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WE are informed that Sir John Thompson is at work on a bill for the codification of the criminal law of Canada. This will, we presume, involve a repeal of the Acts we now have relating to that subject. This action may possibly be desirable, but we trust the authorities at Ottawa do not intend to follow our Provincial legislators in the annual game of tinkering and amending the statutes.

ANY decision in reference to matters connected with the development of the practical use of that mysterious fluid known as electricity is interesting. We notice that in the case of *Cumberland Telephone Company* v. *United Electric Railway Company*, 42 Fed. Rep., 273, it has been held that, in view of the present state of electrical science, a telephone company cannot enjoin the operation of an electric railway on account of the serious injury to their business caused by the escape of electricity from its rails. In other words, let every opportunity be given to those who are endeavoring to apply this great force of nature to the practical use of mankind, even though others may suffer temporary inconvenience. The principle is a sound one, and commends itself to the nineteenth century thinking-machine.

A POINT of practice of some importance to mortgagees was recently decided by Ferguson, J., in the case of *Smith* v. *Brown*, *post infra* p. 603. Default had been made in payment of a mortgage, and the mortgagee had given notice of sale under the power of sale which was in the short form, and as follows: "Provided that the said mortgagee on default of payment for one month may, on one month's notice, enter on and lease and sell the said lands." During the time provided for payment by the notice of sale, the mortgagee proceeded to advertise the mortgaged lands for sale on a day subsequent to that limited for payment. The mortgagor then brought an action to restrain the further publication of the advertisement until the time for payment had expired, as being in contravention of R.S.O., c. 102, s. 30, and Ferguson, J., being of opinion that the publication of an advertisement was the taking of a proceeding within the meaning of the Act, granted the injunction as prayed, and the parties agreeing that the motion should be turned into a motion for judgment, he gave the plaintiff the costs of the action.

The Indian Jurist, coming to us from the antipodes, is a well conducted and interesting journal. We notice in the last number received reference made to various matters of especial interest in that great country, and some of them of interest to ourselves. The editor takes exception to a suggestion made by a contemporary, that old criminal offenders should be punished by whipping, in addition to rigorous imprisonment. There is a good deal of morbid sentimentality on the matter of whipping. We are satisfied that the lash is often the only means of reaching the conscience of certain offenders, and we should prefer to see it more used than it is. In the hot climate of India, boys as well as girls come to maturity at a very early age, and there are several allusions to that fact in the publication before us. The custom of child marriage comes in for much discussion in the number before us, and the writer urges the propriety of some protection being afforded to these unfortunate children in the same direction as the special legislation in existence in England and this country for unmarried girls. A precocious youth at Serampore recently stabbed a school-master in the abdomen with a knife, the pedagogue barely escaping with his life. The jury were compelled to find the boy guilty, but perhaps having the remembrance of some old scores of their own to wipe out, recommended the young rascal to mercy on account of his extreme youth; and the Sessions Judge, laying the blame on the parents for not paying better attention to his morals, punished them by imposing a fine of one hundred rupees. We agree with the *Jurist* in the hope that the High Court would not fail to revise the sentence, and agree with the suggestion that probably a good flogging might tend to teach this juvenile to restrain his homicidal instincts. At the same court, curiously enough, a girl of eight years was found guilty by the Judge of murdering a child of four, by drowning it in a canal, in order to get possession of its jewels. As the jury would not convict, the Judge referred the case to the High Court. How this tribunal will treat the case remains to be seen. We presume they will not follow the example of the Judge who fined the boy's parents—certainly a novel way of dealing out criminal law under these circumstances, though under others perhaps worthy of serious consideration.

RIGHTS OF MORTGAGEES AS AGAINST MECHANICS' LIENS.

By section 5, (3), of The Mechanics' Lien Act (R.S.O., c. 126), it is provided that "in case the land upon or in respect of which any work as aforesaid is executed, or labor performed, or upon which materials or machinery are placed, is incumbered by a prior mortgage or other charge, and the selling value of the land is increased by the construction, alteration, or repairs of the building, or by the erection or placing of the materials or machinery, the lien under this Act shall be entitled to rank upon the increased value in priority to the mortgage or other charge." Mr. Holmested, in his edition of the Act, has pointed out that the language of this section varies from the similar section in the Revised Statutes of 1877 (R.S.O., 1877, c. 120, s. 7). In that section the words used were "a mortgage or other charge existing or created before the

commencement of the work." The revisers of the Statutes no doubt thought that the expression "prior mortgage" was a more compendious expression of the same idea, but when it comes to be judicially construed it is possible it may be found to have an altogether different effect. It is somewhat surprising that the Courts have not before now been called on to expound this section as it now stands in the Statute book, for it is obvious that some very nice points may be raised as to its true meaning. Under the Statute of 1877, it was tolerably plain that the mortgagees who were intended to be affected were those who had an existing charge upon the land in question before the work of the lienholder was commenced. And the equity of the provision when confined to such cases was reasonably plain. The mortgagee's security, after he had lent his money, might be enhanced in value by the lienholder, and to the extent to which it should be so enhanced in its actual selling value the lienholder was to have priority. But it may be open to question whether the present wording of the Statute may not carry the right of a lienholder beyond this equitable limit, so as to do a manifold injustice to a mortgagee. It all depends on what meaning the Courts may place on the words "prior mortgage" in this section (s. 5). If they are held to include every mortgage which is prior to the lienholder, then it may be found to work injustice. For instance, a mortgagee without actual notice of any lien, may advance his money on the security of the property after all, or a large part of, the work of the lienholder has been done upon it, and upon the value of the land as so improved. By prior registration of his mortgage he may acquire priority over the lien (see cases cited in Holmested's Mechanics' Lien Act, p. 9). This then becomes a "prior mortgage," but can it fairly be said to be a "prior mortgage" within the meaning of section 5, (3)? It has acquired its priority, not by virtue of its being prior at the time the work was commenced or done, but by virtue of the Registry Act, and the neglect of the lienholder to register his lien so as to retain his priority, and which if he had done possibly the mortgagee would not have advanced his money. These are facts which seem to take the case entirely out of the equitable principle on which the original Act was framed; because the security on which the mortgagee has advanced his money has not been subsequently improved or enhanced in value; but, on the contrary, if the claim of the lienholder to priority were allowed, it would be subtracting a material part of the original security from the mortgagee on the faith of which he had advanced his money, which would be obviously unjust. Such considerations as these, therefore, rather lead to the conclusion that the words "prior mortgage" must necessarily have a somewhat restricted meaning, and can only include mortgages which are actually prior at the time the work of the lienholder is done, and cannot include those which subsequently acquire priority by virtue of the Registry Act.

GRAND JURIES.

We observe that the Minister of Justice has recently issued a circular letter to all judges and Attorney-Generals of the various provinces of the Dominion, for the purpose of ascertaining their views on the important question whether

grand juries should, or should not, be abolished. Of late years the practical usefulness of grand juries has been much discussed, and many opinions pro and con have been given. The recent action of the Minister of Justice is likely to result in the gathering together of the opinions of those, who, being intimately concerned in the administration of justice, are perhaps best qualified to speak upon the question, and whose position will naturally entitle their opinions to the most respectful consideration.

Whatever may be the result of the answers sent in to the Minister of Justice, as to the desirability of abolishing or continuing grand juries, there can be no doubt that they have formed an important element in the criminal procedure of the mother country from a remote antiquity. Blackstone even finds in the institutions of Ethelred regulations concerning them. They have sprung from that sensitive regard which the laws of England have for so many generations had for the liberty of the subject, and which indeed is the foundation of all true liberty. Such an institution, hallowed by so hoary an antiquity, is not likely to be cast aside, unless it is made very manifest that it is to give place to a better system. That the grand jury has proved a wholesome barrier against frivolous and malignant accusations, there can be little doubt. And yet, like most institutions which have a wise and laudable reason for being called into existence, it is possible they may outlive their usefulness, and we would be in a sad state if the administration of the law had not from time to time undergone change.

Before a man can be punished for any serious crime, he may, if he insist on it, require the judgment of no less than twenty-four men, of whom twelve at least (the grand jury) are required to say whether a case is made out for putting him on his trial at all; and before he can be convicted, twelve others (the petit jury) must unanimously find him guilty of the offence with which he is charged. By this means it is sought to provide as far as possible a safeguard against unjust and malicious accusations for men of every degree. Such a protection is not to be lightly cast aside by any one who rightly values the life, liberty, and reputation of himself and his fellow-subjects.

It has been very strongly urged of late in some quarters that grand juries have outlived their usefulness; that they delay public business to suit their own convenience; that they are apt to overstep their province and to assume to try cases, instead of confining themselves to the simple question whether a *prima facie* case is made out; that they are liable to suffer themselves to be influenced by improper considerations, or the importunities or representations of the friends of accused persons; and that by this means legitimate subjects for trial and investigation before a petit jury are smothered in the grand jury room, and, in short, that instead of advancing the cause of justice, the grand jury, not infrequently, obstructs it. In addition to this, there is great force in the objection that there is no individual responsibility on members of the grand jury, and that this secret tribunal is as often used to gratify malevolent purposes as it is to choke off proper prosecutions. A man's best friends or his worst enemies may be on a grand jury, and there is no challenge, as in the petit jury, to secure a fair, impartial hearing. Then there is the absurdity of ignorant or a majority of

ignorant men (for selection is now a matter of chance) passing *privately* upon a case. If they are advised by the Crown prosecutor, and he is honest, they may do what is right, but they may take their own prejudiced views. If they do, who is to be held responsible? Everything connected with the administration of justice should be not only honest, but open as the day, and with appropriate responsibility. Strange as it may seem, the class of men on grand juries in Ontario are, as a rule, inferior even to those on the petit juries; and one or two bad men on the former may work great evil, and the want of challenge intensifies the evil. The liberal challenge allowed in serious cases helps to purify a petit jury.

All these considerations are, no doubt, important to be borne in mind in determining the value of the grand jury as an element in our criminal procedure; but it is also necessary to consider whether these evils of the grand jury system outweigh any advantages which attend it; and whether or not they can be corrected by a less drastic process than the total abolition of the grand jury. Certain it is, that if the grand jury system were abolished, some other means would have to be devised whereby the wholesome restraint it is intended to exercise over criminal prosecutions may still be retained. We may hereafter have something to say as to what would be the best way of meeting this need.

