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LAW OF THE CANADIAN CONSTITUTION: GENERAL LEGISLATIVE POWER OF THE DOMINION PARLIAMENT.*

Secs. 91 and 92 of the British North America Act purport to make a distribution of legislative powers between the Parliament of Canada and the Provincial Legislatures, sec. 91 giving a general power of legislation to the Parliament of Canada, subject only to the exception of such matters as by sec. 92 are made the subjects upon which the Provincial Legislatures were exclusively to legislate.

The great importance of that feature of the Constitution of the Dominion of Canada whereby what may be called the general residue of legislative power is vested in the Dominion Parliament is obvious. The words of the proposition are taken from the judgment of the Privy Council in *Dow* v. *Black* (1875), (*a*); and in their judgment in *Valin* v. *Langlois* (1879), (*b*), their Lordships say again, more concisely: "That which is excluded by the 91st section from the jurisdiction of the Dominion Parliament is not anything else than matters coming within the classes of subjects assigned exclusively to the Legislatures of the Provinces." And so in *Russell* v. *The Queen* (1882), (*c*), dealing with the Canada Temperance Act, their Lordships say: "If the Act does not fall within any of the classes of subjects in sec. 92, no further question" (*sc.*, as to its validity) "will remain, for it cannot be contended, and indeed was not contended at their Lordships' bar, that if the Act does not come within one of the classes of subjects assigned to the Provincial Legislatures, the Parliament of Canada had not by its general power 'to make laws for the peace, order, and good government of Canada' full legislative authority to pass it." And in *Bank of Toronto* v. *Lambe* (1887), (*d*), they say that they adhere to the view "which has already been taken by this committee, that the Federation Act exhausts the whole range of legislative power, and that whatever is not thereby given to the Provincial Legislatures rests with the Parliament"; referring to which last dictum Osler, J.A., observes in *Clarkson* v. *Ontario Bank* (1888), (*e*), in regard to the Ontario Act respecting assignments for the benefit of creditors, 48 Vict., cap. 26, which he held to be *ultra vires*: "Another argument that was pressed upon us

* The following article is from advanced sheets of a forthcoming work upon the "Law of the Canadian Constitution," by A. H. F. Lefroy, Barrister-at-law.

(*a*) L. R. 6 P.C. at p. 280; 1 Cart. at p. 105.

(*b*) 5 App. Cas. at p. 120; 1 Cart. at p. 163.

(*c*) 7 App. Cas. at p. 836; 2 Cart. at p. 19.

(*d*) 12 App. Cas. at p. 588.

(*e*) 15 A.R. at p. 191.

may be noticed, viz., that so long as Parliament had passed no general law dealing with the subject, the field was open to the Legislature to supply the want of one as nearly as might be. Pushed to its legitimate conclusion, this argument implies that the Legislature of each Province may pass a local bankrupt or insolvent Act; but it is met and answered by the observation of the Privy Council in *Lambe* v. *Bank of Toronto*, (*f*), not indeed for the first time made there, that the Federation Act exhausts the whole range of legislative power, and that what is not thereby given to the Provincial Legislatures rests with the Parliament."

We have here that distribution of legislative power which, as Crease, J., says in the *Thrasher case* (1882), (*g*), "may one day, though in the perhaps distant future, expand into national life." He tells us, in the same case (*ib.*, at p. 199), that he has from the first examination into the Act regarded sec. 91 of the B.N.A. Act "as the legal keystone of Confederation, without which the whole fabric, built up with such exceeding care, would infallibly tumble to pieces from absolute lack of power of cohesion." And, again (*ib.*, at p. 200), this section, he says, appears to him "to contain the legal germ of development of the Union in the future clearly shadowed forth in the early speeches of Sir John Macdonald." And (*ib.*, at p. 202) he cites words of Lord Carnarvon in introducing the Act into the House of Lords, in reference, as he says, to this 91st section: "In this is, I think, comprised the main theory and constitution of Federal Government; on this depends the practical working of the new system. The real object which we have in view is to give to the central Government those high functions and almost sovereign power by which general principles and uniformity of legislation may be secured in those questions of common import to all the Provinces; and at the same time to retain for each Province so ample a measure of municipal liberty and self-government as will allow, and indeed compel, them to exercise those local powers which they can exercise with great advantage to the community." But the subsequent Privy Council decision of *Bank of Toronto* v. *Lambe* (1887), (*h*), seems to very clearly show that the learned judge goes too far in saying, as he does (at p. 199), that "the very groundwork and pith of the constitution is that the Dominion is Dominus." At all events, the Dominion Government or Parliament can in no sense be called "Dominus," except so far as the possession of the veto power can be said to make them so. In the face of *Bank of Toronto* v. *Lambe*, it is impossible any longer to say, as Crease, J., says in the *Thrasher case* (*i*), that the Local Legislatures have to exercise their legislative powers "so that they shall not interfere with the general legislation in similar or on the same matters under the exclusive powers expressed or necessarily implied as belonging to the Dominion under sec. 91," notwithstanding that he adds a little further on that "on this very point of supremacy of the Dominion, where Federal and Provincial laws conflict, and even sometimes where they may

(*f*) 12 App. Cas. 588.
(*g*) 1 Brit. Col. at p. 195.
(*h*) 12 App. Cas. 588.
(*i*) 1 Brit. Col. at p. 200.

concur, in my humble opinion, depends the stability and ultimate success of this great Confederation."

So likewise the Privy Council decisions upon which our leading proposition is based, by affirming that within their sphere the jurisdiction of Provincial Legislatures is indeed exclusive, finally dispose of the surprising opinion, stated by Wilson, C.J., in *re Niagara Election Case, infra,* to have been expressed by Johnson, J., in the *Montreal Centre Election Case, Ryan* v. *Devlin,* (*j*), that because the Parliament have by sec. 91 of the B.N.A. Act the power "to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by the Act assigned exclusively to the Legislatures of the Provinces"; and because "for greater certainty, but not so as to restrict the generality of the foregoing terms of the section," it is declared that, "notwithstanding anything in this Act, the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects" therein next enumerated, therefore, the Parliament might legislate on matters assigned by the Act exclusively to the Legislatures of the Provinces; because the grant of that exclusive jurisdiction, it is said, is not to "restrict the generality of the foregoing terms," and because the *non obstante* clause overrides the whole of that section.

As Wilson, C.J., says (referring to this judgment of Johnson, J.) in *re Niagara Election Case* (1878): (*k*) "The words 'and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section,' relate to the preceding terms, 'peace, order, and good government of Canada,' qualified by non-control over the exclusive jurisdiction of the Provinces, just as if the section had read, 'except in relation to those classes of subjects assigned exclusively to the Legislatures of the Provinces.'" And he adds: "I am also of opinion that the words 'notwithstanding anything in this Act' apply only to 'the classes of subjects next hereafter enumerated,' and that their meaning is, if there is nothing in the classes of subjects over which the Provinces have exclusive jurisdiction inconsistent with the exclusive control of the Dominion over the classes of subjects specially assigned to the Dominion Parliament, or over matters which relate to the 'peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces,' then the Dominion Parliament shall have full authority to legislate." And Johnson, J., in the case we have already referred to of *Ryan* v. *Devlin* (1875, (*l*), himself seems to correctly paraphrase sec. 91 where he says: "As it was obviously impossible for any foresight to provide beforehand and in every detail for every case in which Dominion legislation might be required, the Imperial Act seems in effect to have said: 'Nothwithstanding anything in this Act, notwithstanding that we have enumerated the most salient subjects upon which the Dominion

(*j*) 20 L.C.J. 77. But, *quære,* whether the dicta of Johnson, J., in this case are intended to be so understood, or go any further than is indicated in the quotation from his judgment (at p. 83) cited a little further on.

(*k*) 29 C.P. at p. 295-6.

(*l*) 20 L.C.J. at p. 83.

Legislature may make laws, it must be clearly understood that there is nothing at all to prevent them from legislating for the whole Dominion in matters not to be found in the list of those given to them, and not assigned to the Provinces.'"

In this sense it is that, as stated by Ritchie, C.J., in *Valin* v. *Langlois* (1879), (*m*): "The British North America Act vests in the Dominion Parliament plenary power of legislation, in no way limited or circumscribed, and as large, and of the same nature and extent, as the Parliament of Great Britain, by whom the power to legislate was conferred, itself had." Or, as Gwynne, J., expresses it in *Citizens Insurance Co.* v. *Parsons* (1880), (*n*): "The whole scope and object of the British North America Act," and "the scheme of the constitutional government which it was designed to create, was to vest in the Dominion Parliament, consisting of Her Majesty (herself the supreme executive authority) as one member and a Senate and House of Commons as the other members of the legislative body, the supreme jurisdiction to legislate upon all subjects whatsoever, except as to certain specific matters particularly enumerated, purely of a local, domestic, and private nature, which were assigned to the Provinces" (*o*).

Under this general legislative power of the Dominion Parliament, the Dominion Act (*p*), whereby authority is conferred upon courts and judges in Canada to make orders for the examination in the Dominion of any witness or party in relation to any civil or commercial matters pending before any British or foreign tribunal, was held *intra vires*: *ex parte Smith* (1872), (*q*). It was objected that it was a matter of procedure, and therefore within the jurisdiction of the Provincial Legislature; but Torrance, J., held that it was "a matter of international comity, and the Act is one which the Dominion Parliament might very properly pass."

In view, then, of the above authorities, it seems impossible not to take exception to the words of Peters, J., in *Kelly* v. *Sullivan* (1875), (*r*), where he says: "This Island had a constitution similar to that of the other B.N.A. Provinces when it entered the Confederation. The B.N.A. Act of 1867 does not abrogate these Provincial constitutions, but merely withdraws from them the power of making laws regarding certain matters enumerated in sec. 91 over which they previously had jurisdiction. But, as to all matters not so withdrawn, the Provinces remain in possession of their 'old dominion,' and retain their jurisdiction over them in the same plight as it previously existed." Whatever the intention of learned judge may have been, the above passage seems to read as though there was a residue of power in the Provinces after deducting the enumerated matters in sec. 91, whereas we have seen the residuary powers are all in the Dominion, the Provinces only having the enumerated subjects in sec. 92 under their control. But this does not destroy the force of the argument which Tessier, J., draws

(*m*) 3 S.C.R. at p. 16; 1 Cart. at p. 173.

(*n*) 4 S.C.R. at p. 333; 1 Cart. at p. 338.

(*o*) So per Fournier, J., in *Severn* v. *The Queen* (1878), 2 S.C.R. at p. 120, 1 Cart. at p. 464; per Dorion, C.J., in *ex parte Dansereau* (1875), 19 L.C.J. at pp. 231-2, 2 Cart. at p. 190.

(*p*) 31 Vict., c. 76.

(*q*) 16 L.C.J. 140; 2 Cart. 330.

(*r*) P.E.I. at pp. 91-2.

from the way sec. 91 is framed in favour of a liberal interpretation of the B.N.A. Act, (*s*): "The Confederation Act was passed with the object of conciliating the interests and rights of a pre-existing Province; this Act should be liberally interpreted. . . If it had been desired to limit the powers of the Provincial Legislatures to certain particular subjects, why not have defined those powers, and then said afterwards that 'all other powers belonged to the Federal Parliament.' On the contrary, it has been necessary to specify in sec. 91 the special powers of this Parliament in certain cases, as in a treaty between two independent parties, which specifies the rights belonging to each of the two."

There is one important exception from what we may call the general residuary legislative power of the Dominion Parliament specially provided for in the B.N.A. Act. The right of legislation as to property and civil rights in each of the Provinces is conferred on the Legislature of that Province: see per Strong, V.C., *in re Goodhue* (1872), (*t*). But though the power of Provincial Legislatures is strictly confined to property and civil rights "in the Province," nevertheless the Dominion Parliament has not power by itself to pass laws as to property and civil rights generally over the Dominion, for sec. 94 specially provides that any such law shall not have effect in any Province unless and until adopted and enacted as law by the Legislature thereof.

