Canada Law Journal.

No. 18.

VOL. XVIII. OCTOBER 15, 1882.

DIARY FOR OCTOBER.

21. Sat. .. Battle of Trafalgar, 1805.
22. Sun... *20th Sunday after Trinity.*
23. Mon.. Lord Monck, Governor-General, 1861.
24. Tue... Supreme Court Session begins. Sir J. H. Craig, Governor-General, 1807.
25. Wed.. Battle of Balaclava, 1854.
29. Sun... *21st Sunday after Trinity.*
31. Tue... All Hallow Eve. Second Intermediate Examination.

TORONTO, OCT. 15, 1882.

SIR CHARLES HALL has resigned his position as one of the Vice-Chancellors of England.

AT the conclusion of a case at Sandwich recently, Chief Justice Hagarty remarked upon the promptness with which the United States authorities surrendered, without any legal quibbling, criminals who flee from Canada, and added that he hoped to live to see the day when the Canadian authorities would act with the same promptness in returning criminals wanted in the United States, and not permit this country to be made a haven for bad characters from over the border.

WE regret that Mr. R. P. Stephens has been compelled through ill health to resign his positiou as Registrar of the Court of Queen's Bench. He is succeeded by Mr. John Winchester, who will doubtless make an efficient officer.

Whilst we have not one word to say against the fitness of this gentleman for the position to which he has been appointed, we are old-fashioned enough to think that offices, such as that which became vacant by the retirement of Mr. Stephens, instead of being filled by young men well able to battle for themselves and their clients, ought rather to be given to some one of the many older members of the Bar who might be glad to accept them as a relief, from what may, from various circumstances, be a hard struggle for existence. What is wanted for such a position is not energy and push so much as the steadiness and experience of riper years.

THE death is announced of Hon. E B. Wood, Chief-Justice of Manitoba. He died suddenly at Winnipeg, in the sixty-third year of his age. We are compelled to hold over an obituary notice until next issue.

The name of Hon. John O'Connor has been mentioned in connection with the vacant seat, but, as we write, no appointment has been made. Mr. O'Connor is a self-made man of solid ability, and a sound lawyer, and has many qualifications for the position. The Winnipeg Bar, thinking that it had some interest in the appointment, as in truth it has, met and passed a resolution naming Mr. T. W. Taylor, Q.C., as the person of their choice. However desirable it might be that the voice of the Bar should be heard on these occasions, and quite agreeing that Mr. Taylor would make an excellent judge, it is not likely that any ministry would give up the patronage thus naturally falling to it, or endeavour to escape one of the difficulties of their position by throwing on others their responsibility to the country in so important a matter.

WE do not intend to express an opinion, one way or the other, on the course which Convocation recently thought fit to pursue with reference to stopping the reporters' salaries, but we cannot but deplore the tone in which the subject has been discussed in some

of the daily journals. The suggestion that a body of gentlemen must necessarily have been biassed by political considerations in whatever they have done or not done as Benchers of the Law Society, is too puerile and ridiculous to be taken seriously. It is a joke, and a very bad one. It will, we venture to say, find little favour at Osgoode Hall, where those who in political matters are inclined to Conservatism will be disposed to say, Save us from our friends! For ourselves, as a legal journal, we have no more to do with politics than the Man in the Moon or the Benchers of the Law Society.

ANOTHER case of petty pilfering at Osgoode Hall has recently come to our notice. It appears that a few days ago a member of the profession left a neck-tie and scarf pin of some little value on the mantel-piece in the inner barristers' room in the Chancery wing, upon going into Court, and on his return found that, though the mantel-piece was still there, the neck-tie and pin were not. Even the halls of justice are not sacred to the sneak-thief, and until some of the more militant members of our body consent to practise sentry duty at the entrance to the various barristers' rooms, it is hard to say how such incidents can be prevented. No doubt a few full privates of the Queen's Own or Tenth Royals posted, with all their armour on, in different parts of the buildings might prove a remedy, but it is the only one we can suggest. Meanwhile, those who will play the confidence game for their own amusement must take the consequences.

RECENT ENGLISH DECISIONS.

Proceeding with L. R. 7 App., at p. 259 is a very important case on the meaning of "injuriously affected" as applied to lands in Acts relating to railways, viz., *Caledonian Ry. Co.* v. *Walker's Trustees.*

RAILWAYS—"INJURIOUSLY AFFECTED"—R. S. O. C. 165, S. 7.

The words "injuriously affected" are found in this connection in our R. S. O. c. 165, s. 7. The grounds on which the plaintiffs claimed to be "injuriously affected" in *Caledonian Ry.* v. *Walker* were, that the railway was constructed in such a way as to run directly across two streets, one on the north and one on the south of the property on which their cotton-mill stood, which had formerly been the special and only means of access therefrom to the principal thoroughfare of the district, and had thereby rendered it necessary that all carts, carriages and passengers going to or from the plaintiff's works should go by a longer detour, along certain new streets on which, moreover, the gradients were considerably steeper than those of the former streets thus obstructed. The House of Lords held that, under these circumstances, the property of the plaintiffs was "injuriously affected" within the meaning of the Railway Act. For the defendants, it was contended, that compensation was excluded by *Caledonian Ry. Co.* v. *Ogilvy*, 2 Macq. 229, and *Ricket* v. *Metropolitan Ry.*, L. R. 2 H. L. 175; while the plaintiffs relied on *Metropolitan Board of Works* v. *McCarthy*, L. R. 7 H. L. 243. These three cases, with others, are therefore discussed at length in the opinions of their lordships. Lord Selborne says of them:—"All the three decisions appear to me to be capable of being explained and justified upon consistent principles; the propositions which I regard as having been established by them, and by another judgment of our lordships in the the case of *Hammersmith Ry. Co.* v. *Brand*, L. R. 4 H. L. 171, being these:—i. When a right of action which would have existed if the work, in respect of which compensation is claimed, had not been authorized by Parliament, would have been merely personal, without reference to land or its incidents, compensation is not due under the Act; established by *Ogilvy's* case, 2 Macq. 229. ii. When damage arises, not out of the execution but only out of the subsequent use of the

work, then also there is no case for compensation; established by *Brand's* case, L. R. 4 H. L. 171. iii. Loss of trade or custom by reason of a work not otherwise directly affecting the house or land in or upon which a trade has been carried on, or any right properly incident thereto, is not by itself a proper subject for compensation; established by *Ricket's* case, L. R. 2 H. L. 175. iv. The obstruction, by the execution of the work, of a man's direct access to his house or land, whether such access be by a public road or by a private way, is a proper subject for compensation; *Chamberlain's* case, 2 B. and S. 617; *McCarthy's* case, L. R. 7 H. L. 243." Lord O'Hagan and Lord Blackburn declare the present case undistinguishable from *McCarthy's* case; they also express entire concurrence with Lord Selborne. Lord Blackburn declares that it is not easy, and that to his mind it was not possible, altogether to reconcile the above mentioned decisions of the House. He concurred, however, in the decision of the other Lords as regards the present case. He says, as to *Ogilvy's* case, "I think the ground on which both the Lord Chancellor (Cranworth) and Lord St. Leonards decided in *Caledonian Ry. Co.* v. *Ogilvy*, 2 Macq. 229, was that no compensation is given for damages occasioned by the works of the company, if the thing done was one for which, if done without any statutable power, no action could have been maintained, however certain it may seem that it would never have been done but for the creation of the company, which, notwithstanding Lord Westbury's strong opposition, is, I think, now settled to be correct law. Next, that though an action would have lain for the thing done, yet no compensation is given unless the ground of action would be that lands, or some interest in lands, was injuriously affected, which also is, I think, now settled law, and they thought that the pursuer could not have maintained an action at all, or, if he could, that it would have been an action in respect of personal loss or inconvenience, and not an action in respect of an injurious affection of his land or house." Speaking of *McCarthy's* case, L. R. 7 H. L. 243, he says:—"I think this decides that the right of access by a public way to land, is a right attached to the land, and that if an obstruction to the public right of way occasions particular damage to the owner or occupier of that land by diminishing its value, the action which he might bring for that particular damage would be an action for an injury in respect of the land;" and he adds, "Now I do not dispute that an obstruction to a highway may be so distant from lands that no one could reasonably find that the lands were appreciably damaged by the obstruction, but I think it unnecessary to try to give a definition of that distance; it is enough to say that in this case the distance is not too great."

PROPER MODE OF DEALING WITH RECORDED CASES.

There is a *dictum* of Lord Selborne on this point, at p. 275, which seems noticeable; he says, "The reasons which learned Lords who concurred in a particular decision may have assigned for their opinions, have not the same degree of authority with the decisions themselves. A judgment which is right, and consistent with sound principles, upon the facts and circumstances of the case which the House had to decide, need not be construed as laying down a rule for a substantially different state of facts and circumstances, though some propositions, wider than the case itself required, may appear to have received countenance from those who then advised the house."