The recalcitrancy of grand juries is not any newly-discovered fault. It may be that in some parts of the country there is not a sufficiency of the class of educated and independent men from which grand juries ought to be drawn, and it may be necessary in the future, as it has been in the past, to supply some remedy for their backslidings. In England such remedies have practically now fallen into disuetude: the class which compose grand juries there, we presume, are sufficiently alive to their duty as citizens, and sufficiently independent fearlessly to perform it, to make it no longer necessary to resort to penal measures for their correction. But there was a time, even in England, when a grand jury which failed to do its duty could, upon the presentment of a new grand jury, impanelled for the purpose, be fined for their default. But it may be said that such a procedure as would dispense with grand juries has passed out of the region of general reasoning, for we have the fact that the experience of centuries of actual working has, in Scotland, established that justice can well be administered without the use of this venerable institution.

Truth fears nothing but to be concealed. The fullest enquiries should be made from well-informed quarters. When these enquiries are made, the Government will no doubt have sufficient light to see what change is necessary and can properly be made. A scheme will then doubtless be formulated. When that is done, ample time should be given for the fullest consideration. It has never been the province of this journal to prejudge or throw cold water on any attempt to obtain light with a view to improvement, and many of the most valuable changes that have taken place in the administration of justice in this country have first been suggested in the pages of this journal.

The learned Senator from Barrie (than whom no one is more competent to form an opinion on this subject) has directed the attention of the Government

to the matter, and the latter has done well to seek information and opinions from well-informed quarters. When that information is made public, we think it will be seen that his views, so well and fully expressed in his speech in the Senate, meet the approval of the best judges. It is of so much importance that we shall return again to the subject. In the meantime the matter is laid before the profession, that their thought may be directed to it, and a full discussion is invited.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The law reports for November comprise 25 Q.B.D., pp. 485-522; 15 P.D., pp. 185-188; 45 Chy.D., pp. 85-285; and 15 App. Cas., pp. 309-451.

COMPANY—DIRECTORS ACTING ULTRA VIRES—LIABILITY OF DIRECTOR FOR ILLEGAL ACTS OF CO-DIRECTORS—DAMAGE—REMOTENESS.

Culler v. *The London & Suburban G. P. Building Society*, 25 Q.B.D., 485, was an action by a director against a building society to recover a deposit, in which the company set up a counter-claim against the defendant for damages, (*a*) for losses sustained by the society by reason of the plaintiff having, as a director, been a party to the lending of the money of the society on insufficient security, and (*b*) for having also been a party to a resolution approving of the money of the society being lent on unauthorized securities. As to the first ground, the judge at the trial found that there had not been any dishonesty or culpable negligence on the part of the plaintiff, but at the most a mere error in judgment, and the defendants' counter-claim on this ground therefore failed. As to the other ground, the Court of Appeal (Lord Esher, M.R., Lindley and Lopes, L.JJ.) agreed with Mathew, J. (the judge at the trial), that the plaintiff was not liable, because though the resolution in question approved the principle of lending moneys on certain unauthorized securities, and, therefore, was clearly *ultra vires*, yet it was not the actual cause of the defendants' loss, which was occasioned by the subsequent action of other directors (to which the plaintiff was not a party) in authorizing the loans to be made pursuant to the previous resolution—and for this the plaintiff was not liable, as he was not a party to it. In short, in the judgment of the court, the resolution, to which the plaintiff was a party, did the defendants no harm; the damage was occasioned by acting upon it.

INN-KEEPER—LIEN ON GOODS OF GUEST—CREDIT GIVEN TO HUSBAND—LIEN ON SEPARATE PROPERTY OF WIFE.

Gordon v. *Silber*, 25 Q.B.D., 491, raises a new kind of question under the Married Woman's Property Act. A husband and wife go to an hotel, the landlord gives credit to the husband, but he becomes bankrupt and unable to pay the bill, and the landlord then claims a lien on the luggage of both husband and wife, but the latter claims that hers is exempt from liability because it is her separate property under the Act. Lopes, L.J., before whom the action was tried without a jury, while holding that the inn-keeper could not sue the wife for the amount remaining due to him because credit had been given to the husband alone, nevertheless held that he had a valid lien on her goods for the amount, by virtue of which he could retain them until he was paid.

EVIDENCE—WITNESS—PRIVILEGE ON THE GROUND OF PUBLIC POLICY.

In *Marks* v. *Beyfus*, 25 Q.B.D., 494, the question is discussed whether the Director of Public Prosecutions, an officer appointed under 42 & 43 Vict., c. 22, can, when called as a witness, be compelled to disclose the name of the informer and the information he had received, which led to a public prosecution being instituted by him, and the Court of Appeal (Lord Esher, M.R., Lindley and Bowen, L.JJ.) affirmed the Divisional Court (Lord Coleridge, C.J., and Mathew, J.) in holding that he could not, and that such information can only be disclosed when the judge at the trial of the prisoner is of opinion that the disclosure of the name of the informant or the nature of the information is necessary or desirable in order to show the prisoner's innocence. Lord Esher was of opinion that the same rule applied where a subsequent civil action is brought for malicious prosecution.

SHIP—BILL OF LADING—CONSTRUCTION.

Serraino v. *Campbell*, 25 Q.B.D., 501, involves a somewhat curious case of construction. Goods were shipped under a bill of lading providing that the goods were to be delivered, "the act of God, the Queen's enemies, fire, and all and every other dangers, and accidents of the seas, rivers, and navigation of whatever nature and kind soever excepted, unto order or to assigns, they paying freight for the said goods, *and all other conditions as per charter*, with average accustomed." In the charter party were the words, "Negligence claim as per Baltic Bill of Lading, 1885," and amongst the perils excepted by the Baltic Bill of Lading, 1885, were stranding, occasioned by the negligence of the master or crew. Owing to the negligence of the master the vessel was stranded and the goods lost; and the question Huddleston, B., had to decide was whether the words, "and all other conditions as per charter," incorporated the negligence clause above referred to in the charter party, to which the plaintiffs, who were indorsers of the bill of lading, were no parties—and he held that they did not, and that the ship-owners were liable for the loss. The reason of his judgment may be gathered from the following passage: "I am of opinion that the words 'all other conditions' must be connected with the words 'paying freight for the coals,' and include only such conditions as are *ejusdem generis* with the payment of freight, importing into the bill of lading so much of the charter-party as is referable to the subject matter of the discharge and receipt of cargo at the port of discharge, and do not include a clause which would add to the exceptions already recited and very materially alter the contract on the face of the bill of lading," p. 503.

UNDUE PREFERENCE.

In re Skegg, 25 Q.B.D., 505, may be briefly noticed here because the Court of Appeal (Lord Esher, M.R., Lindley and Bowen, L.JJ.) held that when a debtor, on the eve of bankruptcy, was sued by a creditor, and did not appear, and was subsequently sued by two other creditors, whose writs he took to the solicitors of the creditor who had first sued, and asked them to do what was necessary, and they entered an appearance, and in consequence the first creditor got judgment

and execution sooner than the other creditors—this constituted an "undue preference" of the first creditor within the Bankruptcy Act, 1883, s. 28. This case seems somewhat to conflict with the decisions of our own court in *Young* v. *Christie*, 7 Gr., 312, *McKenna* v. *Smith*, 10 Gr., 40, and *Labatt* v. *Bixel*, 28 Gr., 593.

COMPANY—SALE OF SHARES—MISREPRESENTATION BY COMPANY—ESTOPPEL.

In *Bishop* v. *Balkis Consolidated Co.*, 25 Q.B.D., 512, the Court of Appeal (Lord Esher, M.R., Lindley and Bowen, L.JJ.) affirmed the judgment of Williams, J., noted *ante* p. 427; but dissented from the reasons on which he based his judgment. It may be remembered that the action was brought against the company to recover the damages which the plaintiff had sustained in consequence of his having carried out a purchase of shares of the company on the faith of a representation by the secretary of the company that the certificates of the shares for the purpose of the transfer had been lodged with the company. The certificates had been lodged on a prior transfer of the same shares, and not for the purpose of the transfer to the plaintiff; the secretary simply certified in the transfer to the plaintiff, "certificate lodged," which, in the ordinary course of business, would mean, and was intended to mean, that the certificate had been lodged for the purpose of the transfer to the plaintiff. On the plaintiff applying to complete his title, the fact of the prior transfer was discovered, and the company refused to register the plaintiff as owner. Williams, J., held that the certificate of the secretary was a representation as to credit and ability within Lord Tenterden's Act (R S.O., c. 123, s. 7), and was therefore void, because not under the seal of the company. He also considered it *ultra vires* of the company. But the Court of Appeal differed with him on both these grounds, and held that the certification was not *ultra vires*, and not within Lord Tenterden's Act, but that no action would lie against the company because the representation, though made carelessly, was made without fraud, and therefore not actionable, according to *Peek* v. *Derry*, 14 App. Cas., 337. They were also of the opinion that the certificate did not amount to a warranty of the transferror's title, but was only a representation that a document had been lodged with them apparently in order, and showing *prima facie* that the transferror was entitled to the shares; but that the company were not estopped thereby from disputing the title of the plaintiff's transferror. When the result of *Peek* v. *Derry* is stated in the bold and naked way in which Lindley, L.J., states it, one cannot help doubting the accuracy of that case, which has been assailed by much adverse criticism. But for that case the plaintiff would have been entitled to succeed in this action, and where one of two innocent parties is to suffer, it certainly does seem more in accordance with natural justice that the one who has by his carelessness brought about the loss should be the one to suffer, rather than the other, who, through his carelessness, has been misled.

PROBATE—TWO WILLS.

In re Grane de la Rue, 15 P.D., 185, is a similar case to *Re Callaway*, 15 P.D., 147, which was noted *ante* p. 455. Here the testator had made one will confined

exclusively to his English property, and the other exclusively to his property in Switzerland and Italy. Probate was granted of the English will alone on a copy of the other will being filed.

COMPANY—WINDING UP—EXAMINATION OF WITNESS—COMPANIES ACT, 1862 (25 & 26 VICT., C. 89), S. 115—(R.S.C., C. 129, S. 81.)

