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WE publish in this number the amendments to the Consolidated Rules as they appear in the *Ontario Gazette*. Reference was made to them in our last issue, but it was thought that it would be helpful to our readers to publish them *in extenso*, and we enlarge our number for this purpose.

THE pressure of other matter compels us to hold over the notes of cases from Manitoba, which should appear in this issue. We trust our readers appreciate the effort we have made to supply them with this summary of what transpires in the highest court of our sister Province. That the work is done well and with great promptitude will be admitted by all.

THE ELLIS CASE.

We publish with pleasure a letter from the Hon. David Mills in reference to an article which appeared lately in this journal upon the subject above mentioned.

Our article was rather an abstract of the debate which took place in the House of Commons upon the motion of Mr. Davies than a full expression of opinion upon the many points involved in the discussion. So far as an opinion was expressed upon the point raised by Mr. Mills, we do not think that anything in his letter affects the position taken by us, which may briefly be stated as follows, viz., that the House of Commons ought not to be made a court of review of the legal decisions of the Bench. This contention is not weakened by Mr. Mills' reference to cases in which Parliament has by

legislation altered the laws so as to nullify or change the effect of legal decisions, or has declared that what the judges held to be the law was not the law, or was not what Parliament intended the law to be. Still, in this, as in all constitutional questions, the rule must not be pressed too far, and cases may be imagined of so gross a character as to make them the exceptions which prove the rule.

We think also that the rule that the integrity and independence of the Bench must be sacredly preserved must not be held to absolve a judge who has manifestly violated the principles that should govern his conduct; and, in reference to this point, while condemning a resort to Parliamentary or newspaper criticism, except in cases of grave necessity, we by no means agree with Mr. Weldon that such criticism should not be entered upon unless it is intended to follow it by a motion for impeachment.

The distinction which Mr. Mills draws between Parliamentary criticism and Parliamentary inquiry is well worthy of attention, and his letter will be read with the attention that should be paid to one so competent to express an opinion on constitutional questions.

SIR THOMAS GALT.

The retirement of Sir Thomas Galt is no longer a rumour. That which was thought possible when he was granted six months' leave of absence has taken place.

His withdrawal, after a career of twenty-five years on the Bench, marks an era in our judicial history. Sir Thomas Galt was the seventh Chief Justice of the Common Pleas, and was a not unworthy successor of Macaulay, Draper, Richards, Hagarty, Wilson, and Cameron, who preceded him in that high position.

Sir Thomas had, prior to his appointment as Chief Justice on the 7th of November, 1887, been already eighteen years on the Bench as a Puisne Judge, and there are few judges now on the Bench of this Province who have had so long and so varied a judicial experience as he has had.

Prior to his elevation to the Bench he had acquired a distinguished position at the Bar, where his reputation as one of the leaders of the common law Bar was unquestioned. His almost exclusive devotion to the common law, however, was not

an altogether satisfactory training for the judicial office, at least since the changes in our jurisprudence effected by the Judicature Act came into operation; for, with equity law, Sir Thomas Galt was never familiar, and was, to use the expression which that accomplished lawyer, Lord Bowen, has applied to himself, but "a proselyte at the gate"; and it is doing him no injustice to say that, when the time arrived when it became almost essential for a judge to be proficient in equity, Sir Thomas Galt had passed that age when men can readily take up and assimilate what are, to them, totally new ideas.

But, though he never made any pretensions to any great knowledge of equity law, his sound common sense very largely supplied the defect, and in his own particular department of law he has been always recognized as a sound expositor. As a criminal lawyer, he had few equals.

It has been said of some eminent politician that, when recommending the appointment of a man as a judge, his first inquiry was always directed to ascertaining whether the man in question was a gentleman; if he knew a little law, so much the better, but the real *sine qua non* with him was that the appointee must be a gentleman; and, without any flattery, we can honestly say that, in the case of Sir Thomas Galt, this condition was unquestionably fulfilled—and he was one of nature's gentlemen, not one merely by accident of birth. No one who ever had any business before him ever left his presence without recognizing that Sir Thomas Galt's high-bred courtesy was after the fashion of the old school, which, unhappily, we fear, is not being perpetuated as it ought among those who attain to high rank, and for which high mental power is, after all, no adequate compensation.

It is this uniform kindness and courtesy which Sir Thomas Galt has so invariably displayed throughout his judicial career which has endeared him to all classes of the profession, and will make them regret that the time has at last arrived when the tie which has so long bound them together is at last to be severed.

Relieved from the strain of judicial duties, we trust the learned judge may enjoy, in his retirement, many years yet of happiness, and we can assure him that by all those with whom he has been brought into contact in the discharge of his high office he will ever be regarded with most sincere affection and esteem.

MORTGAGEE V. PURCHASER SUBJECT TO MORTGAGE.

The argument that there is a "want of privity" between a mortgagee and a purchaser of the lands subject to the mortgage, whereby the former is debarred from recovering his debt directly from the latter, does not appear to have been ever seriously questioned. We venture to think that the argument is based upon assumption, rather than upon sound legal deduction.

The purchaser has been assumed to be a stranger to the mortgage contract, and his rights and liabilities have been dealt with on that footing.

If a mortgagor die without having paid off his mortgage, against whom is the mortgagee entitled to enforce payment? Most people would answer, "Against the mortgagor's executor or administrator, of course." Why, "of course"? A brief enquiry into the position and liabilities of executors and administrators will show not only that they are not liable upon such contracts "of course," but that, in cases where they are liable, their liability is governed by principles which are in terms applicable to purchasers of lands subject to a mortgage.

By way of introduction, let us, first of all, ascertain in what light the law regards a purchaser, and what this privity is, the (supposed) want of which has proved so troublesome to mortgagees.

It is almost needless to say that a purchaser occupies the position of one of his vendor's "assigns," a term which comprehends "all those who take either immediately or remotely from or under the assignor, whether by conveyance, devise, descent, or act of law": *Baily* v. *DeCrespigny*, L.R. 4 Q.B., p. 186.

Privity of contract (for this is the species of privity with which we have to do) is a term less easy of definition. Judges and text-writers alike seem to fight shy of defining it, and refer one to the various cases in which it has formed the subject of discussion.

These cases show that privity of contract is a relationship between two or more parties to a contract, by virtue of which relationship each is bound to the other or others in respect of certain rights and liabilities. Persons who are not included in this relationship are called *strangers* to the contract; and, as regards them, there is said to be a want of privity.

In attacking the current theory, we shall adopt the precaution-

ary tactics of one who sees an object ahead of him, and is uncertain whether it is a real live man or only a scarecrow. We shall leave the beaten path, and make a short detour around the object, so as to take a look at it from a different angle.

Let us, then, instead of directing our attention to the question of *liabilities*, turn aside for a moment and consider *the rights* of a purchaser who has bought lands subject to an ordinary short form mortgage, and who has agreed with the mortgagor, either expressly or by implication, to assume and pay off the mortgage.

Our assumed case will cover all the usual transactions of the kind, whether the liability be expressed to be one of indemnity or of payment. It will not apply to that rare class of cases of which *Blackley* v. *Kenney*, 19 O.R. 169, is an example, where the mortgagor agrees to bear the burthen.

In the ordinary mortgage contract each of the parties binds himself to extend certain rights to the "assigns" of the other. What those rights are we shall presently inquire.

The document containing the contract is registered, and open to the public to peruse, and it is quite sure to be perused by any one who decides to become a purchaser.

Is there anything which forbids us to treat such a document as *an offer* to any one who will come in and accept the position of assign to either party? If not, the mere act of completing a purchase from the mortgagor clinches the matter, and establishes the requisite privity: Pollock on Contracts, Bl. Ser., 12.

The object does not look quite so formidable from this point of view. It seems to have no legs. Let us walk on a little further, and observe it from behind.

(1) Under the proviso for defeasance the right to pay off the mortgage is not confined to the mortgagor, but is expressly extended to his heirs, executors, administrators, *or assigns*, or any of them. A payment of interest by one thus "concerned to answer the debt" is sufficient to keep the mortgagee's right alive against the mortgagor: *Lewin* v. *Wilson*, L.R. 11 App. Cas., at p. 644; whereas a payment by a stranger would not have that effect: *Harlock* v. *Ashbury*, L.R. 19 Ch.D. 539.

(2) If the mortgagee attempt to exercise his power of sale, he can only do so effectually "after giving written notice to the said mortgagor, his heirs *or assigns*."

(3) Again, if, by reason of non-payment of interest, the prin-

cipal falls due, "in such case the said mortgagor, his heirs *or assigns*, shall, on payment of all arrears under these presents, with lawful costs and charges in that behalf," be relieved from payment of the principal.

(4) Lastly, the proviso for quiet possession is also extended to the heirs *and assigns* of the mortgagor.

The rights of the purchaser, as an assign of the mortgagor, were thus contemplated and provided for in the mortgage itself, and they are rights which the mortgagee is bound to respect.

The flimsy garments of our object are no longer sufficient to conceal the old stump; and we therefore conclude that whatever else may be wanting it is not privity.

But we do not contend that by establishing privity between the parties we thereby establish any liability. That is quite another matter, and depends upon the terms, both express and implied, of the contract itself.

It may be said, for instance, that the proviso for defeasance operates merely as a right or licence to the mortgagor's assigns; whereas the covenant for payment, which imposes a liability, purports to bind only the mortgagor, his executors and administrators. The proviso, in its extended form, reads as follows:

"(2) Provided always, and these presents are upon this express condition, that if the said mortgagor, his heirs, executors, administrators, or assigns, or any of them, do and shall well and truly pay, or cause to be paid, unto the said mortgagee, his executors, administrators, or assigns," etc., etc.

Now, whether this proviso operates as a mere licence or as a covenant, in either case the purchaser, as we have shown, is privy to it, and is entitled to enforce his right to pay off the mortgage. As a matter of construction, a similar form of proviso, in England, has been held to have created a covenant: see *Brookes* v. *Drysdale*, L.R. 3 C.P.D. 52. Be that as it may, we think the direct liability of the purchaser to the mortgagee may be shown by other and weightier considerations.

The only obstacle which lies in our way at this stage of the journey is the well-established rule of law which says that the legal effects of a contract are confined to the contracting parties.

If, as we have suggested, the mortgage contract may be regarded as an offer to any one who will accept the position of an assign of either party, the obstacle disappears. The pur-

chaser's privity and liability are established by his deed, which not only makes him a party to the mortgage transaction, but makes him the party who is to pay the money.

But, if this be not so, the rule in question is not inflexible. Numerous exceptions have been engrafted upon it, and among them we find (1) executors, (2) administrators, (3) beneficiaries under a settlement, (4) assignees, whether of debtor or creditor. (See Pollock on Contracts, Bl. Ser., chap. 5.)

None of these persons is or was a party to the contract sued upon, yet any of them may be a proper party or parties to an action for the enforcement of the contract.

The dearth of authority in England upon cases such as the one in question is probably owing to the rarity of such transactions there. But the principles applicable to such cases are frequently invoked, and they affirm the liability, as well as the privity, of the purchaser.

