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WE would call the attention of those of the profession practising in the Admiralty Court to the new rules and orders which came into force on the 10th of last month. As will be generally known, the Exchequer Court is now, by virtue of the Act 54 & 55 Vict., c. 29, constituted a Court of Admiralty, the previously existing Maritime Court having been abolished. As some Deputy-Registrars in local towns have recently issued writs, under the impression that they had power to do so, we would remind all officers of the court, as well as the profession, that since the above Act, which came into force in October, 1891, they have no longer such power, which is reserved to the Exchequer Court at Ottawa, and to the office of the Toronto Admiralty District at Toronto, which is now a branch of the Exchequer Court.

IT is a good sign of the legal growth of a young country when text-books written by men of that country are made use of to instruct the profession of the future. It is therefore with pleasure that we note a few changes that have been made in the curriculum of the Law School, and which take effect next school year. The additions made to the Canadian text-books now on the course are that Mr. A. H. Marsh's "History of the Court of Chancery" has been placed on the first year curriculum, and in the third year Mr. J. J. Maclaren's work on "Bills and Notes" is substituted for "Chalmers on Bills," while Mr. W. H. P. Clement's "Law of the Canadian Constitution" will be read when the British North America Act is required.

The second intermediate examination under the Law Society curriculum has been discontinued, and the examinations for certificate of fitness and Call will be a thing of the past after next May.

WE were recently asked some questions (*ante* page 190) as to the etiquette of the profession on the following points:

(1) If a solicitor employs a counsel as leader at a trial of *nisi prius*, and there is subsequently a motion before the full court in term, is there any etiquette requiring him to give a brief to the same counsel on the motion in term?

(2) If upon a motion in term a brief is given to a leading counsel, and the case is afterwards carried to the Court of Appeal, is there any etiquette entitling him to expect to have a brief in the Court of Appeal?

(3) If the opinion of counsel is taken before commencing litigation upon the questions about to arise in the suit, is there any etiquette requiring that he should have a brief in the case when it comes before the courts?

We answered the question by saying that we knew of no etiquette or unwritten law of the profession which required that in any of the above cases the same counsel should be employed. Our namesake in England refers to the subject, taking practically the same view as ourselves, saying that they know of no rule which requires a solicitor to employ a particular counsel in the conduct of litigation simply because before the action commenced, or at any time, they have advised on the matters in question, and remarking that certainly different counsel are, for various reasons, frequently employed under such circumstances, though that a solicitor would often be led to select the same counsel as advocates by the motives which originally prompted his employment as an adviser, and, further, because he is already acquainted with the matters in question.

As regards the other cases put, the writer in our contemporary seems to think that there is in England an understanding to this extent: that, "If two counsel have been employed in the same interest at any stage of an action, and there are subsequent proceedings in the matter, the junior will not accept a brief in those proceedings (if they are of the kind in regard to which leaders are usually engaged) without the leader, unless the latter refuses or waives his right to be retained. The practice in regard even to this rule is, however, very ill-defined and varying, and the rule is, as all such rules are in England, so far as they are observed at all, made operative only by the action of individual barristers."

MR. IRVING BROWNE, of the *Albany Law Journal*, in referring to the counsel for the American Government in the Behring Sea arbitration, writes: "The lawyers of this country are watching with a good deal of interest the proceedings of the Seals Commission, and especially are curious to learn what the English Bar thinks of our lawyers who have been sent over the ocean to advocate the interests of this Government. Whatever you may think of them, we have sent you as good as we have. Messrs. Carter, Phelps, and Condert are not accomplished lawyers, but men of affairs and of varied experience. They are also excellent speakers, after the American order, to which Mr. Condert adds a trace of his native French vivacity and wit. Mr. Carter is by many deemed the leader of the New York City Bar since Mr. O'Conor's death and Mr. Evart's engagement in politics."

These gentlemen are doubtless doing the best they can with a very bad case. We note in this connection what the writer says about their not being "accomplished lawyers," but rather "men of affairs," as well as "excellent speakers." Uncle Sam probably showed his wisdom in his selection under the circumstances. When a client has a bad case, the more the law and logic of the matter are hidden behind a cloud of side issues, witty nothings, and wide statements, overlapping the facts in evidence, the better. Canada, on the contrary, sends one who is perhaps her most exact lawyer; as well known for his deep and wide knowledge of law as for his strict, crushing logic, and, above all, one who was never known to overstate his case, misstate facts, or mislead the court by a hair's breadth. What all the Canadian profession know of Mr. Christopher Robinson is, we believe, more or less true of Sir Charles Russell and Sir Richard Webster, the counsel for England. We remark *en passant* that the special correspondent of *The Times* thus speaks of Mr. Robinson's address: "Mr. Christopher Robinson, the Canadian counsel, in a brilliant speech summarized the whole case, reducing it to a series of concise propositions, which, from the British point of view at least, demonstrated the absurdity of the American claims" This is much greater commendation, by the way, than what appears to be the regulation compliment of the polite Frenchman who presides over the commission.

THE LAW'S DELAY.

Our attention has been called to a *cause celèbre*—another case of *Jarndyce* v. *Jarndyce*—in one of the Maritime Provinces, which has given rise to a good deal of comment in the local press, and that of no very favourable nature. It is not our custom, as a general rule, to comment on any particular case that comes before the courts, unless some principle is involved, or that the case is one that calls for interference, owing to the rights of suitors being, apparently, neglected or denied. Such a case this one appears to be.

From the local newspapers, which have from time to time devoted considerable space to the facts and proceedings in the case, we gather that in January, 1883, a wine merchant in St. John, New Brunswick, died, leaving a large estate, both real and personal; his family consisting of four daughters only. By his will he appointed his brother-in-law, one James McGregor Grant (uncle of his children), his widow, and another person, executors and trustees. His widow died the year following, when, after some delay, Ronald, a son of the uncle, a young man of twenty-one years, was appointed in her place, the *cestuis que trustent* supposing that, being their cousin, he would prove desirable. His father stated, too, that, as he was a lawyer, he would be able to do certain work for which legal expenses had been previously incurred. Shortly after, this young man was, at his father's suggestion, appointed agent of the estate at a salary of $1,500 a year, though the person previously acting as such had received but $1,000.

It having come to the knowledge of the *cestuis que trustent* that at the passing of the executors' and trustees' accounts in May, 1890, a sum of over $350 was charged by another son of the senior trustee, as commission on collection of rent and interest, and that the expenses of management for the previous year had amounted to nearly $5,000, exclusive of an annuity of $400 to their uncle as managing trustee, they began to agitate for a change in the trusteeship. Their uncle not acceding to their wishes, they, under legal advice, on the 17th of September, 1890 (this date should be borne in mind), presented a petition to the judge in equity to have both these trustees, father and son, removed, they refusing to resign the position.

At the hearing of this petition, a letter was read in open

court (it is given *verbatim* in the newspapers of the day) from the uncle (senior trustee) to one of his nieces, reproaching them in very gross language for their action, making a charge against their dead father of having systematically for years defrauded the customs of large sums, and saying that he could "put the government in possession of information which would justify them now or at any time within fifty years in seizing the books and property of the estate, and leaving you all simply paupers, with the reputation of the family irretrievably ruined, and the public astonished with a revelation of twenty years of most successful fraud, not only on the government themselves, but on customers." Then came the details of this fraud, as charged, after which the writer continues: "I do not intend that either you or any of your sisters shall become trustees . . . and you shall not, as you impertinently express it, deprive Ronald of a livelihood, although you may well blush at the source from which you obtain your own. Wealth accumulated by fraud and the misery of others will probably eventually prove to be more a curse than a blessing," etc.

We give prominence to this letter, because it is a mystery to us how a trustee who displays such a bitter *animus* toward these unfortunate girls, whose father had placed him *in loco parentis* to them, should still be allowed to remain in the same position, though upwards of two years and a half have elapsed since the petition to remove him was presented.

We must here, *par parenthese*, say that the charges this model guardian thus made against his wards' father and his own brother-in-law are pronounced to be absurd and impossible by both the collector and inspector of customs there.

The petitioners further set forth that they had always acted on the advice of their uncle, but that now they had lost all confidence in him, and could not meet him on busniess or have any correspondence with him, and that his threats would keep them in a constant state of anxiety and unrest.

Now for the proceedings thereafter. On the 4th of December, 1890, the case came before the judge, when an annuitant who lived in Australia was directed to be served, and over six months was thus lost. Early in August, 1891, the case was ripe for hearing, but the trustee's counsel were not ready (one of them the judge's son), and it was not till the 10th of December following

that the first hearing took place. At this hearing the petitioners' counsel urged that the son be removed, on the ground that, being a trustee, he could not be the agent of the estate and receive a salary, thus making profit out of it, and on the ground of excessive extravagance in the management of the estate, the son's income as trustee and agent having, the previous year, amounted to $2,150, a larger sum than received by any of the heirs but one; that the father (petitioners' uncle) be removed on the ground that he, having written the letter which was read in court, and which was published in full in the daily papers of the city, was not one to have the confidence of the heirs, and that one who had threatened to make them paupers and to destroy their reputation was not fit to be continued in a position of trust over their property. The judge, however, refused to hear the case until the accounts had been gone over before a referee. These accounts, we are told, had been annually passed before the Court of Probate, but none of the *cestuis que trustent* were ever present or represented by counsel. After some half-dozen adjournments, lasting about a month, owing chiefly to the trustees not being ready with their accounts (!), the examination was entered upon, and upon the 23rd of July the reference was concluded, the referee making his report on the 25th of August. In the course of the examination it was found necessary to apply to the court on a point of evidence, when the judge's son, a Q.C., appeared for one trustee, each of the other trustees being also represented by a Q.C., though the interests of all—on this point at least—were identical. On this occasion it was that the judge expressed an opinion that the trustee making out the account (the son) should not be asked to work more than *two days in the week*.