In re North Australian Territory Co., 45 Chy.D., 87, the liquidator of a company being wound up had, with the leave of the Court, brought an action against another company, and had in the action endeavored to obtain discovery of certain documents in the possession of the defendant company, which the Court refused on the ground that no defence having being put in, the application for the discovery was premature. The liquidator, in order to evade the effect of this decision, then obtained an order for the secretary of the defendant company to be examined as a witness in the winding-up proceedings under s. 115 of the Companies Act, 1882 (R.S.C., c. 129, s. 81); the secretary did not appeal from this order, but on appearing for examination refused to answer a question relating to the matter in issue in the action. Upon this the liquidator moved to compel him to attend again at his own expense and answer the questions, but inasmuch as he failed to show any reason for seeking the discovery except to aid him in the action, and so to evade the order postponing discovery in the action, the Court of Appeal (Cotton, Bowen, and Fry, L.JJ.), reversing the order of Kekewich, J., held that the witness was justified in refusing to answer the questions. The rule, therefore, which may be deduced from this case seems to be this, that when an action has been brought by a liquidator of a company being wound up he must confine himself to the proper procedure in that action for the purpose of getting discovery, and cannot resort to the provisions of R.S.C., c. 129, s. 81, to get indirectly what he could not get directly in the action. At the same time it must be remembered that this is not a hard and fast rule, but one that may be relaxed if justice requires it.

PRACTICE—FURTHER CONSIDERATION—ORDER TO PAY COSTS OUT OF FUND IN COURT—SUBSEQUENT APPLICATION TO APPORTION COSTS AGAINST REALTY AND PERSONALTY.

In re Roper, Taylor v. *Bland*, 45 Chy.D., 126, a question of practice of some importance came before the Court of Appeal, from Kay, J. A testatrix bequeathed a mixed fund of pure personalty and money to arise from realty directed by her will to be sold to her sisters for life and then to a charity. This was a suit to administer the estate, and on further consideration (or as we should say here, on further directions), the costs of suit and certain legacies were ordered to be paid out of a fund in court (part of which arose from realty and part from pure personalty), so far as it would extend, and the deficiency to be raised out of a sum of stock in court which represented realty. There was no reservation of any subsequent further consideration, nor of the question how the costs should be ultimately borne. The dividends on the residue of the stock were ordered to be paid to one of the parties for life, with liberty to apply on the death of the tenant for life. The testatrix's heir-at-law applied for payment out of the fund to him as being realty; but the Attorney-General, for the charity,

objected that the costs of administering the realty should have been paid exclusively out of the proceeds of the realty, in which case there would have been a substantial sum of pure personalty left for the charity. Kay, J., considered that the order on further consideration had concluded the question how the costs were to be borne, and ordered payment to the heir. Fry, L.J., agreed with Kay, J., but the other members of the Court of Appeal (Cotton and Bowen, L.JJ.) considered that the Attorney-General's contention was correct as to the mode in which the costs should be paid, and that the order on further consideration, containing no declaration as to the ultimate incidence of the costs, nor any indication of any intention to decide that question, must be treated as having directed the payment of costs generally out of the fund, merely for convenience, and not with any intention of altering the rights of the parties, and was, therefore, no obstacle to the court now setting the matter right, as the fund was still under its control.

LEGACY TO CHARITY—PURE PERSONALTY—MUNICIPAL BONDS—MORTMAIN—9 GEO. 2, C. 36, S. 3.

In re Thompson, Bedford v. *Teal*, 45 Chy.D., 161, though turning to a large extent on the effect of certain Imperial Statutes, may nevertheless be referred to as furnishing the latest views of the Court of Appeal (Cotton, Bowen, and Fry, L.JJ.) on the much-debated question as to what constitutes an interest in land within the Mortmain Act, 9 Geo. 2, c. 36, s. 3, out of which legacies to charities can not properly be paid. The fund in question in this case was secured by municipal bonds, which were made a charge on the surplus which might remain of the Borough fund after making certain payments. The Borough fund was partly derived from rents of land. The Court of Appeal held (overruling Stirling, J.) that the bonds in question did not give an interest in land within the meaning of 9 Geo. 2, c. 36. A statute provided that the proceeds of the sale of any surplus lands were also to be carried to the Borough fund; but as it was not shown that there were any surplus lands, the court held that the debentures, which were a charge on the fund, must be treated as pure personalty. It is by no means clear, even if it had been shown that there were surplus lands, that that would have made any difference. In the course of the argument, Fry, L.J., propounded the following question: "Suppose you place a tub under your apple tree, and give a charge upon such apples as fall into it, is that an interest in land?" to which the learned counsel replied, "Yes, because the apples being now on the tree are part of the land." Whether that is a satisfactory answer to the question, we must leave our readers to judge.

POWER OF APPOINTMENT—REAL ESTATE—INVALID EXECUTION OF POWER—POWER TO APPOINT IN TAIL DOES NOR WARRANT APPOINTMENT FOR LIFE.

In re Porter, Porter v. *Dequetteville*, 45 Chy.D., 179, the validity of an assumed exercise of a power of appointment was called in question. The facts were that a husband and wife, having a general power of appointment, over real estate under a deed dated 5th September, 1837, by a deed dated the 9th September, 1837, exercised that power by appointing to themselves successively for life, with remainder to such of their children in tail, and in such manner as they should

by deed appoint, with remainder to the children as tenants in common in tail. Subsequently by another deed made in 1855, which recited the deed of 5th September, 1837, but did not refer to the deed of the 9th September, 1837, and reciting their intention to exercise the power in the deed of the 5th Sept. the husband and wife, in exercise of that power "and of every other power or authority enabling them in that behalf," purported to appoint the property to themselves successively for life, with remainder to their son Edward for life, with remainder over to Edward's issue. The husband and wife afterwards died, leaving several children besides Edward. The question was whether this appointment of 1855 could be deemed a valid exercise of the power contained in the deed of the 9th September. North, J., held that it was not, because there was no intention to exercise that power, and the Court of Appeal (Cotton, Lindley, and Fry, L.JJ.) agreed with him; Lindley, L.J., was also of opinion that that power only authorized an appointment in tail, and neither authorized an appointment to the son Edward's issue, nor the appointment of a life estate to him.

MORTGAGE—FETTER ON REDEMPTION—POLICY OF LIFE INSURANCE AS COLLATERAL SECURITY.

The case of *Marquess of Northampton* v. *Pollock*, 45 Chy.D., 190, illustrates in a very striking and forcible way the rule that all attempts to fetter a mortgagor in his right of redemption on payment of the debt, interest, and costs, are nugatory in a Court of Equity. In this case an insurance company advanced to the late Earl Compton £10,000 on the security of a reversionary interest to which the Earl was entitled contingently on his surviving his father. In accordance with the contract between the parties, the insurance company insured the life of Earl Compton against that of his father for £34,500 in their own office, and provided the premiums until his death. The reversion was charged with principal and premiums and compound interest thereon. It was stipulated that in the event of Earl Compton dying in the lifetime of his father that the proceeds of the policy should belong to the insurance company absolutely. Earl Compton did die in the lifetime of his father without having paid anything in respect of interest, premiums, or principal; and the plaintiff, as his administrator, claimed to be entitled to a declaration that the defendants (who were trustees of the insurance company) were entitled to the insurance moneys as a security only for what was due them, and that he was entitled to any balance that might remain after payment thereof. This relief North, J., held the plaintiff entitled to, and his decision was affirmed by the majority of the Court of Appeal (Cotton and Lindley, L.JJ., Bowen L.J., dissenting). Many such transactions would be fatal to the insurance company. They advanced £10,000, the original loan, and for premiums £3450, making altogether £13,450, and had to pay up £34,500 less the £13,450 and interest thereon. But of course the Court had to treat the case just as if the insurance had been effected with some other insurance company, the mere fact that on this particular policy the defendants, as insurers, had made a loss, could not affect the legal rights of the parties as mortgagor and mortgagees. It is not often, however, that a borrower comes out of a transaction of this kind quite so satisfactorily to himself. It may be well also to observe

that if the defendants' contention had prevailed, they would have been entitled to keep the whole of the £34,500 secured by the policy, and at the same time to sue the plaintiff as representative of Earl Compton, not only for the £10,000, but also for the premiums paid for keeping the policy on foot. Lord Justice Bowen's dissent, it may be observed, was based on the fact that in his view the policy was not a part of the mortgage security, and that by the stipulation of the parties, the mortgagor was merely to have the right to become the owner of it in his lifetime, on paying what was due. He thought that the presumption which would arise in favor of the policy being the property of the mortgagor, from the fact that he was to be charged with the premiums, was displaced by the express agreement of the parties to the contrary.

MORTGAGE OF PERSONALTY—INTEREST AFTER DAY COVENANTED FOR PAYMENT—ARREARS OF INTEREST.

In *Mellersh* v. *Brown*, 45 Chy.D., 225, an attempt was made, unsuccessfully, to persuade Kay, J., that in a foreclosure action brought on a mortgage of a reversionary interest in personal estate, the Court should, by analogy to the Statute of Limitations relating to land, allow no more than six years' arrears of interest, and also that, there being no covenant for payment of interest after the day fixed for payment, the rate reserved by the mortgage (which was 5%) ought not to be allowed. But Kay, J., scouted the idea that there was any analogy in regard to land, there was a statutory limit as to the arrears recoverable, whereas as regards personal estate there was not, and therefore all the interest recoverable on the covenant must be paid as the price of redemption; and that the rate reserved being no more than a jury would be directed to give by way of damages for the detention of the money after the day fixed for payment, there was no reason or authority for allowing the mortgagee any lower rate. The question here discussed as to the rate of interest payable after the day of payment has been several times of late discussed in our own Courts, and it may be useful here to notice a passage from the judgment of Cotton, L.J., *In re Roberts*, 14 Chy.D., 52, which is cited by Kay, J., in which that learned judge intimates that there may be a difference in the rate allowed in an action on the covenant, and in a suit for foreclosure or redemption, a distinction, we may observe, touched upon by Boyd, C., in *Muttlebury* v. *Stevens*, *ante* vol. 23, p. 12. The passage we refer to is this, "It is only necessary for me to add that we are not deciding now what rate of interest should be allowed in a suit for redemption, but simply in an action brought for breach of covenant to pay the money on a given day," which Kay, J., states he takes to mean this: "If the mortgagor were coming here to ask for redemption, it is very possible we might say to him that he should not redeem without paying the higher rate; but as it is only a question on the covenant which does not expressly reserve interest after the day named for payment, we will fix as damages a rate of interest lower than that for which the mortgage deed itself stipulates."

PRACTICE—SERVICE OF WRIT—DEFENDANTS SUED IN FIRM NAME—FOREIGN PARTNER—DISSOLUTION OF FIRM BEFORE ACTION—SERVICE ON MANAGER—ORD. IX., R. 6; ORD. XVI., R. 14 (ONT. RULES 265, 317).