And of course the Dominion Parliament, as well as the Local Legislatures, is subject to the express provisions of the British North America Act. For example, as put by O'Connor, J., in the case of *Gibson* v. *M'Donald*, (*u*): "The exclusive right to appoint the judges is reserved to and vested in the Government of the Dominion, and even the Parliament of the Dominion cannot divest the Government of that power, for it cannot so change the British North America Act." And we are reminded of a further limitation to the residuary legislative power of the Dominion Parliament in the argument of Mr. Edward Blake, Q.C., in the case of *the St. Catharines Milling and Lumber Co.* v. *The Queen* (commonly known as the Ontario Lands Case), who observes: "As to the legislative powers, a residuum—I do not say *the* residuum, but *a* residuum—a part not specifically reserved to the Provinces, is granted generally to the Dominion. I say 'a part,' because inherent in the Federal form there is with its advantages, great as they are, what may be deemed a defect—it has the 'defects of its qualities'; and there are some things which cannot at all be done, or at any rate done by the central authority in a Federal union—which cannot at all be done *modo et formâ*, . . which they may be done in a legislative union" (*v*).

Again, as Wilson, J., says in *Reg.* v. *Taylor* (1875), (*w*): "The Dominion may be said to have general jurisdiction, or, in the language of constitu-

(*s*) *Bank of Toronto* v. *Lambe* (1885), 1 Mont. L.R., Q.B., at p. 166; 4 Cart. at p. 60.

(*t*) 19 Gr. at p. 452; 1 Cart. at p. 573.

(*u*) 7 O.R. at p. 419; 3 Cart. at p. 328.

(*v*) This argument has been printed by the press of *The Budget*, 64 Bay St., Toronto, 1888. The passage quoted will be found at p. 8.

(*w*) 36 U.C.R. at p. 191.

tional writers, 'general sovereignty,' in all matters but those in which it is expressly excluded, or in which, from the inherent condition of a dependency, it is necessarily and impliedly restricted." And this last restriction seems to be illustrated by the report of Sir John Macdonald, as Minister of Justice, dated August 25th, 1873, and duly approved of in Council, wherein he expressed the view that the powers of the Dominion Parliament itself did not extend to authorizing the extradition or removal of any insane or other person out of the Dominion, but that for such a purpose an Act of the Imperial Parliament must be passed (*x*).

To return to our leading proposition, it indicates two important respects in which our constitution differs from that of the United States. In the first place, and subject, of course, to such necessary restrictions as have just been referred to, it was intended by the British North America Act, in the words of Henry, J., in *Valin* v. *Langlois* (1879), (*y*): "To leave no subject requiring legislation unprovided for: and that in the powers given all should be included; and, in the distribution, either Parliament or the Local Legislatures should deal with every subject" (*z*). Now, the Constitution of the United States differs in this respect. There, there is a residuum of powers neither granted to the Union nor continued to the States, but reserved to the people, who, however, can put them in force only by the difficult process of amending the Constitution (*a*). And, in *The Queen* v. *The Mayor, etc., of Fredericton* (1879), (*b*). Palmer, J., alludes to this distinction, saying: "It is to be borne in mind that the great fundamental difference between the American idea of legislative power and the British is that the American is based upon the idea that all such power was in the people alone, and no American Legislature has any power to legislate at all, except what is given to them by the people in convention, and expressed in their written constitution: and the people have reserved to themselves a great part of that power, so that many laws no Legislature in that country has power to pass. Whereas by the British Constitution no legislative power exists in the people alone at all, but such wholly exists in . . the Queen, Lords, and Commons, and the . . concurrence of these three bodies, and these alone, can express the supreme will of the nation, and there is no limit to their power of legislation. . . Therefore, I think it is an important question to every Canadian desirous of the well-being of his country whether any and what part of those principles have been secured to him by the B.N.A. Act. And if the enacting parts of that Act have left the question doubtful, I think the recital in the preamble, that the Act was passed to carry out an expressed wish of the Legislatures of the different Provinces of Canada that they should be federally united, etc., with a constitution similar in principle to that of the United Kingdom,

(*x*) Hodgins' Reports of Ministers of Justice, Vol. 1, p. 78.

(*y*) 3 S.C.R. at p. 65; 1 Cart. at p. 201.

(*z*) Other authorities for this proposition may be found in *City of Fredericton* v. *The Queen* (1880), 3 S.C.R. 505, 2 Cart. 27; per Ritchie, C.J., 2 Cart. at p. 54; per Taschereau, *ib.* at p 51; per Gwynne, J., *ib.* at p. 61; and per Gwynne, J., again, in *Attorney-General* v. *Mercer* (1881), 5 S.C.R. at p. 701, 3 Cart. at p. 77.

(*a*) Bryce's American Commonwealth, Vol. 1, pp. 307-8.

(*b*) 3 Pugs. & B. at p. 143, *seq.*

would settle the question. I therefore think it clear that the intention was to have no reserved powers; that there should be in Canada the same kind of legislative power as there was in the British Parliament, so far as that was consistent with the Confederation of the Provinces and our position as a dependency of the Empire; and that, as in the United Kingdom no court, judge, or other power has the right to resist or control the will of Parliament, so all that courts in Canada have a right to do is to decide between the two Legislatures as to which of them has the power, and not to deny it to both. And when we look at the sections dividing the legislative power (the 91st and 92nd sections), I think this is put beyond doubt" (*c*). And so likewise in the argument in *Hodge* v. *The Queen* before the Privy Council (*d*), Mr. Jeune, who was one of the counsel engaged in the case, observed that he had always understood the preamble to the British North America Act, where it speaks of the Dominion having a constitution similar in principle to that of the United Kingdom, as referring to this feature, that the Dominion has every legislative power not expressly given to the Provinces. And in one of the latest works on Canada (*e*), we read: "The Federalists of the United States, in breaking away from the sovereignty of England, were compelled to create in some of its main aspects an instrument of government deferring always to the will of the people, who were the depository of supreme power. In Canada, all power is supposed to descend down from the Crown."

It would seem, then, that the dictum of Henry, J., in *City of Fredericton* v. *The Queen* (1880), (*f*), must be regarded as clearly overborne by authority where he says: "It is contended that, inasmuch as the Local Legislatures could not provide as is done by this Act, Parliament necessarily must have the power it exercised. The proposition, as a general one, must be admitted: but there may be, and, I think, there are, exceptions, and that this" (referring to the Canada Temperance Act, 1878) "may fairly be considered one of them," though the same learned judge speaks again in a similar manner in *Attorney-General* v. *Mercer* (1881), (*g*), and in the *Queddy River Driving Boom Co.* v. *Davidson* (1883), (*h*). But the view that, subject to the necessary limitations already alluded to, there are any exceptions to the residuary power of the Dominion Parliament is clearly opposed to the weight of the authorities already referred to, and to the learned judge's own dictum in *Valin* v. *Langlois* (1879), above quoted (*i*). Ritchie, C.J., puts the matter very clearly in *City of Fredericton* v. *The Queen* (1880), (*j*), saying: "With us, the Government of the Provinces is one of enumerated powers which are specified in the British North America Act, and in this respect differs from the constitution of the Dominion Parliament, which, as has been stated, is

(*c*) And so per the same learned judge in *Ackman* v. *Town of Moncton* (1889), 24 N.B., at p. 114.
(*d*) Dom. Sess. Papers (1884), Vol. 17, No. 30, at p. 62.
(*e*) Greswell's History of Canada, p. 220.
(*f*) 3 S.C.R. at p. 546; 2 Cart. at p. 43.
(*g*) 5 S.C.R. at pp. 656-7; 3 Cart. at p. 43.
(*h*) 10 S.C.R. at p. 236; 3 Cart. at p. 258.
(*i*) 3 S.C.R. at p. 65; 1 Cart. at p. 201.
(*j*) 3 S.C.R. at p. 536; 2 Cart. at p. 35.

authorized 'to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces';" and so almost in the same words, per O'Connor, J., in *Gibson* v. *Macdonald* (1885), (*k*).

The second constitutional feature of the Dominion indicated by our leading proposition, in which it contrasts with that of the United States, is that whereas in the former all powers of legislation not expressly assigned to the Provincial Legislatures rest with the Dominion Parliament, in the latter the States retain all powers of legislation not expressly assigned to Congress. This is again and again pointed out in the cases as the leading stinction between our constitution and that of the United States (*l*). In *Leprohon* v. *City of Ottawa* (*m*), Harrison, C.J., calls attention to the express provision of the tenth amendment of the Constitution of the United States, that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." And it is interesting to observe that in his Essay on the Government of Dependencies, published in 1841, Sir George Cornewall Lewis remarks (*n*): "The limited extent of the powers given to the common Government and the indefinite extent of the powers reserved by the several Governments are certainly important defects in the political system of the United States, threatening to bring about a disruption or dissolution of their union, and involving the Federal State, which arises from their union, in wars or disputes with other independent communities. But the prejudices and interests which in each of the revolted colonies separated the powers of its peculiar Government would have opposed invincible obstacles to a perfect fusion of those colonies into one independent State"; while in *Angers* v. *The Queen Ins. Co.* (*o*) Torrance, J., observes: "The framers of our constitution had before them the melancholy warfare which had so long desolated so large a portion of the continent, and determined that there should be no questions as to the supremacy of the general Government or the subordinate position of our Provinces. It was intended that the general Legislature should be strong—far stronger than the Federal Legislature of the United States in relation to the States Governments" (*p*).

It may be worth while to observe that in Gray on Confederation (*q*), as quoted by the learned author himself in *Tai Sing* v. *McQuire* (1878), (*r*), we find

(*k*) 7 O.R. at p. 424; 3 Cart. at p. 334.

(*l*) Per Ritchie, C.J., in *Valin* v. *Langlois*, 3 S.C.R. at p. 14, 1 Cart. at p. 171; per Fournier, J., *ib.* 3 S.C.R. at p. 193, 1 Cart. at pp. 193-4; *Slavin* v. *The Corporation of Orillia*, 36 U.C.R. at pp. 174-5; per Ritchie, C.J., in *City of Fredericton* v. *The Queen*, 3 S.C.R. at pp. 532-6, 2 Cart. at pp. 34-5; per Cross, J., in *North British and Mercantile, etc., Insurance Co.* v. *Lambe* (*Bank of Toronto* v. *Lambe*), 1 Mont. L.R., Q.B., at p. 152, 4 Cart. at p. 48; per Spragge, C., in *Leprohon* v. *City of Ottawa*, 2 A.R. at p. 529, 1 Cart. at p. 600.

(*m*) 40 U.C.R. at p. 489; 1 Cart. at p. 646.

(*n*) See Edition of 1891, by C. P. Lucas, at p. 321.

(*o*) 21 L.C.J. at p.; 1 Cart. at p. 155.

(*p*) But reasons for objecting to the use of the word "subordinate" as applied to the Provinces will be found stated in other portions of this work.

(*q*) Published in Toronto in 1872, Vol. 1, pp. 55-6.

(*r*) 1 Brit. Col. at p. 105.

what may be thought, indeed, a somewhat fanciful explanation of the fundamental difference between the Constitution of the United States and that of the Dominion just referred to, in the following passage: "The source of power was exactly reversed. At the time of framing of their constitution, the United States were *congeries* of independent States, which had been united for a temporary purpose, but which recognized no paramount or sovereign authority. The fountain of concession, therefore, flowed upwards from the several States to the united Government. The Provinces, on the contrary, were not independent States. They still recognized a paramount or sovereign authority, without whose consent or legislative sanction the union could not be formed. True, without their consent, the rights would not be taken from them; but, as they could not part with them to the other Provinces without the sovereign assent, the source from which those rights would pass to the other Provinces, when surrendered to the Imperial Goverrment for the purpose of confederation, would be through the supreme authority. Thus the fountain of concession would flow downwards, and the rights not conceded to the separate Provinces would vest in the Federal Government, to which they would be transferred by the paramount or sovereign authority."

