Canada Law Journal.

VOL. XXXII. MARCH 2, 1896. NO. 4.

There are very many of our subscribers who are quite competent to confer a benefit upon their brethren of the Bar by contributions to our columns on subjects with which they have special familiarity; we should be very glad to hear from them. In the word "contributions," we would include correspondence, notes of recent cases of importance in their localities, articles on any subject of general interest, or incidents connected with Bench or Bar which are worthy of preservation. We desire to make this Journal not only useful but indispensable to the profession throughout the Dominion.

It is stated that the success of the English Commercial Court has recently been shown by the fact that there were no fewer than 58 summonses in the list for trial; and it is claimed that commercial men prefer to bring their disputes into a Court where a rapid system of procedure is provided for them, and where they can rely upon having their cases decided by an able Judge who is familiar with their transactions. Whilst there is much to commend these Courts in theory, and their establishment and success, in the long run, and where commerce is large, is very probable, it may be that the circumstances surrounding us and the class of men who would be in charge of similar Courts in this country, would not at present make them equally successful here.

Our exchanges refer to the death of Lord Blackburn, recently well known as one of the best Judges on the English Bench. He was appointed a Puisne in the Queen's Bench, by

his fellow countryman, Lord Chancellor Campbell, in 1859, though he was at that time practically unknown to the public. Objection was taken at the time that he had not worn a silk gown, a fact of some importance in England, though of none in Canada. But the Chancellor said, "I knew nothing of Mr. Blackburn, except of having seen him at the Court over which I preside. I have no private intimacy, and I declare on my word of honour, I don't know what side he is on in politics, but I have known him as a sound, good and able lawyer." This appointment, made without regard to politics, reflected as much honor on Lord Campbell as it did upon Mr. Blackburn. It is a pity such an example is not more often followed in this country. In 1876 he was created a Lord of Appeal in Ordinary, and on this occasion the approval of his appointment was general and emphatic. He retired in 1886. Our English namesake says that "when Lord Blackburn, one of the greatest exponents of mercantile law of this generation, passed away, he was superior as a mercantile lawyer to Lord Hannen, and if inferior in original ability to Lord Bramwell, far exceeded him in stability and evenness of judgment."

DELIVERY OF SOLICITORS' BILLS.

The statutory obligation imposed upon solicitors requiring them to deliver their bills of costs to their clients one calendar month before they can be permitted to sue for the recovery thereof, places them in a somewhat unique position. No other creditor is required to go through any such preliminary; on the contrary all other creditors may demand payment of their bills when due, and in the event of non-payment, may on the same day proceed to enforce the demand by action at law. Perhaps it is because no layman can be expected to understand a lawyer's bill in less than a month, that this lengthened period between demand and suit is considered necessary, but we fear even after a month's consideration a solicitor's bill will still appear to most lay minds an altogether incomprehensible affair, with its minute details of attendances

for this, that and the other thing. A physician's little bill for "professional services" has the merit of brevity and comprehensibility, though perhaps it is none the more conducive to any real satisfaction on the part of the recipient, than the more voluminous bill of the solicitor. These qualities of brevity and simplicity, however, which it undoubtedly possesses, are probably considered sufficient to render it unnecessary to require in such cases a month's delivery before suit, and most solicitors would very gladly exchange the detailed system of rendering of bills imposed on them by law for the delightful brevity and simplicity of the physician's method.

Seeing, however, that this exceptional duty of delivering a bill in detail a month before suit, is imposed on solicitors, it seems a little hard to vex them further by holding, as an Irish Court has recently done (see *Maguire* v. *Carey*, L. T. Jour., Feb. 1, 1896, p. 316), that where the bill is sent by post, the day of its actual delivery by the post office officials to the person to whom it is directed, is the day of delivery, and not the day on which it is deposited in the post office. If such a ruling were to prevail in Ontario, owing to the very irregular way in which people in country places call for their letters at the post office, it would in many cases be unsafe to resort to the post office as a means for delivering a bill, and nothing but the actual manual delivery of the bill to the client would enable a solicitor to say when he might with safety begin his action for its recovery.

DIVORCE IN BRITISH COLUMBIA.

The jurisdiction of the Supreme Court of British Columbia over the subject of Divorce has again been questioned. The Chief Justice the other day declined to hear and dispose of a motion in the case of *Levey* v. *Levey*, as he doubted the jurisdiction of the Court in such matters. The motion was afterwards brought before Mr. Justice Drake, who took the view that the Supreme Court had jurisdiction, and acted accordingly.

It would appear from a note which appears in the draft of the proposed Revised Statutes of British Columbia, at the conclusion of the Acts respecting divorces and matrimonial causes, that in the case of *M., falsely called S.* v. *S.*, reported in B.C. L.R. 25, being a suit for nullity of marriage, it was held by Crease and Gray, JJ., (Begbie, C.J., dissenting) that the Supreme Court of British Columbia has all the jurisdiction conferred on the Court for Divorce and Matrimonial Causes, under The Imperial Matrimonial Causes Act of 1857, (20 & 21 Vict., c. 85) as amended by 21 & 22 Vict., c. 108. It was thought that the application of the Imperial statutes to British Columbia might have arisen either under the general application of Imperial statute law to the then colony at the time of the passing of the statute, or under an Act passed in British Columbia in 1867, called the English Law Act, which provides that the civil laws of England, as the same existed on the 19th of November, 1858, and so far as the same are not from local circumstances inapplicable, shall be in force in that province. This general enactment left the question for decision by the British Columbia Court, "Is this statute from local circumstances inapplicable?" The Chief Justice held that they were inapplicable; Crease and Gray, JJ., being of a contrary opinion. The case was not argued, except on behalf of the petitioner. It will thus be seen that Chief Justice Davie, in the course he took, followed the lead of the late Chief Justice, and, as there was no argument as against the applicability of the statute, and the judgment being that of a divided Court, in an unargued case, it cannot be said that the subject is res judicata.

It may also be noted that in March, 1891, the full Court, (Begbie, C.J., Crease and Walkem, JJ.) in the case of *Scott* v. *Scott*, held that there was no appeal to the full Court from the decision of a judge granting a decree of divorce, and on that ground they dismissed the appeal, notwithstanding sec. 55 of 20 & 21 Vict., c. 85.

Under the circumstances it is but common prudence that so grave a question should be set right at once. If the jurisdiction exists, there need be no more anxiety; but if it is shown not

to exist or is doubtful, then possibly legislation can be procured to set the matter at rest. There is certainly ample room for argument against the fact of there being jurisdiction. But to permit the question to remain open is to confirm the present feeling of unrest and apprehension, and may entail great misery and loss. The course that the Chief Justice has advised, viz., having the matter discussed pro and con in full Court, is now the proper thing to do, and this doubtless will shortly be done.

We were sorry to see an item which appeared in reference to this matter in an Ottawa paper, stating that "the Catholic Church is believed to be behind the Chief Justice." Very happily little attention is paid nowadays to newspaper items in the average daily papers. They are very frequently incorrect, and being too often written by irresponsible and ignorant persons, and intended to appeal to the prejudices and passions of the masses, who desire to be tickled by something sensational (whether true or false is immaterial), should really carry no weight. Such statements as the above, however, are calculated to do harm, in that they tend to break down that reverence for law and order so necessary for the welfare of any community. The honor of the Chief Justice of British Columbia, of course, needs no defence against such silly slanders. The fact that the objection to the jurisdiction was taken by his eminent predecessor, would be a sufficient vindication, if any were needed.

CAUSERIE.

"If I chance to talk a little while forgive me."
—*Henry VIII., Act I, Scene 4.*

We often hear voluntary and extra judicial oaths, both loud and deep, uttered by weary counsel who have to wade through the tedious judgments which one of our Canadian Courts of Appeal is in the habit of rendering. That our American brethren are not exempt from this species of martyrdom is attested by the case of *Jacksonville, etc., R. Co.* v. *Peninsular, etc., Land Co.*, decided by the Supreme Court of

Florida, and reported in 27 Fla. 1. The gravamen of the action was the destruction of several houses belonging to the Land Company by fire alleged to have been occasioned by sparks emitted from one of the railway company's locomotives. Now one would imagine that a case involving the application of a well-settled principle of law, such as this, would not call for any prodigious ratiocination by the Court in determining it. But by repeatedly inserting long extracts from the evidence and arguing conclusions therefrom; analyzing, even to the minutest detail, the Judge's charge in the Court of first instance; entering upon prolix definitions of well known doctrines, and copiously interlarding transcriptions from text-books and reports to be found in every lawyers' library, the opinion of the Court is swelled to the outrageous volume of 105 octavo pages! The *American Law Review* (vol. xxix., p. 881) in speaking of this case very properly says: "Decisions of this length are an attack upon the lives of the profession."

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While discussing this obnoxious practice of padding judgments to the utter undoing of their usefulness, it might not be out of place to quote some remarks of Lord Campbell in *Burch* v. *Bright*, to be found in 36 L.T. 89. After, as he says, having "laboriously travelled through the decree and judgment of the Vice-Chancellor (Wood), occupying forty pages of a huge quarto volume closely printed," he proceeds as follows: "Considering my long experience as a judge and the position which (however unworthily) I have the honor to fill, perhaps I may, without impropriety, venture to say, with the most profound and sincere respect for Vice-Chancellor Page Wood, that I should have disposed of the appeal not only with less labor to myself, but more satisfactorily and more confidently, had his judgment been more condensed. My attention has been diverted from the main questions in the case by elaborate and minute disquisitions as to the bearing of contradictory evidence on subordinate points, and by following the devious paths by which the

final conclusion is reached. Judgments of such prodigious length, instead of settling, have a tendency to *unsettle* the law, and instead of sending away the defeated party contented, I can only say from my own experience, since I have presided in this court, that they rather generate appeals; for although the decree may be right, some of the various reasons for it may be questionable, and a false hope is excited that, impugning these, the decree may be reversed." This deliverance of the distinguished Chancellor so pithily embodies the moral we would point in the premises, that little more remains to be said. We would only add, if we may do so without appearing presumptuous, that a judge should never encumber his reasons with the facts of a case to an extent beyond that which is absolutely necessary to a clear understanding of his conclusions. If the case is a reportable one, the statement of its essential facts comes properly within the province of the reporter. For a judge, in pronouncing his decision upon a question of fact, to accompany it with an argument justifying it upon the evidence, is simply to fly in the face of the old adage that "One's conclusion may be right, but ten chances to one his reasons for reaching it will be wrong!" But that a judge in these days of a thoroughly educated profession and multitudinous libraries, should expand his reasons with dissertations upon elementary principles of law, and laboriously transcribe pages from authorities at every practitioner's hand, is simply intolerable, and should be held to be ample ground for his compulsory retirement from the Bench.

