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THE NEW RULES.

It may well be doubted whether the attempt to put the "new wine" of Equity into "the old bottles" of the Common Law, which the Legislature essayed to do when it passed the Judication Act, has been an unqualified success. In a recent case, to which our attention has been drawn, a suitor, entitled under a will to a legacy charged upon land, brought an action to enforce the charge. The action was, unfortunately, tried before a "Common Law Judge"—as the judges of the Queen's Bench and Common Pleas Divisions are still called, without any reason, so far as we know, except it be for their supposed innocence of any knowledge of Equity principles, or of the practice in working out equitable relief.

The judge at the trial refused to make any order for the sale of the property, although holding that the plaintiff was entitled to the charge, and that it was in arrear. The case was subsequently brought before a Divisional Court of "Common Law Judges," and they also declined to make any order for sale, the only reason suggested being, as we are informed, that there might be incumbrancers! Any judge familiar with the procedure in Equity would, of course, have had no hesitation in referring the action to a Master to make the necessary inquiries, and sell the property; but the new-fashioned Equity which is administered by "Common Law Judges" will render it necessary for the unfortunate suitor either to appeal to the Court of Appeal, or bring a new action, or else present a petition to obtain the relief which he was entitled to in the first instance—at, of course, a considerable extra expense in the way of costs. When one hears of such cases, is it

unreasonable to ask why "Common Law Judges" who undertake to administer Equity do not take the trouble to inform themselves a little more thoroughly on that branch of law? Surely by this time they, at least, should have divested themselves of the impression that they are intended by the Legislature to be simply "Common Law Judges." For we need hardly say that the Legislature intends them to be Equity judges as well, and in order to administer Equity satisfactorily it is absolutely necessary to know something about both the principles of Equity and the procedure laid down in the Consolidated Rules for working out equitable relief. These remarks do not apply to all of the so-called "Common Law Judges." There is, at least, one notable exception; but, then, he was a good Equity lawyer before he was promoted to the Bench.

It is such considerations as these which make it a matter of exceeding great doubt how the new method laid down for the carrying on of the weekly business of the court will answer. Hitherto the profession had some chance of bringing their actions before the judges best capable of disposing of them, and, notwithstanding the Judicature Act, Equity cases very largely found their way into the Chancery Division. Now all that will be changed, for one judge is to take all the ordinary weekly business of all the Divisions for the week he is sitting, and the "Common Law Judges," when their turn comes in court, will have to wrestle with Equity cases as best they may. This, in the end, may help to disillusionize both themselves and the profession that they are merely intended to be "Common Law Judges," and they may, in time, prove good Equity as well as Common Law judges; but some, at least, of them, be it said with all respect, will have need to be diligent students.

But there is another feature about the new arrangement of the weekly court and Chamber business which makes it doubtful whether the change will be advantageous to the public or the judges themselves. Hitherto we have had two judges sitting each week, one in the Chancery Division and another for the other two Divisions. The Chancery judge sat on Monday in Chambers, and the business usually occupied the whole day. He also sat in court on Tuesday, Wednesday, and not infrequently on Thursday. The business on these days varied. Sometimes an hour or two and sometimes the whole day would be consumed.

In the other Divisions the sittings were held on Tuesday and Friday, and sometimes, when necessary, on another day besides. Generally speaking, these sittings consumed the whole day.

Now, if one judge found the business of the Chancery Division alone all that he could satisfactorily manage in one day, how is he going to get through with the business of the other two divisions added? In the same way, if one judge found that he had enough to do to carry through the work of the so-called "Common Law Divisions," how is he possibly going to get through with the Chancery Division business added thereto? Formerly there were, in effect, six days', and sometimes seven days' sittings in each week; now there are only going to be five. Formerly the business was taken by two judges; now it is to be taken by one.

A rearrangement of the business was no doubt needed, but we are afraid that the way it has been made will not prove satisfactory. It appears to us that a better arrangement would have been to have still had two judges sitting each week, but to have assigned to one all the Chamber business and motions not required to be set down in all the Divisions, and to have assigned to the other all the other court business. In this way the business would not have been so burdensome to the judges, and would be capable of being more expeditiously transacted. Some judges are proverbially quick and expeditious, others are equally notorious for their slowness. How the latter will ever get through a week's business under the new régime remains to be seen.

At any rate, we do not think it ought to be expected of any judge that he should attempt to do the business required of him as though he were engaged in a race against time. No judge ought to allow himself to be hurried in the discharge of his judicial duties, and a slap-dash method of doing business of this kind may simply mean the infliction of grievous injustice on suitors who are the victims.

RECENT SUPREME COURT DECISIONS.

ITS APPELLATE JURISDICTION IN PROCEEDINGS FOR CONTEMPT.

The case of *Ellis* v. *The Queen* in the current volume of Supreme Court Reports (22 S.C.R. 7) is an important decision on the appellate jurisdiction of the court, and also presents some peculiar, if not remarkable, features in the manner in which the decision was arrived at.

The court, in this case, holds that an appeal does not lie from a judgment in proceedings for contempt of court, which is a criminal matter, except under section 68 of the Supreme Court Act (R.S.C., c. 135); that is to say, unless the proceedings are by indictment resulting in a conviction which has been affirmed by the non-unanimous judgment of the court of last resort for the province from which the appeal comes. This decision practically shuts out an appeal in such cases; for though contempt of court is clearly indictable, yet that form of proceeding has never been resorted to, and it is almost a certainty that it never will.

The Supreme Court has had occasion twice before to deal with this question of jurisdiction. In the first case, *Ellis* v. *Baird*, 16 S.C.R. 147, an appeal in this same case at an earlier stage, the point was avoided by a decision that the case was not ripe for appeal. In the same volume of the reports is the case of *O'Brien* v. *The Queen*, 16 S.C.R. 197, in which the court held that an appeal does lie in a case of contempt. The latter decision is now overruled, and the Supreme Court occupies practically the ground always taken by the Judicial Committee of the Privy Council, which has invariably refused to entertain such appeals. To the judges of the provincial courts it may be a matter of regret that the views expressed by the Privy Council in a number of well-known cases were not adopted by the Supreme Court when the matter was first before them judicially, namely, that every court should be allowed to protect its dignity and authority by summary proceedings without being more or less restrained by the probability of its action being reviewed by an appellate court, whose members would deal with the case from a very different standpoint. On the other hand, it may be that the very fact of its dignity being, or being supposed to be, treated lightly might ren-

der the court taking these proceedings incapable of pursuing that even and steady course which should characterize a court of justice, and that the judges of appeal would view the case with a clearer and less prejudiced vision. Whilst the provincial courts are to be congratulated on their right to conserve their dignity for the future without interference, and as heartily as if that right had never been interfered with in the past, we must question the desirability of this state of the law. Experience shows that, after all, judges are only mortal. "Our craft is in danger" has many applications, and is none the less forceful because the subject of its influence is unconscious thereof. In our opinion, it is a misfortune that there should be no appeal in such cases.

As stated above, this decision comprises, in some of the reasons given for it by their lordships, certain peculiar features upon which it may be profitable to comment. As already stated, this case overruled *Re O'Brien* on the question of jurisdiction, and their lordships, or some of them, thought it necessary to account for the former contrary holding. The members of the Bar who attended the court during the term just past credit one occupant of the Bench with the remark that "the Supreme Court never overrules its own decisions, but has developed the art of distinguishing cases into a science." In the present case the court seems to have gone a step further, and endeavoured to show that two contrary decisions were both right, and this is how that somewhat difficult task is assumed to have been accomplished.

The Chief Justice says: "In the case of *O'Brien* v. *The Queen* this objection" (that contempt is a criminal matter) "was not taken . . . and, moreover, had the objection been there taken, it could scarcely have prevailed in the face of the decision in the English Court of Appeal already referred to in the case of *The Queen* v. *Jordan*, 36 W.R. 797, in which the jurisdiction had been assumed and exercised, and which was then *the governing authority upon the point*. . . . Further, assuming that contempt of court is an indictable offence, the case of *O'Brien* v. *The Queen* was a proper subject of appeal, since the judges of the court below were not unanimous."

His lordship could not have chosen a more unfortunate method of endeavouring to prove that the Supreme Court cannot make a mistake, for the above justification of the decision in *Re*

O'Brien is based on error both of law and fact. If he had contented himself with the opening remark, that the objection was not taken in the former case, his position would not have been open to adverse criticism; but by the reference to *The Queen* v. *Jordan*, and the concluding sentence of the above quotation, he takes a position which is distinctly contradicted by the authorities he invokes.

The report of *Regina* v. *Jordan* in 36 W.R. shows that the case was considered on the merits, and the appeal dismissed. Lindley, L.J., and Lopes, L.J., gave reasons for coming to that conclusion, and at the end of the report is the following remark by Lindley, L.J.: "It is doubtful whether this is not a criminal matter upon which we could not have heard an appeal. At any rate, this must not be taken as a precedent for hearing such appeals." In the face of this, how can his lordship say that *The Queen* v. *Jordan* was the governing authority on the question of the criminal or non-criminal nature of contempt, or on any question? How can a case be a "governing authority" when the very court deciding it says it is not to be followed?

But there is another reason for objecting to the statement that this case would have governed *Re O'Brien* under the circumstances stated by his lordship. *Regina* v. *Jordan* was decided by the Court of Appeal in 1888. Twenty years earlier the case of *Re Pollard* was before the Judicial Committee of the Privy Council, and in the report to Her Majesty, which was embodied in an Order in Council, their lordships of that board said: "No person should be punished for contempt of court, which is a criminal offence, unless," etc. And yet it is said that *Regina* v. *Jordan* is a leading case to the contrary. (*Re Pollard* is reported in L.R. 2 P.C. 186.)