Shepherd v. *Hirsch* 45 Chy.D., 231, is a decision of Chitty, J., on a point of

practice. The writ was issued against the defendants by their firm name. The firm had been dissolved without (as the judge found) the plaintiff's knowledge, before action (see Ont. Rule 317). One of the partners was domiciled in England; the other was a foreigner, domiciled in France. The writ was served on the manager at the place where the business of the firm purported to be carried on. The Frenchman applied to set aside the service, on the ground that at the time of service and when the writ was issued he was the sole owner of the business, and under *Russell* v. *Cambefort*, 23 Q.B.D., 526 (see *ante* p. 8), he could not be sued by serving the manager. Chitty, J., however, held that under Ord. ix., R. 6 (Ont. Rule 265), coupled with the proviso to Ord. xvi., R. 14 (Ont. Rule 317), service on the manager was good service on the firm, notwithstanding one of its members was a foreigner, domiciled abroad, and notwithstanding the dissolution—because service on the manager was good service on the member of the firm in England, and service on one partner was good service on all, according to *Pollexfen* v. *Sibson*, 16 Q.B.D., 792, notwithstanding some of them were out of the jurisdiction, and therefore he held the Frenchman was well served.

COMPANY—RESERVE FUND—DIVIDEND—BONUS—CAPITAL OR INCOME—TENANT FOR LIFE.

In re Alsbury, Sugden v. *Alsbury*, 45 Chy.D., 237, a question arose similar to that discussed in *Worts* v. *Worts*, 18 Ont., 332, as to whether bonuses paid to shareholders of a company out of a reserve fund were to be deemed capital or income. The memorandum of association of the company provided for increase of capital. The articles provided that the directors might declare dividends, and before recommending a dividend they might set aside out of profits a reserve fund for contingencies, equalizing dividends, and other specified objects, and that they might declare and pay interim dividends. Shares in the company were settled by will. At the testator's death, the reserve fund was £3,000; subsequently it was increased to £9,000. The directors thereafter resolved to divide £15,000, as "special bonus," and this amount was paid as "interim dividend," in April, 1889. About £5,000 of extraordinary expenses were incurred, and a further dividend of £10 per share was paid, in November of that year, when the reserve fund was reduced to £2,000. North, J., held that the tenant for life of the settled shares was entitled to the whole amount divided as income of the shares. In *Worts* v. *Worts*, 18 Ont., 332, a similar conclusion was arrived at.

TRUST—ADMINISTRATION—OVER-PAYMENT TO BENEFICIARY—LIABILITY OF BENEFICIARY TO REFUND OVER-PAYMENT.

In re Winslow, Frere v. *Winslow*, 45 Chy.D., 249, was an action for the administration of a testator's estate, which was divisible among the testator's two sons and two daughters. It appeared that the estate had been managed for a long time by one of the executors, who had paid large sums, in respect of their shares, to each of the beneficiaries, but to the sons more than to the daughters—and the residue of the estate was now insufficient to equalize the shares. Under these circumstances, it not being shown that the deficiency had not arisen from a wasting of the estate subsequent to the payments to the sons, North, J., held

that the sons who had been over-paid were not trustees for the excess they had received over their sisters, nor bound to refund it in order to equalize the shares of the latter; but as the excess paid to one of the sons was larger than the amount of his costs, he was held not entitled to be paid them out of the residue of the estate.

PRACTICE—THIRD PARTY PROCEDURE—ORIGINATING SUMMONS.

In re Wilson, Attorney-General v. *Woodall*, 45 Chy.D., 266, North, J., held that the third party procedure could not be resorted to in proceedings commenced by an originating summons. We presume the same rule would apply to proceedings commenced under our practice in a summary way (see Ont. Rules, 965, 989, 992, etc.)

WILL—POWER OF APPOINTMENT—DEATH OF ONE OF OBJECTS IN LIFETIME OF DONEE, EFFECT OF—COVENANT TO SETTLE WIFE'S PROPERTY.

In re Ware, Cumberlege v. *Cumberlege-Ware*, 45 Chy.D., 269, is another case on the law of powers. In this case the question arose on the construction of the will of a testator, who had left two sums of £10,000 to his nephew John, and niece Ann, for life, with power to them to appoint the capital "to their brothers or sisters, Charles, Samuel, and sister Catharine," and in default of appointment, then the money was to be equally divided between the three persons named, or their respective representatives. The objects of the power all survived the testator, but Catharine died during the lifetime of the donees of the power—John and Ann. John, by will, appointed one-third of his £10,000 to Charles, and the other two-thirds to Samuel, both of whom survived him. Ann, by her will, appointed her £10,000 to Charles and Samuel, in equal shares. Samuel survived her, but Charles predeceased her. The trustees of the will of the original testator now applied for the opinion of the court as to who was entitled to the £20,000. The first question was whether the power could be exercised at all, and if at all, whether as regards the whole fund, or two-thirds only. Stirling, J., held, that notwithstanding Catharine having died in the lifetime of the donees, the power continued in force and extended to the whole fund, and that the appointment was valid, except as to the share appointed by Ann, in favor of Charles, which had lapsed. This being the case, the question then arose as to who were entitled to this £5,000, as to which the appointment failed, and this depended on the meaning to be attached to the word "representatives," and Stirling, J., decided that it meant the executors or administrators of the person represented—and not his next of kin (see, however, *Burkett* v. *Tozer*, 17 Ont., 587, where the context was held to give the word "representatives" the meaning of "next of kin"). Consequently the personal representatives of Charles, Samuel, and Catherine, were held entitled to the £5,000. As regards Catharine's share of this fund, a further question arose: By her marriage settlement, made in 1843, her husband had covenanted to settle all "other personal estate which, upon the said intended marriage, or at any time during the said intended coverture, shall come to or vest in the said husband in right of his intended wife, or in her, the said wife, by bequest, gift, or otherwise." Catharine died in 1867, her husband surviving her.

Both the donees of the power survived her, and the question was, whether her share of the unappointed £5,000 was bound by the covenant for settlement? On behalf of the husband it was contended it was not indefeasibly vested in possession during the coverture, but during the lifetime of the donees of the power was always liable to be divested. But Stirling, J., held that during coverture the share had vested in interest, though not in possession, and was therefore bound by the covenant, notwithstanding it was liable to be divested by the exercise of the power.

Notes on Exchanges and Legal Scrap Book.

WHO says the profession in the Province of Quebec are behind the age in advertising capacity?

The following unique specimen begins with the name of a man so modest that for worlds we would not divulge his name or drag it before an admiring public. Let it suffice that he is a B.C.L., as well as: "Advocate, Counsellor at Law, etc. Revising Barrister for ———. Attorney for Legal and Commercial Exchange of Canada. Associate Attorney for Wilbers' Mercantile Agency and others. Collections and Legal business of every description promptly executed. Attends all Provincial Courts. Capias, Attachments, and Seizures made. Ejectments and Real Estates actions brought. Institutes Insolvency proceedings, fyles claims and attends Creditors' meetings, winding up and distribution of assets. Suits for damages for personal wrongs or damages to property entered. Examines titles, searches Mortgage records, Personal and Real. Sues for maintenance and support between parents and children and ascendants. Separation of property and otherwise between consorts obtained. Pauper and Lunacy laws invoked. Prosecutes and defends in criminal cases in all stages before Justices, Magistrates, and the High Courts. Takes extra-judicial declarations and affidavits anywhere. Draws Marriage contracts, Wills, Leases, Mortgages, Bills of Sales, etc., etc. Attends and closes up Probate matters, and Successions. Manages Estate for heirs, Collects rents, Insurance claims, etc. Furnishes Legal opinions on matters in any State or Country and provides Counsel there. Draws Petitions, private Bills, incorporating Acts for Municipalities or Corporations and appears before Legislative Committees. Bills, Notes, Drafts, I.O.U.'s and Mercantile papers realized upon. Municipal cases a speciality."

A TREE DEEDED TO ITSELF.—A tree a property holder. What do you think of that? Is it legal? If so, when the tree dies to whom does the land belong? If not, whose is it now? It is certainly an exceptional case, and nobody ever heard of such a thing before. There are only a few in the city who know it, as it was done so long ago as to pass out of the recollection of nearly all. However, it is true, as the records of deeds at the Court House contain the one

giving the tree itself and all the land within eight feet of it. The tree in question is the magnificent oak in front of the residence of Major Stanley, and it seems to stand straighter and hold its head more highly and proudly, as if it knew that it ranked above the common trees of the world, which are the slaves of humans, and can be cut down and burned at the will of their owners. This majestic oak cannot be touched against its will, but the trouble is to ascertain what its will may be. And who is to be judge of whether it is willing to be cut down or not? It is a peculiar case. The facts as told us are these: Way back in the first part of this century the land containing the tree and that taking in a good part of the vicinity was owned by Col. W. H. Jackson. Col. Jackson had watched the tree grow, from his childhood, and grew to love it almost as he would a human being. Its luxuriant foliage and sturdy limbs had often protected him from the heavy rains, and out of its highest branches he had many a time gotten the eggs of the feathered songsters. He watched its growth, and when, on reaching a ripe old age, he saw the tree standing in its magnificent proportions, he was pained to think that after his death it would fall into the hands of those who might destroy it. Thinking thusly, he came to the conclusion that the only way to be sure of its protection from the axe of the unsparing woodsman was to allow it to become its own master. And this he did. Going to the Court House, he had there recorded a deed, from which the following is an extract: "I, W. H. Jackson, of the county of Clarke, of the one part, and the oak tree (giving location) of the county of Clarke, of the other part; Witnesseth, That the said W. H. Jackson for and in consideration of the great affection which he bears said tree, and his great desire to see it protected, has conveyed, and by these presents do convey, unto said oak tree entire possession of itself and of all land within eight feet of it on all sides."—*U. S. Paper.*