By the referee's report he disallowed the sum of nearly $4,800, charged and received by the trustees. Though this report was made on the 25th of August, 1892, argument upon it was delayed on one pretext or another till the 12th of January, 1893. Decision was then reserved for three weeks, but no judgment given till the 6th of May following. By this judgment it was held that the amount reported against the trustees by the referee (as improperly charged) should be reduced from $4,752 to $4,549, on the ground that it was now too late to go into accounts which had

already been before the Probate Court, and he ordered that all costs should be paid out of the estate.*

Thus after the lapse of two years and a half, and at a cost to themselves of from $5,000 to $6,000 (this being the estimate of the costs of the motion so far), the petitioners succeeded to the extent of having $200 deducted from the $4,500 improperly charged by the trustees. This, however, is but a "side issue," as it were. The main motion for the appointment of new trustees, though made on the 17th of November, 1890, has not, up to the present writing, been decided. Such a state of things could not, we believe, happen in this Province. Though our judges are, admittedly, very hard-worked, we never hear a complaint of a judgment being unnecessarily deferred.

We must confess to having our righteous wrath aroused by the fact that these defenceless women are allowed to protest in vain at such a state of things; that trustees inimical to them, and acting most improvidently for the estate, should be forced on them; that not only should these trustees be allowed to retain moneys improperly detained from their wards, but that the latter should be put to the cost of upwards of $5,000 in proving these trustees to have so retained moneys improperly from them; and, finally, that after all the waste of $5,000 in money, and two and a half years in time, they seem to be still no nearer obtaining the justice that they have demanded. The insinuation, openly made, that the delay is partly attributable to the fact that the judge's son is counsel for the trustees may be altogether groundless; but it is unfortunate, nevertheless, that he has occupied the position he does, under the circumstances detailed. The statement made, too, by one of the counsel, as we are told, that this litigation would not cease until the best part of the estate should be eaten up, may have been recklessly made; but it is undeniable that all the costs already incurred—very serious in amount—come out of the pockets of the unfortunate petitioners.

SINCE the above was written, we have received a copy of the *St. John Globe* of June 10th, which comments at length on the

*It was not claimed at all that the charges in question were improperly disallowed by the referee; indeed, the judge said, " . . . It appears by the evidence of some of these trustees and executors themselves that they have unnecessarily mixed up the business of the estate with their own in such a way as would render their conduct open to attack."

conduct of the judge referred to in the above remarks. We now give his name (Mr. Justice Palmer, Judge in Equity, residing in St. John, N.B.), as we have already given the name of the precious specimen of a trustee, Mr. Grant, of the same place. There is no reason why we should withhold their names, as their conduct is the subject of public comment in their own city. Probably the one will never be a trustee again, and the other is not likely to be a judge very long, if the statements which appear as to his conduct in the newspaper referred to are true. If these charges are not true (which, for the credit of the Canadian Bench, we would be glad to be assured of), the editor of the *St. John Globe* has laid himself open to a criminal information for libel, which, of course, the judge is now bound to prefer against him.

The charges made are those of gross, unblushing nepotism, much worse than those which drove Lord Westbury from the woolsack; also that, to ensure success in this judge's court, it is necessary to employ his son as counsel; and the further charge is that the judge received a large sum of money under circumstances which seemed to require an explanation, which we trust can be given.

It is stated that an effort was made recently by umber of prominent lawyers to have a representation made to the Government in regard to certain courses pursued by this judge in discharging his judicial duties; but this fell through, it is said, because some of the movers feared to take any action which might bring upon them the wrath of the judge. We confess that if this be so, we have very little sympathy with the profession in that Province. However, we presume the matter must by this time have reached the ears of the Minister of Justice, and it is his duty to take such action in the premises as may be necessary either to vindicate the character of the judge, or to remove him from the Bench.

CURRENT ENGLISH DECISIONS.

The Law Reports for June comprise (1893) 1 Q.B., pp.373-521; (1893) P., pp. 57-85; (1893) 2 Ch., pp. 1-270; and (1893) A.C., pp. 125-206.

JUDGMENT CREDITOR—RECEIVERSHIP ORDER—EQUITABLE EXECUTION—PRACTICE—RECEIVER GRANTED EX PARTE.

In re Potts, (1893) 1 Q.B. 648, it became necessary to determine whether a judgment creditor who had obtained a receivership order as against a certain residuary estate to which the judgment debtor was entitled thereby acquired the position of a "secured creditor," as against other creditors, upon the subsequent bankruptcy of the debtor. Williams, J., held that he did not, and says at p. 653: "The property which is in the hands of the receiver is held by the court *in medio* until the rights of the plaintiff have been determined; but until that has been done, and the proceeds of the sale of the property by the receiver have been handed over by him to the person who obtained the order, in my judgment, he obtained no property in, no lien, and no charge whatever on that which is the subject-matter of the order"; and, as under the Bankruptcy Act, a "secured creditor" is one entitled to a "mortgage, charge, or lien on the property of the debtor," it followed that the judgment creditor was not a "secured creditor." This view was affirmed by the Court of Appeal (Lord Esher, M.R., and Lindley and Bowen, L.JJ.). Both Lindley and Bowen L.JJ., express the opinion that the granting of the receivership order on the *ex parte* application of the judgment creditor was irregular.

PRACTICE—PARTIES—ACTION FOR DAMAGE TO REVERSION—TENANT IN COMMON, RIGHT OF, TO SUE FOR DAMAGE TO REVERSION WITHOUT JOINING HIS CO-TENANTS—COVENANT RUNNING WITH LAND—SEVERANCE OF REVERSION.

Roberts v. *Holland*, (1893) 1 Q.B. 665, is a decision of Wills and Cave, JJ., on an interesting question of pleading. The action was brought by one of several tenants in common entitled to the reversion in certain demised premises to recover damages (1) for injury to the reversion, and (2) for breach of a covenant running with the land. The lease in question was made by one Ellis Humphreys, who, by his will, had devised the reversion to his six daughters, one of whom had assigned her interest to the

plaintiff, and the question was whether the plaintiff was entitled to sue alone, or whether it was incumbent on him to join as plaintiffs his co-tenants in common. This question the court answered in the affirmative. By the severance of the reversion, the court held that the covenants running with the land became several contracts with each of the tenants in common in whom the reversion had become vested.

PHARMACY ACT, 1868 (31 & 32 VICT., C. 121)—(R.S.O., C. 151, SS. 24, 27)—MEDICINE CONTAINING A SCHEDULED POISON—"PATENT MEDICINE," MEANING OF.

Pharmaceutical Society v. *Piper*, (1893) 1 Q.B. 686, was an action for selling an article containing a scheduled poison in breach of the Pharmacy Act (see R.S.O., c. 151, ss. 24, 27). The defendants were grocers, and had sold a bottle of proprietary medicine called Chlorodyne in the ordinary course of their business. The medicine contained a certain quantity of morphine, the active principle of opium, one of the poisons mentioned in the schedule to the Act, and it was held by Lawrance and Collins, JJ., that the sale was a breach of the Act, and subjected the defendants to the penalty thereby imposed. The court also decided that a "patent medicine" is one that is the subject of letters patent, and does not include merely proprietary medicines, which are not the subject of letters patent.

CONSPIRACY—MALICIOUSLY PROCURING BREACH OF CONTRACT, ACTION FOR—CONSPIRACY TO INJURE PERSON BY PREVENTING OTHERS DEALING WITH HIM—TRADES' UNION.

Temperton v. *Russell*, (1893) 1 Q.B. 715, which in a previous stage is noted *ante* p. 284, on a question of parties, is an important deliverance of the Court of Appeal (Lord Esher, M.R., and Smith and Lopes, L.JJ.) on the legal aspect of attempts on the part of trades' unions to coerce employers of labour to accede to their demands. The defendants were members of a joint committee of three trades' unions connected with the building trade. A firm of builders having refused to obey certain rules these unions had laid down, the defendants sought to compel them to do so by preventing the supply of building materials to them. The plaintiff had been accustomed to supply the firm in question with materials, and he was requested by the defendants to cease supplying them, which he refused to do. Thereupon, with the object of coercing the plaintiff to accede to their demand,

the defendants induced persons who, to the knowledge of the defendants, had entered into contracts to supply the plaintiff with materials to break their contracts, and not to enter into further contracts with the plaintiff, by threatening that the workmen would be withdrawn from their employ if they refused. In consequence of the breach of contract, and the refusal of such persons to enter into further contracts with him, the plaintiff sustained damage. The action was tried by Collins, J., with a jury, who found a verdict for the plaintiff for £50 damages for the breach of contract, and £200 for damages sustained by the refusal of persons to make contracts with the plaintiff. The Court of Appeal were unanimously of opinion that the acts of the defendants rendered them liable in damages on both heads of complaint, and that the plaintiff was entitled to judgment for the damages awarded. This case is an instance of the kind of tyranny which, unrestrained by law, workmen are prone to exercise over their employers; and it is a fortunate thing that both the tyranny of employers and employed is, to some extent, amenable to law. It was argued, on the part of the defendants, that the action for inducing persons to break their contracts was confined to cases of master and servant, or cases where personal service is contracted for; but it was held that there was no such limitation, and that an action will lie for maliciously causing any lawful contract to be broken: and the maliciously conspiring to prevent persons trading with another to that other's prejudice is equally actionable.

LANDLORD AND TENANT—OVERHOLDING TENANT—PRESUMPTION OF TENANCY FROM YEAR TO YEAR.

In *Dougal* v. *McCarthy*, (1893) 1 Q.B. 736, the Court of Appeal (Lord Esher, M.R., and Lopes and Smith, L.JJ.) overruled the judgment of Hawkins, J., at the trial, The action was for rent. The plaintiff had let the demised premises to the defendants for a year certain, at a rent payable quarterly in advance. The term expired on the 1st February, 1892, but the defendants continued in possession. On the 25th February the plaintiff wrote to the defendants demanding payment of a quarter's rent. The defendants did not answer this letter, but remained in possession, and on 26th March they wrote to the plaintiff to the effect that they intended discontinuing possession, and they gave him notice that

they would not continue the same beyond the period required under their agreement, but that they would be glad if he could take up the premises on the 14th May, or even earlier. There was no claim for use and occupation, but the defendants were willing to pay for use and occupation up to 14th May. Hawkins, J, was of opinion that there was no evidence of a tenancy from year to year after the 1st February, 1892. He, therefore, dismissed the action; but the Court of Appeal were unanimous that the evidence established that the defendants continued in possession with the consent of the plaintiff as his tenant, and that the presumption was that they did so on the terms of the expired lease, so far as applicable, as tenants from year to year, in accordance with the rule laid down by Lord Mansfield in *Right* v. *Darby*, 1 T.R. 159.