And, lastly, the court could not, on the authority of *Regina* v. *Jordan*, have decided against this objection to hearing *Re O'Brien* at the time it would have been taken. *Re O'Brien* was argued in March, 1888, and *Regina* v. *Jordan* was not decided until June of the same year, so the court would not have had the benefit of the latter case at the argument, and probably would have quashed the appeal on the authority of *Re Pollard* and s. 68 of the Supreme Court Act.

Then his lordship says, and Mr. Justice Fournier repeats the statement in his delivered opinion, that *Re O'Brien* was a proper

subject of appeal because the judges of t court appealed from were not unanimous in their opinions. But the section of the Supreme Court Act prohibiting appeals in case of unanimity is the only section which allows an appeal in any criminal case, namely, s. 68. As before pointed out, an appeal is given from the judgment of the court of final resort in a province affirming a conviction on indictment, and that only when the judges of such court of final resort differ. Indictment, conviction, and non-unanimous affirmance of such conviction are all essential to make a criminal case a proper subject of appeal, and it is declared in this case that one of them alone, difference of opinion, would effect that result. That position seems too untenable to call for serious notice.

The opinion of Mr. Justice Fournier in this case likewise presents certain features not often seen in the judgment of a court of such eminence as the Supreme Court of Canada. What is specially noticeable in his judgment is that it mainly deals with a matter never argued before the court or raised for decision, and one which would not have been an element in the case if it had been considered on the merits. The point in question was as to the right of a judge of the Supreme Court of New Brunswick to issue a rule *nisi* for a writ of prohibition to prevent the County Court judge from holding a recount of ballots in an election in Queen's County, N.B., the proceedings in such election and issue of said rule having formed the subject-matter of an attack by the defendant Ellis on the judiciary of that province, which was held to constitute a contempt of court. By his judgment Judge Fournier professes to overrule, as far as a single judge can, the decision of the Provincial Supreme Court in the case of *Re Steadman* (29 N.B. R. 200), holding that prohibition could issue, and making the rule absolute; but in this case of *Ellis* v. *The Queen*, in the court below, it was held by all the judges that whether there was jurisdiction to issue the rule *nisi* or not was immaterial. And necessarily so, for it would be impossible to contend that a judge could be abused and vilified for the issue of a judicial process, and the offender escape liability on the plea that such process was issued without jurisdiction. Unquestionably, the contempt is the same whether there was jurisdiction or not.

Notwithstanding these considerations, Mr. Justice Fournier

has attempted to demonstrate, and has apparently succeeded in demonstrating to his own satisfaction, that prohibition would not lie in such case. Whether or not his arguments will commend themselves to the profession at large remains to be seen.

The decision of the Supreme Court of New Brunswick in the case of *Re Steadman* proceeds upon the simple ground that though the County Court judge exercises a special jurisdiction in holding a recount of votes under the Election Act, yet if he exceeds the jurisdiction thereby conferred upon him he is subject to prohibition by a superior court, as he would be in performing his ordinary functions as a County Court judge. Now, how does Mr. Justice Fournier meet that plain proposition of law? He opens his argument by stating that the jurisdiction conferred by the election is special, that the rules governing its exercise are only to be found in the statute, in constitutional principles, and in the English jurisprudence on controverted elections, and that it is not subject to ordinary procedure in the courts further than that it is to be administered by the judges who compose them. Thus far nobody will dispute the correctness of his lordship's statement of the law. He then quotes from the judgment in the court below to the effect stated above, and that in issuing the rule *nisi* Judge Tuck was acting judicially, and the charges against him by the defendant Ellis were calculated to interfere with the administration of justice, and bring proceedings of the court into contempt, and he attempts to controvert that judgment by citations from the well-known cases of *Valin* v. *Langlois* and *Theberge* v. *Landry* in the Privy Council. His object in referring to those cases is to show, what nobody will deny, that the authority and legislative power over all questions relating to Dominion elections is in the Dominion Parliament, and he makes a deduction from these authorities which, stated baldly and without further comment or argument, seems to satisfy himself that, as election matters were transferred to the courts for the purpose of arriving promptly at a final decision, and to make it clearly known as speedily as possible, such purpose would be entirely defeated if the proceedings were allowed to be interrupted and prolonged by recourse to writs of prohibition and other forms of procedure in ordinary matters. "It is clear," his lordship says, "that the admission of such forms of procedure is altogether illegal, as contrary to the spirit of the law."

Now, every word of the judgment up to this would have to be accepted as good law if it were possible to establish the position that, in exercising their functions under the Election Act, the judges having jurisdiction could not possibly err, and would be incapable of exceeding such jurisdiction. But the whole judgment disregards the very ground upon which the writ of prohibition issued, namely, that the County Court judge was proceeding to hold a recount of votes where the Election Act gave him no authority to do so. It must be assumed that the Supreme Court of New Brunswick was right in holding that he had no such authority, for their judgment was not appealed against, and, on this point, stands entirely unimpeached. Then, according to Judge Fournier, the object of Parliament in transferring election matters to the courts can only be accomplished by allowing those authorized to deal with them to usurp jurisdiction if they choose, and be subject to no control. In other words, there must be a speedy decision, whether right or wrong, whether authorized or unauthorized, and, if the latter, no interference is permitted.

Apparently the only solid ground upon which this judgment can stand is the authority of the *Centre Wellington Case*, 44 U.C.R. 132, in which the Court of Queen's Bench in Ontario refused a mandamus to compel a County Court judge to hold a recount. He relies upon this, however, on the assumption that mandamus and prohibition are absolutely identical, whereas it requires very little consideration to show a great dissimilarity between them. To command a recount of votes where the jurisdiction is doubtful may be productive of great, and, perhaps, irreparable, mischief, and is, moreover, unnecessary, as the same object may be attained by an election petition. On the other hand, to prohibit such recount may prevent the very mischief a mandamus, or allowing it to proceed, might occasion, and, at the worst, can only cause delay. It is true that the Chief Justice in the case just cited expressed the opinion that neither mandamus nor prohibition would lie in such case, but he was only dealing with the former, and the different considerations affecting the other may never have occurred to him. At all events, it is only the dictum of a single judge, and cannot override the matured opinion of five judges of the highest court in New Brunswick.

But the final conclusion, from the argument above outlined in

Judge Fournier's judgment, is one that will not commend itself to any lawyer: that is, that as Judge Tuck issued the rule *nisi* without jurisdiction, he was not acting judicially, and his lordship implies that, in consequence thereof, the defendant could not be guilty of contempt in charging corrupt and improper motives against him in so issuing it. This doctrine would lead to very dangerous consequences if accepted and acted upon; every day a judge has to perform an act which he considers judicial, and in every case in which he mistakes his authority, or it should turn out that he makes an order, issues a writ, etc., without jurisdiction, and so is not acting judicially, he could be assailed by litigants or others for such act with impunity. Moreover, a corrupt judge could accept bribes for such act, and be free from liability as a judge if the act done was beyond his authority. And it would extend further. The only consequence of want of jurisdiction would be to render the proceedings void, and the same result might follow in case of certain irregularities, and then it might be said the proceeding was not a judicial act.

The remainder of Judge Fournier's judgment deals with the jurisdiction of the Supreme Court to entertain the appeal. To that no exception can be taken, except as to the repetition of the fallacy pointed out in the opinion of the Chief Justice, that the appeal in *Re O'Brien* was properly entertained, because the judges of the court appealed from were unanimous. Taschereau and Gwynne, JJ., who also took part in the latter case, gave no reasons for quashing the present appeal. It should be stated that Mr. Justice Taschereau, although he did not formally dissent in the former case, expressed a doubt as to the jurisdiction to hear it.

Mr. Justice Patterson also gave judgment in *Ellis* v. *The Queen*. Not having been a member of the court when *Re O'Brien* was decided, he had no *amour propre* to be wounded, and is somewhat unkind to his brother judges in his method of dealing with the question at issue. For instance, he cites the case of *Re Pollard*, and points out that contempt was held by the Judicial Committee of the Privy Council to be a criminal matter as early as 1868, though the Chief Justice declares that *The Queen* v. *Jordan*, decided in 1888 by the Court of Appeal, was the leading authority on the question until 1891. Again, he holds that s. 27 of the Supreme Court Act prohibits an appeal in the

case of contempt, an order in such case being a matter of judicial discretion in the court below, which might have disposed of the O'Brien case. Otherwise, he agrees with the rest of the court, though he makes no reference to the matter mainly dealt with by Judge Fournier, imitating in his silence the Chief Justice.

The whole case would seem to show that the Supreme Court is not infallible; and that if it has erred, as we venture to think it has, in the matters above referred to, the better course would have been frankly to admit it, rather than to fall into worse error by seeking to maintain its infallibility: that a judge will sometimes take up time and space in the reports in dealing with a matter that has no reference to the case he is deciding: and that their lordships are not always in accord among themselves, either as to law or facts, though that is, probably, to a greater or less extent, a feature of all courts.

We have before now expressed the opinion that in the Supreme Court, which is the court of ultimate resort in the Dominion, a decision should be arrived at as the decision of the court as a unit, and judgment given accordingly. This would necessitate, of course, full and free consultation and exchange of opinion between the judges, which would in itself be most helpful, and decidedly beneficial to the public.

CURRENT ENGLISH CASES.

CONVERSION—MONEY DIRECTED TO BE INVESTED ON LAND—DEVISE OF REAL ESTATE—TRUST TO REINVEST IN LAND.

