

THE
Canada Law Journal.

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DECEMBER 31, 1894

No. 20

WE publish with this number the Index of contents, Tables of Cases, etc. The Sheet Almanac for 1895 will be issued as usual with the first number for the new year.

EXTENSIVE alterations are in progress in the west wing of Osgoode Hall, whereby a large addition is to be made to the library. The scheme, when carried out, will involve the destruction of the barristers' robing and consulting room in that wing. The accommodation for the Bar for robing and consultation with witnesses and clients was already sufficiently circumscribed; but we understand that an arrangement has been made to provide accommodation for such purposes upstairs, and of a more extensive and convenient character. We are glad to learn that there is no intention of interfering with the present library, and that the new room is to be reached by doorways on either side of the fireplace at the western end. The new room is to be lighted from the roof, and will afford increased facilities for storing books for many years to come. A difficulty would seem, however, to arise as to lighting the passages to the offices in the west wing, which are already dark. We trust, however, the architect will be able to overcome this.

SIR JOHN THOMPSON, P.C.

"The Right Hon. Sir John S. D. Thompson, P.C., K.C.M.G., M.P., Q.C., Premier and Minister of Justice of Canada, died at Windsor Castle, December 12th, 1894, aged 50 years. R.I.P."

The above is the inscription on the coffin of our late Premier. One deep feeling of sorrow for his death pervades Canada from

the Atlantic to the Pacific, from the capital to the most remote villages in the Dominion.

Our Ottawa correspondent writes under date of 14th instant :

“ How forcibly we are reminded of the shortness and uncertainty of life by such an event as the sudden and untimely death of one so prominent as Sir John Thompson, in whom Canada has lost her Premier, and the profession of which *THE JOURNAL* is an exponent and record its political chief ! The air of the city has been and is full of him, flags flying at half-mast, little gatherings of politicians at street corners talking about him, and newspapers full of speculations on the consequences of his decease. And now we hear that Mr. Mackenzie Bowell has been sent for by the Governor-General, and has been entrusted with the formation of a new Ministry.

It has been said that ‘the evil men do lives after them: the good is oft interred with their bones’; but in all the notices of Sir John by papers of all shades of politics, there has been no charge of evil against him; all join in eulogy, and any one who seeks, to-day, testimony to his merit has only to listen and to read. He followed, and will, of course, be compared with, the other Sir John, of whom Mr. Joseph Pope has given us so excellent and justly eulogistic a memoir; and though less brilliant and sparkling, and less skilful in the management of members and of men than his predecessor, he was perhaps his superior in the power of convincing men by logical argument, while he was probably his equal in the science of government, and in a knowledge of the law in all its bearings, whether general, technical, or practical.

Sir John Thompson has given us a good code of criminal law, and, had he lived, would have been a likely man to have given effect to that provision of the Constitutional Act which contemplates the unification of the civil law in all the Provinces of the Dominion except Quebec, and might, perhaps, have removed that singular distinction of equity from law which the Quebec code ignores.

Born in 1844, he died comparatively young, but with honours which have fallen to the lot of few. Called to the Bar in 1865, he was, in 1882, appointed Judge of the Supreme Court of Nova Scotia. He left the Bench to re-enter public life, and in 1885 he entered the Cabinet, becoming Minister of Justice. On the

decease of Sir John J. Abbott, in 1892, he became Premier of the Dominion, and on the 12th of December, 1894, was sworn in as a member of Her Majesty's Privy Council.

His tragic death at Windsor Castle, where he was Her Majesty's guest, after receiving this high distinction, dying probably of heart disease, intensified by the excitement of the ceremony and the strain and fatigue of the meeting of the Council, is known to all. He lay in state in the marble hall of the castle, where a wreath of flowers and laurel was laid on his coffin by our Empress-Queen in person, with expressions of profound sorrow for the loss of her faithful servant. The funeral service of his church was performed over his remains by Her Majesty's commands, and a State procession and cortege attended them to the railway station, whence they were conveyed to the port where they will be placed on board Her Majesty's steamship *Blenheim*, to be carried to Halifax for interment in his native Province of Nova Scotia.

We are glad to see that the indications are that ample provision will be made for Lady Thompson and the family, for whom Sir John's self-sacrificing patriotism prevented his making the provision his talents and affection would otherwise have ensured. In the meantime every attention and consolation that grateful affection could suggest have been shown to them by all; and they have the satisfaction of knowing that their husband and father died in the performance of his duty to Canada, and that he left a character unstained even by the breath of scandal, possessing the respect even of his opponents, whilst he increasingly enjoyed during his comparatively short public life the confidence of his party, and of the people of this Dominion."

He is succeeded in the responsible position of Minister of Justice by Sir Charles Hibbert Tupper, K.C.M.G. We trust he may efficiently and worthily fill an office once held by such men as Sir John A. Macdonald, Hon. Edward Blake, and Sir John S. D. Thompson.

MORTGAGE ACTIONS.

There are some observations of Mr. Justice Gwynne in the recent case of *Hagar v. Clark*, 22 S.C.R. 510, which call for observation, as they are calculated to create, and we believe have created, an erroneous impression. The action was for fore-

closure against the mortgagor (O'Neill), and Clark as the assignee of the equity of redemption. In addition to foreclosure, the plaintiff also claimed judgment for possession. The defendant Clark set up that the mortgage had been given to secure the purchase money of the mortgaged property, which had been bought by O'Neill from the plaintiff, to be used by the defendant O'Neill for a brothel, to the plaintiff's knowledge, and that the price had been enhanced by reason of the illegal purpose for which the premises were intended to be used; and he contended that the consideration for the purchase was illegal, and the plaintiff's mortgage was therefore void. Judgment having gone against Clark in the courts below he appealed, and in order to shut out the defendant Clark from this defence counsel for the plaintiff appears to have argued that as to him the action might be treated as simply an action of ejectment founded on the legal title to the land, and therefore, as the plaintiff did not claim payment of any mortgage money as against him, the question of consideration did not arise, and it was not open to him to set up the alleged illegality of the consideration as a defence to the plaintiff's right to recover possession, and it was in answer to this line of argument that the observations we refer to were made. At p. 515 Mr. Justice Gwynne says that it was argued that the action was to be regarded as three separate actions, namely, besides being an action for foreclosure of the mortgage, that it was, at the same time, an action against the mortgagor on the covenant, and as against the appellant an action in the nature of an action of ejectment for recovery simply of possession of the land mortgaged, and he goes on to say, "But neither in the Act of 1873 (The Administration of Justice Act) nor in The Ontario Judicature Act, nor in the Rules passed by the judges under the authority of that Act, can I find anything in support of the contention." And referring to Rule 341, which expressly enables a claim for possession to be joined with a claim for foreclosure, he seems to think that it bears out his view, because it winds up with the declaration that "such an action shall not be deemed an action for the recovery of land within the meaning of these Rules."

There can be no doubt that prior to The Administration of Justice Act, 1873, a mortgagee was entitled to pursue all his remedies upon his mortgage at the same time. He might bring a

suit in equity to foreclose, and he might at the same time bring an action at law on the covenant, if any, for payment of the mortgage money, and another action at law in ejectment to recover possession of the mortgaged lands; and the only penalty for his so doing was that he could not in equity compel the defendant to pay as part of the price of redemption the costs of all three actions, unless it should be made to appear to the court that there was some good and sufficient reason for bringing the action at law. There is equally no doubt whatever that since The Administration of Justice Act mortgagees have been held entitled to include in suits for foreclosure claims on the covenant, and also claims for possession of the land, and this was the necessary consequence of the giving to the Court of Chancery a common law jurisdiction. This common law and equity jurisdiction is perpetuated in the High Court of Justice by The Judicature Act; and as a necessary consequence the court has ample jurisdiction to give to a mortgagee not only any equitable remedy, but also any legal remedies to which he may be entitled, in one and the same action. And though it is true that Rule 341 declares that an action of foreclosure in which a claim for possession is joined "shall not be deemed an action for the recovery of land within the meaning of these Rules," yet the meaning of that must be, that it is not to be so deemed for the purpose of necessitating leave to be obtained before the two causes of action can be joined, as required by the previous part of the Rule in the case of all other claims sought to be joined with a claim for the recovery of land. For all other purposes it is certain that an action for foreclosure in which a claim for possession is joined is an action to recover land; that a judgment for recovery of the land may be awarded therein, and enforced in the same way as any other action for the recovery of land.

