The Canada Law Journal.

VOL. XXV. MARCH 1, 1889. NO. 4.

THE legal proceedings for the winding up of the Central Bank have been unusually expeditious, and so far beneficial to the creditors. The heavy burden of the litigation has been borne by the Master-in-Ordinary, though it was not part of his ordinary duties, or compulsory on him to undertake it. The Dominion statute in effect makes him an additional judge of the High Court for winding up cases, by providing that the judicial powers conferred upon the Court by the Act "may be exercised by the Master-in-Ordinary," as well as other officers named in the Act.

BILLS AND NOTES.

IN the proceedings of the Dominion Parliament we notice with pleasure the introduction in the House of Commons, by Sir John Thompson, Minister of Justice, of Bill No. 5, "An Act relating to Bills of Exchange, Cheques and Promissory Notes"—a copy almost *verbatim et literatim* of the English Act 45 & 46 Vict., c. 61—intituled "An Act to codify the law relating to Bills of Exchange, Cheques and Promissory Notes" (1882)—an Act admitted by general consent to be admirably drawn, and the best specimen of the codification of the law on a most important subject which has been yet produced in the shape of an Act of Parliament. Sir John Thompson has wisely made no changes in the matter or wording of the English Act, in applying it to Canada, except such as are obviously necessary—as, for instance, the days to be observed as holidays, the substitution of the word "Canada" for "the United Kingdom," and the retention of the Canadian rule that when the last day of grace is a non-judicial day, the bill or note shall be payable on the next *following* judicial day—instead of the next *preceding* day, as in England—and in the mode of protesting a bill or note when the services of a notary cannot be obtained. There are also some forms, and a tariff of fees, which are not in the English Act. With these slight exceptions the Bill is identical, clause for clause, with the English Act. We suppose that although it is not the common practice to refer a Government Bill to a special committee, this Bill may perhaps be referred to the Sessional Committee on Banks or Banking, or to one specially selected for its consideration; and will, no doubt, be thoroughly examined and tested by gentlemen conversant with the subject. The object of the Bill is of course to make the law the *same in all* our provinces; and it is fortunate that in the Revised Statutes of Canada, vol. 2,

the laws in force on the subject in the several provinces, except only in Quebec under the civil code, are given in full; and in vol. 3 that portion of the law which is contained in the civil code is given in like manner; so that the committee examining the Bill will have all the statute law in force in Canada on the subject before them, and can make any correction in the Bill which may be seen to be required by the special circumstances of any province. There are appended to the Bill the tariff of fees before mentioned, and a number of forms, which are not appended to the English Act, and which have been taken chiefly from the statutes in force in Quebec, where it is believed they have been found useful. These of course will require consideration. It seems to us that Sir John Thompson has given our Parliament the opportunity and the material for a codification of a most important portion of the statute law of the Dominion, and that the people of Canada will be deeply indebted to him for so doing.

SOLICITOR AND CLIENT.

Of all the business relations of life, perhaps the most important is that which exists between solicitors and their clients. These relations are often of the most intimate character. To the solicitor is confided not only the management of his client's business, but family secrets and difficulties which are hidden from the rest of the world, are often of necessity confided to him. The intimate relations thus established naturally in some cases beget feelings of friendship and gratitude on the part of the client, and enable the solicitor to exercise a degree of influence over his client, which might often be exercised to the prejudice of the latter, did not the law very wisely guard the interests of the client, so as to practically invalidate all transactions between solicitor and client whereby the former gains any benefit beyond his legal fees. Lawyers are like other men, and are liable to form an extravagant estimate of the value of their services, and sometimes may think themselves deserving of, and justified in accepting from their clients, gifts over and above their legal fees for services rendered. The law has, however, imposed a very strict rule to guard both the client from making improvident gifts to his solicitor, and the solicitor from the temptation to use any influence he acquires over his client for his own benefit. All dealings between a client and his solicitor, whereby a benefit over and above his legal fees results to the solicitor, are regarded by the Courts with the greatest jealousy. In many cases the transaction will be altogether set aside, and in others absolute transfers of property will be treated as mere securities for the actual indebtedness from the client to the solicitor; and in all such cases the onus is upon the solicitor, in the event of litigation, to establish by the clearest evidence that the transaction is one which is perfectly fair and reasonable, and that it was entered into free from any influence on his part. This jurisdiction, as was remarked by Turner, V.C., in *Billage* v. *Southee*, 9 Ha. 540: "Is founded on the principle of correcting abuses

of confidence, and it is one of universal application; and the cases in which the jurisdiction has been exercised—those of trustee and *cestui que trust*, guardian and ward, attorney and client, surgeon and patient—are merely instances of the application of the principle."

Gifts from clients to their solicitors, made while the relation of solicitor and client subsists between them, are, as a rule, absolutely void. The leading authority on this point is *Middleton* v. *Welles*, 4 Br. P.C. 245; 1 Cox 125. In this case the client was a poor man, of intemperate habits, and of eccentric character, who, by the unexpected death of his cousin intestate, became heir to his estate, which was of considerable amount. A firm of solicitors informed him of his succession to the estate, and accompanied him to obtain—and did obtain on his behalf—letters of administration to the estate. Shortly afterwards they procured him to execute a transfer of the estate to them, they agreeing to pay him an annuity of £52 during his life. The deed recited that the intestate had intended to benefit the solicitors by making a will in their favor, and that the client desired to effectuate this alleged intention of his deceased cousin, but of the truth of this recital no evidence was given. The deed was read over to the client, and explained by an independent solicitor, who was called in by the donees for the purpose, and this solicitor testified that the client seemed perfectly to understand the matter and acted voluntarily. The client died during the same year, and the action was brought by his representatives to set aside the transaction. The judgment of the House of Lords is very briefly reported; but from the head-note it would appear that their Lordships adopted the argument of counsel for the plaintiffs, and laid down that it is an established rule in Courts of Equity that no gift or gratuity to any attorney beyond his fair professional demands, made during the time he continues to conduct or manage the affairs of the donor, shall be permitted to stand; and more especially if such gift or gratuity arises immediately out of the subject then under the attorney's conduct or management, and if the donor is at the time ignorant of the nature and value of the property so given.

When the case was originally before Lord Thurlow, L.C., he said: "In the case of attorneys it is perfectly well known that an attorney cannot take a gift while the client is in his hands, nor instead of his bill; and there would be no bounds to the crushing influence of the power of an attorney who has the affairs of a man in his hands, if it was not so."

In *Tomson* v. *Judge*, 3 Drew. 306, a deed of land made by a client to his solicitor, purporting to be made in consideration of £100, but which the solicitor admitted to have really been made as a gift, was set aside. Kindersley, V.C., thus lays down the law: "Now, as to the case of purchases by solicitors from their clients, there is no rule of the Court to the effect that the solicitor cannot make such a purchase. A solicitor can purchase his client's property even while the relation subsists; but the rule of the Court is that such purchases are to be viewed with great jealousy, and the onus lies on the solicitor to show that the transaction was perfectly fair; that the client knew what he was doing, and in particular

that a fair price was given, and of course that no kind of advantage was taken by the solicitor:" p. 313. Further on he proceeds to point out the rule as regards gifts, thus: "In the case of a gift the matter is totally different, and it appears to me that there is a far stricter rule established in this Court with regard to gifts than with regard to purchases, and that the rule of this Court makes such transactions, that is, of gifts from the client to the solicitor, absolutely invalid:" p. 314. And on p. 315 he says that in the opinion of Lords Thurlow, Erskine and Eldon, "it is not open to the attorney to show that the transaction was fair." In *Walmsley* v. *Booth*, 2 Atk. 25, Lord Hardwicke at first refused to set aside a bond obtained by an attorney from his client as a gratuity, on the ground that the client was a man not in the least likely to be imposed upon, but on appeal he reversed his own decree; and in *Kenney* v. *Brown*, 3 Ridg. P.C. 462, a gift to a solicitor by his client of a part of the estate, which was the subject of a suit carried on by the attorney, was set aside.

In *O'Brien* v. *Lewis*, 4 Giff. 221, a solicitor claimed a sum of £300 on the ground that he had been directed by his client to retain that sum as a gift, but it appearing that the direction had been given during the existence of the relationship of solicitor and client Stuart, V.C., held the gift to be invalid, and on appeal this decision was affirmed (32 L.J. Chy. 569,) Lord Westbury saying in the course of his judgment on the appeal:—"The law treats the relation between solicitor and client in a peculiar manner. It has laid down certain rules and scales of charges, by which the services of a solicitor are to be remunerated, and it imposes on him an obligation not to bargain with his client while the relation exists for any additional benefit beyond that legal remuneration." In this case the gift was made in 1852, and the suit to set it aside was not commenced until 1861, and it was held that the delay afforded no defence.

The recent case of *Tyass* v. *Alsop*, 59 L.T.N.S., 367, was somewhat similar in its facts. There a client out of gratitude to her solicitor in recovering a large sum of money, between £4,000 and £5,000, voluntarily directed the solicitor to retain £1,000 out of the fund, as a present, over and above his taxed costs; but Kekewich, J., had no difficulty in deciding that the gift could not be upheld, and the solicitor was ordered to pay over the £1,000 with interest to the plaintiff who was the personal representative of the donor, who had died three years after the gift, and who, previous to her death, and after the relationship had ceased, had expressed her willingness to abide by the gift. Kekewich, J., says: "In order to sustain such a gift you must have something done after the confidential relation has ceased, amounting to a release of the client's right to set aside the gift. Now there is nothing whatever in this case except the bill of costs delivered in 1882, and £95 paid as balance, and the girl's acceptance, without insisting upon a claim to the £1,000, and what passed on the 27th April. As regards the first event there is nothing of an active character in it. What happened on the 27th April is far more important. She came not, as I said, as a client, but as a person in distress, and she did refer to the gift of £1,000 as something she meant to abide by. But suppose she had changed her mind next day, could Messrs. Alsop,

Moore & Co. reply to that by saying, 'Why, on the 27th of April she told us that she was urged to bring this action, and make this claim, but did not intend to do so, and was determined to abide by what she had done and to adhere to her gift.' I cannot doubt that that defence could not have been supported if she had changed her mind. There was nothing equivalent to release, but only a declaration of intention which could not have been set up as a defence to an action." This case has since been affirmed by the Court of Appeal; see *Law Times Journal*, vol. 86, p. 279.