In conclusion, it should be stated that the case of *ex parte Dansereau* (1875), (s), reminds us that when we speak of Local Legislatures having only such powers of legislation as are expressly conferred upon them by secs. 92 and 93, of the B.N.A. Act, it is not to be forgotten that by virtue of the very fact that they are legislative bodies at all they may have certain implied powers and privileges necessarily incident to such bodies, and may be entitled to regulate by statute the exercise of such implied powers and privileges. This matter, however, will be found discussed in detail in other portions of this work.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

HALF-YEARLY MEETING OF CONVOCATION.

Tuesday, December 29th, 1891.

Convocation met.

Present—The Treasurer, and Messrs. Irving, Moss, Kerr, Bruce, McCarthy, Osler, Strathy, Shepley, Watson, Robinson, Mackelcan, Meredith, Aylesworth, and Macdougall.

The minutes of last meeting were read and approved.

Mr. Moss, from the Committee on Legal Education, reported:

(1) In the case of James Knowles, recommending that the filing of his assignments be allowed *nunc pro tunc*, that his service be allowed, and that he be granted his Certificate of Fitness. The Report was ordered for immediate consideration, adopted, and it was ordered that Mr. James Knowles do receive a Certificate of Fitness.

(s) 19 L.C.J. 210; 2 Cart. 165.

(2) In the case of Mr. T. H. Lloyd, that his papers are regular, his service has been completed, and he is entitled to his Certificate of Fitness. Ordered for immediate consideration, adopted, and ordered that he receive his Certificate of Fitness.

(3) In the case of Mr. F. Billings, that his papers are regular, that he has completed his service, and is entitled to his Certificate of Fitness. The Report was ordered for immediate consideration, adopted, and it was ordered that he receive a Certificate of Fitness accordingly.

Mr. Osler, from the Committee on Reporting, reported first on the condition of the Digest as follows:

The Digest is now ready to issue down to column 1384. Of the residue, all of the larger titles are in type, and all revised except "Railways," which will be in the printer's hands not later than the 10th of January. The table of cases is completed up to column 1384, and the whole work should be ready for distribution about the 15th February, but not later than the 1st March. The total number of pages will be within the original estimate, namely, 1250 pages.

Approximately, the cost of the Digest will be:

1250 pages at $2.80	$3,500
Compiling	3,750
	$7,250

Say, $7,500 for an edition of 1500.

The volume will include all cases up to November, 1890, and Volume 1, Ontario Election Cases, viz.: Volume 17, Supreme; Volume 19, Ontario; Volume 13, Practice; and Volume 17, Appeal.

The committee advise Convocation to decide upon the price at which the Digest is to be issued, and the list of persons and corporations to whom volumes are to be sent.

We advise the price of the Digest, to members of the Society, up to 1st April, 1892, to be issued at $5, and after that date, $7.50 in cloth. To all others at $7.50 from the beginning.

The Report was ordered for immediate consideration. Ordered, that the price of the Digest be $7.50, but that each member of the Society may purchase one copy before the 1st day of July next at $5.

Mr. Osler, from the same committee, reported on the edition of the regular Reports as follows:

The committee recommend that the edition of the Reports be increased by 100, making each edition up to 1850 at the rate suggested in Messrs. Rowsell & Hutchison's letter of 22nd December.

Ordered for immediate consideration, adopted, and ordered accordingly.

Mr. Osler, from the same committee, reported on the request of the University of Toronto for gift of the Reports as follows:

With regard to the request of the University of Toronto for a gift of Reports from 1867 down, the committee report that the request involves a gift of 105 volumes, about 30 of which are out of print, but which can be procured, by exchange, from Messrs. Rowsell & Hutchison. Your committee think that the gift, if made, should come from Convocation, and not by the recommendation of the committee.

Ordered for immediate consideration, and ordered that in view of the destruction by fire of the University Library the gift of one hundred and five volumes referred to in the Report be made to the University of Toronto.

Mr. Osler, from the same committee, reported on the question of the Supreme and Exchequer Court Reports as follows:

With regard to the Supreme and Exchequer Court Reports, your committee have ascertained that the Department of Justice will authorize the issue to the Law Society at the price charged to publishers, say, $2.20 per volume, and your committee recommend that a circular be issued with a view of ascertaining the number who desire to take the Reports through the Society, and that it is desirable that the Society should undertake the duty of distributing the Reports to the profession at about $2 per volume, with perhaps some small addition to be paid to Messrs. Rowsell & Hutchison, through whom the distributing should take place. After the circular has been responded to, the committee are to report again for action by Convocation.

The Report was ordered for immediate consideration. Ordered, that it be referred back to the committee.

Mr. Osler, from the same committee, reported as to the official law list, recommending that none be issued for the next year.

Ordered for immediate consideration, and adopted.

Mr. Osler, from the same committee, reported on the condition of the Reporting as follows:

The state of the Reporting is given by the letter of the Editor of 20th November, 1891, in the following words:

TORONTO, 20th November, 1891.

DEAR SIR,—The work of Reporting is generally in a forward state.

In the Court of Appeal there are now, in addition to the judgments of last week, five unreported cases, all of September, all in type and revised.

In the Queen's Bench there is one, of October, in type and revised.

In the Common Pleas there are no unreported cases.

In the Chancery Division Mr. Lefroy has seven, five of September and two of this month. Mr. Boomer has six, two of August—which, however, were not handed out until September—and four of October, the two former ones ready.

There is only one Practice case of October, and which is in type and revised.

The Digest to the volume of election cases will be issued to-morrow.

I enclose a letter from Mr. Joseph with reference to the Consolidated Digest.

I may mention that over 1000 double columns have been struck off ready for issue. This is less than one-half of the total number of columns. A great deal of work has, however, been done on the remaining portion.

J. F. SMITH.

B. B. Osler, Esq., Q.C., *Chairman.*

REPORT OF COMMITTEE ON REPORTING ON THE REFERENCE AS TO REORGANIZATION.

We report that no change can be made in the reporting staff, and we give a comparative statement as to cost of reporting in England and in Ontario in support of our views that we are obtaining our reporting at a reasonable rate, and that the staff could not be reduced without detriment to the value of our Reports.

COMPARATIVE STATEMENT AS TO COST OF REPORTING IN ENGLAND AND ONTARIO.

1889.

English Law Reports.

App. Cas., English, Scotch, and Irish Appeals to H.L. and Colonial, and Indian to P.C.—59 cases by three Reporters—20 cases each.

Q.B.D., 168 cases, of which 88 are in Court of Appeal—by 12 Reporters.

Ch.D., 203 cases, including Court of Appeal—14 Reporters, say, 15 cases each.

Probate, Divorce, and Admiralty, 29 cases—3 Reporters, 10 cases each.

Total, 459 cases by 2 Editors and 32 Reporters. In all, 4320 pages.

1890.

App. Cas., 46 cases—3 Reporters—15⅓ cases each.
Q.B.D., 205 cases—12 Reporters—17 cases each and one over.
Ch.D., 193 cases—12 Reporters—16 cases each and one over.
P.D., 37 cases—3 Reporters—18½ cases each.
Total, 481 cases—2 Editors, 30 Reporters. Number of pages, 4239. There are of course a much larger number of courts in England.

ONTARIO LAW REPORTS—ONE YEAR.

Appeal, between 50 and 60; say, 55
Ontario, about 200..... 200 { Q.B.D., C.P.D., about 116 / Ch.D..... 84 } In Vols. 19 and 20 O.R.
Practice, upwards 65..... 65
320
[Election cases, 20, extra.] In all, 2500 pages per annum.
Indexes, table of cases prepared by Reporters. 3½ volumes per annum.

The number of volumes issued in England is twice that of the number issued in Ontario, by five times the number of Reporters. The number of cases reported in England is about one-third more than in Ontario.

In England each Reporter averages fifteen cases and a fraction per annum.

In Ontario each Reporter averages at least fifty cases per annum.

Salaries—Reporters from £300 to £350, and 25% bonus—£375 to £425=$1,800 to $2,100 each.

Editors—£750 (*i.e.*, £600 and £150 bonus,=$4,000 each.

The indexes to volumes, digests, etc., are prepared by people specially employed—7 vols. per annum.

Expenditure for salaries, $55,000 a year besides bonus.

The last edition of Chitty's Equity Index commenced to issue in 1883 and was completed in 1889. There are 8 volumes and table of cases of about 8300 pages—about 1400 pages a year.

The promised Consolidated Digest of the English Law Reports was advertised in the autumn of 1889 as in process of compilation, and is now advertised as likely to be ready in the spring of 1892. This, of course, is a very large work, containing 25 years, and will bring the cases to the end of 1890. Seven barristers are engaged at it, and probably other assistance for the clerical work.

The Report was ordered for immediate consideration, and was adopted in so far as concerns the condition of the Reporting.

As to reorganization, ordered to be printed and distributed, and to be considered on the second day of next Term.

Ordered, that the Digest be distributed free to all entitled to the Reports under Rule 97, except practising solicitors and barristers.

Ordered, that it be referred to the Reporting Committee to consider the advisability of including, as an appendix to the Digest, the Digest of Cartwright's Cases, and if they think it advisable that they be authorized to include the same.

Mr. Shepley, from the Library Committee, reported as follows:

Your committee beg to report as follows:

(1) At the request of the Finance Committee, this committee has expressed its willingness to assume charge of the Benchers' robing room, consultation rooms 1 and 2, and the gallery of Convocation Hall, in addition to the Library proper and its two annexes, it being considered that the rooms mentioned, in their situation and uses, are naturally associated with the Library for purposes of management. Should Convocation approve of this, it will be desirable to amend Rule 67 so as to cover the additional rooms. A draft amendment is submitted herewith.

(2) Rules 67 and 69, as they now stand, place in the hands of this committee all expenditure upon books for the Library. A practice which has been found convenient has grown up, by which books have been, from time to time, ordered upon the signature of two or more members of the committee without formal action on the part of the committee. Your committee deems it proper that this practice should receive the sanction of a Rule authorizing it, but confining its operation within certain definite and proper limits. Your committee presents herewith a draft Rule which it is hoped will attain this object.

(3) In view of the separation of the office of Librarian from that of sub-Treasurer and Secretary, it is desirable, in the opinion of your committee, that, so far as practicable, Library expenditure should be kept separate from the general expenditure of the Society. In respect of ordinary and considerable expenditure upon books, this is now being accomplished as a matter of book-keeping under satisfactory arrangements with the Finance Committee. It is, however, further desirable and convenient, in the opinion of your committee, that for petty expenditure a proper sum should be paid from time to time to the Librarian by the sub-Treasurer. A draft Rule embodying this suggestion, and also embodying the scheme for separate accounts, is submitted herewith.

(4) Your committee has concurred in a recommendation made by the Librarian that, provided the supply of Reports and other books warrants it, he be authorized to seek friendly relations with other great law libraries by offering exchanges of books. Your committee reports its concurrence in this recommendation, and advises that action be taken in the matter in the direction of the recommendation.

(5) In respect of the reference by Convocation to this and other Standing Committees, on the 17th November last, to consider and report a theoretical organization as to members and salaries of the staff, your committee is not yet able to report. The creation of the separate office of Librarian and the imposition of distinct duties upon him are so recent, and have such an important bearing upon the subject referred to, that your committee feels that it cannot satisfactorily make a report at the present time. Your committee, however, believes that the recent changes referred to are already showing highly beneficial results in the Library and its management.

All of which is respectfully submitted.

The Report was ordered for immediate consideration, paragraph by paragraph.

The first, second, third, and fourth paragraphs were adopted, and the fifth was read.

Mr. Shepley moved the first reading of a Rule, based on the Report of the Library Committee, to be substituted for Rule 67.—*Carried.*

Mr. Shepley moved that the Rule as to stages be suspended.—*Carried unanimously.*

Mr. Shepley moved that the Rule be read a second time and passed.—*Carried.*

The same is as follows:

Proposed amendments to the Rules relating to the Library:

That the following be substituted for Rule 67:

67. "It shall be the duty of the Library Committee to assume the general supervision and management of the Library, its two annexes, the Benchers' robing room, consultation rooms 1 and 2, and the gallery of Convocation Hall."