STATUTE OF FRAUDS—CONTRACTOR INTERESTED IN LAND—DEBENTURES—COMPANY.

Driver v. *Broad*, (1893) 1 Q.B. 744, we have already noticed when before Mathew, J. (see *ante* p. 354). It will suffice to say that his decision that the contract in question for the sale of the debentures of a company, which were a charge upon real property held by the company, was a contract for an interest in land, and, therefore, invalid under the Statute of Frauds for not being in writing, was affirmed by the Court of Appeal (Lord Esher, M.R., and Lopes and Kay, L. JJ.).

INSURANCE—ACCIDENT—"INJURY CAUSED BY EXTERNAL MEANS."

Hamlyn v. *The Crown Insurance Company*, (1893) 1 Q.B. 750, was an action on an accident policy, under which the plaintiff was insured against "any bodily injury caused by violent, accidental, external and visible means." The policy, however, excepted injuries arising from "natural disease or weakness, or exhaustion consequent upon disease." The injury on which the action was based was occasioned by the plaintiff stooping to pick up a marble, in doing which the plaintiff dislocated the cartilage of one of his knees. Before the accident the plaintiff had not suffered from any weakness of the knee or knee-joint. The defendants resisted the action on the ground that the injury was not due to any external cause, and was, therefore, not within the policy; but the Court of Appeal (Lord Esher, M.R., and Lopes and

Smith, L.JJ.) were agreed that the injury was caused "by violent, accidental, external, and visible means" within the meaning of the policy, and that the plaintiff was entitled to recover.

PRACTICE—FOREIGNER, DEFENDANT—SERVICE OUT OF JURISDICTION—APPEARANCE UNDER PROTEST.

In Firth v. *De Las Rivas*, (1893) 1 Q.B. 768, the defendant was a foreigner. He had been served abroad with notice of the writ of summons, which he now moved to set aside. It was argued that the defendant had waived his right to object to the jurisdiction by reason of having entered an appearance in the action. The appearance contained on the margin the following memorandum: "N.B.—This appearance is entered under protest in order to preserve the defendant's right to object to the jurisdiction." It was contended that there was no power to enter an appearance under protest; but Wills and Charles, JJ., held that whether the appearance was bad or not the defendant was entitled, notwithstanding, to object to the jurisdiction. If it were bad, there was no appearance at all; and if it were good, it expressly saved in the defendant's right to take the objection, and fell within the decision of *Mayer* v. *Claretie*, 7 Times L.R. 40.

PRACTICE—PARTIES—MISJOINDER OF PLAINTIFFS—SEVERAL PLAINTIFFS SUING IN RESPECT OF DIFFERENT CAUSES OF ACTION—"SLANDER"—ORDER XVI., R. 1 (ONT. RULE 300).

In *Sandes* v. *Wildsmith*, (1893) 1 Q.B. 771, an attempt was made to join two separate actions for slander in one. The action was brought by two plaintiffs (mother and daughter), each of whom claimed damages in respect of different slanders by the defendants, some of which were alleged to have been spoken of the mother only, and some of the daughter only. Grantham, J., set aside the writ and statement of claim as being an abuse of the process of the court; but the Divisional Court (Wills and Laurance, JJ.), although of opinion that the two causes of action were improperly joined, yet thought the proper order to make was to require the plaintiffs to elect to which cause of action the present action should be confined, and to amend the proceedings by striking out all parts thereof which referred to the claim of the other plaintiff. Wills, J., who delivered the judgment of the court, without deciding what is really the proper construction to be put on Order xvi., r. 1 (Ont. Rule 300), was clear that the

court had a discretion as to allowing different causes of action by several plaintiffs to be joined in the same action, and that the test whether two or more distinct causes of action should be allowed to be joined was whether, in case separate actions should be brought, the court would order the actions to be consolidated. *Booth* v. *Briscoe*, 2 Q.B. 496, was distinguished because there the action was brought by eight co-trustees for a single libel reflectin on them all.

PRACTICE—PERSONS HAVING THE SAME INTEREST IN ONE CAUSE—ORDER AUTHORIZING DEFENDANTS TO DEFEND ON BEHALF OF OTHER PERSONS INTERESTED WHO ARE NOT PARTIES—POWER TO MAKE OVER AGAINST WILL OF DEFENDANT—ORDER XVI., R. 9 (ONT. RULE 315).

Wood v. *McCarthy*, (1893) 1 Q.B. 775, is a decision of a Divisional Court (Wills and Laurance, JJ.), affirming an order of Bruce, J., authorizing the defendants in the action to defend on behalf of all the members of a benefit society of which the defendants were respectively president and secretary. The action was brought by the plaintiff as a member of the society to enforce his rights under one of the rules of the society, which provided that in case a member became permanently disabled by accident a levy should be made on all the members of the society for his benefit. The plaintiff applied for an order authorizing the defendants to defend on behalf of all the members of the league. The defendants resisted the action, relying on the late case of *Temperton* v. *Russell*, (1893) 1 Q.B. 435, (see *ante* p. 284); but it was held by the court that this was a case in which the plaintiff sought to enforce a beneficial proprietary right in which the persons sought to be represented were interested, and that the case was therefore within the class of cases in which Lindley, L.J., in *Temperton* v. *Russell*, said that the order could properly be made under Ord. xvi., r. 9 (Ont. Rule 315).

PARLIAMENTARY ELECTION—ELECTION PETITION—AMENDMENT—JUDGE NOT ON ROTA—JURISDICTION.

In *Shaw* v. *Reckitt*, (1893) 1 Q.B. 779, a Divisional Court (Hawkins and Cane, JJ.) set aside an *ex parte* order of Grantham, J., allowing an amendment of an election petition on the ground that the learned judge was not on the *rota* for the trial of election petitions, and had therefore no jurisdiction, and also because in any case such an order ought to be made *ex parte*. We are

inclined to think that this case would be held to apply to Ontario election petitions, although the wording of the Ontario Controverted Elections Act (R.S.O., c. 10) is not identical with that of the English Act (46 & 47 Vict., c. 51, s. 56); but as regards Dominion election petitions, we doubt whether it would be deemed in point.

None of the cases in the Probate Division call for any notice here.

SMALLPOX HOSPITAL.—ERECTION OF SMALLPOX HOSPITAL BY ONE MUNICIPALITY WITHIN THE LIMITS OF ANOTHER—NOXIOUS BUSINESS—NUISANCE—INJUNCTION.

Withington v. *Manchester*, (1893) 2 Ch. 19, was an action brought by one municipal body to restrain the defendants, another municipal body, from erecting a smallpox hospital on land of the defendants situate within the plaintiffs' district. The action was based on the proposition that a smallpox hospital was a noxious or offensive business within the meaning of the Public Health Act, 1875 (38 & 39 Vict., c. 55); but the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) agreed with Chitty, J., that the clause of the Act relied on, which enumerated the trades of blood-boiler, bone-boiler, fell-monger, soap-boiler, tallow-melter, or tripe-boiler, "or any other noxious or offensive trade, business, or manufacture," was to be construed as relating to other businesses *ejusdem generis* as those enumerated, and did not include hospitals for infectious diseases, which were specially dealt with by other clauses in the Act, which enabled municipal authorities to erect hospitals for the reception of the sick, and did not confine them to erecting such buildings within their own territorial limits.

In connection with this case, we may also refer to a subsequent case in this number, viz., *Attorney-General* v. *Manchester*, (1893) 2 Ch. 87, which was an action *quia timet*, brought by the Attorney-General on the relation of the same municipal body, and also of certain private owners of property in the neighbourhood where the defendants proposed to erect the hospital in question, to restrain them from so doing, on the ground that the proposed hospital would be a public nuisance; but this action also failed, Chitty, J., holding that a smallpox hospital was not *per se* a nuisance, and that the plaintiffs had failed to show that there was a probability that the danger apprehended by the plaintiff would,

in fact, ensue. We may observe that these cases establish that the English law on this subject differs from the law in Ontario as laid down in *Elizabethtown* v. *Brockville*, 10 O.R. 373, where the Chancellor held that one municipality in Ontario could not, under R.S.O., c. 205, 595, establish a smallpox hospital within the limits of any other municipality.

WILL—GIFT TO "RELIGIOUS SOCIETIES" WITHOUT SPECIFYING ANY PARTICULAR SOCIETIES—CHARITY—GENERAL CHARITABLE INTENT—COSTS.

In re White v. *White*, (1893) 2 Ch. 41, a testator had given his property "to the following religious societies, viz.: . . . to be divided in equal shares between them," but the particular objects were not named in the will. It was contended by the Attorney-General, on behalf of the Crown, that the will indicated a general charitable intent, and that although the particular objects were omitted, yet the court should direct a scheme in order to carry out the intention of the testator. Although Kekewich, J., admitted the principle invoked, he held it did not apply because, in his opinion, a gift to religious societies was not necessarily a charitable gift in the technical sense of the word, and he therefore held there was an intestacy; but the Court of Appeal (Lindley, Bowen, and Smith, L.JJ.) came to a different conclusion, holding that, although a particular "religious" purpose may be shown not to be a charitable purpose, as technically understood, yet that the authorities had established that a bequest to "religious" purposes was *prima facie* a bequest for "charitable" purposes. They, therefore, reversed the decision of Kekewich, J., and directed a scheme as to such part of the gift as consisted of pure personalty at the testator's death. The costs of all parties were ordered to be paid out of the estate.

MORTGAGE—REDEMPTION—TWO PARTIES—SUBSEQUENT INCUMBRANCERS—PRIORITY—MARSHALLING APPORTIONMENT OF INCUMBRANCES.