But Mr. Justice Gwynne goes on to observe that, "since The Judicature Act, all the courts, no doubt, administer legal and equitable principles in all suits joined for the purpose, but the Act countenances no such confusion of remedies and principles as the form of action in triplicate would seem to suggest." These words, taken by themselves, are calculated to mislead, and suggest to some minds that The Ontario Judicature Act does not authorize the joining in a foreclosure action all the claims spoken of. But, although this interpretation has been put upon

his words, we feel, nevertheless, confident that that is not really the meaning of the learned judge. It is necessary, in order to arrive at a proper understanding of his judgment on this point, to bear in mind the nature of the argument the learned judge is controverting. The argument was that each claim was to be regarded as a separate action, so as to preclude a defendant from setting up a certain defence, which would be applicable to one cause of action, but not to another. We do not understand the learned judge to say that The Judicature Act and Rules do not authorize the joining of the several claims for foreclosure, for judgment on the covenant for payment of the mortgage money, and for recovery of possession of the mortgaged land, in one and the same action; because we cannot believe for a moment that so self-evident a proposition can be the subject of any controversy. Rules 248 and 341, and the forms of judgment Nos. 182 and 183, given in the Appendix to the Rules, appear to us to make that point too plain for argument. What the learned judge denies—and, we respectfully think, with good reason—is that, where these claims are so joined, they cannot be treated as separate actions, so as to preclude a defendant from setting up, or the court from giving due effect to, any defence, whether legal or equitable, which he is entitled to raise in regard to any branch of the case. It is only in this view that the learned judge's remarks as to "the confusion of remedies" seem applicable. Ordinarily speaking, it is not a confusion, but a combination, of remedies which the plaintiff seeks in a mortgage action: but, undoubtedly, there would be a confusion of remedies if the court were compelled to say, as to one branch of the case, "You are entitled to succeed upon your legal title," but, as to another, "You have no right to any relief whatever, because the foundation of your claim is tainted with illegality or fraud."

Although, therefore, the language of the learned judge is somewhat unguarded, and, perhaps, wider than the occasion demanded, we are inclined to think it is susceptible simply of this meaning, viz.: That though, under The Judicature Act, it is competent for a mortgagee to join, in his action for foreclosure, a claim on the covenant, and also a claim for the recovery of possession of the mortgaged land, yet, where he does so, these claims are not to be treated as if they were three separate and distinct actions, so as to prevent a defendant from setting up, or the court from

giving effect to, any defence, either legal or equitable, to the plaintiff's claim taken as a whole, and that, in such actions, the court is not bound to give effect to a plaintiff's legal title as mortgagee in respect of any part of his claim, if there be any good ground disclosed by the defendant why, in law or equity, the plaintiff is not entitled to the position which he claims to hold as mortgagee. This, far from contravening the provisions of The Judicature Act, seems to us really carrying out its spirit and intention.

CURRENT ENGLISH CASES.

INJUNCTION—PARTNERSHIP—LUNATIC PARTNER—JURISDICTION

J. v. S., (1894) 3 Ch. 72; 8 R. Aug. 223, was an action for the dissolution of a partnership, and the plaintiff applied for and obtained an interim injunction restraining the defendant, who was of unsound mind, from interfering with the partnership business. On the motion to continue the injunction to the trial, it was contended that there was no jurisdiction to grant an injunction in such a case; but Stirling, J., held that there was, and continued the injunction until judgment in the action, or further order.

MARRIAGE SETTLEMENT—COVENANT TO SETTLE AFTER-ACQUIRED PROPERTY—PROPERTY ACQUIRED AFTER TERMINATION OF COVERTURE—AMBIGUITY—RECITALS.

In re Coghlan, Broughton v. Broughton, (1894) 3 Ch. 76; 8 R. Aug. 162, the question presented for decision was the proper construction of a covenant contained in a marriage settlement, whereby the wife had covenanted with the trustees that, "if at any time after the marriage and during the life" of the wife, any personal property should be given or bequeathed, or come to her or the husband in her right, the husband and wife would settle the same; the point in controversy being whether or not the covenant extended to property acquired by the wife after her husband's death. Kekewich, J., held that it applied only to property acquired "during their joint lives"; but that the covenant was ambiguous, and that the ambiguity might be aided by reference to the recitals, and that from them it could be collected that the covenant was only intended to apply to property acquired during the joint lives of the husband and wife: but even

reading the covenant without the recitals he was of opinion that, on the authorities, the same conclusion must be reached as to the legal effect of the covenant.

BUILDING SOCIETY—POWER TO LOAN ON FIRST MORTGAGES ONLY—PAYMENT OF PART OF MORTGAGE MONIES—POSTPONEMENT OF SECURITY FOR BALANCE—*ULTRA VIRES*—SUBROGATION.

In *Portsea Building Society v. Barclay*, (1894) 3 Ch. 86; 8 R. Aug. 167, the plaintiffs were a building society, and under their rules they were only empowered to lend money on the security of first mortgages. They had lent £17,000 to a man named House on the security of a first mortgage. It was subsequently discovered that the plaintiffs had exceeded their borrowing powers, and notwithstanding this an application was made by the plaintiffs to the Imperial Life Insurance Company for an advance, and in pursuance of that application the following arrangement was made and carried out. The insurance company lent House £6,000 on the security of the property covered by the plaintiffs' mortgage. This sum he handed over to the plaintiffs, and they applied it on account of his mortgage to them, and the plaintiffs joined in House's mortgage to the insurance company, and thereby agreed to postpone the plaintiffs' mortgage to that of the insurance company for the £6,000 so advanced by them. The plaintiff company was subsequently ordered to be wound up, and the liquidator now contended that the above transaction was *ultra vires* of the directors, so far as the postponement of the plaintiffs' mortgage was concerned. Romer, J., was of opinion that the transaction amounted to an attempt to loan on a second mortgage, which was contrary to the rules, and that, therefore, the company was not bound by the deed whereby they purported to postpone their mortgage to that of the insurance company; and that the latter were not entitled to rank *pari passu* with the plaintiffs in respect of the £6,000 as purchasers *pro tanto* of House's security to the plaintiffs; neither could the insurance company be treated as creditors of the plaintiffs for the £6,000 advanced by them to House; and he, therefore, gave judgment in favour of the plaintiffs, declaring them to be entitled to priority over the insurance company for the balance due on their (the plaintiffs') mortgage.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

EASTER TERM, 1894.

Monday, May 21st, 1894.

First day of term.

Present, between 10 and 11 a.m., the Treasurer, and Messrs. Moss, Shepley, and Riddell, and, in addition, after eleven, Messrs. Osler, MacKelcan, Watson, Ritchie, and Lash.

The report of the Legal Education Committee on the examinations for call under the Law Society curriculum was read.

Ordered, that the following gentlemen do receive their certificates of fitness: Messrs. F. W. Hall, A. Nugent, E. McMartin, C. G. Powell, A. R. Walker, W. H. Cairns, John McKean, A. S. Dickson, Fred. Elliot, D. R. Tate, A. F. McMichael, F. M. Canniff, G. M. Kelley and J. Porter. Special reports were made on the cases of E. H. Bickford and P. A. Gahan.

(Proceedings after 11 a.m.) The following gentlemen were called to the Bar: Messrs. J. A. Murphy, C. Murphy, E. L. Middleton, A. Nugent, J. McKean, T. J. Murphy, W. McN. Shaw, T. A. Duff, W. F. Scott, A. S. Dickson, E. F. Burritt, W. L. Ross, R. C. Hays, T. Graham, D. A. Dunlap, C. C. Fulford, G. A. Sayer, J. A. McLean, C. G. Powell, A. F. McMichael, F. M. Canniff, and W. C. Perkins.

Mr. Osler's motion, notice of which was given on the 16th February, 1894, as to the improvements to the entrance, etc., of the eastern wing of Osgoode Hall, was then put and carried.

Mr. William Leslie Beale was then called to the Bar.

Moved by Mr. Osler, seconded by Mr. Ritchie, that it be referred to the Reporting Committee to consider and to report to Convocation for its consideration an alteration in the system of publishing Reports. Carried.

Mr. Barwick, from the Legal Education Committee, then presented the following Report:

They have had under consideration an application by the authorities of the Royal Military College at Kingston to place their cadets who have passed their entrance examination, including therein the papers taken upon what is termed the Voluntary or Further examination, upon the same footing as students of universities.

The committee have examined the subjects prescribed for the entrance examination, including the Voluntary or Further examination, and do not consider them equivalent to the course required by the Rules; but, upon an examination of the subjects prescribed for the first year course at the College, they are of opinion that the entrance examination, including the Voluntary or Further examination, and the first year's course constitute a sufficient equivalent for the course now required by the Rules.

The committee think that, having regard to the fact that the College is a national institution of learning, and that its graduates are now admitted to the Society on the same footing as graduates of universities, the same privileges may be extended to cadets who have passed through the first year's course as are accorded to undergraduates of universities.