In re Cleveland, (1893) 3 Ch. 244, is a case upon the equity doctrine of conversion. Under a power of sale conferred by statute certain lands in Staffordshire were sold, and the proceeds were in the hands of the trustees upon trust to invest them in lands in England or Wales to be settled upon the limitations of a settlement, under which the Duke of Cleveland was tenant for life, with remainder to his sons successively in tail with remainder to himself in fee. He died without issue, leaving a will, by which he gave all his lands in Staffordshire to trustees upon trusts for the benefit of one family, and all the rest of his estate

not otherwise disposed of in trust for another family. The question was which of the families was entitled to the proceeds of the Staffordshire lands sold in the testator's lifetime. Kekewich, J., held that they belonged to the devisees of the Staffordshire lands; but the Court of Appeal (Lindley, Lopes, and Smith, L.JJ.) held that they passed under the residuary devise of real estate, because the proceeds were impressed with a trust to invest them in land, therefore they must be regarded as land, and would pass under a devise of land, according to the well-known maxim of equity: "Equity considers that as done which ought to be done"; but inasmuch as under the trust the money might have been invested anywhere in England, it would not pass under a devise of lands in Staffordshire. Smith, L.J., who delivered the judgment of the court, says, at p. 250: "Notwithstanding the observations of Sir George Jessel in *Chandler* v. *Pocock*, 15 Ch.D. 491, money which a testator has not got into his own hands, and which he has no right to have in his own hand, and which is held upon trust for investment in land, is, in our opinion, to be treated as real estate; although, if he has power to dispose of such money, he can dispose of it either as land or money, as he may think right."

VENDOR AND PURCHASER—TRUSTEE VENDOR—ABSENT TRUSTEE—CONDITIONS OF SALE—"WILFUL DEFAULT"—INTEREST—CONVEYANCING AND LAW OF PROPERTY ACT, 1881 (44 & 45 VICT., C. 41), S. 56—TRUSTEE ACT, 1888 (51 & 52 VICT., C. 59), S. 2, S-S. 1—(54 VICT., C. 19, S. 7, S-S. 1 (O.)).

In re Hetling, (1893) 3 Ch. 269, the Court of Appeal (Lindley, Lopes, and Smith, L.JJ.) affirmed a decision of Kekewich, J., under the Vendors and Purchasers' Act. The vendors contracted to sell a parcel of land, subject to a condition that "if from any cause whatever other than the wilful default of the vendors" the purchase should not be completed by the day fixed for completion, the purchasers should pay interest on the purchase money. The property was subject to a mortgage to two trustees, one of whom, a solicitor, was abroad, but who had left a general power of attorney with his partner, authorizing him to execute deeds and convey any property held by him as trustee or mortgagee. The vendors knew that there would be difficulty in communicating with the absent trustee, but, relying on the sufficiency of the power of attorney, fixed the 10th November, 1892,

for the completion of the purchase. The purchaser declined to complete without a conveyance from the absent trustee, alleging that, notwithstanding the Trustee Act, 1888, s. 2 (54 Vict., c. 19, s. 7 (O.)), a power to execute the deed did not include a power to receive the money. A conveyance was ultimately obtained from the absent trustee; but, owing to the delay thus occasioned, the purchase could not be completed till the 1st March, 1893. The vendors claimed interest from the 10th November, 1892; but it was held that the purchaser was right in his objection to complete without a release from the absent trustee, and that the delay was attributable to the wilful default of the vendors, and, therefore, that they were not entitled to interest. As regards the question of default, Kekewich, J., says, at p. 273: "If the completion of the contract is postponed beyond the day named, by default of the vendor, for which he is responsible, regarding him as a free agent, then that is wilful default on his part," and that, as they must be taken to have known that a conveyance from the absent trustee would be necessary, the delay in obtaining it must be taken to be wilful default on their part; and with this view Lindley, L.J., who delivered the judgment of the Court of Appeal, concurred.

EXECUTOR—DEBT BARRED BY STATUTE OF LIMITATIONS—PAYMENT OF DEBT BY EXECUTOR AFTER ADJUDICATION THAT IT WAS BARRED—RES JUDICATA—SOLICITOR ADVISING BREACH OF TRUST, LIABILITY OF.

Midgley v. *Midgley*, (1893) 3 Ch. 282, is a decision we have already referred to (see *ante* vol. 29, p. 734). In this case, one of two executors, acting upon the advice of a solicitor, voluntarily paid a debt due by the testator after it had been adjudicated upon and held to be barred by the Statute of Limitations. The present action was brought by the co-executor against the executor who had paid the debt, the creditors who had received it, and the solicitor who had advised the payment, to recover the money. Romer, J., held that the plaintiff was entitled to succeed, and that, although an executor might, as a general rule, pay a statute-barred debt without being guilty of a *devastavit*, yet that he could not do so after it has been judicially declared by a court of competent jurisdiction to be barred by the statute. The solicitor was held liable by reason of his having advised the payment, which the court, in the circumstances, held to be a breach of

trust, and was, with his co-defendants, ordered to pay not only the money wrongfully paid, but also the costs of the action.

COMPANY—ISSUE OF STOCK AT A DISCOUNT—ISSUE OF DEBENTURES AT A DISCOUNT.

In *Webb* v. *Shropshire Railways Co.*, (1893) 3 Ch. 307, the Court of Appeal affirmed the decision of Romer, J., to the effect that, under the English Companies Clauses Consolidation Act, 1845, a company may lawfully issue paid-up stock at a discount, either for cash, or for land, labour, or other consideration, subject to the liability of the directors for issuing the stock below its value, without necessity. And such companies may also, if authorized to borrow money by mortgages or debentures, validly issue debentures at a discount; and an agreement by such a company with its bankers to issue to them paid-up stock and debentures at a discount, in consideration of an advance of money, was, under the circumstances, upheld.

LUNATIC—MAINTENANCE—DEBTS OF LUNATIC.

In re Plenderleith, (1893) 3 Ch. 332, the Court of Appeal (Lindley, Lopes, and Smith, L.JJ.) decided that where a fund belonging to a lunatic is under the control of the court an order may be properly made for the maintenance of the lunatic out of the income and capital thereof, even though the effect of the order may be to leave insufficient capital to pay the debts of the lunatic, and that creditors have no right to have sufficient of the capital impounded to meet their demands, notwithstanding they may have obtained a charging order upon the fund. In other words, the court regards the maintenance of the lunatic as the first charge upon any funds of the lunatic under the control of the court, to which the claims of all creditors must be subordinated. It may be open to doubt how far the principle on which this case proceeds is consistent with the provisions of R.S.O., c. 54, s. 11.

COMPANY—PROFITS—INCOME OR CAPITAL—TENANT FOR LIFE AND REVERSIONER.

In re Armitage, Armitage v. *Garnett*, (1893) 3 Ch. 337, was a contest between a tenant for life and a reversioner as to whether certain moneys paid in respect of shares were to be regarded as capital or income. By a will the testator bequeathed his residuary estate to A. for life, and after her death upon further trusts.

Part of the residue consisted of £10 shares in a company, with £8 per share paid up. Some years after the testator's death, the company was wound up, and out of the assets there was paid for the testator's shares £9 5s. apiece. The £1 5s. excess over what had been paid up on the shares arose from two funds: one of them consisted of profits reserved by the directors to meet contingencies; and the other was a fund created under the articles of association, and being the excess of profits made over and above what would pay a dividend of ten per cent., and which was to be applied in making up the half-yearly dividend to 5 per cent. in any year in which the profits fell short of that amount. The Vice-Chancellor of the County Palatine held that the £1 5s. excess was income, and therefore that the tenant for life was entitled to it; but the Court of Appeal (Lindley, Lopes, and Smith, L.JJ.) were of opinion that though the £1 5s. per share was profit, yet that it was not income to which the tenant for life was entitled, but must go as capital.

WILL—CONSTRUCTION—RESIDUARY GIFT—INTENTION TO EXCLUDE FROM RESIDUE—ERRONEOUS RECITAL.

In re Bagot, Paton v. *Ormerod*, (1893) 3 Ch. 348, an attempt was made to exclude from a residuary gift in a will certain property undisposed of by the will, on the ground that on the face of the will there appeared an apparent intention on the part of the testatrix to exclude it from the residue. The ground on which this contention was based was the fact that the testatrix recited in the will that she had settled the property in question upon a person named, whereas, in fact, it was not settled, but still at the testatrix's disposal. But Kekewich, J., was of opinion that this was insufficient to prevent its forming part of the residue, and the Court of Appeal (Lindley, Lopes, and Smith, L.JJ.) unanimously upheld his decision, but in doing so they intimate pretty plainly that they think *Circuitt* v. *Perry*, 23 Beav. 275; *Harris* v. *Harris*, Ir. R. 3 Eq. 610; *Hawks* v. *Longridge*, 29 L.T.N.S. 449; and *Clibborn* v. *Clibborn*, 9 Ir. Jur. 381, were wrongly decided. According to Lindley, L.J., "The intention to exclude [property from the residue] must not be founded on a mistake as to the ownership of the property; it must be an intention to exclude the property, even if it is the testator's to dispose of."

SETTLEMENT—FORFEITURE CLAUSE ON BANKRUPTCY, ALIENATION, OR DEATH—INTERIM INCOME—ACCELERATION.