In *Flint* v. *Howard*, (1893) 2 Ch. 54, a somewhat intricate question is discussed concerning the right of redemption. The action was brought by the plaintiff to redeem. The charges on the mortgaged property stood as follows: (1) Mortgage to defendant Howard for £6000 on properties A. and B. The plaintiff was owner of property B., subject to Howard's mortgage. (2) A mortgage on property A., in favour of defendant Howard for £2500. (3) A mortgage on property A. for 1700 in

favour of one Minns. (4) A mortgage on property A. in favour of defendant Howard for £6500. It will thus be seen that Howard was the first mortgagee on both properties for £6000, and was also second and fourth mortgagee on property A. for £2500 and £6500. The plaintiff had been originally the holder of the second mortgage on property A. for £2500, and had assigned it to Howard in order to give him priority over it in respect of his fourth mortgage. The question was on what terms, under these circumstances, the plaintiff was entitled to redeem. As owner of property B. he claimed to be entitled to redeem the prior mortgage on that property, and as a necessary incident of his right of redemption of that property he was also entitled, on paying off the debt, to an assignment of all securities held by Howard therefor; but there came the question on what terms property A. would then be redeemable by Howard as subsequent mortgagee. Romer, J., solved the difficulty by declaring that on redemption of properties A. and B. by the plaintiff he would be entitled, as against the subsequent incumbrancers, to hold parcel A. subject to redemption on payment of a proportionate part of the first mortgage according to the value of property A. relative to that of property B. This the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) held to be correct. The fact that the plaintiff had been a subsequent incumbrancer on property A., and had assigned his incumbrance on that property to Howard with the intention of giving Howard priority on that property in respect of his fourth mortgage, was held not to deprive the plaintiff of his right of redemption as owner of property B.

LEASE—SURRENDER BY ACT AND OPERATION OF LAW—ORAL ASSENT OF LESSEE TO LEASE TO ANOTHER—CHANGE OF POSSESSION—STATUTE OF FRAUDS (29 CAR. 2, C. 3), S. 3—COVENANT FOR QUIET ENJOYMENT—INTERESSE TERMINI.

In *Wallis* v. *Hands*, (1893) 2 Ch. 75, Chitty, J., was called on to decide two questions of interest. The first was as to the effect of a new lease in possession made with the oral assent of the tenant in possession under a prior subsisting lease. It was contended that the oral assent to the new lease operated as a surrender in law of the prior lease; but it was held that inasmuch as it was not accompanied by any delivery up of possession to the new lessees it did not have that effect, and that such oral assent was insufficient to take the case out of the Statute of Frauds, s. 3.

The second point was whether a person having only an *interesse termini* could maintain an action for breach of a covenant for quiet enjoyment, and Chitty, J., held that he could not, and that his remedy is by action against his lessor for not putting him in possession. He also held that a person having only an *interesse termini* cannot bring an action of trespass in respect of the demised premises.

COMPANY—DEBENTURE-HOLDERS—ADMINISTRATION OF DEBENTURE TRUSTS.

Collingham v. *Sloper*, (1893) 2 Ch. 96, was a suit for the administration of the unspent portion of the proceeds of the bonds of a foreign railway company in the hands of English trustees. The bonds were a charge on the railway. Owing to litigation and consequent delay in realizing the bonds, it had become impossible with the present and prospective resources of the company to carry out the undertaking. A substantial minority of the bond-holders claimed that the funds in question should, under the circumstances, be repaid to the bond-holders *pro rata*. And North, J., held that they were entitled to this, subject to the funds being first applied in saving and realizing the property charged.

Notes and Selections.

WE are aware that "accidents will happen in the best regulated of families," and so we presume it was an accident that caused *The Central Law Journal* to copy something from our pages without acknowledgment. Perhaps we may have unwittingly transgressed ourselves, and so are glad to forgive our excellent contemporary.

CROWNER'S QUEST.—The English *Law Journal*, in referring to amusing verdicts of juries, remarks upon the beautiful confusion of thought represented by the verdict of a coroner's jury at Driffield. It appears that the deceased died in a workhouse from pneumonia, but before his death he stated that he had been roughly handled by the union laborers at Hull. The jury came the conclusion that he died from pneumonia, but "that his death was accelerated by the rough treatment *he was alleged* to have received at Hull."

EDITOR AND CONTRIBUTOR.—Within a few days after his transfer from the Shoreditch to the Westminster County Court, His Honour Judge Lumley Smith has had to deal with three cases of not a little public interest and importance. In the first, "the custom of the music hall" came in question; in the second, the learned judge properly declined to add to the burdens under which ratepayers are at present groaning by sanctioning a practice of making committal orders "by consent"; while in the third case —*Macdonald* v. *The National Review*—which we reported last week, and on which we now propose briefly to comment, His Honour pronounced a decision which, if upheld on appeal, will materially, and as we think injuriously, affect the relations of editors and their contributors. The facts were these. The plaintiff, Mr. W. A. Macdonald, a Canadian journalist, sought to recover from the proprietors of *The National Review* the price of an article which he had written and submitted to the editor's consideration, *ex proprio motu*, and which had been set up in type, sent to him for correction, and returned revised. The article was not published within what Mr. Macdonald deemed "a reasonable time"; he complained of its non-appearance, and got back the manuscript, with an implied refusal to insert it, by return of post. The plaintiff contended that by putting his manuscript into type and sending him a proof for revision the editor had in law "accepted" his article, and was bound to publish or pay for it within a reasonable time. The defendants, on the other hand, maintained, and adduced what appears to us to have been strong evidence to prove, that this position was, according to journalistic custom, untenable. But His Honour Judge Lumley Smith agreed with the plaintiff, and held that to print a manuscript and (presumably) send the author a proof for correction is to exercise over it the *dominium* which constitutes an acceptance in law. We are far from satisfied that the judgement in this case is sound. The question at issue was one of custom, and His Honour's decision seems to us to have been against the weight of the evidence. But if the learned judge is right, and if an article, ultroneously written and sent to a journal, is accepted whenever the editor puts it in type, and must be published or paid for within what a court of law not endowed with journalistic instincts or guided by journalistic experience considers a reasonable time, we can only say that the difficulty which the free-lance or "outside" contri-

butor at present finds in penetrating the charmed circle of journalistic success well be tenfold increased. It is stated that action in the case of *Macdonald* v. *The National Review* was taken at the instance of the Society of Authors. We doubt whether that excellent body has gained anything better than a Pyrrhic victory, in which the conquerors will ultimately lose more than the vanquished defendant.—*Law Journal.*

THE LATE JUDGE EDDIS.—We make some extracts from an obituary notice in the English *Law Journal* of the above gentleman, who was a brother of Mr. H. W. Eddis, F.S.A., a well-known accountant in this city. The writer says: "Judge Eddis, who, on the 23rd ult., fell a victim to a sudden attack of pneumonia, was one of the oldest County Court judges in the country. He died at the ripe age of seventy-six, after being actively connected with the law for forty-eight years. His death was singularly sudden and sad. He arrived at Stoke Bishop Vicarage, the residence of his brother-in-law, the Rev. David Wright, apparently in excellent health for so old a man, and with every prospect of spending the Whitsun vacation in a pleasant fashion. Suddenly, however, pneumonia set in, and after three days' illness he passed away. His loss has been keenly felt, not only by a large circle of private friends, but by members of the profession who practised before him. He was courtesy personified on the Bench. Not once during the ten years he presided at the Clerkenwell County Court was he known to wound a single practitioner with a sneer. He was courteous and chatty; but these qualities never descended into what Tennyson has called 'oily courtesy and garrulous ease.' There was something almost fatherly in his treatment of forensic beginners, so attentively did he listen to their speeches, and so tenderly did he treat their arguments. His patience appeared to be inexhaustible. Even the most loquacious suitor in person found it very hard to find its limits. He would listen to his long-drawn story with a judicial calm worthy of higher things. He was called to the Bar at Lincoln's Inn in 1845. Devoting himself to Chancery work, he acquired a considerable practice as an equity draftsman and conveyancer, and latterly enjoyed one of the best practices in Lincoln's Inn. He was distinguished as a stuff-gownsman for

his readiness to raise every point which the ingenuity of an equity lawyer could hit upon. While he was being led this power frequently proved valuable, but when he became a Q.C. it caused his addresses to be too voluminous. His decisions were seldom reversed on appeal. A member of the Standing Committee for Framing the Rules of the County Court, Arthur Shelley Eddis was highly respected by his colleagues, many of whom have gracefully expressed the sorrow with which they received the intelligence of his sudden death."

HOMICIDE BY NECESSITY.—By the judgment of the Supreme Court of Alabama in the case of *Arp* v. *The State*—of which we publish an abridged report elsewhere—the curious defence of "homicide by necessity," already banished from England by the decision of the Court of Queen's Bench in the memorable prosecution of Dudley and Stephens for the murder of the boy Parker on the high seas under pressure of starvation, is now outlawed also in one of the leading American States. It may be hoped that this decision will be followed in the other States, where, as in Ohio, some uncertainty on the point still seems to linger. There is, of course, a form of homicide by necessity which every civilized system of jurisprudence ought to recognize—the right of every man to repel by violence, carried, if need be, up to the point of killing, any illegal violence practised upon himself. But neither in the common law nor in the principles on which the common law is founded will any sanction be discovered for the doctrine that any man may excuse himself under the plea of necessity or compulsion for taking an innocent life. We speak the more strongly on this subject because it is unfortunately at the door of England and of one of England's greatest lawyers that the responsibility for the theory which the Supreme Court of Alabama has just brushed aside must lie. "If divers," wrote Lord Bacon in his commentary on the maxim, *Necessitas inducit privilegium quoad jura privata*, "be in danger of drowning by the casting away of some boat or barge and one of them get to some plank or on the boat's side to keep himself above water, and another, to save his own life, thrust him from it, whereby he is drowned, this is neither self-defence nor misadventure, but justi-

fiable." Doubtless the same thought may be, and, indeed, is found in other writers. But it is impossible to study the literature of "homicide by necessity" without seeing that Lord Bacon's *dictum* has been its chief inspiration. We rejoice that American lawyers, following the example of their English brethren, are now repudiating its authority. It is supported by no decisions; it is expressly contradicted by Sir Matthew Hale; it is discredited by the testimony of a cloud of witnesses who, for the sake of others, have courted death with greater eagerness than ever Epicurean courted pleasure; and its recognition would lead to an absolute divorce of morality from law. In the eloquent language of Lord Coleridge, in the case of Dudley and Stephens: "Who is to be the judge of this sort of necessity? By what measure is the comparative value of lives to be measured? Is it to be strength, or intellect, or what? It is plain that the principle contended for leaves to him who is to profit by it to determine the necessity which will justify him in deliberately taking another's life to save his own." The only necessity which a brave man would recognize, or whose existence the law should for a moment admit, in such circumstances as Arp alleged to have beset him is that immortalized by the noble Roman, to whom Lord Bacon himself referred: "*Necesse est ut eam, non ut vivam.*"—*Law Journal.*