The next case requiring notice is the last in this number of the appeal cases, viz., *Mussoorie Bank* v. *Raynor*, p. 321.

WILL—PRECATORY TRUSTS.

In this case it appeared that a testator made his will thus: "I give to my wife the whole of my property, both real and personal, including" [government promissory notes, bank shares, a house, plate, money, furniture, carriages, horses, etc.] "feeling confident

that she will act justly to our children in dividing the same when no longer required by her." The Privy Council held that the wife took an absolute interest. In their judgment their Lordships say: "Considering the nature of the property, which includes a number of articles as to some of which the use is equivalent to the consumption; to the nature of the first gift, which, although not expressed in terms to be an absolute gift, is quite unlimited, and is legally an absolute gift; and and to the fact that the first gift is only cut down by words which do not constitute a direct gift, but are to operate through an influence upon the consicience and feelings of the wife, their Lordships cannot come to any other conclusion than that the testator intended his wife to use the property according to her requirements. That is equivalent to a absolute gift." And more generally: "Their Lordships are of opinion that the current of decisions now prevalent for many years in the Court of Chancery shews that if the doctrine of precatory trusts were applied to the present case it would be extended far beyond the limits to which any previous case has gone. No case has been cited, and probably no case could be cited, in which the doctrine of precatory trusts has been held to prevail when the property said to be given over is only given when no longer required by the first taker. Now these rules are clear with respect to the doctrine of precatory trusts, that the words of gift used by the testator must be such that the Court finds them to be imperative on the first taker of the property, and that the subject of the gift over must be well defined and certain."

The remaining July numbers of the Law Reports which remain for service, consist of 9 Q. B. D. p. 1-13; 7 P. D. p. 101-117; and 20 Ch. D. p. 229-441.

AWARD AND SATISFACTION—DELIVERY OF CHEQUE.

In the first of these, the first case which requires mention is *Goddard* v. *O'Brien*, p. 37. In this case, A. being indebted to B. to the amount of £125, for goods sold and delivered, gave B. a cheque for £100, payable on demand, which B. agreed to accept in satisfaction. The question was whether this was a good award and satisfaction. On the negative side, it was argued that the case fell within the rule laid down by Brett, C.J., in *Cumber* v. *Vane*, Str. 426, that a debt is not satisfied by a receipt of a security of equal degree for a smaller sum. The Divisional Court, however, held in favour of the affirmative. Grove, J. says:—"The difficulty arose from the rule laid down in *Cumber* v. *Vane*. But that doctrine has been much qualified, and I am not sure that it has been over-ruled. In *Sibree* v. *Tripp*, 15 M. & W. 23, the judgments of Parke and Aldernon, D.B., and strong expressions of a contrary opinion." And he adds, "to say that you may receive something which is not money,—a chattel, for instance, of inferior value; but that you cannot receive money, is to my mind a very singular state of the law. I cannot see why the same reasoning should not apply to a chattel as to money." On the subject of the state of the law in this respect, the amusing language of Jessel, M. R., in *Couldery* v. *Bartram*, L. R. 19 Ch. D. 399 (noted *supaa*, p. 210), may be cited. In *Goddard* v. *O'Brien*, Huddleston, B., says the rule cannot be better stated than it is in the notes to *Cumber* v. *Wane*, Smith's L. C. 8th Ed. at p. 366.

LAW SOCIETY.

TRINITY TERM, 46TH VICTORIA, 1882.

The following is the *resume* of the proceedings of the Benchers on the 27th June, and during Trinity Term. Published by authority.

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

Mr. J. D. Cameron and Mr. C. W. Oliver, with honors, and Messrs. J. C. F. Bown, C. J. Leonard, E. E. Kittson, V. A. Robertson, L. E. Dancy J. H. Ingersoll, H. W. Hall, R. A.

Pringle, J. C. Alguire, F. A. Knapp, J. A. Robinson, and J. M. Ashton.

The following gentlemen received Certificates of Fitness, namely :—

Messrs. J. D. Cameron, C. W. Plaxton, B. F. Justin, J. C. F. Bown, J. Chisholm, D. J. Lynch, C. J. Leonard, W. J. Nelson, J. C. Culham, G. W. Marsh, J. A. Robinson, R. C. Hays, J. C. Coffee, E. Cahill, W. M. Germon, H. D. Helmcken, and J. M. Ashton.

The following gentlemen passed their first Intermediate Examination, namely :—

A. C. Macdonell (First Scholarship), A. S. Lown (Second Scholarship), A. B. McBride (Third Scholarship), and W. A. Matheson, D. S. Kendall and T. J. Blain, with honors, and L. H. Patten, G. H. Jarvis, J. B. Jackson, W. E. Middleton, J. W. St. John, A. C. Rutherford, D. J. Owens, S. O'Brien, George E. Evans, J. A. Forin, J. L. Duncan, M. Wilkins, W. D. Jones, F. E. Nelles, F. W. Thistlewaite, H. H. Bolton, N. A. Bartlett, R. D. Gunn, G. E. Kidd, and A. Gillespie.

The following gentlemen passed their Second Intermediate Examination, namely :—

George Morehead (First Scholarship), T. C. Short (Second Scholarship), A. W. Ambrose (Third Scholarship), and A. F. Godfrey, W. A. Stratton, G. F. Cairns, G. W. Ross, T. C. Atkinson, J. Burdett, W. J. Peck, C. C. Ross, T. B. Shoebotham, W. Lees, W. H. Gordon, W. J. Taylor, F. E. Titus, J. M. Best, G. W. Danks, M. McFadden, P. J. King, F. S. Wallbridge, J. N. Marshall, H. McMillan, J. G. Forgie, J. P. Telford, M. S. McCraney.

The following gentlemen passed the Preliminary Examination as Students and Articled Clerks, namely .—

Graduates—Spencer Love, Francis Robert Latchford, John Alfred McAndrew, Henry Walter Mickle, A. M. Lafferty, Charles T. Glass, Arthur E. O'Meara, Angus McMurchy, Edward George Graham, Robert Hall Pringle, Smith Curtis, Willoughby L. Brewster, John Frederick Grierson, Edward K. C. Martin, J. Shilton, Christopher Robinson Boulton, Fenwick Williams Creelman, William H. Blake, F. W. G. Thomas, William Morris, Alexander Clive Morris, David Fasken, James Baird, F. C. Wade, G. S. Macdonald, George G. S. Lindsay, Alfred Herman Gross.

Matriculants—Joseph S. Walker, G. J. Cochrane, D. D. L. Grierson, E. J. B. Duncan, Francis Hall, John F. Wills, Henry Parker Thomas, William F. Johnston, Thos. A. Wardell, W. H. Hearst, Norman McDonald, W. J. Millican, John McKay, Robert C. Le Visconte.

Juniors—H. A. Percival, J. H. Reeves, J. S. Chalk, J. H. A. Beattie, W. B. Lawson, H. N. Roberts, F. F. Lemieux, J. P. Moore, J. H. Sinclair, G. H. Dawson, N. McCrimmon, J. Y. Murdoch, J. G. Leggett, G. H. Hutchison, G. L. Lennox, R. A. Bayley, E. A. Crease, J. H. Jack, J. W. Bennett, M. McLean, W. G. Burns.

Tuesday, June 27th, 1882.

Convocation met.

Present—The Treasurer, and Messrs. Crickmore, L. W. Smith, J. F. Smith, Bethune Kerr, Benson, Murray, McLennan, Martin, McCarthy, Read.

The Report of the Legal Education Committee on the petition of G. B. Douglas was adopted.

The final Report of the Building Committee was adopted.

The Report of the Engineer on the subject of the condition of the heating apparatus was received.

Ordered, That a copy of this Report be sent to the Attorney-General and the Commissioner of Public Works, and that Mr. L. W. Smith do confer with them on the subject.

Mr. Martin presented the Report of the County Library Aid Committee, recommending that the initial grants to existing associations should be doubled, and that the whole subject of grants to county libraries should be reconsidered.

The Report was considered.

Mr. Martin moved the first reading of the following rule :—

1. The maximum initiatory, or first grant, provided by the 6th sub-section of the rule as to County Libraries, adopted on the 24th day of June, A. D. 1879, shall not exceed twelve dollars for each practitioner in the county or union of counties ; and the said sub-section is hereby amended by substituting for the words "six dollars," the words "twelve dollars."

2. This rule shall extend to existing Library Associations.

3. In case the contributions in money or books made to any existing Library Association, and to be taken into account in estimating the amount of its first grant, have been insufficient to entitle it to the maximum first grant hereby pro-

vided, it shall be competent to supplement such contributions at any time before the 31st December, 1882, and on evidence thereof being supplied, such association may receive the balance coming to it in respect of the maximum first grant under this rule.

The rule was read a first time.

Mr. Martin moved that the rules be dispensed with, and that the said rule be read a second and third time. Carried unanimously.

The rule was read a second and third time, and was carried.

Ordered, That the County Libraries Aid Committee be directed to take steps to ascertain by 31st December next, in what further cases it may be expected that County Libraries will be formed.