Werderman v. *Societé Générale D'Electricité*, L.R. 19 Ch.D. 246, is an instance in point. There a patentee assigned letters patent to A. and B., who covenanted that the patentee should be entitled to receive £5 per cent. of all net profits, whether arising from royalties, sale, or otherwise, which should be received by A. and B. or the survivor of them, or the executors or administrators of the survivor, their or his assigns, etc., etc. A. and B. had taken the assignment with a view to forming a company to work the patent. The company was formed, and the patent made over to them. The patentee sued the company for an account of profits. The company demurred, on the ground that there was no privity between them and the plaintiff, and that the plaintiff's right, if any, was against A. and B. only.

Bacon, V.C., and, subsequently, the Court of Appeal, gave judgment for the plaintiff.

Jessel, M.R., in delivering judgment, says, at p. 252:

"It was clearly the meaning of the parties that, as long as Denayrouze and Marcilhacy worked the patent, they were to make out the account and pay over the share of the profits. When their assigns worked the patent, the assigns were to make out the account and pay; in other words, the arrangement between them was, that the owners of the patent for the time being should be bound to work it to the best advantage, to keep proper accounts, and to pay a share of the profits to the plain-

tiff. How, after that, it can be argued in a court of equity that an assign can take the patent, with notice of that arrangement, and keep all the profits for himself, I am at a loss to understand." Lindley, L.J., says, at p. 256:

"It is said that the company is not a party to the agreement, and that the proper persons to be sued by the plaintiff for the profits payable to him under the agreement are the two French gentlemen, parties to the contract, and not the company, which was not a party. In order to dispose of that argument we must look into the agreement, which seems to me to contemplate and to provide for two totally different things. First of all, there is a a provision that if the assignees of the patent sell it out and out, the plaintiff is to have nothing more to do with it. There is an end of it, except that there would have to be an account taken of the proceeds. Then the agreement provides for a method of assignment which does not amount to a sale. The word "assigns" occurs in clause after clause, and particularly the accounting clause gives the plaintiff—which is somewhat unusual —a right to see the books of the assigns, in order to see that he gets his proper share of the profits."

No substantial distinction of this case from our assumed class of cases can be based upon the fact that the transaction was held to be an assignment, and not a sale.

A so-called sale by a mortgagor bears a greater resemblance to the assignment which was held to have taken place in the Werderman case than to the sale which was there contended for. A mortgagor does not, by selling his equity of redemption, divest himself of all interest in the lands; for if he be sued by the mortgagee he acquires a new right to redeem, and is entitled, upon paying the mortgage money, to a reconveyance to himself, subject to any equity of redemption vested in any other person: *Kinnaird* v. *Trollope*, L.R. 39 Ch.D. 636.

Moreover, in the Werderman case the judgments indicate that, even if the transaction had been found to be a sale, the company would still have been held liable, as assigns, to account to the plaintiff for the proceeds.

The assigns of a mortgagor are not merely entitled to rights (several of which have been above instanced); they also incur express liability under the mortgage contract. The covenant for further assurance is extended to them, and it is not difficult to

imagine circumstances in which it might operate as onerously for the assigns as the "accounting clause" in the Werderman case might have done.

Does it make any difference that, in the covenant for payment, the mortgagor does not purport to bind his assigns, but only himself, his heirs, executors, and administrators?

Words that are in common everyday use often mislead us into forgetfulness of their true significance.

Who, then, are heirs, executors, and administrators, and why should they be drawn into other people's liabilities?

The answer is at once simple and suggestive: it is because they are, in law, assignees of the testator or intestate.

Their legal position and liability may be indicated by a few brief references. The heir-at-law is liable to an action for a breach of a covenant annexed to a reversionary estate which has descended to the heir; and evidence that the defendant is heir-at-law will support a declaration charging him as assignee: *Derisley* v. *Custance*, 4 T.R. 75. He is also liable, in common with the personal representative, to the extent of the assets which have come to him by descent upon all contracts under seal entered into by the ancestor, in which the heir is expressly named, but not otherwise: Addison on Contracts, 9th ed., 227.

In Viner's Abridgment, under the heading "Administrator or Executor: How Considered," we read: "Executor is in law testator's assignee by the very making him executor."

Executors or administrators are answerable, *as far as they have assets*, for debts of every description due from the deceased: Williams on Executors, 9th ed., page 1594.

The executor is not only liable upon all covenants by the the testator which have been broken in his lifetime, but, moreover, he is answerable for all breaches in his own time, as far as he has assets, *for the privity of contract of the testator is not determined by his death*: Williams, p. 1630.

"So, if money be payable to A. or his assigns, his executor shall take it, for he is assignee in law."

"So, if A. covenant to grant a lease to I.S. *and his assigns* by Christmas, and I.S. dies before that time and before the grant of the lease, it must be made to his executors *as his assigns*, or they may bring covenant": Williams, pp. 697, 768.

It thus appears that executors and administrators, whether

expressly mentioned or not, are liable upon the contracts of the testator or intestate, as being in law the assignees or assigns of the deceased contractor, and that the liability is not absolute, but only in so far as they have received assets.

The learned reader has already grasped our point.

The purchaser of lands subject to a mortgage is, equally with the executor or administrator, an assign of the mortgagor, and *ex hypothesi* he has, or must be treated as having assets retained to meet this very indebtedness: to wit, the mortgage money which he deducted from the consideration for the lands.

The mortgagee's rights against the executor or administrator are not increased by the fact that they are expressed; and his rights against the purchaser are not diminished by the omission of the word "assigns" in the covenant.

But, it may be objected, the cases of the purchaser and of the personal representative cannot be analogous, for when the mortgagor dies there is an end of him, at least so far as rights and remedies are concerned, and his personal representative, if he have assets, must alone be looked to; whereas, if the mortgagor be still alive, he remains liable to the mortgagee even after selling the lands.

A simple case might be put which will both illustrate and answer this objection: Suppose a man dies leaving a will, whereby he directs his executor to pay all his debts and funeral expenses, and to give the residue of the estate to the testator's wife. The debts include a mortgage of $1,000. The assets are just sufficient to cover all the liabilities. The executor discharges them all except the $1,000, which he puts in his own pocket. Subsequently, the testator's estate is increased by a legacy of $1,000 under the will of a distant relative, and the amount is sent direct to the wife. What are the mortgagee's rights?

The executor is surely liable, for he has assets still in his hands sufficient to meet the claim, and (omitting the question of remuneration for services) he has no equity to compel the wife to part with the money. But is it not equally clear that the wife is also liable, although perhaps only secondarily, just as we shall see the mortgagor would be if he were still alive?

It is not, therefore, altogether true to say that after the death of a mortgagor his personal representative must alone be looked to.

So, in the case of the purchaser, it is only partly true to say that if the mortgagor be still alive he remains liable to the mortgagee, notwithstanding a sale of the lands. The position occupied by a mortgagor after selling his lands subject to the mortgage was defined by our Court of Chancery, as long ago as A.D. 1859, to be that of a surety to the mortgagee: *Joice* v. *Duffy*, 5 U.C.L.J. 141 (cited by Mr. Justice Osler in *Sutherland* v. *Webster*, 21 A.R., at p. 236).

Esten, V.C., in delivering the judgment of the court, said: "I quite agree with the principles laid down in Hilliard on Mortgages, that where a mortgagor sells subject to his mortgage the rule in regard to principal and surety applies, and the mortgagor becomes a surety to the mortgagee for the payment of the mortgage debt." The same doctrine has been recently enunciated and approved in the Court of Appeal and by the Chancellor. (See *Blackley* v. *Kenney*, 29 C.L.J. 110; *Sutherland* v. *Webster*, *supra*; *Muttlebury* v. *Taylor*, 22 O.R. 312.) Accordingly, a failure by the mortgagee to respect the rights arising from the new relationship may discharge the mortgagor.

It has, indeed, been argued by Mr. F. A. Anglin (14 C.L.T., at p. 101) that the suretyship exists only between the mortgagor and the purchaser. But when dealing with a triangular figure one must not forget that it has three sides. If, after determining two of those sides, and the connection between them, he had asked us to find the position of the third side, the problem would have been intelligible—and easy.

This relationship of principal and surety, as we need scarcely point out, gives us another direct route to the purchaser's liability.

The reluctance which both courts and text-writers have shown to recognizing this relationship in mortgage transactions appears to be based upon the supposition that it would enable a debtor (the mortgagor) to vary the rights of his creditor (the mortgagee), *without the latter's consent*. But this is not so. The mortgage contract contemplates and provides as well for an assignment by the mortgagor by deed *inter vivos* as for an assignment in law by his death.

Why any of the parties to this suretyship should object to it is a curious enigma. It imposes no obligation upon the purchaser which he has not already agreed to assume. It imposes

none upon the mortgagor, but, on the contrary, protects him to the extent of discharging him altogether in case his rights are not respected by the mortgagee. Least of all should the mortgagee object, for so long as he treats the mortgagor fairly the new relationship gives him a personal remedy against two people instead of one, without taking from him an atom of his real security.

If we are right in thus regarding the liability of the purchaser as a direct liability to the mortgagee, the ruse sometimes adopted by purchasers, of taking a release from the mortgagor, would of course be inoperative. On the other hand, the mortgagee would not, by obtaining from the mortgagor an assignment of the purchaser's covenant, acquire any additional rights.

A. C. GALT.

CURRENT ENGLISH CASES.

WILL—CONSTRUCTION—BEQUEST OF INCOME OF FUND FOR LIMITED TIME—TENANT FOR LIFE AND REVERSIONER—CONTINGENT ANNUITY—SURPLUS, INCOME OF.

In re Whitehead, Peacock v. *Lucas*, (1894) 1 Ch. 678, a testatrix being entitled to the residue of an estate, bequeathed it to L. for life, with reversion to L.'s children. The residue consisted of, first, the income accruing on a sum of money set apart and invested to provide for the payment of certain legatees, payable when the legatees attained twenty-five, and which did not bear interest in favour of the legatees in the meantime. As to this part of the residue, Stirling, J., held that the income of this fund must be treated, as between L. and her children, as capital and invested, and that L. was only entitled to the income derived thereupon. Another part of the residue was a sum of money set apart to secure a contingent annuity, the whole of which would form part of the residue in the event of the annuity not becoming payable; and as to this fund, he was of opinion that L. was entitled to be paid the surplus income which it might produce after providing for the annuity.

MORTGAGE OF LAND, AND TRADE MACHINERY—BILL OF SALE—NON-REGISTRATION OF CHATTEL MORTGAGE.

Small v. *National Provincial Bank*, (1894) 1 Ch. 686, was a contest between a mortgagee and an assignee of the mortgagor

for the benefit of his creditors. The mortgage under which the mortgagee claimed was a mortgage of business premises and trade machinery and fixtures thereon. The mortgage had not been registered under The Bills of Sale Act; the mortgagee, nevertheless, was about to sell these chattels under his mortgage, and the present action was brought by the assignee for an injunction to restrain him from so doing. Stirling, J., granted an interim injunction, being of opinion that the mortgagee was not entitled to sell the chattels in question either separately or along with the land.

WILL—CONSTRUCTION—IMPLIED CHARGE OF LEGACIES ON RESIDUARY REAL ESTATE—DEBTS, PAYMENT OF—DEFICIENCY OF PERSONAL ESTATE.