THE LONDON CHAMBER OF ARBITRATION.—The chairman of the Joint Committee of the City Corporation and the Chamber of Commerce, which guides [illegible] policy, and watches, with paternal anxiety, over the proceedings of the London Chamber of Arbitration, has this week, in a long and able letter to the *Times*, undertaken to discharge the difficult duty of chronicling the results of the pretentious juridical experiment which was inaugurated some six months ago at the Guildhall. The material allegations in this interesting manifesto are as follow. There has not, it is true, been "a rush of cases," clamouring for determination by the arbitrators of the London Chamber; so far, one reference only from the High Court has been obtained, and in one instance, where an award was drawn up without the professional aid of the registrar, it "was referred back owing to a legal technicality." But the chairman of the Joint Committee is well

satisfied that the infant English Tribunal of Commerce is growing in stature and in favour both with the public and with the legal profession. "There has been a sufficient number of cases," he says, "to test the organization of the chamber, and those disputants who have had recourse to it speak well of the simplicity, the rapidity, and the efficiency of its machinery." Again, although the High Court has as yet referred only a single question to its arbitrament, "the expedition with which this case (involving much technical knowledge) was heard and decided elicited expressions of satisfaction from the court"; and, doubtless, "this will lead to the court sending down similar cases involving technical or special knowledge." The "legal technicality" that invalidated or retarded the operative effect of an award was, of course, a regrettable incident, but "the arrangements of the chamber are designed to prevent such occurrences." Again, "a rush of cases" to the Guildhall was not expected, "because the majority of existing contracts specify some other form of arbitration"; but the chairman is informed that solicitors, public companies, and others are now employing a clause in agreements referring disputes to the chamber. On these grounds, and in virtue of the economy, the rapidity, and the efficiency with which the chamber has exercised its "prentice hand" where it has had the opportunity of doing so, the chairman of the Joint Committee contends that the usefulness of the chamber has been established, and that it has accomplished what was promised, viz., the speedy, satisfactory, and inexpensive settlement of disputes. We have only a few observations to offer on this remarkable letter. It is the latest, and, in our opinion, the worst example of the tendency which public and quasi-public departments are displaying to convert what ought to be a report into an *apologia*. The same mischievous phenomenon has recently manifested itself in the Return made by the Director of Public Prosecutions, and, to some extent, by the Inspector-General in Companies' Liquidation. But Sir A. K. Stevenson and Mr. John Smith are merely controversial. The chairman of the Joint Committee is not only controversial, but vague. It would have been better to let the Chamber of Arbitration go on working "silently" and "unobtrusively" till definite statistics as to its success or failure could be furnished to the public. That arbitration will play an important part in the future as it has played in

the past juridical life of England we have no doubt, but we remain unconvinced that the jurisdiction of the law courts over the general and even mercantile litigious business of this country will ever be ousted by an extra-judicial Tribunal of Commerce, and we are satisfied that, if it were, the results would be as unsatisfactory as those which the French Tribunaux de Commerce have attained whenever they have had to dispose of cases of real commercial magnitude.—*Law Journal.*

Reviews and Notices of Books.

History of Elections in the American Colonies. By Cortlandt F. Bishop, Ph.D., Columbia College, New York, 1893.

This is part of the series of studies in History, Economics, and Public Law of Columbia College, edited by the University Faculty of Political Science. It is of much interest to the student of history, especially, of course, to those desiring to follow the development of municipal government in those great colonies of Great Britain, now known as the United States of America.

The Criminal Code of the Dominion of Canada, as amended in 1893, with Commentaries, Annotations, Precedents of Indictments, etc. By Henri Elzear Taschereau, L.L.D., one of the Judges of the Supreme Court of Canada. Toronto: The Carswell Co. (Ltd.), Law Publishers, 1893.

This work has been received, and will be noticed hereafter.

Correspondence.

GRADED SUCCESSION DUTIES.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—In the volume of the Statutes of Manitoba for 1893 there will be found in chapter 31 an "Act to provide for the payment of succession duties in certain cases." No duties are chargeable at all if the value of the estate passing, after payment of all debts and expenses of administration, does not exceed $4,000, nor does the Act apply to property passing "to or for the

use of the father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law of the deceased, or one or more of such persons, when the value of the property so passing does not exceed $25,000," and there is the further provision for the benefit of the near relatives above enumerated that a legacy or benefit going to any one of them not exceeding $10,000 is exempt from any duty under the Act.

In other cases the scale of duties is as follows:

Up to $25,000			1	per cent.
25,000,	and under	$ 50,000	2	"
50,000	" "	100,000	3	"
100,000	" "	250,000	4	"
250,000	" "	500,000	5	"
500,000	" "	600,000	6	"
600,000	" "	700,000	7	"
700,000	" "	800,000	8	"
800,000	" "	1,000,000	9	"
1,000,000 or more			10	"

Owing to the peculiar wording of section 4 of the Act, if the value of the estate is exactly $25,000, it is not certain whether 1 or 2 per cent. is to be paid, as the language is: "Upon the value up to $25,000 a duty of $1 on every $100; in cases where said value reaches $25,000, but does not reach $50,000, a duty of $2 on every $100 of its value." Moreover, if one estate nets $25,000 the duty is only $250, whilst if another estate nets, say, $25,050, the duty would be $501; so that in the first case the heirs would receive $24,750 clear, and in the other only $24,549, or less by about $200. This is an anomaly which holds good through all the table, and ought to be remedied by amendment next session.

I would suggest the following variation of the table of duties:

Up to	$25,000	1	per cent.
On the next	25,000 or less	2	"
"	50,000 "	3	"
"	150,000 "	4	"
"	250,000 "	5	"
"	100,000 "	6	"
"	100,000 "	7	"
"	100,000 "	8	"
"	200,000 "	9	"
On all above	1,0000,000	10	"

As there are no millionaires in this Province yet, it was not

thought necessary to continue this table at the present time; but, for the benefit of statesmen, and especially finance ministers in the Dominion and throughout the civilized world, allow me to continue the grading so auspiciously begun.

Stopping in the above table at $1,000,000, let it proceed somewhat thus:

On the next	$2,000,000	or less	15 per cent.
"	5,000,000	"	20 "
"	12,000,000	"	30 "
"	30,000,000	"	40 "
On all above	50,000,000		50 "

Here would be an easy way of raising a large national revenue, and the wonder is that governments at their wits' ends for means to meet their enormous expenditures have not availed themselves of it to a much greater extent than they have yet done. Graduated inheritance or succession taxes are imposed in many countries; but, so far as I know, ten per cent. is the highest rate anywhere charged. But why stop there? When an estate of $100,000,000, for example, descends, would not the half of it be enough to keep the sorrowing relatives beyond the reach of grinding poverty? Consider the many oppressive taxes imposed in England. They could all be done away with by the adoption of my suggestion, with benefit to the many, and injustice to none. Once admit the principle of progression in the rates, and it is only a question of expediency how far you should go. There is no confiscation about it. While a man lives his property is his own, and none of it would be taken from him. But when he dies, his wealth goes *in the manner prescribed by the state*, and that portion of it taken by the state for public purposes *is not taken from the heirs or devisees*, because it would never be theirs to take. Then I go further and say that there is no tax which the wit of man can devise that would be less felt or more easily collected. Such a tax would enable our government at Ottawa to go as far in the direction of free trade as should be considered advisable, or to adopt prohibition of the liquor traffic if they wished to do so, as the needed revenue would be easily made up by it. Of course, if the other Provinces follow the lead of Manitoba and Ontario, it might be difficult for the Dominion to impose the same tax, but the Provinces could raise enough revenue in this way to enable them to do without the Dominion subsidies now paid to them, thus settling once for all a very serious and constantly recurring difficulty, and relieving the Dominion of a very large annual expenditure.

GEORGE PATTERSON.

Winnipeg, June 15.

DIARY FOR JULY.

2. Sunday ..... *5th Sunday after Trinity.*
3. Monday..... Heir and Devisee sitt. Co. Ct. sitt. for motions and Surr. Ct. sitts, except in York.
7. Friday..... Col. Simcoe, Lieut.-Gov. of Upper Canada, 1792.
9. Sunday..... *6th Sunday after Trinity.*
13. Thursday.... Sir John B. Robinson, 7th C.J. of Q.B., 1829.
15. Saturday.... Manitoba entered Confederation, 1870.
16. Sunday..... *7th Sunday after Trinity.*
19. Wednesday.. Quebec capitulates to the British, 1629.
20. Thursday.... British Columbia entered Confederation, 1871.
22. Saturday.... W. H. Draper, 9th C.J. of Q.B., 1863. W. B. Richards, 3rd J. of C.P., 1863.
23. Sunday..... *8th Sunday after Trinity.* Upper and Lower Canada united, 1840.
25. Tuesday..... St. James. Canada discovered by Cartier, 1534.
29. Saturday.... Wm. Osgoode, 1st C.J. of Q.B., 1792.
30. Sunday..... *9th Sunday after Trinity.*

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

[June 21.

BROWN *v.* MOYER.

Defamation—Libel—Justification—Fair comment—Pleading—Evidence.

Under a defence of "fair comment" in a libel action, evidence of the existence of a certain state of facts on which it is alleged the comment was fairly made is admissible, but not evidence of the truth of the statement complained of as a libel.