The committee recommend that cadets of the Royal Military College, Kingston, who produce satisfactory proofs of their having passed the entrance examination, including the Voluntary or Further examination as part of such entrance examination, and of having further attended for one year at the College and taken the course for such year,

and passed the examination prescribed at the termination of the year, within four years from their application for admission on the books of the Society, be admitted as students at law of the matriculant class without further examination, and that a Rule be passed in accordance with this recommendation, such Rule to remain in force during the continuance of the present curriculum of subjects for entrance examination and the first year course at the College.

The Report was adopted, and leave given Mr. Barwick to introduce a Rule embodying the recommendation of the committee.

The petition of Mr. F. W. Casey, praying for the remission of certain fines was read, and not granted.

The complaint of N. Ford and J. Ford against Mr. H. H. R., a solicitor, was read. The Secretary was directed to request that the complaint be verified by a statutory declaration. The complaint of Mrs. Savinia Adair against Mr. J. W. W. was referred to the Discipline Committee to report. The complaint of Mrs. Crain against Mr. N. D. M. was read, and the Secretary was directed to request that the complaint be supported by a statutory declaration. The complaint of Mr. Porter against Mr. A. C. F. B. was referred to the Discipline Committee to report. The complaint of Mrs. Ferguson against Mr. W., a solicitor, was read, and the Secretary was directed to request the petitioner to verify her statements by declaration. The complaint of Mr. J. J. Dalton against Mr. T. G. M., a solicitor, was read. The Secretary was directed to request the petitioner to verify his statements by declaration.

The Secretary then reported the correspondence respecting the order of the House of Legislative Assembly made during the last session, as follows :

Immigration Department, Ontario, Old Parliament Building, Toronto.

March 21st, 1894.

SIR,—I am directed by the Honourable the Provincial Secretary to transmit to you a copy of an order passed by the Legislative Assembly on the 16th inst., as follows :

Ordered, that there be laid before this House a return showing a detailed statement of the receipts and expenditure of the Law Society of Ontario for the year 1893, also a statement of the assets and liabilities of the Society on the 1st day of January, 1894, also a statement showing the objects and purposes to which the funds of the Society are applicable.

And to request that you will be good enough to cause a return to the same to be made and transmitted to the undersigned with all possible dispatch.

Yours, etc.,

(Signed)

DAVID SPENCE, Secretary.

H. MACBETH, Esq.,

Secretary Law Society, Osgoode Hall.

The Law Society of Upper Canada, Osgoode Hall,

March 31st, 1894.

DAVID SPENCE, Esq.,

Secretary Immigration Department, City.

SIR,—I have the honour to acknowledge your letter of the 21st, transmitting, by direction of the Honourable the Provincial Secretary, a copy of an order passed by the Legislative Assembly requiring :

(1) A detailed statement of the receipts and expenditure of the Law Society for the year 1893.

(2) A statement of the assets and liabilities of the Society on the 1st January, 1894.

(3) A statement showing the objects and purposes to which the funds of the Society are applicable.

In compliance wherewith I am directed to forward :

(1) The printed statement of revenue and expenditure of the Law Society for the year ending 31st December, 1893, pursuant to R.S.O., c. 145, s. 53.

(2) Statement of assets and liabilities, 1st January, 1894: Assets—(a) Cash in the bank, \$23,278.48; (b) investments in securities producing \$3,541, \$77,600; (c) real

estate, part of the Osgoode Hall property, viz., the east wing and library, the examination hall and Law School—the grounds belonging to the Ontario Government are kept in order at the cost of the Law Society; (d) books in library, 26,000 volumes, furniture, etc. Liabilities, none.

(3) The objects and purposes to which the funds of the Society are applicable:

(a) Education of such persons as may be desirous of pursuing the legal profession, and the distribution of honours, scholarships, and medals as rewards for proficiency; annual cost to the Society, after deducting fees paid by students, about \$7,000. (See particular: printed statement of receipts and expenditure enclosed.)

(b) The reporting and publishing the decisions of the judges and distribution thereof to every practising solicitor, and the free distribution to all judges and certain official persons, and to the county law libraries, making four volumes, issued yearly; the annual cost of reporting, about \$17,000.

(c) The maintenance of the law library at Osgoode Hall, now 26,000 volumes, open to the use of all judges, and for reference on arguments in courts; annual cost of maintenance, \$8,000.

(d) The establishment of and aid to maintain law libraries in the county towns, of which nineteen have been established and in use for the profession and local public officers. Amount of annual grant for the year, about \$4,000. Total expenditure with regard to these libraries since their first establishment, and not including sums spent since beginning of 1894, \$37,907.93.

(e) The requirements of the library at Osgoode Hall will, in the near future, demand large additional accommodation, the necessity for which appears by the report of the Librarian of the Society. A copy of the report is transmitted herewith.

I beg leave to add that, in respect of carrying on the general work of the Society, which may be comprised under the heads of Legal Education, Reporting, Library, and Aid to County Libraries, care and maintenance of buildings and general expenses, the Society expended, last year, \$54,625, as detailed in the printed statement enclosed.

The foregoing cover all the information which, by the order of the Honourable the Legislative Assembly, is required.

Yours, etc.,

(Signed)

HERBERT MACBETH,
Secretary, Law Society.

The action of the Secretary was approved.

Moved by Mr. Watson, seconded by Mr. Lash, that Rule 63 be amended by adding thereto the words, "such appointment to be made yearly in Easter Term of each year." The Rule was passed.

Mr. Watson moved, seconded by Mr. Ritchie, that Mr. H. W. Eddis be appointed the Auditor for the ensuing year. Carried.

Mr. A. H. Backhouse was then called to the Bar.

On motion of Mr. Moss, seconded by Mr. Barwick, the following resolution was carried:

Convocation records its deep regret at the sudden decease of Mr. W. A. Reeve, Q.C., the Principal of the Law School, on the 2nd day of May instant, and its sense of the great loss the School has sustained through the sad event.

It was ordered that the Secretary advertise that Convocation would make an appointment of a Principal of the Law School on the 27th day of June next, and that applications should be in the hands of the Secretary 15th June next, the advertisement to be in the usual form, and in the daily papers, as usual.

Tuesday, May 22nd.

Present, between 10 and 11 a.m., the Treasurer, and Messrs. Moss, Hoskin, Riddell, Strathy, Shepley, and Robinson, and, in addition, after 11 a.m., Messrs. S. H. Blake, Britton, Lash, Osler, Macdougall, Martin, Bruce, Teetzel, and Guthrie.

(Proceedings after 11 a.m.) Ordered, that it be referred to a special committee to examine Mr. D. B. S. Crothers, who applies for call under

section 7 of 57 Vict., c. 44, and they subsequently reported that the result was satisfactory.

Mr. Watson, from the Finance Committee, presented the following Report :

The Finance Committee beg leave to report :—

(1) That on the 3rd February, 1894, the administrator of the estate of the late Phillips Stewart paid to the Law Society the sum of \$15,682.9c., being moneys of the said estate then and theretofore realized by the administrator, and thereafter also transferred to the Law Society three certain mortgages, which, with the said sum paid in cash, constituted the estate of the testator available for the purposes hereof. The mortgages are not considered as of more than doubtful security. The above-mentioned payment and the assignment of the mortgages were so made and received in pursuance of the Act passed 56 Vict., cap. 117.

(2) Your committee has caused to be paid to the trustees of the Sick Children's Hospital the sum of \$7,841.45, being one-half of the sum so received, such payment also being made in pursuance of the statute.

(3) Your committee caused the sum of \$741.80 to be paid into the general funds of the Law Society in repayment of expenses actually disbursed in connection with the administration of the estate, and in obtaining the legislation whereby the estate was apportioned between the Law Society and the Sick Children's Hospital.

(4) On the 28th day of February, 1894, your committee caused the sum of \$7,099.65, together with \$14.50 interest then accrued, to be deposited in the Quebec Bank at Toronto on special deposit at four per cent. to the credit of the Law Society, and it so remains subject to further order and direction.

(5) Your committee desires that Convocation should give directions for the care and management of this fund, and the carrying out and performance of the trusts in the will set forth.

The Report was read and adopted.

Ordered, that the property of the estate remain in hands of the Finance Committee for investment, who shall hold the annual income to be expended in the purchase of books for the Law School by the Legal Education Committee.

The following gentlemen were then called to the Bar : Messrs. E. R. Martin, D. McDonald, L. T. Barclay, L. K. Murton, G. P. Deacon, N. Jeffrey, D. B. S. Crothers.