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A good story comes to us from one of the provinces down by the "sounding sea." In the old days preceding the organization of the Bar Society in the province, the examination of candidates for admission to the practice of the law was entrusted to a board consisting of a Judge of the Supreme Court and two barristers. This examination was conducted orally, and, as can be easily imagined, took upon itself the character of a most trying ordeal, or a merely perfunctory performance

according to the personnel of the board. On the occasion when a young gentleman named M——— presented himself as a candidate, Judge D———, whose mental habit presented a strange admixture of irascibility and boisterous good-humor, occupied the chair. Upon him fell the duty of examining the students in real property law. Something early in the day had ruffled his temper and rendered him antipathetic to the unhappy young men arraigned before him. If there was any one branch of law of which it could be said that M——— knew less than of another, it was that appertaining to tenures, and the worthy Judge's hostile manner was just about knocking what little he knew of it completely out of his head, and so losing him his chance to pass, when his ready wit came to his aid and ended his *mauvais quart d'heure*. "Sir," said the Judge, "your definition of a special estate in fee tail is very imperfect, but can you give me an example of a 'base fee?'" For one awful moment to M——— this seemed the end of all things, but suddenly a bright idea struck him, and, with a significant smile irradiating his features, he thrust his hand into his trousers' pocket and jingled together a few coins that happened to be therein. The Judge's keen sense of humour immediately grasped the import of the act, and, laughing vociferously, he cried: "You'll do, Mr. M———, you'll do; go up and sign the roll!" M——— became one of the best known counsel at *nisi prius* in the province, and was subsequently appointed to a Judgeship.

Ottawa. CHARLES MORSE.

We make no apology for publishing the following, written by Capt. Clive-Phillips Wolley, and first published in the *Colonist*, B.C. No son of the Sea Queen has ever sung more stirring strains.

THE SEA QUEEN.

She wakes! in the furthest West, the murmur has reached our ears:
She wakes! in the furthest East, the Russian listens and fears:
She wakes! the ravens clamor, the winds cry overhead,
The wandering waves take up the cry, "She wakes whom nations dread!"

At last ye have roused the Sea Queen! at last, when the world unites,
She stirs from her scornful silence, and wakes to her last of fights.
Alone, with a world against her, she has turned on the snarling crew,
No longer the peaceful trader, but the Viking the North Seas knew.
She calls, and her ships of battle—dragons her seas have bred—
Glide into Plymouth harbor, and gather round Beachy Head.
She wakes! and the clang of arming echoes through all the earth,
The ring of warriors' weapons—stern music of soldier's mirth.
In the world there be many nations, and there gathers round every throne
The strength of earth-born armies, but the Sea is England's own.
As she ruled, she still shall rule, from Plymouth to Esquimalt;
As long as the winds are tameless—as long as the waves are salt.
This may be our Armageddon—seas may purple with blood and flame,
As we go to our rest forever, leaving the world a name.
What matter? there have been none like us, nor any to tame our pride:
If we fall, we shall fall as they fell, die as our fathers died.
What better? the seas that bred us shall rock us to rest at last,
If we sink with the Jack still floating, nailed to the Nation's mast.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

We continue our review of the cases in the January numbers of the Law Reports:—

NULLITY OF MARRIAGE—DURESS.

Ford v. *Stier*, (1896) P. 1, was a matrimonial suit for a declaration of nullity of marriage on the ground of duress. The evidence showed that the petitioner when about 17 years of age was induced by her mother, under whose control she was to go to a church and go through the form of marriage with the respondent, that she objected, but was told that it would be all right, and that she supposed it was only a betrothal, that she hardly knew the respondent, and after the ceremony she had thrown away the ring, and the respondent immediately went off to Africa without consummating the marriage, and that the petitioner had never seen him since, and had four years afterwards married another man. It also appeared that

the respondent had at the time of the marriage falsely sworn in an affidavit that the age of the petitioner was 18, and had represented that her father consented, whereas he was entirely ignorant of the marriage. Barnes, J., on the evidence granted the prayer of the petition. A similar decision was given by Proudfoot, J., 10 Nov., 1883, in *Burns* v. *Davidson*, and see *Lawless* v. *Chamberlain*, 18 O. R. 296.

PRESUMPTION OF DEATH.

In the goods of Robertson (1896) P. 8, Barnes, J., refused to grant administration to the estate of a brother of the applicant who in 1863 had emigrated to Australia, and who had corresponded regularly with his family up to 1870, since which time nothing had been heard of him, until advertisements should have been published requesting information as to the missing man.

MORTGAGE OF TRUST FUND—MORTGAGEE—SUBSEQUENT INCUMBRANCES.

In re Bell, Jeffery v. *Sayles*, (1896) 1 Ch. 1, involves a very simple question, and yet one which the Court of Appeal (Lord Halsbury, L. C., Smith and Rigby, L.JJ.) held that Kekewich, J., had incorrectly decided. The point was simply this: the plaintiffs were mortgagees of a trust fund which considerably exceeded the amount due to them; there were subsequent incumbrances on the fund. The plaintiffs claimed that the whole fund should be paid to them; the trustees were willing to pay over only so much of it to the plaintiffs as was sufficient to satisfy their debt. The plaintiffs then commenced the present proceedings to compel compliance with their demand. The Court of Appeal sustained the defendants' contention and dismissed the application.

PRACTICE—COUNTER CLAIM BY PARTY BROUGHT IN AS A DEFENDANT BY COUNTER CLAIM—ORD. XXI. R. R., 11, 12, 13, 14—(ONT. RULE 373).

In *Alcoy & Gandia Ry.* v. *Greenhill*, (1896) 1 Ch. 19, the Court of Appeal (Smith and Rigby, L.JJ.) have arrived at the same conclusion as was reached by the Q. B. Divisional Court in *General Electric Co.* v. *Victoria Electric Co.*, 16 P. R. 529, viz., that a person brought into an action as a defendant

by counter claim, cannot himself deliver a counter claim, following *Street* v. *Gower*, 3 Q. B. D. 498.

PRACTICE—SERVICE OUT OF JURISDICTION—INJUNCTION ACT TO BE DONE WITHIN THE JURISDICTION ORD. XI., R. 1 (*f*)—ONT. RULE, 271 (*f*).

Badische Anilin Soda Fabrik v. *Johnson*, (1896) 1 Ch. 25, was an action for an injunction to restrain the selling of goods in England, which were manufactured in Switzerland, as being an infringement of the plaintiffs' patent. The plaintiffs having served the purchasers of the goods, who were resident in England, applied for leave to serve the manufacturers in Switzerland. North, J., refused the application, but the Court of Appeal (Lindley, Smith and Rigby,, L.JJ.) were of opinion that the plaintiffs were entitled to the order.

PRACTICE—PARTICULARS—DISCOVERY—FRAUD ALLEGED—ORD. XIX. R.6.

In *Waynes Merthyr Co.* v. *Radford*, (1896) 1 Ch. 29, is a decision of Chitty, J., on another point of practice, The plaintiffs were proprietors of a colliery in Wales from which smokeless steam coal was obtained, and the defendants were coal merchants in London. The plaintiffs claimed to have lost business by reason of fraudulent acts of the defendants, and they claimed an injunction restraining them from selling as coal supplied by the plaintiffs or from their collieries, coal which had not in fact been so supplied or got, the delivery up of certain documents, and £10,000 damages. After the statement of claim had been filed, and an interlocutory injunction had been granted, the plaintiffs applied for discovery, and the defendants at the same time applied for the delivery of particulars before making discovery. Chitty, J., in Chambers, granted the defendant's application and directed that unless such particulars were delivered in four days, further proceedings in the action should be stayed until the delivery of the particulars. The plaintiffs then moved in Court before Chitty, J., to rescind this order. The plaintiffs in their statement of claim specified two distinct cases of fraudulent dealing by the defendants, and then went on to allege that "on divers others occasions" the defendants had committed similar acts. The defendants contended that, except in cases

where a fiduciary relationship exists between the parties, particulars should always precede discovery, and claimed that this rule had been laid down by Kay, L.J., in *Zierenberg* v. *Labouchere* (1893) 2 Q. B. 189; but Chitty, J., held that no such hard and fast rule existed, but that it was a matter for judicial discretion in all cases as to whether particulars should precede discovery, and after a careful consideration of the facts of the present case, he varied his order by directing discovery to precede the delivery of particulars.

WILL—"ACT OF PARLIAMENT"—"SETTLEMENT"—SETTLED LAND ACT, 1882 (45 & 46 VICT. C. 38) S. 2—SETTLED ESTATES ACT (58 VICT., C. 20, S. 2 (O.).

Vine v. *Raleigh*, (1896) 1 Ch. 37, though a decision under the Settled Land Act, 1882, may also be taken as bearing on the interpretation of the Ontario Settled Estates Act (58 Vict. c. 20, sec. 2), inasmuch as Chitty, J., determined that the words "Act of Parliament" in the English statute in the clause defining the meaning of "settlement," include public as well as private Acts; and where by the operation of the Thellusson Act a direction to accumulate contained in a will was void, and under that Act the accumulations went to the next of kin, the will and the Act together constituted "a settlement" within the meaning of the Settled Land Act.

WILL—CONSTRUCTION—CHARITY—GIFT TO "THE POOR AND THE SERVICE OF GOD."

In re Darling, *Farquhar* v. *Darling*, (1896) 1 Ch. 50; 13 R. Dec. 93, may be briefly noticed. The question was whether a testamentary gift "to the poor and the service of God," was a good charitable gift, and Stirling, J., held that it was.

TRUSTEE—BREACH OF TRUST—INVESTMENT—POWER TO INVEST IN SUCH SECURITIES AS TRUSTEES "SHALL THINK FIT"—INVESTMENT INDUCED BY COMMISSION TO TRUSTEE—SECRET PROFIT BY TRUSTEE.