ETHICS OF JOURNALISM.—A curious case, illustrating the ethics of French journalism, has lately been tried in Paris before a jury. It grew out of the celebrated political trials of Boulanger, Rochefort, and Dillon. The offence consisted of abstracting from the court, a few days before the trial, a number of depositions, and printing them in a newspaper. Three persons were prosecuted for these acts, two journalists and the person who abstracted the volume, and all three were acquitted by a French jury. According to an account of the trial given in *Revue Bleu* for April 26, the question submitted to the jury was: "Has a newspaper the right to publish a secret document, one that must have been stolen, with the knowledge that it was stolen?" Journalists and managers of newspapers called before the bar as experts showed a touching unanimity in their evidence, and all proclaimed what they called the rights of the press. Journalists of one class said: "I have no opinions. My business is to get the news, and to give it to the public. Whenever a document falls into my hands that I think is capable of interesting, I hasten to publish it;" some adding, "lest a competitor should forestall me," and one expressed the reserve, "unless it should work harm to my country." Another class said: "I serve a party. I am a party man, a fighter. Any document that promises to aid the cause that I

defend, I use without hesitation. Any weapon is good with which I can strike a blow at the enemy." When the Advocate-General asked: "Would you publish a document knowing it to be stolen?" some replied frankly, "Yes, even knowing that it was stolen;" one answered, with a smile, "Oh, I am not inquisitive;" and one made the still neater response, "There is no theft in the case; it is simply expropriation in the interests of the public."—*Pump Court.*

SPECIFIC PERFORMANCE OF AGREEMENTS BY LETTERS.—Numerous decisions have established the fact that an agreement for the sale and purchase of realty so as to satisfy the requirements of the Statute of Frauds, may be entered into by letters passing from one person to another, when such letters contain all the terms of the bargain. Where there is an offer to sell a specified property at a given price by one party, and a simple acceptance of that offer by the other, no difficulty arises. But where the acceptance is accompanied by some new stipulation, or exception, or where the parties show by subsequent negotiation in the matter that they do not consider the letters to amount to a complete and final agreement, as where both of them afterwards seek to introduce new conditions into the bargain, it then becomes a question whether there is an agreement that can be specifically enforced at the suit of either party. Recent cases on this subject, though somewhat difficult to reconcile on some points, agree in others; and it appears to be now established by several decisions that the fact that a simple acceptance of an offer contains a statement that the acceptor "has instructed his solicitor to prepare a formal agreement" does not render such acceptance a conditional one. If the true and essential ingredients of a contract, the parties to the bargain, the description of the property and the price to be paid, be clearly stated, then although the contract may not be set forth in the form which a solicitor would adopt if instructed to draw up the agreement in writing, an acceptance by letter will not the less constitute an agreement between the parties merely because the latter may say, "We will have this agreement put in due form by a solicitor:" (see *Rossiter* v. *Miller*, 39 L.T. Rep., N.S. 173; 3 App. Cas. 1124; *Bolton Partners* v. *Lambert*, 60 L.T. Rep., N.S. 687; 41 Ch.Div. 295, C.A.) And it would seem that the fact that the acceptance concludes with the words "subject to the title being approved by our solicitors," does not make such acceptance a conditional one—these words seemingly meaning nothing more than a guard against the title being accepted without investigation, but that it should be subject to investigation in the usual way: (*Hussey* v. *Horne-Payne*, 41 L.T. Rep., N.S. 1; 4 App. Cas. 311.)

In the recent case of *Bolton Partners* v. *Lambert* (*supra*) the facts, sufficient for our purpose, were these: After some preliminary verbal negotiations between the parties, the defendant, on the 8th Dec., 1886, wrote to the plaintiffs offering to take from them a lease of their works for the remainder of the plaintiffs' term, at a yearly rent of £3,500 payable quarterly, with an allowance of £500 from the first quarter's rent on account of repairs, etc. On the 9th of that month Mr. Scratchley, a director of the company, wrote to the defendant, stating that his

offer should be laid before the board; and on the 13th Dec. he again wrote to the defendant, stating that the directors accepted the offer made in his letter of the 8th inst., and added that "the company's solicitors had been instructed to prepare the necessary documents." On the 13th Jan., 1887, however, the defendant wrote to the plaintiffs, alleging that he had discovered that he had been misled as to the value of certain of the plant and machinery on the premises, and added, "I therefore withdraw all offers made to you in any way." In an action by the company seeking specific performance of the alleged agreement contained in the letters of the 8th and 13th Dec., 1886, Mr. Justice Kekewich decided in their favor; and from his judgment the defendant appealed. The Court of Appeal held that these two letters constituted a complete and final contract; that the statement in the letter of Mr. Scratchley of the 13th Dec., 1886, as to the preparation of the necessary documents by the company's solicitors, did not render it a conditional acceptance; and that the letter by the defendant of the 13th Jan., 1887, withdrawing his offer was ineffective as having been made after the contract was complete; and the court confirmed the judgment of Mr. Justice Kekewich.

On the other hand it appears to be settled that the Court will not grant specific performance of an alleged agreement by letters, when looking at the whole correspondence and the conduct of the parties in continuing negotiations, not on a mere matter of form, but on some substantial question involved, after the offer and acceptance, it appears they did not consider the agreement complete and final. Thus, in *Hussey* v. *Horne-Payne* (*supra*), after some preliminary verbal negotiations, the defendant, on the 4th Oct., 1876, by letter offered the land in question to the plaintiff for £37,500. The plaintiff's agent on the 6th Oct. wrote in answer accepting the offer, subject to the title being approved by his solicitors. Further negotiations, however, followed by letter passing between the parties and their solicitors and by written memoranda, as to the payment of the amount of the purchase money by instalments, and as to the conveyance of the property as the purchase money was paid, wherein reference was made to the signing of a contract, but no such contract was signed. The plaintiff claimed specific performance of an alleged contract contained in the letters of the 4th and 6th Oct., with a declaration that the terms respecting payment of the purchase money and the conveyance of the property were also binding on the parties. But it was held by the House of Lords, that although the two letters, if they had stood alone, would have been sufficient evidence of a concluded contract under the Statute of Frauds they must be read in connection with the other correspondence and negotiations, whereby it appeared that there were to be other terms which at that time had not been agreed upon; that efforts were made to settle those other terms, and that such efforts did not result in a settlement thereof, and therefore there was in fact no completed agreement between the parties of which specific performance could be decreed. A recent case to the same effect is that of *The Bristol, Cardiff, and Swansea Aerated Bread Company* v. *Maggs*, 62 L.T. Rep. N.S. 416, decided by Kay, J. The facts are briefly these: On the 29th May, 1889, the defendant Maggs wrote to the plain-

tiffs offering to sell his business at Cardiff, lease, and goodwill for £450; fixtures and fittings, and stock-in-trade to be taken at a valuation; the offer to hold good for ten days. On the 1st June following, Colonel Guthrie, a director of the company, on behalf and with the authority of the company, wrote stating that he accepted the defendant's offer. On the 2nd June the defendant's solicitor sent to Colonel Guthrie a formal memorandum of agreement, which contained several new terms, for approval. This memorandum was altered by the plaintiff's solicitors, mainly by the insertion of a clause preventing the vendor for five years from carrying on a like business within Cardiff, or within a distance of five miles from the town hall, and returned the memorandum on the 4th June with an accompanying letter. On the 5th June the defendant's solicitor wrote sending the draft again to the plaintiff's solicitors with a modification of the proposed additional clause. On the 6th June the plaintiff's solicitors wrote stating that they could not themselves agree to the proposed modification; but they had asked Colonel Guthrie to call about it. On the 7th June the defendant's solicitor wrote stating that Colonel Guthrie had not called, and by his client's instructions he begged to inform them that his client "declined to proceed further in the matter." In an action by the company for specific performance of the alleged agreement by the two original letters, Mr. Justice Kay held that he was bound to look at the whole correspondence from beginning to end; and that although the two letters relied upon would, if nothing else had taken place, have been sufficient evidence of a complete agreement, yet the plaintiffs themselves had shown that the agreement was not complete by reopening the matter and stipulating afterwards for an additional term, not on a mere matter of form, but of considerable advantage and importance to them, which kept the whole matter of purchase and sale in a state of negotiation only; and that therefore the defendant was at liberty to put an end to the negotiations, as he did by withdrawing his offer, although the ten days named in his letter of the 29th May had not elapsed.—*Law Times.*

LIFE INSURANCE.—When a person effects an insurance on his own life, and in the policy designates another person as payee of the sum insured, the latter may maintain an action on the policy, without showing an insurable interest in the life: *Vivar* v. *Supreme Lodge K. of P.* (N.J.) 20 Atl., 36. [And this it would appear, without any acceptance by the company, and there being no privity of contract between the plaintiff and the company.]

PEINE FORT ET DURE.—In January, 1720, two highwaymen, named Spiggot and Phillips, refused to plead until the effects taken from their persons were restored to them. Thereupon they were sentenced to be pressed to death in the Press-room at Newgate. Phillips was terrified, and begged to be taken back to plead, which, as a mercy, he was permitted to do, although in strict law he could have been denied the request. His companion, however, was pressed, and bore

the amazing weight of three hundred and fifty pounds for the space of half-an-hour; but when an additional fifty pounds were added, his fortitude gave way, and he begged to be allowed to plead. They were, of course, both hanged. The following year another highwayman, named Hames, refused to plead. In vain was the dreadful alternative explained to him. He continued mute, and was taken to the Press-Room, and bore a weight of two hundred and fifty pounds for seven minutes, when he cried out to be taken back to court. He too was hanged. The last time this sentence was inflicted, was upon a ship-master, who, to save his landed property from the clutches of the law, so that his wife and family should not starve after his death, remained mute.—*Pump Court.*

"FROM," MEANING OF.—"From" is *prima facie* an exclusive term, so that if in a contract any right is to continue under it for a certain period "from" a given day, that day is to be excluded, but the term is not so unambiguously exclusive as not to be susceptible of an inclusive construction if there be anything in the context to show that an inclusive meaning was intended by the parties. Such is the effect of *Pugh* v. *The Duke of Leeds*, 2 Cowp., 714, and *Wilkinson* v. *Gaston*, 9 Q.B., 137, in both of which cases "from" was construed as inclusive; but in the curious case of *The South Staffordshire Tramways Company* v. *The Sickness and Accident Association* (Notes of Cases, p. 127), Mr. Justice Day and Mr. Justice Lawrence, though differing on another point, agreed in the opinion that there was nothing in the context of the contract before them to show an inclusive meaning to be put upon the term. The contract was one of assurance against accident "for twelve months, from November 24, 1887," and an accident within the meaning of the policy happened on November 24, 1888. Here there was clearly nothing in the context to avoid the operation of the ordinary rule, and the judgment on this point is indisputably correct. On a much more difficult point, whether an accident to forty persons was forty accidents or one, the judges were equally divided, and Mr. Justice Lawrence, as junior judge, withdrew his judgment. We cannot help thinking the accident was but a single one, but, looking to the large amount in dispute, the case, which must in any event go to the Court of Appeal, will in all probability be taken to the House of Lords.—*Law Journal.*

THE October number of *The Law Quarterly Review*, edited by Sir Frederick Pollock, Professor of Jurisprudence in the University of Oxford, comes to us laden, as usual, with good things. The leading articles are as follows: "The Law of Criminal Conspiracy in England and Ireland"; "The Bourgoise Case in London and Paris"; "The Compulsion of Subjects to Leave the Realm"; "Remoteness and Perpetuity"; "Tinkering Company Law"; "Difficulties of Abstract Jurisprudence"; "Gifts of Chattels without Delivery"; together with the usual very able and interesting notes on points of law too numerous to mention. We copy some of them for the benefit of our readers. We note the remarks of the editor, when calling attention to the stricture of a contemporary, that these notes

"are nearly all on cases." He thus replies: "It is quite true—as true as that we do not profess to offer an excellent substitute for the comic weeklies. We had supposed, and shall continue to suppose, until we have much better reason to the contrary, that most English-speaking lawyers would rather have notes on the points of current cases than remarks on things in general, or stale professional gossip. The same paragraph says that 'students of legal science are becoming fewer every year.' We do not know on what facts this statement is founded. It is certainly not so at the Universities."