In *Wright* v. *Proud*, 13 Ves. 138, Lord Eldon says: "Independent of all fraud an attorney shall not take a gift from his client while the relation subsists; though the transaction may be not only free from fraud but the most moral in its nature." And again in *Wood* v. *Downes*, 18 Ves. 127, he says: "It is not denied in any case, that if the relation has completely ceased, if the influence can be rationally supposed also to cease, a client may be generous to his attorney, or counsel, as to any other person, but it must go so far." And in *Montesquieu* v. *Sandys*, 18 Ves. 315, he also says: "The connection must, as in the case of guardian and ward, be *bonâ fide* dissolved before he can take anything beyond his regular fees." Lord Brougham, L.C., in *Hunter* v. *Atkyns*, 3 My. & K. 136, states the rule somewhat differently, but practically to the same effect, thus: "Standing in the relation in which he stands to the other party, the proof lies upon him (when in the case of a stranger it would lie on those who opposed him) to show that he has placed himself in the position of a stranger, that he has cut off as it were the connection which bound him to the party giving or contracting, and that nothing has happened, which might not have happened, had no such connection subsisted." The law in these cases is also stated by Bacon, V.C., in *Minet* v. *Morgan*, 6 Chy. D. 638. The head note of that case seems a little paradoxical, it is as follows: "To prevent the operation of the rule that a solicitor shall not take a gift from his client, *while the relation subsists*, there must not only be a total absence of fraud, misrepresentation, or even suspicion, *but there must be a severance of the confidential relation*." But Bacon's, V.C., own statement of the law is quite explicit, at p. 645, he says: "The law I take it to be as plainly settled on the subject as any law existing in this country, that while the relation of solicitor and client subsists, the solicitor cannot take any gift from his client. That is the rule of law, a rule which, if it were necessary for me to justify it, I should say was requisite for the safety of society." In that case, after the gift, the donor in the presence of another solicitor who fully explained the matter to him, executed a codicil to his will confirming the transaction. But as to this, Bacon, V.C., remarks: "Is that what the law requires? The law requires that the relation should be severed in the first place. It requires that in consequence of that severance some independent advice should be obtained by the donor," p. 648: and he set aside the gift notwithstanding the codicil. See also *Waters* v. *Thorn*, 22 Beav. 549.

It is somewhat singular, however, that in *Minet* v. *Morgan* the earlier decision of Lord St. Leonards, L.C., in *Stump* v. *Gaby*, 2 D.G. M. & G., 623, was not referred to either by counsel or the Court. There a conveyance by a client to his

solicitor was impeached, and the defendants pleaded that after the making of the deed the client had by his will, reciting that certain of his relatives had threatened to dispute the conveyance, thereby ratified and confirmed the conveyance, and for the further confirmation thereof did devise the land in question to the solicitor. The plea did not allege any facts showing how the will had been made, or that the testator had any independent advice in making the will, but on demurrer it was held good. On appeal, it was argued for the plaintiffs that the conveyance itself, being voidable by reason of the alleged fraud, was not susceptible of being confirmed by a simple instrument, such as the will set up, which, it was argued, was evidently obtained by the solicitor exerting the same undue influence; and, to use the language of the Court in an old case, was "a contrivance only to double hatch the cheat": *Wiseman* v. *Beake*, 2 Vern. 121. Under such circumstances it was contended a Court of Equity imposes an obligation on the party deriving a benefit from the instrument of confirmation, to show by the clearest evidence that the act of confirmation was done with all the deliberation that ought to attend a transaction, the effect of which is to ratify that which in justice ought never to have taken place. But Lord St. Leonards says, at p. 631: "It is beyond dispute that a man may, if he pleases, confirm a voidable conveyance; and if a client dealing with his solicitor executes a voidable instrument, and afterwards chooses to confirm it by will, he clearly may. The difference between the confirmation of such an instrument by a contract between the same parties, and a testamentary disposition, is that when a client deals with an attorney, and the latter commits what may be considered a fraud in this Court, and then induces the client to confirm that dealing, the attorney has to show that the confirmation was made by the client with a full knowledge of his rights to set aside the conveyance. I have nothing to do with such a case, nor do I wish to disturb the decisions on that head; but here there was no such dealing: the party was disposing of his own property by will in favor of a person with whom he had previously been dealing, and it was equally competent for him to have disposed of the same property in favor of any other individual. It was a testamentary act, it was not a matter of contract, and the will is therefore the guide under which the Court must act; the testator has devised the estate in express terms, and my opinion is that if he had not so devised it, but had simply said, referring to the prior conveyance, 'I confirm it,' that alone would have been a valid confirmation."

It will be seen from the passage cited that, in the opinion of Lord St. Leonards, a vital difference exists between a confirmation of a voidable deed or gift, by contract, and a confirmation by will. In the latter case he virtually held that it was unnecessary to show that the will was made by the testator when free from the influence and control of the solicitor to whom the voidable conveyance had been made; but, in view of the general tenor of the authorities, it is perhaps doubtful whether this position can be maintained to its full extent: See *Waters* v. *Thorn*, 22 Beav. 549.

The Court will not interfere with mere trifling benefits conferred by a

client on his solicitor upon the mere proof of the existence of the relationship, unless there be *mala fides: Rhodes* v. *Bates*, 2 Chy. 252. But according to the general current of the authorities to which we have already referred, it would seem that it is impossible to uphold, under any circumstances, a gift of any considerable amount from a client to his solicitor, made during the existence of the relationship; but *In re Holmes, Woodward* v. *Humpage*, 3 Giff. 345, Stuart, V.C., said: "The principle of influence vitiates the gift, but the presumption of influence may be rebutted by circumstances *short of the total dissolution of the relation of solicitor and client.* The relation is only looked at as creating the influence; and as soon as circumstances of evidence are introduced which remove all effect of the influence, whether the relation subsists or not, if the influence of that relation is removed, there is no incapacity on the part of the solicitor to become the subject of his client's bounty, and to be the recipient from his client of a gift wnich will be valid at law and in equity." Whether this statement of the law is correct or not, it is certain that very few, if any, cases are to be found in the reports in which, where the relationship has existed, evidence has been given so as to successfully rebut the presumption of influence which arises from the mere fact of the existence of the relationship.

Indeed, wherever a confidential relationship is established, the Court presumes its continuance, unless there is distinct evidence of its determination: *Rhodes* v. *Bate*, 2 Chy. 252. But it will appear as we proceed that even the severance of the relationship is not enough to validate a gift, unless it is also established that the influence resulting from the relationship theretofore existing has also ceased.

While the Court considers it "highly improper for a solicitor to derive a personal advantage in the shape of gifts from his clients, or in the shape of the liquidation of his bills untaxed and undelivered, still the Court cannot approve of clients entering into transactions with their solicitor, whereby they obtain from him present relief; and at the same time indulge the expectation that the Court will afterwards, at their instance, annul the whole transaction on the ground of the relation subsisting between them;" *per* Romilly, M.R., in *Gardener* v. *Ennor*, 35 Beav. 558, in which case, securities taken by the solicitor from the client were ordered to stand as security for what should appear to be actually due on a taxation, but costs were withheld from the client; and see *White* v. *Lightbourne*; 4 Br. P.C. 181; *Morgan* v. *Higgins*, 1 Giff. 270; *Newman* v. *Payne*, 2 Ves. 199 4 Br. C.C. 350.

The same principles which apply to gifts by clients to their solicitors, apply equally to gifts from clients to their counsel, and on this point the well-known case of *Broun* v. *Kennedy*, 33 Beav. 133, is a leading authority. That case arose out of the remarkable litigation which, some thirty years ago, attracted the attention of all England, in reference to the disputed will of Samuel Swinfen. This gentleman died in 1854, and by his will devised all his estates, worth £60,000, to his daughter-in-law, Patience Swinfen. The will was contested, and at the first trial, Sir Frederic Thesiger, who acted for the devisee, without the

concurrence of his client, consented to a compromise. This compromise Patience Swinfen refused to be bound by, and it was at this juncture Mr. Kennedy appeared on the scene as her counsel; and having defeated the attempts made to enforce the compromise, first by attachment of his client, and afterwards by suit for specific performance, he ultimately succeeded in compelling a new trial which resulted in a verdict in favor of his client by the establishment of the validity of the will under which she claimed. Mr. Kennedy had all along refused to receive any fees for his services, which extended over several years, but relied on the promise of his client, that his strenuous exertions on her behalf would be amply and substantially rewarded. She had, according to his account, promised him £20,000 in the event of success, and about two months after the litigation had been brought to a close, she, at his solicitation, made a deed of the estates to him, to hold during her life for her benefit and after her decease for himself in fee, subject to a charge for debts, not to exceed £10,000, and to her appointment of a further sum of £10,000 in favor of her relations. This deed was prepared by an independent solicitor, who read it over and explained it to the client, and she perfectly understood it. Two years afterwards, however, she married Broun, much to the dissatisfaction of Mr. Kennedy, and then a change came over her relations with him, which resulted in a suit being brought to set aside the deed. In this she was successful. Mr. Kennedy attempted to support it as a gift freely and voluntarily made, and also as the fulfilment of a contract to remunerate him for his services. Sir John Romilly, M.R., was of opinion that the deed could not stand, as it was clear that although it was prepared, and explained by, and executed in the presence of, an independent solicitor, the client was at the time completely under the control and influence of Mr. Kennedy, and in reply to the argument of the defendant, that at the time of the execution of the deed he was not her counsel, as she was not then engaged in litigation, he says at p. 148: "But this Court does not proceed *on the mere technicality of the existence of such a relation at that moment*, if the fact were so, but upon the proof of the degree of influence existing at the time, which in the present case is established conclusively, and also that it arose from the relation of confidential adviser and counsel previously existing, and subsequently continued, and which enabled the defendant to exert over the mind of the grantor a power sufficient to obtain the deed." So far as the attempt to support the deed on the footing of contract was concerned, the case was virtually concluded by the previous decision in *Kennedy* v. *Broun* 13 C.B.N.S., 677, in which Kennedy had brought an action to recover on the alleged promise to pay him £20,000 for his services, and it was held by the Court of Common Pleas that such a promise, even if established, constituted no obligation on which an action could be maintained by counsel against his client.

Not only may a solicitor not take any gift over and above his fees, but security taken for costs to accrue in respect of future services to be rendered, is void: *Hope* v. *Caldwell*, 21 C.P. 241, *Robertson* v. *Caldwell*, 31 U.C.Q.B., 402, and any bargain by the client to pay more than the legal charges, cannot be enforced: *Re Geddes & Wilson* 2 Chy. Ch. 447.