In re Bawden, National Provincial Bank v. *Cresswell*, (1894) 1 Ch. 693, Kekewich, J., had to apply the principle laid down in *Greville* v. *Browne*, 7 H.L.C. 689. A testator, having made certain specific devises and bequests, bequeathed pecuniary legacies, and gave all the real and personal estate, to which at his death he should be entitled, "and not otherwise disposed of," to his executor absolutely. *Greville* v. *Browne* lays down the rule that when a testator gives pecuniary legacies, and then gives his residuary real and personal estate, the legacies are implied charges on the residuary realty; but it was argued that this rule only applied where there was a gift of residue in terms, or some equivalent expression, and that the expression "all my real and personal estate not otherwise disposed of" was not equivalent. Kekewich, J., however, was clear that the principle applied wherever, in fact, there was a gift of residue, no matter in what terms the gift is expressed. Other questions are decided as to the liabilities of pecuniary legacies and residuary real estate to contribute to the payment of the debts, which, however, it is not necessary further to refer to here, as under R.S.O., c. 108, the realty and personalty in Ontario are both primarily chargeable with the debts of the deceased owner.

TRUSTEE—APPOINTMENT OF NEW TRUSTEE—APPOINTMENT OF NEW TRUSTEE BY WILL—CONVEYANCING AND PROPERTY ACT, 1881 (44 & 45 VICT., C. 41), S. 31—(R.S.O., C. 110, S. 3).

In re Parker, (1894) 1 Ch. 707, Kekewich, J., decided that it is not competent for a last surviving trustee to appoint a new trustee to succeed him in the trust by his last will and testament;

but that where he has assumed to do so his general executors have, nevertheless, under The Conveyancing and Property Act, 1881 (44 & 45 Vict., c. 41), s. 31 (R.S.O., c. 110, s. 3), the power to appoint the new trustee, and that their appointment will prevail over that assumed to be made by their testator.

TRUST—TRUSTEE—LOAN TO FIRM AUTHORIZED BY TESTATOR—CHANGE IN FIRM—BREACH OF TRUST—PAYMENT OF INTEREST—PARTNERS, LIABILITY OF—STATUTE OF LIMITATIONS—TRUSTEE ACT, 1888 (51 & 52 VICT, C. 59), S.8—(54 VICT., C. 19, S. 13 (O.))—COSTS.

In re Tucker, Tucker v. *Tucker*, (1894) 1 Ch. 724, was a suit against the trustees of a will to make them responsible for alleged breaches of trust. The testator had, by his will, expressly authorized his executors and trustees to invest his personal estate "either by placing the same on deposit with the firm of Baker, Tuckers & Co., should they be willing to accept it at interest," but, if not, then upon usual securities, with liberty to call in and vary the investments. At the time of his death the testator had a sum of money on deposit with the above-named firm, which the executors continued after his death, and after there had been, to the knowledge of the executors, from time to time changes in the membership of the firm. From the death of the testator until 1891, the interest on the money so deposited was regularly paid by the firm. Romer, J., held that the loan to Baker, Tuckers & Co. was only authorized so long as the firm was constituted as at the date of the testator's death; that on the membership of the firm becoming changed, it was the duty of the trustees at once to have called in the money, and their not doing so was a breach of trust, which rendered them liable for any loss that might accrue. At the time of the testator's death, the firm of Baker, Tuckers & Co. consisted of Henry Tucker and William Tucker. Henry Tucker died in 1875, and appointed William Tucker his executor. The payments of interest made after Henry Tucker's death were not paid out of his estate, but by the continuing firm. It was held that the claim of the trustees in respect of the loan as against his estate was barred by the Statute of Limitations; but as regards William Tucker, who retired from the firm in 1883, and stipulated with the continuing partners that they should assume and pay the debt in question, it was held that the payments of interest subsequently made by the continuing members of the

firm in pursuance of this agreement prevented the Statute of Limitations from running as against William Tucker, who was held to be liable to the testator's estate for the full amount of the loan. Although William Tucker was found to be personally liable, yet, as representing the estate of Henry Tucker, the action was dismissed as against him, with costs incurred in his representative capacity. As to one of the existing trustees, who was responsible for the breach of trust, but who had been adjudicated bankrupt, and offered at the hearing to retire from the trust, it was admitted that it would be useless to proceed further with the action against him; it was, therefore, ordered that proceedings against him should he stayed, but he was refused his costs.

SALE—MISREPRESENTATION—RESALE FOR ENHANCED PRICE—RESCISSION OF EXECUTED CONTRACT.

Edinburgh United Breweries v. *Molleson*, (1894) A.C. 96, although a Scotch case, seems to be deserving of attention. Stripped of the unfamiliar technicalities of Scotch law, the case seems to have been shortly this: Molleson, the defendant, was a trustee of a brewery, which he, on the 15th November, 1889, contracted to sell to one Dunn for £20,500. A deposit of £3,700 was paid down, and the balance of the purchase money was to be paid on the 31st of December following. The contract provided that it was entered into on the basis that the net profits of the brewery for the two years preceding the 31st December, 1888, had been £3,750, or thereabouts, and that if, on examination of the accounts, this should be found to be incorrect, the contract was to be at an end, and the £3,700 was to be repaid. The books were examined by an accountant selected by Dunn, who was satisfied of the correctness of the statement. Dunn then sold the brewery to the Edinburgh Breweries Co., at an advance of £8,000, to which company he also assigned all benefit of his contract with Molleson, and thereupon Molleson conveyed the brewery direct to the company. After the latter company had worked the brewery for more than a year after the conveyance, it was discovered that a clerk of Molleson's had altered the books in order to make the profits appear larger than they really were, Molleson being ignorant of the fact. The Edinburgh Breweries Co., together with Dunn, brought the present action for a rescission of the contract, relying on the stipulation con-

tained in it that it should be at an end if the statement as to the profits was discovered to be incorrect. The House of Lords (Lords Herschell, L.C., Watson, Ashbourne, Macnaghten, and Morris) agreed with the Court of Session that the action could not succeed, and that the stipulation in question was intended only to apply to a discovery of the incorrectness of the statement of the profits prior to the completion of the contract. Dunn, they held, had no right to rescind the contract because he had sold to his co-plaintiffs, and no ground appeared, nor was any case made, for rescinding his sale to them, and his joining with his co-plaintiffs could not give them any better right; and the Edinburgh Breweries Co., as assignees of Dunn, they held, had no right to relief against Molleson, because it did not appear that the sale to them was affected by the misrepresentation. From the judgment of Lord Ashbourne, it would appear that the plaintiffs sought to recover the purchase money without offering to restore the property.

Correspondence.

THE ELLIS CONTEMPT CASE.

To the Editor of THE CANADA LAW JOURNAL:

DEAR SIR,—I have read with interest your article on the discussion which took place in the House of Commons on the subject of the Ellis contempt case. Among other things, you refer to a quotation which I made from a speech of Sir Robert Peel, in which he asserted the right of Parliament to exercise a superintending control over the manner in which judges discharged their duty, and you say that I have failed to observe the distinction between criticism of the manner in which a judge exercises his powers, and of the judgment which he might give on the matter before him.

Permit me to say that this observation is, in my opinion, based upon a mistaken view of the power, and, in certain contingencies, of the duty, of the House of Commons. There is no such distinction known to Parliamentary law as that which you endeavour to make, and this is clearly shown in the extract which you quote from one of Lord Palmerston's speeches. You have,

it seems to me, fallen into the same mistake as that made by the Minister of Justice—you have confounded the propriety of Parliamentary criticism with the propriety of Parliamentary inquiry.

It is a well-settled rule of Parliamentary usage not to inquire into a charge which is not of so grave a character as to warrant the removal of the judge in case the charge should be established. Mr. Justice Monaghan, in holding the assizes in the county of Down, swore at some of the magistrates present for what he thought was a failure of duty. No one proposed to appoint a committee to inquire into his conduct; but no one thought, on that account, that his conduct was not a fair subject for Parliamentary discussion, and in all cases it is a proper way of exercising the restraining influence of public opinion. But you may reply that this is only a criticism of manner, and not of judgment. Then let me refer you to the case of *The Queen* v. *McNaughten*. McNaughten had murdered Mr. Drummond, the secretary of Sir Robert Peel, mistaking him for Sir Robert himself. He was tried at the Central Criminal Court, and discharged, on the ground of obvious insanity. Now, his case could not have come before the Law Lords, by appeal, nor otherwise, because, apart from impeachment, and the trial of Peers, they have no original jurisdiction. The matter was not judicially before them. They could not consider the case in their judicial capacity.

It was only in their political capacity, as having a supervision over the administration of justice in the Kingdom, that they could have made the conduct of the judges, in the acquittal of McNaughten, the subject of discussion and criticism. They, nevertheless, did so; they questioned the law as laid down in the Central Criminal Court; they put a series of questions to the judges as assessors to the House of Lords, a function which they discharge only when their lordships are engaged in the consideration of a case. The opinions then expressed were extra-judicial, though they have since been largely followed. But all these proceedings were criticisms, not upon the conduct of the judges of the Central Criminal Court, but upon their judgment. This one case is conclusive against your contention.

Permit me to give one further illustration. In the case of the *Queen* v. *Keyn*, the Court of Exchequer Chamber held that the criminal law of England did not extend to its territorial waters. But Parliament passed "The Territorial Waters Jurisdiction

Act," *not professedly to amend the law, but to declare the law*, and it did declare "that Her Majesty's jurisdiction extends, *and has always extended*, over the open seas adjacent to the coasts of the United Kingdom, and of all the other parts of Her Majesty's dominions, to such a distance as is necessary for the defence and security of such dominions." For the great Law Lords, who initiated that discussion, must be taken to have known their duties as members of Parliament too well to have invaded a province which belongs exclusively to the judiciary. So that Parliament in this, as in almost every other declaratory Act, has pronounced the judgment of a court wrong in point of law, and has, by legislation, established a different rule. In the *Queen* v. *Dudley*, Lord Coleridge said the opinion of the *minority* in the Fraconia case has been since not only *enacted*, but *declared* by Parliament to have been always the law. These illustrations are sufficient to show that there is no such limitation upon the usage of Parliament as the one suggested by the Minister of Justice, and of which you approve.

I am far from saying that the power is one which can be often used with propriety, but my contention is that it exists; that it is in the public interest that it should be possessed by Parliament; and that, without it, the rights of Parliament could not be protected against judicial encroachment, as the prohibition of Judge Steadman in the discharge of his duty as an officer of Parliament, and not of the Crown, clearly shows.

Yours, very respectfully,

DAVID MILLS.

London, August 2nd, 1894.

[We refer to the above letter from our esteemed correspondent in another place, *ante* p. 487.—ED. L.J.]

DIARY FOR SEPTEMBER.