In re Akeroyd, Roberts v. *Akeroyd,* (1893) 3 Ch. 363, turns upon the construction of a marriage settlement whereby certain property of a wife was settled upon trust to pay the income to the wife for life, and after her death to her husband until he should become bankrupt or alienate the same, or until his death, whichever should first happen; and after the decease of the survivor, then upon trust for the children of the marriage. The husband became bankrupt in the lifetime of his wife. She having died, and her husband having survived her, the question was who was entitled to the income which should accrue between the death of the wife and the death of the husband. It was claimed by the children; and by the husband's trustee in bankruptcy under the authority of *Re Tredwell,* (1891) 2 Ch. 640; but the Court of Appeal (Lindley, Lopes, and Smith, L.JJ.) held that the children were entitled to it. North, J., had decided that the income for this period had not been disposed of by the settlement, and was therefore applicable as if no settlement had been made. The Court of Appeal distinguished the case from *Re Tredwell* on the ground that in that case the intention of the settlor could not be collected from the settlement, whereas in the present case they held that it could.

Reviews and Notices of Books.

Admiralty Law, Canada. The Rules, 1893, annotated, with forms, tables of fees, and statutes, and a treatise on the matters subject to the jurisdiction of Admiralty Courts in Canada. By Alfred Howell, Barrister-at-Law, author of "Naturalization in Canada," "Surrogate Court Practice," and other works. Toronto: The Carswell Co. (Ltd.), Law Publishers, etc., 1893.

As the author says in his preface, the coming into force of the Admiralty Act, 1891 (Canada), conferring jurisdiction throughout Canada and its waters, tidal and non-tidal, and of the General Rules for regulating the practice thereunder, published in the *Canada Gazette,* June 10th, 1893, mark a new era in the administration of maritime law and the exercise of admiralty jurisdic-

tion in the Dominion. This suggested to the author the collecting together, with those Rules, of such statutes, Imperial and Canadian, as are material, and also the leading decisions of the House of Lords, the Privy Council, the High Court of Admiralty, the Admiralty Division of the High Court of Justice, England, and of the Supreme and Exchequer Courts of Canada, relating to the jurisdiction and practice in question.

The introductory chapter gives an interesting history of Vice-Admiralty Courts in America, which were introduced with British rule on the North American continent, bringing us down to the present state of the law, so far as Canada is concerned, and to the Admiralty Act of 1891.

As perhaps might be expected, the notes to this Act, and to the General Rules and orders which have been passed to interpret and carry it into force, are but few. The litigation, up to the present time, connected with such matters has, however, been limited.

Part III. of the Act covers this subject of admiralty jurisdiction generally, the question of salvage, damage, bottomry, and respondentia; seamen's wages, ownership, mortgages, pilotage, towage, necessaries, accounts, charter parties, foreign ships, and sales by marshal. In the book is included the Act respecting the Navigation of Canadian Waters, and the Act as to the Registration of Ships (R.S.C., c. 79).

We think, in some respects, the arrangement of the matter might be improved. The profession will, however, be much indebted to Mr. Howell for his industry in this department of law, which, as time goes on, must necessarily be of greater importance, seeing that Canada now ranks so high in the list of the maritime countries in the world.

A Practical Treatise on the Office and Duties of Coroners in Ontario, and the other Provinces and the Territories of Canada, and in the Colony of Newfoundland. With schedules of fees, and an appendix of forms. Third edition. By William Fuller Alves Boys, LL.B., Junior County Court Judge, County of Simcoe, Ontario. Toronto: The Carswell Co. (Limited), Law Publishers, etc., 1893.

We are glad to see that Judge Boys has been paid the compliment of being asked for a third edition of his very useful book,

an event not common with Canadian authors, though, doubtless, it will be more so as time goes on.

The former editions were intended for use in the Province of Ontario only, but Judge Boys has adapted this to all the Dominion at large, and the colony of Newfoundland. He adds a new chapter, containing a programme of the ordinary proceedings at an inquest in consecutive order, with forms required as the inquest proceeds. This will be a convenient addition to the book, and enable coroners more readily and accurately to perform their duties.

The author apologizes for devoting a chapter to such matters as would be usually found in works on medical jurisprudence. We have no doubt, however, that this chapter, dealing with poisons, antidotes, wounds, and bruises, and hydrostatic and blood tests, will be found of great use where medical works are not obtainable.

This edition is dedicated to Hon. J. R. Gowan, C.M.G., Senator, to whom, twenty-nine years previously, the first edition of the work was dedicated.

The Principles of the Law of Evidence. With elementary rules for conducting the examination and cross-examination of witnesses. By W. M. Best, A.M., LL.B. Eighth edition. With a collection of leading propositions by J. M. Lely, Esq., Barrister-at-Law, editor of Woodfall's Law of Landlord and Tenant, etc. With notes to American and Canadian Cases by Charles F. Chamberlayne, Esq., of the Boston Bar. London: Sweet & Maxwell (Ltd.). Boston: The Boston Book Co., 1893.

The original work was published in 1849, and, together with the second, third, and fourth editions, was the work of Mr. Best himself. The fifth and sixth editions were brought out, after the author's death, by Mr. Russell, in 1870-75. Various changes were made in these editions, from time to time, in the direction of making the work more practical and less theoretical, reducing the illustrations, and leaving out other matters which increased the size of the book without adding much to its usefulness.

As the author states, the main feature of this edition is the introduction of notes on American cases, and having "the Canadian, New Brunswick, and Nova Scotia cases added," a some-

what curious way of expressing what he intended to indicate. We must, however, expect centuries to elapse before the average Englishman can grasp the geography and the political and national position of any countries besides England, Scotland, Ireland, and perhaps Connaught.

This work on Evidence has now become a formidable rival to the more familiar "Taylor on Evidence," whilst the introduction of Canadian and American notes will render it a favourite in the Dominion of Canada and the United States.

This is the first English book, internationally published, to reap the benefit of the recent American Copyright Act, and the author takes the opportunity of congratulating the legal writers of the English-speaking countries upon the passing of that Act, and of expressing the hope that its principles may be still further extended by the abolition of the requirement of transatlantic printing as a condition precedent to transatlantic copyright.

County Constable's Manual; or Handy Book, compiled from the Criminal Code, 1892-3. With schedules of fees, crimes, and punishments, the courts and jurisdiction. By J. T. Jones, High Constable, County of York. Second edition. Toronto: The Carswell Co. (Limited), Law Publishers, etc., 1893.

That is what the author calls it, a handy book for the use of peace officers, giving, in concise manner, all information that could well be given in a work of its size. It is so well known to those who require its use that little need be said about it. The publishers have done their work carefully and neatly.

DIARY FOR FEBRUARY.

1. Thursday....Sir Edward Coke born, 1552.
4. Sunday.....*Quinquagesima Sunday.*
5. Monday.....Hilary Term begins. County Court Non-Jury sittings in York begin.
6. Tuesday.....W. H. Draper, 2nd C.J. of C.P., 1856. Convocation meets.
7. Wednesday...Ash Wednesday.
9. Friday.....Convocation meets. Union of Upper and Lower Canada, 1841.
10. Saturday.....Canada ceded to Great Britain, 1763.
11. Sunday .....*1st Sunday in Lent.* T. Robertson, J. Chancery Division, 1887.
14. Wednesday...Toronto University burned, 1890.
16. Friday.....Convocation meets.
17. Saturday.....Hilary Term ends.
18. Sunday.....*2nd Sunday in Lent.* Robert Sedgewick, J. of S.C., 1893.
20. Tuesday.....Supreme Court of Canada sits.
24. Saturday.....St. Matthias.
25. Sunday.....*3rd Sunday in Lent.*
27. Tuesday.....Sir John Colborne, Administrator, 1838.
28. Wednesday...Indian Mutiny began, 1857.

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

From MEREDITH, J.] [Jan. 8.

IN RE THE HESS MANUFACTURING COMPANY.

SLOAN'S CASE.

Company—Promoter—Trust—Sale of land—Stock—Contributory—Winding up.

To make an alleged promoter of a company liable for the amount of paid-up shares allotted to him in consideration of the transfer by him to the company of property standing in his name, it must be shown that at the time of its acquisition by him he stood in such a relation to the intended company that he could not claim to have bought the property for himself, and therefore that there was no consideration for the allotment; and the court (HAGARTY, C.J.O., dissenting), having on the evidence come to the conclusion that this was not shown, reversed the judgment of MEREDITH, J., 23 O.R. 182.

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

Hellmuth and *Raney* for the respondent.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [Dec. 29, 1893.

JONES *v.* MILLAR.

Company—Shareholders—Paid-up stock—Moneys of company in hands of shareholders—Action by execution creditor to recover—Parties—Addition of—Rules 324, 326—Service on added parties.

Where the defendants agreed to take stock in a company about to be incorporated, and arranged that their interest in certain land acquired from them by the company should be applied in payment of their stock, and although it appeared that the company took the land over at a price considerably beyond that at which it was acquired by the defendants, yet, no fraud being shown, it was

Held, that the shares of stock issued to the defendants, pursuant to the arrangement, upon the incorporation of the company, as fully paid-up shares must be treated as such in an action by an execution creditor of the company seeking to make the defendants liable upon their shares for the amount unpaid thereon.

The law upon that subject is the same in this Province as that of England prior to the Companies' Act, 30 & 31 Vict., c. 131.

The plaintiff sought also to recover from the defendants moneys shown to be in their hands which were really the property of the company.

Held, that the plaintiff was entitled to judgment against the defendants for payment to him of such moneys, but the company were necessary parties to the action; and their consent to being added as plaintiffs not having been filed as required by Rule 324 (*b*), they should be added as defendants.

Held, also, a proper case, under Rules 324 (*c*) and 326, for dispensing with service upon the company, as the defendants already before the court were directors and the principal shareholders in the company.