Wills v. Carman, 17 O.R. 225, discussed.

Judgment of the Chancery Division, 23 O.R. 222, reversed.

John King, Q.C., for the appellant.

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

[June 21.

WEEGAR *v.* GRAND TRUNK R.W. Co.

Railways—Coupling cars—Superior officer—Workmen's Compensation for Injuries Act.

This was an appeal by the defendants from the judgment of the Common Pleas Division, reported 23 O.R., and was argued before HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A., on the 2nd of June, 1893.

McCarthy, Q.C., for the appellants.

W. R. Smyth for the respondent.

June 21st, 1893. The appeal was dismissed with costs; BURTON, J.A., dissenting on the ground that the plaintiff was not acting under Garland's orders.

[June 21.

REGINA *v.* POTTER.

Intoxicating liquors—Refusal to admit officer—Liability of licensee for offence of servant—R.S.O., c. 194, ss. 112, 130.

Held, per HAGARTY, C.J.O., and MACLENNAN, J.A. : Under section 112 of the Liquor License Act, R.S.O., c. 194, the licensed hotel-keeper is personally responsible for the refusal of his servant to admit an officer claiming the right of search under section 130.

Per BURTON and OSLER, JJ.A. : Section 112 does not apply to an offence of that kind, but is limited to offences connected with sale, barter, and traffic.

In the result, the judgment of the County Court of Frontenac quashing the conviction was upheld.

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

McIntyre, Q.C., for the respondent.

[June 21.

DUNSFORD *v.* MICHIGAN CENTRAL R.W. CO.

Railways—Fences—Crossings—Gates—51 Vict., c. 29, ss. 194 to 199.

It is the duty of the railway company to see that gates at farm crossings have proper fastenings, and the knowledge of the owner of the farm that the fastenings are insufficient and his failure to notify the company of that fact will not prevent him from recovering damages from the company if his cattle stray from his farm owing to the insufficiency of the gate fastenings and are killed or injured.

Judgment of the County Court of Elgin reversed.

W. J. Tremeear and *J. A. Robinson* for the appellant.

D. W. Saunders for the respondent.

[June 21.

PURCELL *v.* BERGIN.

Will—Revocation—Revival by codicil—Void legacies—R.S.O., c. 109, s. 24.

The testator made a will on the 14th of May, 1890, disposing of all his estate, giving to certain charities specific proportions of the residue and naming three persons executors. In January, 1891, he made another will, revoking all previous wills and making a number of specific devises and bequests, but leaving a large residue undisposed of. In March, 1891, he executed a codicil, in which, after stating that "I will and devise that the following be taken as a codicil to my will of the 14th day of May, 1890," he revoked the appointment of one of the named executors "to be one of the executors of this my will," and in his stead appointed another person, "with all the powers and duties in my said will declared." The attestation clause stated that this was signed, etc., by the testator "as a codicil to his last will and testament."

Held, [HAGARTY, C.J.O., dissenting] affirming the judgment of ROBERTSON, J., that there was shown in this codicil an intention to revive the revoked will within the meaning of section 24 of the Wills Act, R.S.O., c. 109.

But *held*, further, reversing the judgment of ROBERTSON, J., that the will so revived took effect as the date of the codicil, and that for the purpose of deciding as to the validity of the charitable bequests it must be treated as if executed at that date.

Certain of the charitable bequests having therefore been held void, it was further held that those that were good were not increased, but that the amount of the void bequests was distributable as in case of intestacy.

Moss, Q.C., and *Hoyles*, Q.C., for the appellants.

S. H. Blake, Q.C., *Foy*, Q.C., *J. Macdonell*, Q.C., *Leitch*, Q.C., *Arnoldi*, Q.C., *F. A. Anglin*, *F. G. Minty*, and *F. R. Latchford*, for various respondents.

[June 21.

FORBES *v.* MICHIGAN CENTRAL R.W. CO.

Prohibition—Division Court—Delivery of judgment—R.S.O., c. 51, s. 144.

Prohibition will lie to restrain proceedings under a judgment delivered without the notice required by section 144 of the Division Courts Act, R.S.O., c. 51.

Judgment of the Queen's Bench Division, 22 O.R. 568, affirmed; MACLENNAN, J.A., dissenting.

M. Wilson, Q.C., for the appellant.

D. W. Saunders for the respondent.

[June 21.

IN RE OLIVER AND THE CITY OF OTTAWA.

Municipal corporations—By-law—Estimates—Debt—R.S.O., c. 184, ss. 344, 357, 359.

A municipal corporation has no power without a by-law assented to by the electors to enter into contracts involving expenditure not payable out of the ordinary rates of the current financial year, and resolutions for the execution of contracts for the building of a bridge, payment for which was to be made partly in the current financial year and partly in the next, were quashed as being a contravention of sections 344, 357, and 359 of the Municipal Act, R.S.O., c. 184.

Judgment of ROSE, J., affirmed.

Aylesworth, Q.C., for the appellants.

R. G. Code for the respondent.

[June 21.

FRANK *v.* SUN LIFE ASSURANCE CO.

Insurance — Life Insurance — Premium notes — Non-payment — Forfeiture — Conditions.

The assured gave to the company, to cover the first annual premium payable under a policy of assurance containing no condition as to forfeiture for non-payment of premiums, two instruments in the form of promissory notes payable at 90 days and 180 days from the date of the policy, each containing a provision that if payment were not made at maturity the policy should be void. The first note was not paid at maturity, and while it was unpaid and before maturity of the second note the assured died.

Held, HAGARTY, C.J.O., dissenting, that without any election or declaration of forfeiture on the part of the company the contract came to an end upon non-payment of the first note, and was not kept alive by the currency of the other note.

McGeachie v. *North American Life Assurance Co.*, 20 A.R. 187, and *Manufacturers' Life Insurance Co.* v. *Gordon*, 20 A.R. 309, applied.

Judgment of STREET, J., reversed.

Aylesworth, Q.C., and *E. F. Brown* for the appellants.

Brewster for the respondent.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [June 10.

POLL *v.* HEWITT.

Master and servant—Accident—Negligence—Defect in machine—Volenti non fit injuria.

In an action by a servant against a master to recover damages for injuries sustained by the plaintiff owing to an accident which occurred by reason of a defect in the machine which he was working, it appeared that the plaintiff knew of the defect and of the likelihood of an accident, and that he worked and continued to work the machine without help from any other person, and without any complaint.

Held, that the plaintiff was *volens*, and could not recover at common law.

McCarthy, Q.C., for the plaintiff.

A. S. Ball for the defendant.

Chancery Division.

Div'l Court.] [June 28.

SOUTHWICK *v.* HARE.

Contempt of court—Motion for attachment—Court or Chambers.

Decision of MEREDITH, J., *ante* p. 310, affirmed on appeal.

Although it cannot be said that a Judge in Chambers would in no circumstances have jurisdiction to make an order for attachment in such a case, the proper practice is to move in court.

R. B. Beaumont for the plaintiff.

Masten for McGuire.

Div'l Court.] [May 10.

THOMPSON *v.* FOWLER.

Contract of hiring of tug—Terms of—No demise.

J.F. hired a tug from R.T. by a contract in these words: "I agree to charter tug J.K.W. (R.T., owner) to tow two barges from B. to D., for which I agree to pay . . . owner, to supply engineer and captain. (Sd.) J.F."

"I hereby agree to the above. (Sd.) R.T., Owner."

Held, (reversing FALCONBRIDGE, J.) not a demise of the tug, but a contract of hiring.

F. R. Latchford for the appeal.

Stuart Henderson, contra.

FERGUSON, J.] [June 1.

IN RE ALGER AND THE SARNIA OIL COMPANY.

Vendor and purchaser—Security for damages caused by unsuccessful appeal—Items of—Who liable for.

In winding-up proceedings in which A. had been declared the purchaser of the property (an oil refinery) by the report of a referee, leave to appeal to the Court of Appeal (an appeal to a judge having been dismissed) was granted to two unsuccessful tenderers upon condition of giving $2,500 security for any damages A., "as purchaser of the property," might sustain if the appeal failed. The appeal having failed, the damages were found by a referee as (1) cost of caring for the property; (2) interest on the purchase money; (3) taxes; and (4) deterioration.

Held, on an appeal from this report, that until a purchaser gets possession the care of the property, the taxes, and the deterioration should be borne by the vendor, and that as it was not shown that A. had paid his purchase money or set it apart he was not entitled to interest on it, and consequently that none of the items of damage found by the referee could be recovered by A. under the security given, as he was not damnified in those particulars.

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

E. R. Cameron, contra.

Div'l Court.] [Feb. 27, June 7.

JOHNSTON *v.* BURNS.

Assignments and preferences—Sale of debts—Action by purchaser—Set-off of barred claim—R.S.O., c. 124, s. 20, s-s. 5—S. 23.

This case, reported *ante* p. 160, was carried to the Divisional Court, and argued on Feb. 27, 1893, before BOYD, C., and FERGUSON, J.

J. M. Clark for the appeal.

Frank Denton, contra.

June 7, 1893. Judgments were given by both judges unanimously sustaining the decision of the trial judge.

Practice.

Q.B. Div'l Court.] [June 10.

CLARK *v.* CAMPBELL.

Evidence—Pending motion—Examination of party as witness on—Rule 578—Consequence of default—Contempt of court—Suspending order.

Under Rule 578, a party may require the attendance of the opposite party for examination as a witness upon a pending motion; and the consequence of default on the part of the party to be examined is to put him in contempt.

And where, upon a motion by the plaintiff to set aside or vary an order staying proceedings until he should give security for costs, he required the attendance of the defendant for examination as a witness, and the defendant attended, but refused to be examined, an order suspending the former order until he should submit to be examined was affirmed.

Kilmer for the plaintiff.

W. H. Blake for the defendant.

BOYD, C.] [June 27.

DOWIE *v.* PARTLO.

Venue—Change of—Injury—Expense—Convenience.

The place of trial of an action will not be changed unless the defendant shows that some serious injury and injustice to his case will arise by trying it where the plaintiff proposes to have it tried. The question of injury is one of degree, in which the elements of expense and convenience are to be considered.