In re Smith, *Smith* v. *Thompson* (1896), 1 Ch. 71, was an action against trustees to compel them to make good losses occasioned to the trust fund by an improvident investment. The trustees had power to invest in such securities "as they should think fit." The investment complained of had been made upon the security of debentures constituting a

floating security on the undertaking and assets of a limited company, and for making which investment one of the trustees received from a director of the company a commission or bribe of £300. The other trustee made the investment bona fide, and believing it to be good: he had died, and the action was against his representatives and the other trustee to compel them to make good any loss occasioned by the investment. Kekewich. J., held that the large discretionary power contained in the words "shall think fit" must be read as meaning "shall honestly think fit," and that in the absence of evidence that the deceased trustee did not act honestly in making the investment, his estate could not be made liable: but with regard to the other trustee he considered the circumstance of his having accepted a bribe, precluded the idea that he had acted honestly, and therefore he was liable to make good the loss, and he also held that besides making good the loss he was also bound to account to the trust estate for the £300 he had thus received.

RIVER—RIPARIAN PROPRIETORS—CHANGE OF BED OF STREAM—ACCRETIONS—TITLE BY POSSESSION.

In *Hindson v. Ashby*, (1895) 1 Ch. 78, a point of law is discussed which does not very often arise, and that is, the effect of a change in the bed of a stream on the rights of the respective riparian proprietors. In this case the bed of the stream did not belong to either riparian owner, but it was held by Romer, J., that the general rule nevertheless applied viz., that the owner on whose side an accretion takes place by reason of the change in the bed of the stream, is entitled to the benefit of it. He also held that the question of the position of the bed of a river is one of fact to be determined not by any hard and fast rule, but by having regard to all material circumstances, including past and present fluctuations and the nature, growth and user of the land.

COMPANY—WINDING UP—CONTRIBUTORY SHARES "FULLY PAID UP"—NON-REGISTRATION OF AGREEMENT - COMPANIES ACT 1867 (30 & 31 VICT. C. 131, S. 25); (R.S.C. C. 119, S. 27)—ESTOPPEL.

In re Building Estates Brickfields Co., (1896) 1 Ch. 100, a question arose in a winding up proceeding as to the liability

of a holder of shares under the following circumstances to be placed on the list of contributories. One Wright being entitled under an agreement which was not registered as required by the Companies Act 1867, s. 25 (see R.S.C. c. 119, s. 27), to fully paid-up shares in a joint stock company, agreed with one Parbury to procure him, in consideration of £500, which was duly paid, an allotment of 100 fully paid-up shares in the company when incorporated. After the company was incorporated Wright procured 100 of the shares to which he was entitled under his agreement, to be allotted to Parbury as his nominee, and they were accordingly allotted to and accepted by him. No part of the £500 was ever paid to the company. The shares were issued as fully paid-up shares. The liquidator contended that by reason of the non-registration of Wright's agreement before the issue of the shares, as required by the statute, Parbury was liable to pay for them in full, but Williams, J., determined that the company was estopped from denying that the shares were fully paid up, having certified them to be paid in full, on the faith of which Parbury accepted the shares, and therefore he could not be made liable.

CORRESPONDENCE.

PRACTICE AS TO CROSS-EXAMINATION.

To the Editor of the Canada Law Journal.

SIR,—Will you or any of your learned correspondents state in your columns what the practice is in Ontario, or the other provinces, or what would be deemed the correct practice, in the following case: Witness for the plaintiff is called, examined in chief, and then subjected to the usual cross-examination at large by defendant's counsel. At the close of defendant's case, plaintiff's counsel recalls witness to rebut a witness of the defendant on a particular point, which was, of course, new matter. Counsel for defendant then proposes to cross-examine the witness over again *on the whole case.*

The Judge (of an inferior court) thereupon lays down the rule as follows: "Having cross-examined the witness before, at the usual and appropriate stage of the trial, your right to cross-examine him again *now* is limited to the new matter in respect to which he was called in rebuttal, unless you state on your responsibility as counsel (1) That you forgot something on your former cross-examination at large, or (2) That you omitted something on your former cross-examination which has occurred to you since as an appropriate subject for further cross-examination."

Counsel declines to say he forgot or omitted anything; cross-examines in respect to the subject matter of the rebuttal, will not accept the right to go further as thus limited, and appeals from the Judge's ruling to vindicate his right to cover the whole ground again at this stage if he sees fit.

The majority of the Court of Appeal are understood to have held that there is no such rule as the Judge below laid down. The point involved seems to be of sufficient interest to warrant a discussion in your columns.

QUERIST.

[We do not see anything to complain of in the ruling of the Judge in the Court below. It may be that there is no rule of law governing such a case; but certainly the Judge appealed from followed a very common and a very reasonable practice, and if no injustice were done, and there seems to have been none, we can see no reason for interference.—ED. C.L.J.

BRANCH OFFICES.

To the Editor of the Canada Law Journal.

SIR,—I should be glad to know what is the etiquette of the profession as to branch offices. There is certainly an abuse of the practice in some cases. Perhaps some of your subscribers can throw light on the subject.

COUNTRY SOLICITOR.

[We should be glad if some of our subscribers would give the benefit of their thought and experience in this matter.—ED. C. L. J.

DIARY FOR MARCH.

1 Sunday.....*Second Sunday in Lent.* St. David.
3 Tuesday .....Court of Appeal for Ontario sits.
5 Thursday.....York changed to Toronto, 1834.
6 Friday .....Weekly Court at London and Ottawa.
8 Sunday.....*Third Sunday in Lent.*
10 Tuesday .....Prince of Wales married, 1863. Weekly Court at Ottawa
13 Friday .....Lord Mansfield born, 1704. Weekly Court at London.
15 Sunday.....*Fourth Sunday in Lent.*
16 Monday .....Queen Victoria made Empress of India, 1876.
17 Tuesday ..... St. Patrick.
18 Wednesday....Arch McLean, 8th C. J. of Q. B. Sir J. B. Robinson, C. J. App., 1862.
19 Thursday.....P. M. S Vankoughnet, 2nd Chancellor U. C., 1862.
20 Friday .....Weekly Court at London and Ottawa
22 Sunday.....*Fifth Sunday in Lent.*
23 Monday .....Sir George Arthur, Lieut.-Governor of U. C., 1838.
24 Tuesday .....Weekly Court at Ottawa.
25 Wednesday ....Annunciation.
26 Thursday.....Bank of England incorporated, 1694.
27 Friday .....Weekly Court at London.
28 Saturday.....Canada ceded to France, 1632.
29 Sunday.....*Sixth Sunday in Lent.* Palm Sunday.
30 Monday .....B. N. A. Act assented to, 1867. Lord Metcalf, Gov.-Gen., 1843.
31 Tuesday .....Slave Trade abolished by Great Britain, 1897. Weekly Court at London and Ottawa.

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Ontario.] [Dec. 9, 1895.

DOMINION GRANGE MUTUAL INS. CO. *v.* BRADT.

Insurance against fire—Mutual Ins. Co.—Contract—Termination—Notice—Statutory conditions—R.S.O. (1887), c. 167—Waiver—Estoppel.

B. applied to a mutual company for insurance on his property for four years, giving an undertaking to pay the amounts required from time to time, and a four months' note for the first premium. He received a receipt beginning as follows: "Received from B. an undertaking for the sum of $46.50, being the premium for an insurance to the extent of $1,500 on the property described in his application of this date," and then providing that the company could cancel the contract at any time within fifty days by notice mailed to the applicant, and that non-receipt of a policy within the fifty days, with or without notice, should be absolute evidence of rejection of the application. No

notice of rejection was sent to B., and no policy was issued within the said time, which expired on March 4th, 1891. On April 17th, B. received a letter from the manager, asking him to remit funds to pay his note maturing on March 1st. He did so, and his letter or remittance crossed another from the manager, mailed at Owen Sound, April 20th, stating the rejection of his application and returning the undertaking and note. On April 24, the insured property was destroyed by fire. B. notified the manager by telegraph, and on April 29th the latter wrote returning the money remitted by B., who afterwards sent it again to the manager, and it was again returned. B. then brought an action which was dismissed at the hearing, and a new trial ordered by the Divisional and affirmed by the Court of Appeal.

Held, affirming the decision of the Court of Appeal (*Barnes* v. *Dominion Grange Ins. Co.*, 22 A.R. 68, and of the Divisional Court, 25 O.R. 100), GWYNNE, J., dissenting, that there was a valid contract by the company with B. for insurance for four years ; that the statutory conditions in The Ontario Ins. Act (R.S.O 1887, c. 167) governed such contract, though not in the form of a policy ; that if the provision as to non-receipt of a policy within fifty days was a variation of the statutory conditions, it was ineffectual for non-compliance with condition 115, requiring variations to be written in a different colored ink from the rest of the document, and if it had been so printed the condition was unreasonable, and that such provision, though the non-receipt might operate as a notice, was inconsistent with condition 19, which provides that notice shall not operate until seven days after its receipt.

Held also, that there was some evidence for the jury that the company, by demanding and receiving payment of the note, had waived the right to cancel the contract, and were estopped from denying that B. was insured.

Appeal dismissed with costs.

Aylesworth, Q.C., for the appellant.

Cameron, for the respondent.

Ontario.] [Dec. 9, 1895.

CANADA ATLANTIC RY. CO. *v.* HURDMAN.

Railway company—Loan of cars—Reasonable care—Breach of duty—Negligence—Risk voluntarily incurred—Volenti non fit injuria—"Kicking" cars on switch.

A lumber company had railway sidings laid in their yard for convenience in shipping lumber, over the line of railway with which the switches connected, and followed the practice of pointing out to the railway company the loaded cars to be removed, the railway company thereupon sending their locomotive and crew to the respective sidings in the lumber yard and bringing away the cars to be despatched from their depot as directed by the bills of lading.

Held, affirming the decision of the Court of Appeal for Ontario (22 A. R. 292), and of the Queen's Bench Divisional Court, (25 O.R. 209) that in the absence of any special agreement to such effect, the railway com-

pany's servants while so engaged were not the employes of the lumber company, and that the railway company remained liable for the conduct of the persons in charge of the locomotive used in the moving of the cars. Also, that where the lumber company's employes remained in a car lawfully pursuing their occupation there, the persons in charge of the locomotive owed them the duty of using the utmost skill and care in moving the car with them in it, so as to avoid all risk of injury to them. *Heaven* v. *Pender* L.R. 11 Q.B. 503 followed.

In the trial of an action for damages in consequence of an employee of the lumber company being killed in a loaded car which was being shunted, the jury had found that "the deceased voluntarily accepted the risks of shunting," and that the death of the deceased was caused by the defendants' negligence in shunting, in giving the car too strong a push.