Mr. Shepley moved the first reading of the following Rule, based on the Report, to be substituted for Rule 68:

68. "The Library Committee shall purchase the books for the Library as in their judgment may be necessary, and may expend annually for this purpose such sum as may be included in the estimates approved by Convocation, and the Treasurer and sub-Treasurer are hereby authorized to pay the amounts from time to time required by the committee.

"(*a*) Purchases of books shall be made upon recommendations presented by or through the Librarian only by formal authority of the Library Committee, save in cases of apparent necessity, when the Librarian may, with the authority of two members of the committee give orders for such purchases."

Carried.

Mr. Shepley moved that the Rule as to stages be unanimously suspended. —*Carried unanimously.*

Mr. Shepley moved that the Rule be read a second time and passed.—*Carried.*

Mr. Shepley moved the first reading of a Rule, based on the Report of the committee, to be substituted for Rule 69.

Mr. Shepley moved that the Rule as to stages be suspended.—*Carried unanimously.*

Mr. Shepley moved that the Rule be read a second time and passed.—*Carried;* and the same is as follows:

69. The Librarian shall have the immediate and general charge of the Library, under the superintendence of the Library Committee.

(*a*) The Librarian shall keep a ledger and a petty cash book. In the former shall be entered, in separate accounts, payments made to the various publishers from whom purchases are made, to the binders, and to others with whom the Library has dealings.

In the petty cash book shall be entered all petty Library expenditures made out of such sums as the Finance Committee may authorize the sub-Treasurer to advance to the Librarian for that purpose.

Nothing herein contained shall affect the keeping of the customary books and accounts by the sub-Treasurer.

Mr. Watson, from the Committee on Fusion of the Courts, presented an interim Report as follows:

Your committee, appointed by resolution of 12th December instant, begs leave to present an interim Report.

Your committee is very strongly of the opinion that the fusion and amalgamation of the three divisions of the High Court of Justice is an urgent necessity, and should be completed without delay.

Your committee is of the opinion that it is in the interest of the administration of justice that the double circuits should be abolished, and that common sittings should be held for trial of actions in the three divisions throughout the different cities and county towns of the Province, that thereby much labour and expense would be saved, a greater uniformity maintained, and the interests of the public and of suitors much better served. Such sittings should be held at certain fixed periods for each city and county town, and should be more frequent than the present sittings of Assize and Nisi Prius.

Your committee is also strongly of opinion that the separate sittings of the Divisional Courts should be abolished, and that there should be only one Divisional Court for the disposition of cases in all the divisions of the said court, and that such Divisional Court should be composed of not less than three judges, none of whom should be the trial judge, and that there should be sittings of the said court at least monthly, and more frequently when required.

Your committee recognizes the present difficulties in effecting the abolition of the double circuits, amongst others the pecuniary results to the judiciary, and that in view of their present manifestly inadequate remuneration the change should not, except with the consent of the judiciary, be pressed at this time; and, in anticipation of legislation by the Dominion Government at its next session, whereby provision may be made for increasing the remuneration of the judiciary, your committee is of opinion, with regard to the abolition of double circuits and of

separate sittings of the Divisional Courts, that, beyond the presentation of a petition for such increase of salary to the judges, and the presentation of copies of this Report to the Minister of Justice and to the Attorney-General of Ontario, further action should be deferred until after the next session of the Dominion Parliament.

Your committee, however, is of the opinion that provision might and should be made forthwith for the abolition of a double sittings for the trial of actions in the city of Toronto, and that there should be one sittings only in the city of Toronto for the trial of cases in all the divisions, and that judges in rotation should be assigned to take such sittings of the court for a period of at least two months each, and that there should be a sittings fortnightly of the said court for the trial of non-jury cases; such sittings to commence on the first and third Tuesdays on each and every month throughout the year, with direction and power to the said trial judge in his discretion, upon application of either party to an action, to order and summon a special jury for the trial of such cases as may be deemed proper therefor, and that in addition to the provision above mentioned there should be a quarterly sittings of the said court for the trial of jury and criminal cases as the practice now exists. And, further, that upon a special application to the Chancellor, or to the Chief Justice of the Queen's Bench or Common Pleas Division, a special sittings of the court for the trial of non-jury cases or of cases requiring a special jury in any other city or county town may be at any time directed and held. And, further, that the separate weekly sittings of the Chancery Division and of the Queen's Bench and Common Pleas Divisions in single court at Toronto should be immediately abolished, and also the separate sittings of a judge in chambers, and that hereafter there should be only one sitting of a judge daily for the purpose of hearing all motions in single court for all the divisions, and one daily sitting of a judge in chambers for the hearing of all appeals or motions in all the divisions.

And your committee is respectfully of opinion that the changes as above-mentioned with regard to the sittings of the court for trial of actions in Toronto and the outer special sittings of the court for the trial of actions and the sittings of a judge in single court and in chambers are not only urgently necessary, but are quite practicable, and that common and public interests require that the same should be put into immediate force and effect. And it is recommended that a copy of this Report should be transmitted to the Attorney-General of this Province and to the President of the High Court of Justice, and the chief justices and judges of the several divisions of the said courts.

Your committee is of opinion that the tariff relating to the allowance for printing appeal books for the Court of Appeal should be revised, and that hereafter a less rate per page of six folios should be taxed or allowed in the action for the printing of such appeal books.

Your committee is desirous that the directions and powers given to them by the resolution of Convocation should be continued for further action and report, and that such further direction and power may be given as to Convocation may seem proper.

December 29th, 1891.

Mr. Watson moved that the Report be printed and distributed, and that 200 extra copies be printed for the use of the committee for distribution, and that the Report be taken into consideration on the second sitting day of next Term.—*Carried.*

Mr. Strathy moved the adoption of the Report of the Committee on Unlicensed Conveyancers as follows:

REPORT OF THE SPECIAL COMMITTEE ON UNLICENSED CONVEYANCERS.

The committee to which was referred for consideration the complaint of a large proportion of the members of the profession in reference to unlicensed or uncertificated conveyancers beg leave to report as follows:

Your committee find that the matter referred to was considered by a committee appointed for that purpose in May, 1881, at which time much information was collected and various Reports by such committee presented to the Bench, of all of which your committee has had the benefit.

Your committee is strongly of opinion that there are ample grounds for the complaints made, and believes that the members of the profession (especially those practising in the country) are entitled to protection in some form against the competition of persons outside the profession who, without having been at any expense to qualify themselves for the work, or paid any fees to Government or Law Society, prepare deeds and documents of various kinds, and do other work strictly within the province of members of the profession.

A number of suggestions have been made to your committee, the following of which appear to be the most worthy of consideration:

(1) Amend the Registry Act by enacting that every solicitor who draws any deed, mortgage, assignment, or instrument of any kind (except a will), affecting any interest in land in Ontario, shall endorse thereon the name of himself, or of the firm of which he is a member, and such solicitor or firm shall be liable for any negligence that may occur in the preparation of such deed or other document. Further, that no deed or other document (except a will) affecting any interest in land in Ontario shall be registered in any registry office unless and until the same has endorsed thereon the name of a practising solicitor or firm of solicitors in Ontario.

(2) That there be legislation confining the work of conveyancing to notaries public, or enacting that no deed shall be recorded unless and until it has attached to the same the certificate of a notary public certifying that the same appeared to be duly executed and proved.

(3) That there be legislation for the purpose of incorporating or licensing conveyancers, by which all persons who have heretofore acted as conveyancers be granted a conveyancer's certificate or license upon application therefor within six months, and upon payment of a reasonable fee, followed by an annual fee thereafter, and that all other persons desiring to act or practise as conveyancers be required to pass an examination before such persons as the judges of the High Court might or shall direct, and to pay an annual fee.

Your committee, having duly considered these and other suggestions, is of opinion that the one numbered three is, viewing the prospect of legislation in the direction proposed, and the other circumstances surrounding this question, the only one likely to receive consideration from the Legislature, the only body who can regulate the subject, and your committee would therefore suggest that a committee be appointed to interview the Attorney-General, place the question before him, and urge that legislation of the character last suggested be passed.

Your committee has ascertained that Acts cognate in character to that suggested are in force in Ireland and Manitoba, and therefore ventures to think that if the matter is fairly placed before the Attorney-General it will receive his best consideration and be followed by legislative action calculated to afford relief to the profession.

Your committee annexes to this Report copies of the Imperial and Manitoba Acts above referred to.

17th November, 1891.

Imperial Act, 27 Victoria, chapter 8.
Manitoba Act, chapter 25, of 1881.

Ordered, that the debate on this Report be adjourned to the last sitting day of next Term.

Mr. Hoskin, from the Discipline Committee, reported that the matter of the complaint of Mr. Millar against Mr. Clarke was proceeded with, and pending the inquiry Sir Adam Wilson, a member of the committee, died, and that until the vacancy is filled it will be impossible to proceed with the inquiry.

The petition of Mr. Charles Millar, complaining of a letter by Mr. S. R. Clarke in the *World*, was read.

Mr. Aylesworth moved that the vacancy in the Discipline Committee be filled by the appointment of Mr. Proudfoot.—*Carried unanimously.*

Mr. Meredith moved that Mr. Millar's petition this day presented be considered on the first day of next Term.—*Carried.*

Mr. Moss, from the Legal Education Committee, presented their Report as to organization as follows:

The Legal Education Committee beg to report as follows:

(1) They have had under consideration the matters referred to them by Convocation on the 17th of November last with regard to organization members and salaries of the staff of the department in respect of which they are the Standing Committee.

(2) The committee understand this reference to relate to the Principal of the Law School, and the Lecturers and Examiners.

(3) This staff has been so recently organized and placed upon its present footing that sufficient time has not elapsed to enable the committee to judge from observation or practical results whether any or what (if any) changes in members or salaries might prove advantageous, and they do not suggest any for the present.

(4) The committee, however, are of opinion that it would be of advantage to limit a period of tenure by the Examiners and Lecturers (not including the Principal) of their respective offices, subject as heretofore to their sooner determination at the will of Convocation.

(5) The committee recommend that no Examiner should hold office for more than three years, and that he should not be eligible for reappointment.

(6) The committee further recommend that no Lecturer (save the Principal) should hold office for a period longer than three years, but that he should be eligible for reappointment.

December 29, 1891.

Ordered that the Report be printed and distributed and taken into consideration on the second day of next Term.

Mr. Moss, from the Law School Building Committee, presented their final Report as follows:

The Law School Building Committee beg to present their final Report as follows:

(1) The Law School building has been completed in accordance with the contracts approved of by Convocation, except as regards the coloring of the walls in the several rooms. Upon the architect's advice this work was postponed until the Christmas vacation, to give time for the walls to thoroughly dry before the coloring was applied. The work is now being proceeded with and will be finished in a few days.

(2) The committee from time to time directed certain additional work, necessary for the occupation of the building for the purposes of lectures, such as seating, lighting, hat rails, hooks and fittings, cupboards and other necessaries specified in the architect's report annexed, to be done, and the details thereof appear in the architect's report.

(3) While the excavations for the foundations were in progress, it was discovered that the course of the water supply pipe leading to the main building was under the new building, and it became necessary, as the architect advised, to carry the pipes outside and around the north end of the new building. It was also necessary to lay down some new pavement leading to the front door, and to do some other work of a trifling nature; the details appear in the architect's report.

(4) The architect having reported and certified that the whole of the works of every trade in connection with the erection of the building have been executed in a thorough, substantial, and workmanlike manner, with the best materials of their several kinds and in full and complete accordance with the drawings and specifications, and that they were finished within the time named in the contract, and more than thirty days having elapsed since the completion of the contracts, the committee authorized the issue to the contractors of cheques for the balances due them in respect of their contracts, except in the case of M. O'Connor, whose certificate is withheld until the completion of the coloring of the walls.

(5) The architect having also reported and certified that the works additional to and above the contracts for the building proper have been done in a most satisfactory and efficient manner, except in regard to the lecture room furniture, the committee authorized the issue of cheques for the amounts certified by the architect to be payable in respect of such work, except for the lecture

room furniture, for which no certificate has yet been issued for the reasons stated in the architect's report. All the seats are now in the building, and the work of putting them in their places is now being proceeded with, and will probably be done in a few days.