It may be well to notice two or three of the very few instances in which gifts from a client to his solicitor have been upheld. *Oldham* v. *Hand*, 2 Ves. 259, was a case in which a large sum of money had been recovered by the solicitor for his clients, and the latter made the solicitor a present of £4,000. The case is not very fully reported, but it would seem that in the course of the suit, the parties in some way or other, which is not explained in the report, ratified the gift, which under the circumstances was upheld. But how they came to bring a suit to set aside the transaction, and then in that suit ratified the transaction they sought to impeach; and how it was that after the ratification the case came to be submitted to the judgment of the Court, is not apparent from anything that appears in the report itself. On the whole, therefore, this case appears to be *sui generis*, and cannot be considered as an authority establishing any general principle. In *Harris* v. *Tremenheere* 15 Ves. 34, the suit was brought by the representatives of a deceased client to set aside certain leases granted by him to his solicitor, who was also a distant relative. Some of the leases were purely voluntary gifts made by the client to the solicitor on the former receiving an accession of fortune. One had been purchased by the solicitor from the client, and another had been granted by the client under the following circumstances: The solicitor being about to be married, wrote to his client offering to purchase the leasehold as a provision for his intended wife; but the client refused to sell, and instead, insisted on making a gift of the lease. This last transaction and also the gifts of the other leases were upheld, but the lease purchased was set aside on the ground that there was not sufficient evidence that it was a proper bargain, and that a fair consideration had been paid.

(*to be continued.*)

COMMENTS ON CURRENT ENGLISH DECISIONS.

CONTRACT—BOND—CONSIDERATION PARTLY ILLEGAL—CONTRACT INTENDED TO AFFECT THE COURSE OF CRIMINAL PROCEEDINGS.

Lound v. *Grimwade*, 39 Chy. D. 605, is an illustration of the doctrine that where a contract is founded on a consideration which is partly illegal, it is void altogether. In this case the plaintiff gave the defendant's assignor a bond to secure £3,000, the consideration for which was that the plaintiff should be free from any legal proceedings or other consequences, for having introduced one Connor to the defendant's assignor, through whom he had lost money; and the plaintiff also gave the defendant's assignor a mortgage as collateral security for the bond. The action was brought to set aside the securities as having been given under duress, but the evidence, though it failed to show any duress, nevertheless established that the consideration for the securities included stipulations that certain criminal proceedings which were pending against Connor should be conducted in such a way either that the plaintiff's name should not be mentioned, or that if mentioned he should be exonerated from all blame in connection with the transaction; and it was held by Stirling, J., that

this stipulation was illegal, and that the consideration being bad in part, the securities were void altogether.

WILL CONSTRUCTION—GIFT TO CLASS—SUBSTITUTIONARY GIFT TO CHILD OF MEMBER OF CLASS WHO SHALL DIE IN TESTATOR'S LIFETIME—CHILD OF MEMBER WHO WAS DEAD AT DATE OF WILL.

In re Chinery, Chinery v. *Hill*, 39 Chy. D. 614, the construction of a will was involved. The testator had bequeathed a share of his estate upon trust to invest the principal moneys and pay the income to his sisters and nieces for life for their separate use, and after the death of each sister to apply her share for the benefit of his nieces equally upon the trust of their original shares; "and after the death of each niece, upon trust, to pay her share to each of her children as she shall by will appoint, and in default of appointment to her children equally on attaining twenty-one years, and if no such children, then on trust for the survivors or survivor of my said nieces. If my niece shall die in my lifetime her share shall be for the benefit of her child or children, but if no such children who shall attain twenty-one, then such share shall be for the benefit of my surviving nieces equally upon the same trusts." The question was whether the child of a niece who died before the date of the will was entitled, and Stirling, J., following *Christopherson* v. *Naylor*, 1 Mer. 320, and dissenting from *In re Smiths' Trust*, 5 Chy. D. 497 *n*, held that she was not; although at the same time saying that, apart from authority, the inclination of his opinion would be in favor of following the decision of the late Master of the Rolls in the latter case.

MARRIED WOMEN'S PROPERTY ACT, 1882 (R.S.O. c. 132, s. 5, s.s. 2, c. 20)—INTEREST OF MARRIED WOMAN IN FUND SETTLED ON FORMER MARRIAGE.

In re Onslow, Plowden v. *Gayford*, 39 Chy. D. 622, involves a question under the Married Women's Property Act, 1882 (R.S.O. c. 132). By a marriage settlement made in 1878, a fund was settled to pay the income to the wife for life, and during her then intended coverture, for her separate use, and after her death the fund was to be held, in default of children in trust, for such person as the wife should, during coverture by will, and when discovert by deed or will, appoint, and in default, if the wife should survive the husband, in trust for her, her executors, administrators, and assigns. The husband died in 1880, and there was no issue of the marriage. In 1887, the wife married again, and the question now raised, was whether the wife was entitled to an absolute transfer of the fund, and Stirling, J., held that she was.

MARRIED WOMAN—UNDISPOSED OF SEPARATE PERSONAL ESTATE.

In re Lambert, Stanton v. *Lambert*, 39 Chy. D. 626, may be referred to as showing a slight difference between the English Married Women's Property Act, 1882, and the R.S.O. c. 132. Under the former, as appears from this case, the husband is entitled to the undisposed of separate property of his deceased wife, as if the separate use created by the statute had never existed. But under R.S.O. c. 132, s. 23, where the wife leaves children, her undisposed of separate estate is to be distributed in the same proportions between the husband and

children, as the personal property of a husband dying intestate is distributed between his wife and children, and it is only where there are no children that the property is to be distributed as if the Act had not been passed. It is possible that in the construction of this section, however, some conflict will be found to exist between its provisions and those of R.S.O. c. 108, s. 5, which provides that the real and personal property of a married woman, as to which she dies intestate, is to be distributed as follows: One-third to her husband, if she leave issue, and one-half if she leave none; and subject thereto shall go and devolve as if her husband had pre-deceased her; probably the latter clause as embodying the provisions of a later statute, will be found to over-ride R.S.O. c. 132, s. 23, so far as it conflicts with it.

MORTGAGE—COVENANT BY MORTGAGOR—ASSIGNMENT OF EQUITY OF REDEMPTION—FURTHER CHARGE BY ASSIGNEE—RIGHT OF MORTGAGORS WHO HAVE ASSIGNED, TO RE-CONVEYANCE ON PAYMENT UNDER COVENANT.

In *Kinnaird* v. *Trollope*, 39 Chy. D. 636, a point of interest as between mortgagee and mortgagor was decided by Stirling, J., viz.: that, though a mortgagor who has assigned his equity of redemption has no right of redemption, yet if he is sued by the mortgagee on his covenant he is entitled, on payment of the amount due thereon, to a re-conveyance of the mortgaged property, and that, without paying off the amount of any further charge given by the assignee of the equity of redemption. But the mortgagees in their re-conveyance were held entitled to reserve their right of redemption in respect of the further charge.

POWER OF APPOINTMENT—CORRUPT BARGAIN INDUCING APPOINTMENT—FRAUD ON POWER.

Whelan v. *Palmer*, 39 Chy. D. 648, is a case illustrating the law of powers, and the necessity of their bonâ fide execution. In this case a man had a power to appoint a jointure not exceeding £200 in favor of his wife. He had fallen out with his wife, and was living with another woman by whom he had had a child. With a view solely to benefiting his mistress, he proposed to execute the power in favor of his wife, provided she would agree to assign thereout to the mistress £60 a year, which she did; and it was held by Kekewich, J., that the bargain was corrupt, and a fraud on the power, and therefore that the appointment was altogether void, although if it had appeared that the husband had intended to benefit his wife to any extent, the appointment might have been upheld *pro tanto*.

TRUSTEE—INVESTMENT—CONTRIBUTORY MORTGAGE—BREACH OF TRUST.

The only point decided in *Webb* v. *Jonas*, 39 Chy. D. 660, by Kekewich, J., is that in the absence of an express power, it is a breach of trust for trustees having an ordinary power to invest on real securities, to invest in a contributory mortgage of freeholds, *i.e.*, a mortgage in favor of the trustees and other persons as mortgagees.

PLEDGE—CHATTELS STORED IN ROOM—DELIVERY OF KEY—POSSESSION—BILL OF SALE.

In *Hilton* v. *Tucker*, 39 Chy. D. 669, it was held by Kekewich, J., that it is not essential to a valid pledge that the advance and delivery of possession should

be contemporaneous. In this case, in November, 1883, the plaintiff agreed to lend to one Stephen Tucker £2,500 on the security of a valuable collection of prints and engravings. On the 19th November, 1883, £1,250 was advanced on account of the loan, and it was arranged between the parties that the collection should be stored in a certain room; and on 21st December, 1883, Tucker wrote to the plaintiff, saying: "The collection has been moved in to-day; Larkin has the key, which I place entirely at your disposal." On 24th December, 1883, the balance of the loan was advanced, and on 11th January following Tucker wrote to the plaintiff: "You having advanced me £2,500, I hereby authorize you to retain possession of my collection of engraved prints now deposited by me in a certain room . . . . the key of which room is at present in your possession and power, and I hereby acknowledge that you are to retain possession of such prints, etc., until the whole of the said sum of £2,500, with interest at 5%, has been repaid to you." Tucker having died insolvent, his administratrix claimed the goods on the ground that the letter of the 11th January constituted a bill of sale, which was void under the Bills of Sale Act, ss. 8, 9. Bnt it was held by Kekewich, J., that the transaction was a pledge independent of the letters, and that the Bills of Sale Act did not apply, and that the pledge was perfected by the delivering of the key to Larkin, which amounted to a constructive delivery of the goods to the plaintiff.

SETTLEMENT—NEW TRUSTEES—NON-DISCLOSURE OF INCUMBRANCES BY RETIRING TRUSTEE—CONSTRUCTIVE NOTICE.

The case of *Hallows* v. *Lloyd*, 39 Chy. D. 685, shows that it is necessary for incumbrancers who have given notice of their claims to a trustee, to repeat the notice when new trustees are appointed, because the latter, according to the decision of Kekewich, J., in this case, are not bound by notices of incumbrancers given to the retiring trustee of which no notice appears amongst the trust documents, and which the retiring trustee fails to disclose to the new trustees.

PRACTICE—PARTICULARS—DISCOVERY—INFRINGEMENT OF TRADE MARK

In *Humphries* v. *Taylor Drug Co.*, 39 Chy. D. 693, the plaintiff sued the defendants to restrain the infringement of the plaintiff's trade mark, alleging in his statement of claim that the use of the trade mark by the defendants, was calculated to induce, and had induced, divers persons to purchase the goods of the defendants as and for the goods of the plaintiff. After the delivery of a defence denying plaintiff's allegation, the defendants applied for discovery of the names of the persons alleged to have been induced to purchase the goods of the defendants as and for the goods of the plaintiff. Kekewich, J., held that he was entitled to these particulars, notwithstanding that such persons might be called as witnesses for the plaintiff at the trial.