Ordered, that an examination under the Law Society curriculum be held at the usual time in September next for call and certificate of fitness, and that the Secretary give the usual notice in *THE LAW JOURNAL*, and also by post-card, to those who, as far as he can judge by the records, are eligible for such examination.

The petition of T. C. Dawson, a solicitor of the Supreme Court in England, who applies to practise as a solicitor in this Province, was referred to a Special Committee, which reported that he is entitled to receive a certificate of fitness to practise as a solicitor.

Mr. Shepley moved that the matter of the increased library accommodation reported upon in the Librarian's Report of 31st January, 1894, be referred to the committee appointed yesterday on Mr. Osler's motion as to necessary changes, repairs, and alterations to the east wing.

Mr. Lash, in the absence of Mr. Barwick, moved, in pursuance of notice given yesterday (viz., relating to publication of résumé of proceedings), that the words "Journals Committee" in paragraph (f), sub-section 2 of Rule 53, be struck out, and the word "Treasurer" inserted in lieu thereof. The amending Rule was read a first time, and the second reading ordered for the next meeting of Convocation.

Mr. H. Morrison then attended and was called to the Bar.

Saturday, May 26th.

Present : The Treasurer, and Messrs. Proudfoot, Moss, Martin, Shepley, McCarthy, Kerr, Strathy, Robinson, Ritchie, Osler.

On motion of Mr. Martin, seconded by Mr. McCarthy, Mr. Irving was elected Treasurer.

It was then ordered that the chairmen of the several Standing Committees for the past year be a Special Committee to report to Convocation a draft list of members to form the Standing Committees for the ensuing year.

The following gentlemen were then called to the Bar : Messrs. J. H. Greenwood, E. W. Harding, C. A. Myers, John English, W. L. Haight, A. S. Clarke, F. C. Martin, H. J. Finkle, F. Cleary, E. D. Cahill, G. S. Goodwillie, A. E. H. Creswick, A. J. Anderson.

Mr. Moss, from the Legal Education Committee, reported in the cases of W. M. Shaw, G. G. Thrasher, and J. F. Lennox. The committee recommend that they receive their certificates of fitness. Ordered accordingly.

Dr. Hoskin, from the Committee on Discipline, presented a Report on the complaint of Mr. J. T. Pierce against Messrs. S—— and E——.

Ordered, that the Report be received ; and further ordered, that this Report be taken into consideration on Friday, the 14th of September.

On motion by Mr. Martin, seconded by Dr. Hoskin, it was ordered that the payments hitherto made to the legal periodicals referred to in the letter of Mr. O'Brien of the 21st May, 1894, be continued.

Mr. Moss, pursuant to leave, moved that the following Rule be adopted :

134 (a) A cadet of the Royal Military College, Kingston, who produces satisfactory proof of his having passed, within four years of his application, the entrance examination, including the Voluntary or Further examination prescribed as part of, or in addition to, such entrance examination, and of having attended the first year's course at the College and passed the examination prescribed at the termination of the year, may be admitted as a student at law of the matriculant class without further examination, on giving the usual notice and paying the prescribed fee. Provided this Rule shall only continue while the authorities of the College maintain the present curriculum subjects for entrance and first-year work.

The Rule was read a first time, and ordered for second reading at the next meeting of Convocation.

Mr. Martin moved, seconded by Mr. Shepley, that the Library Committee do not, in future, order six copies of all legal publications by members of the profession in Ontario, but deal with each publication on its merits. Carried.

Mr. Strathy presented the Law Society with a copy of the Rules of the Law Society of Upper Canada, published in Michaelmas Term, 1832, and printed at York, Hilary Term, 1832.

Convocation recorded its thanks to Mr. Strathy for the interesting relic, and directed that it be carefully preserved.

Friday, June 1st.

Present : The Treasurer, and Messrs. Robinson, Moss, Shepley, Aylesworth, and Riddell.

Mr. Shepley, on behalf of the committee appointed to strike Standing Committees for the ensuing year, reported the following as members of Convocation to compose such committees, as follows :

Finance.—Messrs. A. B. Aylesworth, Walter Barwick, S. H. Blake, A. Bruce, John Hoskin, Z. A. Lash, E. Martin, W. R. Riddell, C. H. Ritchie, G. F. Shepley, H. H. Strathy, G. H. Watson.

Library.—Messrs. A. B. Aylesworth, Walter Barwick, S. H. Blake, W. Douglas, Donald Guthrie, Charles Moss, W. Proudfoot, W. R. Riddell, C. Robinson, G. F. Shepley, H. H. Strathy, G. H. Watson.

Reporting.—Messrs. A. B. Aylesworth, B. M. Britton, J. Idington, Colin Macdougall, F. Mackelcan, D. McCarthy, James Magee, B. B. Osler, W. Proudfoot, C. H. Ritchie, G. F. Shepley, J. V. Teetzel.

Legal Education.—Messrs. Walter Barwick, John Hoskin, Z. A. Lash, Colin Macdougall, F. Mackelcan, E. Martin, W. R. Meredith, Charles Moss, W. R. Riddell, C. H. Ritchie, C. Robinson, J. V. Teetzel.

Discipline.—Messrs. A. B. Aylesworth, Alexander Bruce, Donald Guthrie, John Hoskin, J. K. Kerr, F. Mackelcan, James Magee, M. O'Gara, W. Proudfoot, W. R. Riddell, C. Robinson, G. H. Watson.

Journals and Printing.—Messrs. John Bell, B. M. Britton, W. Douglas, C. F. Fraser, J. Idington, J. K. Kerr, Z. A. Lash, Colin Macdougall, James Magee, M. O'Gara, J. V. Teetzel, G. H. Watson.

County Libraries' Aid.—Messrs. B. M. Britton, Alexander Bruce, W. Douglas, D. Guthrie, A. S. Hardy, J. Idington, J. K. Kerr, E. Martin, W. R. Meredith, M. O'Gara, B. B. Osler, H. H. Strathy.

It was ordered that the foregoing minute stand as an amendment to the minutes of 26th May.

The motion to amend Rule 53 was ordered to stand for 8th June.

The Rule with reference to the admission of cadets of the Royal Military College as students of the matriculant class was read a second and third time and passed.

The petition of Mrs. Crain against Mr. N. D. M., solicitor, having been duly verified, was referred to the Discipline Committee to report whether a *prima facie* case has been made out.

The petition of Mrs. Ferguson against Mr. A. W. W., a solicitor, having been duly verified, was referred to the Discipline Committee to report whether a *prima facie* case has been made out.

The Secretary then reported: That the papers of B. E. Sparham, who applies for call under 57 Vict., are regular, and he has complied with the Act.

Messrs. B. E. Sparham, W. S. Wilson, and R. S. Robertson were then called to the Bar.

Friday, June 8th.

Present: The Treasurer, and Messrs. Osler, Shepley, Martin, Mackelcan, Riddell, Moss, Bruce, Aylesworth, Ritchie, and Watson.

Mr. Moss further reported on the results of the third year examination in the Law School, Easter, 1894.

Ordered for immediate consideration and adopted.

Ordered, that the following gentlemen do receive their certificates of fitness as solicitors: T. A. Duff, A. E. Bull, J. T. Scott, A. W. Briggs, J. G. Shaw, W. Douglas, T. H. Grout, W. H. Harris, A. T. Kirkpatrick, J. A. Stevenson, C. R. McKeown, W. Stamworth, G. F. Peterson, J. P. White, D. Donald, A. MacLennan, J. Sale, W. N. Ferguson, D. I. Sicklesteel, J. J. McCready, G. H. Ferguson, H. C. Pope, T. E. Godson, T. R. Beale, W. J. Moran, H. E. Price, F. G. Anderson, J. D. Kennedy, D. O'Connell, D. W. Jamieson, J. E. Irving.

The following gentlemen were then called to the Bar: Messrs. A. E. Bull, J. T. Scott, A. W. Briggs, J. G. Shaw, W. Douglas, T. H. Grout, W. H. Harris, A. T. Kirkpatrick, C. R. McKeown, W. Stamworth.

G. F. Peterson, D. Donald, A. MacLennan, John Sale, W. N. Ferguson, J. J. McCreedy, G. H. Ferguson, H. C. Pope, T. E. Godson, T. R. Beale, W. J. Moran, H. E. Price, F. G. Anderson, J. D. Kennedy, D. O'Connell, D. W. Jamieson, J. E. Irving, M. R. Allison, A. Crow, W. J. Wright.

Ordered, that F. B. Featherstonhaugh receive a certificate of qualification, under 54 Vict.

A letter from the Commandant of the Royal Military College, Kingston, thanking the Law Society for having admitted cadets of that college as students of the matriculant class, was read.