And where the extra expense could not exceed $15, and the place proposed by the plaintiffs was not far from that proposed by the defendant, a motion to change the venue was refused.

R. A. Grant for the plaintiffs.

F. A. Anglin for the defendant.

Appointments to Office.

COUNTY ATTORNEY.

County of Essex.

Alfred Henry Clarke, of the City of Windsor, in the County of Essex, Esquire, Barrister-at-Law, to be Clerk of the Peace and County Crown Attorney in and for the said County of Essex, in the room and stead of Samuel Smith Macdonell, Esquire.

CORONERS

District of Rainy River.

Frank Joseph Ap John, of the Town of Rat Portage, in the District of Rainy River, Esquire, Barrister-at-Law, to be an Associate-Coroner within and for the said District of Rainy River.

District of Nipissing.

Archibald McMurchy, of the Town of North Bay, in the District of Nipissing, Esquire, M.D., to be an Associate-Coroner within and for the said District of Nipissing.

COMMISSIONERS FOR TAKING AFFIDAVITS.

County of London.

Arthur Edward Cubison, of 15 King street, Cheapside, London, England, Gentleman, Solicitor, to be a Commissioner for taking Affidavits within and for the County of London, and not elsewhere, for use in the courts of Ontario.

Province of Quebec.

The Honourable Felix Gabriel Marchand, of the City of Montreal, in the Province of Quebec, to be a Commissioner for taking Affidavits within and for the said Province of Quebec, and not elsewhere, for use in the courts of Ontario.

County of London (Eng.)

William Alfred Plunkett, of 60 St. Paul's Churchyard, London, England, Gentleman, Solicitor, to be a Commissioner for taking Affidavits within and for the County of London, and not elsewhere, for use in the courts of Ontario.

CORONERS.

County of Kent.

Thomas Callum Baker, of the Town of Chatham, in the County of Kent, Esquire, M.D., to be an Associate-Coroner within and for the said County of Kent, in the room and stead of Anderson Ruffin Abbott, Esquire, M.D., removed to another portion of the Province.

County of Lambton.

Albert Joseph Fisher, of the Village of Brigden, in the County of Lambton, Esquire, M.D., to be an Associate-Coroner within and for the said County of Lambton.

ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

Liability of sleeping car company for loss of baggage. *27 American Law Review*, Jan.-Feb.
The London (England) new Chamber of Arbitration. *Ib.*, March-April.
Liability of members of a *de facto* corporation. *Ib.*
The Sunday observance question. *Ib.*
Abatement of legacies where an estate shows a deficiency of assets. *Ib.*
Consolidation of competing companies. *Ib.*
Gift of bank deposit—*Donatio mortis causa*. *Central Law Journal*, April 28.
Fraudulent dealings with client's securities. *Irish Law Times*, April 8, 15.
Arbitrator acting from bias. *Justice of the Peace*, April 1.
Canals and sewers and their right to support. *Ib.*, April 8.
Servants divulging secrets. *Ib.*, April 15.
Loss by felony of servant. *Ib.*, April 22.
Railway passengers and their protection. *Ib.*, April 29.
Extras on building contracts. *Ib.*
Criminal neglect to provide food. *Ib.*, May 6.
Felony of carriers' servants. *Ib.*
Covenants restraining trade. *Ib.*, May 20.
Treasure trove. *Ib.*, May 27
Treatment of habitual drunkards. *Ib.*
Expulsion from a club. *Ib.*, June 3.
Gifts obtained by undue influence. *Ib.*, June 10.
Hiring out a negligent servant. *Ib.*, June 24.
Herbage in highways. *Ib.*
Alteration of negotiable instruments. *Harvard Law Review*, April 25.
Capital punishment in Russia. *Law Journal* (Eng.), April 8.
The House of Lords—Its constitution, uses, and defects. *Ib.*, June 17.
A phase of offer and acceptance in contracts. *Central Law Journal*, May 5, 12.

The burden of proof in contents of wills on the ground of mental incapacity of testator. *Ib.*, May 19.

Dividends—Their nature, declarations, validity, and who entitled to. *Ib.*, June 2.

The law relating to bicycles. *Albany Law Journal*, May 27.

Flotsam and Jetsam.

A REFEREE CASE.

Three goddesses, long, long ago,
The poets tell us,
Sat for inspection in a row
Extremely jealous.

You've heard it—what the partialness
Of Paris ends in,
And what a pretty ten years' mess
He gets his friends in.

. . . . . .

Hera and Pallas, malcontents
At Venus' reign,
Said: "Now young men have got more sense,
Let's try again."

And Aphrodite's laughing eyes
Smile glad consent;
She has no fear to lose her prize,
And well content,

Knows what a power to-day, as then,
A lovely maid is—
Knows well that mankind still are men,
And love the ladies.

So when upon their rival thrones
The three were placed,
They called upon young Lawyer Jones—
A man of taste—

Gave him an apple ripe and sweet,
And then desired
That he should lay it at her feet
He most admired.

Then each in graceful pose the goddesses
Waited all three,
With eager eyes and heaving bodices,
For his decree.

With such a problem, Jones, too wise
To try to grapple,
Opened his mouth, and shut his eyes—
And ate the apple.

—*Green Bag.*

TIT FOR TAT.—On one occasion Mr. Justice Manisty was on circuit at Exeter for the assizes. One morning he left his lodgings early for a stroll; and, finding that he had plenty of time on his hands before the court assembled, he turned into a hair-dresser's shop for the purpose of getting shaved and generally trimmed up. Customers being scarce at that early hour, there was only one assistant present in the place.

When the judge entered the man jumped up with alacrity, and bowed him into the operating chair with all a barber's suave politeness. Having lathered his distinguished customer's face, and stropped his razor with more than ordinary vigour, he commenced to attack the judicial stubble. But he hadn't gone far in his work before he suddenly paused, with one hand on the judge's nose and the other waving the razor painfully near Sir Henry's throat.

"Blessed if I don't think," said the barber, "that you're the old cove what gave me five years at Winchester."

The judge's feelings may be better imagined than described, but he merely replied, with what coolness he could summon to his aid:

"I don't know, my good fellow. I have a bad memory for faces."

However, the man went on shaving, and Mr. Justice Manisty congratulated himself that the ex-convict didn't bear malice. This easiness of mind came a little too soon. After the shave the judge, with characteristic determination, decided to carry out his original programme, and have his hair cut as well. To his horror the barber had no sooner exchanged the razor for his scissors than his locks began to fall in a perfect shower on the floor.

"Hold on, man, hold on!" exclaimed the judge. "I only want a trim up, I tell you; don't cut it so short."

"Cut it short be blowed!" replied the barber, slicing away triumphantly. "You didn't cut it short when you give me five years in the stone jug. This is the prison crop you've got to have, old man, as sure as a gun; so you'd best take it kindly."—*Tid-Bits.*

OSGOODE HALL LIBRARY.

(Compiled for THE CANADA LAW JOURNAL.)

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Law Students' Department.

LAW SCHOOL EXAMINATIONS.

Third Year—May, 1893.

CRIMINAL LAW—PASS.

Examiner: A. W. Aytoun-Finlay.

Answer twelve questions only.

1. A vendor of land conceals an instrument material to the title thereof, with intent to defraud the vendee. The latter instructs his solicitor to proceed criminally against the vendor. What measures must the solicitor adopt before doing so?

2. A justice of the peace issues a summons requiring the attendance of a witness. How, and by whom, may such a summons be served?

3. An accused person has been remanded by the justice of the peace for eight days, but at the end of two days he assumes to order him to be brought before another justice for the same territorial division for examination. Has he or has he not authority to do so; and what is the duty of the gaoler in whose custody the accused is?

4. In what cases may not a judge of the County Court, or justices, admit an accused person to bail?

5. On an indictment for treason, the prosecution endeavours to put in evidence of an overt act, not stated in the indictment. Counsel for the defence objects. What must the prosecution show in order to render this evidence admissible?

6. Where in case of libel a plea of justification is set up, how must the plea be made, and in what terms?

7. Where a list of witnesses intended to be examined before the grand jury has been presented, it is proposed by the prosecution to have additional witnesses so examined. How, if at all, can this be done?

8. What are the *grounds* upon which a prosecutor or an accused person may challenge jurors, and with what limitation, if any?

9. Two accused persons are jointly indicted, and it is proposed to try them together. Their counsel claims the right to challenge in the same manner as if each were being tried alone. The Crown prosecutor objects. What is the right of the accused in such a case?

10. On an indictment for the commission of an offence, the evidence only goes to establish an *attempt* to commit the offence. What is the consequence of this?

11. A jury, after detention for some time, fails to agree, and the court discharges them, and postpones the further trial of the accused.

Counsel for the accused seeks to have this direction of the court reviewed on application for a writ of *habeas corpus*. How far is this course open to counsel, and why?

12. After the conviction of any person for an indictable offence, how, upon what grounds, and to what court may his application for a new trial be made?

13. How may counsel have question of law reserved at the trial?

14. Supposing the court refuses to reserve a question of law, how may counsel proceed to have the question tried as if it had been reserved?

15. When, if at all, may a new trial of any person convicted of an indictable offence be ordered by the Minister of Justice?

CRIMINAL LAW—HONOURS.

Examiner: A. W. Aytoun-Finlay.

1. A prisoner is presented for trial on counts charging the following offences: (*a*) Murder, (*b*) manslaughter, (*c*) arson. What preliminary objection may be taken, and why?

2. A prisoner is charged with murder. The evidence is not sufficient to convict of murder, but proves manslaughter, and also robbery with violence. How may the jury proceed on this evidence?

3. To a plea of *autrefois acquit* it is replied that while the new indictment charges substantially the same offences as at the former trial, it is now made with the addition of a statement of circumstances of aggravation, which, if proved, will render the punishment greater. How far is the plea sufficient to meet this reply, and why?

4. A., the editor of a newspaper published in Toronto, publishes matter reflecting upon a militia regiment having its headquarters at Montreal. On

information by one of the officers of the regiment, the police magistrate of Montreal issues his warrant for the arrest of the editor, in order to have him conveyed to Montreal. The police magistrate of Toronto is called upon to back the warrant. Is he or is he not entitled to do so, and why?