BILL OF SALE—AFTER ACQUIRED PROPERTY, ASSIGNMENT OF—CHOSE IN ACTION—FUTURE BOOK DEBTS.

Proceeding now to the appeal cases, in *Tailby* v. *The Official Receiver*, 13 App. Cas. 523, we find that the House of Lords have reversed the decision of the

Court of Appeal (18 Q.B.D. 25), noted *ante* vol 23, p. 63. The simple question was whether a chattel mortgage which assigned (*inter alia*) all the book debts due and owing, or which might, during the continuance of the security, become due and owing to the mortgagor, was sufficiently specific. Their Lordships held that the assignment of future book debts, though not limited to book debts in any particular business, was sufficiently definite, and passed the equitable interest in book debts incurred after the assignment, whether in the business carried on by the mortgagor at the time of the assignment, or in any other business: overruling *Belding* v. *Read* 3 H. & C. 955, and *In re D'Epineuil*, 20 Chy. D. 758, and approving *In re Clarke*, *Coombe* v. *Carter*, 36 Chy. D. 348 (noted vol. 24. p. 41).

BANKRUPTCY—REALIZATION OF ASSETS—INSURANCE ON DEBTOR'S LIFE—SUBMISSION TO MEDICAL EXAMINATION.

The Board of Trade v. *Block*, 13 App. Cas. 570, is the name by which *In re Betts* 19 Q.B.D. 39, noted *ante* vol. 23, p. 291, is known in the House of Lords. In this case the majority of the Court of Appeal (Lord Esher, M.R. and Lopes, L.J.) held (Fry, L.J., dissenting) that a bankrupt could not be compelled to submit to a medical examination for the purpose of insuring his life, in order to realize more beneficially a contingent reversionary interest to which the bankrupt was entitled, and this decision was affirmed by the House of Lords (Lord Fitzgerald dissenting). Their Lordships holding that the statutory duty imposed on a bankrupt to "do all such acts and things in relation to his property and the distribution of his property among his creditors as may reasonably be required by the trustee," and to "aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors," did not include an obligation to submit to a medical examination, and that his refusal to submit was no ground for refusing him his discharge.

"MINES AND OTHER MINERALS"—CLAY SUITABLE FOR BRICK, WHETHER INCLUDED IN "OTHER MINERALS."

It may be useful to refer to the *Lord Provost and Magistrates of Glasgow* v. *Farie*, 13 App. Ca. 657, for the construction of a statute therein contained. The question arose whether under a statute relating to waterworks companies which provided that they "should not be entitled to any mines of coal, ironstone, slate, or other minerals, under any land purchased by them," they were entitled to a bed of clay suitable for brick-making. The House of Lords reversing the Court of Session, held that common clay forming the surface or subsoil of land, was not included in the reservation in the Act.

PRACTICE—RIGHT TO APPEAL—DECREE BELOW THE APPEALABLE AMOUNT.

In *Allan* v. *Pratt*, 13 App. Ca. 780, the plaintiff sought to recover $5,000 damages, but only succeeded in recovering judgment for $1,100. An appeal by the defendant to Her Majesty in Council was allowed by the Court of Appeal for Quebec, after hearing the parties; but on the appeal coming on to be heard before the Judicial Committee, their Lordships held that the measure of value

for determining a defendant's right of appeal is the amount which the plaintiff has recovered, and where this falls short of the appealable amount the court below cannot give leave to appeal, and where such leave has been erroneously given the appeal will be dismissed: and an opportunity to apply for special leave will not be given unless the circumstances are such as in the opinion of the Judicial Committee render it proper. This case, we may observe, conflicts with the decision of the Supreme Court in *Joyce* v. *Hart*, 1 S.C.R. 321; but accords with the decision of Boyd, C., in *O'Donohoe* v. *Whitty*, 9 P.R. 361.

STATUTE OF LIMITATIONS—RELINQUISHMENT OF POSSESSION BY INTRUDER.

It will be useful to notice *The Trustees, Executors and Agency Co.* v. *Short*, 13 App. Ca. 793, which, though an appeal from New South Wales, is in reality a decision on the effect of the English Statute of Limitations (3 & 4 W. 4, c. 27), which has been adopted in that colony. In this case the Judicial Committee held that the statute does not continue to run against the rightful owner of land after an intruder has relinquished possession without acquiring title under the Act. Their Lordships adopt the doctrine laid down by Parke, B., in *Smith* v. *Lloyd*, 9 Ex. 562, where he says: "We are clearly of opinion that the statute applies, not to want of actual possession by the plaintiff, but to cases where he has been out of, and another in, possession for the prescribed time. There must be both absence of possession by the person who has the right, and actual possession by another, whether adverse or not, to be protected, to bring the case within the statute." In short, their Lordships held that where an intruder goes out of possession and no one else goes in, the possession revests in the rightful owner without the necessity of an actual entry by him.

R.S.O. c. 135, ss 2, 3—COMPENSATION IN RESPECT OF DEATH—MEASURE OF DAMAGES—POLICY OF INSURANCE.

In *The Grand Trunk R. W. Co.* v. *Jennings*, 13 App. Case 800, is an appeal from the decision of the Court of Appeal, Ontario, in which the same question was raised as in *Beckett* v. *The Grand Trunk R. W. Co.*, 13 App. R. 174, affirming the same, case 8 Ont., 601. The action was brought under what is known as Lord Campbell's Act, by a widow for causing the death of her husband. A policy of insurance for $2,000 on the life of the deceased was in force, to which, on his death, the plaintiff became entitled, and the question arose whether the amount of this policy should be deducted from the damages. In *Beckett* v. *The Grand Trunk Ry. Co.*, the majority of the Queen's Bench Division (Armour and O'Connor, J.J.) were of opinion that it should not be deducted; Wilson, C. J., thought it should. In the Court of Appeal the judges were divided in opinion, Hagarty, C.J.O., and Osler, J.A., agreeing with Wilson, C.J. Burton, J.A., on the other hand, agreed with Armour and O'Connor, J.J., while Patterson, J.A., though thinking the receipt of the insurance is a proper matter for the consideration of the Court or jury in estimating the damages, and might afford some ground for reduction from a gross assessment, was nevertheless of opinion that there was nothing shown to warrant any reduction. The result was the affirmance of the judgment of the Queen's Bench Division. Their Lordships of the

Judicial Committee have now affirmed this decision, holding that where the deceased had made provision for his widow, by a policy of insurance on his life in her favor, the amount of such policy is not to be deducted from the amount of damages previously assessed irrespective of such consideration, because she is benefited only by the accelerated receipt of the amount of the policy, and that benefit being represented by the interest of the money during the period of acceleration, may be compensated by deducting future premiums from the estimated future earnings of the deceased. Lord Watson, who delivered the judgment, says at page 804: "It appears to their Lordships that money provisions made by a husband for the maintenance of his widow, in whatever form, are matters proper to be considered by the jury in estimating the loss; but the extent, if any, to which these ought to be imputed in reduction of damages, must depend upon the nature of the provision, and position and means of the deceased.

PRACTICE—JUDGES' NOTES OF EVIDENCE—APPEAL—IMPROPER CONCEALMENT OF MATERIAL FACTS.

The only remaining case to be noted is *Bandanis* v. *Liquidators of Jersey Banking Co.*, 13 App. Case 832, in which the Judicial Committee decide that where judges' notes of evidence are mere private memoranda, and are not taken in pursuance of any law or practice requiring them to be taken, that it is improper to use them before a Court of Appeal. The Court therefore refused an application for an order to the judge appealed from, to transmit his notes of the evidence. Their Lordships also held that when an appellant had, on applying for special leave to appeal, improperly concealed from their Lordships the ground on which the appeal had been refused in the Court below, that a subsequent application for leave to adduce further evidence must be refused, as nothing should be done to assist an appeal so instituted.

Notes on Exchanges and Legal Scrap Book.

TAX SALES.—The change in the mode of conducting tax sales introduced in Manitoba, is said to work well. We have still in Ontario what is popularly known as the "Dutch Auction" plan. It is thought by many that our system is objectionable, as tending to promote mere speculation and to retard settlement or improvement of the land. An attempt was made in the Ontario House to effect a change, and the movement had the endorsation of a large number of County Councils, but the Bill did not pass. The change was, however, made in Manitoba; and there they sell the whole of the land for what it will bring, but only require to have what is due for taxes, interest, and costs of sale paid down, the balance to be paid only where the land is not redeemed and an absolute deed given. The balance is held for the owner, and is payable to him on a judge's order. The municipality under this system gets rid of some troublesome book-keeping, and of a bad tax payer, whilst the tax purchaser has not to wait perhaps half a lifetime in order to get, bit by bit, a sufficient quantity of land to be worth settling on.

Correspondence.

LAW SOCIETY APPOINTMENTS.

To the Editor of THE CANADA LAW JOURNAL:

Dear Sir,—The ambiguity in the form of the notice in use by the Law Society, when advertising for applications from members of the Bar for any office in its gift, must have struck your readers, or those interested, as being very singular. The following is a skeleton copy of one of such notices:

> Applications will be received by the Secretary of the Law Society, at Osgoode Hall, until twelve o'clock noon of . . . day, . . . next, from members of the Bar desirous of being appointed to the office of . . .
>
> No application is to be made to any Bencher on the subject.
>
> J. H. ESTEN, *Secretary Law Society.*

From this no one can be certain whether the appointment is in the gift of the Secretary, or of the Society, or the Benchers. And suppose that in the course of time another Secretary, not quite so much like Cæsar's wife, in matters of fair play, as the present incumbent, should be in office; and he should take it into his head to suppress the application of any one distasteful to him, and allow only those in favor to go before the Benchers, the mode of application here required is admirably adapted to any such operation. Again, the warning against applicants speaking to any Bencher "on the subject" can only be partially effectual. How is a breach of it to be detected? Would it not be better to notify intending applicants that their applications should be in writing, addressed to "the Benchers," care of the Secretary, and sent sealed up, to be opened by the Benchers on day of meeting to make appointment, or other day to be appointed for the purpose? I hope, at all events, that the Law Society will have this notice remodelled, so that it will be less objectionable than it is in its present form.

BARRISTER.

Proceedings of Law Societies.

ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE COUNTY OF YORK LAW ASSOCIATION FOR THE YEAR 1888.

