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IT is sometimes said that the standard of duty to which trustees are expected and required to conform is that which would be reasonably expected to regulate the conduct of a careful and prudent man dealing with his own affairs. But there is an important limitation to this rule of conduct which is sometimes lost sight of, and that is that regard must always be had to the express terms of the trust deed. So that a trustee is not at liberty to act as a prudent and careful man would act in regard to his own affairs, untrammelled by the terms of his trust, but the abstract "careful and prudent man," which he must have in his mind's eye, must be one whose powers of action are expressly constrained and limited as his own are. It was from neglect of this consideration that the trustees came to grief in the late case of *Worman* v. *Worman*, 43 Chy.D., 296, noted *ante* p. 209. In that case part of the trust funds had been invested by the settlor upon the security of a second mortgage. The mortgagor got into difficulties, and it became apparent to the trustees that, unless they purchased the equity of redemption, there was a strong probability that the whole amount invested on the second mortgage would be lost. No doubt a careful and prudent man, dealing with his own affairs would, under such circumstances, do as the trustees did in this case, and that is purchase the equity of redemption. By this means they did, in fact, save the trust estate from the entire loss of the fund secured by the second mortgage; but unhappily for them, although they had admittedly done what was best for the estate under the circumstances, the trust deed did not warrant the investment of the trust funds in the purchase of an equity of redemption. Consequently the abstract "careful and prudent man" in this case ought to have suffered the loss without committing "a breach of trust" in order to prevent it. Because the trustees did not pursue this policy of "masterly inactivity" they had to assume a personal liability for the £2,000 of the trust funds which they had thus invested.

THE TORRENS SYSTEM OF LAND TRANSFER.

The annual report of the Master of Titles is an interesting document to all who are interested in the success of the new system of land transfer, of which his office is the practical embodiment.

His report shows a steady increase of transactions. Thirty-eight additional properties, of the aggregate value of $887,761, have been brought under the

Land Titles Act, in the county of York and the city of Toronto during the past year; making the total value of land registered in Toronto up to the end of 1889, taking the value at the time of its registration, $3,691,249. But owing to the increased value which the land has acquired since its first registration, by buildings and other improvements, the present aggregate value of the land is estimated by the learned Master of Tithes to be not less than $10,000,000. Considering the Act has not yet been in force five years, and that registration under it is entirely optional, this is a pretty good showing.

The most valuable parcel of land registered during the year was one of the value of $100,000, for which the office fees (exclusive of the contribution to the Assurance Fund) only amounted to $50.65. Not a very large amount of disbursements, considering the value of the property, and the advantages secured by registration. Another property of the value of $50,000 was registered, for which the office fees only amounted to $18.60. Of course, these fees depend on the state of the title, and a property with a simple title is generally registered at considerably less expense than one where the title is complicated. On the whole we think it must be admitted that in no case have the disbursements been excessive.

About 400 lots appear to have been registered in the districts of Parry Sound, Algoma, Muskoka, Thunder Bay, and Nipissing, during the past year.

The fees of the Toronto office amounted in all to $10,119.78, as against $5,855.70 in 1888, which is a very considerable increase; while the expenses of the office only amounted to $7,215.85, so that after paying the entire expenses of running the office, a very considerable surplus remained in the hands of the Government.

We do not think it should be the policy of the Government to make a revenue from the office beyond what is necessary for its running expenses, and that instead of rolling up a surplus it would be better, in the interest of the public, that the fees of the office should be from time to time reduced so as to cheapen the dealing with land under this system as much as possible.

When people find that not only can they carry through land transactions quicker, and cheaper, and with greater security under this new system, than under the old, so weighty an argument in favour of its general adoption throughout the Province cannot long be withstood.

We have been led to suppose that the establishment of the Toronto office was in the nature of an experiment, and for the purpose of ascertaining on a limited scale whether the Torrens system of registration and transfer can be adopted without inconvenience, and without requiring too costly an expenditure on the part of the land-owner in making the transition from the old system to the new. It appears to us that the experience of the Land Titles office in Toronto has amply demonstrated the feasibility of the process of effecting the required change from the old system to the new, and has also demonstrated that the expenses of making the change is probably not much, if anything, greater than the expense which the land-owner is put to repeatedly upon every transaction in which an investigation of his title is required to be made under the old system.

Those who have had personal experience of the practical working of the new

system of registration, we believe, are thoroughly satisfied with it; but of course it must not be lost sight of, that the facility it affords for expeditiously making title is by no means its leading claim to public acceptance, its principal merit is the security and certainty which it gives to titles; a security and certainty utterly unattainable under the old system.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for April comprise 24 Q.B.D., pp. 361-507; 15 P.D., pp. 37-49, and 43 Chy.D., pp. 313-469.

PRACTICE—INFANT—DISCOVERY—(ONT. RULE 487).

In *Mayor* v. *Collins*, 24 Q.B.D., 361, a Divisional Court composed of Cave and A. L. Smith, JJ., decided that an infant plaintiff suing by his next friend could not be compelled to answer interrogatories for the purpose of discovery. Under the practice in Ontario he would, on the authority of this case, appear to be exempt from examination under Rule 487. It may, however, be remarked that the learned judges base their decision on the practice in Chancery, and that as that practice had not been altered by the Judicature Act it still subsists in England. In Ontario, however, all former practice inconsistent with the Consolidated Rules is superseded, and any unpro vided case is to be governed, not by reference to the former practice, but, as far as may be, by analogy to the Consolidated Rules (see Rule 3), and whether this fact makes any difference in the applicability of this case remains to be seen.

EXECUTOR—CONFLICT OF LAW AND EQUITY—JUDGMENT VOID AGAINST CREDITORS.

Vibart v. *Coles*, 24 Q.B.D., 364, is a decision of the Court of Appeal which cannot be regarded as an authority in Ontario on the main point decided, owing to the difference in the statute law of this Province and that of England; but it may be useful for reference in relation to the provision of the Judicature Act to the effect that where there is a difference between the rules of Law and Equity the latter are to prevail. In this case the defendant, as administratrix, was sued for a debt, and another action by another creditor was subsequently brought, in which judgment was recovered. This judgment, owing to some technical defect, was void as against other creditors; the defendant, however, paid the claim, which exhausted the assets of the estate, and the defendant set up this fact as a defence in the present action. In England there was a conflict between the rules of Law and Equity as to the right of a personal representative under these circumstances. According to the rule of Law, after suit brought by one creditor the personal representative could not, in case of a deficiency of assets, pay another creditor as against the first creditor suing; but in Equity he might do so. It was held in this case that the Equity rule prevailed, and that the defendant was justified in paying the second creditor in full. It was unsuccessfully argued for the plaintiff that the judgment of the second creditor, although bad as

against other creditors, was good between the parties, and therefore merged the debt, and consequently there was no debt to pay; and that, being bad as against creditors, the judgment could not be validly paid. But their lordships in appeal were agreed that a creditor could not be heard to say that the judgment was void, and yet that it was good for the purpose of merging the debt. Of course in Ontario, on a deficiency of assets, it is the duty of a personal representative to pay all creditors rateably, and this case would be no authority for disobeying the express provision of the statute (R.S.O., c. 110, s. 32).

INTERNATIONAL LAW—AMBASSADOR, PRIVILEGE OF—BRITISH SUBJECT AS SECRETARY TO FOREIGN EMBASSY.

In *McCartney* v. *Garbutt*, 24 Q.B.D., 368, a point of international law came up. The plaintiff was a British subject who had been duly appointed and received by the British Government as the secretary of a foreign ambassador, without any reservation that he should continue to be subject to the laws of his own country. His goods were distrained for parochial rates, and the action was brought to recover damages, as for a wrongful distress, on the ground that he was, as a member of the staff of a foreign ambassador, exempt from payment of the rates. Mathew, J., who tried the case, was of opinion that the plaintiff's contention was correct, and that a British subject is entitled to the privilege as well as a foreigner, unless he is received by the British Government upon the express condition that he is to remain subject to the local jurisdiction of his own country.

MANDAMUS TO CORPORATION—DISCRETION, EXERCISE OF, BY PUBLIC BODY.

Reg. v. *St. Pancras*, 24 Q.B.D., 371, shows that where a discretion is vested in a public body, such as a municipal corporation, and in the exercise of that discretion they allow themselves to be influenced by an erroneous view of their legal rights in the matter, the party injured may obtain a mandamus to compel them to reconsider their action. In this case a municipal body were, in their discretion, empowered to grant retiring servants a superannuation allowance, not exceeding a certain rate; but in considering an application for such an allowance the corporation were influenced by the opinion that if any allowance were granted they had no discretion as to the amount, but must give the highest sum the statute authorized, and therefore rejected the application altogether. The Court of Appeal (Lord Esher, M.R., and Fry, L.JJ.) therefore affirmed the mandamus which had been granted by Lord Coleridge, C.J., and Mathew, J., requiring them to reconsider and determine the application.

BUILDING SOCIETY—NOTICE OF WITHDRAWAL BY MEMBER—INSOLVENCY OF BUILDING SOCIETY.

In re Sunderland Building Society, 24 Q.B.D., 394, a question arose as to the rights of members of a building society under a rule of the society enabling members to withdraw, and to receive back payments made by them, with interest. It was held by a Divisional Court (Lord Coleridge, C.J., and Mathew, J.) that the rule only enabled members to withdraw while the society was sol-

vent, or supposed to be so, and that, therefore, notices of withdrawal given, or which matured, after the society was known to be insolvent, though before a winding-up order had been made, conferred no right to priority of payment on the members so attempting to withdraw.

MANDAMUS—REGISTRATION OF STOCK—JOINT OWNERSHIP BY CORPORATION AND INDIVIDUAL.

Law Guarantee Co. v. *Bank of England*, 24 Q.B.D., 406, was an action for a mandamus to the Bank of England to compel the registration of a corporation and an individual as joint owners of certain stock in the public funds. The bank resisted the action on the ground that a corporation and an individual cannot by law hold either real estate or chattels as joint tenants, but only as tenants in common, because they take in different capacities, and there can be no survivorship; and that, therefore, on the death of the individual the bank could not allow the corporation to transfer the stock without investigating the title of the deceased's representatives, and obtaining their concurrence, which was an obligation the bank was not bound to undertake. As was said by the counsel for the bank, the question was one of importance, not only to the bank, but to all public bodies which keep registers of stocks or shares. Mathew, J., sustained the defendant's objection, and refused the mandamus.

CRIMINAL LAW—CONSPIRACY TO PROCURE ABORTION—24 & 25 VICT., C. 100, S. 58—(R.S.C., C.162, S.47.)

In *Reg.* v. *Whitchurch*, 24 Q.B.D., 420, a case was stated by Wills, J., for the opinion of the Court. Whether a woman, believing herself to be pregnant, but not being so, who conspires with others to administer drugs to herself and use instruments on herself with intent to procure abortion, is liable to conviction for a conspiracy to procure abortion. The Court (Lord Coleridge, C.J., Pollock, B., Hawkins, Grantham, and Charles, JJ.) unanimously answered the question in the affirmative. It may be observed that the Act 24 & 25 Vict., c. 100, s. 58 (R.S.C , c. 162, s. 47) only makes it a crime for a woman to use drugs or instruments on herself to procure abortion provided she is with child; but in the case of other persons it is a crime to use drugs or instruments for the purpose of procuring abortion whether the woman is with child or not, and as Hawkins, J., put it, "It is clear that she could not lawfully call in other persons to do that which when done by them is a crime punishable by penal servitude."

