikes the ordinary observer that it was not intended the cellar of adwelling-house should be excluded from its operation, and to so hold would not only be in the face of the language used but unreasonable.—*Albany Law Journal.*

COMMENTS ON CURRENT ENGLISH DECISIONS.

PRACTICE—DEATH OF ONE OF SEVERAL PLAINTIFFS BEFORE JUDGMENT—APPLICATION TO REVIVE AND CARRY ON ACTION AGAINST THE DEFENDANT.

Arnison v. *Smith*, 40 Chy.D. 567, was a curious application by the executors of one of several plaintiffs, who had died before judgment, to be allowed to carry on the action against the defendants, after judgment had been given in the action in favour of the surviving plaintiffs, who had proceeded without adding the representatives of their deceased co-plaintiff. The action was for damages, and each plaintiff had a separate cause of action. The Court of Appeal (Cotton, Lindley and Lopes, L.JJ.), affirming the decision of Kekewich, J., refused the application; Cotton, L.J., holding that the Court had no jurisdiction to make such an order after a final judgment; and Lindley and Lopes, L.JJ., thinking the order should not be made in the present case even if the Court had jurisdiction.

AGREEMENT TO REFER—STAYING PROCEEDINGS IN ACTION—C.L.P. ACT, 1854, S. 11—(R.S.O., C. 53, S. 38.)

In *Lyon* v. *Johnson*, 40 Chy.D. 579, Kay, J., held that although under the C.L.P. Act, s. 11 (R.S.O., c. 53, s. 38), the Court may, and should *prima facie*, restrain actions in respect of matters which the parties have agreed to refer to arbitration, yet that under that section the Court has a discretion which it is bound to exercise, and under the circumstances existing in this case he refused to grant the stay. The plaintiff and defendant were partners in the surgeons' and apothecaries' business, and the partnership articles provided that presents and gratuities from patients were to be regarded as partnership profits. A lady, who had been a patient of the firm, had died, leaving her residuary estate, amounting to £8,000, to one of the partners. The partner to whom the legacy was left claimed that this bequest was left as an act of private friendship and not in consequence of the testatrix being a patient, and was, therefore, not within the partnership articles; and the learned judge thought that was a question that could be more satisfactorily determined by the Court than by any arbitrator.

SETTLEMENT OF SETTLOR'S OWN PROPERTY—LIMITATION TO SETTLOR FOR LIFE, DETERMINABLE ON ALIENATION.

In re Detmold, *Detmold* v. *Detmold*, 40 Chy.D. 585, a settlor had settled his own property upon trust to pay the income to himself "during his life, or till he shall become bankrupt, or shall assign charge or incumber the said income, or shall do or suffer something whereby the same or some part thereof, would, through his act, default, or by operation or process of law, if belonging absolutely to him, become vested in or payable to some other person"; in which event there was a limitation over in favour of the settlor's wife. A creditor having obtained judgment against the settlor, subsequently obtained the appointment of a receiver of the income of the trust estate by way of equitable execution, and the settlor was thereafter adjudicated a bankrupt. A contest then arose between the wife on the one hand and the receiver and trustee in bankruptcy on the other hand, as to whether the limitation over in favour of the wife was valid. North, J., held that it was, and that the husband's interest was forfeited on the appointment of the receiver, and that the trustee in bankruptcy was bound by it because the forfeiture had taken effect before the bankruptcy commenced.

6 ANNE C. 18—CESTUI QUE VIE—EXECUTORY DEVISE.

In re Pople, 40 Chy.D. 589, is a case in which the procedure provided by 6 Anne, c. 18, was resorted to. The applicant was devisee of land in case of the death of another without having issue, and it was held in the first place that such a person is one having a claim in expectancy to an estate after the death of a person within the meaning of the Act. The devisee for life had married but deserted her husband, having had no issue. Abraham Fowler had previously purchased her interest. Orders were made under the statute in June and August, 1888, for Fowler to produce the tenant for life, first, at W. church door, and secondly, in Court. She was neither produced, nor proved to be alive. North, J., therefore ordered that she should be taken to be dead.

RESTRICTIVE COVENANTS AS TO USE OF LAND—ESTATE SOLD IN LOTS—MUTUAL COVENANTS BY PURCHASER WITH VENDOR AND PURCHASERS OF LOTS.

King v. *Dickeson*, 40 Chy.D. 596, was an action for an injunction to restrain the breach of restrictive covenants as to the use of land. An estate was sold in building lots; the purchasers of each lot entered into a covenant with the vendor and with the purchaser of the other lots not to build on his lot beyond a specified line. The purchaser of one lot mortgaged part of his lot. The mortgagee had notice of the covenant, but no restriction as to the use of the land was imposed on him by the mortgagor. The mortgagee, having foreclosed his mortgage, sold the mortgaged land, and it ultimately vested in the defendant, both the defendant and the sub-purchasers, through whom he claimed, buying with notice of the covenant. The action was brought by the mortgagor in respect of his ownership of the other part of the lot not included in the mortgage; but it was held by North, J., that although the purchasers of other lots would be entitled to prevent the defendant from building contrary to the covenant, yet that the mortgagor, having imposed no restriction on his mortgagee, could not compel its observance either by the mortgagee or any one claiming under him. The action was therefore dismissed.

VENDOR AND PURCHASER—SALE OF "BUSINESS PREMISES"—PROPERTY SUBJECT TO UNDISCLOSED RESTRICTIVE COVENANTS—DEFECT IN TITLE—RETURN OF DEPOSIT.

In re Davis & Cavey, 40 Chy.D. 601, was an application under the Vendors' and Purchasers' Act. The property in question was sold at auction, and described in the particulars as "leasehold business premises." The conditions of sale provided that the title should commence with the conveyance to the vendors and that no objection should be made to anything contained in the lease; but nothing was said about its contents, and no opportunity was given to intending purchasers to inspect the lease, and the property was bought by a purchaser who had not inspected it. After the sale the purchaser discovered that the lease contained covenants restricting him from carrying on upon the premises any trade or business, or doing any act to the nuisance or annoyance or damage of the lessors or the adjoining tenants, or using the premises as a public house. The question was whether, under these circumstances, the purchaser was bound to accept the title; and it was held by Stirling, J., he was not, because as the property was put up for sale as business premises the vendor was entitled to a title that would enable him to carry on any business, subject only to the restrictions imposed by the general law, or in force as to any particular trade; and that as the covenant in question imposed serious restrictions upon the use of the premises as business premises, he was entitled to a declaration that the title was not such as he could be compelled to accept; but the Court refused to order a return of the deposit, because the Court held that in such a case as the present the deposit could only be ordered to be returned if the contract was invalid; and that upon an application under the Act the validity of the contract could not be disputed. The order was, however, made without prejudice to an action for the deposit.

WILL—CONSTRUCTION—DIRECTION TO PAY DEBTS OUT OF RENTS, DIVIDENDS AND ANNUAL PROCEEDS, WHETHER IT AUTHORIZES PAYMENT OUT OF CORPUS—LEGACY, GENERAL, OR SPECIFIC.

In re Green, Baldock v. *Green*, 40 Chy.D. 610, two questions arose upon the construction of a will, whereby the testator had bequeathed to his wife, subject to the payment of his debts, all the cash in his house, and directed that in case such money should be insufficient the deficiency should be paid out of the rents, dividends and annual proceeds of all his estate. He also specifically bequeathed property to his wife for life, and appointed her his executrix. She paid the debts in part out of the corpus. The first question was whether the will authorized payment of the debts out of the corpus: and if not, whether the executrix could be compelled to recoup the corpus out of the income of her specifically bequeathed property. Stirling, J., held that the words "rents, dividends, and annual proceeds" meant the "annual rents, dividends. and proceeds," and did not authorize payment out of the corpus; but as the debts had, in fact, been partially paid out of the corpus, and the testator had not provided for such an event, the executrix could not be required to recoup the corpus out of the income of the property specifically bequeathed to her; because, notwithstanding the provision of the will, the creditors themselves had a right to resort to the corpus for payment. The other question was this: the testator bequeathed a public house in trust for sale, and out of the proceeds of such sale, and the rents and profits until sale, he gave a legacy to Elizabeth Dovey, and as to the residue of such proceeds, and rents, and profits, and all other, the residue of his real and personal estate, he gave the same to her two daughters; and the question was whether the gift of the residue of the public house was general or specific. The Court held it was not specific, but that the residue formed part of the residuary estate of the testator.