The petition of Mr. H. V. H. Cawthra for call to the Bar was read.

Ordered, that the Rule of Convocation prevents the prayer of the petition being granted.

In the complaint of Dalton against T. G. M., a solicitor, the complaint having been verified by declaration, was referred to the Discipline Committee to report whether a *prima facie* case had been shown.

Convocation then rose.

Wednesday, June 27th.

Present: The Treasurer, and Messrs. McCarthy, Macdougall, Strathy, Meredith, Britton, Magee, Martin, Barwick, Moss, Shepley, Watson, Robinson, Teetzel, Lash, Idington, Hardy, Guthrie, and Ritchie.

The minutes of the last meeting were read and confirmed.

The report of the Legal Education Committee on the result of the pass and honour examinations in the first year of the Law School was read.

Ordered, that Mr. Phillips do receive a scholarship of one hundred dollars, Mr. Boles one of sixty dollars, and Messrs. Griffin, Beattie, Sampson, and Hayne each a scholarship of forty dollars.

The Report of the Legal Education Committee on the result of the pass and honour examinations in the second year of the Law School was read.

Ordered, that Mr. Buckingham do receive a scholarship of one hundred dollars, Mr. Sinclair one of sixty dollars, and Messrs. Price, Magee, Ross, Grant, and Gagen each a scholarship of forty dollars.

The Report of the Legal Education Committee on the result of the third year examination in the Law School was read.

Ordered, that the following gentlemen be called to the Bar: Messrs. A. Fasken, R. M. Thompson, F. G. Kirkpatrick, M. H. East, J. M. Scott, H. E. Rose, G. A. M. Young, A. Mearns, G. A. Ball, and F. Langmuir.

Mr. Moss, from the same committee, laid on the table the Report of the Examiners as to the method of conducting the recent examination in the Law School.

The Report of the Legal Education Committee on the list of applicants for the office of Principal of the Law School was read.

Mr. Moss moved, seconded by Mr. Lash, that the action of Convocation on the applications for the office of Principal of the Law School be deferred until Friday, September 14th, and that it be then the first order of business for that day, and that an advertisement be published to state that the time for receiving applications for the office is extended until September 8th. Carried.

Mr. Shepley, from the Special Committee appointed on the first day of this term to arrange for improvements in the east wing and extension of the Library, presented their report.

Ordered, that the Report be referred back to the committee, with instructions to report to Convocation, when practicable, some scheme.

Mr. Britton, from the Reporting Committee, presented their Report on the state of the reporting as follows :

The work of reporting is in a forward state. In the Court of Appeal there are 14 unreported cases, 8 of April and 6 of May. In the Queen's Bench there are 17—14 of March and 3 of April. In the Chancery Division Mr. Lefroy has 3—1 of March, 1 of April, and 1 of May. Mr. Boomer has 6—1 of February (*Reg. v. Connolly*, a long and troublesome case, now ready for revision), 3 of March, 1 of April, and 1 of May. In the Common Pleas there are 3—all of March. Of Practice cases there are 8, of which 5 are of March, 1 of April, and 2 of May.

Moved by Mr. Barwick, seconded by Mr. Martin, that the salary paid to the late Principal of the Law School be continued and paid to his widow up to the fifteenth day of September next. Carried.

The following Report of the acting Principal of the Law School was read, and was ordered to be printed and distributed as usual :

SIR,—I have the honour to report to your committee as follows, respecting the term of the School which closed on the 3rd day of May last, under the melancholy circumstances occasioned by the sudden death of our late Principal.

The number of students entered in the books of the School is as follows :

First year.....	44
Second year.....	63
Third year.....	127

Total..... 234

The number of lectures delivered was as follows :

By the Principal.....	268
Mr. Armour.....	126
Mr. Marsh.....	132
Mr. King.....	131
Mr. Young.....	128

Total..... 785

I have not given the average attendance in each year, as it involves a long computation, for which, unfortunately, I cannot afford the time at present. I am able to state, however, that the attendance in the first year was excellent, and quite as high as could be expected ; the attendance in the second year did not reach as high a standard, but was very good ; the attendance in the third year was decidedly below what it should have been.

Last year, however, was perhaps an exceptional one. A good deal of illness prevailed, as we all know ; the term was an unusually long one ; and, as a general rule, students in the third year have more engagements in their offices than students of a lower grade. And, as the third year was a very large one, all three causes produced an effect which was strikingly apparent on that account.

On the whole, I think the attendance is exceedingly good, and the attention given the lectures is all that could be desired.

In two cases, students who had obtained scholarships from the Society were not permitted to attend the lectures at the opening of the School until they had paid their fees. They were depending upon payment by the Law Society of their scholarships to enable them to pay their Law School fees ; but the late Principal felt himself bound by the Rules, notwithstanding this, to refuse to enter them without payment.

If the Rule is as strict as this, I would recommend that in such cases the student should be entered on his producing to the Principal a certificate, or upon the Principal being otherwise assured that he is entitled to a scholarship, payment of which is deferred. I understand that the object of the Rule is to secure payment, and where the Society holds a student's scholarship payment is amply secured.

Experience has shown, I think, conclusively, that sufficient time is not allowed in the examinations for a proper treatment of the papers. Under the Law Society curriculum the time allowed was ample. But under the Law School curriculum the students,

with the aid of the lectures, are able to treat the papers more intelligently, and I think it necessary, in fairness to them, to give them the opportunity of so doing. The short time allowed not only prevents the best men from sufficiently explaining themselves, but also affords to others the excuse that they were not able to compass the work in the space of the time allotted them.

I would also call attention to the fact, which was acutely felt this year, that an interrupted term from September to May, with but a short vacation at Christmas, is exceedingly tedious and irksome for both students and lecturers. The work is incessant, and attention must be unremitting in order to fill the time allotted. No time is afforded the students for private reading and reflection, unless they abandon all other pursuits and devote themselves exclusively to reading. In my opinion, the reading ought to keep pace with the lecturing. It is impossible for this to be done in the third year; while in the first year it is very difficult for the lecturer to supply a sufficient number of lectures to intelligently fill up the time. In each case the result is unsatisfactory.

In the first the lecturer has to go too largely into detail, simply in order to fill up the time; while in the second he has to treat his subjects more superficially in order to cover them all.

The remedy, I think, is partly to rearrange the curriculum so as to make it more gently progressive, and partly to permit a break in the lectures for breathing time, so to speak.

The first-year work could easily be done in less time with quite as good effect, while more time ought to be devoted to the third year. This is a matter which would naturally fall to the lot of the Principal to regulate, and must necessarily depend, to a great extent, upon his own ideas of what would be the most effective and advantageous arrangement.

With regard to establishing one or more vacations, that, I apprehend, would necessarily come more properly before Convocation. I submit them as the results of some experience as matters to which I think some attention ought to be given.

* Yours, etc.,

EDWARD DOUGLAS ARMOUR.

The following gentlemen were then called to the Bar: A. Fasken, R. M. Thompson, G. A. M. Young, F. G. Kirkpatrick, A. Mearns, M. H. East, J. M. Godfrey, H. E. Rose, J. M. Scott, G. B. Burson, G. A. Ball, F. Langmuir, A. E. Haines, W. B. Nicol, J. P. Telford, R. Paterson, J. Porter, J. A. Stevenson.

The petitions of Messrs. G. H. Draper, D. T. Smith, J. T. Loftus, J. S. Mackay, and W. F. W. Lent were read and referred to the Legal Education Committee, with a request that the committee recommend Rules to govern such cases in future, and that, in the matter of the cases now referred, the committee have power to direct the examiners to re-examine the papers of the respective petitioners and alter the petitioners' standing, if the committee think proper, upon such re-examination of the papers.

The proposed Rule to amend Rule No. 53 was postponed until next term.

The petition of Mr. John Macdonald against Mr. H. O'L. was presented, and at the same time a letter from Messrs. Ritchie & Davis, solicitors for the complainant, requesting that Convocation defer consideration thereof.

Convocation ordered accordingly.

DIARY FOR DECEMBER.