CRIMINAL LAW—PREVIOUS CONVICTION—SUMMARY CONVICTION FOR ASSAULT—SUBSEQUENT INDICTMENT FOR SAME ASSAULT.

In *Reg.* v. *Mills*, 24 Q.B.D., 423, the prisoner was indicted for assault, to which he pleaded that he had been summarily convicted for the same offence and discharged on giving security for good behavior, and the Court (Lord Coleridge, C.J., Pollock, B., and Hawkins, Charles, and Grantham, JJ.) were of opinion that the plea was a good answer.

CRIMINAL LAW—LARCENY OF LETTER—POST OFFICE—CAUSING POSTMAN TO INTERCEPT LETTER—LIABILITY AS PRINCIPAL OR ACCESSORY.

The present number is somewhat rich in criminal cases. In *Regina* v. *James*, 24 Q.B.D., 430, the question was whether a person who induced a postman to

intercept and hand over a letter addressed to somebody else, which is in course of transmission through the post office, is guilty of larceny. The Court (Lord Coleridge, C.J., Pollock, B., and Hawkins, Grantham, and Charles, JJ.) were of opinion that he could be convicted, either as principal, or as accessory before the fact, to the larceny by the postman (see R.S.C., c. 145, s. 1.)

PRACTICE—DISCOVERY—ACTION FOR LIBEL.

The *cause celebre* of *Parnell* v. *Walter*, 24 Q.B.D., 441, which was an action against the proprietors of the *Times* newspaper for the publication of the "Parnellism and Crime" pamphlet, and other matters reflecting on the plaintiff, furnishes a little law on the practice of discovery. The plaintiff sought to interrogate the defendant (1) as to the extent of the circulation of the newspapers and pamphlet containing the alleged libel, and (2) as to the names of the persons from whom certain discreditable letters, alleged to be written by the plaintiff, which constituted part of the libel complained of, were obtained; what was paid for them; and what inquiries were made and what steps were taken to test and verify the information supplied to the defendants. The only defence set up was payment into court of 40/-. The defendants admitted a large circulation, but declined to answer further, on the ground that the information required could not be obtained without a difficult and troublesome enquiry, that the answer would involve disclosure of the defendants' business transactions, and that the precise number of copies sold was not material; and they also declined to answer as to the other matters, on the ground that they were irrelevant and not material. On an application to compel defendants to make further answer, it was held by Denman and Wills, JJ., that the defendants were bound to answer approximately as to the extent of the circulation of the alleged libels, but that the other matters were not relevant or material.

PRACTICE—APPEAL—TRIAL BY JURY—JUDGMENT ENTERED AGAINST FINDING OF JURY—JURISDICTION OF COURT OF APPEAL—ORDER XXXIX, R. 1, ORDER XL, RR. 4, 5 (ONT. RULES 789, 798).

In *Rocke* v. *McKerrow*, 24 Q.B.D., 463, the action was tried before a judge and jury, and the jury found a verdict for plaintiff on his claim, and for the defendant on his counter-claim; upon further consideration the judge came to the conclusion that there was no evidence which he ought to have left to the jury in support of the plaintiff's claim, and gave judgment for the defendant upon both claim and counter-claim. The plaintiff appealed to the Court of Appeal under Ord. xl, rr. 4, 5 (see Ont. Rule 798), but the Court of Appeal held that the appeal would not lie, and the plaintiff's remedy was in the Divisional Court under Ord. xxxix, r. 1 (see Ont. Rule 789). The Court of Appeal were of opinion that Ord. xl, rr. 4, 5 (Ont. Rule 798), only applies to a case where the judge at the trial, while admitting the findings of the jury to be correct, nevertheless directs a judgment to be entered which is erroneous in law, and not to a case where a judge sets aside or altogether disregards the findings of the jury.

PRACTICE—MOTION FOR JUDGMENT UNDER ORD. XIV (ONT. RULE 739), AFTER DEFENCE.

McLardy v. *Slateum*, 24 Q.B.D., 504, was an application for judgment under Ord. xiv. (Ont. Rule 739), after a defence had been delivered in ordinary course. Field, J., had set aside a Master's order giving the defendant leave to defend on paying the amount claimed into court, on the ground that the application could only be made before a defence was delivered; but on appeal, Pollock, B., and Wills, J., reversed the order of Field, J., holding that it is not too late to make the application after defence, but that where the application is so delayed, the onus is on the plaintiff to show that the delay is justifiable under the special circumstances of the case.

SHIP—MORTGAGEE—DISCHARGE OF MARITIME LIEN BY MORTGAGEE—RIGHT OF MORTGAGEE TO INDEMNITY FROM MORTGAGOR AND OTHER OWNERS.

The only case in the Probate Division to which it is necessary to refer to here is the case of *The Orchis*, 15 P.D., 38, which was an action by mortgagees of forty-eight sixty-fourth shares of a ship, to recover from their mortgagor and the other co-owners of the ship an amount paid by them to the master, who had brought an action *in rem* against the vessel, and caused her to be arrested. The plaintiffs paid the master's claim in order to get possession under the mortgage. The mortgagors submitted to judgment, but the other owners resisted the plaintiff's claim on the ground that the mortgagees were not entitled to possession of the whole, but only of the shares mortgaged, and were, therefore, under no obligation to pay the master's claim. The Court of Appeal (Lord Coleridge, C.J., Lord Esher, M.R., and Fry, L.J.), however, affirmed the decision of Butt, J., that the claim being one which was a valid charge on the vessel, the mortgagors were justified in paying it in order to get the vessel released, and were, therefore, entitled to recover the amount paid from the owners, within the principle of law laid down in *Edmunds* v. *Wallingford*, 14 Q.B.D., 811.

DAMAGES—DETENTION OF GOODS—MEASURE OF DAMAGES—RIGHT TO DAMAGES AFTER GOODS TAKEN POSSESSION OF BY RECEIVER—LORD CAIRNS' ACT—(21 & 22 VICT., C. 27, S. 2)—(R.S.O., C. 44, S. 53 (10).)

Dreyfus v. *Peruvian Guano Co.*, 43 Chy.D., 316, is an appeal from the decision of Kay, J., on the question of damages, 42 Chy.D., 66, which we noted *ante* vol. 24, p. 554. The majority of the Court of Appeal (viz., Cotton and Fry, L.JJ.) affirmed the decision of Kay. J., but Bowen, L.J., dissented. It may be remembered that the action was brought by the plaintiffs for the delivery of certain cargoes then at sea. The defendants claimed by their pleadings the right to receive the cargoes. Shortly after the writ had issued a consent order was made, by which the defendants received the cargoes on the terms of keeping accounts and undertaking to abide the order of the court as to the proceeds. At this time two of the cargoes had arrived, and others were subsequently received under the order. At the trial the judge held that there had been an unlawful detention of the cargoes, and directed an inquiry as to damages sustained by the plaintiffs by reason of such detention. The defendants appealed from the whole

of this judgment, but subsequently abandoned thir appeal against the portion relating to the inquiry as to damages, and claimed reimbursement of the expenses incurred under the consent order. The appeal was dismissed, and the defendants then appealed to the House of Lords, who varied the judgment by allowing the claim for expenses, but affirmed it in other respects. No application was made to the House of Lords to vary the terms of the inquiry as to damages, which therefore remained as part of the judgment. The chief clerk allowed damages on the footing of there having been a detention of all the cargoes, commencing on their arrival in England. This Kay, J., affirmed, and from his decision the defendants appealed, on the ground that the effect of the decision of the House of Lords was that there had been no wrongful detention, and that nominal damages only should have been given. Both members of the Court of Appeal who affirmed the decision of Kay, J., were constrained to admit that the defendants had put them in a position of difficulty (and as Fry, L.J., termed it, "a cruel difficulty"), by neglecting to appeal from that part of the judgment directing the inquiry as to damages; but as that part of the judgment remained in force and had been affirmed by the House of Lords, they were of opinion that the plaintiffs under the judgment were entitled to the damages assessed. All the members of the Court, however, were agreed that, under Lord Cairns' Act (R.S. O., c. 44, s. 58 (10)), enabling the Court to award damages in lieu of an injunction, the Court has no power to give damages in cases where the injunction is granted before any damages have been sustained, but merely to restrain a threatened injury. Bowen, L.J., who humbly describes himself as "a proselyte at the gate in matters of equity," considered that the certificate of the chief clerk was wrong, because it lumped together all the cargoes, two only having arrived before the consent order was made; as to the others, he thought that it would be consistent with the judgment as it stood to have found only nominal damages, as the possession taken of them by the defendants under the consent order had been declared by the House of Lords not to be wrongful.

COVENANT NOT TO CARRY ON PARTICULAR TRADE.

Stuart v. *Diplock*, 43 Chy.D., 343, was an action to restrain the defendants from committing a breach of a covenant to carry on a particular trade. The covenant was not to carry on the trade of ladies' outfitting. All that was proved was, that the defendants, who were hosiers, sold four classes of articles, the sale of which was an essential part of the business of ladies' outfitters, but which were also commonly sold by hosiers. Kekewich, J., considered this was a breach of the covenant, but on appeal the Court of Appeal (Cotton, Bowen, and Fry, L.JJ.) were of opinion that the *bona fide* sale of certain articles of hosiery which, though an essential and important part, but not nearly the whole of ladies' outfitting, was not a breach of the covenant, there being no covenant not to carry on any part of the business of ladies' outfitters. The covenant in question was not made directly with the plaintiffs, but with the assigns of their lessors, and a question was raised, but not decided, whether in any event the defendants were liable to the plaintiffs for breach of the covenant.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

HILARY TERM, 1890.

The following is a *resume* of the proceedings of Convocation during the above term:

The following gentlemen were called to the Bar, viz.: *February 3rd*—Arthur Whyte Anglin, with honours and gold medal; Charles Eddington Burkholder, with honours and silver medal, and Robert Elliott Fair; George Smith McCarter, David Hooey, Edmund Sheppard Brown, Duncan Henry Chisholm, Albert Constantineau, William Albert Smith, Walter Allan Skeans, William Edward Fitzgerald, Alfred Edmund Cole, Francis Pedley, William Charles Mikel, Arthur St. George Ellis, Daniel Thomas Kennedy McEwan, Alexander Duncan Dickson, Edward Lindsay Elwood, Albert Edward Baker, Alexander Purdom, Walter Augustus Thrasher, George Harvey Douglas, John Thomas Hewitt, Robert Elliott Lazier. *February 4th*—Richard Vercoe Clement.

The following gentlemen were granted Certificates of Fitness as Solicitors, viz.: *February 3rd*—A. W. Anglin, C. E. Burkholder, J. A. Webster, D. H. Chisholm, A. Purdom, W. A. Skeans, A. E. Baker, A. D. Dickson, G. H. Hutchison, R. S. Chappell, A. S. Ellis. *February 4th*—G. S. McCarter, W. E. Kelly, A. Constantineau, D. Hooey, F. Pedley, H. P. Thomas, H. W. Lawlor. *February 8th*—R. V. Clement, M. C. Biggar, A. E. Cole. *February 14th*—E. S. Brown, W. J. L. McKay.