TRADE MARK—INFRINGEMENT—INJUNCTION.

The only other case in the Chancery Division which remains to be noticed is *Jay* v. *Ladler*, 40 Chy.D. 649, which was an action to restrain the infringement of the plaintiff's trade mark. The plaintiff carried on business as a furrier, under the name of the "International Fur Store," and used as a trade mark for his goods a picture of a lady and a bear. This device he had used as to all his goods, but had registered it as applied to mantles and coats. The defendant had sent out a circular to his customers on which was also the picture of a lady and a bear. This, Kekewich, J., held to be equivalent to advertising his goods as those of the plaintiff, and though it was not proved that any one was actually deceived, an injunction was granted restraining the defendant from using the mark, it being held that, independent of registration, the plaintiff had a common law right to the mark, which was not derogated from by its registration as applicable to a part only of the goods sold by him.

LESSOR AND LESSEE—RESTRICTIVE COVENANT—REPRESENTATIONS.

Turning now to the Appeal Cases the first to be noticed is *Spicer* v. *Martin*, 14 App. Cas. 12, which we noted when before the Court of Appeal (see *ante* vol.

23, p. 67. This was an action to restrain by injunction the breach of a restrictive covenant entered into by the plaintiff's lessor with his grantor, and on the faith of the existence of which the plaintiff had purchased his own lease and entered into a similar covenant. The property of the plaintiff was a private house, being one of six others which had been separately conveyed to the lessor subject to a restrictive covenant on his part against using them otherwise than as private residences. The plaintiff in negotiating for the purchase of a lease of one of them was informed of the existence of this covenant by the lessor, and also that the other houses had been leased to other tenants who had given similar covenants to the lessor, and the plaintiff was himself required to enter into a covenant to the like effect with the lessor, but there were no mutual covenants by the lessor or lessees of the other houses with the plaintiff. Some subsequent lessees, with the concurrence of the lessor, proposed to convert five of the houses into a hotel, and it was to restrain this being done that the action was brought. The Court of Appeal decreed the plaintiff entitled to relief, on the ground that the negotiations for the purchase of the plaintiff's house amounted to a collateral contractual obligation on the part of the lessor that the tenants of the other houses should be bound to use their houses as private dwellings only. The House of Lords, however, while affirming the decision, did so on the ground that the intention of the parties was that the plaintiff and the other lessees were to be protected by, and have the benefit of, the covenant entered into by their lessor with his grantors, and to be bound by a similar obligation to be entered into by each on his own behalf, and that it made no difference that each house had been conveyed to the lessor by a separate conveyance, and was subject to a separate restrictive covenant.

PRACTICE—COSTS—TRIAL WITH JURY—JURISDICTION OF JUDGE TO DEPRIVE PLAINTIFF OF COSTS—"GOOD CAUSE"—ORD. 65 R. 1—(ONT. RULE 1170.)

The vexed question as to the principle on which the judge at a trial may under Ord. 65 r 1 (Ont. Rule 1170.) deprive a successful plaintiff of costs, has at length reached the House of Lords in *Huxley* v. *The West London Extension Railway*, 14 App. Cas. 26. It may be remembered that the reversal by the Court of Appeal of a decision of Lord Coleridge, C.J., depriving a plaintiff of costs under that Rule in the case of *Jones* v. *Curling*, 13 Q.B.D. 262, roused the judicial ire of that learned judge, and we find that in the present case he at first refused to exercise his discretion as to costs, on the ground that the Court of Appeal in *Jones* v. *Curling* had made the principles on which such jurisdiction was to be exercised wholly unintelligible to him, and it was not until the case had been remitted to him by the Court of Appeal that he could be persuaded to exercise his jurisdiction. This he then did, and deprived the plaintiff of costs on the ground that he had claimed £300 and only recovered £50, and had preferred an extravagant and extortionate claim, and had supported it by fraudulent statements and dishonest acts, and had endeavoured to substantiate it before a jury by evidence which they properly disbelieved. An appeal from this decision was dismissed by the Court of Appeal. The plaintiff's appeal to the House of Lords

was based on the ground that Lord Coleridge, C.J., having refused to entertain jurisdiction on the question of costs, was *functus officio*, and had thereafter no jurisdiction to make the order when the cause was remitted to him by the Court of Appeal. That his refusal to entertain jurisdiction was in fact an order on the question of costs; and also that the grounds assigned by Lord Coleridge did not amount to "good cause" within the Rule. But the Lords were against the appellant on both grounds, holding that by his refusal to entertain jurisdiction on the first application Lord Coleridge was not thereby *functus officio;* and also that the grounds assigned constituted "good cause." With reference to *Jones* v. *Curling*, Lord Bramwell remarked that he shared Lord Coleridge's astonishment at the decision which so perturbed him. But Lord Fitzgerald said, "The principle on which that case is supposed to rest seems to be, that if there are no facts before the judge which would constitute 'good cause,' then the judge has no jurisdiction to interfere, and his order would be erroneous. So far I can can see no reason to dissent; I concur so far;" but whether in that particular case there was, or was not, "good cause," he declined to express an opinion. With the principle thus enunciated Lord Watson seems also to agree. In his opinion, without attempting a complete definition, "good cause" embraces, at all events, "everything for which the party is responsible, connected with the institution or conduct of the suit, and calculated to occasion unnecessary litigation and expense." After judgment had been delivered, a letter was handed to the Lord Chancellor from the plaintiff, asking permission to address their Lordships; but they refused to hear him, on the ground that his case had been fully argued as to the law, and it would not be regular to permit him to make an additional statement as to facts which could not be proved.

COLLISION—EXCEPTIONAL CURRENT—NEGLIGENCE.

City of Peking v. *The Compagnie Des Messageries*, 14 App. Cas. 40, was a case of collision. The appellant's vessel had in broad daylight run down the respondent's vessel at her moorings, and had been found by the Admiralty Court solely liable for the collision. Notwithstanding the fact that the accident was attributable to the effect of an exceptional current, known to be a possible though improbable contingency, yet inasmuch as it was shown that the anchors were not in readiness it was held that the appellants had neglected ordinary precautions and could not be absolved from blame.

B.N.A. ACT, S. 109—INDIAN RESERVATION—RELATIVE RIGHTS OF DOMINION AND PROVINCE.

The celebrated case of *St. Catharines* v. *The Queen*, 14 App. Cas. 46, was brought to determine the relative rights of the Dominion and the Province of Ontario in certain lands in Ontario, which at the time of Confederation formed an Indian Reservation, but in which the Indian title had subsequently been ceded to the Dominion Government by a treaty with the Indians, made in 1873. The judgment of the Judicial Committee of the Privy Council was delivered by Lord Watson, and the ground of the decision may be gathered from two extracts. "The Crown has all along had a present proprietary estate in the land upon

which the Indian title was a mere burden." The ceded territory was at the time of the union land vested in the Crown subject to "an interest other than that of the Province in the same," within the meaning of sect. 109 (of the B.N.A. Act) and must now belong to Ontario in terms of that clause." With regard to the effect of the treaty of cession in 1873, which it was claimed amounted to a conveyance of the Indian title to the Dominion Government, he says: "Even if its language had been more favourable to the argument of the Dominion upon this point, it is abundantly clear that the commissioners who represented Her Majesty, whilst they had full authority to accept a surrender to the Crown, had neither authority nor power to take away from Ontario the interest which had been assigned to that Province by the Imperial Statute of 1867." Whilst Ontario is declared entitled to the territory in question it has also to assume the liabilities incurred to the Indians as a consideration for the surrender of their interest.

MORTGAGE—PROVISO FOR REDEMPTION—CONSTRUCTION—CONVEYANCE, TERMS OF.