Held, that the verdict meant only that deceased had voluntarily incurred the risks attending the shunting of the cars in a careful and skillful manner, and that the maxim, volenti non fit injuria, had no application. *Smith* v. *Baker*, 1891, A.C. 325, applied.

Appeal dismissed with costs.

Chrysler, Q.C., and *Nesbitt*, for appellants.

McCarthy, Q.C., and *Blanchet*, for respondent.

Quebec] [Dec. 9, 1895.

KERR *v.* ATLANTIC & NORTH WEST RY. CO.

Prescription—Action for damages—Injury to property—Continuance of damgae—Art. 2261 C.C.—Railway Co.—Construction of road—Wrongful act of contractor—Liability for.

K. brought an action against a railway company for damages by reason of a right of way which he claimed having been closed up by the building of a portion of the road through the city of Montreal, and claimed that he suffered an annual loss of $450 by being deprived of the right of way. The company pleaded, inter alia, that the action not having been brought within two years from the time the alleged wrong was committed, was prescribed by Art. 2261 C.C., and also that the injury was done by the contractor for building the road, and they were not liable therefor.

Held, affirming the decision of the Court of Queen's Bench, that the injury complained of having been committed by one act, the consequences of which might have been foreseen and claimed for at the time, the fact that the damage continued did not prevent the prescription running against K., and his action was barred by Art. 2261 C.C.

Held also, that the company were not liable for the wrongful act of the contractor in borrowing earth for embankments from a place, and in a manner not authorized by his contract, and so committing the injury complained of.

Appeal dismissed with costs.

Taylor, for the appellant.

Abbott, Q.C., for the respondents.

Quebec.] [Dec. 9, 1895.

LA COMPAGNIE L'ECLAIRAGE AU GAZ, ETC., *v.* LA COMPAGNIE DES POUVOIRS HYDRAULIQUES, ETC.

Construction of statute—By-law—Exclusive right granted by—Statute confirming—Extension of privilege—45 Vict., c. 79, s. 5 (P.Q.)—C.S.C., c. 65.

In 1881 a Municipal by-law of St. Hyacinthe granted to a company incorporated under a general Act of Quebec the exclusive privilege for twenty-five years of manufacturing and selling gas in said city, and in 1882 said company obtained a special Act of incorporation (45 Vict., c. 79), sec. 5 of which provided that "all the powers and privileges conferred upon the said company as organized under tne said general Act, either by the terms of the Act itself or by resolution, by-law or agreement of the said city of St. Hyacinthe, are hereby reaffirmed and confirmed to the company as incorporated under the present Act, including their right to break up, etc., the streets . . . and in addition it shall be lawful for the company, in substitution for gas or in connection therewith, or in addition thereto, to manufacture, use and sell electric, galvanic or other artificial light . . with the same privilege, and subject to the same liabilities, as are applicable to the manufacture, use and disposal of illuminating gas under the provisions of this Act."

Held, affirming the decision of the Court of Queen's Bench, that the above section did not give the company the exclusive right for twenty-five years to manufacture and sell electric light; that it was a private Act, notwithstanding it contained a clause declaring it to be a public Act, and the city was not a party, nor in any way assented to it; that in construing it the Court would treat it as a contract between the promoters and the legislature, and apply the maxim, *verba fortius accipiuntur contra proferentem*, especially where exorbitant powers are conferred; that the right to make and sell electric light "with the same privilege" as was applicable to gas, did not confer such monopoly, but gave a new privilege as to electricity, entirely unconnected with the former purposes of the company; and that the word "privilege" there used could be referred to the right to break up streets and did not necessarily mean the exclusive privilege claimed.

Appeal dismissed with costs.

Geoffrion, Q.C., for the appellants.

Lafleur and *Blanchet* for the respondent.

Province of Ontario.

HIGH COURT OF JUSTICE.

Divisional Court.

MEREDITH, C.J., ROSE, J., MCMAHON, J. [Feb. 17.

BELANGER *v.* MENARD.

Bills of sale and chattel mortgages—Fraud—Possession.

The registration of a bill of sale, and the consequent publicity given to the transaction which it evidences, prevents the inference of fraud being drawn from the retention of the possession by the bargainor.

Cookson v. *Swire*, 9 App. Cas. at pp. 664-5, specially referred to.

Judgment of the County Court of the united counties of Prescott and Russell, reversed.

Shepley, Q.C., for the plaintiff.

J. B. O'Brian, for the defendant.

Practice.

MEREDITH, C.J., ROSE, J., MACMAHON, J. [Feb. 12.

PEARSON *v.* TORONTO RUBBER SHOE MFG. CO.

Specific performance—Defence—Inconsistent pleading in another action—Estoppel—Conduct disentitling party to relief.

An appeal by the plaintiff from an order of the Master in Chambers dismissing a motion made by the plaintiff under Rule 387, in an action for specific performance of a contract, to strike out portions of the statement of defence setting up that the plaintiff had made certain allegations in another action, relating to the same subject matter, inconsistent with the allegations in his present action, which former allegations were not true, but if true, showed that the plaintiff had no right to maintain the present action.

Held, that if the allegations attacked were pleaded by way of estoppel or as an answer to the action, they should be struck out as disclosing no answer; but it was not clear, and should not be determined upon this application, whether the defendants should not be allowed to plead the allegations in the other action as conduct disentitling the plaintiff to relief in this action.

Order made allowing defendants to amend accordingly within ten days, with leave to the plaintiff to raise a point of law under Rule 385. If the amendment is not made, the appeal is to be allowed and the paragraphs complained of struck out. Costs to the plaintiff in the cause.

W. M. Douglas, for the plaintiff.

W. H. Blake, for the defendants.

STREET, J.] [Feb. 14.

MONES *v.* MCCALLUM.

Receiver—Administration action—Status.

The right of a judment creditor of a legatee or devisee under a will to bring an action for the administration of the estate of the testator is doubtful.

A receiver, appointed at the instance of a judgment creditor to receive the interest of the judgment debtor in the estate of his father for satisfaction of the judgment debt, was given leave to bring an action for administration, no opinion being expressed as to his status.

D. Armour, for the application.

STREET, J.] [Feb. 17.

RE BAGWELL; ANDERSON *v.* HENDERSON.

Administration—Summary order—Executors and administrators—Account.

More than a year after the grant of the probate to the sole executrix

named in the will of the testator, three legatees applied summarily for an administration order, upon the ground that the executrix, who for several years before the death of the testator had managed his business affairs, had refused to account for her dealings with his moneys, and now claimed an allowance from the estate for her services before the death and as executrix, denying that any sum was due by her to the estate.

Held, that the legatees were entitled to the usual administration order, under which the Master could make all the necessary inquiries and were not driven to an action for administration.

J. Bicknell, for the plaintiffs.

Bruce, Q.C., for the defendant.

ARMOUR, C. J.
STREET, J. [Feb. 20.

MADIGAN *v.* FERLAND.

Venue—Change of—Convenience—Preponderance.

Upon appeal by the defendant from an order of a Judge affirming an order of a Master refusing to change the venue from Toronto to Sault Ste. Marie, the Court was divided in opinion.

Per ARMOUR, C.J.—The venue should be changed, because the action could be more fitly and conveniently tried at Sault Ste. Marie.

Per STREET, J.—The defendant had not shown so great a preponderance of convenience in favor of the change as was necessary under the authorities, especially in view of the previous refusals by the Master and Judge. *Peer* v *North-West Transportation Co.*, 14 P.R. 381, referred to.

D. Armour, for the defendant.

Osler, Q.C., for the plaintiff.

GENERAL SESSIONS OF THE PEACE.

COUNTY OF YORK.

McDOUGALL, Co. J.] [Dec. 24, 1895.

REGINA *v.* NOTMAN.

Licensing and regulating cabs for hire—R.S.O., 1887, cap. 184, s. 436—By-law of police commissioners—Several offences charged in conviction—Amendments under criminal code.

The appellant had been convicted before Hugh Miller, Esquire, J.P., on the information and complaint of one James McClelland, a police constable, under By-law No. 15 of the Police Commissioners for the City of Toronto, which was founded upon section 436 of the Revised Statutes of Ontario, 1887, c. 194, for "setting up, using and driving" for hire a certain vehicle (described in the conviction as a "tally-ho coach") without being licensed under the by-law.

It appeared in evidence that the appellant was the owner of the vehicle in question, which was a heavy, elevated conveyance, drawn, when in use, by four

horses, and having its seating accommodation on the top, where there were four or five exposed seats, ranged one behind the other, and extending across its full width, each capable of holding several people. A charge of $1 per head was made to every passenger desiring to be conveyed on the trip or excursion, which was one planned and controlled by the appellant, and upon which a distance of about twelve miles was regularly traversed by a customary route, the limits of the city being usually overpassed in its course. Evidence was also adduced to show that the appropriate designation for the vehicle was "brake" or "drag"; and that it did not correspond, in any essential feature, with either a cab or omnibus, the two classes of conveyance which were subject to the by-law.

The vehicle was run intermittently for a few months of the year, and during fine weather only; and it stopped, *en route*, to take up passengers at certain hotels in the southern or lower part of the city, the proprietors of which were authorized to solicit and book passengers upon it for the appellant, on commission. It was further shown that the conveyance, if not entirely unknown, was, at all events, not a public competitor for favor, or sought to be used for hire, in the city, before the passage of the statute or by-law.

It appeared that the appellant was the duly qualified holder of a license for a livery-stable, under another and separate by-law of the Commissioners; and that the cab by-law did not sanction or establish rates of fare for travel *beyond* the city limits, such as were fixed thereby affecting only cabs and omnibuses plying for hire *within* them, and to which no more than two horses were to be attached. In the case of an omnibus, there was a special provision, defining the streets and route upon which its running was permissible, and another which prescribed its seating capacity, inside as well as out.

The by-law was passed under the statute before mentioned, the language of which, so far as material, is, "The Board of Police Commissioners shall, in cities, license and regulate * * * * the owners of livery stables, and of horses, cabs, carriages, carts, trucks, sleighs, omnibuses and other vehicles used for hire within the said city, and shall establish the rates of fare to be taken by the owners or drivers of such vehicles, for the conveyance of goods or passengers, either wholly within the limits of the city, or from any point within the city to any other point not more than three miles beyond said limits."

Held, that from the general trend of the by-law, and having regard to the conditions and restrictions imposed, and which were to govern the licensing and regulating of the vehicles dealt with, the conveyance in question could not be said to be covered by it, more especially since such conveyance could not have been in contemplation of the framers of the by-law, when passed.