To the Members of The County of York Law Association:

GENTLEMEN:—The Trustees, in presenting their Third Annual Report to the Association, again take pleasure in reporting that the affairs of the Association are in a prosperous condition. There has been a large addition to the membership during the year, sixty-six new members having subscribed for stock.

Since the last annual meeting, the Report of the Joint Committee of the Law Associations has been embodied in the new Rules of Practice, and since their

promulgation a sufficient time has elapsed to make it plain to the Profession that these rules have simplified practice and are a well attempted effort to bring about more effectually the fusion aimed at by the Judicature Acts.

The strong recommendation of the Joint Committee, which provided for the fixing definitely the mode of trial before trial, has not been adopted in the rules. It is understood that the Judges in dealing with this recommendation in so far as it relates to trial by jury, apart from the question of *ultra vires*, have deemed it expedient to interfere with the expressed wish of the Legislature embodied in the 76th and following sections of the Judicature Act.

The trustees suggest that a representation be made to the Attorney-General upon this subject, and that legislation be asked to carry the recommendation of the Joint Committee into effect.

The important question of the establishment of a permanent circuit list which will bring about a more complete fusion of the divisions of the High Court, will receive the further consideration of the Joint Committee of the Judges and the Law Associations. This Joint Committee have agreed to the suggestion that two Judges shall sit in each week before whom motions may be brought according to the following scheme, without regard to the divisions in which the papers relating to such motions may be styled :

	MONDAY.	TUESDAY.	WEDNESDAY.	THURSDAY.
DIVISION A.....	Chambers	Court Motions	Appeals from Reports	Court Motions
DIVISION B.....	Court Motions	Chamber Appeals	Court Motions	Chambers

This scheme is now before the Supreme Court of Judicature for consideration.

This committee have also suggested that the minor differences of practice in the offices of the various divisions at Osgoode Hall should be brought to the attention of the Attorney-General, and that he should be requested to designate some officer to whom such differences in practice should be referred for arrangement so as to ensure conformity.

The question of the increase of judicial salaries has been lately pressed upon the authorities. That an increase should be made is freely submitted, and the Trustees hope that during the next sittings of Parliament a measure will be passed for this purpose.

The Trustees have endeavored during the past year to expend the available funds in the purchase of books most needed by members. The daily attendance in the Library is now however so large, and the demands for books are so varied, that the Trustees cannot expect the collection of books will anything like answer requirements for years to come.

During the year nothing whatsoever has been done to remedy the scandalous condition of the present Court House, nor has any effort been made by the city

to comply with the statutory requirements imposed by the Act passed during the session of 1887.

It was the duty of the corporation forthwith, after the passing of that Act, to proceed with the erection of a new Court House, so as to complete the same before the 26th of June, 1889.

No attempt has been made to comply with that duty. The attention of the Mayor and Council has been called to this matter, and the following resolution passed by the Trustees has been transmitted to them :

"That whereas it was the duty of the corporation of the City of Toronto to commence forthwith after the passing of the Act 50 Victoria, Chapter 72, and proceed with the erection of a new Court House in the City of Toronto, and whereas the work has not been proceeded with.

"Resolved, that the attention of the Mayor of the City of Toronto be directed to the provisions of the Act, and that he be urged to forward the erection and completion of the Court House, and that in default of such work being forthwith commenced and actively prosecuted, such proceedings by way of indictment and otherwise be taken, as may be advised, to compel the performance of the duties imposed by the Act."

It is understood that a measure is to be introduced during the present sittings of the Legislature for the division of the City Registry Office. The following resolution passed by the Trustees has been transmitted to the Attorney-General :

"Whereas under the system of registration which is at present in force in the City of Toronto, the lands within the said City are divided into park lots containing one hundred acres each and town lots of smaller area, upon which respective park lots or town lots all instruments affecting the lands therein contained are registered, until the owners of said lands choose to register plans relating to their holdings ;

"And whereas in many instances no plans have been registered upon the said park lots or town lots or upon considerable portion thereof, by reason whereof it is necessary that each person who is called upon to search the title to the smallest portion of the said lands shall peruse all instruments registered upon the said park lots or town lots, for the purpose of ascertaining whether they or any of them affect the title to the particular lands in question, which instruments in many cases amount to several thousands in number, and to peruse which necessarily consumes a great amount of time and involves the incurring of great risk and expense.

"And whereas it is expedient that the Registry Laws and the Registry Offices should be framed and regulated as to afford the greatest possible facilities to persons searching titles to land ;

"Be it therefore resolved that in the opinion of this Board, before any subdivision of the Toronto Registry Office be made, the grievances aforesaid should be removed by legislation providing for the subdivision of all the lands in the City of Toronto into small blocks or sections ;

"And providing for the preparation of abstract indices in books of convenient

size relating to the said subdivisions, each of which abstract indices shall extend from the Crown Patent onwards and shall contain those registrations only that affect the subdivision to which the said abstract index relates.

"And providing that whenever a plan of any lands has been or may be registered in the said Registry Office, an abstract index shall be prepared in abstract books of convenient size relating to the lands comprised within the said plan, which abstract index shall extend from the Crown Patent onwards and shall contain those registrations only that affect the lands comprised within the plan to which the said abstract index relates :—

"And providing that the said abstract indices shall with reference to each instrument therein mentioned, indicate as concisely as may be the lands which are by the said instrument affected ;

"And providing for the duplication or further multiplication of the said abstract indices as convenience shall require ;

"And be it further resolved that in the opinion of this Board the above mentioned reforms can be better secured by the continuance of the existing system of registration under the Registry Act presided over by a single Registrar, than by a subdivided system and a multiplication of offices."

The Trustees, under the powers conferred upon them by the Declaration of Incorporation, and in obedience to a request made by the Libraries Aid Committee of the Law Society, at a meeting of the Board held on the 3rd day of November last, altered By-Law Number Twenty-Six of the Association by striking out the words "first Monday in February" in the second line thereof, and inserting in lieu thereof the words "last Monday in January," and this alteration is submitted for approval at the next general meeting of the members pursuant to the provisions of the Declaration of Incorporation.

The Trustees record with great satisfaction the high opinion they continue to entertain of the services of the Librarian.

One member of the Association, Mr. James Maclennan, Q. C., the Vice-President elected at the last annual meeting, was appointed a Justice of the Court of Appeal during the year.

The Trustees record with deep regret the death of one member during the year, Mr. W. A. Foster, Q. C.

The Historian of the Association has during the year published his Lives of the Judges, a most valuable contribution to the History of the Dominion.

At the date of the last Annual Report the Association numbered 256 members. There are now 314 members.

The particulars required by the By-Laws accompany this Report, being :

1. The names of the members admitted during the year.
2. The names of the members at the date of this report.
3. A list of the books contained in the Library.
4. A list of the books added to the Library during the year.
5. A list of periodicals received during the year.
6. A detailed statement of the assets and liabilities of the Association at the

date of this Report, and of the receipts and disbursements during the year.

The Treasurer's accounts have been duly audited, and the Report of the Auditors will be submitted to you for your approval.

January 27th, 1889.

WALTER BARWICK,
Treasurer.

J. K. KERR,
President.

THE COUNTY OF YORK LAW ASSOCIATION.

Treasurer's Statement for the Year ending 31st December, 1888.

DR.				CR.		
FOLIO				FOLIO		
23	Carswell & Co., on act. of				Balance of Cash on hand,	
29	Reports and Statutes, Text				Dec. 31st, 1887	$87 73
	Books, Periodicals, Sub-			2	Stock Subscriptions	290 00
	scriptions, etc	$850 00		6	Annual Fees	542 00
33	Williamson & Co., Periodicals	68 50		21	Annual Grant from Law	
37	Rowsell & Hutchinson,				Society	505 00
	Binding	25 40		21	Grant from Law Society—	
29	Miscellaneous Text Books	16 59			half Librarian's Salary for	
41	Furniture account	8 50			the year	145 00
44	Salaries, Printing, Expenses,			15	Cash Donations from Mem-	
	etc	569 18			bers	25 00
33	Ontario Gazette	4 00		141	Interest on Bank Deposits	15 73
	Balance on hand	68 29				
		$1,610 46				$1,610 46

Statement of Assets and Liabilities on the 31st December, 1888.

ASSETS.		LIABILITIES.	
Reports and Statutes	$3,244 86	Stockholders	$1,595 00
Text Books	1,286 62	Carswell & Co	192 42
Periodicals	377 00	Profit and Loss Account	3,253 40
Furniture	64 05		
Cash in Bank	68 29		
	$5,040 82		$5,040 82

PROFIT AND LOSS ACCOUNT—1888.

DR.		CR.	
Expenses	$569 18	Balance, 31st December, 1888	$2,589 85
Balance	3,253 40	Annual Fees	542 00
		Law Society—Annual Grant	505 00
		Do half Librarian's Salary	145 00
		Donations	25 00
		Interest	15 73
	$3,822 58		$3,822 58

Toronto, December 31st, 1888.

WALTER BARWICK.
Treasurer.

DIARY FOR MARCH.

1. Fri.....St. David.
3. Sun .....*Quinquagesima Sunday.*
5. Tue .....Court of Appeal sits. Gen. Sess. and Co. Ct. Sittings for trial in York. Holt, C. J., died 1710 æt. 65.
6. Wed .....Ash Wednesday. First day of Lent. York changed to Toronto, 1834.
10. Sun .....*Quadragesima Sunday.*
13. Wed.....Lord Mansfield born 1704.
17. Sun .....*2nd Sunday in Lent St. Patrick's Day.*
18. Mon .....Arch. McLean 8th C. J. of Q. B. 1862.
24. Sun .....*3rd Sunday in Lent.*
28. Thu .....Lord Romilly appointed M. R. 1851.
30. Sat.....B. N. A. Act assented to 1867. Reformation in England began 1534
31. Sun .....*4th Sunday in Lent.*

Early Notes of Canadian Cases.

EXCHEQUER COURT OF CANADA.

BURBIDGE, J.] [Feb. 5.

MAGAN *v.* THE QUEEN.

Tariff act, sched. C.—Timber cut to order.

By item (Departmental No. 726, Schedule C of the Tariff Act, it is provided that the following articles shall be admitted into Canada free of duty, that is to say :—

"Lumber and timber, plank and boards, sawn of boxwood, cherry, walnut, chestnut, gumwood, mahogany, pitch pine, rosewood, sandalwood, Spanish cedar, oak, hickory and whitewood, not shaped, planed, or otherwise manufactured, and sawdust of the same, and hickory lumber sawn to shape for spokes of wheels, but not futher manufactured."