The following gentlemen passed the Second Intermediate Examination, viz.: R. McKay, F. R. Martin, W. G. Owens, A. H. O'Brien, A. A. Smith, A. J. Anderson, G. R. Wilkinson, J. McEwan, W. P. McMahon, J. H. H. Hoffman, G. D. Grant, A. Bridgman, F. F. Pardee, J. F. Lennox, W. L. McCarthy, W. Mills, A. Crow, D. Mackenzie, S. D. Evans, J. G. Farmer, T. W. Scandrett, F. W. Wilson.

The following gentlemen passed the First Intermediate Examination, viz.: J. C. Cameron, J. S. Robertson, W. B. Taylor, W. L. Wickett, J. R. Milne, P. F. Carscallen, J. E. Varley, E. Harley, H. F. Gault, T. M. Harrison, L. Lafferty, S. D. Schultz, G. G. Duncan, A. B. Jones, W. H. Cairns.

The following gentlemen were entered as Students-at-Law, viz.: *Matriculant Class*—Norman Young Poucher, Bertram Halford Ardagh, John Ashworth, Zachary Richard Edmund Lewis. *Junior Class*—John Alexander Stewart, Geo. Wilson Patterson, William Albert Mace, George Edward Deroche, George Hossack Findlay, James Houston Spence, Charles Arthur Batson, John Thomas White, Ralph McDonald Blackley, William Henry Lovering, James O'Brien, James Dickson, Lewis Frederick Clarry, Allan Norman Cameron. *Articled Clerks*—Edward J. Going, John Charles Elliott, Ethelbert Fletcher Harrison Cross.

Monday, February 3rd.

Convocation met.

Present—Messrs. Ferguson, Foy, Irving, Kingsmill, Macdougall, Mackelcan, Meredith, Morris, Moss, and Murray.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of last meeting (Dec. 31st, 1889) were read and approved.

Ordered, that the Finance Committee be requested to report to Convocation upon the direction given that Committee 15th February, 1889, to enquire and report whether further accommodation can be provided in Osgoode Hall for the clothing of practitioners in attendance at the Hall, and to report what, if any, difficulties exist in the way of making such provision.

Mr. Moss, from the Special Committee on Honours and Medals, presented a report, which was adopted.

Ordered, that Messrs. A. W. Anglin and C. E. Burkholder be called to the Bar with honours, and that Mr. Anglin be awarded a gold medal, and Mr. Burkholder a silver medal.

Messrs. Anglin and Burkholder attended, and were called to the Bar, and presented with a gold and silver medal respectively.

Tuesday, February 4th.

Convocation met.

Present—Messrs. Britton, Bruce, Foy, Fraser, Irving, Kingsmill, Macdougall, Mackelcan, Martin, Moss, Murray, and Shepley.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of last meeting were read and approved.

The petition of George Macgregor Gardner was read, and referred to Messrs. Irving and Hoskin, to whom instructions to oppose Mr. Gardner's bill have already been given.

Mr. Martin, seconded by Mr. Foy, moved the second reading of the rules to amend the rules relating to the Law School as amended, the consideration of which on 31st December, 1889, had been ordered for this day.

The rule was read a second time.

Mr. Martin then moved, seconded by Mr. Foy, that the rules as amended be read a third time.

The rules were then read a third time, were passed, and are as follows:

RULES TO AMEND THE RULES RELATING TO LAW SCHOOL.

164 (*g*). Students-at-Law and Articled Clerks who are exempt from attendance at the Law School, either in whole or in part, may elect to attend the Law School and pass the Examinations thereof in lieu of passing the Examinations under the existing curriculum applicable to Students and Clerks, so exempt in whole or in part, as aforesaid; such election shall be made in writing signed by the Student or Clerk, addressed to the Principal of the Law School, and deposited with him when producing the Secretary's receipt for payment of the Law School fees for the first term to be attended, in conformity with such election, and after such election the Student or Clerk so electing shall be bound to attend the Law School and pass the Examination thereof in the same manner as if originally bound to attend the Law School and pass the Examinations thereof.

164 (*h*). Students-at-Law and Articled Clerks who shall elect to attend the Law School as provided in Rule 164 (*g*), and who would be entitled to present themselves for their First or Second

Intermediate Examination, or for their Final Examination, as the case may be, in any term during any School year term, or before Michaelmas Term then next ensuing, shall upon proof of such attendance, and of passing the Examinations prescribed for the First or Second Intermediate Examination or Final Examination (as the case may be), at the close of such School term or at the Examinations thereof, commencing with the first Monday in September, be allowed such Examination in lieu of their First or Second Intermediate or Final Examination, as the case may be.

164 (*i*). Rules 164 (*d*), 164 (*e*), and 164 (*f*), shall apply to Rules 164 (*g*) and 164 (*h*).

164 (*j*). It is hereby provided and declared to be the true intent and meaning of the Rules heretofore passed respecting the attendance of Students-at-Law and Articled Clerks at the Law School, that every Student or Clerk who is required to attend the School during one term only shall so attend during that term which shall end in the last year of his attendance in Chambers or service under Articles; that every Student or Clerk who is required to attend during two terms shall so attend during those terms which shall end in the last two years respectively of his attendance in Chambers or service under Articles; and that every Student or Clerk who is required to attend during three terms shall so attend during those terms which shall end in the last three years respectively of his attendance in Chambers or service under Articles; and that all Students-at-Law and Articled Clerks, who, in accordance with the rules, shall have duly attended the School during the term which shall have ended in the last year of their attendance in Chambers or service under Articles, shall be entitled to present themselves for their Final Examinations at the close of the said term, notwithstanding their periods of attendance in Chambers or service under Articles may not have been completed at the time of holding such Examinations.

164 (*k*). All Students-at-Law and Articled Clerks admitted upon the books of the Law Society in Michaelmas Term, 1889, and who by virtue of any previous rule may be required to attend the School during the term of 1889-90, shall be deemed to have duly attended during said term, if they shall have attended not less than five-sixths of the aggregate number of Lectures, and four-fifths of the number of Lectures of each series pertaining to the first year of the School course which shall have been delivered subsequent to the date of their said admission.

Saturday, February 8th.

Convocation met.

Present—Messrs. Beatty, Cameron, Ferguson, Foy, Hoskin, Irving, Mackelcan, McMichael, Moss, Murray, Osler, Shepley, and Smith.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of last meeting were read and approved.

Mr. Murray reported on behalf of the Special Committee appointed to meet and confer with the Provincial Secretary as to the proposed concession in relation to Osgoode Street, referred to in the resolution of Convocation of 29th November, 1889.

The report was read, and ordered to be taken into consideration on Friday, 14th inst., and that the petition and report of the Committee be printed and sent to the members of Convocation forthwith, and that petitioners be informed that it is desirable that the agreement and Act of the Legislature proposed in the report be submitted to Convocation for consideration at the same time, as after Friday next there will not be a meeting of Convocation for three months, and that members of Convocation be informed that the report will be considered on Friday next.

Mr. Hoskin, in pursuance of an order of 31st December, 1889, in the matter of Mr. J. P. McMillan, reported that he had made application to Mr. Justice

Robertson for an order amending the order striking Mr. McMillan off the rolls, upon which application the following judgment was given:

"Mr. Hoskin, Q.C., having applied to me to amend an order made by me on 16th March, 1889, whereby one John P. McMillan, a solicitor, and a member of the Law Society of Upper Canada, was ordered to be struck off the roll of solicitors, so as to include the further order: 'That such order shall be transmitted by the proper officers of this Court to the Treasurer of the Law Society,' in terms of the Rule 119 of the Society; I am of opinion that such order, having been acted upon, cannot be amended, unless by another application made in due form, upon notice to the party affected thereby."

January 8th, 1890. (Sd.) THOMAS ROBERTSON.

Upon motion of Mr. Hoskin, seconded by Mr. Cameron, it was ordered that the solicitor of the Society be instructed to take the necessary steps to have the order referred to amended.

Mr. Hoskin, from the Discipline Committee, reported in the case of the complaint of Mr. Adam Good against Mr. W——, that this matter, so far as it relates to negligence, should be tested in a court of law, and not be investigated by this committee, and they submitted to Convocation for its consideration whether the other charge, viz., that of instigating litigation, should be proceeded with.

The report was received, and Convocation ordered that no further action be taken, inasmuch as the charge of negligence is the only charge specifically made, and not a matter requiring the action of Convocation.

Ordered, that upon a special rule being passed repealing for this case the rule requiring notice, etc., prior to call, the application of Sir John S. D. Thompson, K.C.M.G., a member of the Bar of Nova Scotia, for call to the Bar of this Province, be granted, and that upon the production to Convocation of a certificate of call to the Bar of Nova Scotia, and the testimonials required by sub-sec. 5 of sec. 1 of chap. 146, R.S.O., Sir John S. D. Thompson, K.C.M.G., now Minister of Justice, be called to the Bar of this Province, and that the fees payable upon such call be remitted or waived by the Society.

Leave was granted to introduce a special rule.

Mr. Osler, in absence of Mr. Robinson, moved, seconded by Mr. Cameron, the following Special Rule:

That Rule 207, sub-heads 1 and 3, Rules 209 and 210, and any other Rule conflicting with the above resolution be suspended and dispensed with in the case of Sir John S. D. Thompson, K.C.M.G., on his application for call to the Bar of Ontario.

The rule was introduced, read a first and second time, and by unanimous consent rule 21 was suspended, and the rule was read a third time.

The Secretary laid on the table a return of solicitors who had paid their annual fees up to Michaelmas Term, 1890, and also of the solicitors who had failed to pay in time.

Ordered, that it is desirable that a correct list of Benchers, taken from the journals, from the foundation of the Society to the present time, be prepared, and that Mr. Read, Q.C., be requested to prepare the same.

Ordered, that Mr. Grasett do check the Roll of Barristers and Solicitors with Mr. Hardy in the compilation of his authorized list, and that Mr. Grasett be authorized to sign the same certifying to its accuracy.

Friday, February 14th.

(Subject to confirmation at next meeting of Convocation.)

Convocation met.

Present—Sir Alexander Campbell and Messrs. Beatty, S. H. Blake, Britton, Bruce, Cameron, Ferguson, Foy, Fraser, Guthrie, Hoskin, Irving, Lash, McMichael, Martin, Meredith, Morris, Moss, Murray, Osler, Purdom, Robinson, and Shepley.

The minutes of last meeting were read and approved.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

Mr. Morris, from the Library Committee, presented the report of that committee on the application of the Hamilton Law Association for new editions of students' books, recommending that the Association be forthwith supplied with the following books: One copy of Dart on Vendors, 1888; one copy of Armour on Titles, 1887; one copy of O'Sullivan's Government in Canada, 1887; one copy of Smith on Contracts, 1885. And that the Secretary of the Association be informed that there is not any new edition of Smith's Mercantile Law, although one is expected, but that an order has been given for such new edition when published. Referring to Blackstone's Commentaries by Kerr, this work is not contained in the new curriculum adopted by the Law Society, and need not therefore be supplied.