Mr. Martin moved, and it was resolved, That in the opinion of Convocation the practice of using Osgoode Hall for the trials of causes involving the examination of witnesses was producing great and increasing inconveniences, and should be discontinued.

Ordered, That the Treasurer, and Messrs. McCarthy, Maclennan, and the mover, be a Committee to call upon the judges and the Attorney-General, for the purpose of representing the necessity of arrangements being made as early as practicable which will remove the inconveniences which have prevailed under the present system, and which are constantly increasing.

Mr. Crickmore presented the Report of the Lecturers on the subject of the examinations in the Law School, and moved that Messrs. Maclennan, J. F. Smith, and the mover, be a Committee to ascertain and report who, if any, are entitled to prizes under the said report and the rule in that behalf.

On the motion of Mr. Maclennan an order was made as to the distribution of the earlier parts of the Election Reports published by Mr. Hodgins.

Mr. Benson and Mr. Murray were appointed a Committee to examine the Journals, and report on the first day of Trinity Term as to whether any and which of the elected Benchers had vacated his seat by non-attendance.

Mr. J. F. Smith presented the Report of the Select Committee as to prize men in the Law School, which was adopted, and was as follows:—

To the Benchers of the Law Society:

The Special Committee to whom was referred the consideration of the question as to which of the parties, if any, are entitled to prizes under the examinations by the Lecturers of the Law School, beg leave to report that in the Senior Class no one has obtained the requisite number of marks, namely, three-fourths; and that in the Junior Class, Mr. D. C. Ross is entitled to a prize of law books of the value of twenty-five dollars.

(Signed) J. F. SMITH,
Chairman.

Ordered, That pursuant to the Report, Mr. D. C. Ross do receive a prize of law books to the value of twenty-five dollars as prize man of the Junior Class.

Monday, 28th August, 1882.

Present—The Treasurer, and Messrs. Crickman, Hoskin, Irving, Mackelcan, Moss, Bethune, Maclennan, Meredith, Martin, Ferguson, Beaty, Benson, Read.

Mr. Benson presented the Report of the Select Committee to examine the Journals on the subject of vacation of the seats of elected Benchers, in which it appears that the Hon. Stephen Richards, Q. C., and John Bell, Esq., Q. C., had vacated their seats by non-attendance.

Ordered, That a call of the Bench be made for Friday, September 8th, for the election of two Benchers in their place.

Tuesday, 29th August, 1882.

Present—Messrs. Benson, Bethune, Crickmore, Maclennan, Ferguson, Beaty, Mackelcan, Foy, Moss, Irving and Read.

Mr. Benson was elected chairman in the absence of the Treasurer.

The Committee on Legal Education reported on the case of Mr. Alguire as follows:—

As to the case of John Calvin Alguire, it appears that during this Term he has passed the ordinary examination required to be passed by candidates for call. On the 7th September, 1878, registration in Montreal of certificate of clerk with Hilton took place. He was transferred to Hutchison for the residue of the term of three years. P. H. Ray, Secretary of the Bar of Lower Canada, District of Montreal, certifies as of the date of 7th September, 1878, that he was registered. There are certificates of Messrs. Hilton and Hutchison that he has served the three years, and done all things to entitle him to be examined and admitted to the privileges of the Bar of Lower Canada. The Committee recom-

mend that Mr. Alguire produce a certificate of his having passed the preliminary examination in Montreal; a declaration of his own, showing the causes accounting for the delay in registering his contract of service, and testimonials of good character, to the satisfaction of the Society; and that thereupon he be called to the Bar.

The Report was adopted.

Ordered, That Mr. Alguire having complied with all the requirements of the Report, be called to the Bar.

In the case of Mr. Knapp, the Special Committee to whom it was referred, reported as follows :—

Trinity Term, 29th August, 1882.

To the Law Society in Convocation:

The Special Committee to whom was referred the case of Frederick Augustus Knapp, beg leave to report that Mr. Knapp is entitled to be called to the Bar, under the rules in special cases. He appears to have been called to the Bar, and is still a member of the Bar of the Province of Quebec, section of the District of Montreal, in good standing; and that since his call no adverse application has been made to disbar him, and that no charge is pending against him for professional or other misconduct; that he has duly given the notice both in the *Gazette* and to the Society as required by the special rules; and he having passed before us the examination prescribed, and paid the fees payable by the candidates for call to the Bar, under the said rules, and it appearing that the same privilege is extended to barristers of Ontario in the Province of Quebec, the Committee therefore recommend that he be called to the Bar.

As to his position of candidate for Certificate of Fitness, the Committee find that he has been in actual practice as a barrister and advocate in the Province of Quebec for three years; that no application has been made to disqualify him from practice at the Bar of Quebec, and that no charge is pending against him for professional or other misconduct; that he has given the notices as well to the Society as in the *Gazette*, required by the rules for the admission of solicitors in special cases, and that the same privilege is extended to solicitors of Ontario in the Province of Quebec, and he having furnished the necessary fees. The Committee recommend that he receive his Certificate of Fitness.

(Signed) JAMES BETHUNE,
Chairman.

Mr. Bethune moved the adoption of the first clause of the report recommending that Mr. Knapp be called to the Bar.

Ordered, That Mr. Knapp be called to the Bar.

Mr. Bethune moved the adoption of the second clause of the Report recommending that Mr. Knapp receive a Certificate of Fitness.

Mr. Beaty, seconded by Mr. Foy, moved in amendment, That the Report on Mr. Knapp's case, recommending that he receive his Certificate of Fitness, be referred to a committee consisting of Messrs. Maclennan, Mackelcan, Crickmore, Bethune and Beaty, to report,

1. Whether an advocate from the Province of Quebec, admitted to the Bar of Ontario, must first pass an examination in the law and practice of law in Ontario to entitle him to admission to practice as a solicitor.

2. If so, what such examination shall be, and in what subjects, and to what extent in comparison with the ordinary examination of articled clerks in Ontario.

3. Whether application to the Court must first be made to direct such examinations, or whether application to the Court for admission is to be made after such examination.

4. What fees are payable by Mr. Knapp.

Mr. Beaty's motion in amendment was carried.

The Rule to amend Rules 94, 95, 97 and 98, relating to the call of Barristers in special cases, and the admission of attorneys and solicitors in special cases, was read a first time.

Ordered, That the Rule be read a second time ou Saturday, September 2nd.

Saturday, September 2nd, 1882.

Present —The Treasurer, and Messrs. Read, Irving, Bethune, Ferguson, Crickmore, Maclennan, Moss, Foy, Fraser, J. F. Smith, and Benson.

The Report of the Finance Committee as to the investments made by them, was read and received.

The Rule to amend Rules 94, 95, 97 and 98, was read a second time.

Ordered, That it be read a third time on September 8th.

The Rule as to notice was suspended unanimously, and the following Rule was read a first time :—

Rule 126 is hereby amended by adding thereto the following words: "And for every other

certificate not by these rules otherwise provided for, one dollar.

Ordered for second reading on September 8th.

On motion of the Chairman of the Legal Education Committee, it was ordered, That no Candidate for Call or Certificate of Fitness who shall have omitted to leave his petitions and all his papers with the Secretary complete, on or before the third Saturday preceding the term, as by the rules required, shall be called or admitted except after report upon a petition by him presented, praying special relief on special grounds.

On motion of Mr. Bethune, it was ordered that the fees for the Examiner for Matriculation where but one Examiner is appointed, shall be fifty per cent. more than the present tariff, that is, a fee of twenty-four dollars, and one dollar and fifty cents for each student examined.

The Chairman of the Library Committee presented the Report of the Library Committee, as follows :—

The Library Committee beg leave to recommend that Convocation authorize the opening of the library in the evening, except during Christmas vacation and Saturday nights, from the first of November, 1882, to the first of June, 1883, the hours of opening and closing in the evening, and arrangements previously ordered, to be continued for the above period.

(Signed) ÆMILIUS IRVING,
Chairman.

28th August, 1882.

The Report was adopted, and it was ordered accordingly.

September 8th, 1882.

Present—The Treasurer, and Messrs. Irving, S. H. Blake, Crickmore, Murray, Foy, Moss, Beaty, Mackelcan, J. F. Smith, Ferguson, Kerr, Hardy, McCarthy, Maclennan, and Benson.

The Chairman of the Legal Education Committee presented a Report on the Curriculum as follows :—

To the Benchers of the Law Society in Convocation :

The Report of the Legal Education Committee.

The Committee has had under consideration the expediency of putting Leiths Williams on the curriculum. They recommend that the examiners be instructed to give their questions from Leiths Williams hereafter, and that the secretary be authorized to publish forthwith a notice that at the first Intermediate Examination hereafter, including next Michaelmas Term, the examiners will give questions on Leiths Williams on Real Property.

The report was received and ordered for immediate consideration. After debate it was ordered that the further consideration of this clause be deferred till the second day of next term.