2. Sunday .....*15th Sunday after Trinity.* De Besuharnois, Governor, 7126.
8. Saturday.....Irish Home Rule Bill rejected, 1893.
9. Sunday .....*16th Sunday after Trinity.*
10. Monday .....Trinity term for Law Society begins. Convocation meets.
11. Tuesday .....Court of Appeal sits. Gen. Sess. and Co. Ct. sitts. for trial in York. Jewish year 5655 begins.
12. Wednesday...Frontenac, Governor of Canada, 1692.
14. Friday .....Convocation meets. Jacques Cartier arrived at Quebec, 1535. Quebec taken and death of Wolfe, 1759.
16. Sunday.....*17th Sunday after Trinity.*
17. First Parliament of U.C. met at Niagara, 1792.
18. Tuesday.....Earl of Aberdeen, Gov.-Gen., 1893. Quebec surrendered to British, 1759.
21. Friday.....St. Matthew. Convocation meets.
22. Saturday .....Courcelles, Governor of Canada, 1665.
23. Sunday.....*18th Sunday after Trinity.*
24. Monday.....Law School begins. Guy Carleton, Lieut.-Gov. and Com.-in-Chief, 1766.
25. Tuesday.....Sir Wm. Johnston Ritchie died, 1892.
28. Friday .....W. H. Blake, 1st Chancellor of U.C., 1849.
29. Saturday.....St. Michael and All Angels.
30. Sunday .....*19th Sunday after Trinity.* Sir Isaac Brock, administrator, 1811.

Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.] [May 1.

CITY OF TORONTO *v.* TORONTO STREET R.W. CO.

Construction of contract—Street railway—Permanent pavements—Arbitration and award.

The Toronto St. R.W. Co. was incorporated in 1861, and its franchise was to last for thirty years, at the expiration of which period the city corporation could assume the ownership of the railway and property of the company on payment of the value thereof, to be determined by arbitration. The company was to keep the roadway between the rails and for eighteen inches outside each rail paved and macadamized, and in good repair, using the same material as that on the remainder of the street, but if a permanent pavement should be adopted by the corporation the company was not bound to construct a like pavement between the rails, etc., but was only to pay the cost price of the same, not to exceed a specified sum per yard.

The city corporation laid upon certain streets traversed by the company's railway permanent pavements of cedar block, and issued debentures for the whole cost of such work. A by-law was then passed charging the company with its portion of such cost in the manner and for the period that adjacent owners were assessed under The Municipal Act for Local Improvements. The company paid the several rates assessed up to the year 1886, when they refused

to pay, on the ground that the cedar block pavement had proved to be by no means permanent, but defective and wholly insufficient for streets upon which the railway was operated. An action having been brought by the city for these rates, it was held that the company was only liable to pay for permanent roadways, and a reference was ordered to determine, among other things, whether or not the pavement laid by the city was permanent. This reference was not proceeded with, but an agreement was entered into by which all matters in dispute to the end of the year 1888 were settled, and thereafter the company was to pay a specified sum annually per mile, "in lieu of all claims on account of debentures maturing after that date, and in lieu of the company's liability for construction, renewal, maintenance, and repair in respect of all the portions of streets occupied by the company's tracks so long as the franchise of the company to use the said streets *now* extends." The agreement provided that it was not to affect the rights of either party in respect to the arbitration to be had if the city took over the railway, nor any matters not specifically dealt with therein, and it was not to have any operation "beyond the period over which the aforesaid franchise now extends."

This agreement was ratified by an Act of the Legislature passed in 1890, which also provided for the holding of the said arbitration, which, having been entered upon, the city claimed to be paid the rates imposed upon the company for construction of permanent pavements, for which debentures had been issued, payable after the termination of the franchise. The arbitrators having refused to allow this claim, an action was brought by the city to recover the said amount.

Held, affirming the decision of the Court of Appeal, that the claim of the city could not be allowed; that the said agreement discharged the company from all liability in respect to construction, renewal, maintenance, and repair of the said streets; and that the clause providing that the agreement should not affect the rights of the parties in respect to the arbitration, etc., must be considered to have been inserted *ex majori cautela*, and could not do away with the express contract to relieve the company from liability.

Held, further, that as by an Act passed in 1877, and a by-law made in pursuance thereof, the company was only assessed as for local improvements which, by the Municipal Act, constitute a lien upon the property assessed, but not a personal liability upon owners or occupiers after they have ceased to be such, after the termination of the franchise the company would not be liable for these rates.

Appeal dismissed with costs.

Robinson, Q.C., and *S. H. Blake*, Q.C., for the appellants.

McCarthy, Q.C., for the respondents.

Nova Scotia.] [May 31.

CITY OF HALIFAX *v.* REEVES.

Public street—Encroachment on—Building upon or "close to" the line—Charter of Halifax, ss. 454, 455—Petition to remove obstruction—Judgment on—Variance.

By s. 454 of the charter of the city of Halifax, any person intending to erect a building upon or close to the line of the street must first cause such

line to be located by the city engineer, and obtain a certificate of the location; and, if a building is erected upon or close to the line without such certificate having been obtained, the Supreme Court, or a judge thereof, may, on petition of the Recorder, cause it to be removed.

A petition was presented to a judge, under this section, asking for the removal of a porch built by R. to his house, on one of the streets of the city, which, the petition alleged, was upon the line of the street. A porch had been erected on the same site in 1855, and removed in 1884; while it stood, the portion of the street outside of it, and, since its removal, the portion up to the house, had been used as a public sidewalk. On the hearing of the petition, the original line of the street could not be proved, but the judge held that it was close to the line so used by the public, and ordered its removal. The Supreme Court of Nova Scotia reversed his decision. On appeal to the Supreme Court of Canada,

Held, that there was evidence to justify the judge in holding that the porch was upon the line; but, having held that it was close to the line, while the petition only called for its removal as upon it, his order was properly reversed.

Decision of Supreme Court of Nova Scotia affirmed, but on different grounds.

An objection was taken to the jurisdiction of the Supreme Court of Canada, on the ground that the matter did not originate in a Superior Court.

Held, TASCHEREAU, J., dissenting, that the court had jurisdiction.

Canadian Pacific Railway Co. v. Ste. Therese, 16 S.C.R. 606, and *Virtue & Hayes*, 16 S.C.R. 721, distinguished.

Appeal dismissed with costs.

MacCoy, Q.C., for the appellant.

Newcombe, Q.C., for the respondent.

New Brunswick.] [May 31.

PORTER *v.* HALE.

Evidence—Foundation for secondary evidence—Execution of agreement—Proof of signatures—Laches—Relief asked for inconsistent with claim.

Land was left by will to trustees in trust to divide the same, or proceeds of sale thereof, among testator's children. C., one of the beneficiaries, agreed to sell a part of said land to P., but the trustees and C. afterwards sold the same part to other persons. In a suit by P. against C., the trustees, and the registered owners under the last conveyance, for specific performance for the agreement of sale by C., and the cancellation of said conveyance and an injunction against further transfers, P. alleged that the trustees and other beneficiaries under the will had signed an agreement by which the land in question was to be conveyed to C., in settlement of the estate. On the hearing, secondary evidence of this agreement was tendered, on proof that C., who was the proper custodian of it, was without the jurisdiction and supposed to be in Scotland, and that P. had written to him and to his sister and one of the trustees, inquiring where he was, but could not get the information. None of the letters contained any reference to the agreement, nor to P.'s object in making the inquiry. Secondary evidence having been received,

Held, affirming the decision of the Supreme Court of New Brunswick, that sufficient foundation for its reception had not been laid, and it should not have been received; that P. should have stated in his letters that he wanted this specific document: that he should have had inquiries made in Scotland by some independent person to ascertain where C. was to be found, and, if he had been found, to ask him for the paper in question; and that a commission might have been issued to the Court of Session in Scotland, and a commissioner appointed by that court to procure the attendance of C. and his examination as a witness.

The secondary evidence given of the execution of said agreement was that it was signed by, at least, four persons, but the handwriting of only two of them, including one of the trustees, was known to the witness proving it.

Held, that the proof of execution was insufficient to establish the case set up by P.; that an instrument signed by one only of the trustees could convey no title, legal or equitable, to C.; and that the evidence of its contents was not satisfactory.

The alleged agreement by C. to sell said land to P. was executed in 1884, and the suit was not instituted until more than four years after.

Held, that the delay in taking proceedings was a sufficient answer to the suit; though P. was in possession of the land in the interval, the evidence clearly showed that it was not in the capacity of a prospective purchaser, but in that of a caretaker, having been so appointed by the trustees.

P. also claimed to be entitled to a decree for performance, in the event of the case made by his bill failing, on the ground that the testator's will had not been registered in New Brunswick, as required by law, and was, consequently, void as against him, a purchaser from C., one of the heirs.

Held, that, as the bill claimed title under the will, P. could not have a decree based on the proposition that the said will was void as against him, and no amendment could be allowed making a case not only at variance with, but antagonistic to, the bill, especially as such amendment was not asked for until the hearing.

Appeal dismissed with costs.

McLeod, Q.C., and *Palmer*, Q.C., for the appellant.

Weldon, Q.C., *Currey*, and *Vince* for the respondents.

New Brunswick.] [May 31.

SCOTT *v.* THE BANK OF NEW BRUNSWICK.

Debtor and creditor—Payment to pretended agent—False representations as to authority—Indictable offence—Ratification of payment by creditor—Adoption of agency.

S., a shipmaster, before starting on a voyage, deposited $1,000 in a bank and obtained a deposit receipt therefor, which he left with R., part owner and manager of his vessel, for safe keeping. S. was absent for four years, and when he returned and asked a settlement with R., who owed him $2,650 on ship's account, he found that R. had received the amount of the deposit from the bank and applied it to his own use. To avoid proceedings against him,

R. gave to S. a bill of exchange on a person in Ireland for £250 and a mortgage on an interest he claimed to have on his father's property, and S. went to sea again without stating any of these facts to the bank. In two years he returned again, and found that R. had left the country, the bill of exchange had not been accepted, and nothing had been realized on the mortgage. He then demanded the amount of his deposit from the bank, which they refused to pay, and he brought an action to recover the same.

The action was twice tried. On the first trial a verdict was given in favour of S., the jury having found that when R. took the deposit receipt to the bank, with the name of S. indorsed on it, such indorsement had not been written by S., and the trial judge held that the finding was, in effect, that of forgery by R., which could not be ratified. The jury also found that the security taken by S. did not include the $1,000. The Full Court ordered a new trial, on the ground that the last finding was against evidence (31 N.B. Rep. 21), and an appeal from that decision to the Supreme Court was not entertained (21 S.C.R. 30). On the second trial the bank obtained a verdict, which was affirmed by the Full Court. On appeal from the latter decision,

Held, affirming the judgment of the court appealed from, that the doctrine of estoppel was not involved in the case; that R. obtained the money from the bank by falsely representing that he had authority from S.; that S., by ratifying and confirming the payment, adopted the agency, and his act made the payment equivalent to one to a person having authority to receive it; and it made no difference that by his false representations R. may have committed an indictable offence.

Appeal dismissed with costs.

McLeod, Q.C., and *Palmer*, Q.C., for the appellant.

Blair, Attorney-General of New Brunswick, for the respondent.

New Brunswick.] [May 31.

ROURKE *v.* THE UNION MARINE INSURANCE CO.

Trover—Joint owners of vessel—Sale by one—Conversion—Marine insurance—Abandonment—Salvage.