The Committee further recommended that the Secretary of the Hamilton Association be informed that in pursuance of the recommendation of the Special Committee adopted by Convocation of 21st May, 1887, in future the renewal of the set of students' books supplied them must be assumed by the Hamilton Association.

The committee also beg leave to report that they have received an application from the junior library assistant asking for an increase of salary, and your committee beg leave to recommend that his salary be increased to eight hundred dollars per annum, to take effect from this date.

On behalf of the committee. (Sd.) ÆMILIUS IRVING, *Chairman.*

February 4th, 1890.

The report was adopted, and ordered accordingly.

Mr. Murray presented the report of the Special Committee, dated February 28th, on the subject of the closing of Osgoode Street.

Mr. Murray moved that the report be adopted. *Lost* on a division.

Mr. Shepley presented the report of the Editor to the Reporting Committee, as follows:

Toronto, 14th February, 1890.

DEAR SIR,—I have to report that in the Court of Appeal Mr. Grant's arrears have been finished, and the digest of his last volume will be ready in a few days. Mr. Cassels has eleven cases all of the 14th January, so that all judgments in the Court of Appeal to the end of 1889 have been published. In the Queen's Bench there are seven unreported cases, all of December, six of which are ready to issue.

In the Common Pleas there are twenty-six, of which two are of September, one of November, fourteen of December, and nine of January.

In the Chancery Division Mr. Lefroy has sixteen, two of October ready to issue, one of November revised, seven of December, and six of January.

Mr. Boomer has two, one of October ready to issue, and one of November revised.

All the Practice cases to the end of 1889 have been published—five of January are unreported.

I am, yours truly. (Sd.) J. F. SMITH.

B. B. OSLER, ESQ., Q.C., *Chairman.*

Mr. Murray, from the Finance Committee, reported that the preliminary engagement of Miss Wynn as telegraph and telephone operator is finished, and moved that she be now appointed at a salary of thirty-six dollars a month.

The report was adopted, and ordered accordingly.

Mr. Lash gave notice that at the next meeting of Convocation he would move, "That it is expedient to consent that the Dominion Government have certain privileges over Osgoode Street, in rear of Osgoode Hall grounds, in connection with the drilling of volunteer troops thereon, and that Messrs. Murray, Shepley, Foy, Irving, Robinson, and the mover, be a Special Committee to prepare and submit to the next meeting of Convocation a draft of such agreement and statutes as, after conference with the Government and municipal authorities, they may think should be entered into and passed for the purpose of granting such privilege and protecting the interests of the Law Society."

The letters from Messrs. Thornberry & Co., F. A. Barr, and F. Nicholls, on the subject of electric lighting, were read and referred to a committee consisting of the Library Committee, and Messrs. Osler, Mackelcan, Murray and Lash.

The following telegram was received from Sir John S. D. Thompson, the Minister of Justice, from Sharbot Lake, on the C.P.R.:

To J. H. Esten, Osgoode Hall:

In consequence of train from Montreal breaking down, Ottawa car has been detained at Smith's Falls until a few moments ago, therefore we cannot reach Toronto until four o'clock.

(Sd.) JOHN S. D. THOMPSON.

Convocation thereupon adjourned until five o'clock p.m.

5 p.m. Convocation met pursuant to adjournment.

Present—Messrs. Beatty, Britton, Cameron, Moss, Murray, Osler, Purdom, Robinson, Shepley, and Mr. Irving, the Chairman of the day.

Sir John Thompson, Minister of Justice and Attorney-General of Canada, having presented his Certificate of Call to the Bar of Nova Scotia, under the seal of the High Court, dated the 7th February, 1890, and also the Certificate of Sir Alexander Campbell, K.C.M.G., Lieutenant-Governor of Ontario, and a former Minister of Justice and Attorney-General for Canada, that he has known him for many years, and that he is a gentleman of good character and conduct, it was ordered that Sir John Thompson be called to the Bar of Ontario.

Sir John Thompson thereupon attended, and was called to the Bar accordingly, and was subsequently presented to the Judges of the Common Pleas Division of the High Court of Justice.

Sir John Thompson afterwards took his seat as an ex-officio Bencher.

Convocation adjourned.

Correspondence.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—There is a distinct violation of good taste creeping into the public press. I refer to the calling of a member of the legal profession "Lawyer So-and-So." Like many a short cut in language, it offends against custom, euphony, and the dignity of the profession. Fancy calling one of the much-admired leaders of the Bar, "Lawyer Robinson!" It smacks too much of Texan freedom for my taste. What do you think, Mr. Editor?

Peterborough, April 25. J. H. B.

Notes on Exchanges and Legal Scrap Book.

THE ENGLISH CEREMONIAL ON "TAKING SILK."—It will be interesting to many members of the profession, and especially to those who are now Queen's Counsel, and to all who expect to "take silk," to read the following letter of Mr. Locock Webb, Q.C., to Mr. Hodgins, Q.C., on the English ceremonial observed on a barrister becoming a Queen's Counsel. Mr. Webb is a Queen's Counsel of eminence, and one of the leaders of the English Bar, and a Bencher of the Middle Temple, and is well-known as the author of a work on the "Practice of the Supreme Court, and on Appeals to the House of Lords." The letter, which we publish by the permission of Mr. Hodgins, was written in reply to one from that gentleman to Mr. Webb, requesting information concerning the oath taken by Queen's Counsel, and other matters which are fully explained in Mr. Webb's most interesting letter. We have made inquiries from old members of the Bar, and have also examined the old Term Books of the Court as to whether the Queen's Counsel's oath was ever administered in this country, but our inquiries and searches have resulted in a negative.

Some years ago we published an article written for this Journal by Mr. Hodgins, on the "Right of Queen's Counsel to defend Prisoners," (17 CANADA LAW JOURNAL, 74), in which the duty imposed by the office on Queen's Counsel not to take cases against the Crown, was fully explained and illustrated from precedents in the English Courts. A barrister accepting the office of Queen's Counsel is supposed to accept a standing retainer from the Crown, and it is therefore inconsistent with that retainer to take a brief against the Crown without the consent of the executive. The point may be illustrated by the practice and rule which prevent the standing counsel of any of our great railway or other corporations taking briefs against the corporation without the consent of the directors.

The following valuable letter of Mr. Locock Webb's will be read with great interest by all members of the legal profession in Canada:—

4 Elm Court Temple, 27th March, 1890.

DEAR SIR,—You are quite right, the practice of swearing in the Queen's Counsel here continues. But I could meet with the form of the oath nowhere, until I turned up the Oaths Com-

mission Report of 1867. As you may possibly not have that blue book in your library, an extract is enclosed. I am unable to refer you to any other book where the oath is published.

Touching your questions. From very ancient times (probably as far back as Alfred) it has been the custom for the Lord Chancellor and judges to take an oath on appointment, and so it was with the old Sergeants. Upon the original creation of King's Counsel (said to have been first made in 1663, by the appointment of North, aftewards Lord Keeper), it would seem an oath was in like manner taken from the King's Counsel. The practice came to be established by the authority, probably, of the king himself originally, and to have grown into a custom.

I am unable to find any statute requiring the oath, and I believe there is no such statute. With us, at home, you know custom has really the weight of common law, unless controlled by statute; and no Act of Parliament, therefore, was required for authorizing the oath.

"The Promissory Oaths Act, 1868" (31 & 32, Vic. c. 72), which passed the year after the Commissioners' report was submitted to Parliament, is silent as to the Queen's Counsel's oath, and consequently the custom remained in force in that respect.

I have added a note to the extract as to the ceremonial here of calling an utter barrister "within the bar." I am most pleased to answer your questions to the best of my power.

It always delights us to welcome "home" our Canadians, and especially in our Inns of Court our brother Q.C.'s. I am happy to learn that you and your friends were pleased with your visit to my own Inn *domus*. Please remember me kindly to them, and say that I trust your visit to the Middle Temple will be renewed.

In Old England we were sorry, indeed, to learn of the destruction by fire of your splendid Toronto University.

Very faithfully yours,

LOCOCK WEBB.

THOMAS HODGINS, ESQ., Q.C., Toronto.

THE following is the Oath taken by Queen's Counsel in England:—

"Ye shall severally swear that well and truly ye shall serve the Queen as one of her counsel learned in the law, and truly counsel the Queen in her matters when ye shall be called, and duly and truly minister the Queen's matters and sue the Queen's process after the course of the law and after your cunning. Ye shall take no wages nor fee of any man for any matter against the Queen where the Queen is party*. Ye shall duly in convenient time speed such matters as any person shall have to do in the law against the Queen, as ye may lawfully do without long delay, tracting, or tarrying the party of his lawful process in that that to you belongeth. Ye shall be attendant to the Queen's matters when ye be called thereto. As God you help, and by the contents of this book."

The following is the ceremonial observed on "Taking silk":—

The new Queen's Counsel meet by appointment at the House of Lords, and are ushered into the Lord Chancellor's private room—entering according to seniority of call to the Bar. The Lord Chancellor remains seated at his table, and the Queen's Counsel form a semi-circle opposite.

The Clerk of the Crown then reads the oath, and the Queen's Counsel repeat the words after him.

The Lord Chancellor then rises from his seat and presents with his own hand to each of them in succession his Patent, and sometimes shakes hands and says a few kinds words to any old friends—formerly his associates at the Bar. The ceremony is then over, excepting the formal calling within the Bar.

The Queen's Counsel meet again by appointment adjoining the Law Courts,

form in procession, and enter on the left hand of the principal court first—the senior leading—and stands by the inner bar. The judge then addresses him thus: "Mr. A. B., Her Majesty having been pleased to appoint you one of Her Majesty's counsel, learned in the law, you will take your seat within the Bar."

He then enters within, bends to the judge, then bends to the Q.C.'s within the Bar, who all rise and return the compliment. He then turns right round and bends to the outer Bar, who in their turn all rise.

He then takes his seat, and the judge again addressing him, says: "Mr. A. B., do you move?" Whereupon he rises and bends, and the judge returns the bow; and then Mr. A. B. moves off on the right hand side of the court.

And this ceremonial is repeated in each of the Superior Courts, and thus ends the ceremony of "taking silk."

Mr. Webb remarks that it is customary in any Crown case for the Q.C. retained contra to apply for a license, which is granted, as of course, upon payment of some small fee. The Oaths Commissioners recommended that in altering the form of this oath the words "with license of Her Majesty" should be inserted where marked *.

THE LORD CHANCELLOR OF ENGLAND.—Hardinge Stanley Giffard, Baron Halsbury, the present Lord Chancellor of England, is the third son of the late Stanley Lees Giffard, LL.D.,—for more than a quarter of a century the editor of the *Standard* newspaper,—and was born in 1825.