(6) The following summary shows the expenditure incurred in connection with the building, including the architect's fees and the certificates yet to issue to Mr. O'Connor and for the lecture room furniture:

(1) Amount of contracts for building proper		$29,335.10
(2) Additional work in connection with water pipes, pavement, snow guards, etc., etc.	$360.00	
(3) Gas service and fixtures	678.00	
(4) Hat and umbrella stands, hooks, numbering rooms, fittings, etc.	333.93	
(5) Lecture room furniture	700.90	
		2,072.83
(6) Architect's fees		1,570.39
Total expenditure		$32,978.32

For the details, reference may be made to the architect's report and statement annexed hereto. The book containing the record of payments is submitted herewith.

The committee have endeavoured to carry out the designs of Convocation with a strict regard to economy of expenditure, and they feel assured that while economy has been practised there has been secured to the Law Society a building well fitted for the permanent home of its Law School.

December 29th, 1891.

The Report was ordered for immediate consideration and adopted.

Ordered, that Convocation expresses its gratification at the very satisfactory results of the labours of the committee.

The Special Committee appointed to consider the appointment and tenure of the offices in the Society reported as follows:

At the meeting of Convocation held on 17th November last, it was ordered that it be referred to a committee composed of the Treasurer and the Chairman of each of the Standing Committees of Finance, Legal Education, Reporting, and Library to consider and report to Convocation, not later than 29th December next, a plan for the appointment and tenure of the offices in the Society.

The said committee having met and considered the matters to them referred beg leave to present their Report as follows:

I.—APPOINTMENT TO OFFICE.

(1) There shall be a Standing Committee on nominations to office consisting of four members besides the Treasurer.

(2) Whenever it becomes necessary to make an appointment the Standing Committee shall advertise for applications, enquire into the merits of the applicants, and report to Convocation the name of the person they think best qualified for, and whom they recommend to receive the appointment.

(3) They shall also report a list of all the applications and transmit all the correspondence.

(4) The report shall be signed by each member of the committee who concurs therein.

(5) On the consideration of the report, the question for its adoption may be negatived; or amended by a reference back to the committee for further enquiry, or for a fresh advertisement. No other amendment shall be admissible.

(6) In case the report is adopted, such adoption shall be an appointment of the nominee.

(7) In case the report is negatived, the committee shall report the name of the person whom they think next best qualified and whom they recommend as next in order of merit for the appointment.

(8) In case the report is referred back, the committee shall make the enquiry; or issue and act upon the advertisement, in accordance with the reference, and shall report the result.

(9) Upon the report under paragraphs 7 or 8, a procedure shall take place in Convocation similar to that already prescribed; and so on until a report of the committee is adopted.

II.—TENURE OF OFFICE.

(10) All offices shall be held during the pleasure of Convocation.

(11) In case the pleasure is not earlier determined, no Examiner shall hold office for more than three years, and no Examiner shall be eligible for reappointment.

(12) In case the pleasure is not earlier determined no Lecturer, save the Principal, shall hold office for a period longer than three years; but each lecturer shall be eligible for reappointment.

(13) In case the pleasure is not earlier determined no Editor or Reporter shall hold office for a period longer than three years, but every Editor and Reporter shall be eligible for reappointment

(14) With reference to existing officers, the rules as to determination of offices by effiux of time shall have operation as follows:

(*a*) As to Examiners, on the last day of Trinity Term in A.D. 1893.

(*b*) As to Lecturers, on the last day of Easter term in A.D. 1893.

(*c*) As to Editor and Reporters, on the last day of Michaelmas Term in A.D. 1892.

December 28, 1891. ÆMILIUS IRVING.

Ordered, that the Report be printed and distributed, and considered on the second day of next Term.

Mr. Irving, from the Finance Committee, presented their Report on reorganization as follows:

At the meeting of Convocation held on 17th November last, it was ordered that it be referred to the Standing Committees of Finance, Legal Education, Reporting, and Library severally to consider and report to Convocation, not later than 29th December next, a the retical organization as to members and salaries of the staff of the department in respect of which it is the Standing Committee, and the best practicable plan for improving the present organization.

The Finance Committee beg leave to state that they met and considered the subject of the said order of Convocation, but have been unable to reach any conclusions for report within the time specified; but respectfully ask for leave to report on the said matters on some future day, as Convocation may be pleased to order.

Respectfully submitted on behalf of the Finance Committee.

December 28th, 1891. ÆMILIUS IRVING.

Ordered, that the reference be continued, and that the Report, when framed, be printed and distributed before next Term.

The letter of Messrs. Rowsell & Hutchison, asking for a payment on account of the new Digest, was read. Ordered, that it be referred to the Finance Committee, with power to act.

The letter of Messrs. Lount, Hewson & Creswicke, complaining of a solicitor, was read. Ordered, that it be referred to the Discipline Committee to enquire and report whether a *prima facie* case has been made for enquiry.

The letters of Mr. G. M. Greene, and of Messrs. Denton, Dods & Denton, relating to the Bar of the North-West Territories, were read. Ordered, that they be referred to the Legal Education Committee to request legislation making the same arrangement as to the North-West Territories as exists with regard to the Provinces.

Ordered, that the Secretary do write to Messrs. Greene and Denton, Dods & Denton, saying that the existing law does not warrant the proposed step, but that the attention of the Legislature will be called to the omission.

The letter of Mr. G. S. Holmsted was read and referred to the Reporting Committee to enquire and report.

Mr. Kerr moved a resolution as to the death of Sir A. Wilson as follows:

That the following resolution be entered on the proceedings of Convocation, and that an engrossed copy of the same be transmitted to Lady Wilson:

That the Benchers in Convocation desire to record the feeling of profound regret with which they have just learned of the death, this morning, of the Hon. Sir Adam Wilson, formerly Chief Justice of the Queen's Bench Division of the High Court of Justice of Ontario.

In thus paying their tribute of respect to his memory, they express the sentiments of every member of the Bar of Ontario, who are mindful of the great services rendered by the late Sir Adam Wilson to the profession, to the judiciary, and to the public generally throughout the long and useful life just brought to a close.

Called to the Bar in the year 1839, he was in active practice continuously until appointed to the Bench in 1863. He was appointed Queen's Counsel in 1850. Having entered the Parliament of Old Canada in 1860 as representative of the North Riding of the County of York, in 1862 he was called to the office of Solicitor-General for Upper Canada. He was appointed a judge of the Court of Queen's Bench in 1863, and a Chief Justice, in 1878, of the Court of Common Pleas, and Chief Justice of the Court of Queen's Bench in 1884. He received from Her Majesty the honour of knighthood, and retired from the Bench in 1887, since which time the Benchers in Convocation have enjoyed the benefit of his counsel and assistance in the best interests of the profession, which he had so much at heart. He was a sound and able lawyer, a conscientious, fearless, and forcible advocate and example to those who are to follow him at the Bar.

In his Parliamentary career he was a faithful representative of the people, firm and independent in enforcing his convictions, at all times commanding the respect alike of friends and opponents.

During a quarter of a century on the judicial Bench he was distinguished as an able, impartial, and upright judge, patient and painstaking to ascertain what was right, ever anxious to administer justice to every suitor whose cause came before him.

The virtues of his private life, as well as the conscientious discharge of his public duties, should stimulate all to imitate the high-minded and distinguished man who has so suddenly passed from amongst us.

Carried unanimously, and ordered that a copy of the above resolution be engrossed and forwarded to Lady Wilson.

Mr. Irving moved the following motion:

It appearing that in the matter of *The Queen and Connolly*, before the Common Pleas Division of the High Court of Justice, on motion made before the Divisional Court on 5th December instant, the court was pleased to hear as counsel on behalf of the defendants Connolly and others Mr. Fitzpatrick, one of Her Majesty's counsel for the Province of Quebec, duly authorized to practise as a barrister in the courts of justice of Quebec, but not having been called or admitted to the practice of the law as a barrister by the Law Society of Upper Canada, according to the statute in that behalf;

Resolved, that the members of Convocation present repectfully protest against the courts of this Province hearing counsel at the Bar, or within the Bar, who have not been admitted to practice at the Bar in Her Majesty's courts in Ontario according to the provisions of the law and the Rules of this Society (*Re De Souza*, 11 Ont. 43), and ordered that the Secretary forward a copy of this resolution to each of the judges of the Supreme Court of Judicature.

Ordered, that the consideration of this motion be adjourned to the first day of next Term.

Ordered, that Mr. Moss and Mr. Britton's notices be postponed to the second day of next Term.

Convocation adjourned.

J. K. KERR,
Chairman Committee on Journals.

DIARY FOR JULY.

1. Fri.....Dominion Day. Long vacation begins.
3. Sun.....*3rd Sunday after Trinity.* Quebec founded by Champlain, 1608.
4. Mon.....County Court sittings for motions, except in York. Surrogate Court sittings. Declaration of American Independence.
5. Tues....Battle of Chippewa, 1814.
7. Thur....Col. Simcoe, Lt.-Governor of Ontario, 1792.
9. Sat.....Importations of slaves into Canada prohibited, 1793.
10. Sun.....*4th Sunday after Trinity.* Christopher Columbus born, 1447.
11. Mon.....Battle of Black Rock, 1812.
12. Tues.....Battle of the Boyne, 1690.
13. Wed.....Sir John B. Robinson, 7th C.J. of Q.B , 1829.
15. Fri.....Manitoba entered Confederation, 1870.
17. Sun.....*5th Sunday after Trinity.*
19. Tues.....Quebec capitulated to the British, 1629.
20. Wed.....British Columbia entered Confederation, '71.
22. Fri.....W. H. Draper, 9th C.J. of Q B., 1863. W. B. Richards, 3rd C.J. of C.P., 1863.
23. Sat.....Upper and Lower Canada united, 1840.
24. Sun.....*6th Sunday after Trinity.* Battle of Lundy's Lane, 1814.
25. Mon....St. James. Canada discovered by Cartier, 1534.
29. Fri.....Wm. Osgoode, 1st C.J of Q.B., 1792. First Atlantic cable laid, 1866.
31. Sun.....*7th Sunday after Trinity.*

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.] [June 17.

MCGUGAN *v.* SMITH.

Contract—Agreement for service—Specific performance—Remuneration for services—Quantum meruit.

S., with the consent of her parents, went to live with her grandfather when she was eleven years old, and some three years after the grandfather agreed that if she would remain with him until he died, or until her marriage, he would provide for her by his will as amply as for any of his daughters. She lived with him until she was twenty-five, when she was married, performing all the time such services as tending cattle, cleaning out stables, breaking in unmanageable horses, doing field work and other things usually done by a man.

About a year after her marriage her grandfather died, leaving her by his will $400, a sum much less than his daughters received. She brought an action against the executors of the estate for specific performance of the said agreement, or, in the alternative, for wages for the time she worked for the testator.

Held, affirming the judgment of the Court of Appeal, that S. was entitled to payment for her services, and that $1000 was a reasonable amount to remunerate her therefor, and she was entitled to judgment for that amount which was to include the $400 left to her by the will.

Held, also, that the agreement made with S. by her grandfather was not one of which the court would decree specific performance.

Appeal dismissed with costs.

James A. Glenn for appellant.

John A. Robinson for respondent.

[June 20.

MCGUGAN *v.* MCGUGAN.

Appeal—Jurisdiction—Proceeding originating before judge in chambers—Right to tax costs—Party chargeable — Ratepayer — R.S.O. (1887), c. 147, s. 43.

By R.S.O. (1887), c. 147, s. 43, any person who not being chargeable as the principal party is liable to pay or has paid any bill of costs to the solicitor in an action is entitled to apply for an order of taxation of such bill, and such application may be made to a county court judge or a judge of the High Court in Chambers. M., a ratepayer of a township, applied to a judge of the High Court for an order to tax a bill against the town conncil. His application was refused, and he appealed to the Divisional Court, when the order for taxation was made. An appeal was taken to the Court of Appeal, where the judgment of the Divisional Court was reversed, and M. sought to appeal to the Supreme Court.