5. In criminal cases, when, if at all, does an appeal lie from the Court of Appeal (Divisional Court) to the Supreme Court of Canada?

6. In case of an action to recover any penalty, under any Act providing for such recovery, within what time limit, at most, must such action be brought?

7. An offender is charged with an offence which is punishable under two different Acts. What option is given to the prosecution under such circumstances? When must a search warrant be executed, and with what exception?

9. As the result of a coroner's inquest, a person is committed, by the coroner, for trial.

Is or is not this a proper proceeding, and what would you suggest in the alternative?

PRACTICE—PASS.

Examiner: M. G. Cameron.

Answer twelve questions only.

1. When a trustee is authorized to invest in either of two specified modes, and by mistake invests in neither, what is the measure of his liability in case of loss to the estate?

2. What right of set-off, if any, has a mortgagee in occupation against the occupation rent?

3. Is it proper for a "master" to report circumstances showing an accounting party to have been guilty of wilful neglect, and default, as a "special circumstance." If so, what must appear to make the accounting party liable? If not, why is it not proper?

4. Where a *lis pendens* is issued, what special privilege has a defendant who desires to compel the plaintiff to proceed promptly?

5. If a solicitor who has given a written undertaking to appear on behalf of a defendant fails to do so, what course are the following parties entitled to take under the rules?

(*a*) The defendant. (*b*) The plaintiff.

6. A., B., and C. joint in an action of libel against D. No joint injury is shown. Will they be entitled to proceed with the action in this form? Give the rule governing.

7. Enumerate the cases in which the plaintiff is entitled to judgment without the necessity of filing or delivering a statement of claim.

8. Where a counterclaim is made against a person other than the plaintiff, to what restrictions is it subject?

9. A. brings an action against B., the executor of C., and in his statement of claim alleges that C. made a good and valid *donatio mortis causa* to him. Is that a good pleading? Explain.

10. What is the effect of a solicitor's lien on the right of set-off between parties to an action? Is there any distinction where the set-off is (*a*) in the same action, and (*b*) in a separate action?

11. Where an action has been commenced in the name of the wrong person as plaintiff, what must be shown to the court in order that the proper person may be substituted as plaintiff?

12. When and how may an application to add or strike out or substitute a plaintiff or defendant to an action be made?

13. If the contents of any document are material in a pleading, should the whole document be set out, or what should the pleading contain so far as that particular document is concerned?

14. In an action in which it is material that malice should be shown, what allegation must the pleading contain in order to disclose a good cause of action?

15. Is there any, and, if so, what penalty attached where any allegations of fact are denied or not admitted by either or any party when they ought to have been admitted?

PRIVATE INTERNATIONAL LAW—PASS

Examiner: A. W. Aytoun-Finlay.

Answer *eight* questions only.

1. A. purchases a foreign ship under such circumstances that he does not get a good title, independent of a *personal equity* against the vendor. What law determines whether the foreign owner is estopped disputing A.'s title?

2. Dr. A. leaves his horse and gig on the street while he visits a patient on Jarvis street, Toronto. On his return he finds horse and gig gone. Ten days later he sees them in possession of C., and at once claims them as his property. C. denies his right to them. It appears that a thief had taken the horse and gig on board a steamer for Montreal, thence to Jolliette, in the Province of Quebec (in which province *suppose* the law of market overt to obtain). There they were sold to B., a farmer, an innocent purchaser, for value, who, in turn, sold them to C., residing in Toronto.

What is the legal position of A. and C. respectively, and why?

3. A. and B., Italians, visit Toronto and are there married. This marriage is declared invalid by a competent Italian court on the ground of the purpose of the parties to evade the laws of Italy. Afterwards a question of property arises, by which the validity of the marriage is put in issue before the court here. Is it or is it not valid, and why?

4. A foreign contract is brought before the court here. What is essential (*a*) to establish *external validity;* (*b*) to render it capable of enforcement?

5. Certain transactions, affecting the transfer of and title to certificates of Mexican canal shares, take place in Toronto. By what law must the title (*a*) to these certificates, (*b*) to the *shares*, to which the certificates relate, be determined?

6. It is sought to enforce (*a*) a contract, not illegal here, but illegal by its proper law; (*b*) a contract valid by its proper law, but illegal here.

May it or may it not be enforced in either case, and why?

7. An Ontario barrister, being at New York, is retained to proceed to Paris and transact certain business requiring the services of counsel. He afterwards finds a difficulty in recovering his fees and costs, and proposes to sue for them. By what law must his right to sue and recover be determined, and why?

8. A. enters action here against B. to recover damages on a contract. B.

pleads that, as the fact is, A. has already brought an action unsuccessfully, at Winnipeg, for the rescission of the same contract, and on the same state of facts. Is or is not this a sufficient defence, and why?

9. Where the nature of foreign law or the difference between it and the Ontario law is a fact in the cause, what are the functions of the judge and jury respectively in dealing with it?

10. What is meant by such an expression as "Anglo-Indian domicile," and wherein lies the necessity for its use?

SALES—MERCANTILE LAW, ETC.

Examiner: F. J. Joseph.

Answer 18 questions only.

1. Where a chattel is sold with a warranty, can the vendee return the chattel for breach of the warranty?

2. Do either of the following contracts require to be in writing to enable the plaintiff to recover thereon?

(*a*) The plaintiff agreed to print for the defendant a book, of which the defendant was the author, for $500, the plaintiff to find the materials.

(*b*) The plaintiff agreed to paint a portrait of the defendant for $500.

3. Can a creditor apply a payment, unappropriated by his debtor, (*a*) to a gambling debt, or (*b*) to a debt barred by the statute?

4. The vendors ship goods to the vendees, and send them a bill of lading. The vendees endorse the bill of lading to a bank for advances. Before the arrival of the goods, the vendees become insolvent. What are the rights of the vendors to stop *in transitu*?

5. A. transhipps 20,000 bushels of wheat to Liverpool, which he insures for $10,000. B. is negotiating for the purchase of the wheat, and believing he is likely to close a bargain with A. insures it for $10,000. Subsequently B. purchases the wheat, and A. agrees to keep up his policy for B.'s benefit. The vessel carrying the wheat is lost. What is B.'s position as to the insurance?

6. Define an *open* and a *valued* policy of marine insurance, and state your reasons for saying under which policy the insured derives the most advantage.

7. A., an agent for B., has in his possession a quantity of merchandise belonging to B., valued at $1,000. B. verbally agrees with A. that he (A.) may retain the goods as his own on paying him, B., $900 at the end of a month. Before the month is up, A. returns the goods to B. Can B. hold A. liable on his contract?

8. A. purchases from B. a quantity of wheat in the hands of C., a warehouseman. B. gives A. an order on C. to deliver the wheat. Before A. can deliver his order to C. the wheat is destroyed by fire. Upon whom does the loss fall?

9. The defendants were carriers of machinery from Toronto to Owen Sound, for the plaintiffs' mill. A case containing part of the machinery was lost, and the plaintiffs were obliged to send to England to replace the machinery in the missing case. This delayed the working of the mill for a whole year. Discuss the measure of damages recoverable by the plaintiffs.

10. A. buys out B.'s shop and business. The next day, C., unaware of the change, sends an order to B. for goods. A. sends the goods to C. When A.

:ends for payment, C. refuses to pay, on the ground that he had a set-off against B., and had not contracted with A. Can A. recover against C.? Supposing C. had consumed the goods, would it have made any difference?

11. The defendant ordered from plaintiffs, who were manufacturers of steel rails, 1,000 tons of rails of their own manufacture. The rails were shipped, but the defendant refused to take them, as they had not been manufactured by the plaintiffs. The plaintiffs proved that the rails were of the same quality as those ordered by the defendant. On this evidence, could they succeed?

12. How does the death of a surety affect a continuing guarantee?

13. What is the rule regarding the payment of freight to a shipowner where the goods are carried, but are injured in the carrying—or, where the shipowner has carried only a portion of what he agreed to carry?

14. The trustees of a church ask A. for a subscription to their building fund. A. says, "I have no money, but I will insure my life for $5,000 and hand you over the policy, but you must pay the premiums." Can the trustees collect the policy?

15. Is the holder of a bill of exchange for value necessarily a holder in due course?

16. (*b*) $550. Toronto, (*a*) May, 1893.

(*a*) One month after date pay to (*c*) the Treasurer, for the time being, of the Anthracite Coal Company or order, (*b*) Five hundred dollars, (*d*) with interest, at the (*e*) Dominion Bank at Toronto. A.B.

To Messrs. C. D. & Co., Hamilton.

Across the face C. D. & Co. write, "Accepted, payable at the (*e*) Standard Bank at Toronto for (*b*) $400."

Assume there is no such company as the Anthracite Coal Company.

The words "with interest" were added by the drawer after the bill had been accepted. Briefly discuss the several paragraphs in the above bill.

17. A procures from B. & Co. certain ploughs of their manufacture, in order to sell them for B. & Co., but upon the agreement that no property in the goods is to pass to A. A. sells them to D. and absconds. Under what circumstances (if any) could B. & Co. recover the ploughs from D.?

18. A., residing in Toronto, by chattel mortgage duly registered, mortgages his goods to B. Three months afterwards A. removes the goods to Hamilton, where he has gone to reside. After this removal, C. issues an execution against A. in Hamilton. Are the goods liable to C.'s execution?

19. Explain the position of a creditor under an assignment

(*a*) When he holds a security on the estate of the insolvent.

(*b*) When he holds a security on the estate of a third person for whom the insolvent is only secondarily liable.

(*c*) Where he holds a note not yet due.

20. A levy is made upon all the assets of an execution debtor. The execution debtor is in arrear in payment of wages to his employees. Have they any remedy?

Law Society of Upper Canada.

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THE LAW SCHOOL.

Princi l, W. A. REEVE, M.A., Q.C.

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

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

ATTENDANCE AT THE LAW SCHOOL.

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

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

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

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

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

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

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

2. All graduates who on June 25th, 1889, had entered upon the second year of their course as Stude .s-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