On the recommendation of the Committee on Legal Education it was ordered that Mr. D. B. S. Crothers be permitted to come up for his Second Intermediate Examination in Hilary Term, 1883.

Mr. Crickmore presented the report of the Select Committee on Mr. Knapp's case as follows :—

The Committee to whom was referred the application of Mr. Knapp to be admitted as a solicitor of the Supreme Court of Judicature of Ontario, beg leave to report as follows :—

1. Under the Rules of the Society Mr. Knapp must, before he can receive a Certificate of Fitness as a solicitor, pass the ordinary examination prescribed for candidates for Certificate of Fitness.

2. Under the Statutes of the Province now in force Mr. Knapp, or any barrister who is an advocate of the Province of Quebec, is entitled to apply to the High Court of Justice for admission as a solicitor ; and that Court may, in its discretion, admit him as a solicitor on his passing an examination before this Society to the satisfaction of the Court.

3. It has been ascertained that the High Court of Justice will accept our certificate of such an applicant, having passed an examination before the Society, as satisfactory.

4. The Committee recommend that the Rules of the Society be so altered that in cases of applicants of the same class as Mr. Knapp, they be examined on the Statute Laws of the Province, including the Judicature Act, before a committee to be appointed by Convocation, and that upon passing such examination they be reported to the High Court of Justice as having passed an examination in pursuance of chap. 140, sect. 3.

5. In the event of such alteration the applicant in such a case may apply to the Society to be allowed to pass the said examination before applying to the Court to be admitted as a solicitor; this was done and approved of by the Court in the case of Mr. Alguire.

6. In the event of such alteration in such a

case as that of Mr. Knapp, the fees payable should be the same as those payable by an applicant for Certificate of Fitness who comes up in the ordinary way of his service under articles of clerkship.

(Signed) JOHN CRICKMORE,
Chairman.

The first three clauses of this report were adopted, the consideration of the remaining three clauses was postponed until the second day of next term.

Mr. Maclennan presented the following report, namely :—

The Committee on Reports beg leave to report as follows :—

The Committee has had under consideration what provision should be made for reporting decisions in election trials.

1. The Committee recommend that the reporters of the Court of Appeal and of the High Court be required to report election decisions under the direction of the editor.

2. That the work be distributed among the reporters as they may arrange between themselves, or as may be prescribed by the editor in advance of the trials.

3. That it shall not be necessary for the reporters to attend trials personally, but they shall take care to procure from the judges, registrars, counsel and shorthand writers engaged in the respective trials, the materials for a report.

4. That the practice reporters prepare reports of all decisions on questions of practice pronounced elsewhere than at the actual trial of any cause.

5. That election decisions, including those on points of practice, be published in volumes as shall be directed by the editor, with the approval of the Reporting Committee.

6. That the judges be requested to assist the Law Society in obtaining materials for the reports.

7. The Committee have to report a vacancy in the Practice Reporting made by the resignation of Mr. Perdue, and recommend that temporary provision be made until a successor to Mr. Perdue can be appointed.

8. The reporters have neglected to send in their returns for this term, with the exception of Mr. Grant.

9. Mr. Tupper's arrears are, as your Committee have ascertained, being brought up by Mr. Harman by arrangement with Mr. Tupper, and your Committee hope they will soon be worked off.

All which is respectfully submitted.

(Signed) JAMES MACLENNAN,
Chairman.

The report was ordered for immediate consideration.

The report was read clause by clause.

The first seven clauses were adopted.

On the eighth clause, Mr. McCarthy moved that all cheques for the salaries of the reporters who have not made returns this term, be withheld until the second day of next term, to give an opportunity to Convocation to consider their returns.

Mr. Hardy moved in amendment, to expunge all the words after "until," and to substitute the following words :—"The Committee shall report to the treasurer that satisfactory returns have been made."

At this point a letter from Mr. Vankoughnet, on the subject of the returns, was read.

The amendment was lost, and the main motion was carried.

Mr. Perdue's resignation was accepted, and it was ordered that the usual notice be issued, and an advertisement published with the view of appointing a reporter of Practice and Chamber cases, on Tuesday, 21st November next.

Ordered, That Mr. Ulric Brunet's matriculation fee be refunded in full under the special circumstances of his case.

Mr. John Bell, Q.C., was re-elected a Bencher.

Mr. Alexander Leith, Q.C., was elected a Bencher in the place of the Hon. Stephen Richards, Q.C.

The Rule amending Rules 95, 96, 97 and 98, as to Call and Admission of Barristers and Attorneys, was read a third time as follows :—

By the Benchers of the Law Society of Upper Canada in Convocation, with the approbation of the Judges of the Superior Courts as visitors of the Law Society, it is ordered as follows :—

1. That so much of Rules 94, 95, 96, 97 and 98, as apply to Solicitors of the Superior Court of Judicature in England, Attorneys or Solicitors in the Courts of Chancery, Queen's Bench, Common Pleas or Exchequer in Ireland, Writers to the Signet, or Solicitors in the Superior Courts of Scotland, persons called to the Bar by any of the Inns of Court, or Societies having

authority to call to the Bar of any of the Superior Courts of England, Scotland, or Ireland, or in any of the Superior Courts not having merely local jurisdiction in England, Ireland, or Scotland, shall be and stand repealed from and after the last day of Hilary Term next.

2. Any Attorney or Solicitor in the Supreme Court of Judicature in England, who shall furnish proof that he has for seven years been in actual practice as such Attorney or Solicitor, may be admitted and enrolled as a Solicitor of the Superior Court of Judicature in Ontario, without examination, upon payment of the like fees and giving of like notices as required in the case of Attorneys and Solicitors of the other Provinces of the Dominion under the said Rules.

3. Provided that this Rule shall not affect any of the persons named in sub-section 2 of Rule 98, who before the last day of Hilary Term, 1883, shall be bound by a contract in writing to a practising Solicitor in Ontario, as mentioned in the said sub-section 2.

The Rule was passed.

Convocation adjourned.

REPORTS

RECENT ENGLISH PRACTICE CASES.

TURNER V. BRIDGET.

Imp. J. A., O. 1, r. 2—Ont. J. A., Rule No. 2.

Interpleader—Summary decision—R. S. O. c. 54, ss. 5, 7.

When the Judge in Chambers had referred an interpleader matter to the Divisional Court, and the latter had summarily heard and determined it,

Held, no appeal to the Court of Appeal would lie.

May 5, C. A.—L. R. 9 Q. B. D. 55.

BRETT, L. J.—The sections of the Common Law Procedure Act, 1860 (R. S. O. c. 54, ss. 5,7) are not repealed or altered by the Judicature Acts, which leave them as they were before. The rule to be deduced from the authorities is that upon anything which may occur on the trial of an interpleader issue there is an appeal from the judgment of the Judge who tries such issue, either with or without a jury; but that where a Judge at Chambers, who hears an interpleader summons, does not order an issue but decides the matter in the exercise of the summary jurisdiction given by s. 14 of the C. L. P. Act, 1860. (R. S. O. c. 54, s. 5) his decision is final, and there is no appeal from it. . . The only question which remains is whether what was done in the present case was in the exercise of the summary jurisdiction given by the statute. If it had been done by the Judge at Chambers, then there would have been no doubt that it was done in the exercise of such jurisdiction. Is that altered because the Judge declined to deal with it at Chambers and referred it to the Court? We are of opinion that it is not. A Judge at Chambers is always acting for the Court, and when he refers such a matter to the Court he only declines to exercise the jurisdiction of the Court, and refers to the Court the summary jurisdiction which he himself has at Chambers. When, therefore, the Q. B. D. barred the claimant in the present case, they did so in the exercise of such summary jurisdiction, and so their decision was final and without appeal.

[NOTE.—*The Imp. and Ont. Rules are virtually identical. The sections of the Imp. C. L. P. Act, 1860, 23-24 Vic. c. 126, ss. 14, 17, also appear virtually identical with R. S. O. c. 54, ss. 5, 7.*]

THOMPSON V. SOUTH EASTERN RY. CO.
SOUTH EASTERN RY. CO. V. THOMPSON.

Imp. J. A., 1873, s. 24, sub-s. 7—Ont. J. A. s. 16, sub-s. 8,

Consolidating of cross actions arising out of same matter—Principles of construction applicable to the Judicature Act.

Where two parties bring cross actions against one another, arising out of the same matter, and it is desirable to consolidate them under the above section of the Judicature Act, the proper criterion for determining which party ought to be made the plaintiff and which the defendant, and whose claim ought to be converted into a counter-claim, is not the largeness of the claim in the one case as compared with the other, neither is it priority of one party over the other in respect to the threatening or commencement of litigation, but the action brought against the party on whom the burden of proof lies ought to be stayed, and the action brought by him ought to be allowed to proceed, the other party to the litigation being allowed to raise by defence, set-off, and counter-claim, all questions intended to be raised by him in the action which is stayed. At the same time this must not be considered a hard and fast rule, but the Court must use its discretion under the circumstances of each case.