The short point decided by the Judicial Committee in *Plomley* v. *Felton*, 14 App. Cas. 61, was simply this, that when tenants in tail under a will joined in a mortgage, thereby barring the entail, but the proviso for redemption was that the reconveyance was to be made to the mortgagors respectively according to their "original respective estates and interests," the parties were entitled to a reconveyance of the estates as originally created by the will and not as altered for the purposes of the mortgage. The mortgaged estate had been sold and the contention arose between the parties claiming to be entitled to the surplus after payment of the mortgage; and the effect of their Lordships' decision is, that the surplus is subject to the limitations of the will, under which the mortgagors acquired their title.

LAW OF HONDURAS—MORTMAIN ACT, 9 GEO. 2, C. 36—INTRODUCTION OF ENGLISH LAW.

It is only necessary to notice *Jex* v. *McKinney*, 14 App. Cas. 77, for the fact that the Privy Council have approved and adopted the decision of the House of Lords in *Wicke.* v. *Hume*, 7 H.L.C. 134, holding that on the true construction of the Act of the Colony of Honduras introducing English law, that while the Mortmain Act (9 Geo. 2. c. 36), was included in the description of laws thereby introduced, yet its provisions do not satisfy the prescribed condition of being applicable to the colony, and therefore it was not in force. A long train of decisions of our Courts have, however, held the contrary to be the case in Ontario (see *Lisscomb* v. *Whitby*, X Gr. 1).

Notes on Exchanges and Legal Scrap Book.

THE ENGLISH BENCH.—Field, J., has sent in his resignation; Manisty, J., will shortly do the same. We are sorry to hear Huddleston, B., cannot remain much longer; Pollock, B., and Denman, J., are known to contemplate retirement; the end of the Special Commission will probably see the elevation of Sir

James Hannen to the comparative ease of Law Lord in the Judicial Committee of the Privy Council. Rumor has long been busy about the retirement from judicial labors of the Master of the Rolls, and now there are similar rumors respecting Lindley and Bowen, JJ., as to the latter of which, however, we are exceedingly sceptical, as we have favorable accounts of this judge's health, and hope to see him again at his post in a couple of weeks. How *all* these vacancies are to be properly filled up is matter for anxiety, but peradventure, the Lord will provide.—*Pump Court.*

PROFESSIONAL INTEGRITY.—I am bold to urge upon young lawyers especially, the utmost scrupulousness in transmitting to clients money collected for them. Do not mix it with your money; do not use it as your own for a day or an hour; do not include it in your bank account; treat it as something to be handled by you with reluctance, and to be given to its owners without delay. Let the members of the Bar and the Court pursue with diligence and severity every lawyer who uses the money of his client and fails to pay it over. Let such a case never be treated as one of debtor and creditor, but as one of embezzlement to be punished criminally. . . . Nothing can be done more effectually to strengthen the character and increase the emoluments of lawyers than to demonstrate that extreme strictness and entire fidelity prevail in the profession concerning moneys collected for others by its members. Equal strictness should be exercised by lawyers when they act as trustees. As a result of the increasing wealth of this country, to which I have before referred, large sums of money of others necessarily come often into the possession of lawyers, and lawyers are frequently made the trustees of estates. . . . The whole community should rise up in condemnation and in punishment of the embezzlers of trust moneys; and the lawyers of the country should take the lead in so strengthening the laws that swift and sure punishment will reach such criminals, and they should particularly establish the fact that to lawyers trust funds can most safely be committed, because the quickest and fullest retribution will follow the lawyer who unlawfully meddles with the money of any person whose means of living depend upon his fidelity as trustee.—*American Law Journal.*

IMPORTANT TO ODDFELLOWS.—The following decision of the English Court of Chancery is of interest to members of other benevolent and provident societies as well as to the members of the society more immediately concerned:—An important question between the Independent Order of Oddfellows, Manchester Unity, as a body, and one of the lodges, the Local Prosperity Lodge, No. 52, of the Haslingden District Independent Order of Oddfellows, Manchester Unity, was recently argued and settled in the Chancery Court of Lancashire. The officials of the Order considered that the lodge had committed a breach of trust and confidence in that they, contrary to the rules of the Order, and without the knowledge and consent of the plaintiffs, and without application to them, had wrongfully appropriated and divided part of the funds of the lodge among themselves and the members,

and which amount should go to the general sick and funeral fund. A declaration was therefore claimed that the appropriation was a breach of trust, and that defendants were personally liable to make good the sum so divided, and as against the defendants, an order for repayment, an injunction of restraint, and an order for payment of costs were desired; for it appeared from the rules that the whole of the objects and rules of the lodge should be subject to the provisions of the general and district rules, and that lodges desirous of appropriating surplus capital must make application to the Grand Master and Board of Directors in manner laid down, and the directors should be authorized to allow appropriation of surplus capital on certain conditions, one of which was that in the event of a lodge at any time making a division of its funds contrary to the provisions, the amount so divided should be forfeited to the sick and funeral fund, and the trustees allowing such distribution or any member receiving any portion thereof should be held personally responsible for the amount so misappropriated. The counsel for the plaintiffs pressed for the full relief desired as a warning to other lodges not to take similar steps. The Vice-Chancellor referred to a similar case, *Schofield* v. *Vause*, where he was not asked to order payment of money, but to restrain in view of a further breach. Counsel for the plaintiffs, however, said that case was merely on so much of the rules as related to the secession of a lodge. He then referred to another case, *Cox* v. *James*, tried before Mr. Justice Chitty in February, 1882, brought by two directors of the Manchester Unity of Oddfellows against the trustees of the Strangers' Refuge Lodge to make them liable jointly and severally to pay a sum which had been divided amongst the members of the lodge contrary to the general rules of the society, and Mr. Justice Chitty made the order desired. The counsel for the defendants, whilst agreeing to an order, pleaded that no order should be made as to costs, as his clients had acted in ignorance of the rules of the Order. As to the case of *Cox* v. *James*, he said there the trustees had notice that they were not to divide the fund, but here the defendants had received no such notice. The Vice-Chancellor took the same view as Mr. Justice Chitty in *Cox* v. *James*. Referring to the plea of ignorance of the defendants, he said if there was any ignorance which should not be excused it was ignorance of the law on the part of trustees acting for a constituent body of men probably very little able to protect themselves, and therefore requiring the protection of trustees, who, as a rule, were persons of higher position than the people of whom they were representatives.—*Law Journal.*

LAWYERS IN CONGRESS.—Mr. Frank Gaylord Cook, in an article in the May *Atlantic*, entitled "The Lawyer in National Politics," gives interesting statistics showing the great preponderance of lawyers in the Federal councils from the earliest days of the nation. Of the signers of the Declaration twenty-five of the fifty-five were lawyers, and of the committee charged with drafting it all but Franklin were lawyers. The convention of 1787 "was practically an assembly of lawyers," and the wisest that ever sat—thirty-four of the fifty-five members were lawyers. In the cabinets, six of the nine in Washington's were lawyers; five of eight in Adams'; six of ten in Jefferson's; eight of fourteen in Madison's;