"THINK of the state of the record," said Parke B. when it was proposed to allow amendment of pleadings. We smile, but it would be wrong to put down such an utterance of the grand old judge to a perverse preference for technicality over justice. He, like others, firmly believed that the interests of justice were best served by a strict adherence to technical rules. We have travelled fast and far since then, as Lord Coleridge points out, and among the most salutary changes have been not only the almost unrestricted power of amending at any stage, but the Court's power of curing irregularities and defects, and so getting at the merits. *Eddowes* v, *Argentine Loan Agency* (38 W.R. 629) is an instance. An affidavit had been sworn before a British Consul abroad, but it omitted the words "before me" in the jurat. It was clear that it had been sworn before the Consul, because there were alterations all through it initialed by him, but it was strenuously contended that the Court must reject it on the authority of *Reg.* v. *Bloxham* (6 Q.B. 528); *Graham* v. *Ingleby* (1 Ex. 651,) etc. Such cases there are; and a "vast amount of expense and injustice," as Lindley, L.J., said, "has been caused by rejecting affidavits like this by reason of some defect or omission by some clerk or official;" but the Court is now empowered to deal with such defects (O. 38, s. 14), and *Reg.* v. *Bloxham*, etc., survive only to furnish us with complacent reflections on the narrow-mindedness of our forefathers, and our superior enlightenment.—*Law Quarterly.*

"THE name of a firm," as Wood, V.C., said in *Churton* v. *Douglas* (Johns 189), "is a very important part of the good-will of the business;" one might go farther and say the most important part, for while partners come and go, the name remains. As such it passes with the good-will to an assignee, but the right to use the name is for the purpose of showing that the business is that formerly carried on by the assignor; it does not entitle the assignee of the business, so Stirling, J., has decided in *Thynne* v. *Shove* (59 L.J., Ch. 509), to use the name so as to expose the assignor to liability by holding him out as the real owner of the business: thus the purchaser of a baker's business must not distribute trade cards with the vendor's name upon them as baker and confectioner. If he does so, the vendor may get an injunction, but he will not get his costs if there is no evidence that he has really been subjected to any liability. If the vendors are a firm, and the dissolution has been duly advertised, and notice given to customers, the use of the vendors' name cannot give rise to any liability (*Newsome* v. *Coles*, 2 Camp. 617), and an injunction ought to be refused (*Levy* v. *Walker*, 10 Ch. Div. 436). In

America they manage better. A man who has bought a business is, in some States, only allowed to describe himself as successor. In others he may use the name of his predecessor, but only with his written consent.—*Ib.*

"No attorney," says Abbott, C.J. (*Montriou* v. *Jeffreys*, 2 C. & P. 113), "is bound to know all the law. God forbid that it should be imagined that an attorney, or a counsel, or even a judge, is bound to know all the law, or that an attorney is to lose his fair recompense on account of an error, being such an error as a cautious man might fall into." But a solicitor is bound to know some things, and one of them is that the County Court is, generally speaking, a cheaper forum than the High Court. When a local board, for instance, wants to recover £34 from a frontager, and is advised to sue in the Lancaster Palatine Court and loses and has to pay the defendant £240 in costs, it is naturally grieved at having to pay its solicitor another £200, and may be excused for charging negligence (*Barker* v. *Fleetwood Improvement Commissioners*, 62 L.T.R. 831). "The cases," says Charles, J., "seem to me to establish that where a solicitor recommends his client to sue in a Court that has jurisdiction over the matter in question, but where the client may incur a penalty as to costs, even if successful, the solicitor may be held to have been guilty of negligence if he has not advised his client as to the risk he runs of incurring the penalty;" but if there happens to be no penalty (as in the Lancaster Palatine Court) for bringing an action in a more expensive Court when he might have brought it in a cheaper, the client it seems has no remedy. Why? If he loses, as in *Barker* v. *Fleetwood Improvement Commissioners*, he has to pay perhaps ten times the amount in costs, because his solicitor has taken him into the more expensive Court. Of course a solicitor may have many proper reasons for doing so: then there is no negligence, but the criterion of penalty or not seems, from the client's point of view, unsatisfactory.—*Ib.*

LORD CAMPBELL much preferred judge-made law to the "crude enactments of the legislature." Lord Coleridge, on the other hand, like Lord Westbury, thinks statute law would be very tolerable but for the cases: so various, as Herodotus would say, are the opinions of men even on the commonest matters. Strange to say, this dictum of the Lord Chief Justice was called forth by the much-abused Bills of Sale Acts. Anyhow we may be thankful that in *Read* v. *Joannon* (25 Q.B.D. 300) the trumpet gave no uncertain sound, and that debentures have not been drawn into the terrible vortex of the Bills of Sale Acts. Whether a "covering deed," including chattels, must still be registered as a bill of sale is not quite clear (see *Ross* v. *Army and Navy Hotel*, 34 Ch. Div. 43), but probably it need not. *Re Pyle Works* (44 Ch. Div. 534) affirms the right of a company to charge its uncalled capital. Uncalled capital is part of a company's property, and there is nothing in the Companies' Act, or in principle, to prevent a company, if its articles authorise it, charging it like any other property. The sections and cases disallowing set-off on winding up were cited in argument as if they appropriated uncalled capital to creditors. The fallacy is transparent. On a winding up they

do; before winding up general creditors have no lien whatever. It may seem like a hardship on creditors that the only fund they can look to should be forestalled. The answer is, this is the meaning of "limited liability." If creditors take the trouble they can always find out what they are trusting to.—*Ib.*

"WHAT is your proposition of law?" the late Lord Justice James would say to a counsel who was bungling his opening with a confused statement of facts. "What is your proposition of law?" the distracted reader of the Chancery Law Reports might well exclaim in coming upon the portentous head-note of nearly two pages of small print to *Sheffield Building Society* v. *Aizlewood* (44 Ch. D. 412), and the exclamation might be repeated in a "crescendo" of despair as case after case met his eye with nearly a page of head-note. An epitome of a case is not, as the editors of the Law Reports seem to think, a head-note at all. A head-note is or should be the key to the case, the clue of legal principle which we can follow as we progress through the intricacies of the report. On the clearness, conciseness, and accuracy of the head-note the value of the report very much, if not mainly, depends. It is therefore a great pity that more pains are not taken by those responsible for the Law Reports to give the "legal pith" of the decision and no more. The latest Law Reports Digest, it is only fair to say, shows a marked improvement both in brevity and arrangement.—*Ib.*

Reviews and Notices of Books

A Digest of the Criminal Law of Canada. By G. W. Burbidge, A.B., D.C.L. Toronto: Carswell & Co., 1890.

This work has now been some months before the profession, and it has therefore in a measure established its own reputation as a valuable addition to the as yet scanty library of Canadian law books. It is based on Stephen's Digest of the Criminal Law of England, and follows the plan there adopted. The work is well done, after a good model, and so we have an excellent codification of our criminal law. The reference to Canadian statutes and cases will greatly assist the practitioner. It is to be regretted that others of our bar, who have a special knowledge of some particular branch of the law, do not see their way to follow the lead of the few who have already published in book-form the law as at present construed by our courts. We have nothing but words of commendation to those who thus endeavor to discharge a duty they owe to their profession; and nothing but praise for the excellent compilation now before us.

The Law of Collateral Inheritance, Legacy, and Succession Taxes. By B. F. Dos Passos. New York: L. K. Strouse & Co., 1890.

A logical treatise on the law of succession taxes in the United States, as applied in the nine States of the Union where it has been adopted, with reasons in favor of such a tax being imposed, and embracing the United States and many English decisions.

DIARY FOR DECEMBER.

1. Mon..... Princess of Wales born, 1844.
2. Tues.....General Sessions and County Court Sittings for Trial in York.
4. Thur.....Chancery Division High Court of Justice sits.
6. Sat.....Michaelmas Term and High Court of Justice sitting ends.
7. Sun.....*2nd Sunday in Advent.* Sir W. Campbell, 6th C.J. of Q.B., 1825.
9. Tues.....General Sessions and County Court Sittings for Trial, except in York.
14. Sun.....*3rd Sunday in Advent.* Prince Albert died, 1861.
17. Wed.....First Lower Canadian Parliament met, 1792.
18. Thur.....Slavery abolished in the United States, 1862.
21. Sun.....*4th Sunday in Advent.* St. Thomas. Shortest day.
24. Wed.....Christmas Vacation begins.
25. Thur.....Christmas Day. Sir M. Hale died, 1676, æt. 67.
26. Fri.....St. Stephen.
27. Sat.....J. G. Spragge, 3rd Chan., 1869.
28. Sun.....*1st Sunday after Christmas.* Innocents' Day.
30. Tues.....Holt, C.J., born, 1642.

Reports.

ONTARIO.

DITCHES AND WATERCOURSES ACT.

RE CURTIN, APPELLANT, AND TAYLOR, RESPONDENT.

Scale of costs—Maps and surveys.

The costs of a map and survey cannot be taxed against an unsuccessful respondent.

[WHITBY, Nov. 15.