A vessel partly insured was wrecked, and the ship's husband gave notice of abandonment to the underwriters, whose agent caused the hull and outfit to be sold to one K. The underwriters afterwards notified the ship's husband that the vessel was not a total loss, and requested him to pay the charges and take possession. He paid no attention to the notice, and K. took the vessel to a port in Maine, U.S., and attempted to repair her, and he afterwards caused her to be libelled for salvage in a United States court, and sold. R., owner of eight shares which had not been insured, brought an action against the underwriters for conversion of her interest.

Held, affirming the decision of the Supreme Court of New Brunswick, that the conduct of the ship's husband, who was agent for R. in respect of the vessel, precluded the latter from bringing such action; that by his notice of abandonment the underwriters became joint owners with R. of the vessel; that they had not sold the vessel so as to deprive R. of her beneficial interest

in her nor to destroy her; that the ship's husband might have taken possession before the vessel was libelled; and that R. was not deprived of her interest by any action of the underwriters, but by the decree of the court under which she was sold for salvage.

Appeal dismissed with costs.

McLeod, Q.C., for the appellants.

Weldon, Q.C., and *Palmer*, Q.C., for the respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Chancery Division.

Div'l Court.] [June 30.

MORRIS *v.* DINNICK ET AL.

Contract—Hiring—Commission sales of manufactured goods—Liability to continue manufacturing—Length of hiring—Construction.

The defendants, trading as a company, agreed with the plaintiff as follows: "We hereby agree to pay you a commission of . . . on all sales of goods manufactured by us . . . you are to use all diligence to make sales . . . and for that purpose you are to act as our agent . . . The above commission to be paid to you from time to time as collections are made . . . In one year from this date it shall be at the option of yourself or ourselves to determine this agreement . . ."

Soon after the agreement was made one of the defendants bought out the other two, and notified the plaintiff that the agreement was at an end, alleging that the company had ceased to exist.

Before the year had expired, the plaintiff brought an action for wrongful dismissal.

Held, (affirming STREET, J.) that there was no express contract of employment for any term on the face of the contract.

That the relation was not that of master and servant, but expressly one of agency.

That there was no undertaking to manufacture any defined quantity of goods, or to manufacture at all, and that no such term should be implied, and that the plaintiff was to get a commission as agent on the sale of goods manufactured, and the continuance of the manufacturing was left at large to be determined by the interests of the principal; and the action was dismissed with costs.

Rhodes v. *Forwood*, 1 App. Cas. 256, and *Turner* v. *Goldsmith*, (1891) 1 Q.B. 549, referred to and distinguished.

E. T. English and *McNabb* for the appeal.

W. R. Riddell, contra.

Div'l Court.] [June 30.

SHEPPARD *v.* BONANZA NICKEL MINING COMPANY OF SUDBURY (LIMITED).

Corporation—Mining company—Acquisition of land—Mortgage for, and covenant to pay purchase money.

Where a mining company has power to acquire land for the purposes of its incorporation, it has power to give a mortgage for and to bind itself by covenant to pay the purchase money.

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

McCarthy, Q.C., and *Raymond*, *contra.*

STREET, J.] [May 21.

HANDY *v.* CARRUTHERS ET AL.

Growing timber—Interest in land—License to enter to cut and remove—Valuable consideration—Part performance—Statute of Frauds.

The plaintiff sold, by parol, certain standing timber to the defendants for value, giving such time for the removal as should be necessary. At the end of three years he gave them notice not to cut or remove any more, which was disregarded.

Held, that this sale of growing timber was a sale of an interest in land, with a parol license to enter for the purpose of cutting and removing the trees.

And that the making of the agreement for the sale of timber, with the license to enter and remove it, for a valuable consideration, was an answer to the plaintiff's claim for damages, and the Statute of Frauds was met by showing part performance.

And that, notwithstanding the notice, the defendants might show the existence of the agreement for a valuable consideration, under which they were entitled to do what was charged as a trespass, and under which no right of revocation existed: and the action was dismissed with costs.

McManus v. *Cooke*, 35 Chy. Div. 681, referred to.

Haughton Lennox and *G. W. Lount* for the plaintiffs.

W. A. Boys for the defendants.

Common Pleas Division.

ROSE, J.] [April 5.

MERRITT AND CORPORATION OF TORONTO.

Auctioneers—Right to issue licenses therefor—Power to prohibit—R.S.O., c. 184, s. 495, s-s. 2.

Section 495, s-s. 2, of The Municipal Act, R.S.O., c. 184, which empowers any city, etc., to pass by-laws for the "licensing, regulating, and governing of auctioneers and other persons selling or putting up for sale goods, wares, and effects for public auction, and for fixing the sum for every such license, and the

time which it shall be in force," is only for the purpose of raising a revenue, and does not confer any right of prohibition so long as the applicant is willing to pay the sum fixed for the license. Where, therefore, a city refused to license the plaintiff as an auctioneer on the ground that he was a person of a notoriously bad character and ill-repute a mandamus was granted, compelling them to issue to him such license.

J. E. Jones for the applicant.

W. R. Meredith, Q.C., *contra.*

STREET, J.] [May 18.

RE DAVIS.

Infant, custody of—Parents married in this Province—Removal to United States, where husband naturalized, and divorce obtained by the wife.

The parents of a child now seven years old, British subjects, and married in this Province, where the child was born, removed to the United States, where the husband became naturalized. In consequence of his alleged intemperance and adultery the wife left him, and on the ground of such adultery applied to the courts there and obtained a decree granting her a divorce and the custody of the child, though shortly before such decree was pronounced and to escape its effect the husband returned to this Province, bringing the child with him.

On an application by the wife an order was made granting her the custody of the child.

L. McCarthy for the applicant.

W. H. Blake, contra.

Div'l Court.] [May 25.

REGINA *v.* BELL.

Criminal law—By-law against swearing in street or public place—Private office in custom house.

A city by-law enacted that no person should make use of any profane swearing, obscene, blasphemous, or grossly insulting language, or be guilty of any other immorality or indecency, in any street or public place.

Held, that the object of the by-law was to prevent an injury to public morals, and applied to a street or a public place *ejusdem generis* with a street, and not to a private office in the custom house.

Langton, Q.C., for the applicant.

F. W. Garvin, contra.

MACMAHON, J.] [June 1.

PHELPS *v.* LLOYD.

Will—Devise—Indefiniteness.

A testator by his will devised to certain named persons who were appointed the executors and trustees of the will the remainder of the estate, to be used to further "the cause of our Lord Jesus Christ."

Held, that the legacy was not void for indefiniteness; and discretion having been given to the executors and trustees, it was not necessary that a scheme should be declared.

German for heir-at-law.

Moss, Q.C., and *Fraser*, *contra*.

ROBERTSON, J.] [June 1.

WILSON *v.* CORPORATION OF INGERSOLL.

Taverns and shops—By-law to fix number of licenses—Passed without required two-thirds vote—Read a third time only at subsequent meeting on such two-thirds vote—Validity.

A by-law to regulate the proceedings of a town council required that every by-law should receive three readings, but that no by-law for raising money or which had a tendency to increase the burdens of the people should be finally passed on the day on which it was introduced, except by a two-thirds vote of the whole council.

A by-law to fix the number of tavern licenses, and which therefore required such two-thirds vote, was read three times on the same day and declared passed, but did not receive the required two-thirds vote. A special meeting was then called for the following evening, when the by-law was merely read a third time, when it received the required two-thirds vote.

Held, that the by-law was bad, for, having been defeated when first introduced by reason of not having received a two-thirds vote, it was not validated by merely reading it a third time at the subsequent meeting.

The by-law did not show, as required by The Liquor License Act, the year as to which it was to be applicable.

Held, that it was bad for this reason also.

Osler, Q.C., and *Jackson* for the applicant.

Fullerton, Q.C., *contra*.

BOYD, C.] [June 1.

TORONTO GEN... TRUSTS CO. *v.* QUIN.

Dower—Release by marriage settlement—...tion of Estates Act—Right of election.

Section 4 of The Devolution of Estates Act, R.S.O., c. 108, which gives the widow a right of election between her dower and a distributive share in her deceased husband's land, does not apply where by marriage settlement she accepted an equivalent in lieu of dower. In such case she has no right to any share in the lands.

E. T. Malone for the plaintiffs.

W. M. Douglas for the heirs.

T. R. Slaght for the widow.

BOYD, C.] [June 4.

RE CLARKE AND BARBER.

Division Courts—Splitting up cause of action—Contract for sale of land.

Where under an agreement for the sale of land the balance of the purchase money was payable by instalments, with interest at a named rate half yearly,

and three of the instalments, amounting to $240, as well as the interest, amounting to $70, and three years' taxes, were overdue, and an action was commenced in the Divisional Court for the $70 and two years' taxes, amounting to $125,

Held, that the action was maintainable, and did not come within s. 77 of The Division Courts Act, whereby the splitting of causes of action is forbidden; and prohibition was refused.

R. B. Beaumont for the motion.

R. M. Macdonald, contra.

BOYD, C.] [June 5.

RE CHAMBERS AND CORPORATION OF BURFORD.

Municipal corporation—By-law establishing road—Certainty in description of land taken—Publication—Bi-monthly paper.

A by-law recited that certain land thereinafter described had been used as a public road for thirty years, and on which public money had been expended and statute labour performed, and was a continuation of a public road; and that it was in the interest of the public that the same should be clearly established by by-law. The by-law then enacted that the land, describing it as commencing at the northeast angle of lot No. 7 in the 11th concession of the Township of Burford, where a stone has been planted; then south 16 degrees 10 minutes, east 34 chains and 4 links to a stake; then north 78 degrees 30 minutes 1 chain to a stake; then north 16 degrees 10 minutes, west 34 chains 4 links to the northwest angle of lot No. 6 in the said 11th concession; then westerly in a straight line 1 chain to the place of beginning, containing 3¾ of an acre, is established as a common and public highway.

Held, that there was no uncertainty in the description of the land taken.

One of the courses was given as 24 chains and 4 links instead of 34 chains and 4 links; but as the parallel course was correctly given and the error appeared so obvious as not to be calculated to mislead, it was held not to be a ground of objection.

Where there was no weekly paper published in the township, but only one bi-monthly, the statute does not render it obligatory to use such paper for publication of the by-law.

S. A. Jones for the motion.

Harley, contra.

Practice.

Chy. Div'l Court.] [June 30.

WILKES *v.* KENNEDY.

Summary judgment—Rule 739—Action on implied covenant—Land Titles Act, R.S.O., c. 116, s. 29—Unconditional leave to defend.

In an action by the assignee of a charge registered against land under the Land Titles Act, R.S.O., c. 116, to recover money due under the covenant for payment implied by virtue of s. 29, there being no entry in the register

negativing the implication, the defendant, in answer to an application for summary judgment under Rule 739, swore that it was clearly understood between him and the original chargees that the land only was to be liable, and this was corroborated by one of the original chargees, the plaintiff, however, swearing that she was a *bona fide* purchaser for value without notice of this understanding.

Held, that there was a *bona fide* contest of a question to some extent novel, which ought to be fairly litigated in the usual way, without hampering conditions being imposed on the defence.