March 29, C. A.—L. R. 9 Q. B. D. 320.

This was an appeal from the judgment of the Queen's Bench (Field, J., and Huddleston, B.), who, under the above circumstances, held that the party who had first issued a writ should be made plaintiff.

BRETT, L. J.—This seems to me to be a question of very great importance as to the administration of justice under the Judicature Act. I think the constant efforts of the Courts since the passing of the Judicature Acts have been, and I think have properly been, to so construe the Judicature Acts, and all the rules and orders under them, as to make as few absolute or unconditional, or what is called hard and fast rules, as can possibly be, and to make the interpretation of the Acts, and all the rules and orders, so large that the Courts can (unless they are prevented by the words of the Statute) exercise a discretion in each particular case, so as to do that which is most just and expedient between the parties. . . What is the meaning of sub-s. 7 of sec. 24 of Jud. Act, 1873 (Ont. Jud. Act, s. 16, sub-s. 8)? . . Now I desire to carry out what I have said has been the rule of conduct, as far as I know, in all the Courts and upon both sides of the Court of Appeal ever since the passing of these Acts. I desire to keep the exercise of the jurisdiction given to the Courts under this sub-s. 7 as large as I can, so as to enable the Court to do what is right and just in each particular case between the parties. I therefore think that there is no hard and fast rule, in the case of cross actions, that the one which was commenced last must be the one to be stayed. I think that the Judge must exercise his discretion as to what is the fairest mode, upon taking all matters into consideration, of trying the several disputes which exist between the parties; if there is nothing to guide him, but who was the first to issue out the writ, I should say that it would be a wise and proper mode of exercising the discretion to give that party the advantage which he has got by his diligence. For instance, if the burden of proof (and I only give this as an instance) is as much on one side as on the other with reference to separate parts of the transaction, then I should think that the person who has issued the first writ would have gained the advantage, and that the action in which he is plaintiff ought to be the action which is to be carried on. But it seems to me that if all the substantial burden of proof is upon the person who is plaintiff in the action which was begun second, it is not conclusive as to a fair and just mode of trying the dispute between the parties to stay the action in which he would begin who has the substantial burden of proof as to all the controverted matters. It would be unfair to deprive him of being the plaintiff and so having the right to begin, and it would be hard to make him the defendant, although all the burden of proof lies upon him, ahd so to give his antagonist the power of anticipating him in matters which, but for the order of the Court, he could not do. Therefore, it seems to me that the Judge must consider what is the fair mode of trying that which is shown to be the substantial matter when it will come before the jury.

HOLKER, L. J.—In this case the Court of Appeal is called upon to exercise jurisdiction, so far as I know, for the first time under the powers conferred by the Judicature Act, 1873, s. 24, sub-s. 7. It is a jurisdiction not exactly to consolidate actions, but to prevent the multiplicity of actions, by directing that instead of there being two actions between the same parties, there should be only one. . . As far as I can make it out, the right to the first word and the last is not such a substantial advantage, as both these parties seem to think. But no doubt it is of importance that as the question has to be decided, it should be decided on clear and intelligible principles, and it is to my mind a very difficult question. It is difficult because the mind of the Court is left without very much principle to guide it, but my Lord has endeavoured to lay down some principle upon which a matter of this kind should be decided, and I must say that in all he has said upon that subject I agree with him. I do not think this is a case which can possibly be decided by any fixed rule or by any hard and fast rule. The circumstances from the beginning to the end must be heard; and in one case one consideration may have more weight, more cogency, and more effect than that same consideration may have in another. . . In such a matter as this I cannot be confident; but it seems to me to be reasonable that the party to the litigation who has substantially everything to prove in it, and who would fail substantially unless the necessary evidence were produced, should be allowed to commence the proceedings at the trial, and have the control of the action.

[NOTE.—*The Imp. and Ont. sections are identical.*]

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

BENNETT V. GRAND TRUNK RAILWAY CO.

Trespass—Contributory negligence.

The servant of the plaintiff was in charge of an omnibus running to and from the station of the defendants' railway, and on the evening in question was attending at Georgetown station, at a distance of about nine feet five inches from the track, but was unable to see along the railway in either direction by reason of houses intervening. By leaving the omnibus, however, and going to the track he could have seen an approaching train; but omitting to take this precaution, although aware that a train was then due, he started off to cross the track, and did not hear or see anything of the approaching train until it was within about four feet of him, when he was unable to avoid the train, and the bus and harness of the horses were considerably damaged. It was not shown that the driver of the train had given any warning of the approach of it by sounding the whistle or bell on its nearing that part of the track where it crossed the road to the station. At the trial of an action brought to recover the amount of the damage done the omnibus and harness, the Judge of the County Court (Halton) non-suited the plaintiff, and subsequently, in term, refused to set the non-suit aside, considering that the negligence of the plaintiff's servant was the proximate cause of the accident.

Held, on appeal, [in this reversing the Court below] that the question of negligence on the part of the driver of the locomotive had been improperly withdrawn from the jury, and that a new trial must be had in order to submit that question to them.

Schoff, for the appeal.

J. K. Kerr, Q.C., contra.

DAVIS V. AUSTIN.

Tavern keepers—Supplying liquor after notice not to do so—Principal and agent—R.S.O. ch. 181—Assessing damages.

The plaintiff, whose husband was in the habit of drinking intoxicating liquors to excess, gave notice to the defendant, a duly licensed inn keeper, forbidding him to supply liquor to her husband; in consequence of which, it was alleged, defendant forbade his bar-keeper furnishing liquor to the husband; notwithstanding which the bar-keeper did serve plaintiff's husband with liquor in the tavern kept by the defendant.

Held, notwithstanding the alleged forbidding of the bar-keeper to furnish such liquor, the defendant was liable under the statute R.S.O. ch. 181, sect. 90.

On the trial of the action the County Court Judge (Norfolk) ordered judgment to be entered for the defendant on the ground that his bar-keeper had furnished the liquor contrary to the defendant's orders; the Court, on appeal, reversed such finding and directed a reference back to the Judge of the County Court to assess the damages, the Judge having a discretion to assess the same at any sum between $20 and $200, and the Court declined to follow the course adopted in the case of *Denny* v. *The Montreal Telegraph Co.*, 3 Ap. R. 628.

Falconbridge, for appellant.

Osler, Q.C., for respondent.

GRANT V. VAN NORMAN.

Insolvent debtor—Preferential assignment—Pressure.

V., who was a practising attorney and also Clerk of the Peace and County Attorney, having been ordered to pay over certain moneys, or in default be struck off the roll of attorneys, made an asssignment of his emoluments as County Attorney to H. W. and J. to secure the amount which he had been ordered to pay their client, at the same time telling H. W. and J. that he would leave it to them to hand him back such part as they chose on which to live, such an assignment being generally executed at the beginning of each quarter, upon which they drew the amount coming from the County and handed V. back a portion to live on., Subsequently V. recovered a judgment in favour of a client on which costs were taxed in his favour at $164, which he also assigned to secure an accommodation indorser. About a month afterwards the plaintiff G., as an execution creditor, obtained an attaching order.

Held, [affirming the judgment of SENKLER, J.]

that the existence of the order held by H. W. and J. was a sufficient pressure to prevent the assignment executed by V. being considered a preference within the meaning of the Act, (R.S.O. ch. 118).

Moss, Q.C., for appeal.
S. H. Blake, Q.C., contra.

BUIST V. MCCOMBE.

Damage feasant—Distress—Illegal sale.

The plaintiff and the defendant C. owned adjoining farms, and, owing to the want of proper fences between them, the plaintiff's cattle went upon and damaged the wheat of C., who distrained upon them damage feasant, but subsequently abandoned the seizure, and the same night they again trespassed on the land, doing some damage to the meadow, etc., C. thereupon again seized and impounded the cattle, claiming $10 for damage to wheat and hay. Ten days after the distress C. directed the pound keeper to sell, although proper notice of the seizure and intended sale had not been given. On the trial of an action brought for such alleged improper seizure and sale, the County Court Judge withdrew the case, except as to amount of damage, from the jury, and in term gave judgment in favour of C., but, under the circumstances, without costs. On appeal the finding as to C. was reversed, and judgment ordered to be entered against him as well as his co-defendant, he having, by improperly urging on the sale, rendered himself liable as a participator therein.

Osler, Q.C., and *A. D. Cameron*, for appeal.
H. J. Scott, contra.

REES V. MCKEOWN.

Replevin—Boarding-house keeper—Distress—R.S.O. 147.

In an action of replevin the defendant, for a second plea, avowed for board due by plaintiff to him as a boarding-house keeper; and for a third, avowed a lien on the goods of plaintiff under R.S.O. ch. 147, sect. 2. On the trial, before the Judge of the County Court (York) without a jury, the evidence as to whether the defendant was the keeper of a boarding-house, was contradictory; but the learned judge decided in favor of the plaintiff, holding that the defendant was not a boarding-house keeper. On appeal this finding of the County Court Judge was affirmed, although, had the matter come before this Court in the first instance it would have decided that the defendant was a boarding-house keeper, but, under the circumstances, gave no costs of the appeal to the respondent

Bigelow, for appellant.
Donovan, for respondent.