Held, that the appeal could not be entertained.

Per RITCHIE, C.J., and STRONG, J.: Even if the court has jurisdiction to hear this appeal and that it was not a matter of discretion in the Court of Appeal to hear it or not, we should not interfere in a matter of taxation of costs. Moreover, on the merits the ratepayer was not a person entitled to an order for taxation.

Per TASCHEREAU, J.: The judgment sought to be appealed from is not a final judgment under the Supreme Court Act; it was a matter of discretion for the Court of Appeal to entertain the appeal from the Divisional Court or not, and the proceedings did not originate in a Superior Court. For all these reasons the appeal should be quashed.

Per GWYNNE, J.: Whether we have jurisdiction to hear the appeal or not, the matter is one in which this court should not interfere.

Per PATTERSON, J.: The order in this case was one in which the court had a discretion to

make or refuse, and so it is not appealable to this court.

Appeal dismissed with costs.

Riddell, Q.C., and *John A. Robinson* for appellants.

Glenn for respondents.

Quebec.] [May 9.

PONTIAC CONTROVERTED ELECTION.

Election petition—Judgment—R.S.C., c. 9, s. 43—Enlargement of time for commencement of trial—R.S.C., c. 9, s. 33—Notice of trial—Shorthand writer's notes—Appeal—R.S.C., c. 9, s. 50 (b).

In the Pontiac election case, the judgment appealed from did not contain any special findings of fact or any statement that any of the 20,000 charges mentioned in the particulars were found proved, but stated generally that corrupt acts had been committed by the respondent's agents without his knowledge, and declared that he had not been duly elected and that the election was void. On an appeal to the Supreme Court on the ground that the judgment was too general and vague,

Held, that the general finding that corrupt acts had been proved was a sufficient compliance with the terms of the statute 49 Vict., c. 9, s. 43.

On the 10th October, 1891, the judge in this case within six months after the filing of the petition by order enlarged the time for the commencement of the trial to the 4th November, the six months expiring on the 18th October. On the 19th October another order was made by the judge fixing the date of the trial for the 4th November, 1891, and the respondent objected to the jurisdiction of the court.

Held, that the orders made were valid: ss. 31, 33, c. 9, R.S.C.

Held, also, (1) that the objection to the insufficiency of the notice of trial given in this case under s. 31 of c. 9, R.S.C., was not an objection which could be relied upon in an appeal under s. 50 (*b*) of c. 9, R.S.C.

(2) That evidence taken by a shorthand writer not an official stenographer of the court, but who has been sworn and appointed by the judge, need not be read over to the witnesses when extended.

Appeal dismissed with costs.

O'Gara, Q.C., and *Aylen* for appellant.

McDougall for respondent.

[June 2.

THE CORPORATION OF THE TOWN OF LEVIS *v.* THE QUEEN.

Expropriation of land—Value of land taken—Award by Exchequer Court judge—Appeal.

The Supreme Court will not interfere with the award of the judge of the Exchequer Court as to the value of land expropriated for railway purposes where there is evidence to support his finding, and such finding is not clearly erroneous.

Appeal dismissed with costs.

Belleau, Q.C., for appellants.

Angers, Q.C., for respondent.

FLATT *v.* FERLAND.

Fraudulent conveyance—Action to set aside by a creditor—Amount in controversy—Appeal—Jurisdiction—R.S.C., c. 135, s. 29.

In December, 1889, F., a trader, sold to G., respondent, certain real estate in Montreal which was mortgaged for $7000; for $8000 with a right of *reméré* for one year.

In January, 1890, F. made an assignment, and I. F., *et al.*, creditors of F. in the sum of $1880, brought an action against G. to have the deed of sale of the property, which was valued at over $11,000, set aside as made in fraud of his creditor. G. pleaded that he was willing to return the property upon payment of the sum of $1000 which he had advanced to F., and the courts below dismissed F., *et al.'s*, action. On appeal to the Supreme Court of Canada,

Held, that as the appellants' claim was under $2000 and that they did not represent F.'s creditors, the amount in controversy was insufficient to make the case appealable. R.S.C., c. 135, s. 29.

Appeal quashed with costs.

Belcourt for respondents.

Brosseau for appellants.

Nova Scotia.] [May 2.

PEOPLES BANK OF HALIFAX *v.* JOHNSON.

Contract—Consideration—Stifling prosecution.

L. was a member of the firm of H. & A. L., doing business at Lockport, N.S., and also local agent of a bank in that town. As such agent he had embezzled the bank's money, and the cashier of the bank obtained a bond from J.,

whose adopted daughter was the wife of L., agreeing to pay the indebtedness of the firm. In an action against J. on said bond the defence was that it had been given in consequence of threats by the cashier to prosecute L. for the embezzlement, and was therefore void.

Held, affirming the judgment of the Supreme Court of Nova Scotia, that the evidence established that the only consideration for the bond was to prevent the prosecution, and such consideration being illegal the bond was void.

Appeal dismissed with costs.

Ross, Q.C., for appellant.

Drysdale for respondent.

CITY OF HALIFAX *v.* LORDLEY.

Municipal corporation—Duty to light streets—Liability for negligence—Obstruction on sidewalk—Position of hydrant.

L. was walking along the sidewalk of a street in Halifax at night when an electric lamp went out, and in the darkness she fell over a hydrant and was injured. In an action against the city for damages it was shown that there was a space of seven or eight feet between the hydrant and the inner line of the sidewalk, and that L. was aware of the position of the hydrant and accustomed to walk on said street. The statutes respecting the government of the city do not oblige the council to keep the streets lighted, but authorize them to enter into contracts for that purpose. At the time of this accident the city was lighted by electricity by a company who had contracted with the corporation therefor. Evidence was given to show that it was not possible to prevent a single lamp or batch of lamps going out at times.

Held, reversing the judgment of the court below, STRONG and TASCHEREAU, JJ., dissenting, that the city was not liable; that the corporation being under no statutory duty to light the streets the relation between it and the contractors was not that of master and servant, or principal and agent, but that of employer and independent contractors, and the corporation was not liable for negligence in the performance of the service; that the position of the hydrant was not in itself evidence of negligence in the corporation; and that L. could have avoided the accident by the exercise of reasonable care.

MacCoy, Q.C., for the appellants.

Drysdale for the respondent.

MUNICIPALITY OF LUNENBURG AND OTHERS *v.* THE ATTORNEY-GENERAL OF NOVA SCOTIA.

Municipal corporations—Maintenance of county buildings—Establishment of county court house and gaol—Right to remove from shire town.

The county of Lunenburg, N.S., contains the municipality of C. and the town of L., which are corporations separate and distinct from the municipality of the county. L. is the shire town of the county, and contains the county court house and gaol, and the sittings of the Supreme Court for the county are required to be held there. By R.S.N.S., 5th ser., c. 20, s. 1., as amended by 49 Vict., c. 11, "County or district gaols, court houses, and sessions houses may be established, erected, and repaired by order of the municipal councils in the respective municipalities."

In 1891, an Act was passed by the Legislature of Nova Scotia empowering the municipality of L. to borrow money for the purpose of erecting and furnishing a court house and gaol in the county, or repairing and improving the present court house. The municipality of C. and town of L. were respectively to contribute towards payment of this loan. The municipality, by resolution, proposed to erect the said buildings in B., another town in the county, and an injunction was granted by the Supreme Court restraining the municipal council from erecting a court house for the general purposes of the county at B. or from expending in such erection any funds in which the municipality of C. and the town of L., or either of them, were interested. On appeal from the judgment granting said injunction,

Held, that without direct legislative authority the court house and gaol for the purposes of the county could only be situated at the shire town; that the authority in the municipal council to establish these buildings did not allow their erection in any other place, which would in effect repeal and annul the Acts of the Legislature providing for their establishment in L., the shire town; and that the injunction was properly issued and must be maintained.

Appeal dismissed with costs.

W. B. Ritchie for the appellants.

Russell, Q.C., for the respondent.

[May 10.

IN RE CAHAN.

Appeal—Jurisdiction—Security for costs—Final judgment.

C. applied to the Supreme Court of Nova Scotia to be admitted an attorney of said court, presenting to the court a certificate from the President of the Dalhousie Law School of his having taken the degree of LL.B. at said school, and claiming that the Act of the Nova Scotia Legislature, 54 Vict., c. 22, which made certain provisions respecting the admission of graduates of the Law School to the bar of the province, had done away, so far as such graduates were concerned, with certain conditions required to be performed by persons desiring admission to practise law. The Supreme Court held that graduates of the Law School were still obliged to perform these conditions, and refused the application. C. sought to appeal to the Supreme Court but gave no security for the costs of such appeal, his application not having been opposed and there being no person to whom such security could be given.

Held, GWYNNE, J., doubting, that the court had no jurisdiction to hear the appeal.

Per RITCHIE, C.J., and TASCHEREAU, J.: That giving security for costs is a condition precedent to every appeal to this court, and without it the court has no jurisdiction.

Per STRONG, J.: That it was never intended that the Supreme Court should interfere in matters relating to the admission of attorneys and barristers in the different provinces, and on that ground the appeal would not lie.

Per TASCHEREAU and PATTERSON, JJ.: That the judgment sought to be appealed from was not a final judgment within the meaning of the Supreme Court Act.

Appeal quashed.

Russell, Q.C., for appellant.

New Brunswick.] [May 16.

SCOTT *v.* THE BANK OF NEW BRUNSWICK.

Appeal—New trial—Verdict against weight of evidence—Interference with.

S. brought an action against the bank to recover money deposited on a special receipt, and the defence to the action was that the money had been paid to an agent of S. On the trial S. swore that after he got the deposit receipt from the bank he handed it to one R. for safe keeping while he was at sea, and that he had never indorsed it. It was shown that some time after R. presented the receipt at the bank with the name of S. indorsed thereon, and obtained the amount of the deposit with interest. When S. returned he found that R. had so used the receipt, and he afterwards took from him a mortgage for a larger amount than his deposit with the bank. The jury found that the name of S. was forged to the receipt, and that the mortgage given to S. did not include the amount claimed from the bank. A verdict was given for S., which was set aside as being against the weight of evidence, and a new trial was granted, from which S. appealed.

Held, that the Supreme Court would not interfere with the order for a new trial granted on the ground that the verdict was against the weight of evidence.

Appeal dismissed with costs.

Palmer, Q.C., for appellant.

Barker, Q.C., for respondent.

AYR AMERICAN PLOW CO. *v.* WALLACE.

Promissory note—Form of—Indorsement by party not named—Liability as maker.

The agent of the plaintiff company required security from a customer for goods sold, and went with the customer to the office of W., who was proposed as such security. W. agreed to become security, and was proceeding to write out promissory notes for the customer to sign when the agent requested the notes to be drawn on a form supplied to him by his principals, which was done, the customer signing such notes, of which the plaintiff company were payees. W. wrote his name across the back. The notes were not paid, and no notice of dishonour was given to W., but an action was brought against him and the customers as joint makers. On the trial the agent swore that he had never asked the customer for an indorser, but only for security; that he was accustomed to take joint notes in such cases; and that he supposed he was getting joint notes in this case. W. swore that he was asked to indorse, and only intended to indorse. A nonsuit was entered, with leave reserved to plaintiffs to move for judgment "if there is any evidence that should

be left to the jury as to W.'s liability." The motion for judgment was refused.

Held, affirming the judgment of the Supreme Court of New Brunswick, that the evidence showed that W. only intended to become indorser of the notes, and there was no evidence to go to the jury of his intention to be a maker. The nonsuit was right, therefore, and should be maintained.

Appeal dismissed with costs.

Earle, Q.C., for appellants.

Currey for respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

[May 10.

IN RE HUSON AND SOUTH NORWICH.

By-law—Publication—Polling places—Quashing—Discretion.

Notice of intention to submit a local option by-law to the votes of the township electors was given in proper form and for the requisite number of times in a paper published in an incorporated village, the bounds of which did not actually touch, though they came close to those of the township in question. This paper was the nearest paper, it had a large circulation in the township, and was that in which the township council had been in the habit of publishing their notices and by-laws. No paper was published in the adjoining municipality.