Jones v. *Stone*, (1894) A.C. 124, followed.

James A. Macdonald for the plaintiff.

F. J. Roche for the defendant.

Court of Appeal.] [June 30.

MOLSONS' BANK v. COOPER.

Summary judgment—Rule 744—Application of—Special grounds for relief—Substantial defence.

In two actions to recover the amounts of overdue promissory notes motions were made by the plaintiffs at an early stage, under Rule 744, for summary judgments, upon the grounds that the sheriff had seized and sold certain property of the defendants under execution, and that in order to share in the distribution of the proceeds of sale under The Creditors' Relief Act it was necessary for the plaintiffs to have immediate judgments.

Held, not a sufficient special ground for the application of the Rule.

In answer to the motions, the defendants set up on affidavits the defence that there was an agreement between them and the plaintiffs that the moneys collected on collaterals should be applied in discharge of the notes sued on, among others, and that moneys were so collected and applied; but this agreement was denied by the plaintiffs.

Held, per OSLER, J.A., that this was a substantial defence, and ought not to be tried summarily upon affidavits.

Leslie v. *Poulton*, 15 P.R. 332, followed.

Remarks by MACLENNAN, J.A., on the origin and application of Rule 744.

Judgments of GALT, C.J., and MACMAHON, J., reversed.

Shepley, Q.C., for the plaintiffs.

Aylesworth, Q.C., for the defendants.

Appointments to Office.

POLICE MAGISTRATES.

County of Norfolk.

John Wesley Griffin, of the Village of Delhi, in the County of Norfolk, Esquire, to be a Police Magistrate in and for the said Village of Delhi, without salary.

CLERKS OF THE PEACE AND COUNTY ATTORNEYS.

County of Hastings.

Peter James Mills Anderson, of the City of Belleville, in the County of Hastings, Esquire, Barrister-at-Law, to be Clerk of the Peace and County Crown Attorney in and for the said County of Hastings, in the room and stead of George Eyre Henderson, Esquire.

United Counties of Leeds and Grenville.

Matthew Munsell Brown, of the Town of Brockville, in the County of Leeds, one of the United Counties of Leeds and Grenville, Esquire, Barrister-at-Law, to be County Attorney and Clerk of the Peace in and for the said United Counties of Leeds and Grenville.

LOCAL MASTERS.

County of Prince Edward.

Charles Howard Widdifield, of the Town of Picton, in the County of Prince Edward, Esquire, Barrister-at-Law, to be Local Master of the Supreme Court of Judicature for Ontario in and for the said County of Prince Edward, in the room and stead of Nehemiah Gilbert, Esquire, resigned.

CORONERS.

County of Carleton.

Anthony Freeland, of the City of Ottawa, in the County of Carleton, Esquire, M.D., to be an Associate Coroner within and for the said County of Carleton.

DIVISION COURT CLERKS.

County of Frontenac.

William Howard Reynolds, of the Village of Verona, in the County of Frontenac, Gentleman, to be Clerk in the Fourth Division Court of the County of Frontenac, in the room and stead of Alexander Grant, resigned.

DIVISION COURT BAILIFFS.

County of Middlesex.

Charles Smith, of the Village of Arva, in the County of Middlesex, to be Bailiff of the Eighth Division Court of the said County of Middlesex, in the room and stead of William Guest, resigned.

Obituary.

SIR MATTHEW BAILLIE BEGBIE, Knight, Chief Justice of British Columbia, died June 11th. He was appointed in 1851, when British Columbia was a Crown colony.

SIR JAMES LUKIN ROBINSON, Barrister, late Clerk of the Surrogate Court, died August 21st. Mr. Robinson was called to the Bar at the Middle Temple (London), and also to the Bar of Upper Canada in 1843. He was Reporter of the Court of Queen's Bench from August, 1846, to November, 1856.

HON. C. F. FRASER, of Brockville, Barrister, Inspector of Registry Offices, died August 24th. Mr. Fraser was called to the Bar in 1865, and was for many years a prominent member of the Mowat Administration of the Province of Ontario.

D. M. CHRISTIE, of Chatham, Barrister, drowned in the French River, about August 21st. Mr. Christie was called to the Bar in 1878, and at the time of his death was senior member of the firm of Christie & Lewis.

JAMES FARQUHARSON MACLEOD died September 5th at Calgary, N.W.T. He was called to the Bar in Ontario in 1860, and was, at the time of his death, one of the judges of the Northwest Supreme Court.

RULES OF PRACTICE OF THE SUPREME COURT OF JUDICATURE FOR ONTARIO.

24TH MARCH, 1894. 23RD JUNE, 1894.

In force September 1st, 1894.

1281. RULE 2 is amended by adding thereto the following words :

"(*a*) The words 'County Court,' where they appear in the Consolidated Rules, shall include District Court."

1282. RULE 11 is hereby amended by adding thereto the following words : "And shall also sign and issue certificates of *lis pendens* under his seal of office, when required to do so on issuing the writ of summons."

1283. RULE 12 is hereby amended by adding thereto the words "or supplied by him to other officers."

1284. RULE 15 is hereby amended by inserting after the word "summons" the words "and *præcipes* for certificates of *lis pendens*."

1285. RULE 18 is hereby amended by inserting after the words "Deputy Registrars," wheresoever they occur in the said *Rule*, the words, "and Deputy Clerks of the Crown."

1286. RULE 28, clause (*d*) is hereby amended by inserting after the words "County of York" the words "or registrar sitting personally, or by deputy," and by adding after the word "assize" in the second line the words "or sittings of the Court."

MASTER IN CHAMBERS.

1287. RULE 30 is rescinded and the following substituted therefor :

30. The Master in Chambers, in regard to all actions and matters in the High Court, including proceedings in the nature of *quo warranto* under *The Municipal Act*, shall be and hereby is empowered and required to do all such things, transact all such business, and exercise all such authority and jurisdiction in respect to the same as by virtue of any statute, or by the rules or practice of the Superior Courts, or any of them, respectively, were at the time of the passing of the Acts 33 Vict. (O.), cap. 11, 37 Vict. (O.), cap. 7, and *The Ontario Judicature Act, 1881*—or are now done, transacted, or are exercised by any Judge of the said Courts sitting at Chambers, save and except in respect to the matters following :

(1) All matters relating to criminal proceedings, or the liberty of the subject ;

(2) Appeals and applications in the nature of Appeals ;

(3) Proceedings as to Lunatics under the Revised Statutes of Ontario, chapter 54, sections 5, 6, 7, 8, 9, 17 and 18, and chapter 44, section 14c ;

(4) Applications to arrest ;

(5) Petitions for advice under the Revised Statutes, chapter 110, section 34.

(6) Applications as to the custody of infants under the Revised Statutes, chapter 137, section 1 ;

(7) Applications as to leases and sales of settled estates; to enable minors, with the approbation of the Court, to make binding settlements of their real and personal estate on marriage; and in regard to questions submitted for the opinion of the Court in the form of special cases on the part of such persons as may by themselves, their committees, or guardians, or otherwise, concur therein;

(8) Opposed applications for Administration Orders;

(9) Opposed applications respecting the Guardianship of the person and property of Infants;

(10) Applications for Prohibition, Mandamus or Injunction.

(11) Proceedings as to Partition and sale of Real Estate, under the Revised Statutes, chapter 104.

(12) Extending the time for appealing to the Divisional Court, or the Court of Appeal, before, or after the time limited for that purpose has expired.

(13) Appeals from Judges of County Courts or Local Masters, or in respect of any other matter which by these Rules is expressly required to be done by a Judge of the High Court.

(14) The payment of money out of Court, or dispensing with payment of money into Court, in administration and partition matters.

(15) Making an order for taxed costs in lieu of commission under the provisions of Rule 1187.

(16) Striking out a jury notice except for irregularity.

(17) And except (unless by consent of the parties) in respect of the following proceedings and matters, that is to say:

(*a*) The removal of cases from Inferior Courts, other than the removal of judgments for the purpose of having execution.

(*b*) The referring of causes under R.S.O., c. 44, ss. 102, 103; R.S.O., c. 53, ss. 1, 2.

(*c*) Reviewing taxation of costs, except as provided in Rule 854.

(*d*) Staying proceedings after verdict, or on judgment after trial or hearing before a Judge.

1288. RULE 40 is hereby amended by adding thereto the following words:

"(*a*) The report of a Referee may be filed by any party forthwith after the same shall have been made, in the same manner as the report of a Master, and shall have the effect of, and be subject to all the incidents of a report of a Master as regards confirmation, appealing therefrom, motions thereupon, and otherwise."

1289. RULE 41 is hereby rescinded and the following is substituted therefor:

"41. The Judge of every County Court other than the County Court of York, shall, in all actions brought in his County, and in interpleader proceedings where the goods in respect of which interpleader is sought are situate in his County have concurrent jurisdiction with and the same power and authority as the Master in Chambers in all proceedings now determined in Chambers at Toronto, except that the authority of such Judge shall not extend to proceedings in the nature of a *quo warranto* under *The Municipal Act*, or to the

payment of money out of Court (except as provided by Rule 1164), or dispensing with payment of money into Court, in any action or matter, or to appeals from the Taxing Officers in Toronto pending taxation, or to making an order for the sale of infants' estates." 48 V., c. 13, s. 21. J.A. Rule 584.

1290. RULE 137 is amended by adding thereto the following:

"(*a*) Where by a report, any money in Court is found to belong to infants, the Master shall require proper evidence of the age of the infants to be given before him, and shall in his report state the date of birth and age at the time of his report of each of such infants or shall certify specially his reason for not so doing. This *Rule* shall also apply to infancy proceedings."

1291. RULE 138 is rescinded and the following substituted therefor:

"138. Every Local Master who does not practice as a Barrister or Solicitor, and who has not taken out certificates to practice, shall, in addition to his other powers as Local Master, have in all actions brought in his County and in interpleader proceedings when the goods in respect of which the interpleader is sought are situated in his County concurrent jurisdiction with and the same power and authority as the Master in Chambers in all proceedings now taken in Chambers at Toronto, except that the authority of such Local Masters shall not extend to proceedings in the nature of a *quo warranto* under *The Municipal Act*, or to payment of money out of Court, or dispensing with payment into Court, or to appeals from the Taxing Officers at Toronto pending taxation; or to making an order for sale of infants' estates."

1292. RULE 146 is amended by striking out the words "bank interest" in the second line and by substituting therefor the words "interest allowed by the Court."

1293. RULE 163 is amended by striking out the words "Cayuga, or Sault Ste. Marie."

1294. RULE 165 is rescinded and the following substituted therefor:

"165. Money required to be paid into Court may be paid into the Canadian Bank of Commerce or any chartered Bank being its agent in this Province."

1295. RULE 167 is rescinded and the following substituted therefor:

"167. The person applying for the direction is to leave a præcipe there or in the Form No. 112 in the Appendix, and is to leave with the officer issuing the direction the judgment or order or certified copy thereof under which the money is payable, and in case the direction is obtained elsewhere than in Toronto, he shall also leave the necessary postage for the transmission of the documents to the Accountant."