The appellant herein, having succeeded in setting aside the award of the engineer, with costs against the respondent, filed the usual affidavit of disbursements, claiming therein the sum of $17.00 as being paid to a surveyor, in addition to his fees as a professional witness; which sum of $17.00 the clerk disallowed, and this was an appeal from his ruling.

N. F. Paterson, Q.C., for appellant.

T. W. Chapple, for respondent.

DARTNELL, J.J. The clerk is right. Sec. 27 of the Ditches and Watercourses Act, R.S.O., chap. 220, provides that "the fees to witnesses . . . shall be the same as those allowed to witnesses . . . in the Division Court." It is true that in the Superior and County Courts, by Rule 1213, the taxing officer can allow for maps or plans when the necessity of them is shown to him, and that they were used at the trial; but this rule cannot be taken as adding another item to the Division Court tariff. In this, as well as similar cases before me under the Act, the map was unnecessarily elaborate and expensive.

Appeal disallowed.

HEALY, APPELLANT, AND MCDONALD, RESPONDENT.

Maintaining Ditches—Benefit to the lands—Inferior and superior owners.

Unless there is a preponderating benefit to the land through which it is necessary to construct or maintain a ditch for the benefit of the superior owner, the inferior owner should not be required so to construct or maintain it, where it is shown that any possible benefit to his land is counterbalanced by the inconvenience or nature of its location; and an award was amended to accord with this view.

[WHITBY, Nov. 24.

Through Healy's land, from east to west, was situated a well-defined natural drain or watercourse. McDonald's land lay to the south; and in order to drain a portion thereof, it became necessary to open a ditch northerly through Healy's land, until the natural watercourse was reached. This, by an award of the township engineer, made in March, 1884, was permitted to be done by McDonald at his own expense. A new award, by a different engineer, and which is the subject of this appeal, directed that th ditch should in future be deepened and maintained by Healy.

N. F. Paterson, Q.C., for the appellant.

J. McCosh, for the respondent.

DARTNELL, JJ. The award in question is, in fact, a reversal of the former award, in a matter of considerable importance to the appellant. There does not appear to be any new circumstances which would justify the change, and certainly none enuring to his benefit. On the contrary, from the raising of the waters of Lake Simcoe, more than the usual quantity of water backs up on Healy's land, and the additional volume of water from McDonald's land would tend further to increase the flooding. There was some evidence that the drain in question might benefit a small portion of Healy's land; but, on the other hand, it was shown that by reason of its "zig-zag" course, it would inconveniently divide the field through which it passes. It is to be recollected that the Act is in derogation of common law rights, and it must therefore not be construed to the detriment of one, who,

but for its operation, has no obligation imposed upon him.

The construction or maintenance of a ditch or drain, for the benefit of another, should not be imposed upon any one, unless a decided and preponderating benefit is the natural consequence. I think it is the duty of the engineer to weigh the disadvantages against the advantages, and only charge a duty upon an unwilling owner when he is clearly and considerably to be benefited by the work, The present award is, in fact, a reversal of that made by the former engineer, and I am fortified by his opinion. I can find no circumstances which justify any change, but rather the contrary. This award must be amended by restoring the parties to the position they formerly occupied, and the appeal is allowed with costs.

Early Notes of Canadian Cases.

EXCHEQUER COURT OF CANADA.

BURBIDGE, J.]

THE ST. CATHARINES MILLING AND LUMBER CO. ET AL *v.* THE QUEEN.

Dominion Lands—Permit to cut timber—Implied warranty of title—Breach of contract to issue license.

1. A permit issued under the authority of the Minister of the Interior, under which the purchaser has the right within a year to cut from the Crown domain a million feet of lumber, is a contract for the sale of personal chattels, and such a sale ordinarily implies a warranty of title on the part of the vendor; but if it appears from the facts and circumstances that the vendor did not intend to assert ownership, but only to transfer such interest as he had in the thing sold, there is no warranty.

2. The Government of Canada, by Order-in-Council, authorized the issue of the usual license to the company (suppliants) to cut timber upon the Crown domain, upon certain conditions therein mentioned. The company did not comply with such conditions; but before the expiry of the year during which such license might have been taken out, proceedings were commenced by the Government of Ontario against the company, under which it was claimed that the title to the lands covered by the license was vested in the Crown for the use of the Province of Ontario, and that contention was ultimately sustained by the Court of last resort.

Held, that there was a failure of consideration which entitled the company to recover the ground rent paid in advance on the Government's promise to issue such license.

Quære: Will an action by petition or on reference lie in the Exchequer Court against the Crown for unliquidated damages for breach of warranty implied in a sale of personal chattels?

BURBIDGE, J.]

THE VACUUM OIL CO. *v.* THE QUEEN.

"The Customs Act, 1883," ss. 68, 69, 198, 207—Money deposited in lieu of seizure—Market value—Waiver of notice of claim—Penalties—Prescription.

1. The company (suppliants) were manufacturers of oils, doing business at Rochester, New York. Their principal business in the United States was done directly with the consumer. For several years they did business from their office at Rochester directly with Canadian consumers. In some cases the purchaser paid the duty, and in others the company sold at a price including the duty and the cost of transportation. In the former case they charged the Canadian purchaser the price to consumers at their place of business in Rochester, and the oils were so invoiced and the duty paid on that value by the purchaser. In the latter case, the price to the consumer at Rochester was taken as a basis upon which the price per gallon to the Canadian purchaser was made up, but the goods were entered for duty at a lower value—two sets of invoices being used, one for the purchaser in Canada, and the other for the company's broker at the port of entry.

Held, that the oils were undervalued.

2. The company having changed their manner of doing business in Canada, and having established a warehouse at Montreal, which became the centre and distributing point of their Canadian business, exported oils from Rochester to Montreal in wholesale lots. The invoices

showed a price which was not below the fair market value of such oils when sold at wholesale for home consumption in the principal markets of the United States.

Held, that there was no undervaluation.

3. When goods are procured by purchase in the ordinary course of business and not under any exceptional circumstances, an invoice disclosing truly the transaction affords the best evidence of the value of such goods for duty. In such a case the cost to him who buys the goods abroad is, as a general rule, assumed to indicate the actual market value thereof. It is presumed that he buys at the ordinary market value. It is not the value at the manufactory, or the place of production, but the value in the principal markets of the country, *i.e.*, the price there paid by consumers or dealers to dealers that should govern. Such value for duty must be ascertained by reference to the fair market value of such or like goods when sold in like quantity or condition for home consumption in the principal markets of the country whence so imported.

4. Goods seized for fraudulent undervaluation were released upon a deposit of money. The importer made no claim by notice in writing under the 198th section of "The Customs Act, 1883," but there was no question that he claimed the goods. Subsequently he submitted evidence to show there was no ground for the seizure, and the Minister having considered such evidence, and having heard the parties, acquitted the importer of the charge of fraudulent undervaluation, but found there had been an undervaluation of these and other goods. No proceedings were taken to condemn the goods within the three years mentioned in section 207 of "The Customs Act of 1883." On petition to recover the money deposit, it was

Held, that the Minister had waived the notice of claim required by section 198 of the said Act.

Quære: Does section 198 apply to the case where money is deposited in lieu of goods seized?

5. The additional duty of 50% on the true duty payable for undervaluation under section 102 of the Customs Act of 1883 is a debt due to Her Majesty, which is not barred by the three years prescription contained in section 207, but may be recovered at any time in a court of competent jurisdiction.

Quære: Is such additional duty a penalty?

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Chancery Division.

BOYD, C.] [Nov. 1.

RE GRAYDON *v.* HAMMILL.

Contact of sale—Incumbrances—Local improvement rate—Sewers—Vendor and purchaser.

Where parties had contracted in writing, the one with the other, to sell to each other certain lands free from incumbrances,

Held, that though the contract also provided that taxes were to be proportioned and allowed to date of completion of sale, special frontage rates imposed for local improvements and construction of sewers prior to the contract, the period of which had not expired, were incumbrances to be discharged by the vendors respectively.

A. Cassels for vendor.

Marsh, Q.C., contra.

FERGUSON, J.] [Oct. 4.

SMITH *v.* TENNANT.

Contract—Conveyance—Merger of contract in conveyance.

The plaintiff agreed in writing to give certain lands of his for five houses of one, for whom the defendant was assignee for creditors, which were in course of erection on S. avenue. By the contract, which was dated March 24th, these five houses were to be completed by May 30th, similar to certain houses on O. street. Mutual conveyances were to be exchanged between the parties within sixty days, *i.e.*, by May 24th, and as a matter of fact they were executed and exchanged about May 9th.

The plaintiff claimed damages for non-completion of and defects in the finishing of the five houses on S. avenue.

The deed from the defendant contained no covenants covering the matter complained of.

Held, that nevertheless the plaintiff was, on the original contract, entitled to recover.

It was impossible to arrive fairly at the conclusion that a contract to perform certain work,

or to do a certain thing, for the benefit of the other contracting party, at a period after the time fixed by the same agreement for the execution and final delivery of the formal conveyances, became merged in the conveyance.

FERGUSON, J.] [Nov. 18.

SMITH *v.* BROWN.

Mortgagor and mortgagee—Sale under power—Notice of sale—Demand of payment within a month—Advertising sale during the month—Injunction—R.S.O., c. 102, s. 30.

An advertisement for sale of lands is a "proceeding" within the meaning of the words "no further proceedings" in s. 30 of R.S.O., c. 102.

Where a mortgagee served upon the mortgagor a notice demanding payment of the mortgage money, and stating that unless payment were made within a month from the service the mortgagee would proceed to sell, an injunction was granted restraining the mortgagee from publishing until after the expiry of the month an advertisement of the sale of the mortgaged premises.

A. Abbott for plaintiff.

J. A. Paterson for defendants.

ROSE, J.] [Nov. 8.

HALL *v.* HALL.

Donatio mortis causa—Delivery of keys of box and rooms containing valuables.

Shortly before his death the plaintiff's uncle delivered to her his watch and pocket-book, and also the keys of his cash-box, then in the actual possession of his solicitor, and of two rooms, in which were contained securities for money and chattels. He accompanied the delivery with words of gift.

Held, upon the evidence, that the deceased intended to give to the plaintiff what the keys placed in her control, and to part with the possession and dominion of the cash-box and its contents, and of the rooms and their contents; and upon the law, that the intention of the deceased should be given effect to, and a valid *donatio mortis causa* declared.

C. G. Snider for plaintiff.

Bicknell for defendants.