Held, further, that the convictions charged the three separate and distinct offences of "setting up," "using" and "driving," and for this reason also, could not be supported; and that the powers of amendment conferred by the criminal code, assuming them to be applicable to the case of a conviction under a by-law, did not authorize the removal from the conviction of all the offences so charged, but one, and its retention therein alone.

Du Vernet, for the appellant.

Drayton and *McBrady*, for the respondent.

DIVISION COURTS.

COUNTY OF ONTARIO.

TISDALE *v.* KELLY.

Bailiff's poundage upon execution—Item 15 of bailiff's tariff.

The wording of the sheriff's and bailiff's tariff as to poundage is different, and the bailiff is entitled to 5 per cent. upon the amount of property necessarily sold.

[WHITBY, Dec. 4, 1895, DARTNELL, J. J.

This was an appeal from the taxation by the clerk of the bailiff's fees on an execution on which $52.10 was realized at the sale. The client allowed him $2.60 poundage upon this sum and this was the only item objected to.

DARTNELL, J. J.: I am informed that the Inspector, or rather the acting Inspector, is of the opinion that this sum was improperly allowed; I am compelled to differ from him. No doubt he bases his opinion upon the dictum of his honor Judge Sinclair, at page 126 of his work of 1886, in which the authorities of *Michie* v. *Reynolds* 24 U.C.Q.B., *MacRoberts* v. *Hamilton* 7 P.R. 95, are quoted as authorities in favor of the proposition that "the bailiff is not entitled to poundage on anything" but the net sum paid over or going to the execution creditor.

With the greatest respect, I think the learned judge is wrong. The authorities cited by him put an interpretation upon the *sheriff's* tariff as to poundage, in that the words made use of are "poundage where the sum made shall not exceed $1,000 (in the C.C. on the sum made)." In the bailiff's tariff the words used are "5 per cent. upon the amount of the property necessarily sold." To give the interpetation put upon this item by the learned judge it would be necessary to import the word "net" before the word "amount," which I humbly conceive would be a strained construction of a sentence otherwise sufficiently explicit. I think the clerk's allowance of this item is correct.

Province of Nova Scotia.

SUPREME COURT.

RITCHIE, J. In Chambers. [Jan. 31.

QUEEN *v.* SUTHERLAND & SON.

Attachment of debt—Garnishee order—Motion to open up—Attachment against party not appearing on the record.

After recovery of judgment and entry against defendants in their firm name, plaintiff obtained a garnishing order absolute, attaching the debt of S. S., alleged to be a partner in the defendant firm, the garnishees (the town of D.) failing to show cause, owing to the inadvertence or negligence of their officers. The garnishees now applied to open afresh the garnishee proceedings,

alleging that S. S., whom alone they owed, was not a partner in defendant firm, or in the alternative that S. S. might be let in to oppose an attachment of the debt upon that ground.

Held, that upon all parties agreeing that the amount should be paid into Court to abide the Judge's order, the whole proceedings might be opened afresh, and if necessary an issue directed on the point as to whether S. S. were a partner or not.

Quære, as to the validity of a garnishing order obtained against a party not appearing on the record.

Russell, Q.C., for garnishees.

Fulton, for plaintiff.

RITCHIE, J.
In Chambers.

Feb. 4.

DICKIE *v.* HICKMAN.

Death of joint defendant—Assignment of judgment — Execution against property of deceased.

After judgment against two joint defendants for a joint cause of action one of the defendants died. On application by the assignee of the judgment under O. 40, r. 23, for leave to issue execution against the surviving defendant and the executors of the deceased defendant,

Held, that when the plaintiff or assignee in such case elects to take execution against personalty, the execution must be against the survivor alone, and that O. 40, r. 23, does not apply except with respect to lands of the deceased.

Mathers, for application.

RITCHIE, J.
In Chambers.

[Feb. 4

IN RE GILLIS.

Imprisonment under Collection Act—Execution—Commitment for fraud—Habeas corpus.

A judgment debtor having failed to pay a monthly instalment in manner pursuant to the order of a commissioner, made by virtue of the Collection Act, was imprisoned under execution. He then sought a discharge under R. S. C. 108, an Act for the relief of indigent debtors, but was remanded for fraud by order of commitment for the period of two months. On application for his discharge on the ground that the commitment was bad by reason of defects apparent on the face thereof,

Held, that without deciding the question whether the prisoner was held under the original execution or under the order of commitment, the primary and real cause of his detention should first have been shown by a return of the documents under which he was held.

Application dismissed.

Bulmer, for application.

McDougall, contra.

RITCHIE, J. In Chambers. Feb. 7.

LYND *v.* MCCONNELL.

Claim for unliquidated damages—Negligence—Tender and payment into court—Embarrassing pleas.

In an action for damages arising out of the alleged negligence of defendant the latter pleaded in paragraph 7 of his defence: "As to the whole of plaintiff's claim the defendant made tender before action of $30, and has paid the same into Court." On application to strike out said paragraph as embarrassing,

Held, that as a plea of tender could not properly be raised in such an action, the above paragraph was embarrassing and must be struck out.

Application granted with costs.

Whitman, for plaintiff.

Sinclair, for defendant.

Province of New Brunswick.

SUPREME COURT.

EN BANC.] [Feb. 7.

BANK OF NOVA SCOTIA *v.* FISK.

Practice—Attachment for costs.

Plaintiffs sued defendants in St. John Circuit Court. The case was appealed to N. B. Supreme Court and from there to the Supreme Court of Canada, which set aside the judgment of the Supreme Court of N. B. (ordering a new trial), and ordered the defendant to pay costs of appeal and also certain other costs. Plaintiffs had this order made a rule of the Supreme Court of N. B., and then obtained a rule *nisi* for an attachment for non-payment of costs.

Pugsley, Q.C., opposed the granting of the attachment on the ground that the Supreme and Exchequer Court Act provisions were not either rules or orders such as are contemplated by the following, "any Court or Judge may enforce the payment of any money ordered to be paid by such Court or Judge by attachment, etc." (Col. Stat., c. 38, s. 26), under which the application was made.

Rule absolute for attachment.

Coster, contra.

EN BANC] [Feb. 7.

GLEESON *v.* DOMVILLE.

Practice—Entry docket not filed—Estoppel—Execution not issued within a year and a day.

Plaintiff sued defendant in 1879, and a verdict was given for defendant in 1880. On appeal to the N. B. Supreme Court and Supreme Court of Canada,

the verdict was upheld and appeal dismissed with costs. In 1896 the defendant issued a fi. fa. for the costs. The plaintiff's attorney applied to set the fi. fa. aside, and for a day of proceedings, and the defendant's attorney being present in court, heard the application. He withdrew the first execution and issued a second one. The plaintiff's attorney moved the Court in Hilary Term to set aside the judgment on the ground that the cause had never been entered, and failing that, to set aside the writ of fi. fa. on the following grounds :

(1) That the writ of fi. fa. was not issued within a year and a day.

(2) That the attorney issuing the fi. fa. was in contempt, inasmuch as he was present in Court, and knew that a stay of proceedings had been granted in the matter.

(3) That no memorial of judgment had been recorded within five years from the signing of the said judgment.

Cap. 8, Acts 1880, s. 8, provides : "That during the lives of a party to a judgment, or those of them during whose lives execution might formerly have issued within a year and a day without a scire facias, writs of execution may be issued within a period of twenty years from the signing of such judgment, without the revival of the judgment." Sec. 10 provides, "the provisions of this Act shall apply to all suits now *pending* in which a plea or pleas have not been delivered," but not to "any suit *now pending*" in which a plea or pleas had been delivered. In this case the pleas had been delivered before the passing of the Act.

Held, (1). That the plaintiff was estopped, after contesting the case at the trial, and arguing the appeals, from taking advantage of his own neglect to enter the cause.

(2). That defendant's attorney was not in contempt.

(3). That the 10th sec. of cap. 8, Acts 1880, must be held to apply to the provisions in that chapter enabling a defendant to give notices of defence, and not to section 8.

Carleton, for the motion.

Coster, contra.

EQUITY COURT.

JONES ET AL. *v.* RUSSELL.

It may be useful to note here the authorities cited on the argument of this case before Mr. Justice Tuck, a mem. of which was sent to us after the publication of the note of this case as it appears *ante*, p. 131 :—*Clark* v. *Addy*, 10 Ch. App. 676, 2 Appeal Cases 423 ; *Curtis* v. *Platt*, 3 Ch. Div. 135 ; *Proctor* v. *Bennis*, 36 Ch. Div. 740 ; *The Ticket Punch and Register Co.* v. *Colby's Patents*, 11 Times Law Reports 262 ; and *Dudgeon* v. *Thompson*, 3 Appeal Cases, 44.

Province of Prince Edward Island.

COURT OF CHANCERY.

ROLLS COURT.]

GILLIS *v.* GILLIS.

Devise of land for masses for the dead 9 Geo. II., c. 36, Mortmain Act - Power of Court of Chancery to apply doctrine of cy-pres independently of 43 Eliz., c. 14.

Testator devised and bequeathed one-third of his real and personal property "to the parish priest for masses for the repose of his soul." After disposing of another third he directed that "the remaining one-third of my property be disposed of for charitable purposes by my executors in accordance with my intentions."

Held, that neither the statute of Mortmain (9 Geo. II., c. 36) nor 1 Edw. VI., c. 14 (against superstitious uses) are in force in Prince Edward Island, and the devise and bequest to the parish priest for masses was good.

That the devise for "charitable purposes by my executors in accordance with my intentions," being for the purpose of a charity, should not be allowed to lapse by reason of indefiniteness. The expression, "in accordance with my intentions," is a well known mode of expression by Roman Catholics, having a definite meaning applicable to religious purposes.

That the Court of Chancery has power to apply the doctrine of cy-pres by virtue of its inherent jurisdiction, independently of 43 Eliz., c. 14, which is not in force in this Province.

The dictum of Chief Justice Marshall that the Court of Chancery has no power to protect and enforce a charitable bequest, void for indefiniteness, independently of 43 Eliz., c. 14, not followed. His decision in *Trustees of Baptist Association* v. *Hart's Exors*, 4 Wheaton, is chiefly based on the assumption that in the old cases anterior to the statute the Court of Chancery acted not by virtue its inherent jurisdiction, but of the royal prerogative of the Sovereign as Parens Patriæ and vested in the Lord Chancellor by the royal sign manual. But the report of the Royal Commission upon the Public Records submitted to Parliament, subsequently to that decision, cite many cases where the Court of Chancery, previous to the stat. of Eliz., appointed trustees for indefinite charities. Story, J., in *Vidal* v. *Girard's Executors*, 2 How., 127, followed.