1296. RULE 168 is amended by striking out the word "forthwith," and substituting therefor the words "on the same day."

1297. RULE 171 is amended by striking out the words "Cayuga or Sault Ste. Marie."

1298. RULE 173 is amended by striking out the words "Cayuga or Sault Ste. Marie."

1299. RULE 174 is amended by striking out the words "prior to" and substituting the word "during"; and by striking out the word "twentieth" and substituting the word "thirtieth."

1300. RULE 175 is amended by adding thereto the following clause:

"(*a*) In case of the unavoidable absence of the Accountant or Chief Clerk in the Accountant's Office, a Judge of the High Court may authorize any other officers to sign or initial cheques in the place of the Accountant and Chief Clerk respectively."

1301. RULE 176 is amended by striking out the word "file" and substituting therefor the word "leave."

1302. RULE 177 is rescinded and the following substituted therefor:

"177. Orders dispensing with payment of money into Court or certified copies thereof are in all cases to be left with the Accountant forthwith after entry thereof."

1303. RULE 202 is amended by striking out the word "enter" in the seventh line and substituting therefor the words "cause to be entered," and by striking out the word "make" in the last line and substituting therefor the words "cause to be made."

1304. RULE 203 is amended by striking out the word "enter" and substituting therefor the words "cause to be entered."

1305. RULE 217 as amended by Rule 1268 is rescinded and the following substituted therefor:

"217. The Divisional Court of the Chancery Division shall hold sittings commencing on the third Thursday in February, the last Monday in May and the first Thursday in December in each year."

1306. RULE 219 is amended by adding thereto the words:

"Motions to vary or set aside judgments entered at the trial."

1307. RULE 233 is rescinded and the following substituted therefor:

"233. Every writ shall bear date on the day on which the same is issued, and shall be tested in the name of the President of the High Court of Justice; and every writ of summons shall require the defendant to appear thereto in ten days after service including the day of service, if the service is to be made in Ontario, except as provided by *Rule* 275 as amended."

1308. 237*a*. Where a writ, of which production is necessary, has been lost, the Court or a Judge, upon being satisfied of the loss and of the correctness of a copy thereof, may order that such copy shall be sealed and served in lieu of the original writ.

1309. RULE 271 is rescinded and the following substituted therefor:

SERVICE OUT OF THE JURISDICTION.

"271.—(1) Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge whenever:

(*a*) The whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits); or

(*b*) Any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction is sought to be construed, rectified, set aside, or enforced in the action; or

(*c*) Any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or

(*d*) The action is for the administration of the personal estate of any deceased person who at the time of his death was domiciled within

the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument of which the person to be served is a trustee, which ought to be executed according to the law of Ontario; or

(*e*) The action is founded on any breach or alleged breach within the jurisdiction of any contract wherever made, which is to be performed within the jurisdiction or on any tort committed within the jurisdiction; or

(*f*) Any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or

(*g*) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.

"(2) Service of any order or notice in the winding up of a Company may by leave of the Court or a Judge be allowed out of the jurisdiction.

"(3) Every application for leave to serve or give notice of any proceeding out of the jurisdiction shall be supported by affidavit or other evidence stating that in the belief of the deponent the applicant has a right to the relief claimed, and showing in what place or country the person to be served is or probably may be found, and whether he is a British subject or not, and the grounds upon which the application is made, and no such leave shall be granted unless it shall be made sufficiently to appear to the Court or Judge that the case is a proper one for service out of the jurisdiction under this *Rule*.

"(4) Any order giving leave to effect service out of the jurisdiction of a writ, or to give notice of a writ out of the jurisdiction, shall limit a time after such service or notice for entering an appearance. In regulating the time for entering the appearance regard shall be had to the place or country where or within which the writ or summons is to be served or the notice given.

"(5) Any order giving leave to serve out of the jurisdiction a notice of motion, to which an appearance is not required to be entered, shall limit a time when the motion is to be heard, having regard to the place or country where or within which the notice of motion is to be served.

"(6) Where the defendant or respondent is neither a British subject nor in British dominions, notice of the writ or summons and not the writ or summons itself is to be given to him. Such notice shall be given to him personally, or in such other manner as the Court or a Judge may direct.

"(7) Service out of the jurisdiction of a petition or notice of motion may be allowed by the Court or a Judge whenever the petition or notice is presented or given in an action or matter relating to the administration of the estate of a deceased person or to the execution of a trust, or prays for an order dealing with any funds in Court. In regulating the time for hearing the petition or motion regard shall be had to the place or country where or within which the petition or motion is to be served."

1840. RULE 275 is rescinded and the following substituted therefor:

"275. When a defendant is served within Ontario and not in Algoma, Rainy River or Thunder Bay, he shall appear within ten days, including the day of service

"(*a*) If served within Algoma, Rainy River or Thunder Bay, unless otherwise ordered under *Rule* 485, he is to have thirty days in an action for the recovery of land, and twenty days in other actions, after the service, including the day of service, except when he is served between the first day of November and the 30th day of June or on either of said days, in which case he shall have an additional period of ten days."

1311. RULE 276 is rescinded and the following substituted therefor:

"286. When a defendant is to be served out of Ontario the writ of summons may be in the Form No. 2 in the Appendix, and the statement of claim is to be served therewith, unless the writ is specially indorsed under *Rules* 245, 246 or 248."

1312. RULE 316 is amended by adding thereto the following clause:

"(*a*) The Court shall have power to appoint a person to represent unborn persons under this *Rule*."

1313. RULES 328, 329, 330, 331 and 332 are rescinded and the following substituted therefor:

"328. Where a defendant claims to be entitled to contribution, or indemnity over against any person not a party to the action, he may, by leave of the Court or a Judge, issue a notice (hereinafter called the third party notice) to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer and served on such person according to the *Rules* relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or a Judge, be served within the time limited for delivering his defence. Such notice may be in the form or to the effect of the Form No. 88*a* in the Appendix hereto, with such variations as circumstances may require, and therewith shall be served a copy of the Statement of Claim, or if there be no Statement of Claim, then a copy of the writ of summons in the action.

"329. If a person not a party to the action, who is served as mentioned in *Rule* 328 (hereinafter called the third party), desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party must enter an appearance in the action within eight days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third party notice. Provided always that a person so served and failing to appear within the said period of eight days may apply to the Court or a Judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or a Judge shall think fit.

"330. Where a third party makes default in entering an appearance in the action, in case the defendant giving the notice suffer judgment by default, he shall be entitled at any time, after satisfaction of the judgment against himself, or before such satisfaction, by leave of the Court or a Judge, to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third party notice; provided that it shall be lawful for the Court

or a Judge to set aside or vary such judgment upon such terms as may seem just.

"331. Where a third party makes default in entering an appearance in action, in case the action is tried and results in favour of the plaintiff, the Judge who tries the action may, at or after the trial, direct such judgment as the nature of the case may require, for the defendant giving the notice against the third party; provided that execution thereon be not issued without leave of the Judge, until after satisfaction by such defendant of the verdict or judgment against him. And if the action is finally decided in the plaintiff's favour, otherwise than by trial, the Court or a Judge may, on motion, direct such judgment, as the nature of the case may require, to be entered for the defendant giving the notice against the third party at any time, after satisfaction by the defendant of the amount recovered by the plaintiff against him.

"332. If a third party appears pursuant to the third party notice, the defendant giving the notice may apply to the Court or a Judge for directions, and the Court or Judge, upon hearing of such application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the action, as the Court or Judge may direct; and, if not so satisfied, may direct such judgment as the nature of the case may require, to be entered in favour of the defendant giving the notice against the third party.

"(*a*) The Court or a Judge upon the hearing of the application mentioned in the last-mentioned *Rule*, may, if it shall appear desirable to do so, give the third party liberty to defend the action, upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, documents to be delivered, or amendments to be made, and give such directions as to the Court or Judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action.

"(*b*) The Court or Judge may decide all questions of costs, as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other, or others, or give such directions as to costs as the justice of the case may require.

"(*c*) Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure shall be adopted, for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last-mentioned defendant were a third party; but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action."

1314. RULE 336*a* is amended by striking out the words "writ of summons" in the last line, and substituting therefor the word "notice."

1315. RULE 341 is amended by adding to the first paragraph thereof, after the word "claimed," the following words: "Or for specific performance,

or for an injunction or receiver in respect of the said lands, or the rents and profits thereof."

1316. RULE 363 is amended by adding thereto the following words :

"(*a*) In mortgage actions when it becomes necessary to fix a date for redemption after the lapse of the first period of six months, the further time allowed shall be one month."

1317. RULE 370 is amended by striking out in lines 3 and 4 the words "file a copy of the writ with a copy of the special endorsement thereon if not filed already and."

1318. RULE 371 is amended by inserting in line 2 before the word "counterclaim" the word "or," and by striking out in line 2 the words "or demurrer."

1319. RULE 372 is amended by inserting in line 3 before the word "counterclaim" the word "or," and by striking out in lines 3 and 4 the words "or demurrer.

1320. RULE 374 is amended by striking out in line 2 for word "aforesaid" and substituting the words "hereinafter mentioned.

1321. RULE 380 is amended by inserting in line 1 after the word "plaintiff" the words "and other person, if any, named as a party to the counterclaim."

1322. RULES 384, 385, 386, 387, 388, 389, 390 and 391 are rescinded and the following substituted therefor :

"384. No demurrer shall be allowed.

"385. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.

"386. If, in the opinion of the Court or a Judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counterclaim or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.

"387. The Court or a Judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case, or in case of the action being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly as may be just."

1323. RULE 392 is amended by striking out in line 5 the words "or demurrer."

1324. RULE 393 is amended by striking out in line 2 the word "demurrer."

1325. RULES 395, 396 are amended by inserting before the word "pleading," wherever it occurs in the said *Rules*, the words "writ or."

1326. RULE 423 is amended by adding thereto the following words :

"(*a*) A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice or

written proceeding requiring particulars, may in all cases be ordered upon such terms, as to costs or otherwise, as may be deemed just."

1327. RULE 425 is rescinded and the following substituted therefor:

"425. A defendant who has set up any set-off or counterclaim, may, on application in Chambers, be allowed to amend the same upon such terms in all respects as the Court or a Judge shall see fit."

1328. RULE 426 is amended by striking out the words "either of the last two preceding Rules," and by substituting therefor the words "*Rule* 424."

1329. RULE 427 is amended by striking out the words "or 425."

1330. RULE 462 is rescinded and the following substituted therefor:

"462. Where a party sues or defends in person and no address for service of such party is written or printed pursuant to the directions of *Rules* 240, 241 and 242, or where a party has ceased to have a solicitor, or where a defendant served with a writ of summons, or notice in lieu of a writ of summons, has not duly appeared thereto, all writs, notices, orders, appointments, warrants and other documents, proceedings and written communications, not requiring personal service upon the party to be affected thereby, shall, unless the Court otherwise directs, be deemed to be sufficiently served upon the party, by posting up a copy in the office in which the proceedings are being conducted. But if an address for service is written or printed as aforesaid, then all such writs, notices, orders, warrants and other documents, proceedings and written communications, shall be deemed sufficiently served upon such party if left for him at such address for service."