"Early Struggles," "Silk," "Office," "Knighthood," and "The Woolsack,"—these are the necessary chapters in the biography of a Lord Chancellor; and the external facts in Lord Halsbury's career range themselves under the usual headings naturally and appropriately. He was admitted as a student of the Inner Temple in 1847, was called to the bar in 1850, assumed the silk robes of a Queen's Counsel in 1865, was raised to the Solicitor-Generalship and received the honour of knighthood in 1875, and just ten years later became Lord Chancellor. After having twice contested Cardiff unsuccessfully in the Conservative interest, Lord Halsbury, then Sir Hardinge Giffard, Solicitor-General, was elected member of Parliament for Launceston in 1877, and continued to represent that constituency till his promotion to the woolsack.

The traditions of the Temple declare the attainment at once of strictly professional and of political or administrative eminence to be well-nigh impossible. There are lawyers and there are politicians in the High Court of Justice; but the politicians are not lawyers, and the lawyers, for the most part, are not politicians. Sir William Harcourt, for instance, is a powerful parliamentary debater and an astute party leader, but his ignorance of law is a standing joke in the House of Commons. Sir Horace Davey, again, has forgotten more law than Sir William Harcourt ever knew, and will take his place in legal history with Benjamin and Selborne and Cairns, but many third-rate politicians are greater than he. Sir Henry James alone among living advocates has taken a double first, in politics and in law. His defence of Mr. Justice Keogh in the famous

Galway Election Petition debate; his apostrophe on the same occasion to the Archbishop of Tuam,—"I tell thee, proud prelate of the West," etc.; his management of the Judicature and Corrupt Practices Act; his reply to Mr. Goschen on the second reading of the Franchise Bill of 1884, and his speech in the course of the Home Rule debates in 1886,—render intelligible the doubt which Sir Henry James' friends have all along entertained whether his proper place was the Cabinet or the Bench, and explained the ready credence accorded in 1880 to the rumour that he was going to the Home Office as Secretary of State.

Now, Lord Halsbury's reputation is not parliamentary. He has engineered several important measures, but so in their day did Baron Huddleston and Sir John Coleridge. Perhaps the incident best known in the Chancellor's political career is the delay in his admission to the House of Commons in 1877, caused by the writ certifying his election having been misplaced! Neither is Lord Halsbury an eminent lawyer in the strict sense of the term. No conscientious biographer would put him on the same plane with Sir Richard Webster or Mr. Henry Matthews, not to speak of even greater names than theirs. He has never done, and could not do, such splendid judicial work as Sir James Hannen has quietly achieved in his dingy and ill-ventilated court. Lord Halsbury, his official position notwithstanding, must ever be third best in a tribunal to which the Earl of Selborne and Lord Bramwell belong.

Again, the Lord Chancellor's reputation is not derived from any triumphant victory over early difficulties. He was neither a Scotsman nor a poor clergyman's son. He was not called upon to write paragraphs for newspapers, or to haunt the theatres as a dramatic critic, or to "coach" idiots for a profession which they will only bring into contempt. We must seek elsewhere for the sources of his eminence. Lord Halsbury has risen to the woolsack from the Old Bailey. He has never been Attorney-General; and he was engaged in nearly every *cause celebre* tried in the English Courts from 1864 to 1885.

It may be interesting to run rapidly over the chief incidents in the Chancellor's forensic career. In 1864 Franz Muller was tried for the murder of an English gentleman, Mr. Briggs, on the North London Railway. The excitement to which the case gave rise can still be faintly traced in the pages of the "Annual Register," where the best account of it is to be found. Muller escaped to New York, was promptly arrested on his arrival, brought back to England, tried, condemned, and duly executed, in spite of the foolish efforts of a German Protection Society and of the King of Prussia (who telegraphed to Queen Victoria, requesting her personal intervention) to procure a reprieve. Now, in this case Mr. Hardinge Giffard, along with the Solicitor-General, Sir R. P. Collier, and Mr. (now Sir James) Hannen, conducted the prosecution.

Two years later, "the London tailors"—Druitt, Partridge, and the rest—were tried before Baron Bramwell for picketing and intimidation during the great strike. Mr. Coleridge, Q.C., the present Lord Chief Justice, Sergeant Parry, and Hardinge Gifford, defended the prisoners; but the law was too strong for the advocates, and a conviction followed. "I lay it down," said Baron Bramwell to the jury, "without hesitation, that whenever two or more persons

agree that they will by molestation, annoyance, threats, intimidation, or any other manner of coercion,—not by persuasion,—influence the minds, wishes, and wills of others as to the modes in which they should or should not bestow their labour, the persons who so act are guilty of a criminal offence."

In 1868 came the Fenian trials. Here the Attorney-General (Sir J. B. Karslake), the Solicitor-General (Sir Balliol Brett, now Lord Esher, Master of the Rolls), and Mr. Giffard appeared for the Crown; but only a single conviction was obtained. Montague Williams and Edward Clarke, now a Knight and Solicitor-General, had been retained for the defence.

Mr. Giffard was a member of the Welsh Circuit, and at the Glamorganshire Assizes held at Cardiff in July, 1869, he was pitted against Mr. Grove, Q.C., in the strange case of "Esther Lyons." This was an action raised by Barnett Lyons, a Jew and a money-lender in Cardiff, against a Welsh dissenting minister and his wife, for having enticed away his daughter Esther with the view of converting her to Christianity. Mr. Grove was an eminent man of science; his name is associated with a galvanic battery of some notoriety; he is the author of a work on the correlation of physical forces; he enjoyed the reputation of being the best patent lawyer of his day; he was for many years a Justice of the High Court, and is now a Privy Councillor. But as a *nisi prius* advocate he was helpless in the hands of Hardinge Giffard; and the money-lender got a verdict for £50, to the surprise and against the charge of the presiding judge, Mr. Baron Channell.

In the same year Giffard, together with Karslake, Coleridge, Hawkins (now a Judge of the High Court), and other celebrities, successfully defended the Directors in the famous Overend Gurney prosecution. On the first Tichborne trial he appeared, with Sergeant Ballantine, for the plaintiff, who was afterwards represented by Dr. Kenealey.

In 1871 Boulton and Park were tried for frequenting theatres and other places of public resort in women's clothes. Hardinge Giffard prosecuted with the law officers of the day and Sir Henry James, but failed to secure a conviction. In Belt. *v.* Lawes Sir Hardinge Giffard was matched against Charles Russell, now the unchallenged leader of the common-law bar. Not without dust and heat do such rivals engage,—

But Hardinge Giffard remained master of the field. The plaintiff, for whom he appeared, got £5,000 damages; and the Court of Appeal declined to disturb the verdict, at least to his disadvantage. Belt *v.* Lawes was an action of libel. The defendant had alleged that certain busts and pieces of sculpture attributed to Mr. Belt, and claimed by him as his own, had in fact been executed by persons in his employ. The case was tried before Mr. Baron Huddleston at Westminster; the trial lasted for forty-three days, and the present Attorney-General shared in the defeat of Sir Charles Russell.—*A.W.R., in The Green Bag.*

DIARY FOR MAY.

1. Thu....St. Philip and St. James.
2. Fri.....J. A. Boyd 4th Chy., 1881.
3. Sat.....Mr. Justice Henry died, 1888. Last day for filing papers and fees for final exam.
4. Sun....*Fourth Sunday after Easter.*
6. Tues...Supreme Court of Canada sits. Lord Brougham died 1868, æt. 90.
10. Sat.....Indian Mutiny 1857.
11. Sun....*Rogation Sunday.*
13. Tues...Court of Appeal Sits. General Sessions and County Court Sittings for trial in York begin. Solicitors' Examination.
15. Thu....Barristers' Examination.
18. Sun....*Sunday after Ascension.*
19. Mon....Easter Term commences. High Court Justice Q.B. and C.P.D. Sittings.
21. Wed....Confederation proclaimed 1867. Lord Lyndhurst born, 1772.
24. Sat.....Queen Victoria born 1819.
25. Sun....*Whitsunday.* Princess Helena born 1846.
27. Tues....Habeas Corpus Act passed 1679.
28. Wed....Battle of Fort George 1813.
29. Thu....Restoration of Charles II., 1660.

Reports.

IN THE THIRD DIVISION COURT OF THE COUNTY OF ONTARIO.

WILCOX *v.* COLTON, LAING, AND MAHONEY.

Claimant's chattel mortgages—After acquired property—Erroneous statement of consideration—R.S.O., c. 125.

When a chattel mortgage contains no agreement to charge after acquired property, a second chattel mortgage upon such property intended to be collateral to the renewal of the first cannot be supported, the more because on its face it is not shewn to be collateral, but apparently in respect of a new advance.

(Whitby, April 8.

Interpleader. The claimant's case rested upon two chattel mortgages. The first was dated 13th January, 1888, and properly filed and renewed in 1889 and 1890, securing $381.20. Nothing was contained therein affecting after acquired property.

The second was dated 6th January, 1890, properly filed, securing $263.

It was shewn or admitted that the last mortgage was given to secure the unpaid balance of the first, and was intended to be collateral to its renewal, but did not so state, and on its face appeared to be given in consideration of a new advance. It included various chattels not set out in the first mortgage, and excluded certain others which the mortgagor had in the meantime sold or exchanged.

DARTNELL J.J.—There is no question as to the sufficiency or *bona fides* of the first mortgage, it having been given for monies actually advanced to the mortgagor by the claimants for the purpose of carrying on certain lumbering operations on their behalf.

It remains to be considered whether the claimants can hold the after acquired property under their second chattel mortgage.

It was conceded, and I think correctly, that there is no decision governing the point.

A conclusion can only be arrived at by applying the principles of other rulings to the matter now in question.

It appears that an agreement as to future chattels gives no legal rights, and does not pass the after acquired property; but that in a proper case it can be made effectual on the ground that a Court of Equity will enforce it as attaching upon that property when it is ascertained. *Clark* v. *Scottish Imperial Insurance Co.*, 4 S.C.R., 709. And also that the Chattel Mortgage Act was not intended to cover agreements creating equitable interests in non-existing and future acquired property. *Banks* v. *Robinson*, 15 O.R., 618.

"Effect can only be given to words in a conveyance as they are found, and the Court cannot carry out the intention of the parties under such instruments if the words do not shew *verbatim* such intention," *Tapfield* v. *Harman*, 12 U.C.C.P., 311.

"If it be the intention of the parties to affect future acquired property, that intention must clearly appear on the face of the deed," *Mason* v. *McDonald*, 25 U.C.C.P., 439.

In this view the claimants cannot hold that the after acquired property, cannot be held as against the the defendants' execution creditors, and the second mortgage not being given in pursuance of any agreement contained in the first mortgage cannot aid the claimants, in addition to which there is the fact that the consideration as expressed was not true, and that the mortgage was given for an antecedent debt by a mortgagor insolvent with the knowledge of the claimants.

My judgment, therefore, is for the claimants in respect of the chattels now existent, contained in their first mortgage, and against them in respect of those acquired by the mortgagor after its execution. Costs of interpleader to be paid out of proceeds of sale.

IN THE FOURTH DIVISION COURT OF THE COUNTY OF ONTARIO.

PROVINCIAL PROVIDENT INSTITUTION *v.* TODD.

Benefit Society—Waiver of forfeiture—Liability for assessments.

The forfeiture clause in the benefit certificate being for the protection of the insured, and the contract being voidable, not void,

Held, that the demand for further assessments after the certificate had become forfeited was a waiver of such forfeiture, and that a member could not withdraw without paying all dues and assessments to the date of the receipt by the Institution of his notice of withdrawal.