all but one in Monroe's; all in John Quincy Adams'. Since John Quincy Adams every secretary of state has been trained for the Bar. Of the thirty-six secretaries of the treasury all but four have studied law. Of thirty-five postmaster-generals all but eight have received a legal training. Twenty-seven, nearly two-thirds, of the secretaries of war, and eight of the secretaries of the navy, have been educated to the Bar, and while the former post has been occupied by eight army officers, only one of the latter officials was ever at sea. In the first Senate seventeen of twenty-nine were lawyers, and half the House. In the twentieth House four-fifths had studied law, In the thirtieth, three-fourths of the Senate and three-fourths of the whole Congress were lawyers; in the fiftieth, four-fifths of the senators and two-thirds of the whole number; in the fortieth, forty-nine senators and one hundred and fifty-four representatives had studied law. After Washington none but lawyers occupied the presidency until Harrison, and since, all but Taylor, Johnson, and Grant have been lawyers. All but four of the twenty-two vice-presidents have been lawyers. Mr. Cock also shows that in the earliest days most of the lawyers were men of liberal education, culture and travel, but of the presidents and vice-presidents only about half have been college graduates. He also shows that few of the secretaries of state have had any experience in diplomacy, and few of the secretaries of the treasury have had any experience in finance. There has been an increasing proportion of self-educated men in the later Congresses. He concludes: "There are signs that this virtual monopoly in national politics is gradually disappearing. The unprecedented development of science and industry during the past fifty years has caused the growth of special departments of law, offering extraordinary rewards for their practice, and thus lessening the attractiveness of politics. Often the adoption of a legal specialty opens the way, not to the Senate of the United States, but to the management of a vast corporation and to the possession of great wealth. Sometimes these objects are reconciled, and the Senate, as before, becomes the ultimate goal. In fact, wealth has long since asserted herself by the side of legal knowledge as the nurse of statesmen, and the millionaire sits with the lawyer in the halls of Congress. . . . Nevertheless the lawyer must retain an important influence in national affairs; and that influence when properly exerted is a great conservative force. As DeTocqueville has well pointed out, a large part of political questions in the United States are passed upon sooner or later by the legal profession; and the habit of consulting precedent begets 'the stationary spirit of legal men and their prejudices in favour of existing institutions.' It fell mainly to them to constitute and establish the government of the United States. Guided by that spirit they have adjusted the political experience of the Anglo-Saxon race to the modified conditions of a new world, and the excellence of their work will ever deserve a grateful recognition."

DISCHARGE OF SURETY.—The important case of *The Mayor and Corporation of Durham* v. *Fowler*, reported recently in the *Law Times* and in this month's number of the *Law Journal*, possesses additional interest in this country by reason of its bearing on the Irish cases of *McMullen* v. *McMullen* and *Lawder* v.

Lawder, and more particularly in reference to the point upon which the latter decision was distinguished, and was now held by the English Queen's Bench Division rightly distinguishable, from *Phillips* v. *Foxall* and *Sanderson* v. *Aston*. It appears that the plaintiffs, the Town Council of a Borough, acting under the Municipal Corporations Act, 1882, appointed a collector for their borough rate, for whom the defendants became sureties. A condition of the bond was that the collector should pay to the treasurer of the borough all sums of money received by him as soon as the same should be received. The plaintiffs also appointed the same person collector for their district rate, for whom the defendants also became sureties. A condition of the bond was that the collector was to pay over to the borough treasurer the moneys collected by him within a week of their collection. The plaintiffs levied a borough rate, and in the precepts to the overseers, in addition to naming the amount of the contribution required from each parish, they stated the amount in the pound of the rate. The collector did not pay over the proceeds in respect of the borough rate as soon as he received them. The collector also, in respect of the amounts collected under the district rate, had not for many years previously to the execution of the bond paid over, and for some years after did not pay over, to the borough treasurer the proceeds of the rate within seven days of their collection by him. The plaintiffs acquiesced in these irregularities. Subsequently, the collector made default in paying over the amounts collected by him in respect of both rates, and was convicted of embezzlement in respect of the same, and the plaintiffs sued the defendants on their bonds. On this state of facts, several grounds of defence were put forward, but, passing over minor ones, we shall refer only to the main contention relied upon on behalf of the defendants, that they were discharged by reason of the systematic neglect of several of the leading conditions of both bonds, acquiesced in by the obligees from the date of the bonds respectively, and continued down to the discovery of the defalcations that led to the institution of the litigation. Now, mere *laches* of the obligee, or a mere passive acquiescence on his part in acts which are contrary to the conditions of a bond, is not of itself sufficient to relieve the sureties from liability; and as in effect the jury had found merely such "passive acquiescence" in what the collector, Goundry, did, the defendants had finally to base their defence on the contention that there was evidence from which the jury might not unreasonably have inferred that the corporation had, within the language of the leading authority, *MacTaggart* v. *Watson* (10 Bligh, 618, 3 Cl. & F. 525), "either by their conduct prevented the things from being done, or connived at their omission, or enabled the person to do what he ought not to have done, or leave undone what he ought to have done," but for which conduct the omission or commission would not have happened. And this question resolved itself, on the facts, into one as to whether the plaintiffs had connived at the departure from the conditions of the bonds in a sense amounting to more than "mere passive inactivity," such as the jury had found in substance. As to what would amount to evidence of such connivance, the judgment of the Court (delivered by Denman, J.) discussed and considered very closely the subsequent cases, *inter alia*, of *Dawson* v. *Lawes*, *Black* v. *The Ottoman Bank*, *Madden* v. *McMullen*, *Railton* v. *Mathews*, *Phillips* v. *Foxall*, and *Sanderson* v. *Aston*.

In *Phillips* v. *Foxall* (L. R. 7 Q. B. 666) it was held that a surety was discharged when an obligee continued the party, whose honesty was guaranteed, in his service after knowledge of his dishonesty, without communication of the discovery of his dishonesty to the surety; while in *Sanderson* v. *Aston* (L. R. 8 Ex. 73) it was held that a plea stating that the obligee of a bond who has continued in his service a clerk and traveller who had failed to pay over sums received by him, contrary to the condition of the bond that he should well and satisfactorily account for and pay over to the plaintiff all sums received for the plaintiff's use, and that the plaintiff, though well knowing the said defaults, wholly omitted and neglected to inform the defendants thereof, and continued to employ the clerk in his service, was a good plea to an action on the bond for the breaches subsequent to the time when the plaintiff knew of the previous defaults. *Sanderson* v. *Aston*, however, was so decided upon the supposed authority of *Phillips* v. *Foxall*, but certainly goes much beyond what that authority would justify, and the Court now found it impossible to reconcile the decision in *Sanderson* v. *Aston* with the cases already cited. "But," added Denman, J., "even assuming it to be a binding authority on an undistinguishable state of facts, we think that it is not an authority that in the present case there was evidence for the jury of such a defence as that which was held to be valid in that case. It was a decision only on demurrer, and decides only that the plea stated facts of non-payments which were *prima facie* a breach of duty which would have entitled the obligee to discharge the person employed. It by no means follows that if all the facts of that case had been set out there would upon the whole matter have been any case for the jury in support of the defence in question. Even if the cases of *Phillips* v. *Foxall* and *Sanderson* v. *Aston* were applicable in other respects, we think that they are distinguishable in principle from the present case on a ground upon which the Court of Common Pleas in Ireland held the surety liable in the case of *Lawder* v. *Lawder and others*. That was an action on a bond given to the plaintiff, a county treasurer, by a high constable as barony cess collector. The defaults consisted of lodging moneys in his own bank instead of the county bank, and retaining in his hands more than £100 at a time, in violation of the conditions of the bond. The Court held that, though *Phillips* v. *Foxall* would have applied if the plaintiff had been a private individual, the sureties were liable because the treasurer merely sued in his official capacity, and no personal equity could be set up against him. It was no doubt there said: 'He does not appoint the high constable; he cannot dismiss him. *Phillips* v. *Foxall* and all such cases are grounded on privity existing between the plaintiff and defendant.' Still we think that where the parties taking the bond are mere trustees for ratepayers, as the corporation here were, and the collector also a person who owed a duty to the ratepayers, the sureties who had guaranteed the proper discharge of his duties have no right to shelter themselves under the neglect of its duty by the corporation in not insisting on the fulfilment of the very conditions of the bond to which they are parties. The corporation may themselves be looked upon 'as public officers' as much as was the treasurer in *Lawder* v. *Lawder and others*." And in the result it was held, accordingly, that the defendants were not discharged from their liability as sureties.—*Irish Law Times.*

DIARY FOR JUNE.