Flotsam and Jetsam.

A WILL of about 1830 has this clause: "I leave to my widow the sum of five hundred pounds"; but adds the clause, that she is only to come into the *enjoyment* of it after her death, in order "that she may be buried suitably as my widow."

A JUDGE AS A PREACHER.—The novel sight of a judge of the Criminal and Civil Courts of the City of London preaching to an open-air congregation was witnessed in the churchyard of St. Botolph, Aldersgate street. During the dinner hour, from a quarter past 1 to 2 p.m., and before an attendance of fully one thousand, the Common-Serjeant, Sir William T. Charley, Q.C., delivered an earnest discourse.

A YOUNG counsel, practising before Lord Ellenborough, was beginning to recite a long speech, when his memory failed him. "My lord," said he, "the unfortunate client, who appears by me—my lord, my unfortunate client —" The Lord Chief Justice interfered, and in a gruff voice said, "You may go on, sir; so far the Court is quite with you."

MR. JUSTICE MAULE once addressed a prisoner at a county assize in the following words: "Prisoner at the bar, your counsel thinks you innocent; I think you innocent; but a jury of your own countrymen, in the exercise of such common sense as they possess, which does not appear to be much, have found you guilty, and it remains that I should pass upon you the sentence of the law. That sentence is that you be kept in imprisonment for one day and as that day was yesterday, you may go about your business." The unfortunate rustic, rather scared, went about his business, but thought that law was an uncommonly puzzling thing.—*Pump Court.*

LORD BROUGHAM said, in the House of Lords, that he remembered a case wherein Lord Eldon referred it in succession to three chief courts below to decide what a particular document was. The Court of King's Bench decided it was a lease in fee; the Common Pleas, that it was a lease in tail; the Exchequer, that it was a lease for years. Whereupon Lord Eldon, when it came back to him, decided for himself that it was no lease at all.

THE following notice to the profession is extracted from a New Jersey paper of 1821 : "To be sold, on the 8th July, one hundred and thirty-one suits at law, the property of an eminent attorney about to retire from business. (Note —The clients are rich and obstinate)."

EXCITED FEMALE.—"Say, if you have filed them divorce papers for me, I want you to go around and stop 'em right away."

Lawyer.—"Have you made it up with him?"

Excited female.—"Lord, no. I don't have to. He has just been run over by a train. I want you to sue the company for damages."—*Express.*

MANY of the "good things" which almost unconsciously drop from the lips of one of our learned Chief Justices at Osgoode Hall are unhappily lost in oblivion, or perhaps survive for a time only in the memory of those who happen to hear them. Here is a *mot* of his which, we think, deserves a more enduring fate. Speaking of the Act enabling county court judges to officiate in other counties than their own, he duly observed : "It is very hard on the people of a county to have a judge coming among them whose law they are not accustomed to." This may be a little hard on some of our judicial friends in country places, but they will excuse our inserting a joke at their expense. Have none of them some pleasant rejoinder? The same learned Chief Justice dearly loves a joke. One does not often get inside his armor ; but he would not object to be pierced by an unpoisoned shaft neatly inserted.

Law Society of Upper Canada.

THE LAW SCHOOL, 1890.

LEGAL EDUCATION COMMITTEE.

CHARLES MOSS, Q.C., *Chairman.*

C. ROBINSON, Q.C.	Z. A. LASH, Q.C.
JOHN HOSKIN, Q.C.	J. H. MORRIS, Q.C.
F. MACKELCAN, Q.C.	J. H. FERGUSON, Q.C.
W. R. MEREDITH, Q.C.	N. KINGSMILL, Q.C.

This notice is designed to afford necessary information to Students-at-Law and Articled Clerks, and those intending to become such, in regard to their course of study and examinations. They are, however, also recommended to read carefully in connection herewith the Rules of the Law Society which came into force June 25th, 1889, and September 21st, 1889, respectively, copies of which may be obtained from the Secretary of the Society, or from the Principal of the Law School.

Those Students-at-Law and Articled Clerks, who, under the Rules, are required to attend the Law School during all the three terms of the School Course, will pass all their examinations in the School, and are governed by the School Curriculum only. Those who are entirely exempt from attendance in the School will pass all their examinations under the existing Curriculum of The Law Society Examinations as heretofore. Those who are required to attend the School during one term or two terms only will pass the School Examination for such term or terms, and their other Examination or Examinations at the usual Law Society Examinations under the existing Curriculum.

Provision will be made for Law Society Examinations under the existing Curriculum as formerly for those students and clerks who are wholly or partially exempt from attendance in the Law School.

Each Curriculum is therefore published herein accompanied by those directions which appear to be most necessary for the guidance of the student.

CURRICULUM OF THE LAW SCHOOL, OSGOODE HALL, TORONTO.

Principal, W. A. REEVE, 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.

The School is established by the Law Society of Upper Canada, under the provisions of rules passed by the Society with the assent of the Visitors.

Its purpose is to promote legal education by affording instruction in law and legal subjects to all Students entering the Law Society.

The course in the School is a three years' course. The term commences on the fourth Monday in September and closes 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.

Students before entering the School must have been admitted upon the books of the Law Society as Students-at-Law or Articled Clerks. The steps required to procure such admission are provided for by the rules of the Society, numbers 126 to 141 inclusive.

The School term, if duly attended by a Student-at-Law or Articled Clerk is allowed as part of the term of attendance in a Barrister's chambers or service under articles.

The Law School examinations at the close of the School term, which include the work of the first and second years of the School course respectively, constitute the First and Second Intermediate Examinations respectively, which by the rules of the Law Society, each student and articled clerk is required to pass during his course; and the School examination which includes the work of the third year of the School course, constitutes the examination for Call to the Bar, and admission as a Solicitor.

Honors, Scholarships, and Medals are awarded in connection with these examinations. Three Scholarships, one of $100, one of $60, and one of $40, are offered for competition in connection with each of the first and second year's examinations, and one gold medal, one silver medal, and one bronze medal in connection with the third year's examination, as provided by rules 196 to 205, both inclusive.

The following Students-at-Law and Articled Clerks are exempt from attendance at the School.

1. All Students-at-Law and Articled Clerks attending in a Barrister's chambers or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889.

2. All graduates who on the 25th day of June, 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.

In regard to all other Students-at-Law and Articled Clerks, attendance at the School for one or more terms is compulsory as provided by the Rules numbers 155 to 166 inclusive.

Any Student-at-Law or Articled Clerk may attend any term in the School upon payment of the prescribed fees.

Students and clerks who are exempt, either in whole or in part, from attendance at The Law School, may elect to attend the School, and to pass the School examinations, in lieu of those under the existing Law Society Curriculum. Such election shall be in writing, and, after making it, the Student or Clerk will be bound to attend the lectures, and pass the School examination as if originally required by the rules to do so.

A Student or Clerk who is required to attend the School during one term only, will 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 will be entitled to present himself for his final examination at the close of such term in May, although his period of attendance in Chambers or Service under Articles may not have expired. In like manner those who are required to attend during two terms, or three terms, will attend during those terms which end in the last two, or the last three years respectively of their period of attendance, or Service, as the case may be.

Every Student-at-Law and Articled Clerk before being allowed to attend the School, must present to the Principal a certificate of the Secretary of the Law Society shewing that he has been duly admitted upon the books of the Society, and that he has paid the prescribed fee for the term.

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.

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 subjects and text-books for lectures and examinations are those set forth in the following Curriculum:

FIRST YEAR.

Contracts.

Smith on Contracts.

Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

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.

Deane's Principles of Conveyancing.

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.

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.

Dart on Vendors and Purchasers.

Hawkins on Wills.

Armour on Titles.

Criminal Law.

Harris's Principles of Criminal Law.

Criminal Statutes of Canada.

Equity.

Lewin on Trusts.

Torts.

Pollock on Torts.

Smith on Negligence, 2nd edition

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 the Courts.

Statute Law.

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

During the School term of 1890-91, the hours of lectures will be 9 a.m., 3.30 p.m., and 4.30 p.m., each lecture occupying one hour, and two lectures being delivered at each of the above hours.

Friday of each week will be devoted exclusively to Moot Courts. Two of these Courts will be held every Friday at 3.30 p.m., one for the Second year Students, and the other for the Third year Students. The First year Students will be required to attend, and may be allowed to take part in one or other of these Moot Courts.

Printed programmes showing the dates and hours of all the lectures throughout the term, will be furnished to the Students at the commencement of the term.

GENERAL PROVISIONS.

The term lecture where used alone is intended to include discussions, recitations by, and oral examinations of, students from day to day, which exercises are designed to be prominent features of the mode of instruction.

The statutes prescribed will be included in and dealt with by the lectures on those subjects which they affect respectively.

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court, if not given at the close of the argument.

At each lecture and Moot Court the roll will be called and the attendance of students noted, of which a record will be faithfully kept.

At the close of each term the Principal will certify 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 will 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 of each series 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, the Principal will make a special report upon the matter to the Legal Education Committee. For the purpose of this provision the word "lectures" shall be taken to include Moot Courts.

Examinations will be held immediately after the close of the term upon the subjects and text books embraced in the Curriculum for that term.

The percentage of marks which must be obtained in order to pass any of such examinations is 55 per cent. of the aggregate number of marks obtainable, and 29 per cent. of the marks obtainable on each paper.

Examinations will also take place in the week commencing with the first Monday in September for students who were not entitled to present themselves for the earlier examination, or who having presented themselves thereat, failed in whole or in part.

Students whose attendance at lectures has been allowed as sufficient, and who have failed at the May examinations, may present themselves at the September examinations at their own option, either in all the subjects, or in those subjects only in which they failed to obtain 55 per cent. of the marks obtainable in such subjects. Students 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 fixed for such examinations, of their intention to present themselves, stating whether they intend to present themselves in all the subjects, or in those only in which they failed to obtain 55 per cent. of the marks obtainable, mentioning the names of such subjects.

Students are required to complete the course and pass the examination in the first term in which they are required to attend before being permitted to enter upon the course of the next term.

Upon passing all the examinations required of him in the School, a Student-at-Law or Articled Clerk having observed the requirements of the Society's Rules in other respects, becomes entitled to be called to the Bar or admitted to practise as a Solicitor without any further examination.

The fee for attendance for each Term of the Course is the sum of $10, payable in advance to the Secretary.

Further information can be obtained either personally or by mail from the Principal, whose office is at Osgoode Hall, Toronto, Ontario.

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