[Whitby, March 27.

This action was brought to recover the amount of two assessments, which were claimed to be due by the defendant to the plaintiffs, amounting to $3.40.

The defendant was a beneficiary in the plaintiff's institution for the sum of $2,000 so long as he kept up certain payments according to their rules.

On the 15th of November last certain semi-annual dues became due, and should have been paid on that date. On the same date an assessment was made, which the defendant had thirty days to pay, under the condition 7 of the certificate issued to him, and the concluding part of this condition reads: "Default in the payment of assessments in the time and manner specified in this condition shall, *ipso facto*, suspend the member and void this certificate."

The defendant did not pay either the dues or assessments until the 17th day of January, when he forwarded the money due by him up to the 15th of December, 1889, and also his certificate, with notice of withdrawal, and requested to be freed from any further liability. This he did immediately upon the receipt of the notice calling for two further assessments. The plaintiffs' claim that on the 15th day of January two other assessments were called for, that the defendant became liable therefor, and it is for this assessment that they brought this action; they claiming that although they had the right to suspend defendant on the 15th day of December they had not done so.

Condition 9 reads as follows: "That the member may withdraw and be freed from further liability to the Institution at any time or during the thirty days given in said notice of assessment, or the sixty days given for reinstatement, upon notifying the secretary (by registered letter) of his or her intention to withdraw from the Institution, and paying all assessments and dues, and any or all claim or claims due the Institution at the date of the receipt by the Institution of such registered letter."

DARTNELL, JJ.—If the defendant had remitted the money on the 15th of December which he forwarded on the 17th of January, it is clear that the company would have been forced to accept it and free him from any further liability. There is but little question that if the defendant had died between the 15th day of December and the 15th day of January the plaintiffs would not have been liable to pay the amount of his certificate, as they would probably have claimed that it was void and that he was suspended. The authorities seem to show that although breach of the conditions make the contract void, that it is really only voidable, and the insurers may waive the default and still be liable. It seems to me that in claiming from and notifying the defendant on the 15th of January last, they waived any past forfeiture and still recognized him as a member, and if the defendant died within thirty days thereafter his beneficiary would have an action against the plaintiffs. Under Condition 9 the defendant "could only withdraw and cease to be a member by payment of all assessments and dues, and any or all claim or claims due the Institution at the date of the receipt by the Institution of such registered letter."

The defendant did not *entirely* comply with this condition. He forwarded by registered letter the notice required and money enough to cover the "claim" of the plaintiffs for past assessments and dues, but did not send enough to cover the assessments which had accrued since November, 1889. I think he has failed fully to comply with the terms of the Condition, and is not relieved from the payment of these assessments.

When a death claim arises the plaintiffs make an assessment upon the members sufficient to cover the sum payable, and if a large number of members withdraw without paying up such assessment, the sum payable will fall short, and the continuing members will have to be called upon for an additional sum to make up the deficiency.

The case of Horton *v.* Provident, 16 O.R.,

832, affirmed by the Divisional Court, 17 O.R., 38, and now before the Court of Appeal, and cited for the defendant, is an authority against him. There it was held that the contract was for the insurer's protection, and was voidable, not void, and that they could and did waive the forfeiture. In Wells *v.* Foresters, 17 O.R., 317, it was held on the facts that there had been no waiver and the insurers were not liable. In a recent case of Redmond *v.* Canada Mutual (not reported), Mr. Justice McMahon held that the fact of previous waiver of forfeiture by the receiving of dues long in arrear was not a bar to a defence setting up a forfeiture by non-payment of subsequent dues.

All these cases lead to the conclusion that the forfeiture clauses are for the protection of the beneficiary, and can be waived either impliedly or by express act.

I am informed that this is a test case, and I have been asked to give a considered judgment. I find for the plaintiffs for $3.40 and costs.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

COURT OF APPEAL.

[March 4.

REGINA *v.* WATSON.

Constitutional law—Criminal law—Criminal procedure—B.N.A. Act, s. 91, s-s. 27—51 Vict., c. 32 (O.)—52 Vict., c. 15 (O.)

The "Act to provide against frauds in the supplying of milk to cheese or butter manufactories," 51 Vict., c. 32 (O.), does not deal with criminal law within the meaning of s. 91, s-s. 27, of the B.N.A. Act, but merely protects private rights, and is *intra vires*.

So also the "Act respecting appeals on prosecutions to enforce penalties and punish offences under Provincial Acts," 52 Vict., c. 15 (O.), is not legislation dealing with criminal procedure within the meaning of that subsection, and is *intra vires*.

Judgment of the Queen's Bench Division, 17 O.R., 58, reversed.

E. Blake, Q.C., and *Irving*, Q.C., for the appellant.

E. B. Edwards for the respondent.

[March 4.

SINDEN *v.* BROWN.

Justice of the Peace—Summary conviction—Fine—Distress—Part payment—Imprisonment—Notice of action—R.S.C., c. 178, ss. 60, 61, 62, 63, 64, 65, 66, 67—R.S.O. (1887), c. 73, s. 14.

The defendant was convicted under the Canada Temperance Act and was adjudged to pay a fine and costs, to be levied by distress if not paid forthwith, and in default of sufficient distress to be imprisoned, etc. The defendant paid the costs but not the fine, and a distress warrant was issued against him, and nothing being made under this warrant he was committed.

Held, that the committment was illegal.

Trigerson v. *Board of Police of Cobourg*, 6 O.S., 405, approved and followed.

If a portion of the penalty is paid before committment, the amount paid must be restored before the alternative punishment is resorted to.

Held, also, that the magistrate having, in the honest belief that he was acting in the execution of his duty as such, issued the warrant of committment after part payment of the penalty, he was, though acting without jurisdiction, entitled to notice of action, and that, no notice having been given, the action failed.

Judgment of the Common Pleas Division, 17 O.R., affirmed on other grounds.

McCarthy, Q.C., and *DuVernet* for the appellant.

Aylesworth for the respondent.

[March 4.

MARSHALL *v.* MCRAE.

Master and servant — Wrongful dismissal—Right to dismiss — Grounds of dismissal—Exercise of right—Forfeiture of property.

The plaintiff, who was the inventor of a certain machine, and had assigned certain patents therefor to the defendant, agreed to obtain patents for certain improvements made by him upon the machine, and to assign them to the

defendant as soon as obtained, who in consideration thereof agreed to employ the plaintiff for two years from the date of the agreement for the purpose of demonstrating and placing the patents on the market, and to pay him a certain sum for salary and also his expenses, and the plaintiff and defendant were to share the profits in certain proportions.

The tenth clause of the agreement was as follows:

"It is further agreed that the party of the first part (the defendant) is to be the absolute judge as to the manner in which the party of the second part (the plaintiff) performs his duties under this agreement, and shall have the right at any time to dismiss him for incapacity or breach of duty, in which event the party of the second part shall only be entitled to be paid his salary up to the time of such dismissal, and shall have no claim whatever against the party of the first part."

The defendant dismissed the plaintiff within three months of the date of the agreement for alleged disobedience and incapacity, without communicating to the plaintiff his reasons for so acting, or calling upon him for any explanations.

Held (HAGARTY, C.J.O., dissenting), that the plaintiff had certain rights of property under the agreement; that the parties to it therefore did not occupy merely the relation of master and servant, and that the tenth clause did not give the defendant a right arbitrarily to dismiss the plaintiff, but that he occupied a quasi-judicial position, and was bound to act in good faith, and to enquire into the circumstances upon which he based his determination to dismiss, this necessarily involving notice to the plaintiff and an opportunity of being heard.

Russell v. *Russell*, 14 Chy.D., 471, distinguished.

Judgment of the Queen's Bench Division, 16 O.R., 495, affirmed.

McCarthy, Q.C., and *J. J. Scott* for the appellant.

Moss, Q.C., and *Carscallen* for the respondent.

THORNLEY *v.* REILLY.

Liquor License Act—Sale of liquor after notice —Notice how given—R.S.O., c. 194, s. 125.

This was an appeal by the defendant from the judgment of the County Court of York, reported 26 C.L.J., 26, and came on to be heard before this Court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.) on the 13th of February, 1890.

The plaintiff, a married woman, brought the action under R.S.O., c. 194, s. 125, to recover from the defendant, an hotel-keeper, damages because of the sale by him to her husband of intoxicating liquor after notice not to sell. The notice was signed by the plaintiff and served by her agent.

The action was tried before MACDOUGALL, Co.J., and a jury, and the damages were assessed at $100. The defendant contended that notice signed and served as aforesaid was not sufficient, and that notice by the Inspector was necessary. The learned judge decided against this contention, and judgment was entered for the plaintiff.

This Court was divided in opinion, and the appeal was dismissed with costs.

Per HAGARTY, C.J.O., and BURTON, J.A. The right of action for damages depends on the notice being given by the person filling the public position of Inspector, though the liability as far as the penalties are concerned will be incurred upon notice being given by the private individual. This is the reasonable construction of the words, "person requiring the notice to be given," in themselves, and would appear to be the intention of the Legislature, these narrower words having been substituted for the wider ones of the former section.

Per OSLER and MACLENNAN, JJ.A. The whole scope and effect of the section must be looked at, and liberal constructions given to it. The notice must in all cases be signed by the private individual, and whether served by the Inspector or not, the private individual gives the notice, and the words may fairly be construed to mean "person requiring to give the notice," and there is a right of action whether the notice is served in one way or the other.

Murdoch for the appellant.

LeVesconte for the respondent.

TEMPERANCE COLONIZATION SOCIETY *v.* FAIRFIELD.

Contract—Fraud—Rescission—Repayment of consideration—Statute of Frauds—Uncertainty.

This was an appeal by the plaintiffs from the judgment of the Common Pleas Division,

reported 16 O.R., 544, and came on to be heard before this Court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.) on the 13th and 14th of November, 1889.

The appeal was dismissed with costs.

Per HAGARTY, C.J.O. The agreement was void for uncertainty, the land in question not being in any way defined or ascertained or capable of being defined or ascertained, and at any rate misrepresentations justifying rescission were proved.

Per BURTON, OSLER, and MACLENNAN, JJ.A. The plaintiffs were unable to give to the defendant the right of selection they had agreed to give him, so that the action necessarily failed, and the defendant was entitled to judgment on his counter-claim, there being a failure of consideration.

Per BURTON, J.A., also. The agreement was in itself sufficiently certain, and was not void for misrepresentation.

Per MACLENNAN, J.A., also. No misrepresentations justifying a rescission of the contract were proved, but the agreement was void for vagueness and uncertainty.

McCarthy, Q.C., and *A. H. Marsh* for the appellant.

McLaren and *McClive* for the respondent.

Queen's Bench Division.

Div'l Ct.] [March 8.

COCKBURN *v.* BRITISH AMERICA ASSURANCE COMPANY.

Insurance—Fire—Interim receipt—Powers of local agent of insurance company—Approval by company—Indorsements of application—Non-repudiation of contract—Prior insurance—Eighth statutory condition—Assent of company—Election not to avoid—Extension of policy.