W. R. Smyth for the plaintiff.

W. R. Riddell for the defendants.

Div'l Court.] [Dec. 29, 1893

BRISTOL AND WEST OF ENGLAND LAND, MORTGAGE, AND INVESTMENT CO. *v.* TAYLOR.

Principal and surety—Novation—Extension of time—Increase in rate of interest—Reservation of rights against surety.

A new agreement between the debtor and creditor extending the time for payment of the debt and increasing the rate of interest, without the consent of the surety, is a material alteration of the original contract, and releases the surety.

And whatever effect a provision in such agreement reserving the rights of the creditor against the surety may have on the extension of time, it is idle as regards the stipulation for an increased rate of interest.

Lash, Q.C., for the plaintiffs.

Maclaren, Q.C., and *Shepley*, Q.C., for the defendant.

Chancery Division.

FERGUSON, J.] [Dec. 22, 1893.

IN RE COWAN *v.* AFFIE.

Trial—Res judicata—Division Courts—Right to jury—Mandamus to judge.

Affie brought action against Cowan in the Division Court for $45 for the price of certain hogs; Cowan counterclaimed $5 for ten days' keep and feed of the hogs. The judge nonsuited the plaintiff, without saying anything about the counterclaim. Cowan then brought action in the same court against Affie, claiming $32 for 80 days' keep of the hogs, inclusive of the ten days in respect to which he previously claimed the $5, and he demanded a jury. Affie disputed the claim, and set up that it was *res judicata* in the former action. This latter action came up for trial, and when the jury was about to be called e defendant objected on the above ground, and the judge upheld the objection, and refused to allow the trial to go on, and entered judgment of nonsuit against Cowan, saying that he had intended in the former action to dispose finally of both claim and counterclaim, and was willing, if necessary, to amend his judgment to that effect so far as he had power to do so.

Held, on motion for a mandamus to compel the learned judge to proceed with the hearing of the second action above mentioned, that the issue whether there had been a former adjudication of the matter in dispute was one to be determined by the jury and not by the judge, the case being one in which the plaintfff was entitled to a trial by jury, the learned judge having and exercising the same powers as those possessed by a judge sitting at *nisi prius* in cases tried and that must be tried by a jury, and the judgment of a nonsuit having been pronounced without jurisdiction the case was still pending, and the order for a mandamus must be granted.

Aylesworth, Q.C., for the motion.

Watson, Q.C., *contra*.

STREET, J.] [Dec. 22, 1893.

SMITH *v.* FORT WILLIAM SCHOOL BOARD ET AL.

Public school—Municipal corporations—Ultra vires—Contract of school board—54 Vict., c. 55, s. 116, Ont.

Held, that the school board of a city, town, or incorporated village have no power or authority to enter into any contract for the building of a schoolhouse until the necessary funds have been provided, under 54 Vict., c. 55, s. 116; and

that if a certain sum has been provided under that section for the purpose of building a schoolhouse, they cannot be allowed to enter into any contract or undertake any work involving the expenditure of any greater sum, and therefore the plaintiff, a freeholder, a ratepayer, and elector of the town of Fort William, and a supporter of the public schools therein, suing on behalf of himself and all other ratepayers, was entitled to an injunction to restrain the Public School Board of that town, certain individuals, members of the board, and the contractors for the building of a schoolhouse, from proceeding with the erection thereof in a case where the contract price exceeded the amount provided under s. 116, and to an order compelling the repayment to the school corporation of certain sums paid by individual members of the School Board to the contractors for a certain portion of the work already performed.

B. B. Osler, Q.C., and *F. H. Keefer* for the plaintiff.

Aylesworth, Q.C., and *Gorham* for the defendants.

BOYD, C.] [Dec. 29, 1893.

DYER *v.* TRENTON.

Assessment and taxes—Municipal corporations—Consolidated Assessment Act, 1892, s. 52.

Held, that the intention of the "special provisions" in reference to assessment in cities, towns, and incorporated villages contained in s. 52 of the Consolidated Assessment Act, 1892, is not that the rate of such assessment made under that provision may be levied for the current year. The function of the assessment under that section is defined only with reference to future years, and what is said is that this assessment so taken at the end of the year may be adopted by the council of the following year as the assessment on which the rate of taxation for said following year may be levied.

O'Rourke for the plaintiff.

Marsh, Q.C., and *O'Leary* for the defendants.

Common Pleas Division.

MACMAHON, J.] [Sept. 4, 1893.

ORGAN *v.* CORPORATION OF TORONTO.

Municipal corporations—Ice on sidewalk—Liability of owner, but not of tenant, of adjacent building.

In an action against the city of Toronto for an accident caused by plaintiff slipping on a patch of ice on the sidewalk, caused by water—brought from the roof of an adjacent building—being allowed to flow over the sidewalk and freeze, the owner of the building and the tenant in possession thereof were, at the instance of the city, made party defendants.

Held, that the owner, but not the tenant, was liable over to the city for the damages sustained by the plaintiff.

Irwin for the plaintiff.

Biggar, Q.C., for the city of Toronto.

J. D. Montgomery for the defendant O'Grady.

D. O. Cameron for the defendant O'Donohoe.

MACMAHON, J.] [Nov. 17, 1893.

SELDON *v.* BUCHANAN.

Landlord and tenant--Surrender at law—Whether of whole or part of lands demised.

A lease to the defendant, dated 1st April, 1885, for ten years, at an annual rental of $120, payable quarterly on the 1st January, July, October, and April in each year, contained a provision enabling the lessee to determine the lease by giving three months' notice in writing before the 1st January in any year. The defendant, for his own business, only occupied part of the premises, and subletted the remainder. In November, 1891, the part subletted by the defendant being unoccupied, defendant verbally notified the lessor that unless the premises were repaired he would have to surrender. The lessor treated this as a valid notice under the lease, and, after negotiations with the defendant, it was agreed that the defendant should have the portion of the premises occupied by him at $24 a year, to take effect on the 1st of April following, but with a right to the lessor, should he sell, to cancel same.

Held, that what took place in November, 1891, was a surrender in law of the whole of the premises, and not merely of the part not occupied by the defendant.

Osler, Q.C., and *Jackson* for the plaintiffs.

T. Wells (of Ingersoll) for the defendant.

ROBERTSON, J,] [Dec. 15, 1893.

BURNHAM *v.* BOSWELL.

Will—Residuary devisee—Power of disposal—Disposal by deed—Sufficiency of.

The residuary clause of a will was: "I give and bequeath to my sister M. all the rest and residue of my personal estate," etc., "and what shall remain undisposed of I give and bequeath to my brother H., to and for the use of himself and his children." M. executed a deed of trust whereby she conveyed the residuary personal estate, with other moneys, to E.B., upon certain trusts. Afterwards by her will she disposed of the said estate, etc., somewhat differently from that declared by the deed of trust.

Held, that by the deed of trust there was a sufficient disposal of the said personal estate under the terms of the devise to M., and therefore M.'s subsequent will was inoperative to effect same.

Farewell, Q.C., and *Yarnold* for the plaintiff.

Hampden Burnham for the defendant.

Div'l Court.] [Dec. 30, 1893.

REGINA *v.* CHARLES.

Liquor License Act—Club—Having liquor for sale without a license—Locality of.

A company was incorporated under the Joint Stock Letters Patent Act, R.S.O., c. 157, for establishing a driving park to improve the breed of horses, etc., and for such purposes to acquire the Dufferin Park property, being 161 acres of land on Dufferin street, in the city of Toronto, on which were erected houses, a grand stand, stables, etc., and with power to erect a club house, and, subject to the Liquor License Act, to maintain and rent or lease same, if desirable, for social purposes, to charge fees for persons using any of the privileges or property of the company, and generally to do all things incidental or conducive to the objects aforesaid. The subscribed stock amounted to $5,800; $5,000 was taken up by defendant, and the remainder by three other persons.

Held, that the charter did not authorize the company to have a club house at any other place than that specified in the charter; and when, therefore, the defendant was found in possession of liquor at a place called the Occident Hall, on Queen street in said city, though claimed to be a club constituted under said charter, and of which the defendant claimed to be the secretary, he was properly convicted under s. 50 of the Liquor License Act, R.S.O., c. 194, for unlawfully keeping liquor for sale, barter, or traffic, without a license.

A. G. McLean for the applicant.

J. R. Cartwright, Q.C., and *C. R. W. Biggar*, Q.C., *contra*.

Div'l Court.] [Dec. 30, 1893.

CLEVELAND PRESS CO. *v.* FLEMING.

Prohibition—Division Courts—Amount beyond jurisdiction—Right of judge to amend by striking off excess.

Where a claim for an advertising account beyond the jurisdiction of the Division Court, namely, $143.20, is brought in that court, the judge at the trial has no power to strike out the excess so as to bring the amount within the jurisdiction of the court.

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

W. R. Smyth for the defendant.

Div'l Court.] [Dec. 30, 1893.

REGINA *v.* REDMOND.

Public Health Act—By-law prohibiting unloading manure on railway premises—Conviction—Validity of.

Held, that the unloading of manure from a car on a certain part of a railway premises into wagons to be carried away came within the terms of a by-law amending the by-law appended to the Public Health Act, R.S.O., c. 205, prohibiting the unloading of manure on said part of said premises; that the use of

the word "manure" was not, of itself, objectionable; and that it was not essential to show that it might endanger the public health.

A conviction for unloading a car of manure on said premises, as contrary to said by-law, was, therefore, affirmed.

Aylesworth, Q.C., for the applicant.

H. E. Irwin, contra.

Practice.

ROSE, J.] [Dec. 14, 1893.

BLONG *v.* FITZGERALD.

Parties—Mortgage—Foreclosure—Wife of mortgagor—Right to redeem—Inchoate right of dower.