The plaintiff having entered into a contract with the Grand Trunk Railway Company to supply the company with a certain quantity of white oak plank and boards, and white oak lumber of specified thicknesses, widths and lengths, arranged with certain millmen in the State of Michigan to saw such plank, boards and lumber from the log, in accordance with orders given to them by the plaintiff. The plank, boards and lumber were intended to be used principally, but not wholly, for the construction of cars and railway trucks, and they were ordered to be sawn and were in fact sawn of such thicknesses, widths and lengths as to admit of them being used in such construction without waste of material. The lengths called for by the contract varied, the shortest being two feet two inches, and the invoices on which duty was collected and paid under protest indicated that the lumber when imported was cut to these exact lengths. But the fact as proved by the plaintiff and not denied by the defendant, no witnesses for the Crown being called, was that while the invoices disclosed the correct quantity of material imported, there being in each importation the equivalent of the number of pieces shown in the invoice, they did not show accurately the shape of the different pieces, and that, with perhaps a few unimportant exceptions, the lumber was imported in lengths in which it would be commercial or merchantable : care being taken only that the lengths would be such that the lumber could in Canada be sawn into the shorter and specified lengths without waste.

With reference to the lumber it was proved that after it had been cut to the specified lengths the pieces could not be used in the construction of cars without being recut and fitted.

For the Crown it was contended that the sawing of the lumber from the log at the mill of such thicknesses, widths and lengths, that it could be recut in specified lengths so as to be used for a specific portion of a car was a shaping of the lumber within the exception contained in the item (726) of the tariff referred to.

On the other hand the plaintiff contended that this did not amount to a shaping within the meaning of the statute ; that if, as did not appear to be denied, the lumber in question, in the shape and condition in which it was, would be free of duty if imported for general purposes, or for no definite purpose, it would not become dutiable because its length was such that it could be conveniently and without waste cut up and used for a specific purpose, and that the importer, in giving his order to the millman, had this in view ; that a piece of white oak lumber could not at one and the same time be shaped or not shaped, dutiable or not dutiable, according to the use to which it was to be put. Parliament not having enacted, as it had done in other cases, that the article should be dutiable or not according to the use to which it was intended to be applied by the importer or his customers ; as for instance, that a white oak plank thirty feet long, which being imported for no specific purpose, or for general purposes, would be free of duty,

would not become dutiable because the importer intended to cut it into five pieces six feet long, each of which was adapted to and intended to be used for some specific purpose.

Held, that the plank, boards and lumber in question, in the form in which they were imported, were not shaped within the meaning of the statute, and that they were not dutiable.

Judgment for the claimant.

McCarthy, Q.C. (with whom was *C. Robinson*, Q.C., and *H. A. Mackelcan*), for the claimant.

Sedgewick, Q.C., and *Hogg*, for the defendant.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

SUTHERLAND v. COX.

Stock-brokers—Agreement to buy and carry stock on margin—Failure to purchase.

Plaintiff employed F. as his broker to purchase shares in Federal Bank stock, and to carry the same for him until 1st December on margin, depositing with him a large sum of money for that purpose.

F. transferred his business to the defendants in July, and with it paid over to them the whole of the money which had been left in his hands by the plaintiff, and they assumed F.'s contract with the latter. On the 10th of August they informed him of this by letter, stating: "We took over your 500 Federal from Farley on the 19th July," etc. On the 12th October the defendants called upon plaintiff to put up $2,000 additional margin, the stock having fallen in value; and on default they professed to sell for him, and represented to him that they had sold his shares at a loss, and charged him with the difference thereon—upwards of $2,000.

It appeared that F. had never bought shares for the plaintiff; that he had not transferred, and that the defendants had never received any shares from him for the plaintiff. The alleged sale of these shares with the loss or difference on which the defendants had charged the plaintiff was a mere pretence, defendants never having had any shares of the plaintiff to sell; and the broker with whom he had under the arrangement to become the pretended purchaser, having bought none from him.

Held, that the plaintiff was entitled to recover the money he had deposited with F., and which the defendants had received from him as money had and received.

A contract by a broker to purchase stock for a customer is not satisfied by the broker holding himself liable to account for the market value of the stock when the customer calls upon him to do so, or then purchasing stock to comply with the demand.

If any such custom existed among brokers, of which there was not any evidence, it would not be binding on his client unless he knew of it, and specially submitted to its conditions.

Judgment of the Court below affirmed.

MOLSONS BANK v. MCMEEKING.

Division Court Act, R.S.O. (1877), *c.* 47, *ss.* 163, 165, 166, 168, 221—*Transcript of judgment to County Court—Division Court execution—Return of nulla bona after expiration of writ—R.S.O.* (1887), *c.* 51, *ss.* 220, 223, 224, 226, 380—*Third party moving to set aside judgment.*

The plaintiffs recovered judgment in the Division Court and issued an execution thereon, under which nothing was made, and which expired by lapse of time. At the request of the plaintiff's solicitor the bailiff returned the writ *nulla bona*, although it was alleged that there were goods out of which the debt might have been levied. Upon this return the plaintiffs procured a transcript of his Division Court judgment in regular form, and filed the same in the office of the clerk of County Court, and sued out a writ of *fi. fa.* goods in order to obtain the benefit of the provisions of the Creditors' Relief Act.

The respondent, S., the holder of a warrant of execution in the Division Court, then moved to set aside the plaintiff's proceedings, and they were accordingly set aside by the County Court Judge on the ground that the judgment in the County Court was void, being founded on a return to an expired execution:

Held, that a return of *nulla bona* where there were goods was no more than an irregu-

larity to be complained of by the defendant.

Ontario Bank v. *Kirby*, 16 C.P. 35, followed.

Nor could a third party object that such return was made at the instance of the solicitor of the plaintiffs.

Held, also [reversing the judgment of the County Court], that a return of *nulla bona* could be properly made after the expiration of the writ, and that the transcript and judgment in the County Court founded thereon were valid and regular.

MERCHANTS' BANK v. LUCAS.

Bill of exchange—Forgery—Ratification.

H.Y., after having for some time carried on business as "The Hamilton Cotton Co.," in partnership with the defendants, retired from the company and entered their employ as general manager, blank drafts, etc., signed by the company, being placed in his hands for the financial purposes of the company. In June, 1883, H.Y., for his own purposes, drew in the name of the defendants on M. at Montreal, for $2,760, which was discounted by the plaintiffs and the draft sent by them to Montreal for acceptance. The same was duly honored by the drawee, and would mature on the 28th of September. About a month before the maturing thereof, H.Y. waited on the bank authorities and requested them to recall the draft, alleging that the company were settling with the acceptor. On the same day, the solicitor for the company obtained from H.Y. an order or letter addressed to the defendants, informing them of the fact of his having so used their name on the draft, and requesting them to retire and charge the same to his account, and as it had been discounted for his accommodation and proceeds applied to his own use, they (defendants) should not pay any part of it.

Shortly afterwards the defendants on distinct occasions called at the bank, L. asking to be shown the draft, which was handed to and closely examined by him, and when asked why he was so critical in his examination, answered that the signature of I.M.Y. was usually not so shaky, that he would call in a day or two and see if the draft was taken up. I.M.Y., on visiting the bank after examining the draft very carefully, when he was asked by one of the officers of the institution if he would send a cheque for it, answered it was too late that day, but would send a cheque the following day. No cheque was sent, however, and on or about the 15th September the manager of the bank and the bank's solicitor called to see I.M.Y., and asked why the cheque had not been sent by him, when he admitted having promised to send such cheque; that at the time he had thought he would send it, and could not say why it had not been sent. He declined to say whether or not the signature to the draft was his. H.Y. subsequently left the country. It was shown in evidence that at the time the draft was returned, and for some time afterwards H.Y. had a large amount to his credit in the books of the firm, and continued to have a balance to his credit until after the present action was commenced.

Held, [reversing the judgment of the C.P.D. 13 O.R. 520] that the conduct of the defendants was not such as to preclude them from setting up the defence of forgery.

Semble, the act of forgery not being an act professing to have been done for or under the authority of the person sought to be charged, is incapable of ratification.

HAGARTY, C.J.O., dissenting.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

FERGUSON, J.] [Jan. 4.

TOWNSHIP OF NORTH DORCHESTER v. COUNTY OF MIDDLESEX.

Municipal corporations—Duty of erecting and maintaining "bridges over rivers"—R.S.O. c. 184, s. 535.

Section 535 of the Municipal Act, R.S.O. c. 184, provides that "it shall be the duty of County Councils to erect and maintain bridges over rivers forming or crossing boundary lines between two municipalities (other than in the case of a city or separated town) within the county."

The question in this action was whether the bridges over Doty's Creek, Kettle Creek, and Caddy's Creek, each of which is a stream crossing a boundary line between two town-

ship municipalities, were "bridges over rivers" within the meaning of the enactment.

At Doty's Creek, the span of the bridge was sixty-seven feet; at Kettle Creek, thirty-one feet nine inches; and at Caddy's Creek nine feet. The evidence showed that at Caddy's Creek a culvert would be sufficient.

Held, that the bridges over Doty's and Kettle Creeks were "bridges over rivers" within the meaning and intention of the statute, and that the duty of erecting and maintaining them rested upon the County Council; but that the bridge over Caddy's Creek was not such a bridge.

McHardy v. *Ellice*, 1 A.R. 628, applied, notwithstanding changes in the statute, and followed.

W. R. Meredith, Q.C., for the plaintiffs.

Purdom, for the defendants.

Boyd, C.] [Nov. 19, 1888.
Div'l Court.] [Feb. 4, 1889.

Hands v. Law Society of Upper Canada.

Barrister and solicitor—Professional misconduct—Exercise of disciplinary jurisdiction by Law Society—R.S.O. c. 145, ss. 36, 44—Constitution of discipline committee—Evidence under oath—Action at law by complainant—Question whether wrongful acts done in professional character—Restitution—Waiver.

The plaintiff, a barrister and solicitor, was charged before the Benchers of the Law Society with professional misconduct in his dealings with certain shares of bank stock entrusted to him by a young woman. The charges were referred to the Standing Committee of the Benchers on Discipline, who inquired and reported to the Convocation of Benchers. Convocation adopted the report and resolved that the plaintiff "is unworthy to practice as a solicitor, and that he be disbarred as a barrister." This action was brought to have the resolution declared void, and to restrain the defendants from taking further proceedings under it. The plaintiff objected to the proceedings of the committee and of Convocation as illegal, defective and improper.