A local agent of the defendants effected an insurance against fire upon the plaintiff's steam power saw-mill and machinery, and issued to the plaintiff an interim receipt therefor, dated 4th July, 1888, purporting to be issued by the defendants. The plaintiff at the same time insured the property in other companies. The plaintiff had a prior insurance upon the same property effected by the defendants, and held a policy therefor, and had also a prior insurance in another company.

The local agent enclosed the application for the second insurance to the defendants in a letter dated 17th July, 1888, in which he stated that he sent the policy representing the prior insurance by concurrent book post, to be extended in a manner specified. The defendants received the policy and made the desired extension, and in an action upon the policy and the subsequent interim receipt the jury found that they had also received the letter enclosing the application. The defendants, however, acted throughout as if they had not received it, and on the 7th September, 1888, after they had been furnished with a copy of the application, they wrote to their agent requesting him to take up the interim receipt and return it to them, and informing him that as it had run one-half of the term they had debited him with one half of the premium as earned, and on the same day they re-insured half the risk in another company. The plaintiff was never informed that the defendants had refused the risk, and he was ignorant of it until after the fire, and the defendants never returned him any portion of the premium paid.

The application for the second risk correctly stated the amount of insurance on the property, but not the names of the companies insuring. In the copy of the application subsequently sent to the defendants it was not stated that the defendants had a prior insurance. Indorsed on the application was the following: "Special. To be submitted to the company for approval before receipt is issued;" and "Applications for insurance on property where steam is used for propelling machinery must be approved by the head office at Toronto before the company will be liable for any loss or damage." The plaintiff's attention was not called to these indorsements, and he was not aware that the agent had no authority to grant the interim receipt on this account. The agent swore that he had never received instructions not to grant an interim receipt under such circumstances.

Held, that the indorsements formed no part of the application signed by the plaintiff, and that the agent was acting in the apparent scope of his authority, and was to be deemed *prima facie* to be the agent of the company; and as the defendants never repudiated the contract, but merely determined to put an end to it, and

treated it as a subsisting contract, they were liable upon it.

Under the eighth statutory condition the defendants claimed that they were not liable upon the receipt, because there was prior insurance in another company, and their assent did not appear in and was not indorsed on the policy, or that they were not liable upon their earlier insurance because of the subsequent insurance in other companies without their assent.

Held, that the application and the interim receipt constituted the contract of insurance, and as in this contract the total amount of insurance was truly stated, and the contract continued to be binding until after the loss occurred, the defendants must be considered to have assented to such insurance, and they would be compellable to make their assent appear in, or to have it endorsed on, their policy, if such policy were issued.

Held, also, that the prior insurance was voidable, not void, and that the defendants, after the subsequent contract was entered into in which the total amount of insurance was stated, and after they knew that it was entered into, had elected not to avoid the prior insurance, but to treat it as still subsisting by extending it.

Semble, that the defendants, having assented to the insurance stated in the contract of insurance, could not assert that the effecting such insurance had the result of avoiding the prior insurance effected by their policy.

W. Nesbitt for plaintiffs.

Laidlaw, Q.C., for defendants.

STREET, J.] [March 21.

MARTIN *v.* MCMULLEN.

Bankruptcy and insolvency — Assignment for benefit of creditors—R.S.O., c. 124—Valuing security—Guaranty, construction of.

A deceased person, of whom the plaintiff was executor, gave the defendants a guaranty in respect of goods sold and to be sold to another, in the following terms: "I hereby undertake to guarantee you against all loss in respect of such goods so sold or to be sold, provided I shall not be called in any event to pay a greater sum than $2,500."

The principal debtor, being indebted to the defendants in $5,500, made an assignment under R.S.O., c. 124, and the defendants filed a claim with the assignee, but did not, in the affidavit proving the claim, state whether they held any security or not. At a later date the plaintiff paid the defendants the $2,500, and filed a claim with the assignee.

Held, that the guaranty was not a security which the defendants were required to value under the Act, and that the omission from their claim of a piece of information which could not affect it did not render it invalid.

Held, also, that this was a guaranty, not of part, but of the whole of the debt, limited in amount to $2,500, that is, a guaranty of the ultimate balance after all other sources were exhausted; and the plaintiff was not entitled to rank upon the estate in respect of the $2,500, nor to recover any part of any dividend which the defendants had received.

Hobson v. *Bass*, L.R., 6 Chy., 792, distinguished; and *Ellis* v. *Emmanuel*, 1 Ex.D., 157, followed.

S. G. McKay for plaintiff.

G. C. Gibbins for defendants.

MACMAHON, J.] [April 9.

ABRAHAM *v.* ABRAHAM.

Alimony—Registration of judgment for—Assignment by defendant for general benefit of creditors—Priorities—R.S.O., c. 44, s. 30—R.S.O., c. 124, s. 9.

The precedence given to an assignment for the general benefit of creditors by R.S.O., c. 124, s. 9, over "all judgments and all executions not completely executed by payment," does not extend to a judgment for alimony registered against the lands of the defendant prior to the registration of the assignment; for by R.S.O., c. 44, s. 30, the registration of such a judgment is to have the same effect as the registration of a charge by the defendant of a life annuity on his lands; and the defendant could not convey the lands unless subject to the charge so created; and therefore a general assignment for the benefit of creditors by the defendant in an alimony action, which was not executed until after judgment against him and not registered until after the registration of the judgment, did not take precedence of the judgment, and the plaintiff was not obliged to rank with the other creditors of the defendant.

Idington, Q.C., for the defendant, Hossie.

Osler, Q.C., and *W. M. Douglas*, for the plaintiff.

Common Pleas Division.

MACMAHON, J.] [Dec. 10, 1889.

SCOTTISH AMERICAN INVESTMENT CO. v. TENNANT.

Mortgage—Right to consolidate.

The plaintiffs, who were the mortgagees under three mortgages from the same mortgagors on different lands, were held entitled only to consolidate in respect of the mortgages in default when action brought to enforce them, and as the amount due on the mortgages had been paid, and there was then no default, the right to consolidate was refused.

Lockhart Gordon for the plaintiffs.

Urquhart for the defendant.

MACMAHON, J.] [Dec. 10, 1889.

STACK v. SHAND.

Dower—Payment of yearly sum by report of commissioners—Payable only from filing of report—Dower Procedure Act—O. J. Act.

After action commenced and judgment obtained under the O. J. Act for the recovery of dower in certain lands, proceedings were taken under the Dower Procedure Act for the assignment of dower, but the commissioners appointed under the Act, in lieu of assigning dower, reported in favor of a yearly sum being paid. The report was filed in the office of the local registrar of the court, and in the local registry office, on the 22nd February, 1889.

Held, that there could only be a recovery of the sums assessed since such last named date.

Held, also, that had proceedings been continued under the O. J. Act, instead of substituting those under the Dower Procedure Act, the plaintiff's remedy would have been very different.

Washington for the plaintiff.

Hoyles, Q.C., for the defendant.

Div'l Ct.] [March 7.

BADGEROW v. GRAND TRUNK RAILWAY CO.

Railways—Accident—Negligence—Evidence of—Defective brake—Latent defect.

Action by the plaintiff to recover damages for the death of her husband, by reason of, as was alleged, a defective brake on a car on defendants' railway, on which deceased was employed as a brakeman.

Held, there could be no recovery, for the evidence failed to show how the accident happened, the contention that it was the defective brake being mere conjecture; and even if it were the cause of the accident, it would be no ground of liability, for, under the defendants' rules, it was the deceased's duty to examine and see that the brakes were in proper working order, and report any defect to the conductor, and if he made the examination he apparently discovered no defect, as he made no report, a latent defect being no evidence of negligence, and if he omitted to make such examination, etc., then the accident would be attributable to his own negligence.

McCullough for the plaintiff.

Nesbitt for the defendants.

Div'l Ct.] [March 7.

REGINA v. CANTILLON.

Liquor License Act—Adjudication—Conviction—Imprisonment without prior distress—Cost of conveying to jail.

The adjudication on a second offence under the Liquor Act, without providing for distress, directed immediate imprisonment on default of the payment of the fine and costs, and the conviction drawn up under it was in similar terms. After the issue of a writ of *certiorari*, but before its return, an amended conviction was returned providing for distress being first made.

Held, that the adjudication and conviction made under it were bad for not providing for distress, and that the amended conviction could not be supported, because it did not follow the adjudication.

Semble, that had the amended conviction been in other respects good, it would not have been bad under the Liquor License Act for including the costs of conveying to jail.

DuVernet for the defendant.

Langton for the Crown.

Div'l C't.] [March 7.

REGINA v. ROWLIN.

Conviction—Imposition of costs of commitment and conveying to jail—Offence against Public Health Act R.SO., c. 205.

A conviction for carrying on a noxious and offensive trade contrary to R.S.O., c. 205, the Public Health Act, imposed in default of suffi-

cient distress to satisfy the fine and costs, imprisonment in the common jail for fourteen days, unless the fine and costs, including the costs of commitment and conveying to jail, were sooner paid.

Held, following *Regina* v. *Wright*, 14 O.R., 668, that the imposition of the costs of commitment and conveying to jail were unauthorized, and that s. 1 of R.S.O., c. 74, not referred to in that case, did not affect the question.

Bicknell for the applicant.

Aylesworth, Q.C., and *Waddel* contra.

Div'l Ct. [Feb. 23.

GARDNER *v.* BROWN.

Dower—Equity of Redemption.

There can be no dower in land of which the husband merely acquired the Equity of Redemption, and which he had parted with.

Re Croskery, 16 O.R., 207, followed.

Arnoldi for the applicant.

R. M. Macdonald contra.

Div'l Ct.] [March 7.

HUFFMAN *v.* WATERHOUSE.

Innkeeper—Sale of stallion under R.S.O., c. 154, for keep, &c—Lien—Revival of—Tavern license—Owner of.

An innkeeper, claiming to act under R.S.O., c. 154, sold by public auction a stallion belonging to the plaintiff, a boarder at his inn, to enforce his lien thereon for the keep and accommodation thereof.

Held, that the sale was authorized after the lien accrued; the plaintiff removed the stallion and subsequently brought it back to the inn.

Held, that the lien revived after the return of the stallion.

Under s. 12 of R.S.O., c. 194, the person receiving a tavern license is assumed to have satisfied the license commissioners that he is the true owner, but, notwithstanding, it can be shewn that the licensee was merely the agent of another, who was the real owner of the business.

D. O. Cameron and *Blain* for the plaintiff.

McFadden for the defendant Waterhouse.

Graham for the defendant Broddy.

Chancery Division.

Div'l Ct.] [March 8.

CAMERON *v.* WALKER.

Limitation of actions—Wife's property—Removal of disability of coverture—When time commences to run as against mortgagee or those claiming under the mortgage—Title by possession.

A. and B., husband and wife, were married in 1841. B. acquired certain land in 1865. Defendant was put in possession of the land (three lots) in 1869, and received a deed of one of the lots in 1870. Defendant remained in possession until 1888.

A. and B. made a mortgage of the other two lots in 1881, and a deed in 1884. Plaintiff purchased these two lots from an assignee of the mortgagee under the power of sale in the mortgage, and put up a fence around them, dividing them from the lot conveyed to defendant, and defendant pulled it down. Plaintiff then brought an action of trespass.