The wife of the mortgagor, who has joined in the mortgage for the purpose of barring her dower, to the extent of the mortgage only, has the right to redeem during her husband's lifetime, and is a necessary party to an action of foreclosure in the first instance.

And where she was not so made a party, and judgment of foreclosure was recovered in her absence, she was, after judgment and report, added as a defendant upon her own petition, and permitted to redeem or pay off and obtain an assignment of the mortgage.

John Greer for the petitioner and plaintiff.

J. A. Mills for the defendants, the Union Bank of Canada.

MEREDITH, J.] [Jan. 9, 1894.

IN RE POTTER AND CENTRAL COUNTIES R.W. CO.

Appeal—Award—Railway Act, 51 Vict., c. 29, s. 161 (D.)—Time—Courts—Divisional Court—Single judge.

An appeal under s. 161 of the Railway Act, 51 Vict., c. 29 (D.), from an award need not be brought on for hearing within a month from notice of the award. An effective notice of appeal, given in good faith, within the month, is sufficient.

Such an appeal should be brought on for hearing before a single judge in court, not before a Divisional Court.

McCarthy, Q.C., for the railway company.

Moss, Q.C., for the land owner.

BOYD, C.] [Jan. 15, 1894.

JACOBS *v.* ROBINSON.

Mechanics' liens—Summary procedure—53 Vict., c. 37—County Court—Jurisdiction of local master—Amendment—High Court—Costs.

A Master of the Supreme Court of Judicature has no jurisdiction as such to entertain a summary proceeding under 53 Vict., c. 37, to enforce a mechanic's lien launched in a County Court.

Secord v. *Trumm*, 20 O.R. 174, followed.

Nor can he confer jurisdiction upon himself by subsequently directing an amendment of the affidavits and papers filed by substituting the High Court for the County Court.

An appeal from an order so amending was allowed, but without costs, because the objection should have been taken in time.

L. G. McCarthy for the plaintiff.

J. M. Clark for the defendant.

NOVA SCOTIA.

SAVARY, J.] [Co. Court.

BALCOM *v.* PHINNEY.

Promissory note—Endorsement by person other than payee—Liability to payee.

J.L.P. made a note in favour of J.A.B., and before delivering it to the latter procured E.P. to endorse it. J.A.B. sued E.P. as endorser, and in the alternative as a guarantor. Amendment having been applied for, the trial judge allowed all amendments necessary to state the facts as proved to be considered as made.

Held, that the defendant was liable as an endorser.

MANITOBA.

COURT OF QUEEN'S BENCH.

DUBUC, J.] [Nov. 29, 1893.

SIMPSON *v.* STEWART.

Ejectment—Proof of will—Ancillary letters probate—Identification of testator and executors—Proof of Crown patent—Tax deed—Necessary evidence to support.

Ejectment brought by executors and trustees of estate of Alexander Smith in his lifetime of Glasgow, Scotland.

Defendant asserted title under tax deed.

Ewart, Q.C., and *Perdue* for the plaintiffs, adduced the following evidence:

(1) Ancillary letters probate of the trust disposition and settlement and two codicils, of the deceased, issued out of the Surrogate Court of the Eastern Judicial District of Manitoba, where the lands are situate.

(2) Exemplification of letters patent from the Crown for said lands in favour of deceased.

(3) Depositions of Agnes S. Bell and Robert Bell taken under commission at Ottawa, in Ontario, with an affidavit of plaintiff's attorney that these witnesses were without the province.

Cameron and *James* for defendant moved for a nonsuit on the grounds (1) that the original will should have been produced; (2) that the plaintiffs had not been identified as the executors and trustees under the will; and (3) that Alexander Smith, the testator, had not been identified as the patentee.

Held, (1) While under the old law the first objection would stand, yet now, where under our statutes land is assimilated to personal property and goes to the executors, and in view of the provisions of s. 118 of the Real Property Act, whereby before the district registrar the probate or an office copy is considered sufficient evidence in the granting of a certificate of title, it would appear by analogy that the probate would be sufficient evidence to satisfy the court.

(2) In any event, the same conclusion might be arrived at by applying the rule laid down in Taylor on Evidence, s. 395, 16th ed., in regard to an executor proving title by the production of probate or an exemplification thereof granted by a registrar or district registrar of the court of probate: *Cox* v. *Allingham*, Jac. 514; *Bissett* v. *Maw*, 7 A. & E. 253.

(3) As to the identification of the plaintiffs as the executors and trustees named in the will, in the absence of proof to the contrary the identity of names may be considered as a reasonable and sufficient presumption that they are the same persons: Armour on Titles, 105, quoting *Nicholson* v. *Burkholder*, 21 U.C.R. 108.

(4) The same may be said as to the identification of the deceased as the patentee.

(5) By producing the exemplification of patent the plaintiffs made a *prima facie* case.

Nonsuit refused.

The only evidence brought forward by the defendant was the order in council, proved by a copy of the *Manitoba Gazette*, establishing the Adelaide School District, and a tax sale deed to him from the trustees of the school district, dated March 23, 1881.

Held, the holder of a tax deed must, in order to establish his title, show that there were some taxes due and in arrears at the time of sale: *Stevenson* v. *Truynor*, 12 O.R. 804; *Ryan* v. *Whelan*, 1 W.L.T. 30, 104; 3 W.L.T. 167; *Archibald* v. *Youville*, 1 W.L.T. 140; and *Alloway* v. *Campbell*, 2 W.L.T. 26, 48.

Verdict for plaintiff.

TAYLOR, C.J.] [Dec. 6, 1893.

CANADA PERMANENT LOAN AND SAVINGS COMPANY *v.* DONALDSON.

Mortgagor and mortgagee—Extending time for redemption — Grounds for so doing considered—Terms—Costs.

In equity.

Bill to foreclose mortgage. November 16 last was the day appointed for payment. On that day defendants served notice of motion to have time extended for three months.

The loan was originally $40,000, interest at seven and a half per cent. Default having been made in payment of instalments, plaintiffs went into pos-

session in April, 1885. The bill was filed in February, 1889, and there seemed to be some delay in the prosecution of the suit, caused mainly by the deaths of several of the original defendants. On taking the accounts plaintiffs claimed $58,000, but after the filing of a surcharge and some proceedings in the Master's office the amount due was settled at $50,000; and by his report of May 15, 1893, the Master fixed November 15 ult. as the day for redemption. A number of affidavits were filed on both sides, fixing the value of the property at various amounts ranging from $53,000 to $80,000. The Chief Justice found that the true value was between $60,000 and $65,000.

Though the defendants had not shown, especially at an early stage, any great activity in endeavouring to raise money to pay off the loan, yet it appeared from an affidavit of their solicitor that he had been making, since the Master's report, efforts to sell the property, and that at all events, up to the middle of September, he believed that a sale could be effected at from $60,000 to $65,000. He further showed that since June the property had been in the hands of a real estate agent, who had felt sure of obtaining a purchaser for $60,000, and persons kept negotiating about it, but the stringency of the money market existing for the last four or five months prevented an actual offer; and that at present two persons assure him that within sixty days' time they would pay $55,000 for the property; that he had every hope of obtaining a larger price. An affidavit from the said estate agent was also filed to a similar effect.

Kennedy, Q.C., and *Perdue* for the motion.

Culver Q.C., for the defendants: The conduct, the great delay of defendants, has been such as to disentitle them to indulgence: *Brothers* v. *Lloyd*, 2 Ch. Ch. 119, and *Miller* v. *Cameron*, 9 Prac. 502. No affidavit is filed by any of the parties entitled to or interested in the property: *Anon.*, 4 Gr. 61.

Held, (1) The present case differs from that last mentioned, *Anon.*, in that the defendants herein are not in this province, but resident in Ontario and the United States, and the solicitor states not merely his belief that defendants have been trying to raise the money, but also what he has himself done in that direction; and there is also an affidavit of the agent.

(3) Without going so far as Lord Manners in *Jessop* v. *King*, 2 Ball and B. 91, when he said that the slightest ground would induce the court to extend the time, yet "it does not require a very strong one," to use the words of Lord Lyndhurst in *Nanny* v. *Edwards*, 4 Russ. 124; and even when the case is very weak the time has been extended: *Holford* v. *Yate*, 1 K. & J. 677; and relief has been granted where there has been a temporary difficulty in raising the money, coupled with a fair prospect of doing so within a reasonable time: *G.V.*, 2 Ch. Ch. 33.

Time extended for three months, the defendants paying interest at seven and a half per cent. up to that date upon the whole amount payable on November 15 last, and paying the costs of the present motion on the 21st of December instant. Costs may be taxed before the order is drawn up and payment of them a condition precedent to any further extension of time. As plaintiffs may receive rents during the further time now given these should be credited against the amount due, and the order may provide for notice of the amount to be credited being given, say, one week before the day fixed for payment.

BAIN, J.] [Dec. 8, 1893.

MCKAY *v.* GRANT.

Interpleader issue—Mortgagor and mortgagee—Attornment clause in mortgage—Of none effect unless there is a bona fide demise.

Baker, for execution creditors, moved to bar the claimants.

Vivian for claimants.

Machray for sheriff.

Held, "It is well established law that it is competent for the parties to a mortgage to agree that as regards the mortgaged premises they shall stand to one another as landlord and tenant, and that such an agreement will prevail against third persons, provided that it has been made *bona fide* and honestly: but such an agreement cannot be held to have been made *bona fide* unless, as Mr. Justice Strong said in *Hobbs* v. *The Ontario Loan and Debenture Co.*, 18 S.C.R. 483, it appears that it was really the intention of the parties to create a tenancy at the rental which is reserved, and not merely under colour and pretence of a lease to give the mortgagor additional security not incidental to his character as mortgagee." *Vide* also *Ex parte Voisey*, 21 Ch.D. 442: *dictum* of Cotton, L.J., there expressed, approved of.