Held, per Boyd, C., the trial Judge, that the Discipline Committee was properly constituted without notice of its meetings being given to the Treasurer of the Law Society, who was an *ex officio* member of all standing committees, but who was absent from Canada at the time; and that no valid objection arose from the fact that the other members of the Committee, though notified of the meetings, were not advised of the particular business they were called to transact; and at all events any cause of complaint as to procedure was removed by the fair and just conduct of the final proceedings before Convocation at large, where the plaintiff had ample opportunity to explain and to defend himself.

2. It is not essential to the jurisdiction of domestic tribunals, that they should have the powers of ordinary courts of justice in the trial of litigated matters. R.S.O. c. 145, s. 36, is not imperative; it confers the power to examine witnesses under oath, which may or may not be employed according to the sound discretion of the particular tribunal. Where there is or is likely to be any conflict in the evidence, the witnessses should be sworn. But in this case the salient facts were not controverted by the plaintiff; his counsel stated in his presence that he did not know that he could differ from the conclusions which the Committee had come to; and the evidence derived from admissions of a party is sufficient to found even a decree of the Court. The objection that the Discipline Committee had taken evidence without oath, therefore, failed.

3. The intervention of the Law Society, upon the solicitation of the person aggrieved, was quite warrantable, notwithstanding that such person had brought an action for pecuniary redress.

4. The jurisdiction of the Law Society should not be less than that of the Court; and the latter is exercised not merely in cases arising out of purely professional employment, but whenever the transaction is so connected with the professional character of the solicitor, as to afford a presumption that that character formed a ground and reason of the employment. It is for the Benchers to determine and adjudge what is and what is not becoming conduct in a member of the Society, under R.S.O. c. 145, s. 44; and any act of any member that will seriously compromise the body of the profession in public estimation is within the province of this law. Any misconduct which would prevent a person from being admitted

to the Society justifies his removal: and the conduct which unfits a man to be a solicitor should *a fortiori* preclude his being a barrister. The plaintiff, according to his own statements before the Committee, was acting as a solicitor in the transactions complained of; and the objection that he was not engaged in that capacity, or in the capacity of barrister, failed.

5. The fact that the plaintiff, prior to the resolution of the Benchers, had made restitution to the complainant, did not oust the jurisdiction to discipline.

Certain minor objections to the proceedings were also overruled and the action dismissed by the trial Judge.

Held, however, by the Queen's Bench Divisional Court, on appeal, FALCONBRIDGE, J., dissenting: 1. That the report of the Discipline Committee and the proceedings of Convocation founded upon it were irregular because of the failure to notify the Treasurer of the meetings and to notify the members generally of the particular business for which they were called together; and as the form of the notice was not known to the plaintiff he could not be taken to have waived any right to object.

2. That by the provisions of R.S.O. c. 145, s. 36, the Legislature intended that the evidence in inquiries such as the one in question should be taken upon oath; and it was not intended not to confer upon the defendants a discretion to take it upon oath or without oath as they should think proper; and they could not by arrangement between themselves and plaintiff, adopt a different mode of obtaining the facts than that which the Legislature prescribed in conferring their authority upon them.

Upon the grounds therefore of irregularity in calling the Committee together, and illegality in not taking the evidence under oath, the Court reversed the decision of BOYD, C., and gave judgment for the plaintiff.

C. J. Holman, for the plaintiff.

W. A. Reeve, Q.C., and *Walter Read*, for the defendants.

STREET, J.] [Jan. 15.

ANDERSON *v.* GLASS.

Bankruptcy and insolvency—Assignment for benefit of creditors—Assignee not a sheriff—Requisite number of creditors not assenting—R.S.O. c. 124, s. 3, ss. 2, construction of—Chattel mortgage—Jus tertii—Costs.

The meaning of R.S.O. c. 124, s. 3, ss. 2, is that an assignment executed without the consent of the requisite number of creditors shall have the same effect as if it had been executed with such consent until and unless it be superseded by an assignment executed with such consent; and the words which occur through the Act, "an assignment for the general benefit of creditors under this Act," are to be governed by this construction.

Held, therefore, that a sheriff who had seized goods of insolvent debtors under execution was not justified in refusing to give them up to the debtors' assignee, who was not a sheriff, and the assignment to whom had not been assented to by the number of creditors required by R.S.O. c. 124, s. 3; but

Held, that as the goods were covered by a chattel mortgage, the sheriff could set up the rights of the mortgagee in answer to an action by the assignee to restrain the sale of the goods under the execution.

The assignee having failed in the action, because the mortgagee's rights disentitled him to succeed; and the sheriff having contested the assignee's rights on the other ground, which was declared to be untenable, no costs were given to either party.

Q.B. Div'l Court.] [Feb 4.

COUSINEAU *v.* CITY OF LONDON FIRE INSURANCE CO.

Costs—Taxation—Lapse of appointment and taxation—Long vacation—Notice of taxation—Revision—Fund in Court—Rule 1207.

The plaintiff's costs were being taxed by one of the taxing officers at Toronto, when he applied to stop the taxation in order that he might have the order for taxation varied. The taxation was stopped, the officer gave up to the plaintiff the bill of costs, which he had brought in for taxation, and nothing further was done.

Held, that the effect of this was that the appointment to tax and the taxation lapsed, and no further proceedings could have been had without a fresh appointment; and therefore the taxing officer was not thereafter seized of the taxation, and the local Registrar in whose office the action had been begun

and was pending, could properly issue his appointment and tax the plaintiff's costs.

Held, also, that the taxation was properly had during the long vacation. The defendants objected that they had not a reasonable notice of the taxation by the local Registrar, but did not ask for an enlargement of it, relying instead on objections they took to its proceeding at all, in letters to the plaintiff's solicitors and to the local Registrar, and the taxation proceeded in their absence.

Held, that having taken the risk they must also take the result. A certain sum of money had been paid into Court as security for the defendant's appeal to the Court of Appeal, which was afterwards abandoned; and by an order made on the consent of both parties it was provided that the plaintiff's costs should be paid out of this money after taxation.

Held, ARMOUR, C. J., dissenting, that this money was a fund in Court within the meaning of Rule 1207, and there should be a revision by one of the taxing officers at Toronto of the taxation of costs by the local Registrar.

Per ARMOUR, C. J., the object of Rule 1207 was for the protection of a fund in Court, where the parties to the taxation of costs payable thereout were none of them sufficiently interested in the fund in Court to protect it.

T. Langton, for plaintiff.

C. Millar, for defendant.

Q.B. Div'l Ct.] [Feb. 15.

BARTLETT v. THOMPSON.

Landlord and tenant—Overholding Tenants' Act—Dispute as to date when tenancy commenced—"Color of right."

The proceedings were removed from before the Judge of the County Court of Oxford under the Overholding Tenants' Act, R.S.O. c. 144, and a motion was made by the tenant to set aside the proceedings and the writ of possession granted by the County Judge to put the landlord in possession. The dispute between the parties was as to whether the tenancy began on the 1st or 15th of October. If it began on the 1st, sufficient notice to determine the tenancy had not been given by the landlord.

Held, that there being a dispute between the parties as to the tenancy, there was that "color of right" which the Act contemplated, and the County Judge should have dismissed the case.

Price v. *Guinane*, 16 O.R. 264, approved and followed.

Wallace Nesbitt, for the motion.

C. J. Holman, contra.

Chancery Division.

Div'l Ct.] [Dec. 14, 1888.

DALZIEL v. MALLORY.

Tax sale—Duties of clerk and assessor—Omission to comply with R.S.O. (1887), *c.* 193, *s.* 140—*Curative effect of R.S.O. c.* 193. *ss.* 188, 189.

A lot of land was sold for taxes in 1882, the deed being made in 1883, and an action of ejectment was brought by the purchaser against the owner in 1888. On the trial it was proved that the list of lands required by sec. 140 of R.S.O. (1887), c. 193, was sent by the treasurer to the clerk of the village in which the land was situate, but that it was then lost; and, although the land was occupied, it was not returned "as occupied," nor was the owner notified that it was liable to be sold for taxes, as provided for by sec. 141.

Held [affirming MACMAHON, J.; BOYD, C., dissenting], that the sale was irregular and could not be sustained, and that the defect was not cured by secs. 188 and 189.

Haisley v. *Somers*, 13 O.R. 600; and *Fenton* v. *McWain*, 41 N.C.R. 239, referred to.

Per BOYD, C., dissenting. The omission to raise within the proper time the objection that sec. 141 was not complied with, is cured by sec. 189, and the deed is valid and binding. That section is in the nature of a statute of limitations as to such objections. The decision of the majority of the Court is reached by giving a construction to sec. 163, which in effect adds to the language of the statute, and in so far invades the distinction which ought to obtain between making and administering law.

Haisley v. *Somers, supra*, distinguished.

Aylesworth, for the plaintiff.

J. K. Kerr, Q.C., for the defendant.

BOYD, C.] [Jan. 9.

Re POLTON, *et al, and* SWANSTON.

Vendor and purchaser—R.S.O. (1887), *c.* 112—*Production of deeds—Evidence of trusts by recital in memorial twenty years old—Discharge of mortgage—Mortgage in fee by tenant for life—Necessity of discharge after death of life tenant.*

In an application under the Vendor and Purchaser Act, R.S.O. (1887), c. 112, in which the contract of the sale provided that the vendors should not be bound to produce any deeds or evidence of title, except such as they might have in their possession, but should show a good title, etc., it appeared that A. P., by an indenture of January 16th, 1858, conveyed the lands in question to trustees on certain trusts, which deed was registered by memorial not containing the trusts; by deed of appointment, dated July 4th, 1862, made in pursuance of the deed of 1858, also registered by memorial, which purported to contain a full copy of the deed in which were recitals which set out what purported to be the trusts of the former deed, and showed a life estate in A. P. with power of appointment after; A. P. appointed to trustees who were represented by the vendors, with directions to sell after his death, which had recently occurred; neither of these deeds was in the possession or power of the vendors, the trustees.

Held, that the vendors were not bound to produce the two deeds of January, 1858, and July, 1862; and that the production of the memorial of the latter being twenty years old, reciting the trusts of the former was sufficient evidence of what those trusts were, and as there was an absolute trust for sale the purchaser should take the title.

A. P., in 1873, assumed to mortgage the lands in fee, and died in 1887.

Held, that the mortgage only bound his life estate, and that the vendors were not bound to procure a discharge thereof. The objections of the purchaser were therefore overruled, and the vendors held to have shown a good title.

E. D. Armour, for vendors.

No one for purchaser.

ROBERTSON, J.] [Jan. 25.

Re CENTRAL BANK: CAYLEY'S CASE.