2. Sun.....*First Sunday after Ascension.*
4. Tue.....Maritime Court sits. Lord Eldon born 1751.
8. Sat.....Easter Term and High Court Justice sittings end. Last day for call notices for Trinity Term.
9. Sun.....*Whitsunday.*
10. Mon.....County Court Sittings for motions in York end.
11. Tue.....General Sessions and County Court Sittings for Trial except in York. St. Barnabas. Lord Stanley, Governor-General, 1888.
15. Sat.....County Court Sittings for motions in York end. Magna Charta signed 1216. Emperor Frederick of Germany died 1888.
16. Sun.....*Trinity Sunday.*
18. Tue.....Battle of Waterloo, 1815.
19. Wed.....Battle of Blenheim, 1704.
20. Thur.....Accession of Queen Victoria, 1837.
21. Fri.....Longest day.
22. Sat.....Slavery declared contrary to the law of England, 1772.
23. Sun.....*First Sunday after Trinity.*
24. Mon.....Midsummer Day.
25. Tue.....Sir M. C. Cameron died 1887.
28. Fri.....Coronation of Queen Victoria, 1838.
29. Sat.....St. Peter.
30. Sun.....*Second Sunday after Trinity.*

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

DUBUC *v.* KIDSTON, *et al.*

Hypothecary action—Judgment in—Art. 2075 C. C.—Service of judgment—Art. 476 C.C.P., and Con. Stat. L. C. Ch. 49, sect. 15—Waiver.

By a judgment *en declaration d'hypotheque*, certain property in the possession and ownership of respondents was declared hypothecated in favor of the appellant in the sum of $5,200 and interest and costs, and they were condemned to surrender the same in order that it might be judicially sold to satisfy the judgment, unless they chose rather and preferred to pay to appellant the amount of the judgment. By the judgment it was also decreed that the option should be made within forty days of the service to be made upon them of the judgment and in default of their so doing within the said delay that the respondents be condemned to pay to the appellant the amount of the judgment.

This judgment (the respondents residing in Scotland and having no domicile in Canada) was served at the prothonotary's office and on the respondents' attorneys. After the delay of forty days, no choice or option having been made, the appellant caused a writ of *fi. fa. de terris* to issue against the respondents for the full amount of the judgment. The sheriff first seized the property hypothecated, sold it, and handed over the proceeds to a prior mortgagee. Another writ of *fi. fa. de terris* was then issued, and another reality belonging to the respondents was seized. To this second seizure the respondents filed an opposition *afin d'annuler*, claiming that the judgment had not been served on them, and that they were not personally liable for the debt due to appellant.

Held, 1st, reversing the judgment of the Court below, that it is not necessary to serve a judgment *en declaration d'hypotheque* on a defendant who is absent from the province and has no domicile therein. Art. 476, C.P.C., and Con. Stat. L.C., c. 49, sect. 15.

2nd, That the respondents by not opposing the first seizure of their property, had waived any irregularity (if any) as to the service of the judgment.

3rd, That in an action *en declaration d'hypotheque*, the defendant, in default of his surrendering within the period fixed by the Court, may be personally condemned to pay the full amount of the plaintiff's claim. Art. 2075 C. C.

Appeal allowed with costs.

Blanchet, Q.C., for appellant.

Irvine, Q.C., for respondents.

THE UNION BANK OF LOWER CANADA. *v.* THE HOCHELAGA BANK.

Hypothec to the prejudice of creditors—When invalid—Art. 2023 C. C.

Where an hypothec has been acquired upon property within thirty days immediately preceding the declaration and admission of the mortgagee's agent, that the mortgagors were notoriously insolvent and *en deconfiture*, such hypothec in a report of distribution of the moneys realized on the property of the insolvents cannot be invoked to the prejudice of a party who was a creditor at the time when the hypothec was given. Art. 2023 C. C.

Appeal dismissed with costs.

Irvine, Q.C., for appellants.

Beique for respondent.

G. DEMERS *v.* N. DUHAIME.

Action en restitution de deniers—Sale of personal rights without warranty—Sale en bloc Arts. 1510 and 1517 and 1518 C. C.

N. D., respondent, owner of a cheese factory made an agreement with farmers by which the latter agreed to give the milk of their cows to no other cheese factory than to that of N. D. N. D. subsequently sold to G. D. (the appel-

lant) the factory and *sous la simple garantie de ses faits et promesses*, whatever rights he might have under his agreement with the farmers, for the bulk sum of $7,000.

Then G. D. assigned to B. the factory and the same rights, but excluding warranty, *sans garantie aucune*, for $7,500.

A company was subsequently formed, to whom B. assigned the factory and the rights, and one of the farmers to the original agreement having sold milk to another cheese factory, the company sued him, but the action was dismissed on the ground that N. D. could not validly assign personal rights he had against the farmers. Thereupon G. D. brought an action against N. D. to recover the price paid by him for rights which he had no right to assign. At the trial it was proved that although the price mentioned in the deed, and paid, was a bulk sum for the factory and the rights, the parties at the time valued the rights under the agreement with the farmers at $5,000. G. D. also admitted that the action was taken for the benefit of the present owners of the factory.

Held, affirming the judgment of the Court below (STRONG and FOURNIER, JJ., dissenting), that, inasmuch as the appellant, by the sale he had made to B., had received full benefit of all that he had bought from respondent and had no interest in the suit, he could not claim to be reimbursed a portion of the price paid.

Per TASCHEREAU, J.—If any action be laid at all, it could only have been to set the sale aside, the parties being restored to the *status quo ante* if it were maintained.

Appeal dismissed with costs.

Irvine, Q.C., for appellant.

Casgrain, Q.C., for respondent.

WEIR *v.* CLAUDE.

Pollution of running stream—Long-established industry—Nuisance—Injunction.

W. acquired a lot adjoining a small stream at Cote des Neiges, Montreal, and finding the water polluted from certain noxious substances thrown into the stream, brought an action in damages against C., the owner of a tannery situated fifteen arpents higher up the stream, and asked for an injunction. At the trial it was proved that C. and his predecessors from time immemorial carried on the business of tanning leather there, using the waters of the stream, and that it was the principal industry of the village; that the stream was also used as a drain by the other proprietors of the land adjoining the stream and manure and filthy matter were thrown in, and that every precaution was taken by C. to prevent any solid matter from falling into the creek, and that W.'s property had not depreciated in value by the use C. made of the stream.

Held, affirming the judgment of the Court below, that, as between neighbors there are other obligations than those created by servitudes, which must be determined according to the quality of the locality, the extent of the inconvenience, and also according to existing usages; under the circumstances proved in this case, W. was not entitled to an injunction to restrain C. from using the stream as he did.

Appeal dismissed with costs.

Rielle & Lafleur for appellant.

Laflamme, Q.C., for respondent.

MITCHELL *v.* MITCHELL.

Removal of executor—Arts. 282, 285, 917, C.C..

Held, affirming the judgment of the Court of Queen's Bench for Lower Canada (Appeal side), that Art. 282, C.C., does not apply to executors chosen by the testator, and that in an action for the removal of one executor, when there are several executors, the existence of a law suit between such executor and the estate he represents, and the evidence of irregularities in his administration, but not exhibiting any incapacity or dishonesty, are not a sufficient cause for his removal. Arts. 917—285, C. C. (STRONG, J., dissenting.)

Appeal dismissed with costs.

Rielle for appellant.

DeLisle for respondent.

LES ECCLESIASTIQUES DU SEMINAIRE DE ST. SULPICE *v.* THE CITY OF MONTREAL.

Municipal taxes—Special assessments—Exemption—41 Vict. (Q.), c. 6, s. 26—Educational Institution—Tax.

By 41 Vict., c. 6, sect. 26, all educational houses or establishments, which do not receive any subvention from the corporation or municipality in which they are situated, are exempt from municipal and school assessments; "whatever may be the act, in virtue of which such assessments are imposed and notwithstanding all dispositions to the contrary."

Held, reversing the judgment of the Court of Queen's Bench (Appeal side), Lower Canada, that the exemption from municipal taxes enjoyed by educational establishments under said 41 Vict., c. 6, sect. 26, extends to taxes imposed for special purposes, *e. g.*, the construction of a drain in front of their property. (SIR W. J. RITCHIE, C.J., dissenting.)

Per STRONG, J., every contribution to a pubic purpose imposed by superior authority is a 'tax" and nothing less.

Appeal allowed with costs.

Geoffrion, Q.C., for appellants.

Ethier for respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

[May 14.

CANADIAN LOCOMOTIVE COMPANY *v.* COPELAND.