In the present case it was clear beyond question that there was no intention of creating an actual tenancy at an actual rent; and as it did not seem possible that any further evidence could change the effect of the claimants' own statements, and as it was not suggested that there was any further evidence to give, the plaintiff John Grant should be barred with costs.

NEW RULES OF COURT.

The following new Rules were passed by the Supreme Court of Judicature for Ontario for 29th December, 1893:

Ordered that Rules 210, 211, 212, be hereby repealed, and the following substituted therefor:

210.—A judge shall be at Osgoode Hall every week, except vacation, for the purpose of disposing of all business, except trials, which may be transacted by a single judge. All applications during the week are to be made to the judge assigned to take the weekly work.

211.—The business of the weekly sittings shall be as follows:

Monday and Friday—Chambers business. Motions first, appeals afterwards.

Tuesday, Wednesday, and Thursday—Court business.

212.—All business, except *ex parte* motions, is to be entered on a list for each court day, and to be disposed of in the order of entry, unless otherwise directed by the judge.

212 (*a*)—Lists shall be prepared by the proper officers of all court business for each day, in which the cases and matters shall be entered in the order in which the *præcipe* are filed with the officer.

212 (*b*).—The above rules shall come into operation on and after the 8th January, 1894, and prior publication in the *Ontario Gazette* is hereby dispensed with.

A list of non-jury cases to be tried at Toronto shall be prepared by the proper officer,

upon which he shall enter all actions wherein, after close of the pleadings, notice of trial has been given by either party.

Either party shall be at libery to give ten days' notice of trial in respect of such non-jury cases, and to enter the same on the trial list. Such actions may be tried in the order in which they are entered at the current or next available sittings of the court.

In addition to the above, the following rules were passed on the 4th of January, 1894:

In cases of non-jury actions to be tried at Toronto, notice of trial may be as follows:

"In the High Court of Justice,——Division: A.B. v. C. D.:

"Take notice of trial of this action (or the issues in this action ordered to be tried) at the City of Toronto in ten (or five) days after the service thereof, or as soon thereafter as the court may be sitting for the trial of actions without a jury.

"Dated, etc.

"X. Y., Plaintiff's Solicitor.

"To , Defendant's Solicitor."

After the expiration of the time mentioned in the notice of trial of an action in Toronto, without a jury, either party may enter the action for trial. If both parties enter the action for trial, it shall be tried in the order of the plaintiff's entry.

The party entering the action for trial in Toronto without a jury shall at the time of the entry thereof deliver to the proper officer one copy of the whole of the pleadings in the action, for the use of the judge at the trial, such copy to be certified as a true copy by the officer having charge of the pleadings filed, and to be called the record.

Actions to be tried in Toronto without a jury may be entered for trial before or during any sittings for the trial of actions without a jury; but no such action shall be placed on the peremptory list for trial before the day following that on which the same is entered.

Law Students' Department.

LAW SCHOOL EXAMINATIONS.

First Year—September, 1893.

EQUITY.

Examiner: A. W. Ayloun-Finlay.

1. What is implied by the term "accident," as used in equity? In what cases, if any, will it not be relieved against?

2. How far is a contract induced by fraud *void?* May it ever be enforced by third parties?

3. A grocery business is carried on in mortgaged leasehold premises. On foreclosure, is or is not the good will of the business included in the mortgage, and why?

4. What is meant by a resulting trust? Give examples.

5. A. does not act injurious to the rights of B., and without his acquiescence. Subsequently B. gives an express promise to A. that he will not take legal proceedings to have the injury done to him redressed. How far is B. barred from afterwards taking such proceedings, and why?

6. A. contracts to purchase property from B., but, on searching title, discovers that the concurrence of C., a third party, is necessary. He purchases C.'s interest and then rescinds his contract with B., on the ground that B. cannot give a good title. How will such a proceeding be regarded in equity, and why?

7. In a case, within the Statute of Frauds, the court is asked to avoid a written agreement on the ground of mistake. The court does so. How far is this course consistent with the spirit and terms of the statute?

8. A., B., and C. enter into a written agreement, by which they bind themselves, under a penalty, that they will not bid against each other at a certain sale of property by auction. B. breaks the contract and bids against both A. and C. These two sue B. for the penalty. May or may they not recover, and why?

9. In what cases, if at all, may a trustee make loans from the trust estate on personal security?

10. How may the remedy of the *cestui que trust* against his trustee for breach of trust be barred?

CONTRACTS.

Examiner: F. J. Joseph.

1. A. owes $500 to B., who requires security for the debt. A. is owed $500 by C. A. gives to B. a written order on C. to pay B. the amount C owes to A. C., in writing, acknowledges the order. On failure to pay, can B. sue C.?

2. What are the rights of a surety under the provisions of the Mercantile Amendment Act, who has paid a debt as against his principal and co-surety?

3. A. advertises that he will give $50 to any one who will bring back a horse which he has lost. Is this a binding contract on A. to pay to any one $50 who returns him his horse?

4. Will a conditional promise to pay take a debt out of the Statute of Limitations?

5. Mention any case in which a person can actually give a better title to the transferee than he himself possessed.

6. What difference is there in the effect of a gift of chattels by word of mouth and by deed?

7. A., by writing, engages B. as a clerk for five years at a salary of $500 a year, payable annually. Can evidence be given of a parol agreement that the salary should be paid quarterly?

8. A. purchases a horse from B. for $300; the contract is put in writing. At the time of the contract B. verbally warrants the horse sound. Shortly afterwards A., desiring to sell the horse to C., writes to B. asking him to write him a letter warranting the horse sound. B. writes to A.: "I warrant the horse you purchased from me on the 1st May last perfectly sound." The horse turning out to be unsound, can A. sue B. for breach of warranty on the original contract, or on the subsequent writing?

9. A. arrests B. In order to obtain bail, B. gives his note for $1,000 to C. to become his bail. B. is again arrested by D., and in order to obtain his liberty gives D. a chattel mortgage on his property bearing unconscionable

interest. Both arrests are legal. When C.'s note and mortgage fall due, he refuses to pay them on the ground of illegality. Can he succeed?

10. In an action on an agreement, can a defendant sucessfully set up as a defence that part of the consideration for the agreement was that the plaintiff would not prosecute the defendant for a misdemeanour committed by him?

REAL PROPERTY.

Examiner: M. G. Cameron

1. Give an example of an estate *pur autre vie*, and explain what description of estate a tenant *pur autre vie* takes.

2. What rights, if any, has an infant with respect to the holding of land, and with reference to the making of a binding disposition of an estate therein?

3. Explain briefly the meaning of the expression that "Equity follows the law."

4. Set out shortly the different ways by which a will may be revoked.

5. Give the necessary requisites to entitle a widow to dower.

6. Explain the distinction between contingent remainders, executory interests, and vested remainders, and give an example of each.

7. Distinguish between a reversion and a remainder, and give an example of each and explain how they arise.

8. Explain briefly in what way a will may be properly attested.

9. What are the rights of a party who makes lasting improvements upon the land of another, without the owner's consent, when the improvements are made under the belief that the party making them is the real owner of the land?

10. Give the necessary requisites to the validity of a lease of land for a term of ten years.

Second Year.

CRIMINAL LAW.

Examiner: A. W. Aylesworth-Finlay.

Answer ten questions only.

1. A person is called upon by an alleged peace officer to assist in the arrest of a third person, suspected of having committed an offence. What are the conditions which justify such person giving the assistance required?

2. What constitutes an accessory after the fact?

3. What constitutes an affray?

4. What is essential to constitute the offence of "subornation of perjury"?

5. In what circumstances does "culpable homicide" amount to murder?

6. What constitutes an assault?

7. What constitutes the publication of a libel?

8. Under what conditions may creatures wild by nature be capable of being stolen?

9. When, if at all, does exaggeration, commendation, or depreciation of the quality of anything constitute a false pretence?

10. What constitutes the crime of robbery?
11. What constitutes the crime of burglary?
12. What constitutes a forcible entry on land?
13. What is the distinction between robbery and extortion?

CONTRACTS.

Examiner: F. J. Joseph.

Answer ten questions only.

1. In what cases is an agent personally liable on contracts entered into for a principal?

2. In a sale by auction offered "without reserve," and one of the conditions of sale being that "no person shall retract his bidding," may either the seller withdraw the property or bidder retract his offer when once the property is put up for sale?

A. offers B. to sell him a certain property for $1,000, and gives him, B., one month to accept the offer. What would be the rights of the executors of A. or B. were either of them to die before the offer was accepted?

4. Under what circumstances can money paid under a mistake be recovered back?

5. Is the sale of a growing crop a contract within the 4th or 17th sections of the Statute of Frauds?

6. A. and B. are joint contractors for the erection of a building for C. During the progress of the work A. dies, and subsequently, before the completion of the work, B. dies. Against whom, acting for C., would you bring an action for the non-completion of the contract?

7. Bonds are deposited by a customer in a bank for safe keeping. A clerk of the bank steals them and absconds. Is the bank liable for the loss of the bonds?

8. Will an action lie against a married man for breach of promise of marriage, and would it make any difference if both the parties to the suit were under age?