1. Saturday Princess of Wales born, 1844.
2. Sunday *1st Sunday in Advent.*
4. Tuesday Gen. Sessions and County Court sittings for trial in York.
6. Thursday Rebellion broke out, 1837.
7. Friday Convocation meets. Rebels defeated at Toronto, 1837.
8. Saturday Michaelmas Term ends. Last day for payment of fees,
Law Society. Sir Wm. Campbell, 6th C. J. of Q.B.,
[1825.]
9. Sunday *2nd Sunday in Advent.*
10. Monday Niagara destroyed by U. S. troops, 1813.
12. Wednesday Sir John Thompson, P.C., died at Windsor, 1894.
13. Thursday S. H. Strong, C.J. of S.C., 1892.
15. Saturday J. B. Macaulay, 1st C.J. of C.P., 1849. Prince Albert
[died, 1861.]
16. Sunday *3rd Sunday in Advent.*
17. Monday First Lower Canadian Parliament, 1792.
18. Tuesday Slavery abolished in the United States, 1862.
19. Wednesday Fort Niagara captured, 1813.
21. Friday St. Thomas. Shortest day.
23. Sunday *4th Sunday in Advent.*
24. Monday Christmas Vacation begins.
25. Tuesday *Christmas Day.*
26. Wednesday Convocation meets. Upper Canada made a Province, 1791.
27. Thursday St. John J. G. Spragge, 3rd Chancellor, 1869.
28. Friday Law Society admitted women as students-at-law, 1892.
29. Saturday Sir Adam Wilson, C.J. of Q.B.D., died, 1891.
30. Sunday *1st Sunday after Christmas.*
31. Monday Montgomery repulsed at Quebec, 1775.

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

ROSE, J.]

[Oct. 10

TALLMAN T. SMART.

Chattel mortgage—Validity of renewal—Right of assignee for creditors to question—R.S.O., c. 125, ss. 4, 11—53 Vict., c. 26, s. 2 (O.)—"Void as against creditors"—"Cease to be valid."

Section 2 of 53 Vict., c. 26 (O.), does not enable an assignee for the general benefit of creditors to question the validity of the renewal of a chattel mortgage

It provides that the words "void as against creditors" in R.S.O., c. 125, shall extend to such an assignee, but these words are not found in s. 11 of that Act, the section dealing with renewals; and the words "cease to be valid" there used cannot be read as equivalent to "void as against creditors."

Moss, Q.C., and Lovell for the plaintiff.

Everts for the defendant.

BOYD, C.]

[Oct. 23.]

FITZGERALD v. CITY OF OTTAWA.

Municipal corporations—Drainage—Added territory—Old drain—Liability for overflow.

When the plaintiff's land was part of a township, he and his neighbours had, with the permission of the township authorities, constructed a box drain in the highway to carry surface water therefrom. After the locality had become part of the defendants' territory, this drain collapsed, and the earth covering it acted as a dam, which penned back the water upon the plaintiff's land. The defendants' engineer then made a cut which carried away the water for a time. This, however, became filled up, and the water again came on the plaintiff's land. He notified the defendants, but they did not remedy the matter until after substantial injury was done.

Held, that they were liable.

W/d for the plaintiff.

O'Gara, Q.C., for the defendants.

ARMOUR, C.J., and STREET, J.]

Nov. 27.

REGINA v. MADDEN AND BOWERMAN.

Criminal law—Evidence—Statement of prisoner in previous proceeding—Privilege—56 Vict., c. 31, s. 5 (D).

Crown case reserved.

The prisoners were indicted under s. 394 of the Criminal Code for a conspiracy to defraud. Upon their trial, evidence was offered by the Crown, and received, of a statement made by one of the defendants upon oath, in a prosecution before a magistrate in which this defendant was the complainant and gave evidence on his own behalf. The statement was made upon cross-examination of this defendant in the proceedings before the magistrate.

The question submitted for the opinion of the court was whether evidence of the statement was properly received, having regard to s. 5 of 56 Vict., c. 31 (D.), an Act respecting witnesses and evidence, which provides: "No person shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any other person; provided, however, that no evidence so given shall be used or receivable in evidence against such person in any criminal proceeding thereafter instituted against him other than a prosecution for perjury in giving such evidence."

Held, that, as the defendant did not, so far as the case showed, assert his privilege before the magistrate, the evidence was receivable.

J. R. Cartwright, Q.C., for the Crown.

George Wilkie for the prisoners.

 Chancery Division.

MEREDITH, J.]

[Nov. 28.]

TOWNSHIP OF BURFORD v. CHAMBERS ET AL.

Arbitration—Injunction restraining arbitrators acting—Jurisdiction of High Court—Arbitrator, solicitor for parties.

The High Court has power to prevent an incompetent arbitrator from acting without waiting until the award is made, though perhaps the better course is to apply for leave to revoke the submission if another arbitrator be not substituted.

Malmesbury R.W. Co. v. Budd, 2 Ch.D. 113, and *Beddow v. Beddow*, 9 Ch.D. 89, followed.

A barrister and solicitor who had acted as counsel for the husband on an indictment and trial for obstructing an alleged highway claimed by his wife to be her property, and who had written a letter concerning the matter as solicitor for both husband and wife, was restrained from acting as arbitrator.

Vineburg v. The Guardian Fire & Life Assurance Co., 19 A.K. 293, followed.

Herbert Mowat for the motion.

S. A. Jones, contra.

BOYD, C.]

[Oct. 23.]

THOMPSON ET AL. v. SMITH.

Will—Devise—"My lawful heirs"—Time when heirs ascertained.

A testator, after a gift to his daughter and her mother, for their joint lives, and to the survivor of them, directed that "at the decease of both the residue of my real and personal property shall be enjoyed by, and go to the benefit of, my lawful heirs." At the death of the testator his daughter was his only heir.

Held, that the testator had himself excluded his daughter from being treated as one of his heirs, and by the expression "my lawful heirs" must be held to have meant the persons who at the time of the death of the last survivor of his wife and daughter should then be his heirs at law.

Wyld for the plaintiffs and McTavish.

Gara, Q.C., for the defendants.

 Practice.

MEREDITH, C.J.]

[Nov. 17.]

MALCOLM v. RACE.

Discovery—Action for penalties—Close of pleadings—Notice of trial.

The plaintiff is not entitled to examine the defendant for discovery in an action for penalties under the Ontario Elections Act, 1892.

Hunnings v. Williamson, 10 Q.B.D. 459, and *Martin v. Treacher*, 11 Q.B.D. 507, followed.

A defendant, by simply taking issue upon the statement of claim, closes the pleadings, and may then serve notice of trial.

Hare v. Cawthrope, 11 P.R. 353, followed.

W. H. Blake for the plaintiff.

Aylesworth, Q.C., for the defendant.

MEREDITH, J.]

[Nov. 28.

IRWIN T. TURNER.

Pleading—Counterclaim—Joinder of issue—Defence—Reply—Close of pleadings—Notice of trial—Rules 379-383—“Plaintiff.”

A pleading delivered by the defendants to a counterclaim, in answer thereto, whether by the original plaintiff or by added defendants, which denies the allegations in the counterclaim, puts the plaintiff to the proof thereof, and submits that the counterclaim should be dismissed, is not a joinder of issue, but a statement of defence to the counterclaim; the plaintiff by counterclaim has, by the Rules, three weeks to reply thereto; and the pleading, at least *quoad* the counterclaim, are not closed until after the lapse of three weeks, or until the plaintiff, by counterclaim, has joined issue.

Notice of trial set aside where given by the original plaintiffs after the lapse of four days from the delivery of such a pleading, no subsequent pleading having been delivered.

Construction of Rules 379-383.

Hare v. Cawthrope, 11 P.R. 353, distinguished.

Irwin v. Brown, 12 P.R. 639, overruled.

Quere, whether “plaintiff” in Rule 381, does not include a plaintiff by counterclaim.

B. Morton Jones for the plaintiffs.

W. H. Blake for the defendants.

STREET, J.]

[Nov. 28.

IN RE VILLAGE OF PRESTON AND KLOTZ.

Costs—Scale of—Arbitration—Direction of arbitrators—Municipal Act, 1892, s. 309—Reference back.

Where, upon an arbitration under s. 385, *et seq.*, of the Municipal Act, 1892, the arbitrators made their award and directed that the costs should be paid by the landowners, but did not fix the amount nor direct on what scale they should be taxed, as required by s. 309:

Held, that there was no authority for their taxation either up the High Court or County Court scale.

But, *ressu*, that, upon a proper application, the award would be referred back to the arbitrators to complete it in the matter of costs.

J. H. Moss for the landowners.

DuVernet for the corporation.

MEREDITH, C.J.]

[Nov. 29.]

MACDONALD v. WORLD NEWSPAPER COMPANY OF TORONTO.

Security for costs—Libel—Newspaper—R.S.O., c. 57, s. 9—Criminal charge—“Blackmail”—Criminal Code, s. 406—Trivial or frivolous.