Held (affirming ROSE, J.), that B.'s disability of coverture having been removed in 1876 by 38 Vict., c. 16, s. 5 (O.), the Statute of Limitations ran against her from that time, and that defendant had acquired a good title by possession under 38 Vict., c. 16, s. 1 (O.) But,

Held, also, that as the plaintiff was a person claiming under the mortgage, the statute did not commence to run against him until (as the earliest possible period) the date of the mortgage, less than ten years before action, the plaintiff must succeed, and the judgment in the court below must be reversed.

G. M. Macdonell, Q.C., for plaintiff.

J. McIntyre, Q.C., for defendant.

BOYD, C.] [March 13.

KENNEDY *et al v.* HADDOW *et al.*

Mechanics' lien—Prior mortgage—Subsequent lien—Increase of selling value of the land—Priority.

Before a mortgagee having priority upon the mortgaged premises for payment of his security is postponed to the claim of one who subsequently does work upon the premises, it mus be clearly proved that the selling value of he land has been increased by the work done.

The mortgage should retain its priority to the

extent of the value of the security before the work is begun in respect of which the lien attaches, and the lien should have priority only to the extent of the additional value given by the subsequent improvements. The Court has always been solicitous to protect mortgagors from being improved out of their property, and under the Mechanics' Lien Law the Court must be equally solicitous to protect mortgagees from being improved out of their security.

C. J. Holman for the mortgagee.

Hoyles, Q.C., for the lien holders.

BOYD, C.] [April 2.

RE MCLEAN AND WALKER.

Sale of land—Agreement—When payment to be made—Title—Prior mortgage—Time to take possession—Interest.

In an agreement for the sale of land it was provided that the cash payment should be made and the mortgage for the balance given "so soon as the solicitors for the purchaser shall be satisfied with the title."

Held, that the meaning of the contract was, that payment was not to be required until such title was shown as would justify the purchaser in taking possession; and, following *Wills* v. *Maxwell*, 32 Beav., 552, that no satisfaction being given as to a prior mortgage affecting the land until two years after the agreement, the purchaser could not prudently take possession until then, and interest on the purchase money should only be allowed from that time.

H. Cassels for the vendor.

Moss, Q.C., for the purchaser.

BOYD, C.] [April 3.

Re GOODFELLOW, TRADERS BANK *v.* GOODFELLOW.

Banks and banking — Warehouse receipt—Wheat, conversion into flour — Following moneys representing such flour—R.S.C., c. 120, s. 56.

The Traders Bank took a warehouse receipt from one G., a miller, on 2,800 bushels of wheat in his mill on August 12th, 1888. G. died June 19th, 1889. Shortly before his death the Bank became aware that there was a shortage of wheat in the mill and took possession of what was then there, viz., some 700 bushels. It was proved that as a matter of fact there had been a shortage ever since August 27th, amounting to never less than 638 bushels. Subsequently to August 27th some wheat had been manufactured into flour, and sold out of the mill by G., and some $105 had come into the hands of the administrator of his estate from this source, which sum was a great deal less than the value of 638 bushels of wheat. There was no attempt to prove that this flour was made from the identical 2,800 bushels of wheat in the mill when the receipt was given.

Held, on appeal from the report of the Master at St. Thomas, that the Bank was entitled to follow this sum of $105 in the hands of the administrator, and to claim the same under their warehouse receipt.

A. H. F. Lefroy for the appeal.

Malone, contra.

Practice.

MACLENNAN, J.A.] [April 14.

MULOCK *v.* CAWTHRA.

Money in court—Payment out to next of kin of deceased party — Personal representative—Revivor.

Money in court will not be paid out to the next of kin of deceased parties without a personal representative having been appointed and made a party by revivor, except in simple cases, where the sum in court is small and the circumstances are such that the court can see that it is safe to dispense with administration or revivor or both, in order to save costs.

R. M. Macdonald for the applicants.

MACLENNAN, J.A.] [April 14.

MCCONNELL *v.* WAKEFORD.

Security for costs—Residence of one of two plaintiffs out of Ontario—Rule 1242—Indorsement on writ of summons—Order for security—Irregularity—Nullity—Waiver by compliance.

The writ of summons was indorsed with a statement that the plaintiffs resided at the township of Brant, in the County of Bruce, and in the State of Wisconsin, in the United States of America. Upon this an order was issued upon

præcipe, under Rule 1242, by an officer of the Court, requiring one of the plaintiffs to give security for costs and staying proceedings until security should be given. The plaintiffs, desiring to arrest the defendant, were refused an order because of the stay of proceedings, and then applied for and obtained an order allowing them to deposit $400 with an officer of the Court instead of giving a bond for security of costs, and also declaring it to be without prejudice to the right of the plaintiffs to set aside the order staying proceedings, and they paid the $400 to the officer accordingly.

Held, that it appeared from the endorsement on the writ that the plaintiffs resided out of Ontario, and that the issue of an order for security under Rule 1242 was thereby warranted; but that the order issued, being against one plaintiff only, was irregular and might have been set aside; it was not void, however, and was good until set aside; and having been complied with, as it was by the deposit of the money with the officer, the compliance made it good, and it could not afterwards be set aside, notwithstanding the reservation in the order.

Semble, that if it had appeared by the indorsement, as it afterwards did by affidavit, that one of the plaintiffs in fact resided in Ontario, the order for security would have been void, and would have been set aside notwithstanding the compliance with it.

W. H. Blake for plaintiff.

W. M. Douglas for defendant.

BOYD, C.] [April 15.

STEPHENSON *v.* DALLAS.

Judgment under Rule 739—When granted—Leave to defend—Terms—Evidence on motion—Ex parte examination of witness.

When the facts are not clear and free from doubt, leave to sign judgment under Rule 739 should not be granted.

Bank of Minnesota v. *Page*, 14 A.R., 351, followed.

But where a distinct defence is not made out terms should be imposed upon the defendant upon his being allowed to defend, as a pledge of his *bona fides*; and in this case the defendant was required to pay into Court or secure one-half of the amount claimed.

The examination of a witness conducted by one party without notice to his opponent, is irregular and inadmissible as evidence upon a motion.

H. C. Fowler for the plaintiff.

Walter Macdonald for the defendant.

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Rogers: Law and Medical Men, Toronto, 1884.

Schouler on Executors, 2nd ed., Boston, 1889.

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Stringer on Oaths and Affirmations, London, 1890.
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Throop's Code Civil Procedure, Albany, 1889.
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Wertheimer on Clubs, 2nd ed., London, 1889.
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Law Society of Upper Canada.

LAW SCHOOL—HILARY TERM, 1890.

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

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

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

CURRICULUM OF THE LAW SCHOOL.

Principal, W. A. REEVE, Q.C.
Lecturers, E. D. ARMOUR. A. H. MARSH, LL.B.
Examiners, R. E. KINGSFORD, LL.B. P. H. DRAYTON.

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

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

The course in the School is a three years' course. The term commences on the fourth Monday in September and closes on the first Monday in May; with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's Day.

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

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

By the Rules passed in September, 1889, Students-at-Law and Articled Clerks who are entitled to present themselves either for their First or Second Intermediate Examination in any Term before Michaelmas Term, 1890, if in attendance or under service in Toronto are required, and if in attendance or under service elsewhere than in Toronto, are permitted, to attend the Term of the School for 1889-90, and the examination at the close thereof, if passed by such Students or Clerks shall be allowed to

them in lieu of their First or Second Intermediate Examinations as the case may be. At the first Law School Examination to be held in May, 1890, fourteen Scholarships in all will be offered for competition, seven for those who pass such examination in lieu of their First Intermediate Examination, and seven for those who pass it in lieu of their Second Intermediate Examination, viz., one of one hundred dollars, one of sixty dollars, and five of forty dollars for each of the two classes of students.

Unless required to attend the school by the rules just referred to, the following Students-at-Law and Articled Clerks are exempt from attendance at the School:

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

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

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

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

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

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

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

During his attendance in the School, the Student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance. As far as practicable, Students will be provided with room and the use of books for this purpose.

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

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

Common Law.

Broom's Common Law.
Kerr's Student's Blackstone, books 1 and 3

Equity.

Snell's Principles of Equity.

Statute Law.

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

In this year there will be two lectures each day except Saturday, from 3 to 5 in the afternoon. On every alternate Friday there will be no lecture, but instead thereof a Moot Court will be held.

The number of lectures on each of the four subjects of this year will be one-fourth of the whole number of lectures.

The first series of lectures will be on Contracts, and will be delivered by the Principal.

The second series will be on Real Property, and will be delivered by a Lecturer.

The third series will be on Common Law, and will be delivered by the Principal.

The fourth series will be on Equity, and will be delivered by a Lecturer.

SECOND YEAR.

Criminal Law.

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

Real Property.

Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Deane's Principles of Conveyancing.

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.
Bigelow on Torts—English Edition.

Equity.

H. A. Smith's Principles of Equity.

Evidence.

Powell on Evidence.

Canadian Constitutional History and Law.

Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

Practice and Procedure.

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

Statute Law.

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

In this year there will be two lectures on each Monday, Tuesday, Wednesday, and Thursday from 10.30 to 11.30 in the forenoon, and from 2 to 3 in the afternoon respectively and on each Friday there will be a Moot Court from 2 to 4 in the afternoon.

The lectures on Criminal Law, Contracts, Torts, Personal Property, and Canadian Constitutional History and Law will embrace one-half of the total number of lectures and will be delivered by the Principal.

The lectures on Real Property and Practice and Procedure will embrace one-fourth of the total number of lectures and will be delivered by a lecturer.

The lectures on Equity and Evidence will embrace one-fourth of the total number of lectures and will be delivered by a lecturer.

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

Dart on Vendors and Purchasers.
Hawkins on Wills.
Armour on Titles.

Criminal Law.

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

Equity.

Lewin on Trusts.

Torts.

Pollock on Torts.
Pmith on Negligence, 2nd edition.

Evidence.

Best on Evidence.

Commercial Law.

Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.

Private International Law.

Westlake's Private International Law.

Construction and Operation of Statutes.

Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law.

British North America Act and cases thereunder.

Practice and Procedure.

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

Statute Law.

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

In this year there will be two lectures on each Monday, Tuesday, Wednesday, and Thursday, from 11.30 a.m. to 12.30 p.m., and from 4 p.m. to 5 p.m., respectively. On each Friday there will be a Moot Court from 4 p.m. to 6 p.m.

The lectures in this year on Contracts, Criminal Law, Torts, Private International Law, Canadian Constitutional Law, and the construction and operation of the Statutes, will embrace one-half of the total number of lectures, and will be delivered by the Principal.

The lectures on Real Property, and Practice and Procedure will embrace one-fourth of the total number of lectures, and will be delivered by a lecturer.

The lecturers on Equity, Commercial Law, and Evidence, will embrace one-fourth of the total number of lectures, and will be delivered by a lecturer.

GENERAL PROVISIONS.

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

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

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court.

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

At the close of each term the Principal will certify to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student will be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series during the term, and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal will make a special report upon the matter to the Legal Education Committee. For the purpose of this provision the word "lectures" shall be taken to include Moot Courts.

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

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

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

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

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

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