Bill of lading—Rate of freight—Demand of freight at too high a rate—Refusal of consignees to accept cargo—Sale of cargo by master of vessel—Expenses of sale—Damages—Demurrage.

This was an appeal by the plaintiffs from the judgment of the Queen's Bench Division (reported 14 O.R. 170) and came on to be heard before this court (HAGARTY, C.J.O., BURTON, OSLER and MACLENNAN, J.J.A.) on the 28th and 29th days of January, 1889.

The court (HAGARTY, C.J.O., dissenting) allowed the appeal with costs; agreeing with the court below that freight was payable only at the reduced rate, but holding that it was the duty of the defendants to tender the coal to the plaintiffs with a demand for payment of freight at the reduced rate, and that not having done so the sale was unauthorized, and the expenses in connection therewith could not be charged against the plaintiffs.

The court also held that for the same reason the allowance of damages in the nature of demurrage could not be sustained, but that the defendants were entitled to some compensation (fixed at $100) for the delay of the plaintiffs in unloading the vessel, after the duty of unloading was actually undertaken by them.

Britton, Q.C., and *Rogers*, for the appellants.

W. Cassels, Q.C., and *A. W. Aylesworth-Finlay*, for the respondents.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

ROSE J.] [June 1.

IN *re* MCCALLUM AND BOARD OF PUBLIC SCHOOL TRUSTEES OF SECT. 6, TP. BRANT.

School law—Public school—Suspension of pupil—Mandamus to trustees—Discretion—Delay—Change of position.

A pupil at a public school having injured the top of a school desk by cutting it, he was ordered by the schoolmaster to replace the top, and was suspended until he should do so. The suspension was on the 20th February, 1888, and on the 7th of May, 1889, notice of motion was served by the father of the pupil for a mandamus to compel the trustees to re-admit the son. In the meantime appeals had been made by the father to three of the trustees, to the Public School Board, and to the annual school meeting, on all of which applications the action of the teacher was sustained. During this time the pupil attended another public school.

Held, that the discretion exercised by the master and trustees should not be interfered with, especially after the delay and change in the position of affairs.

W. H. Blake for the applicant.

Aylesworth for the trustees.

Chancery Division.

BOYD, C. [May 22.

Re HEWISH.

Conveyancing Act, 1886—Sale by the Court, R. S.O., 1887, c. 44, s. 53, subs. 10—Mortgage—Bar o dower—Equitable dower.

In certain partition and sale proceedings wherein lands were sold and a vesting order made, but whereto the wives of certain persons entitled as tenants in common were not made parties,

Held, that the title of those claiming under the vesting order was defective, and the Convey-

ancing Act, R.S.O., 1887, c. 44, s. 53, subs. 10, did not cure the defect.

Where at the time of the vesting order the interests of two of the tenants in common were outstanding on mortgages, in which their wives had joined to bar dower,

Held, that the mortgages having been discharged out of the purchase money, the wives would be entitled to dower on the death of their husbands, notwithstanding the sale and vesting order.

E. D. Armour and *Hall* for vendor.

J. H. Macdonald, Q.C., for purchaser.

Practice.

Mr. DALTON.] [April 20.
GALT, C. J.] [May 13.

CLARKE *v.* CREIGHTON.

Irregularity—No indulgence to plaintiff where action not sustainable—Action for damages for false testimony.

The plaintiff sued for damages for false testimony, alleging that he had failed in a prior action by reason of such testimony given therein by the present defendant.

Held, that the action would not lie, and the plaintiff being in default by reason of not having given notice of trial, the action was dismissed.

S. R. Clarke, plaintiff in person.

C. Millar for defendant.

COURT OF APPEAL.] [May 14.

FOSTER *v.* VIEGEL.

Costs—Counter-claim—Scale of costs.

Where the defendant recovers on a counter-claim, the costs should be on the scale of the Court in which the action was brought by the plaintiff.

Irvine v. *Brown*, 12 P. R., 639, and *Amon* v. *Bobbett*, 22 Q. B. D., 543, referred to.

Aylesworth for the appellant.

Lash, Q.C., for the respondent.

FERGUSON, J.] [May 13, 14.

MCNEILL *v.* HAINES.

Costs—Scale of—Action for cutting timber on land—Title to land—R. S. O., c. 47, s. 18.

The plaintiff sued for damages sustained by the defendant cutting timber on his own land, after having sold such timber standing, to the plaintiff's assignor. It was determined by the Court that the timber sold was an interest in land.

Held, that the title to land was brought in question in the action, and therefore, although the plaintiff recovered only $135, a County Court would have no jurisdiction, and the costs should be on the scale of the High Court.

W. M. Douglas for plaintiff.

Lount, Q.C., for defendant.

ROSE J.] June 7.

SMITH *v.* WILLIAMSON.

Costs—Action of ejectment by administrator.

A trustee or executor stands in the same position as any other litigant with respect to costs.

And where an action of ejectment was brought by the administrator of a deceased person in whom the legal estate in certain land was vested, and by the hold of a mortgage created by the deceased person upon such land, and it appeared that the deceased purchased the land with the moneys of the defendant and took the conveyance in his own name, and that the defendant was the true owner of the land,

Held, that the fact that there was no declaration of trust in favor of the defendant, and that the evidence in the hands of the administrator tended to show that the deceased was in his lifetime owner and not trustee, did not relieve the administrator from liability for costs; and costs were given to the defendant against both plaintiffs.

W. N. Miller, Q.C., for the plaintiffs.

Rae for the defendant.

ROSE, J.] [June 7.

MARKLE *v.* ROSS.

Masters and referees—Appeals from interlocutory rulings—G. O. Chy. 642—Rules 39, 846, 848 350—Judge in Chambers—Mortgage action—Plea of payment—Onus of proof.

G. O. Chy. 642 provided for an appeal to a Judge in Chambers against any decree, order, report, or other determination of any Master; but this order has been abrogated, and the provisions for appeals from Masters and Referees are now contained in Rules 848-850, in which there is no provision for an appeal from a ruling or certificate, but from a report only.

Held, nevertheless, that a party to any reference has a right to come to the court at any

stage with any well-founded complaint against the conduct of the referee, either personal misconduct or error in receiving or rejecting evidence, or otherwise; and Rule 39 shows the intention to permit interlocutory rulings to be considered; but a Judge in Chambers has no longer any jurisdiction, and the appeal must be made to a Judge in Court.

Conmee v. *Canadian Pacific R. W. Co.*, 16 O. R. at pp. 641, 642, and cases cited at p. 657, referred to.

Quære, whether upon a reference to a local Master, *qua* Master, an appeal from an interlocutory order would lie under Rule 846.

The action was brought to recover the principal and interest due upon a mortgage, and also upon certain other claims. The interest was alleged to be overdue, and the principal to have become due by virtue of an acceleration clause. The defendant pleaded payment of the interest. A reference was directed to a Master, and upon such reference the plaintiff proved his mortgage and it appeared therein that certain instalments of interest were overdue.

Held, that the plaintiff had made out a *prima facie* case, and could not be called in to prove the non-payment of the interest.

Aylesworth for the plaintiff.

F. E. Hodgins for the defendant.

STREET, J.] [June 11.

WHITNEY *v.* STARK.

Notice of trial—Irregularity—Laches in moving against—Waiver—No power to order short notice.

The ten days prescribed by Rule 661 for giving notice of trial cannot be shortened except by consent, or when short notice of trial is imposed as a term in granting an indulgence.

The plaintiff on the 23rd of May, when the proceedings were not closed, gave notice of trial for a sittings beginning on the 10th June. The pleadings were closed on the 27th May, and notice of trial might then and up to the 31st May have been regularly given in good time for the 10th June. The defendant waited until the 5th June, and then moved to set aside the notice of trial given on the 23rd May as irregular.

Held, that the defendant had waived the irregularity by his laches.

J. F. Gregory for the plaintiff.

R. U. Macpherson for the defendant.

MR. DALTON.] [June 11

BADGEROW *v.* GRAND TRUNK R. W. CO.

Discovery—Examination of officer of company—Failure to attend—Motion to strike out company's defence.

There is no power to strike out the statement of defence of an incorporated company for the default of an officer of such company to attend for examination for discovery.