LAMBIERE V. SCHOOL TRUSTEES.

Public School Act—Meeting of Trustees.

In an action by a school teacher to recover a year's salary of $350, it was shown that the agreement to pay that sum was made in writing, and signed by two, of the three school trustees, but not at the same time or at any meeting of the trustees called for the purpose of transacting school business.

Held, reversing the judgment of the County Court (Haldimand), that the agreement was void as coming within sect. 97 of the Public School Act, which provides that "No act or proceeding of a school corporation which is not adopted at a regular or special meeting of the trustees, shall be valid or binding on any party affected thereby."

Robinson, Q.C., for appellant.
Hardy, Q.C., for respondents.

STEWART V. ROUNDS.

Principal and Agent—Agency to sell will not authorize agent to exchange goods of his principal—Replevin.

The plaintiffs delivered to one R. some cultivators for the purpose of selling, as their agent, for cash or good notes; three of these he exchanged with the defendant, who was aware of the fact of agency, for a buggy, which he sold and retained the proceeds. In an action of replevin the jury found in favour of the defendant, which the Judge, in term, set aside, and directed judgment to be entered for the plaintiffs, which was affirmed by this Court with costs.

Robinson, Q.C., for appellant.
MacBeth, for respondents.

MUTTON V. DEY.

Contract—Time.

The plaintiffs and defendant entered into an agreement in the following terms:—"I, the

undersigned, agree to deliver S. S. Mutton & Co. 40 M. ft. Blk. Ash, with mill-culls out, F. O. B. vessel on Cornwall Canal, @ $10 per M. ft. Also 10 M. ft. Soft Elm at $10 per M. ft., F. O. B. vessel on Cornwall Canal, to be delivered in the month of June, 1881, the lumber now on stick and part seasoned," and the plaintiffs signed a corresponding memorandum, agreeing to accept such lumber at the time specified.

Held, [affirming the ruling of the County Court Judge, (York)] that the plaintiffs were not entitled to inspect the elm with a view of rejecting culls, but were bound to accept as it stood, subject only to a proper measurement thereof.

The plaintiffs had not a vessel on the Cornwall Canal ready to receive the lumber on the first of June, nor until the month of September. The defendant, however, was willing then to deliver it, but the plaintiffs refused to accept unless subject to inspection.

Per OSLER, J.—Time, by the very terms of the memorandum itself, was of the essence of the contract, and the plaintiff was not bound to deliver the lumber in September.

Rose, Q.C., for appellants.

McDougall, for respondent.

JAMES V. BALFOUR.

Statute of Frauds—Promise to pay debt of another.

A promise to pay the debt of another, so long as that other remains liable, and such promise is, therefore, only collateral, must be in writing, even where there is a new and valuable consideration for such promise, otherwise it cannot be enforced against the promissor. Therefore, where the defendant had bought at sheriff's sale the stock of one A., who was indebted to the plaintiff for wages earned in A.'s employ, and in order to induce the plaintiff to continue such service with the defendant, he promised *to see that he was paid*, and the plaintiff did accordingly work for the defendant, who afterwards refused to pay the plaintiff's demand.

Held, [reversing the judgment of the County Court, (Welland)], that the defence of the Statute of Frauds was a bar to the action.

Rose, Q.C., for appeal.

Osler, Q.C., contra.

ELLIS V. THE MIDLAND RAILWAY.

Contract.

"The principle seems to be that in contracts in which the performance depends on the continued existence of a given person or thing, a condition is implied that the impossibility of performance arising from the perishing of the person or thing, shall excuse the performance;" therefore, where the plaintiff was engaged by the defendants, for "the season," *i.e.*, from early in May till sometime in November, as master to manage the steamer *Idyl-Wyld*, and he continued so employed until September, when the steamer was burnt,

Held, that the plaintiff was not entitled to more than a proportionate share of the salary agreed upon; and it appearing that he had already been paid more than the proper proportion, the Court reversed the decision of the County Judge (York), making absolute a rule to set aside the nonsuit granted at the trial, and for a new trial between the parties. But as this conclusion was arrived at on a ground not taken in the Court below, or suggested in the reasons of appeal, the Court refused the successful parties their costs of the appeal.

Lash, Q.C., for appeal.

Huson Murray, contra.

HUNTER V. VANSTONE.

Interpleader suit—Claimant not appearing—Judge's decision final.

In a proceeding against one P. the defendant made a claim to certain goods seized by the plaintiff, as bailiff, under execution, whereupon the Judge, on the final hearing, made a minute, "The claimant, not having put in his claim . . is barred, and is ordered to pay the costs incurred in fifteen days," in obedience to which the claimant did pay the costs of the interpleader but not the fees payable on the execution to the plaintiff as such bailiff, who thereupon instituted these proceedings.

Held, on appeal, [affirming the decision of the County Court Judge,] that the minute so made by the Judge in the interpleader issue, was final and conclusive upon the defendant, and that he could not be heard to say that the bailiff had not seized the goods of P.

H. J. Scott, for the appellant.

McCarthy, Q.C., for the respondent.

McLean v. Pinkerton.

Chattel Mortgage—Registration—R. S. O. ch. 119, sec.—Sunday last of five days.

A chattel mortgage was duly executed on the 12th of July, deposited in the post office on the 16th, and received by the clerk of the County Court on the 18th, the 17th having been a Sunday.

Held, [affirming the judgment of the County Judge, (Victoria)], that such registration was too late, the Act (R.S.O. ch. 119), requiring the same to be effected within five days from the execution of the instrument, and, therefore, that Sunday counted as one of such five days, so that the registration should have been effected on the 16th.

Rose, Q.C., and *F. Hodgins*, for appeal.

Gibbons, contra.

Stoeser v. Springer.

Replevin—Fraudulent purchase—Disaffirming sale.

T. sold a horse, buggy and harness to M., who paid for them by two promissory notes, one his own, and having been informed that M. was worthless, he went and demanded back his goods, at the same time throwing the notes on the table. On the assurance of M., however, that all would be right, T. again took up the notes and went away. Subsequently the plaintiff, without any knowledge of how M. had obtained the goods, traded for them, giving M. $50 cash, in addition to his own horse and buggy. T. afterwards, on ascertaining that he had been deceived, sued out a writ of replevin and retook the goods.

Held, [affirming the judgment of the County Court, Waterloo], that the plaintiff, being a *bona fide* purchaser before any actual disaffirmance of the sale by T., was entitled to retain possession thereof.

McCarthy, Q.C., for the appeal.

J. K. Kerr, Q.C., contra.

Grass v. Austin.

Fraudulent preference—Mortgagor and Mortgagee.

M., the purchaser of land, executed a mortgage thereon for about $2,500 of the purchase money, and having allowed the interest to run in arrear till it amounted to $750, executed a chattel mortgage in favour of his vendors, including grain and hay, as also all the crops and hay sown or to be sown during that year, and subsequently a creditor of M. obtained an execution against him, whereupon the sheriff obtained an order of interpleader. On the trial before the Judge of the County Court (Northumberland and Durham) a verdict was entered for the plaintiffs subject to the opinion of the Judge on the whole case, who subsequently sustained such verdict. On appeal this decision was affirmed, but as there were some articles in the possession of the debtor not covered by the chattel mortgage the Court refused to allow the respondent more than half the costs of such appeal.

Bethune, Q.C., for the appellant.

J. K. Kerr, Q.C., and *Skinner*, for respondents.

QUEEN'S BENCH DIVISION.

Osler, J.] [June 5.

Millar v. Hamelin and Wife.

Statutes of Limitations—Acknowledgment—Estoppel.

Hamelin, being seised of land subject to a mortgage to L. dated 14th October, 1863, and to one to M. dated 12th January, 1864, made an assignment to W. on 22nd November, 1866, under the Insolvent Act of 1864. On 28th January, 1868, Hamelin obtained his discharge; on 27th January, 1869, he obtained from M. an assignment of M.'s mortgage; and on 3rd May, 1869, he made a conveyance under the power of sale in the mortgage to F. H. to the use of his wife, his co-defendant. On 12th April, 1869, L. assigned his mortgage to Mulholland, who, on 28th March, 1873, assigned it to W. In 1879 Hamelin, having procured assignments to himself of a number of the claims against his insolvent estate, presented a petition signed by himself to compel W. to wind it up. He alleged that Mulholland held the L. mortgage in trus for the estate, and asked to have the estate realized and distributed among the creditors. A sale was accordingly had on 20th April, 1880, of all the right title and interest of the insolvent in the land, and the advertisement further stated that the purchaser would acquire only such title

as the vendor had as assignee. Hamelin attended at the sale, and objected to the sale of the land, and bid for the same, and the plaintiff became the purchaser, and took a conveyance from W. on 4th February, 1881. Most of the purchase money went to Hamelin as assignee of the claims against his estate. Hamelin and his wife remained in undisturbed possession from his discharge in insolvency.