One of the polling places was described merely as being "at or near" a certain village. It was shown that this village was a very small one, and that the description was the same as that used in the by-laws appointing the places for holding municipal elections. It was also shown that the poll was held in a place close to that in which the poll had been held in the next preceding municipal election, that place itself having been destroyed.

Another polling place was specifically described by place, lot, and concession, but there was an error in the number of the concession.

It was shown that all the proceedings had been taken in good faith and that no one had been misled by any of these informalities.

Held, therefore, reversing the judgment of SIR THOMAS GALT, C.J., that the court might, in the exercise of its discretionary power so to do, refuse to quash the by-law in question.

Titus for the appellants.

DuVernet for the respondents.

VILLAGE OF BRIGHTON *v.* AUSTON.

Damages—Municipal corporations—Bonus—Repayment—Consideration.

The plaintiffs agreed to give to defendants a bonus of $1,000, in five equal consecutive annual instalments of $200 each, in consideration of their establishing a factory and working it for ten years. The agreement provided that the annual payments were to cease if the defendants ceased to carry on business within five years, but there was nothing in the agreement as to cesser after that time. The defendants carried on business for six years, obtained the full amount of the bonus, and then closed their factory. It was admitted that no specific damages could be proved.

Held, that the plaintiffs were not entitled to repayment of four-tenths of the bonus as upon a failure of consideration, but that they were entitled to nominal damages at least, and, under the circumstances, to the costs of the action.

Judgment of SIR THOMAS GALT C.J., affirmed, MACLENNAN, J.A., dissenting.

W. R. Riddell for the appellants.

J. S. Fullerton, Q.C., and *H. F. Holland* for the respondents.

FLEMING *v.* CITY OF TORONTO.

Municipal corporations—Local improvements—By-law.

A general by-law may be passed providing the means of ascertaining and determining what real property will be immediately benefited by any proposed work or assessment, the whole cost of which is to be assessed upon that property, but such a general by-law is not sufficient in the case of local improvements or construction of bridges, the whole cost of which the council deem it inequitable to raise by local special assessment.

Judgment of STREET, J., 20 O.R. 547, affirmed.

E. D. Armour, Q.C., for the appellants.

Moss, Q.C., and *Coatsworth* for the respondents.

MOORE *v.* JACKSON.

Husband and wife—Separate estate.

A woman, married in 1869, acquired in 1879 and 1882 certain lands by conveyances from strangers, her husband then being living. This action was brought in September, 1889, her husband being still living, to recover the amount of certain promissory notes made by her in 1887.

Held, reversing the judgment of the Queen's Bench Division, and restoring that of ARMOUR, C.J., 20 O.R. 652, that the lands in question were not the separate property of the married woman and were not subject to her debts.

E. D. Armour, Q.C., for the appellant.

J. R. Roaf for the respondent.

KENT *v.* KENT.

Husband and wife—Conveyance direct—Devise—Curtesy—Limitations.

A man, married in 1854, conveyed, in 1870, certain lands to his wife by deed under the Short Forms Act, with the usual covenants, for the expressed consideration of "respect and of one dollar." The husband and wife remained in possession of the lands until the wife died in 1872, leaving a will by which she devised her real estate to two daughters of herself, aged respectively seventeen and twelve, and this husband. The husband remained in possession till his death in 1890. This action was then brought by the younger daughter and the son of the elder daughter to recover possession from the devisee of the husband.

Held, that there had been a valid transfer of the equitable estate in the property to the separate use of the wife, and that the husband must be held to have been in possession after her death as guardian for the children, or as trustee of the legal estate for them, so that there was no bar.

Judgment of the Queen's Bench Division, 20 O.R. 445, affirmed, BURTON, J.A., dissenting.

W. R. Meredith, Q.C., and *E. R. Cameron* for the appellant.

Gibbons, Q.C., for the respondents.

PLATT *v.* GRAND TRUNK RAILWAY CO.

Covenant for title—Breach—Damages—Easement.

The defendants granted to the plaintiffs, with covenants for title under the Short Forms Act, certain lands, with the right and easement of erecting a dam at a certain spot. It was afterwards held that they had no right to grant such a right, but it was shown that it was not, in any event, practicable to maintain a dam at the spot in question.

Held, that the defendants were not liable to repay the full purchase money, less the actual value of the land, without the supposed right, but only the actual practical value of the supposed right, which was nothing.

Judgment of FERGUSON, J., affirmed, OSLER J.A., dissenting.

Shepley, Q.C., and *M. G. Cameron* for the appellants.

S. H. Blake, Q.C., and *W. Cassels*, Q.C., for the respondents.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

FERGUSON, J.] [May 28

GRAY *v.* RICHMOND.

Will—Devise—Direction to devisee to pay legacies—Charge on land—Registration of will—Notice—Priority of legatees over mortgagees—R.S.O., c. 110, ss. 8, 22.

A testator by his will devised land to his son James, subject to the payment of an annuity to his widow for her life after the expiration of a lease given by the testator, and directed his executors to apply the rent derived from the land so devised in payment of an incumbrance thereon, "so that my son may have the said property at the expiration of the said lease free from all incumbrance"; and he then directed that his son James should pay one-half of the sums thereinafter bequeathed to each of his daughters as soon as his own son Daniel should attain the age of twenty-one. To Daniel he devised other land, and directed him also to pay one-half of the bequests to the daughters. Then followed the bequests to his daughters, with names and amounts, to be paid

to them in equal shares by his sons James and Daniel on the latter attaining the age of twenty-one. The will was entirely silent as to the debts of the testator.

James adopted the devise to him, took possession of the land, and dealt with it as his property for many years.

Held, that the one-half of the legacies to the daughters was charged upon the land devised to James.

Robson v. *Jardine*, 22 Gr. 424, followed.

The will was duly registered prior to the dates or registry of certain mortgages created by James upon the land devised to him.

Held, that the mortgagees must be taken to have had, at the time of advancing these moneys, full notice of the will and its contents, and were bound to see to the application of their moneys, and, not having done so, that the legatees were entitled to priority.

Held, also, that that part of s. 22 of R.S.O., c. 110, which provides that the four preceding sections "shall not extend to a devise to any person or persons in fee or in tail or for the testator's whole estate or interest charged with debts or legacies" does not apply only to the cases of wills coming into operation before the 18th September, 1865, but is of general application, and applies to this case.

Held, lastly, that s. 8 of R.S.O., c. 110 (s. 15 of R.S.O., c. 102), does not apply to this case, because the money was not money payable upon an express or implied trust, or for a limited purpose, within the meaning of the section.

McMillan v. *McMillan*, 21 Gr. 594, and *Moore* v. *Mellish*, 3 O.R. 174, distinguished.

Atkinson, Q.C., for the plaintiffs.

M. Wilson, Q.C., and *Pegley*, Q.C., for the defendants.

Chancery Division.

Div'l Ct.] [June 28.

MILLER *v.* RYERSON.

Medical practitioners — College of Physicians and Surgeons — Limitation of actions — R.S.O., c. 148, s. 40 — Infancy.

In an action brought by an infant by her next friend against a doctor, a member of the College of Physicians and Surgeons, for malpractice, more than a year after the services of the doctor terminated, but (as was alleged) within a year from the time the injury became apparent. It was

Held, that under R.S.O., c. 148, s. 40, it was not commenced in time and must be dismissed.

Per BOYD, C.: No exception in favour of infants is to be implied in derogation of the general words of the Act. The liability arises when the professional services are rendered.

J. G. Holmes for plaintiff.

Bigelow, Q.C., and *Aylesworth*, Q.C., for defendant.

BOYD, C.] [April 16.

HOLT ET AL. *v.* THE CORPORATION OF THE TOWNSHIP OF MEDONTE ET AL.

Municipal corporations — By-law — Necessity of signature and seal — School sections, divisions of — Injunction.

The powers of municipal corporations are to be exercised by by-law under the corporate seal and signed by the head and the clerk, unless otherwise authorized or provided for.

The division of the school sections by municipalities involves the exercise of legislative powers, as to which the conclusion of the council should be embodied in a by-law.

A by-law purporting to divide a school section, signed by the clerk for the reeve, and without any corporate or other seal affixed,

Held, invalid and ineffectual, and that it did not accomplish the object of the corporate action or bind the ratepayers of the school section as constituted before the attempted division, and an injunction was granted restraining the defendants from acting on such division.

Marsh, Q.C., and *Hewson* for plaintiffs.

Pepler, Q.C., and *J. A. McCarthy* for defendants.

[May 11.

THE CORPORATION OF THE CITY OF TORONTO *v.* THE ONTARIO & QUEBEC RAILWAY COMPANY.

Railways — Bonus — Condition — Maintenance of workshops — Amalgamation with larger company — Changing circumstances — Ceasing to maintain — Condition complied with.

A railway company having obtained a bonus from the plaintiffs upon condition of locating

and maintaining its machine shops within the city limits did so erect and maintain them for some years until it amalgamated with and lost its identity in another company.

The amalgamated company was afterwards leased in perpetuity to a much larger and more extensive railway company, who removed the shops outside the city limits.

Held, that although all engagements and agreements made by the first-mentioned company were preserved by the legislation effecting the amalgamation and leasing, the acquisition in perpetuity by the larger company of the smaller, under the authority of Parliament, imposed new relations upon the amalgamated road which worked a change in the policy as to the site and size of the machine shops, and that the engagement was satisfied by their maintenance of the said shops by the smaller company during its independent existence.

C. Robinson, Q.C., for the plaintiffs.

E. Blake, Q.C., and *A. M. Grier* for the defendants.

BOYD, C.] [June 15.

JENNINGS *v.* WILLES.

Mechanics' Lien Act—"Payments"—R.S.O., c. 126, s. 9.

Held, the word "payments" in section 9 of the Mechanics' Lien Act, R.S.O., c. 126, is intended to cover payments made by the owner at the instance or by the direction of the contractor to those who supply materials to him as in this case. So, in like manner, "payment" may well extend to the case of payment by the giving of a bill or promissory note, as was done at the instance of the contractor to the other material men in this case.

D. M. Robertson for the plaintiff.

R. McKay for the defendant Wylie.

F. E. Hodgins for the defendants Harris & Co.

Kilmer for the defendants The Christie Lime and Stone Co.

FERGUSON, J.] [June 16.

JUDGE ET AL. *v.* SPLANN ET AL.

Will—Devise — Right to remain and live on "place" while unmarried—Interest in—Use of.

A testator by his will devised as follows: "I will, devise, and bequeath to my wife S.J. all my real and personal property during her natural life, and that my daughter S.J. shall remain and live on said place as long as she remains unmarried." The only real estate or "place" the testator owned was his farm, on which his widow remained with the daughter until her (the widow's) death.

Held, that the daughter had the right, after her mother's death, to live on the property as long as she remained unmarried, and that she had an estate in and was entitled to the use of it, as she might choose to use it, for that period.

Standish for the plaintiffs.

A. Cassels for testator's family.

Justin for purchasers.

Common Pleas Division.

Div'l Court.] [Feb. 27.

MASURET *v.* STEWART.

Fraudulent sale of goods—Intent to defeat creditors—Knowledge of insolvency—Direction to pay proceeds into court.

Where a sale of a whole stock in trade was made by S. to L. and by L. to C. with knowledge of S.'s insolvency, and being in substance a sale by S. to C. with the object of defeating S.'s creditors, L. merely holding the monies the proceeds of the sale for S. and thus for his creditors, the monies were directed to be paid into court for distribution amongst the creditors.

Gibbons, Q.C., for the plaintiff.

W. R. Meredith, Q.C., *contra.*

GALT, C.J.] [March 25.

ADAMSON *v.* TOWNSHIP OF ETOBICOKE.

Municipal law—Bonus to street railway in portion of township—Petition for by assessed owners—Assent of two-fifths of ratepayers.