J. W. McCullough for plaintiff.

Aylesworth for defendants.

Chy. Div'l Ct.] [June 12.

MOSES *v.* MOSES.

Costs—Scale of—Jurisdiction of Division Court—Ascertainment of amount.

The decision of Robertson, J., 13 P.R. 12, as to the scale upon which the costs of this action should be taxed was affirmed by a Divisional Court on appeal.

Wallace Nesbitt for appeal.

Aylesworth contra.

Law Students' Department.

The following papers were set at the Law Society Examination before Easter Term, 1889:

SECOND INTERMEDIATE.

REAL PROPERTY.

1. What is the difference between right of property and right of possession?

2. What is the effect of a tenant's denial of his landlord's title in ejectment?

3. What are the different ways in which a release operates?

4. A. died intestate, leaving a widow, two children, and a child of a deceased child surviving him. How did his land descend under the statute of Victoria?

5. What is an estate upon condition? Give instances of conditions precedent and subsequent, and state their effect upon the estates to which they are annexed.

6. What are the chief points of difference between a tenancy in common and a joint tenancy?

7. A tenant enters under a lease for five years, which is not under seal, and pays rent quarterly according to the terms of the writing. What interest has he?

BROOM'S COMMON LAW AND O'SULLIVAN'S GOVERNMENT IN CANADA.

1. Explain the writ of *prohibition*, and state in what cases it lies.

2. What facts are necessary to constitute *false imprisonment?*

3. When will a *master* have a right of action for an injury done to his *servant?*

4. What is meant by *certiorari*, and for what purpose is it employed?

5. Upon what is the action of *trespass to land founded*, and what facts must be proved in order to establish a *prima facie* case?

6. State briefly the law as to the necessity for proof of *malice* in an action of slander.

7. Enumerate the different constitutional changes which have taken place in this province since the conquest of Canada by England.

PERSONAL PROPERTY—JUDICATURE ACT AND RULES.

1. Specify the main points by which personal property is distinguished from real.

2. How far is a grant of all the fruit which may hereafter grow on a man's land good? Why?

3. "Choses in possession has long been liable to involuntary alienation for the payment of the debts of their owner." Explain fully.

4. A. is surety for B. to C. to secure B.'s liability to C. on a bond from B. to C. A. has to pay the amount of the bond. What can A. claim from C.? Why?

5. A. owes B. $500, and takes B.'s promissory note for $400 in settlement of claim. He afterwards contends that he is not bound to give a quittance, the note being for a smaller amount than the debt. Is he right? Why?

6. At what stage in an action can you obtain an examination of a party for discovery?

7. How is a judgment for the recovery of land enforced?

EQUITY.

1. Explain and exemplify the maxim that "Equity acts *in personam.*"

2. State the rules which govern (according to Snell) in deciding whether a sum mentioned in an agreement to be paid for a breach is to be treated as a penalty or as liquidated and ascertained damages.

3. A. enters into a contract with B. for the purchase of Black Acre, but refuses to carry it out alleging misrepresentation. What facts must he prove in order to succeed?

4. What are the enactments of the Statute of Frauds in regard to trusts?

5. In what respects are charities more favored in law than individuals, and in what less favored?

6 A. who is trustee under the will of B. gives to his solicitor instructions to look out for an investment for some of the trust funds. The solicitor tells him he can recommend a mortgage of $5000 on a farm in the Township of York, stating there was ample margin. The investment is made, and ultimately the farm has to be sold under the mortgage at a loss. What is the position of the trustee?

7. What is meant by the doctrine of Cy-pres? Exemplify.

SECOND INTERMEDIATE HONORS.

REAL PROPERTY.

1. Can a conveyance be drawn to a man so that dower will not attach? If not, can you draw a conveyance so that the grantee can convey again free from dower? Explain fully.

2. It is said that a lease at will is not sufficient to support a remainder. Why?

3. Are the Statutes of Mortmain in force in Ontario? Why? Explain fully.

4. What is the effect of destroying a conveyance, both parties assenting to the destruction?

5. A., the owner of land, is disseised, and the trespasser remains in undisturbed possession for fifteen years without acknowledgment. In the ninth year A. mortgages the land and pays the interest regularly for four years and then makes default. The mortgagee then brings ejectment against the disseisor. Can he recover? Why?

6. A lease is drawn from A. to B. reserving rent to C., who has no interest in the land. Can C. distrain for the rent? Why?

7. A conveyance of land is made to A. B. and the Loan Association of Ontario, their heirs, successors, and assigns respectively, as joint tenants and not as tenants in common. What estates do the grantees take respectively? Explain fully.

BROOM'S COMMON LAW AND O'SULLIVAN'S GOVERNMENT IN CANADA.

1. State the principal rules relating to the construction of statutes.

2. In what cases are wrong-doers exempted from liability on the ground of *public policy?*

3. Explain *public nuisance* and *private nuisance* and show how the former may include the latter.

4. What is the difference between the facts which must be proved in order to attach a witness for disobedience to a subpœna, and those which must be proved in order to maintain an action for damages for such disobedience; and explain the reasons of the difference.

5. Explain the effect of *Mr. Fox's* celebrated *Libel Act.*

6. Define, and explain all the different kinds and degrees of *homicide.*

7. What provisions does the British North America Act contain in reference to the *allowance* and *disallowance* of Provincial Acts?

PERSONAL PROPERTY—JUDICATURE ACT AND RULES.

1. A *personal annuity* is given to A. and the heirs of his body. What interest does A. take?

2. Stock is settled in trust for A. for life, and after his decease in trust for his executors, administrators, and assigns. What is the effect? Why?

3. In case of insolvency of a partnership what is the rule as to payment of debts of the partnership, having regard to the joint and several assets of the partners?

4. A legacy is given by will to A. and B. and their respective executors as joint tenants. A. dies in the lifetime of the testator, what is the effect?

5. What was the difference between legal and equitable choses in action?

6. In the case of a writ not specially indorsed what proceedings may the plaintiff take on default of appearance?

7. What is an order of replevin, and how may it be obtained?

EQUITY.

1. State the general law applicable in cases of (1) gifts from a client to his solicitor; (2) purchases by a solicitor from his client.

2. Distinguish between contribution and apportionment.

3. Under what circumstances will the giving of time by a creditor to the principal debtor release the surety, and when not? Give reasons.

4. State the difference between a mortgage and a pledge of personalty: (*a*) In their nature; (*b*) as regards the remedies.

5. "A.," a trader has, by will, especially directed his trustee "B." to carry on his trade, setting aside the sum of $10,000 for such purpose. State the liability of the trustee, and the rights of creditors after the trade has been so carried on.

6. Under what circumstances will the defence of "*suppressio veri*" avail in an action?

7. State what acts are, and what are not sufficient part performance of a parol contract for the sale of lands in order to withdraw it from the operation of the statute.

Appointments to Office.

CORONERS.

District of Rainy River.

W. D. Lyon, of Rat Portage, to be a coroner for the District of Rainy River.

Wentworth.

H. S. Griffin, M.D., of Hamilton, to be a coroner for the County of Wentworth and City of Hamilton.

POLICE MAGISTRATE.

Oxford.

G. W. Hare, of Tilsonburg, to be police magistrate for the Town of Tilsonburg, without salary, *vice* L. McLean, deceased.

BAILIFFS.

Victoria.

Malcolm MacMillan, of Eldon, to be bailiff of the First Division Court of the County of Victoria, *vice* Angus McKinnon, resigned.

Northumberland and Durham.

Arthur Terrill, of Wooles, to be bailiff of the Tenth Division Court of the united Counties of Northumberland and Durham.

PARNELL *v.* "THE TIMES."—In Mr. Parnell's action against the *Times*, the defence put in is payment into court of forty shillings. It is thought that this is intended to indicate that the libel is not a gross one, as the Attorney-General in *O'Donnell* v. *Walter* admitted it was. This is not correct. The libel may be gross, but the damages may be small. A plaintiff may have so conducted himself as to excuse a publication which, standing alone, would be heavily punished by exemplary damages. This is what the *Times'* defence really means.—*Eng. Law Times.*

Law Society of Upper Canada.