The MASTER of the Rolls concluded an elaborate and lengthy judgment as follows: "From a consideration of these cases and many more which I do not cite, I have arrived at the conclusion that there exists in the Court of Chancery a jurisdiction inherent to it, independent of any statutes giving it power so to deal with this case as to support and protect this charitable bequest. As the English Court of Chancery dealt with *Syderfen's Case*, 1 Ver. 224, and with *Moggridge's Case*, 7 Ves. 69, and with *White's Case* (1893), 2 Ch. 41, so shall I deal with this case and this will. I find the residuary bequest in item 8 of the will a good charitable bequest, but by reason of its indefiniteness

a scheme must be settled. In doing this I shall take care not to interfere with the discretion of the executors, and I shall give such instructions to the Master so to conduct his inquiry as to incur as small an amount of costs as possible, taking care that before any scheme is finally settled notice shall be given to the Attorney-General."

Subsequently the Master of the Rolls settled a scheme in favor of the Charlottetown Hospital in charge of the Sisters of Charity, for poor persons, those from the parish to which the testator belonged to have the preference.

McDonald and *Martin*, for complainants.

McLeod, Q.C., *Davies*, Q.C., *Wyatt* and *Wright*, for the heirs-at-law.

ROLLS COURT.]

YOUNG *v.* BRITISH AND FOREIGN BIBLE SOCIETY AND TRUSTEES OF SIR WILLIAM YOUNG.

Devise to wife for life and then to a charity—Mortmain Act—Heir-at-law —Trustee for charity.

Sir William Young, Surrogate of Prince Edward Island, devised and bequeathed all his property to his wife for life, and after death to the Bible Society. As to the personal property there was no question. As to the real property, it was

Held, (following *Gillis* v. *Gillis*, ante supra) that the devise was not void, but that the Bible Society, not being an incorporated body, could not take the land which descended to the heirs-at-law. But the devise to the Bible Society was a charitable bequest, and the testator's intention should not be defeated by their incapacity to hold the real property, and that the heirs-at-law should be declared trustees for the Bible Society.

The MASTER of the Rolls, in giving judgment, after referring to *Parker* v. *Brooke*, 9 Ves. 583; *Atty.-Gen.* v. *Downing*, Wilmot's Cas. 21; *Bartlett* v. *Nye*, 4 Met. 378, said: "It is quite true that to enforce this trust against the heir-at-law, is to take away from him and to infringe rights which the law itself has given. But the same may be said of nearly every act of the Court of Chancery. In Equity the trust, the conscience, is everything, the legal estate nothing. Sir G. Jessel's dictum in *Baker* v. *Sebright*, 13 Ch. D. 186, that what is called the 'encroachment' of the Court of Chancery upon legal rights, instead of being a term of opprobrium, should be deemed a term of praise, commented on and assented to. The Court of Chancery does interfere with legal rights, but it is for the improvement of the law and the furtherance of justice. When the Court administers an estate the executor is absolutely protected when carrying out its decree. Should it subsequently appear that a creditor or devisee has improperly been paid money, proceedings may be maintained by any one who has received less than he should have against the party receiving too much, but the Court will not permit any proceedings to be taken against the executor if such payment was made, in pursuance of its directions."

A will proved in solemn form in the Court of Probate is binding on the next of kin, but is not binding upon the heir-at-law.

Davies, Q.C., and *Warburton*, for the widow.

McLean, Q.C., and *Mellish*, for the Bible Society.

Fitzgerald, Q.C., for the heirs-at-law.

COUNTY COURT

QUEEN'S COUNTY.

ALLEY, CO.J.] [Jan. 11.

STEEL *v.* STRICKLAND.

Jurisdiction—Admission of payments.

Plaintiff sued for an account of $65, and gave defendant credit for $10. Defendant denied any liability, and claimed that a settlement had been made. At the trial it was proved that plaintiff had a claim of $270.65 against defendant, and to reduce this amount to $55 gave defendant credit for payments which defendant denied having made; and defendant claimed to have made certain payments on account which plaintiff denied. The credit side of the account exceeding $150 was open and disputed.

Held, that the County Court had no jurisdiction to try this case, because in order to give the Court jurisdiction the plaintiff should have admitted the defendant's payments.

Good, for plaintiff.

Strickland, for defendant.

Province of Manitoba.

QUEEN'S BENCH.

KILLAM, J.] [Jan. 29.

DOLL *v.* HOWARD.

County Court—Appeal from—Transfer to Queen's Bench.

In this case it was held that, under the Queen's Bench Act, 1895, sec. 86, which provides that, "In any case in a County Court where the defence or counter claim of the defendant involves matters beyond the jurisdiction of the Court, a Judge may order that the whole proceeding be transferred to the Court of Queen's Bench, and in such case the papers in such proceeding shall be transmitted by the Clerk of the County Court to the proper officer of the Queen's Bench, and the same shall thenceforth be continued and prosecuted in the Court of Queen's Bench, as if it had been originally commenced there"—as soon as such an order has been made, and the papers are received by the officer of the Court of Queen's Bench, there is no longer any cause in

the County Court, and no appeal can be taken from the order of the County Court Judge transferring the cause, notwithstanding the wide provision of sec. 315 of the County Courts Act, and notwithstanding the opinion of the Court above that the order had been improperly made.

Moody v. *Steward*, L. R. 6 Ex. 35; *Harris and Son* v. *Judge*, (1892) 2 Q.B. 565; *Duke* v. *Davis*, (1893) 2 Q. B. 107, followed:

The Judge appealed to was of opinion that the defence or counter claim did not involve any matter beyond the jurisdiction of the County Court, but held that it was for the Judge of the County Court to decide that question in the first instance, as he had jurisdiction to decide it; and, having determined it judicially, his decision cannot be treated as given without jurisdiction.

Appeal quashed without costs.

Martin, for plaintiff.

Hough, Q.C., for defendant.

TAYLOR, C. J.] [Feb. 3.

LAFERRIERE *v.* CADIEUX.

Agreement signed under threat of criminal proceedings—Acquiescence—Waiver.

The plaintiff having bought two horses from the defendant and given a chattel mortgage upon them which was to be paid by delivering hay, a dispute arose as to whether the horses had been paid for or not. Defendant then seized the horses, claiming a right to do so under the chattel mortgage, when the plaintiff prosecuted the defendant for stealing. The defendant then threatened to prosecute the plaintiff for perjury in swearing to the information. The parties then agreed to refer their disputes to arbitration, and an award was made giving the horses to defendant, who was to pay the feed bill due against them, and $15 for previous expenses. The defendant then paid the feed bill and the $15 and took away the horses.

More than four months afterwards the plaintiff replevied the horses in the County Court of Emerson. At the trial of the action, judgment was given for the defendant on appeal to a Judge of the Queen's Bench.

Held, that the plaintiff was not bound by his agreement of arbitration, as he had been induced to enter into it under threat of criminal proceedings. *Williams* v. *Bayley*, 4 Giff. 638, L. R. 1 H. L. 200, and *Windhill Local Board* v. *Vint*, 45 Ch. D. 351, followed; *Flower* v. *Sadlier*, 10 Q. B. D. 572, distinguished.

Held, also, that the plaintiff had not waived the objections to the award, and he was not estopped from claiming the horses by the fact that the defendant had taken the horses and paid the money according to the award, or by allowing the defendant to keep the horses for so long.

Hayward v. *Phillips*, 6 A. & E. 119; *Bartle* v. *Musgrave*, 1 Dowl. N. S. 325, followed.

Appeal allowed and verdict entered for plaintiff with costs.

Munson, Q.C., and *Forrester*, for plaintiff.

Hagel, Q.C., and *A. Howden*, for defendant.

FULL COURT] [Feb. 10.

GRAY *v.* MANITOBA & NORTH-WESTERN RAILWAY COMPANY.

Sale of railway under mortgage—Jurisdiction where part of railway is outside the Province—Priority of working expenses of whole railway over mortgage of part.

In this case the Full Court, on appeal from KILLAM, J., varied his decree (noted volume 31, p. 324) by holding that the Court has no jurisdiction to order a sale of defendants' railway, where part of it is outside of the jurisdiction, and by declaring that under the statute authorizing the plaintiffs' mortgage, the working expenses of the whole railway are a first lien on the revenues thereof, and must be provided for in priority to the claim of the plaintiffs under their mortgage, and the decree was varied accordingly. Costs of re-hearing allowed to defendants.

Ewart, Q.C., and *C. P. Wilson*, for plaintiffs.

Tupper, Q.C., and *Phippen*, for defendants.

FULL COURT] [Feb. 15.

LINES *v.* WINNIPEG ELECTRIC STREET RAILWAY COMPANY.

Negligence—Street railway company—Liability for accident.

Appeal from judgment of BAIN, J., (noted ante, volume 31, p. 586) dismissed with costs.

Machray, for plaintiff.

Munson, Q.C., for defendant.

FULL COURT.] [Feb. 15.

BOOTH *v.* MOFFAT.

Negligence—Fire, damages for setting out.

Appeal from judgment of Bain, J., (noted ante p. 42) dismissed with costs.

Andrews and *Pitblado*, for plaintiff.

Clark, for defendant.

FULL COURT.] [Feb. 15.

CANADA PERMANENT LOAN AND SAVINGS COMPANY *v.* DONORE.

Corporation—School district—Alteration of boundaries—Liability for debt.

In this case it was held, affirming the judgment of TAYLOR, C.J., that the defendant school district, although its boundaries had been changed several times since the incurring of the debt in question, leaving only a fraction of its original territory; and its name had also been changed from the "Protestant School District of Donore" to "The School District of Donore, No. 118," under the Public School Act of 1890, was still liable for debentures issued in 1881, and the interest thereon.

Ewart, Q.C., for plaintiff.

Munson, Q.C., for defendants.

Province of British Columbia.

SUPREME COURT.

DAVIE, C. J., CREASE, J., DRAKE, J.—Full Court. [Jan. 17.

CORBOULD *v.* SPEIRS.

Petition of right—Setting aside Crown grant—Res judicata—Sheriff's sale—Irregularity—Nullity.