Upon an application under R.S.O., c. 57, s. 9, for security for costs in an action for libel, in which the words complained of, published in the defendants' newspaper, accused the plaintiff of attempted "blackmail";

Held, that the words might bear such a meaning as to charge the indictable offence defined by s. 406 of the Criminal Code, and the question whether they did so, when read with the context, was for the jury, and one which should not be determined upon this application; and the Master in Chambers having held that they "involved a criminal charge," his decision should not be interfered with.

An action cannot be considered "trivial or frivolous," within the meaning of s. 9, merely because the existence of a good defence on the merits is shown by the defendant's affidavit, and not contravened by an affidavit of the plaintiff. The latter may properly consider that, upon an application for security for costs, a denial on oath of the truth of the charges against him is unnecessary.

A. W. Bailantyne for the plaintiff.

J. Baird for the defendants.

MEREDITH, C.J.]

[Nov. 29.]

GEORGIAN BAY SHIP CANAL AND POWER AQUEDUCT CO. v. WORLD NEWSPAPER COMPANY OF TORONTO.

Security for costs—Libel—Newspaper—R.S.O., c. 57, s. 9—Criminal charge—Incorporated company—Publication in good faith.

The words "involves a criminal charge," in R.S.O., c. 57, s. 9, s.s. (1) (a), mean "involves a charge that the plaintiff has been guilty of the commission of a criminal offence."

And where the words published by the defendants in their newspaper, of which the plaintiffs, an incorporated company, complained in an action of libel, alleged that the plaintiffs had tried to bribe aldermen by issuing to them paid-up stock in the company;

Held, upon an application for security for costs under the above section, that the words did not involve a criminal charge, for a corporation cannot be charged criminally with a crime involving malice or the intention of the offender.

Mayor, etc., of Manchester v. Williams, (1891) 1 Q.B. 94, followed.

Journal Printing Co. v. McLean, 25 O.R. 509, distinguished.

And where the defendants, by affidavit, showed publication in good faith, and other circumstances sufficient, under the above section, to entitle them to security for costs, and the case made was not disclosed by the cross-examination of the deponent on his affidavit, an order was made for such security.

J. F. Edgar for the plaintiffs.

J. Baird for the defendants.

BOVD, C.]

[Dec. 11.

CARLISLE v. ROBLIN.

Costs—Taxation—Searching affidavit—Registrar's abstract—Counsel fee on ex parte order—Filing order—Engrossing—Counsel fees—Discretion—Witness fees—Brief.

Upon taxation of costs, the following items should not be taxed against the opposite party :

- (1) Attendance to search affidavit on production.
- (2) Attendance to bespeak and for registrar's abstract to prepare for litigation or prove title.
- (3) Counsel fee on attendance to obtain *ex parte* order.
- (4) Attendance to file order for subpoena.
- (5) Engrossment of same order.

The question of the allowance of counsel fees is one for the discretion of the taxing officer ; and where the action is strenuously contested on both sides, it is proper to allow fees to both senior and junior counsel.

Where witnesses in attendance at the trial are not called, the onus is on the party subpoenaing them to show their relevancy ; and in this case he failed to do so.

Where fees paid to such witnesses are disallowed, the portions of counsel's brief containing their evidence should also be disallowed.

Alcorn, Q.C., for the plaintiff.

D. Armour for the defendants.

BOVD, C.]

[Dec. 11.

WELBOURNE v. CANADIAN PACIFIC R.W. CO.

Discovery—Examination—Pleading—ChamPERTY and maintenance.

Discovery will not be enforced in equity in cases of champerty and maintenance, nor should it be under the equivalent remedies given by the Judicature Act ; and a plaintiff should not be compelled, on examination, to answer questions touching an alleged champertous agreement.

Semble, that the rigorous rules which obtained in earlier days in England are not to be imported into the dependencies of England without some modification.

Ram Coomar v. Chunder, 2 App. Cas. at p. 210, specially referred to.

To an action under Lord Campbell's Act the defendant pleaded that it was brought and maintained under a champertous agreement which disentitled the plaintiff to sue.

Held, that this defence should not be struck out ; if proved, it was for the court to say what effect should follow.

W. J. Elliott for the plaintiff.

Angus MacMurchy for the defendants.

MEREDITH, C.J.]

[Dec. 12.]

IN RE HALLOCK.

Contempt of court—Commitment—Disobedience to habeas corpus—Notice—Signature to writ—16 C. I., c. 10, s. 3.

An application to commit a person for contempt of court in disobeying a writ of *habeas corpus* will not be entertained unless a notice has been served upon him informing him of the consequences of failure to obey, nor unless the writ is signed by the person awarding it, as required by s. 3 of 16 Car. I., c. 10. *C. W. Kerr* for the applicant.

BOYD, C.]

[Dec. 15.]

MERIDEN BRITANNIA CO. v. BRADEN.

Costs—Separate defences—Indemnity against costs—Taxation against opposite party.

Action to set aside a chattel mortgage made by an insolvent to a trading firm, and a sale made thereunder to a third defendant. The firm agreed to save the third defendant harmless so far as the costs of the action were concerned. He defended separately, and in his written retainer to his solicitors it was provided that the costs should be charged to the firm. The plaintiffs having been ordered to pay the costs of the defendants;

Held, a proper case to allow two sets of costs, and that no disability existed on the part of the third defendant to tax and recover his costs against the plaintiffs.

Jarvis v. Great Western R.W. Co., 8 C.P. 280, and *Stevenson v. City of Kingston*, 31 C.P. 333, distinguished.

J. Bicknell for the plaintiffs.

C. D. Scott for the defendant Scott.

MANITOBA.

COURT OF QUEEN'S BENCH.

KILLAM, J.]

[Nov. 12.]

FRASER v. SUTHERLAND.

Setting aside Crown patent for land—Title of plaintiff derived from former conveyance by defendant—Estoppel by deed—Covenants for title—Covenant for further assurance.

This was a suit in equity in which the plaintiff sought to have the defendant declared to be a trustee for him, and ordered to convey to him a certain piece of land, part of lot 35 of the Dominion Government survey of the parish of St. John, better known as Point Douglas common, in the city of Winnipeg. The learned judge found, on the evidence, that the land in question was part of lot H, according to Duncan Sinclair's plan, which had, about the year 1874, been conveyed by the defendant to one Clarke, the plaintiff's predecessor in title, under the following circumstances:

The defendant and several others having claimed that some right of common over lot 35 had been conferred upon them by Lord Selkirk conveyed it, in 1872, to certain trustees, of whom the defendant was one, for the purpose of having it divided into town lots and sold for their benefit. The trustees then employed a surveyor, who made a subdivision plan of a portion of the common, after which the trustees made what they considered to be an equitable distribution of the lots on the plan to which the interested parties agreed. The trustees then executed deeds in favour of some of those parties, said lot H, together with the adjoining lot A, being, with other property, conveyed to the defendant. He admitted the conveyance by him to Clarke of lot H, but denied that the purchase money had been paid in full.

Subsequently, McPhillips, another surveyor, made a subdivision plan covering the same territory, in which, as the learned judge found, lot A was given a wider frontage, overlapping about 43 feet of lot H, according to Sinclair's survey. After this the defendant made an application personally at Ottawa for a patent for lot A, according to McPhillips' survey, basing his claim on the trustees' conveyance to himself. The arrangement entered into by the trustees was recognized by the Department of the Interior, and a patent was issued in 1883 accordingly.

The plaintiff had no notice or knowledge of the application for it. It recited that the lands therein described were Dominion lands, that the defendant had applied for a grant thereof, that his claim had been duly investigated, and he had been found duly entitled thereto. It granted lot A, as shown on McPhillips' plan, without further defining its boundaries and size.

The defendant disputed the plaintiff's right to any relief in equity, and, in addition, set up that he had been in possession of the 43 feet in dispute for over ten years, but this was found against him on the evidence.

The defendant's deed to Clarke was made before May 14th, 1875, when the first statute of Manitoba relating to short forms of indentures was passed. It purported to be made in pursuance of the Act respecting Short Forms of Conveyances, and was otherwise in the form in the first schedule to The Short Forms Act, now R.S.M., c. 141, with the covenants in column 1, but contained no recitals.

It was assumed upon the hearing, though not expressly admitted by the counsel for the defendant, that the effect of the deed, under section 2 of the Act, was to make the defendant's covenants equivalent to those in the second column of the first schedule to that Act, and the plaintiff's counsel contended that this worked an estoppel against the defendant.

In view of the date of the instrument, it did not come within The Estoppel Act, R.S.M., c. 52.

Held: (1) That a defendant is not estopped by his mere grant from setting up a title subsequently acquired, at least when it does not appear that he had no title at all at the time of his grant.

Doed. Oliver v. Powell, 1 A. & E. 531; *Right d. Jefferys v. Bucknell*, 2 B. & Ad. 278.