Winding up—Proof of claim—Cheque accepted by Bank after suspension—Set off—Subsequently accrued liability of drawer of cheque—Fraudulent preferences.

On November 15th, 1887, Donovan gave his cheque on the Central Bank, payable to Cayley, for $3,440. Cayley forthwith deposited the cheque in the Dominion Bank, and the latter advanced him $3,000. The Central Bank suspended payment on November 16th, 1887; and, in afterwards filing their claim in the winding up proceedings, the Dominion Bank included the amount of this cheque. On November 23rd, 1887, the Central Bank had marked the cheque good, and charged it against Donovan's account, leaving a balance of $30 in his favor, and crediting the Dominion Bank with the amount of the cheque. Meanwhile Donovan became indebted to the Central Bank on some promissory notes, and the liquidators objected to allow the item of the above cheque for $3,440 in the Dominion Bank claim as filed; thereupon the Dominion Bank withdrew this part of their claim, and the Master disallowed it. Cayley never heard of this withdrawal by the Dominion Bank of their claim on the cheque till after the first dividend was declared and made payable, and only filed his claim against the Central Bank on the cheque on September 13th, 1888. The liquidators claimed the right to set off the amount of Donovan's notes.

Held, that they were not entitled to do so. The fact of the Central Bank having accepted the cheque, and credited the amount to the Dominion Bank, and charged the amount to Donovan, showed conclusively that at that time the Central Bank was not a creditor of Donovan's, nor did the clauses in the Winding Up Act, concerning fraudulent preferences, help the liquidators.

Beck, for Cayley.

Meredith, Q.C., for the liquidators.

ROBERTSON, J.] [Jan. 25.

Re CENTRAL BANK (HENDERSON'S CASE).

Banks and banking—Winding up—Contributories—R.S.C. 120, *ss.* 45, 77.

The appellant, having been placed on the list of contributories in the winding up of the

Central Bank, appealed upon the ground that the transfer of the shares in question to him was a fraudulent transaction, perpetrated in the face of sec. 45 of the Banking Act, inasmuch as the Bank was trafficking in its own shares for the purpose of keeping up the appearance of bonâ fide sales, and so enhancing the price at which the shares of the Bank were being quoted in the market; and that the Bank took the appellant's notes for the price of the shares, undertaking that the notes should not be enforced, but, on a re-sale of the shares, should be delivered up to be cancelled; and that the said transactions were *ultra vires* of the Bank.

Held, that all this amounted to no defence against the liquidators, who represented the creditors of the Bank, and not the Bank alone. What rights the appellant might have as against the directors of the Bank, or other shareholders, was a different matter.

As to certain other shares, in respect to which the appellant had been placed upon the list of contributories, he appealed upon the ground that he had acquired them within one month before the suspension of the Bank, referring to sec. 77 of the Banking Act; and, also, on the ground that those who had transferred their shares to him within the period of one month before the suspension should have also been placed on the list.

Held, that the appellant was rightly placed upon the list as to these shares, but that those also who had transferred their shares within the month should be likewise put upon it.

A. C. Galt, for the appellant.
W. R. Meredith, Q.C., *contra*.

FERGUSON, J.] [Feb. 2.

COURSOLLES *v.* FOOKES, *et al.*

Fraudulent mortgage—Set aside by execution creditors—Priority between execution creditor and subsisting second mortgage—Costs.

C., an execution creditor, brought an action to set aside two mortgages made by his execution debtor to F. and H. respectively, and succeeded as to the mortgage made to F. In an application to decide the priority between C. and the remaining mortgagee, H., in which it was claimed that C. was entitled to the benefit of his diligence, and that to the extent of the mortgage set aside he should have priority over H. It was

Held, that C. was not entitled to any such priority, but that he was entitled to the difference between his solicitor and client costs, and such costs as he should recover from the defendants as in the nature of salvage.

Shepley, for the motion.
S. H. Blake, Q.C., *contra*.

Practice.

MACMAHON, J.] [Feb. 5.

RICE *v.* FLETCHER.

Arrest—Foreigner in Ontario temporarily—About to return home—Intent to defraud—Order to hold to bail.

The plaintiff claimed $20,000 damages from the defendant, the cause of action being criminal conversation with the plaintiff's wife. The defendant lived in the United States, but was here for a temporary purpose when the plaintiff had him arrested under an order to hold to bail.

The plaintiff in his affidavit sworn to on the 30th January, on which the order was granted, stated that the defendant had arrived in Toronto that morning, and that he intended to leave for his own country that night with intent to defraud the plaintiff of the damages he had sustained. Upon a motion for the defendant's discharge,

Held, that in leaving Ontario, he was not doing so with the intent to defraud the plaintiff, and was therefore entitled to be discharged. *Ex. p. Gutierrez*, 11 Chy. D. 298, specially referred to.

Bigelow, for plaintiff.
Tilt, Q.C., for defendant.

STREET, J.] [Feb. 16.

LUCAS *v.* CRUICKSHANK.

Security for costs—Rule 1243—Identity of cause of action.

The plaintiff, as administrator of his late wife, brought this action under R.S.O. c. 135, to recover compensation for her having been killed by reason of alleged negligence of the defendants.

Previous to his obtaining letters of administration to his wife's estate, he had brought an action in his own name against the same defendants for the same purpose, but discontinued it. The costs of the first action being unpaid, the defendants applied for security for costs under Rule 1243.

Held, that the cause of action in the two cases was not the same, and an order staying proceedings till the plaintiff should give security for costs was set aside.

W. H. Blake, for plaintiff.

Aylesworth, for defendant.

FERGUSON, J.] [Feb. 13.

MEIR *v.* WILSON.

Administrator ad litem—Rule 311.

It is not intended by Rule 311 that the business of the Surrogate Court should, in a large measure, be transferred to the High Court; the intention was to provide for necessities arising in the progress of an action, where representation of an estate is required in the action, and there has not been carelessness or negligence on the part of the party who may require the appointment made.

Under the circumstances of this case an application for the appointment of an administrator *ad litem* was refused.

Re Chambliss, 12 P.R. 649, distinguished.

A. H. Marsh, for the motion.

Hoyles, contra.

FALCONBRIDGE, J.] [Feb. 20.

In re MCGREGOR *v.* NORTON.

Prohibition—Division Court—Money paid into Court by defendant—Plaintiff's intention to proceed—Failure to notify in writing—R.S.O. c. 51, *ss.* 125, 126—*Attorning to jurisdiction.*

The defendant in a Division Court suit paid $5 into Court as a full satisfaction for the plaintiff's demand, under R.S.O. c. 51, s. 125. The plaintiff notified the Clerk of the Court, but not in writing, as required by s. 126, that he intended to proceed for the remainder of his claim. The defendant was not notified of this, and did not attend the trial. Judgment was given for the plaintiff, and the defendant moved for, and was granted, a new trial on terms.

Held, that the defendant had attorned to the jurisdiction of the Division Court by moving for a new trial; and that prohibition should not be granted, as the Division Court could, on the new trial, adjudicate upon the objection of the defendant to the plaintiff's failure to notify in writing.

Kappele, for plaintiff.

W. M. Douglas, for defendant.

FALCONBRIDGE, J.] [Feb. 20.

CANADA COTTON CO. *v.* PARMALEE.

Attachment of debts — Unadjusted insurance moneys—Appeal by garnishees.

Insurance moneys alleged to be due to a judgment debtor for a loss where the claim has not been adjusted, acknowledged or admitted, are not attachable under Rule 935 or otherwise.

The garnishee has the right to appeal against an order directing the trial of an issue between the judgment creditors and a claimant of the moneys attached.

Aylesworth, for the garnishees.

D. W. Saunders, for the plaintiffs.

MACMAHON, J] [Feb. 23.

ROBINSON *v.* ROBINSON.

Solicitor and agent—Service of notice—Costs.

A notice of taxation of costs was served on a firm of solicitors in the town where the taxation was to be held as agents of the defendant's solicitors, who lived elsewhere. The solicitors served were not the booked agents of the defendant's solicitors, but had on several occasions acted as their agents in this very suit. The notice did not come to the knowledge of the defendant's solicitors until the day of the taxation.

Held, that the service of the notice was bad; and the taxation pursuant to it was set aside.

No costs were given against the plaintiff, because on the return of the notice the solicitors served as agents appeared, though without instructions, and obtained an enlargement, and this misled the plaintiff.

Rules 202, 203, 204, 461; *Smith* v. *Rowe*, 1 U.C. L.J., N.S. 155; *Hayes* v. *Shier*, 6 P.R. 42; *Omnium Securities Co.* v. *Ellis*, 2 C.L.T., 216, referred to.

W. H. Blake, for defendant.

J. M. Clark, for plaintiff.

Appointments to Office.

CORONERS.

City of Toronto.

L. Pickering, M.D., of Toronto, to be an Associate Coroner for the City of Toronto.

DIVISION COURT CLERKS.

Stormont, Dundas and Glengarry.

Geo. Hearden, of Alexandria, to be Clerk of the Twelfth Division Court of the United Counties of Stormont, Dundas and Glengarry, *vice* Jas. R. Mackenzie, resigned.

Norfolk.

C. E. Freeman, of Simcoe, to be Clerk of the First Division Court of the County of Norfolk, *vice* W. R. Griffin, deceased.

Algoma.

W. L. Nichols, of Thessalon, to be Clerk of the Third Division Court of the District of Algoma.

BAILIFFS.

Wm. Miller, of Thessalon, to be Bailiff of the Third Division Court of the District of Algoma.

Law Society of Upper Canada.

CURRICULUM.

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

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

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

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

5. The Law Society Terms are as follows:—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FEES.

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

BOOKS AND SUBJECTS FOR EXAMINATIONS.

PRIMARY EXAMINATION CURRICULUM, for 1889 and 1890.

Students-at-Law.

1889.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. V.
- Cæsar, B. G. I. (1-33.)

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

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

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

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.
Composition.
Critical reading of a selected Poem:—
1889—Scott, Lay of the Last Minstrel.
1890—Byron, The Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

English History, from William III. to George III. inclusive. Roman History, from the commencement of the second Punic War to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography—Greece, Italy, and Asia Minor. Modern Geography—North America and Europe.

Optional subjects instead of Greek:—

FRENCH.

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

or NATURAL PHILOSOPHY.

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

Articled Clerks.

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

RULE *re* SERVICE OF ARTICLED CLERKS.

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

First Intermediate.

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

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

Second Intermediate.

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

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

For Certificate of Fitness.

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

For Call.

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

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

Michaelmas Term, 1888.