The respondent S. became entitled (by payment of part of the purchase money) to a Crown grant of certain land as soon as he made payment of the balance. A writ for the alleged debt was issued by M. and T. against him. Judgment by default signed, and his interest in said land was sold at Sheriff's sale. S. applied to have the writ and all subsequent proceedings set aside on the ground of irregularities, among others (1) that he was never served with the writ, (2) that the land was sold within a less period than one month from the date of registration of the judgment, contrary to statutory provision. The application was refused by the Court of first instance but allowed by the Court of Appeal.

C., who was solicitor for the plaintiffs in the above suit and purchaser at the Sheriff's sale, had obtained a Crown grant of the land in question by virtue of his purchase and payment of the unpaid balance of purchase money to the Crown. This suit was brought by S. under the Crown Procedure Act, to set aside the Crown grant.

On the trial C. pleaded that the judgment was set aside by means of a false and fraudulent affidavit of S., that he had never been served with the writ, and produced the Sheriff, who swore positively that he had served S. S., in reply, reiterated that he had never been served and introduced corroborative evidence. The Court decreed that the Crown grant should be set aside, holding that the Appeal Court was not imposed upon ; that it was not competent for C. to plead fraud in the present action (even if he was not debarred on the ground of res judicata), as his remedy was to have applied in the previous action under the authority of *Jacques* v. *Harrison*, 12 Q.B.D. 136, to be made party and oppose the application to set aside proceedings ; and further that the Sheriff's sale was invalid for not complying with the statute.

Held, affirming the judgment of the Court below, that the Sheriff's sale was void, and as that was the basis of C.'s title and he could not set up that he was a bona fide purchaser, not a party—seeing that he was solicitor on the record—the Crown grant must be set aside as made under a mistake, C. to have the money paid by him for it returned, and grant to issue to S. on payment of balance of the purchase money.

Per DAVIE, C.J., and CREASE, J. : That S.'s evidence of non-service of the writ was unsatisfactory, and he should be deprived of costs.

Per DRAKE, J. : That the evidence of non-service was not disproved, and S. should have the costs both of the Court below and on appeal.

Appeal dismissed without costs.

A. C. Brydone Jack, for the suppliant, J. Speirs.

A. G. Smith, Deputy Attorney-General, for the Crown.

A. J. McColl, Q.C., for the defendant, G. E. Corbould.

WALKEM, J.] [Feb. 3.

MCADAM *v.* HORSEFLY HYDRAULIC MINING CO.

Contract—Certificate—Personal inspection not essential.

McAdam contracted with the defendant to build a certain amount of sleigh road at a stipulated price ; the work to be done according to certain specifications and to the entire satisfaction of a certain arbiter, one Soues, agreed upon by the contracting parties, and further that as a condition precedent for the plaintiff to obtain payment for the completion of the work, he must secure the written certificate of the arbiter, Soues, that the work had been completed as per specifications. M. obtained a certificate from Soues to the effect "that the road has been passed—completed according to the specifications, by road superintendent Barton," and Soues at the same time made a verbal statement to M. that the work was completed to his entire satisfaction. Soues issued the certificate not from a personal inspection of the road, but from the inspection of and favorable report on it of his subordinate, whose especial duty it was to look after and report on the condition of Government roads, etc.

Defendant refused to pay the balance due. M. sued for full amount of the contract price. On the trial the defendant claimed that the certificate was insufficient, on the ground that Soues issued it on the knowledge of another, and did not state that the road was to his entire satisfaction.

Held, that Soues admitting to M. verbally that he was satisfied with the work was, accompanied with the certificate, sufficient, and that personal supervision was not necessary to the issuing of the certificate : *Clemence* v. *Clark*, Roscoe's Bldg. Cases, 3rd ed. p. 141, and that therefore the plaintiff was entitled to succeed.

A. H. MacNeill, for the plaintiff.

C. Wilson, for the defendant.

DAVIE, C.J.] [Feb. 6.

GERARD *v.* CYRS ; BURKE, Garnishee ; ROBERTS, Claimant.

Promissory note—Cancellation void after garnishee process served.

Cyrs sold some cattle to Burke, taking the latter's promissory note in payment. Gerard, as creditor of Cyrs, attached the debt of Burke to Cyrs. Roberts, claiming to have been the real owner of the cattle, and saying the note should have been made payable to him, not to Cyrs, returned the first note to Burke after the latter was garnisheed, and demanded a new note payable to himself, whereupon Burke destroyed his note to Cyrs, and made one to Roberts instead.

Held, that the note of Burke to Cyrs was actually payable to Cyrs ; that

the cancellation of note could not defeat the garnishment ; that a promissory note not yet due is an attachable debt : *Tapp* v. *Jones*, L. R. 10 Q. B. 591 ; *Ex p. Joselin*, L. R. 8 Ch. D. 327 ; that the garnishee cannot be made to pay the debt before it is due, but that the debt due referred to in the process must be read as meaning "the debt when due or the debt then due."

Ordered that the garnishee order remain absolute with costs against claimant.

The claimant has appealed.

H. C. Shaw, for plaintiff.

J. C. Godfrey, for defendant.

N. C. Bowser, for claimant.

COUNTY COURT OF YALE.

SPINKS, J.] [Jan 28.

COY *v.* AITKINS.

Mineral Act—Interpretation—Priority of registration governs.

The plaintiff located a mineral claim on a certain date. Subsequently the defendant located a claim on the same ground and proceeded forthwith to record it, and did record it prior to the recording of plaintiff's claim, which was recorded some hours later. Sec. 8 of the Mineral Act of 1893, enacts that the title to a claim shall be recognized according to priority of the location. Sec. 9 of the Mineral Act of 1892, which is not specifically repealed by the Act of 1893, declares that priority of record shall decide the title to a claim in case of dispute. Both the claims were recorded within the time limit of the Act.

Held, on the trial, that the date of record must govern.

A motion for a new trial was adjourned ; but pending the adjourned motion an appeal was taken to the Court of Appeals.

W. T. Taylor and *R. Cassidy*, for defendant.

A. J. McColl and *E. V. Bodwell*, for plaintiff.

North-West Territories.

SUPREME COURT.

EN BANC] [Regina, Dec. 5, 1895.

MASSEY *v.* MCCLELLAND.

BAKER *v.* MCCLELLAND.

Homestead—Exemption—57 & 58 Vict., c. 29—Seizure.

Section 1 (9) of Ordinance No. 45 of R. O. of 1888, exempted from seizure under execution the homestead (to the extent of 160 acres) of the execution debtor. This sub-section was declared ultra vires of the Legislative

Assembly in *In re Claxton*, 2 N.W.T. Rep. 88, but had never been altered or amended. 57 & 58 Vict., c. 29, (D.), declared that the territorial legislation on this point "shall hereafter be deemed to be valid, and shall have force and effect as law." The plaintiffs in the first action had filed an execution against the homestead of the defendant in the proper Registry Office prior to the passing of the statute 57 & 58 Vict., c. 29, and the plaintiffs in the second action had likewise filed an execution against the lands of the defendant in the same Registry Office, but subsequent to the passing of the said Act.

Held, that the first execution was a charge on the homestead of the defendant, but that the second was not.

Robson, for Massey.

Johnstone, for Baker.

Secord, Q.C., for defendant

EN BANC] [Regina, Dec. 5, 1895.

HOWLAND *v.* GRANT.

Composition—Accord and satisfaction—Payment into court with denial of liability—Form of judgment.

The plaintiffs sued the defendant for the amount of three promissory notes giving credit for certain payments amounting to 64½ per cent. of the claim, purporting to be made under a composition between defendant and his creditors which provided for the payment of 75 per cent. of the claims. The defendant in his defence denied all liability, claiming that the plaintiffs had been paid in full by the composition and had accepted the payments in full under the composition, and as an alternative defence paid into court as in full satisfaction of plaintiffs' claim the difference between 64½ per cent. and 75 per cent. on the claim, with interest and costs. By the terms of the composition between the defendant and his creditors, including plaintiffs, it was provided that the defendant was to give to his creditors certain promissory notes amounting to 75 per cent. of their claims within 60 days, and that *the receipt of the said notes* by the creditors within the 60 days should operate as a payment and satisfaction in full of their claims. The notes for 75 per cent. were not given, but notes for 64½ per cent. were given some considerable time after the expiration of the 60 days, and a release was given by all the defendant's other creditors, but refused by the plaintiffs at the time of receiving the notes.

It appeared from the evidence that subsequent to the expiration of the 60 days, and prior to the receipt of the notes, negotiations had continued between plaintiffs and defendant and the trustee, under the composition deed, for settlement under the compromise.

At the trial the jury found in answer to questions submitted: (1) That the plaintiffs did not receive 64½ cents on the dollar in full payment of their claim. (2) That the plaintiffs received 64½ cents on the dollar on account of 75 cents on the dollar, as provided by the deed of composition. (3) That the 64½ cents on the dollar were not paid to the plaintiffs on account of the original debt.

On this verdict ROULEAU, J., the trial Judge, gave judgment for the defendant with costs, from which judgment the plaintiffs appealed.

Held, that the findings of the jury meant that they considered that the plaintiffs had continued the offer of 75 cents on the dollar after the expiration of the 60 days, and that therefore the plaintiffs were entitled only to the 75 cents on the dollar when they received the 64½ cents on the dollar and were now entitled only to the difference, viz., the amount paid into court.

Held also, following *Wheeler* v. *United Telephone Co*., 13 Q.B.D. 597, that the judgment of the trial Judge was right in form.

Appeal dismissed with costs.

P. McCarthy, Q.C., for appellants.

Lougheed, Q.C., for respondent.

An appeal has been taken to the Supreme Court of Canada.

In the report of *Morris* v. *Bentley*, ante p. 47, in the first line of the third paragraph, for "Primrose mortgage" read "plaintiff's mortgage."

NOTHERN ALBERTA JUDICIAL DISTRICT.

SCOTT, J.] [Jan. 10.

IN RE MARRIAGGI.

Land Titles Act, secs. 93-111—Certificate showing expiration, satisfaction or withdrawal of execution.

This was a reference by the Registrar of Titles of the N.A.L.R. District at Edmonton, under sec. 111 of the "Land Titles Act, 1894."

Marriaggi was the transferee of land at Fort Saskatchewan by transferee through one Peter Coutts. The question submitted was as follows: "The said lands are subject to two certain executions wherein Peter Coutts is the defendant for the respective sums of $73.51 and $259.75, and the Registrar has doubts as to whether the document hereunto annexed is a certificate showing the expiration, satisfaction, or withdrawal of said execution, within the meaning of sec. 93 of said Act."