Under s. 36 of the Municipal Amendment Act, 1891, 34 Vict., c. 42 (O.), the persons who may petition the council of a township, etc., for granting a bonus to a street railway within a defined portion of the township must be the assessed owners of the lands within such portion to the value of at least one-half thereof; but the by-law therefor must be voted on and assented to by a majority of the ratepayers actually voting, and not of those entitled to vote thereon.

H. S. Osler for the applicant.

Fullerton, Q.C., and *W. Pinkerton*, *contra.*

Practice.

ROSE, J.] [May 19.

OBERNIER *v.* ROBERTSON.

Pleading—Libel—Newspaper—Notice of action—Statement of claim.

In an action for libel contained in a public newspaper, the statement of claim must be confined to the statements complained of and specified in the notice required by R.S.O., c. 57, s. 5, s-s. (2), to be given by the plaintiff before action; and where the plaintiff in such notice specified parts of an article published by the defendant, and in her statement of claim set out the whole article, the portions not specified in the notice were stricken out.

E. D. Armour, Q.C., for the plaintiff.

E. F. B. Johnston, Q.C., for the defendant.

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Law Society of Upper Canada.

LEGAL EDUCATION COMMITTEE.

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THE LAW SCHOOL.

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

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

Examiners: FRANK J. JOSEPH, LL.B.; A. W. AYTOUN-FINLAY, B.A.; M. G. CAMERON.

ATTENDANCE AT THE LAW SCHOOL.

This School was established on its present basis by the Law Society of Upper Canada in 1889, under the provisions of rules passed by the Society in the exercise of its statutory powers. It is conducted under the immediate supervision of the Legal Education Committee of the Society, subject to the control of the Benchers of the Society in Convocation assembled.

Its purpose is to secure as far as possible the possession of a thorough legal education by all those who enter upon the practice of the legal profession in the Province. To this end, with certain exceptions in the cases of students who had begun their studies prior to its establishment, attendance at the School, in some cases during two, and in others during three terms or sessions, is made compulsory upon all who desire to be admitted to the practice of the Law.

The course in the school is a three years' course. The term or session commences on the fourth Monday in September, and ends on the first Monday in May, with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's day.

Admission to the Law Society is ordinarily a condition precedent to attendance at the Law School. Every Student-at-Law and Articled Clerk before being allowed to enter the School must present to the Principal a certificate of the Secretary of Law Society, showing that he has been duly admitted upon the books of the Society, and has paid the prescribed fee for the term.

Students, however, residing elsewhere, and desirous of attending the lectures of the School, but not of qualifying themselves to practise in Ontario, are allowed, upon payment of usual fee, to attend the lectures without admission to the Law Society

The students and clerks who are exempt from attendance at the Law School are the following:

1. All students and clerks attending in a Barrister's chambers, or serving under articles elsewhere than in Toronto, and who were admitted prior to

Hilary Term, 1889, so long as they continue so to attend or serve elsewhere than in Toronto.

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

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

Provision is made by Rules 164 *(g)* and 164 *(h)* for *election* to take the School course, by students and clerks who are exempt therefrom, either in whole or in part.

Attendance at the School for one or more terms, as provided by Rules 155 to 166 inclusive, is compulsory on all students and clerks not exempt as above.

A student or clerk who is required to attend the School during one term only must attend during that term which ends in the last year of his period of attendance in a Barrister's chambers or service under articles, and may present himself for his final examination at the close of such term, although his period of attendance in chambers or service under articles may not have expired.

Those students and clerks, not being graduates, who are required to attend, or who choose to attend, the first year's lectures in the School, may do so at their own option either in the first, second, or third year of their attendance in chambers or service under articles, and may present themselves for the first-year examination at the close of the term in which they attend such lectures, and those who are not required to attend and do not attend the lectures of that year may present themselves for the first-year examination at the close of the school term in the first, second, or third year of their attendance in chambers or service under articles. See new Rule 156 *(a)*.

Under new Rules 156 *(b)* to 156 *(h)* inclusive, students and clerks, not being graduates, and having first duly passed the first-year examination, may attend the second year's lectures either in the second, third, or fourth year of their attendance in chambers or service under articles, and present themselves for the second-year examination at the close of the term in which they shall have attended the lectures. They will also be allowed, by a written election, to divide their attendance upon the second year's lectures between the second and third or between the third and fourth years, and their attendance upon the third year's lectures between the fourth and fifth years of their attendance in chambers or service under articles, making such a division as, in the opinion of the Principal, is reasonably near to an equal one between the two years, and paying only one fee for the full year's course of lectures. The attendance, however, upon one year's course of lectures cannot be commenced until after the examination of the preceding year has been duly passed, and a student or clerk cannot present himself for the examination of any year until he has completed his attendance on the lectures of that year.

The course during each term embraces lectures, recitations, discussions, and other oral methods of instruction, and the holding of moot courts under the supervision of the Principal and Lecturers.

On Fridays two moot courts are held for the students of the second and third years respectively. They are presided over by the Principal or a Lecturer, who states the case to be argued, and appoints two students on each side to argue it, of which notice is given one week before the day for argument. His decision is pronounced at the close of the argument or at the next moot court.

At each lecture and moot court the attendance of students is carefully noted, and a record thereof kept.

At the close of each term the Principal certifies to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student is to be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures on each subject delivered during the term and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, a special report is made upon the matter to the Legal Education Committee. The word "lectures" in this connection includes moot courts.

Two lectures (one hour) daily in each year of the course are delivered on Monday, Tuesday, Wednesday, and Thursday. On Friday there is one lecture in the first year, and in the second and third years the moot courts take the place of the ordinary lectures. Printed schedules showing the days and hours of all the lectures are distributed among the students at the commencement of the term.

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

The fee for attendance for each term of the course is $25, payable in advance to the Sub-Treasurer, who is also the Secretary of the Law Society.

The Rules which should be read for information in regard to attendance at the Law School are Rules 154 to 167 both inclusive.

Examinations.

Every applicant for admission to the Law Society, if not a graduate, must have passed an examination according to the curriculum prescribed by the Society, under the designation of "The Matriculation Curriculum." This examination is not held by the Society. The applicant must have passed some duly authorized examination, and have been enrolled as a ma-

triculant of some University in Ontario, before he can be admitted to the Law Society.

The three law examinations which every student and clerk must pass after his admission, viz., first intermediate, second intermediate, and final examinations, must, except in the case to be presently mentioned of those students and clerks who are wholly or partly exempt from attendance at the School, be passed at the Law School Examinations under the Law School Curriculum hereinafter printed, the first intermediate examination being passed at the close of the first, the second intermediate examination at the close of the second, and the final examination at the close of the third year of the school course respectively.

Any student or clerk who under the Rules is exempt from attending the lectures of the School in the second or third year of the course is at liberty to pass his second intermediate or final examination or both, as the case may be, under the Law Society Curriculum instead of doing so at the Law School Examinations under the Law School Curriculum, provided he does so within the period during which it is deemed proper to continue the holding of such examinations under the said Law Society Curriculum. The first intermediate examination under that curriculum has been already discontinued, and that examination must now be passed under the Law School Curriculum at the Law School Examinations by all students and clerks, whether required to attend the lectures of the first year or not. It will be the same in regard to the second intermediate examination after May, 1893, after which time that examination under the Law Society Curriculum will be discontinued. Due notice will be hereafter published of the discontinuance of the final examinations under that curriculum.

The percentage of marks which must be obtained in order to pass an examination of the Law School is fifty-five per cent. of the aggregate number of marks obtainable, and twenty-nine per cent. of the marks obtainable upon each paper.

Examinations are also held in the week commencing with the first Monday in September for those who were not entitled to present themselves for the earlier examination, or who, having presented themselves, failed in whole or in part.

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

The time for holding the examinations at the close of the term of the Law School in any year may be varied from time to time by the Legal Education Committee, as occasion may require.

On the subject of examinations reference may be made to Rules 168 to 174 inclusive, and to the Act R.S.O. (1887), cap. 147, secs. 7 to 10 inclusive.

Honors, Scholarships, and Medals.

The Law School examinations at the close of term include examinations for Honors in all the three years of the School course. Scholarships are offered for competition in connection with the first and second intermediate examinations, and medals in connection with the final examination.

In connection with the intermediate examinations under the Law Society's Curriculum, no examination for Honors is held, nor Scholarship offered. An examination for Honors is held, and medals are offered in connection with the final examination for Call to the Bar, but not in connection with the final examination for admission as Solicitor.

In order to be entitled to present themselves for an examination for Honors, candidates must obtain at least three-fourths of the whole number of marks obtainable on the papers, and one-third of the marks obtainable on the paper on each subject, at the Pass examination. In order to be passed with Honors, candidates must obtain at least three-fourths of the aggregate marks obtainable on the papers in both the Pass and Honor examinations, and at least one-half of the aggregate marks obtainable on the papers in each subject on both examinations.

The scholarships offered at the Law School examinations are the following :

Of the candidates passed with Honors at each of the intermediate examinations the first shall be entitled to a scholarship of $100, the second to a scholarship of $60, and the next five to a scholarship of $40 each, and each scholar shall receive a diploma certifying to the fact.

The medals offered at the final examinations of the Law School and also at the final examination for Call to the Bar under the Law Society Curriculum are the following :

Of the persons called with Honors the first three shall be entitled to medals on the following conditions :

The First: If he has passed both intermediate examinations with Honors, to a gold medal, otherwise to a silver medal.

The Second: If he has passed both intermediate examinations with Honors, to a silver medal, otherwise to a bronze medal.

The Third: If he has passed both intermediate examinations with Honors, to a bronze medal.

The diploma of each medallist shall certify to his being such medallist.

The latest edition of the Curriculum contains all the Rules of the Law Society which are of importance to students, together with the necessary forms, as well as the Statutes respecting Barristers and Solicitors, the Matriculation Curriculum, and all other necessary information.

Students can obtain copies on application to the Secretary of the Law Society or the Principal of the Law School.

THE LAW SCHOOL CURRICULUM.

FIRST YEAR.

Contracts.
Smith on Contracts.
Anson on Contracts.
Real Property.
Williams on Real Property, Leith's edition.
Deane's Principles of Conveyancing.
Common Law.
Broom's Common Law.
Kerr's Student's Blackstone, Books 1 and 3.
Equity.
Snell's Principles of Equity.
Statute Law.
Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.

Criminal Law.
Kerr's Student's Blackstone, Book 4.
Harris's Principles of Criminal Law.
Real Property.
Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Personal Property.
Williams on Personal Property.
Contracts.
Leake on Contracts.
Torts.
Bigelow on Torts—English Edition.
Equity.
H. A. Smith's Principles of Equity.
Evidence.
Powell on Evidence.
Canadian Constitutional History and Law.
Bourinot's Manual of the Constitutional History of Canada.
O'Sullivan's Government in Canada.
Practice and Procedure.
Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.
Statute Law.
Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.

Contracts.
Leake on Contracts.
Real Property.
Clerke & Humphrey on Sales of Land.
Hawkins on Wills.
Armour on Titles.
Criminal Law.
Harris's Principles of Criminal Law.
Criminal Statutes of Canada.
Equity.
Underhill on Trusts.
Kelleher on Specific Performance.
De Colyar on Guarantees.
Torts.
Pollock on Torts.
Smith on Negligence, 2nd ed.
Evidence.
Best on Evidence.
Commercial Law.
Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.
Private International Law.
Westlake's Private International Law.
Construction and Operation of Statutes.
Hardcastle's construction and effect of Statutory Law.
Canadian Constitutional Law.
British North America Act and cases thereunder.
Practice and Procedure.
Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of Courts.
Statute Law.
Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

THE LAW SOCIETY CURRICULUM.

Examiners: FRANK J. JOSEPH, LL.B.
A. W. AYTOUN-FINLAY, B.A.
M. G. CAMERON.

Books and Subjects prescribed for Examinations of Students and Clerks wholly or partly exempt from attendance at the Law School.

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 Rules of Practice, 1888, and Revised Statutes of Ontario, chaps. 100, 110, 143.

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, and Statute Law, and Pleadings and Practice of the Courts.

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

*The Second Intermediate Examination under this Curriculum will be discontinued after May, 1893.