2) That, in the absence of legislation, covenants do not estop: *Heath v. Crealock*, L.R. 10 Ch. 22; *General Finance, etc., & Co. v. Liberator Society* 10 Ch. 15.

(3) That specific performance of the defendant's covenant for further assurance could not be granted, at least without an amendment of the bill, which had not made a clear case for such relief; and, besides, when no legal estate passes, the covenants for further assurance do not run with the equitable title, so as to enable the assignee to sue at law: *Onward Building Society v. Smithson*, (1893) 1 Ch. 1. The wording of the covenant numbered 5 in the schedule, and the reasoning in *Browning v. Wright*, 2 B. & P. 13, show that the covenantor is not bound, under that covenant, to convey or assure to the covenantee or his assigns any estate subsequently acquired by the covenantor, and which he had never previously held.

(4) That the plaintiff had failed to establish the title set up by him, a title in fee simple, whether legal or equitable, or that any such mistake had occurred in issuing the patent as, under the judgment in *Attorney-General v. Fonseca*, 17 S.C.R. 612, would warrant the setting aside of the patent.

Bill dismissed with costs.

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

Culver, Q.C., and *Sutherland* for the defendant.

Appointments to Office.

CORONERS.

County of Halton.

William Steele Black, of the Town of Oakville, in the County of Halton, Esquire, to be an Associate-Coroner within and for the said County of Halton.

District of Manitoulin.

John William McIntosh, of the Village of Gore Bay, in the District of Manitoulin, Esquire, M.D., to be an Associate-Coroner within and for the said District of Manitoulin.

DIVISION COURT CLERKS.

County of Essex.

Walter Welsh, of the Village of Stony Point, in the County of Essex, Gentleman, to be Clerk of the Ninth Division Court of the said County of Essex, in the room and stead of William A. McIntosh, resigned.

BAILIFFS.

County of Norfolk.

Orlando Hardy Duncombe, of the Village of Waterford, in the County of Norfolk, to be Bailiff of the Second Division Court of the said County of Norfolk, in the room and stead of Edward Grace, resigned.

District of Thunder Bay.

Thomas Connor, of the Town of Port Arthur, in the District of Thunder Bay, to be Bailiff of the First and Third Division Courts of the said District of Thunder Bay, in the room and stead of James McLaren, resigned.

County of Northumberland.

William Walter Brown, of the Village of Colborne, in the County of Northumberland, to be Bailiff of the Seventh Division Court of the United Counties of Northumberland and Durham, in the room and stead of John Reive, resigned.

COMMISSIONERS FOR TAKING AFFIDAVITS.

North-West Territories.

Peter McGill Barker, of the Town of Regina, in the North-West Territories, Esquire, Inspector of Land Titles Offices, to be a Commissioner for taking affidavits within the North-West Territories, and not elsewhere, for use in the courts of Ontario.

Colony of Tasmania.

Charles William Butler, of the City of Hobart, in the Colony of Tasmania, Gentleman, Solicitor, to be a Commissioner for taking affidavits within and for the said Colony of Tasmania, and not elsewhere, for use in the courts of Ontario.

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TO CORRESPONDENTS.

We have received a letter from "A Friend of Law Schools," but no name is given. We would remind our correspondent, whoever he may be, that it is not the custom to publish letters unless the writer's name is given, "not necessarily for publication, but as a guarantee of good faith."

Law Society of Upper Canada.

LEGAL EDUCATION COMMITTEE.

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

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THE LAW SCHOOL.

Principal, N. W. HOYLES, Q.C.

Lecturers: E. D. ARMOUR, Q.C.; A. H. MARSH, B.A., LL.B., Q.C.; JOHN KING, M.A., Q.C.; MCGREGOR YOUNG, B.A.

Examiners: A. C. GALT, B.A.; W. D. GWYNNE, B.A.; M. H. LUDWIG, LL.B.; J. H. MOSS, B.A.

ATTENDANCE AT THE LAW SCHOOL.

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

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

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

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

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

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

1. All students and clerks attending in a Barrister's chambers, or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889, so long as they continue so to attend or serve elsewhere than in Toronto.

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

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

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

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

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

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

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

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

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

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

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

Two lectures (one hour) daily in each year of the course are delivered on Monday, Tuesday, Wednesday, and Thursday. Printed schedules showing the days and hours of all the lectures are distributed among the students at the commencement of the term.

During his attendance in the School, the student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions, or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance.

As far as practicable, students will be provided with room and the use of books for this purpose.

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

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

EXAMINATIONS.

Every applicant for admission to the Law Society, if not a graduate, must have passed an examination according to the curriculum prescribed by the Society, under the designation of "The Matriculation Curriculum." This examination is not held by the Society. The applicant must have passed some duly authorized examination, and have been enrolled as a matriculant of some University in Ontario, before he can be admitted to the Law Society.

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

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

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

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

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

HONORS, SCHOLARSHIPS, AND MEDALS.

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

An examination for Honors is held, and medals are offered in connection with the final examination for Call to the Bar, but not in connection with the final examination for admission as Solicitor.

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

The scholarships offered at the Law School examinations are the following: Of the candidates passed with Honors at each of the intermediate examinations the first shall be entitled to a scholarship of \$100, the second to a scholarship of \$60, and the next five to a scholarship of \$40 each, and each scholar shall receive a diploma certifying to the fact.

The medals offered at the final examinations of the Law School are the following:

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

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

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

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

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

The latest edition of the Curriculum contains all the Rules of the Law Society which are of importance to students, together with the necessary forms, as well as the Statutes respecting Barristers and Solicitors, the Matriculation Curriculum, and all other necessary information. Students can obtain copies on application to the Secretary of the Law Society or the Principal of the Law School.

THE LAW SCHOOL CURRICULUM.

FIRST YEAR.

Contracts.--Smith on Contracts. Anson on Contracts.

Real Property.--Williams on Real property, Leith's edition. Deane's Principles of Conveyancing.

Common Law.--Broom's Common Law. Kerr's Student's Blackstone, Bks. 1 & 3.

Equity.--Snell's Principles of Equity. Marsh's History of the Court of Chancery.

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

SECOND YEAR.

Criminal Law.--Kerr's Student's Blackstone, Book 4. Harris's Principles of Criminal Law.

Real Property.--Kerr's Student's Blackstone, Book 2. Leith & Smith's Blackstone.

Personal Property.--Williams on Personal Property.

Contracts.--Leake on Contracts.

Torts.--Bigelow on Torts--English Edition.

Equity.--H. A. Smith's Principles of Equity.

Evidence.--Powell on Evidence.

Canadian Constitutional History and Law.--Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

Practice and Procedure.--Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

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

THIRD YEAR.

Contracts.—Leake on Contracts.

Real Property.—Clerke & Humphrey on Sales of Land. Hawkins on Wills. Armour on Titles.

Criminal Law.—Harris's Principles of Criminal Law. Criminal Statutes of Canada.

Equity.—Underhill on Trusts. Kelleher on Specific Performance. De Colyar on Guarantees.

Torts.—Pollock on Torts. Smith on Negligence, 2nd ed.

Evidence.—Best on Evidence.

Commercial Law.—Benjamin on Sales. Smith's Mercantile Law. Maclaren on Bills, Notes, and Cheques.

Private International Law.—Westlake's Private International Law.

Construction and Operation of Statutes.—Harcastle's construction and effect of Statutory Law.

Canadian Constitutional Law.—Clement's Law of the Canadian Constitution.

Practice and Procedure.—Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of Courts.

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

NOTE.—In the examinations of the second and third years, students are subject to be examined upon *the matter of the lectures* delivered on each of the subjects of those years respectively, as well as upon the text-books and other work prescribed.

RAILWAYS AND STRIKES.—The United States Circuit Court of Appeals for the Seventh Circuit has rendered a decision reversing Judge Jenkins' famous order respecting the right of the employees of a railroad in the hands of a receiver to strike, the title of the case being *Arthur v. Oakes et al.*, and the opinion being written by Mr. Justice Harlan. It will be remembered that Judge Jenkins granted an injunction against a body of strikers, forbidding them to strike because such action would be detrimental to railroad property. The court holds that it would be wrong for a body of men employed by a railroad to violate a definite contract, but the remedy for such violation could not be by injunction. Now that popular feeling has subsided, this decision will probably command the assent of every man who has any knowledge of the fundamental principles of law. As Judge Harlan pertinently says, the use of the injunction under such circumstances would really deprive the workman of his constitutional rights under our system of government. If a railroad has the right to discharge an undesirable or incompetent workman, the same right of terminating the relation between employer and employee must rest in the latter.

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