The document referred to was a certificate of the deputy sheriff, and was in the following words: "I, the undersigned, deputy sheriff of Edmonton, do hereby certify that there are no writs of execution in my hands for execution against the lands of Peter Coutts, unless or except as follows: There are in my hands: (1) A writ of execution for the sum of $73.51, against the lands of Peter Coutts at the suit of the H. B. Co., dated the 18th September, A.D. 1893, marked as follows, 'Renewed for one year from September 18th, 1894, (Sgd.), Alex. Taylor, D.C.S.C.' and not otherwise renewed. (2) A similar writ of execution, but for the sum of $259.00, dated 24th day of June, 1893, and marked renewed for one year from June 23rd, 1894."

SCOTT, J.:—It must be borne in mind that the only question submitted by the reference is, whether the certificate shows the expiration, satisfaction or withdrawal of the executions referred to. I am of the opinion that it does not clearly show this; unquestionably it does not show their satisfaction or withdrawal, but it was strongly urged by counsel for the transferee and argued pro

and con that it shows that the execution had expired by reason of the fact that what purported to be renewals thereof were invalid and were not effective to prevent the expiry of the execution. I cannot, however, overlook the fact that under certain circumstances (such, for instance, as a seizure of the lands under the execution during their currency) renewal might be unnecessary in order to permit their expiry, and the existence of any such circumstances is not disproved by the certificate or by any of the materials before me.

The only question argued before me was whether the executions had been effectively renewed and their expiry thereby prevented. Had it been a question merely between the parties represented on the argument, I might have disposed of the argument on that point, but I must consider the terms of the reference and the fact that the Registrar has asked for my opinion as to the effect of the certificate, merely for his guidance. True it is for his guidance in this particular matter, but were I to express the opinion that the certificate showed the expiration of the executions, he would doubtless be justified in relying upon that opinion in other cases in which similar certificates may be presented, and in which the executions may have been kept alive by other means than by renewal.

Even if I were to dispose of this application upon the point referred to, I doubt whether such disposition would be conclusive as between the execution creditor and the transferee. In *Massey* v. *Gibson*, 7 Man. L.R. 172, it was held that the opinion of a Judge upon a reference under a section of the Manitoba Registry Act, probably similar to sec. 111, of the Land Titles Act, would not have that effect.

The Registrar is therefore advised that the certificate attached to the reference is not a certificate within the meaning of sec. 92 of The Land Titles Act because it does not show the expiration, satisfaction, or withdrawal of the writs of execution.

N. D. Beck, Q.C. for Marriaggi.

S. S. Taylor, Q.C., for execution creditors.

LAW SOCIETY OF UPPER CANADA.

PROCEEDINGS OF MICHAELMAS TERM, 1895.

MONDAY, Nov. 18.

Present: The Treasurer and Sir Thomas Galt, and Messrs. Bayly, Moss, Hoskin, Shepley, Martin, Ritchie, Watson, Teetzel, Magee, Britton and Barwick.

Ordered that the following gentlemen be entered as students, as of Trinity Term:—

GRADUATE CLASS.—William Caven Brown, Gabriel Hermann Levy, John McDonald Mowat, John Dewar McMurrich, and George Emery Russell, and Samuel Simpson Sharpe, transferred from the matriculant class to the graduate class, and Charles Wilson Cross, his admission to relate back to Easter Term, 1895.

MATRICULANT CLASS.—Colin Stewart Cameron, Arthur Thomas Essery, Oliver Desmond Garbutt, John Howard Hunter, jr., George Freeman Mahon, Albert Norton Proctor Morgan, Peter McDonald, John Alexander McPhail, John George O'Donoghue, Thomas Frank Slattery, Robert James Stewart.

Ordered that the following gentlemen be called to the Bar: S. T. Chown, G. E. Deroche, M. H. Roach, A. H. Royce; and that the following receive their certificates of fitness: A. Casey, S. T. Chown, G. E. Deroche, G. Grant, A. H. Royce.

Ordered that Mr. William Thomas Easton, a solicitor of over ten years standing, be called to the Bar.

Messrs. S. T. Chown, G. E. Deroche and A. H. Royce were called to the Bar, and it was ordered that they be presented to the Court.

A communication was read from the County of York Law Association relating to the circular issued by Mr. George F. Moore, who advertised himself as prepared to undertake matters connected with conveyancing, investigation of titles, probate of wills, etc., and suggesting that steps be taken to obtain revocation of his commission for taking affidavits.

Ordered that the subject be referred to the Finance Committee with the expression of opinion of Convocation that the solicitor be instructed to take steps in the name of the Law Society with a view to the cancellation of Mr. Moore's commissions in the H. J. C., pursuant to R.S.O., c. 62, sec. 8, provided that the Finance Committee on examination think fit so to act.

Convocation then rose.

TUESDAY, Nov. 19.

Present, the Treasurer and Sir Thomas Galt, and Messrs. Magee, Macdougall, Bayly, Moss, Martin, Ritchie, Strathy, Shepley, McCarthy, Mackelcan, Hoskin, Douglas, and Guthrie.

Ordered that Hugel Mabee be called to the Bar and receive his certificate of fitness.

Mr. Moss gave notice that at the next meeting of convocation he would move to amend Rule 135 by adding thereto the following:—"In the case of students taking examinations for matriculation under the departmental regulations of the Department of Education, as contained in Circular No. 4, issued in June, 1895, by the Department, a certificate showing that such student has taken Part II. of the examination within four years of the time of taking Part I., and within two years previous to his application for admission to the Society, shall be sufficient under the foregoing provisions.

Mr. Strathy gave notice that at the next half-yearly meeting he would move :—"That in the opinion of this Society it is in the interest of all persons interested in the carrying out of the laws of this Province that the Legislature of this Province hold its sessions not more often than once in each two years, and that, if thought expedient, a committee be appointed to interview the Government of this Province and urge the views of the Society upon this subject."

Convocation then rose.

FRIDAY, Nov. 22.

Present, the Treasurer and Messrs. Moss, Idington, Aylesworth and Watson.

W. T. Easton was called to the Bar, and it was ordered that he be presented to the Court.

On motion of Mr. Moss the following Rule was read a first, second and third time :

"135 (*a*) In the case of students taking examinations for matriculation under the departmental regulations of the Department of Education as contained in Circular No. 4, issued in June, 1895, by the Department, certificates showing that such students have taken Part II. of the examination within four years of the time of taking Part I. thereof, and within two years previous to their application for admission to the Society, shall be sufficient under the foregoing provisions."

Convocation then rose.

FRIDAY, Nov. 29.

Present, the Treasurer and Sir Thomas Galt, and Messrs. Douglas, Hoskin, Bayly, Hardy, Shepley, Kerr, Watson, Moss and Robinson.

Ordered, that the following gentlemen be entered as students-at-law of the matriculant class as of Trinity Term, 1895 :—

Joseph Harry Campbell, John Alexander Wilson.

The following report was presented from the Reporting Committee :—

Nov. 26, 1895.

"The work of reporting is in a forward state.

In the Court of Appeal there are ten cases unreported ; four of September ready to issue, and six of October. In the High Court, Mr. Harman has six—one of July, ready to issue—two of September, one of October and two of this month. Mr. Lefroy has no cases unreported. Mr. Brown and Mr. Boomer have one each, both of this month. Eight practice cases are unreported ; one of September, two of October—all three ready—and five of November."

Convocation then rose.

FRIDAY, Dec. 6.

Present, the Treasurer and Messrs. Moss, Britton, Barwick, Robinson, Ritchie, Watson, Kerr and Shepley.

Ordered, that Miss Eva Maud Powley be entered as a student of the matriculant class, as of Trinity Term, 1895.

Ordered that the following gentlemen be entered as students at law of the matriculant class, as of Trinity Term, 1895 :—Harry Lowson Boldrick, William Bayard Smyth Craig, Duncan McKechnie, Joseph Alexander Primeau, John Leonard Taugher, William Robert Vair.

Ordered that John Ashworth receive his certificate of fitness.

The report was adapted.

HALF YEARLY MEETING.

TUESDAY, Dec. 31.

Present: The Treasurer and Messrs. Moss, Britton, Shepley, Barwick, Aylesworth, Douglas, Watson, Hoskin, Bayly, Osler, Robinson, Mackelcan, Idington, Bruce, Guthrie.

The following report was presented from the Reporting Committee:

The work on the Quinquennial Digest is well advanced, and there is no doubt that the complete volume will be in the hands of the profession immediately after vacation of this year.

The edition of 1,200 will cost as follows:

For compiling and editorial work	$1,500 00
For printing and gathering into volumes ready for binding the edition of 1,200 copies	1,368 00
On an estimate of 570 pages	$2,868 00
Or with possible incidentals, having regard to matter which may be set up in type and not used, say a total cost on 1,200 volumes	$3,000 00

After consultation with the editor we think these figures may be considered an outside estimate.

The Committee recommend that the volumes be sold to the members of the Society who pay therefor prior to the first day of November next, at $2.50, and that bound copies be distributed gratuitously to the Judges (including County Court), and all others who receive the Reports published by the Society free; and that bound copies be also sent to Public Law Libraries in Quebec, Montreal, Winnipeg, Regina, Victoria, Fredericton, Halifax and Charlottetown, and that to outside purchasers and after 1st October, the price be $4.

The report was adopted.

Ordered, that Melville Ross Gooderham be admitted as a student-at-law of the Matriculant Class as of Trinity Term, 1895.

The following report was presented from the County Libraries Aid Committee:—

"The Huron Law Association have made application for an initiatory grant from the Society. The Committee find that the Association has been duly incorporated and that the conditions contained in Rule 73 have been complied with. The amount contributed in money is $355; there are thirty-one practitioners in the County of Huron, and the Association is therefore entitled to the initiatory grant of $620."

The report was adopted, and an initiatory grant of $620 was ordered to be paid.

Mr. Barwick gave notice that on the first day of next Term he would move the adoption of the following Rules:—

"The Supreme Court Reports shall be furnished to all solicitors who issue their annual certificates during Michaelmas Term."

That Rule 47 be amended so as to read as follows:

"In case of the removal of any officer by the Society, his salary shall cease immediately upon his removal."

Mr. Watson gave notice that on the first day of next Term he would move:—

"That a list of the names of all solicitors on the Roll should be prepared by the Secretary, and that the names of those who have paid their annual fees at the end of Michaelmas Term should be marked apart, and those who have not paid should also be so marked, and that copies of such list so marked should be sent to each Local Registrar, etc., immediately after such Term each year."

Convocation then rose.