9. Does the fact of a creditor who has a lien taking a note for the debt discharge his right to hold the lien?

10. A. buys a horse from B. which B. warrants to be sound. A., a short time afterwards, sells the horse to C. with a similar warranty. C. sues A. for breach of warranty and recovers. Can A., in a suit against B. for breach of warranty, recover the costs of his defending the action by C.?

11. Can a plaintiff obtain both specific performance of a contract and damages for its non-performance?

12. Under what circumstances is a mother entitled to the earnings of her children?

13. Within what time must an action be brought to recover a share of the personal estate of an intestate?

PRACTICE.

Examiner: M. G. Cameron.

1. What is the rule as to the special indorsement of a writ of summons?
2. What sort of service upon a lunatic shall be deemed good service?

3. State briefly the grounds upon which a receiver will be appointed to a lunatic's estate?

4. Within what time must a plaintiff in his action deliver his statement of claim?

5. Is a demurrer in an action to recover land ever, and, if so, when, the proper course to pursue?

6. What is the proper remedy for a person who is made a party to an action by a Master and thinks he was improperly made a party, and what course should he pursue?

7. Explain when personal service of a writ of summons may be dispensed with.

8. How long does an original writ of summons remain in force; and if it is not served within the limited time, what steps should be taken?

9. Is there any rule that governs the place of venue in an action? Explain.

10. What formalities are necessary to the proper issuing of a writ of summons?

11. Set out in detail the form of indorsement for an account, upon a writ of summons.

12. If there is any, state what difference there is in the case of service upon a married woman and a male defendant to an action?

13. State briefly the circumstances under which an action may be dismissed for want of prosecution.

ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

Covenants to keep in repair. *Justice of the Peace*, Oct. 14, 1893.
Passengers not paying fares. *Ib.*, Oct. 21.
Selling poisons as ingredients. *Ib.*, Oct. 28.
Negligence distinguished from fraud. *Ib.*, Nov. 11.
Deposits under contracts and liquidated damages. *Ib.*, Nov. 18.
Conditions precedent in fire policies. *Ib.*, Nov. 25.
Statutory right to interest on debts. *Ib.*, Dec. 9
Executors paying their own claims first. *Ib.*, Dec. 30.
Contempt of court. *Ib.*, Jan. 13, 1894.
The principles of evidence considered in their relation to the nature of the tribunal. *University Law Review*, Nov. 1.
The pecuniary value life and limb. *Ib.*, December.
The German Code of Criminal Procedure. *Law Quarterly*, January.
Modern legislation in the United Kingdom. *Ib.*
Insurance of limited interests—Mortgagor and mortgagee. *Ib.*
Property in ice. *Central Law Journal*, Nov. 3.
Chattel mortgage lien—Agistment—Comity. *Ib.*, Nov. 10.
False pretences in the purchase of merchandise—Rescission of the contract of sale. *Ib.*, Nov. 24.
Rights and remedies of preferred shareholders. *Ib.*, Dec. 1.
Fructus industriales and naturales. *Ib.*, Dec. 8.
Privileged communications in evidence. *Ib.*, Dec. 22.
A legal detention of baggage. *Ib.*, Jan. 5.
The doctrine of election in equity. *Ib.*, Jan. 12.
Delivery in *donationes mortis causa*. *Ib.*, Jan. 19.
Expert and opinion evidence. *Albany Law Journal*, Nov. 18.

SPRING SITTINGS, 1894.

DATE.	TOWN.	JURY OR NON-JY.	JUDGE.	REMARKS.
MARCH.				
Monday, 5th	Milton	Both	Boyd, C.	Supreme Court Sittings commence 20th of February, and 1st of May.
" "	St. Catharines	Jury	Galt, C. J.	
" "	L'Orignal	Both.	Falconbridge, J.	
" "	Owen Sound	Jury	MacMahon, J.	
" "	Belleville	Jury	Street, J.	
Tuesday, 6th	Cornwall	Non	Ferguson, J.	Court of Appeal Sittings commence 6th of March, and 8th of May.
" "	St. Thomas	Jury	Meredith, J.	
Thursday, 8th	Chatham	Non	Boyd, C.	
" "	Ottawa	Jury	Falconbridge, J.	
Friday, 9th	Walkerton	Non	Armour, C. J.	
Monday, 12th	Toronto (1st Week)	Non	Galt, C. J.	Hilary Sittings of Divisional Courts (Q.B.D., and C.P.D.) commence 5th of February.
" "	Brampton	Both.	Ferguson, J.	
" "	Brockville	Non	Rose, J.	
" "	Cobourg	Jury	Robertson, J.	
Tuesday, 13th	Goderich	Jury	Armour, C. J.	
" "	Sandwich	Jury	Boyd, C.	
Monday, 19th	Peterborough	Jury	Rose, J.	Last day for serving Notice of Motion for Hilary Sittings against a Judgment or for a New Trial, 27th of January.
" "	Kingston	Non	Robertson, J.	
" "	Toronto (2nd Week)	Non	Falconbridge, J.	
" "	Orangeville	Both.	MacMahon, J.	
" "	Woodstock	Jury	Street, J.	
Tuesday, 20th	Barrie	Non	Armour, C. J.	
" "	Sarnia	Jury	Meredith, J.	
Friday, 23rd	Brantford	Non	Galt, C. J.	
Monday, 26th	Toronto (3rd Week)	Non	Rose, J.	Motions must be set down for the Hilary Sittings, on or before 1st of February.
" "	Stratford	Jury	Robertson, J.	
Tuesday, 27th	Lindsay	Jury	Armour, C. J.	
" "	Pembroke	Both.	MacMahon, J.	
" "	London	Jury	Meredith, J.	
APRIL.				
Monday, 2nd	Simcoe	Non	Boyd, C.	Sittings of Divisional Court in Chancery Division, commence 15th of February.
" "	Owen Sound	Non	Galt, C. J.	
" "	Toronto (4th Week)	Non	Street, J.	
Tuesday, 3rd	Whitby	Non	Armour, C. J.	
" "	Walkerton	Jury	Ferguson, J.	
" "	Cornwall	Jury	Falconbridge, J.	
" "	Perth	Both.	MacMahon, J.	
Thursday, 5th	Hamilton	Jury	Boyd, C.	Last day for serving Notice of Motion for Chancery Sittings against a Judgment or for a New Trial, 7th of February.
" "	Guelph	Jury	Meredith, J.	
Monday, 9th	St. Thomas	Non	Ferguson, J.	
" "	Toronto (Civil) 1st Wk	Jury	Falconbridge, J.	
" "	Toronto (5th Week)	Non	MacMahon, J.	
" "	Chatham	Jury	Street, J.	
Tuesday, 10th	Ottawa	Non	Robertson, J.	
Monday, 16th	Toronto (6th Week)	Non	Boyd, C.	Motions must be set down for the Chancery Sittings, on or before 12th of February.
" "	Sandwich	Non	Rose, J.	
" "	Berlin	Both.	Falconbridge, J.	
" "	Belleville	Non	MacMahon, J.	
" "	Toronto (Civil) 2nd Wk	Jury	Street, J.	
Tuesday, 17th	Brockville	Jury	Ferguson, J.	
Wednesday, 18th	Sarnia	Non	Galt, C. J.	

DATE.	TOWN.	JURY OR NON-JY.	JUDGE.	REMARKS.
Thursday, 19th	Brantford	Jury	Robertson, J.	Easter Sittings of Divisional Courts (Q.B.D. and C. P.D.) commence 21st of May.
" "	Woodstock	Non	Falconbridge, J.	
" "	Peterborough	Non	Meredith, J.	
Monday, 23rd	Toronto (7th Week)	Non	Boyd, C.	
" "	Toronto (Civil) 3rd Wk	Jury	Galt, C. J.	
" "	Kingston	Jury	Armour, C. J.	
" "	St. Catharines	Non	MacMahon, J.	Last day for serving Notice of Motion for Easter Sittings against a Judgment or for a New Trial, 12th May.
" "	Barrie	Jury	Street, J.	
Tuesday, 24th	Cobourg	Non	Meredith, J.	
Wednesday, 25th	Welland	Both.	Rose, J.	
Monday, 30th	London	Non	Boyd, C.	
" "	Picton	Both.	Galt, C. J.	
" "	Toronto (1st Week)	Criminal	Robertson, J.	
" "	Cayuga	Both.	Falconbridge, J.	Motions must be set down for Easter Sittings on or before 17th of May.
MAY.				
Tuesday, 1st	Napanee	Both.	Rose, J.	
" "	Simcoe	Jury	Ferguson, J.	Sittings of Divisional Court in Chancery Division commence 7th June.
Monday, 7th	Whitby	Jury	Ferguson, J.	
" "	Guelph	Non	Rose, J.	
" "	Hamilton	Non	Robertson, J.	
" "	Toronto (2nd Week)	Criminal	Meredith, J.	
Tuesday, 8th	Goderich	Non	Street, J.	Last day for serving Notice of Motion for Chancery Sittings, against a Judgment or for a New Trial, 30th of May.
Monday, 14th	Stratford	Non	Galt, C. J.	
" "	Toronto (3rd Week)	Criminal	Armour, C. J.	
Tuesday, 15th	Lindsay	Non	Street, J.	
JUNE.				
Monday, 4th	Sault Ste. Marie	Both.	Robertson, J.	
Monday, 11th	Port Arthur	Both	Robertson, J.	Motions must be set down for Chancery Sittings on or before 4th of June.
Thursday, 21st	Rat Portage	Both.	Robertson, J.	
JULY.				
Tuesday, 10th	Bracebridge	Both.	Boyd, C.	
Tuesday, 17th	Parry Sound	Both.	Boyd, C.	

DIGEST OF CASES.

REPORTED AND NOTED IN THIS NUMBER.