Held, that Hamelin was not estopped from setting up a title by possession by reason of the manner in which the sale was brought about; that the acknowledgment of the L. mortgage by Hamelin's petition was not sufficient to stop the running of the Statute, because by assignment of the M. mortgage to Hamelin, and the latter's conveyance under the power to his wife, she became, and was at the time of the petition, the owner of the equity of redemption, and was not affected by her husband's acknowledgment, and therefore the plaintiff failed.

P. O'Brian for the plaintiff.

E. T. Dartnell for the defendant.

Cameron, J.] [Sept. 22.

IN RE THE TOWNSHIP OF SARNIA AND THE TOWN OF SARNIA.

Extending the limits of town—Arbitration—Drainage assessment—Award against township invalid.

A portion of the Township of Sarnia was added to the Town of Sarnia by proclamation of the Lieutenant-Governor. The former municipality was indebted to the Province of Ontario for certain drainage works, under the provisions of R. S. O. cap. 33, which works had benefitted certain roads in the Township. The arbitrators, in settling the matters of dispute between the two corporations, were of opinion that the drainage assessment was not a proper subject of arbitration, and made their award without adjudicating thereon.

Held, that the award was invalid, for the drainage assessment was an ordinary debt, payable out of the general funds of the Township, under R. S. O. cap. 33, to which the Town of Sarnia should contribute a just proportion, under R. S. O. cap. 174, sec. 53.

The award as made directed the Township to pay a certain sum to the Town.

Held, bad; for the only terms upon which the acquisition of adjacent lands can be had by a Town are contained in R. S. O. cap. 174, sec. 53, which only authorizes a payment by the Town to the Township or County.

Robinson, Q.C., for the award.

Aylesworth, contra.

IN RE BRONSON AND THE CITY OF OTTAWA.

Railway — Point of commencement—"From," meaning of—Eminent domain—Expropriation of lands already devoted to public purposes.

The charter of the C. A. R. Co., reciting in the preamble that the line of Railway which it was proposed to construct would afford the shortest and most convenient connection between the Cities of Ottawa and Montreal, authorized the Company to construct their track *from* the City of Ottawa.

Held, that they had the right to enter the City and construct from a point within its limits.

The City passed resolutions providing for a lease of right of way to the Company over lands expropriated by the City for waterworks purposes under 35 Vict. cap. 80 (O).

Held, that though, *prima facie*, the only right intended to be conferred on a company is that of expropriating the private property of individuals or corporations, and not property already devoted to public uses, or already expropriated under other Acts, yet under some circumstances the right to make such expropriations might exist, and if so, then the city would have the corresponding power to convey. And as the applicants had not shown to the Court that circumstances did not exist under which the Railway Company could take the land, the Court would not assume that the City had committed a breach of trust in passing the resolutions

The railway was to cross certain streets at a grade different from that required by the Railway Act, but the resolutions provided that the streets should be graded up to the railway.

Held, objectionable.

Robinson, Q.C., and *Christie*, for the motion.

McCarthy, Q.C., and *Gormully*, contra.

CHANCERY DIVISION.

Ferguson, J.] [Oct. 3.

BANK OF MONTREAL V. HAFFNER.

Mechanics' Lien Act—R. S. O. c. 120—Parties —Priority.

Where a suit was brought to enforce a mechanics' lien on certain property, and one A., who acquired a similiar lien on the said property for work done subsequently to the commencement of the said suit, was made a party thereto in the Master's office, but failed to prove any claim therein.

Held, A. should not have been made a party to the said suit, and the fact of his not proving any claim was no bar to his subsequently commencing a suit to enforce the said lien so acquired by him.

Wallbridge v. *Martin*, 2 Ch. 275, approved of.

Held also, A. was entitled to priority over a mortgage created on the property, previously to the doing of the work in regard to which he claimed a lien, in respect of the increased value of the lands by reason of the improvements, viz., the work done and the materials provided.

Every lien holder is, under the said Act, entitled to security upon the enhanced value arising by reason of his work and materials.

Broughton v. *Smallpiece*, 25 Gr. 290, approved of.

Judgment directed to be settled in the light afforded by the case of *Downer* v. *Mix*, referred to in Mr. Holmested's Mechanic's Lien Act, p. 67.

D. McCarthy, Q.C., and *Cameron* for the plaintiff.

W. Cassels and *Mowat* for defendants.

[NOTE.—*A demurrer in this suit was disposed of some time since, as reported 29 Gr. 319.*]

Ferguson, J.] [Sept. 26.

McDONALD V. OLIVER.

Contract—Construction—Condition precedent.

On February 9, 1875, the defendants entered into a certain contract with the Government for the construction of certain works in connection with the Canada Pacific Telegraph line. On August 2, 1875, the plaintiff entered into a subcontract with the defendants to construct certain parts of the said works. This latter contract stated that the work to be done by the plaintiff should be done on such route as the Government engineer in charge should point out; and the defendants covenanted (subject to the conditions thereinafter set out) with the plaintiff that they would pay him for the whole of the work contemplated to be done and performed by him at the rate mentioned per mile. The parties then declared that the contract was entered into upon the express conditions that followed, the first of these stating that the payments should be made to the plaintiff within twenty days after the estimate of the engineer or officers in charge on behalf of the Minister of Public Works to be, from time to time, put in by him to the Minister, specifying the amount of work done to the satisfaction of the Minister, etc., during the month then ended and past, and a copy of such certificate served upon the defendants.

Held, the above first condition alone, apart from the other parts of the contract, was sufficient to make the obtaining of the estimate of the engineer or officer, and service of a copy of it on the defendants, a condition precedent to the plaintiff's right to recover for work done under the contract.

Roaf, for the plaintiff.

Bethune, Q.C., for the defendants.

Boyd, C.] [Oct. 11.

STUART V. TREMAINE.

Fraudulent preference—Pressure——R. S. O. ch. 118—Transfer to third party.

Where one creditor sought to set aside a transfer of goods to another creditor as a fraudulent preference, and it appeared that the impelling cause which led to the transfer was the application of the latter to be paid or protected,

Held, the transfer was not "voluntary" in the sense in which that word is used in the statute R. S. O. c. 118.

Where, moreover, it appeared that the latter had transferred the goods for value to a third party before the transaction between the debtor and himself was impeached.

Held, he could not be made to account for the proceeds as if he where a debtor of the plaintiff. Under the statute the plaintiff's only remedy was to have any obstruction removed which impeded the operation of his writs of execution; his pursuit of the goods, exigible in execution, failed when a *bona fide* sale took place. *More-*

wood v. *South Yorkshire Ry. Co.*, 3 H. and N. 798, and *Totten* v. *Douglas*, 18 Gr. 346, followed.

Ferguson, J.] [Sept. 23.

SWAINSON V. BENTLEY.

Will—Gift of maintenance—Qualifying clause.

A testator devised certain lands to his two sons, declaring that the legacies thereinafter mentioned should be a charge thereon; he then bequeathed certain pecuniary legacies to his daughters, adding, "I give and devise also unto" [his said daughters] "their support and maintenance so long as they, or either of them, remain at home with" [his two sons,] and he gave his personal property to his two sons in equal shares.

Held, the support and maintenance of the plaintiffs was, by the will, made a charge upon the lands; and they might, for sufficient reasons, cease to live at home, and yet still be entitled to such support and maintenance.

S. H. Blake, Q.C., for the plaintiffs.

G. M. Rae, for the defendants.

Ferguson, J.] [Oct. 3.

MOORE V. MELLISH.

Will—Charge on land—Purchase from executor —Unlimited trust.

In this case the testator, after directing that his funeral charges and his debts should be paid by his executor, disposed of the residue of his real and personal estate as follows:—First, he gave and bequeated certain legacies "to be paid out of my estate," and then he gave the residue and remainder of his estate, real and personal, to his son W. absolutely, and he nominated W. sole executor.

Held, (i.) the legacies were, by the will, charged upon the estate real and personal, and failing personal estate, became a charge upon the land.

(ii.) W. had power to sell the land, and a purchaser from him was not bound to see to the application of the purchase money, for otherwise the purchaser would be required to see to the performance of an unlimited trust, viz., the payment of the debts, and this the authorities show will not be required in such case.

Moscrip, for the plaintiff.

E. Martin, Q.C., for the defendant.

Boyd, C.] [Oct. 11.

SWAISLAND V. DAVIDSON.

Promissory notes—Restricted negotiability—Mutilation—Innocent holder.

The defendant, on purchasing certain patent rights, gave the vendor, one C., two promissory notes for the purchase money, which notes, however, he stipulated should not be disposed of during their currency. The notes were, on their face, payable to C. or bearer, but to carry out the above stipulation the words "the within notes not to be sold," were endorsed upon both notes, contemporaneously with their making; and the evidence showed that the face and back of both the notes must be read together as forming the contract between the parties. Moreover, it appeared that when the notes were brought to the plaintiff the word "not" had been erased in one of them, so that the endorsement read, "This within note to be sold;" and in the case of the other note, the words endorsed, being at the end of the paper, were torn off, but without destroying any part of the face of the note.