CURRICULUM.

1. A Graduate in the Faculty of Arts, in any University in Her Majesty's Dominions empowered to grant such Degrees, shall be entitled to admission on the Books of the Society as a Student-at-law, upon conforming with clause four of this Curriculum, and presenting (in person) to Convocation his Diploma or proper Certificate of his having received his Degree, without further examination by the Society.

2. A Student of any University in the Province of Ontario, who shall present (in person) a Certificate of having passed, within four years of his application, an examination in the subjects prescribed in this Curriculum for the Student-at-law Examination, shall be entitled to admission on the Books of the Society as a Student-at-law, or passed as an Articled Clerk (as the case may be), on conforming with clause four of this Curriculum, without any further examination by the Society.

3. Every other Candidate for admission to the Society as a Student-at-law, or to be passed as an Articled Clerk, must pass a satisfactory examination in the subjects and books prescribed for such examination, and conform with clause four of this Curriculum.

4. Every Candidate for admission as a Student-at-law or Articled Clerk, shall file with the Secretary, four weeks before the Term in which he intends to come up, a Notice (on prescribed form), signed by a Bencher and pay $1 fee; and on or before the first day of presentation or examination file with the Secretary a petition and a presentation signed by a Barrister (forms prescribed), and pay prescribed fee.

5. The Law Society Terms are as follows:—

Hilary Term, first Monday in February, lasting two weeks.

Easter Term, third Monday in May, lasting three weeks.

Trinity Term, first Monday in September, lasting two weeks.

Michaelmas Term, third Monday in November, lasting three weeks.

6. The Primary Examinations for Students-at-law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity, and Michaelmas Terms.

7. Graduates and Matriculants of Universities will present their Diplomas and Certificates on the third Thursday before each Term at 11 a.m.

8. Graduates of Universities who have given due notice for Easter Term, but have not obtained their Diplomas in time for presentation on the proper day before Term, may, upon the production of their Diplomas and the payment of their fees, be admitted on the last Tuesday of June of the same year.

9. The First Intermediate Examination will begin on the second Tuesday before each Term, at 9 a.m. Oral on the Wednesday, at 2 p.m.

10. The Second Intermediate Examination will begin on the second Thursday before each Term, at 9 a.m. Oral on the Friday, at 2 p.m.

11. The Solicitors' Examination will begin on the Tuesday next before each Term, at 9 a.m. Oral on the Thursday, at 2.30 p.m.

12. The Barristers' Examination will begin on the Wednesday next before each Term, at 9 a.m. Oral on the Thursday, at 2.30 p.m.

13. Articles and assignments must not be sent to the Secretary of the Law Society, but must be filed with the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

14. Full term of five years, or, in the case of Graduates, of three years, under articles, must be served before Certificates of Fitness can be granted.

15. Service under Articles is effectual only after admission on the books of the society as student or articled clerk.

16. A Student-at-law is required to pass the First Intermediate Examination in his third year, and the Second Intermediate in his fourth year, unless a Graduate, in which case the

First shall be in his second year, and his Second in the first seven months of his third year.

17. An Articled Clerk is required to pass his First Intermediate Examination in the year next but two before his Final Examination, and his Second Intermediate Examination in the year next but one before his Final Examination, unless he has already passed these examinations during his Clerkship as a Student-at-law. One year must elapse between the First and Second Intermediate Examination, and one year between the Second Intermediate and Final Examination, except under special circumstances, such as continued illness or failure to pass the Examinations, when application to Convocation may be made by petition. Fee with petition, $2.

18. When the time of an Articled Clerk expires between the third Saturday before Term and the last day of the Term, he should prove his service by affidavit and certificate up to the day on which he makes his affidavit only, and file supplemental affidavits and certificates with the Secretary on the expiration of his term of service.

19. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive Certificates of Fitness, Examinations passed before or during Term shall be construed as passed at the actual date of the Examination, or as of the first day of Term, whichever shall be most favorable to the Student or Clerk, and all Students entered on the books of the Society during any Term shall be deemed to have been so entered on the first day of the Term.

20. Candidates for call to the Bar must give notice signed by a Bencher, during the preceding Term. Candidates for Certificates of Fitness are not required to give such notice.

21. Candidates for Call or Certificate of Fitness are required to file with the Secretary their papers, and pay their fees, on or before the third Saturday before Term. Any Candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

22. No information can be given as to marks obtained at Examinations.

23. A Teacher's Intermediate Certificate is not taken in lieu of Primary Examination.

24. All notices may be extended once, if request is received prior to day of examination.

25. Printed questions put to Candidates at previous examinations are not issued.

FEES.

Notice Fee	$ 1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Solicitor's Examination Fee	60 00
Barrister's Examination Fee	100 00
Intermediate Fee	1 00
Fee in Special Cases additional to the above	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

BOOKS AND SUBJECTS FOR EXAMINATIONS.

PRIMARY EXAMINATION CURRICULUM for 1889 and 1890.

Students-at-Law.

1889.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.
- Cicero, In Catilinam, I.
- Virgil Æneid, B. I V.
- Cæsar, B. G. b, I.) 33.)

1890.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cicero, Catilinam, II.
- Virgil, Æneid, B. V.
- Cæsar, Bellum Britannicum.

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

Translation from English into Latin Prose, involving a knowledge of the first forty exercises in Bradley's Arnold's composition, and re-translation of single passages.

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.

Composition.

Critical reading of a selected Poem:

1889—Scott, Lay of the Last Minstrel.

1890—Byron, The Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

English History, from William III. to George III. inclusive. Roman History, from the commencement of the Second Punic War to the death of Augustus. Greek History, from the

Persian to the Peloponnesian Wars, both inclusive. Ancient Geography—Greece, Italy and Asia Minor. Modern Geography—North America and Europe.

Optional subjects instead of Greek :—

FRENCH.

A Paper on Grammar.
Translation from English into French Prose.
1889—Lamartine, Christophe Colomb.
1890—Souvestre, Un Philosophe sous le toits.

or NATURAL PHILOSOPHY.

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

Articled Clerks.

In the years 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidate, as noted above for Students-at-law.
Arithmetic.
Euclid Bb. I. II. and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography—North America and Europe.
Elements of Book-keeping.

RULE *re* SERVICE OF ARTICLED CLERKS.

From and after the 7th day of September, 1885, no person then or thereafter bound by articles of clerkship to any solicitor, shall, during the term of clerkship mentioned in such articles, hold any office, or engage in any employment whatsoever, other than the employment of clerk to such solicitor, and his partner or partners (if any) and his Toronto agent, with the consent of such solicitors in the business, practice, or employment of a solicitor.

First Intermediate.

Williams on Real Property, Leith's edition ; Manual of Common Law ; Smith's Manual of Equity ; Anson on Contracts ; the Act respecting the Court of Chancery ; the Canadian Statutes relating to Bills of Exchange and Promissory Notes ; and Cap. 123 Revised Statutes of Ontario, 1887, and amending Acts.

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

Second Intermediate.

Leith's Blackstone, 2nd edition ; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages, and Wills ; Snell's Equity ; Broom's Common Law ; Williams on Personal Property ; O'Sullivan's Manual of Government in Canada, 2nd edition ; the Ontario Judicature Act ; R.S.O., 1887, cap. 44, the Consolidated Rules of Practice, 1888, the Revised Statutes of Ontario, 1887, chaps. 100, 110 143.

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

For Certificate of Fitness.

Armour on Titles ; Taylor's Equity Jurisprudence ; Hawkins on Wills ; Smith's Mercantile Law ; Benjamin on Sales ; Smith on Contracts ; the Statute Law and Pleading and Practice of the Courts.

For Call.

Blackstone, Vol. I., containing the Introduction and Rights of Persons ; Pollock on Contracts ; Story's Equity Jurisprudence ; Theobald on Wills ; Harris's Principles of Criminal Law ; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers ; Best on Evidence ; Byles on Bills, the Statute Law and Pleadings and Practice of the Courts.

Candidates for the Final Examination 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.

Michaelmas Term, 1888.