Held, (i.) whether the memorandum qualifying the effect of the notes was under-written or endorsed was immaterial, so long as it was a part of the original contract; and the materiality of the endorsement, in this case, appeared sufficiently from the circumstances, and had the effect of providing against a disposing of the notes to a holder for value, so as to preserve to the maker all defences and equities as against the first holder, or volunteers under him, and thus qualified the negotiability of the notes.

(ii.) The erasure and excision were each material alterations of the notes, destroying their value as securities, and discharging the defendant from liability thereupon; and inasmuch as the notes were issued in a perfect state, with no blanks, it could not be maintained that the defendant was negligent in allowing the endorsement to be put at the end of the paper where it could be so easily torn off, and that, therefore, he, the defendant, should suffer instead of the plaintiff, for the doctrine of negligence should not be applied to cases of perfect instruments like the present.

(iii.) Considering the plaintiff's occupation, and the circumstances under which he took the notes, and the suspicious appearances of the notes themselves, he could not be regarded as an innocent holder of the notes.

PRACTICE CASES.

Mr. Dalton, Q.C.] [Sept. 11.

LUCAS V. ROSS.

Special endorsement—Rule 80, O. J. A.—Motion for final judgment under Rule 80, O. J. A.

The writ was endorsed as follows: "The plaintiff's claim is for the price of goods supplied. The following are the particulars: $621.06 for money payable by the defendant to the plaintiff, for goods bargained and sold and delivered by the plaintiff to the defendant, and interest thereon from the 25th July, 1882."

Held, by the Master in Chambers, that the endorsement was not a sufficient special endorsement to entitle the plaintiff to judgment under rule 80.

Leave given to annul and renew motion ten days from service of amended writ.

Aylesworth for the motion.

Holman, contra.

Boyd, C.] [Oct. 9.

RE LOVE.

Infants—Examination—R. S. O. cap. 40.

An application for the sale of of infants' estate under R. S. O. cap. 40. The property was situated in the Town of Lindsay, and was shown to be worth about $400. There were five infants. Three of them, who were over fourteen years, had been examined before the Master at Lindsay. The other two were residing with their mother in the United States, whose affidavit, as to their age and her inability to produce them in Ontario owing to the expense, was filed.

J. H. Macdonald, for the application, submitted that the Court had a general power to relax the rule as to examination, as in similar cases were the estate was large commissioners to examine had been allowed.

BOYD, C., granted the application dispensing with examination of the two infants who were out of the jurisdiction.

ONTARIO GLASS CO. V. SWARTZ.

Division Court—Jurisdiction.

Motion for the prohibition to the 1st Division Court of the County of Kent, to stay proceedings under a judgment obtained by the plaintiff against the defendant, an American citizen.

Held, that the process of Division Courts is of no effect outside the Province of Ontario.

Clement, for the motion.

Aylesworth, contra.

SCOTT V. CREIGHTON.

Contents of statement of claim—Omission of date of writ—Rule 128, O.J.A.—Ejectment.

The defendant moved to set aside the statement of claim, on the ground that it did not mention the date on which the writ issued, as provided by forms in appendix D. to rules O.J.A.

Murray, contra.—The rule merely says "forms may be used," and it is not therefore compulsory to follow the form verbatim.

Held, that the mention of the date of issue of writ was essential; but leave was given to amend on payment of costs, which were fixed at $1.

FLETCHER V. NOBLE.

Division Court—Security for costs—Prohibition.

A motion for a prohibition. The plaintiff resided in the United States of America, and brought his action to the 10th Division Court of the County of York to recover $128, the amount of a promissory note and interest.

The defendant obtained an order for security for costs.

Held, that under sec. 244, cap. 47, R.S.O., a judge of a Division Court has power to order security for costs.

Murray and Barwick, for motion.

Gould, contra.

Boyd, C.] [Oct. 10.

AITCHESON V. MANN.

Venue—35 Vict. cap. 26.

An action to restrain the infringement by the defendant, who resided and carried on business in Brockville, of a patent granted to the plaintiff under 15 Vict. cap. 26.

The plaintiff resided at Belleville, and laid the venue there.

Held, that the venue must be laid at Brockville under the statute.

Order accordingly, costs in the cause.

Hoyles, for the defendant moving.

Langton, contra.

BOOK REVIEW.

THE ONTARIO LAW LIST and Solicitors' Agency Book. 9th edition. Toronto: J. Rordans & Co., 1882.

This little book is so useful, not to say indispensable, to the profession that it certainly deserves a short notice, now that it has broken out in a fresh place, in the form of a new edition. The present edition commences with a short essay on the main characteristics of the novelties in practice introduced by the Judicature Act, which is well worth reading. Amongst other things, also, it comprises a Manitoba Law List, giving the firm names, and also the roll of Manitoban barristers and attorneys, alphabetically arranged. It would be well if Messrs. Rordans, in their next edition, followed the same plan with the Ontario lawyers, and gave not only the firm names, but also a complete alphabetical list of all Ontario barristers and solicitors. Without that it is sometimes a little troublesome to find out a country practitioner unless you happen to know beforehand exactly the town or village where he practices. Again, should you know no more than that you wish to communicate with a certain lawyer of the name of "Smith," who practices somewhere in the country, but you do not happen to know where, or his initials, it may be desirable to be able to find out if there is more than one "Smith" practising in Ontario.

ARTICLES OF INTEREST IN COTEMPORARY JOURNALS.

Telegrams and telegraph—Corroborative evidence.—*Central L. J.*, Sept. 8.
Partnership—Firm name on accommodation paper.—*Ib.*, Sept. 22.
Proof by inspection.—*Ib.*
Mental suffering as an element of damages.—*Ib.*, Sept. 29.
Presumptions of life and death.—*Ib.*
Fear: its legal limitations.—*Ib.*, Oct. 6.
Malicious prosecutions.—*Ib.*
Right of costs out of particular estate or fund in litigation.—*Irish Law Times*, Aug. 26.
Landlord's action for nuisance to premises.—*Ib.*
Venue in criminal cases.—*Ib.*, Sept. 23.
Misconduct of juries.—*Ib.*
Conflicts of laws and bills of exchange.—*American Law Review*, July.
Support, lateral (adjacent) and subjacent.—*Ib.*
The proximate cause of death in accident insurance policies.—*Ib.*
Proof of handwriting.—*Ib.*, Aug.
Specific performance of contracts for the sale of shares in corporations.—*Ib.*
Charter parties.—*Ib.*, Sept.
Promoters of companies as corporate fiduciaries.—*Ib.*
Charter parties.—*Ib.*, Oct.
Conflict between federal and state decisions.—*Ib.*
Dentists.—*Albany L. J.*, July 22.
A history of the English judicature.—*London L. J.*, Aug. 12, *et seq.*
The conveyance of rights of entry.—*Ib.*, Aug. 19.
Evidence of reputation in libel.—*Ib.*
The preliminary investigation of crime.—*Criminal Law Review*, May.
Seduction as a crime.—*Ib.*
The doctrine of materiality in the law of perjury.—*Ib.*, July.
Jurors as judges in criminal cases.—*Ib.*

FLOTSAM AND JETSAM.

The following is from Nova Scotia, published as an advertisement in a newspaper there, and is almost as rich as some of the effects produced by the hybrid race in Ontario :—

C. A. FOSTER, J. P.

Legal Documents of all kinds drawn up at short notice. Collections made in any part of the Province, or the United States.

Real Estate Agent. Auctioneer and Commission Merchant. Dealer in Lumber and Coal.

Agent for the Mutual Relief Society of Nova Scotia. Home Office, Yarmouth, N.S.

Agent for Minard's Liniment, wholesale to the trade only, of Queens and Shelbourne Counties. Orders by mail promptly forwarded.

Headquarters of Wolcott's Branch Medical Agency of New York.

☞ All business entrusted to my care will be transacted strictly upon business principles, independent of politics.

As a hint to some of our advertisers who are on the lookout for some new way to attract customers through our columns, we insert the following advertisement of a Colorado Justice of the Peace:—

GEORGE M. CLELLAND, J. P.,
Dealer in
EVEN-HANDED JUSTICE,
(Let no guilty man escape)
and
FRESH LAID EQUITY.
(Those who dance must pay the violinist.)
Corner of Justice Alley and Forty-First Street,
Canon City, Colorado.

And on the other side the reader finds :—

"Remember that I am not giving any confectionery when I say that this is the only original one-animal justice-mill of the city, and all others are merely imitators and will be shot into the beyond with more or less alacrity. While taking in the city and filling your tanks with booz, don't forget that I am still pulling the ribbons over a portion of the justice-court business."

—*Michigan paper.*