1331. RULE 484 is rescinded and the following substituted therefor:

"484. The time of the long vacation, or of the Christmas vacation, shall not be reckoned in the computation of the times appointed or allowed by these *Rules* for filing, amending, or delivering any pleading, or in the times allowed for the following purposes, unless otherwise directed by the Court or a Judge:

"(1) Appeals to Judge in Chambers;

"(2) Masters' reports becoming absolute;

"(3) Moving to discharge an order under *Rule* 622;

"(4) Moving to add to, vary, or set aside a judgment by any party served therewith;

"(5) Doing any act or taking any proceeding in appealing to the Court of Appeal, except in County Court appeals."

1332. RULE 485 is amended by striking out the words "enlarging time" in the third line.

1333. RULE 487 is amended by adding thereto the following words:

"(*a*) But no such examination shall take place during the long vacation unless upon the order of a Judge."

1334. RULE 488 is amended by adding thereto the following words:

"(*a*) When an action is brought by an assignee of any chose in action, the assignor of such chose in action may be examined for discovery."

1335. RULE 502 is rescinded, and the following substituted therefor:

"502. In case of an examination before the trial, or otherwise than at the trial of an action, if the examining party desires to have such examination taken in shorthand, he shall be entitled to have it so taken at the place of

examination by the Examiner, or by a shorthand writer approved by the Examiner and duly sworn by him, except where the Court or Judge sees fit to order otherwise."

1336. RULE 503 is rescinded and the following substituted therefor:

"503. Where an examination in a cause or proceeding in any court is taken by the Examiner, shorthand writer as aforesaid, or any other duly authorized person, in shorthand, the examination may be taken down by question and answer; and in such case it shall not be necessary for the depositions to be read over to, or signed by, the person examined, unless the Judge so directs where the examination is taken before a Judge, or in other cases unless any of the parties so desires."

(*a*) A copy of the deposition so taken, certified by the person taking the same as correct, and if such person be not the Examiner, also signed by the Examiner, shall for all purposes have the same effect as the original depositions in ordinary cases. 41 V., c. 8, s. 8.

1337. RULE 512 is rescinded.

1338. RULE 537 is amended by striking out the word "demurrers."

1339. RULE 538 is amended by striking out the word "demurrers," and also the words "when a married woman, infant, or person of unsound mind is a party to the action, a copy of the order giving leave to enter a special case for argument shall also be produced."

1340. RULE 539 is rescinded.

1341. RULE 540 is rescinded and the following substituted therefor:

"540. A special case shall be set down to be heard, and notice thereof given to the opposite party six clear days before the day on which it is to be heard; and a copy of the special case shall be left at the office of the Clerk of Records and Writs for the use of the Judge before whom the special case is to be heard, two days before the day appointed for the hearing."

(*a*) Where an order has been made under *Rule* 557 giving leave to set down for argument a special case in an action to which a married woman, infant, or person of unsound mind is a party, such order, or an office copy thereof, shall be produced when the special case is set down.

1342. RULE 544 is amended by adding after the word "same," the words 'provided that the Judge pronouncing such order may himself sign the same."

1343. RULE 553 is rescinded and the following substituted therefor:

"553. An order of reference made under the Judicature Act or *Rule* 551 shall be read as if it contained the provisions in *Rule* 552, but may contain any variation therefrom or addition thereto."

1344. RULE 566 is amended by adding thereto the following words:

"(*a*) Such examination in the absence of any order to the contrary shall be conducted in accordance with the practice hereinbefore prescribed upon examinations for discovery in so far as the same shall be applicable."

1345. RULE 577 is rescinded and the following substituted therefor:

"577. Every person who makes an affidavit to be used in any action or proceeding other than on production of documents shall be liable to cross-examination thereon, and may be required to attend in the same manner, and subject to the same rules as a party to be examined in the cause, but the Court

nevertheless may act upon the evidence before it at the time, and may make such order as appears necessary to meet the justice of the case."

1346. RULE 601 is amended by adding thereto the following clause:

"(*a*) Provided that the Commissioner or Commissioners, if the examining party desires to have such examination taken in shorthand, may take the same in shorthand or employ a shorthand writer, approved by him or them and duly sworn, in which case the examination may be taken down by question and answer; and it shall not be necessary for the depositions to be read over or signed by the person examined unless any of the parties so desire; and a copy of the depositions so taken, certified by the Commissioner or Commissioners, or in case the same shall have been taken in shorthand by some person employed for the purpose as aforesaid, certified by such shorthand writer as correct and signed by the Commissioner or Commissioners, shall, for all purposes, have the same effect as the original depositions in all cases."

(*b*) Form No. 118 is amended by inserting after clause six the following words:

"But where the examination is taken in shorthand it is not necessary for the depositions to be read over or signed by the witness or witnesses, *unless any of the parties so desire;* but in such case a copy of the depositions in long hand certified by the shorthand writer as correct is to be attached to the Commission and signed by the Commissioner or Commissioners who shall have taken the depositions."

1347. RULE 611 is amended by inserting after the words "Court or a Judge," the words "or officer before whom the affidavit is to be used."

1348. RULE 647 is rescinded and the following substituted therefor:

"647. If the pleadings are closed six weeks before the commencement of any sittings of the High Court for which the plaintiff might give notice of trial, and he does not give notice of trial therefor and proceed to trial pursuant to such notice, the action may be dismissed for want of prosecution."

1349. RULE 718 is rescinded and the following substituted therefor:

"718. Where the defendant does not appear, or by his statement of defence admits the execution of the mortgage and other facts, if any, entitling the plaintiff to a judgment, or where the defendant disclaims any interest in the mortgaged premises, or where no statement of defence is delivered, or where notice is filed and served disputing the amount of the plaintiff's claim only, the plaintiff is, on *præcipe* to the Registrar, or Deputy or Local Registrar, or Deputy Clerk of the Crown in whose office the appearance of the defendant was required to be entered, to be entitled to judgment including, where prayed for, the relief for which a claim may be indorsed upon the writ under *Rule* 248."

(*a*) The reference in such cases, when required by the practice, shall be to the Master-in-Ordinary or a Local Master.

(*b*) Such a judgment may be granted, notwithstanding that the defendant has been served by publication, or otherwise, or is a corporation, provided always that where the writ has not been personally served, the claim of the plaintiff shall be duly verified by affidavit.

(*c*) This rule shall apply to actions for redemption, as well as to actions for foreclosure or sale.

(*d*) Where a notice disputing the amount of the plaintiff's claim is filed, the defendant filing the same shall be entitled to four days' notice of the taking of the account of the amount due to the plaintiff. Where no reference as to incumbrances is desired such account may be taken by the officer entering judgment; and where a reference as to incumbrances is desired, then by the Master to whom the action is referred. The finding of the officer taking the account as to the amount due on entering judgment shall be subject to appeal to a Judge in Chambers in the manner prescribed by *Rule* 846, and such officer shall have power to direct a stay of proceedings until the time for appealing has expired.

(*e*) When a reference as to incumbrances is directed in a case where a notice disputing the amount of the plaintiff's claim has been filed, the judgment shall direct that the defendant filing such notice shall have four days' notice of the taking of the account.

1350. RULE 727 is amended by striking out the words "or demurrer," and also by striking out the word "six" and by substituting therefor the word "eight."

1351. RULE 759 is rescinded and the following substituted therefor:

"759. All judgments in cases tried at Toronto shall be settled when necessary by a Registrar."

1352. RULE 761 is rescinded and the following substituted therefor:

"761. All judgments delivered elsewhere than at Toronto, shall be settled when necessary by the Deputy Registrar, Deputy Clerk or Local Registrar, at the place of trial; subject to the right of any party affected to apply upon notice to the other parties interested to one of the Judgment Clerks, or to the Judge, to vary the minutes."

1353. RULE 764 is amended by adding thereto the following clause:

"(*a*) Every order pronounced by the Court shall be drawn up and signed by the Registrar, Local Registrar, Deputy Registrar, Deputy Clerk of the Crown, or the Clerk of the Weekly Court attending the Court at which the same is pronounced, provided that the Judge pronouncing such order may himself sign the same."

1354. RULE 772 is rescinded and the following substituted therefor:

"772. Every judgment and every order pronounced in Court shall be entered at full length in a book to be kept for that purpose by the officer issuing the same."

1355. RULE 835 is amended by striking out the words "section 41," and by substituting therefor the words "the provisions."

1356. RULE 843 is rescinded and the following substituted therefor:

"843. The applicant shall, at least six days before the sittings at which the appeal is to be heard, serve the respondent with the notice of the setting down of the appeal, and with a copy of the appeal book, and of the grounds and reasons of his appeal."

1357. RULE 846 is amended by striking out the figure "9" in clause (*c*) and substituting therefor the figure "10."

1358. RULE 852 is amended by striking out the word "nine" and substituting therefor the word "ten."

1359. RULE 863 is amended by striking out the word "entered" and substituting therefor the word "signed."

1360. RULE 926 is rescinded and the following substituted therefor:

"926. Where a judgment is for the recovery by, or payment to, any person, of money or costs, the party entitled to enforce the judgment may, without an order, examine the judgment debtor upon oath before a Master, or Local Master or an Examiner, or before one of the Registrars, Deputy Clerks of the Crown, or before the Judge of the County Court of the County within which such debtor resides, or before any official referee (or by the order of the Court or a Judge before any other person to be specially named in such order) touching his estate and effects, and as to the property and means he had when the debt or liability which was the subject of the action in which judgment has been obtained against him was incurred, (or in the case of a judgment for costs only,—at the time of the issue of the writ of summons,) and as to the property, and means he still has of discharging the said judgment, and as to the disposal he has made of any property since contracting such debt or incurring such liability, (or in case of a judgment for costs only,—since the issue of the writ of summons,) and as to any and what debts are owing to him."

1361. RULE 935 is amended by striking out all the words after the word "debtor" in the ninth line down to and inclusive of the word "execution" in the twelfth line.

1362 RULE 1015 is rescinded and the following substituted therefor:

"1015. All petitions under the Act are to be filed in the office of the Clerk of Records and Writs, and may, at the option of the petitioner, be referred to any of the officers of the Court at Toronto, or to any conveyancing Counsel who may from time to time be designated by the Court for the purpose, or to any Local Master."

1363. RULE 1017 is rescinded and the following substituted therefor:

"1017. Petitions to be referred to any Local Master are to be indorsed thus: 'To be referred to the Master at and to Mr. Inspector of Titles.'"

1364. RULE 1018 is amended by striking out the word "Referee" in the fourth line, and substituting therefor the words "Local Master."

1365. RULE 1019 is amended by striking out the words "or, if duly stamped, to the Registrar."

1366. RULE 1102 is rescinded and the following substituted therefor:

"1103. Before the Sheriff acts on the order he shall take a bond from the plaintiff with two sufficient sureties in such sum as may be prescribed for that purpose by an order made under *Rule* 1100, if such an order has been made, or if no such order has been made then in treble the value of the property to be replevied, as stated in the order; which bond shall be assignable to the defendant; and the bond and assignment thereof may be in the words or to the effect of Form No. 208 in the Appendix, the condition being varied to correspond with the order."

1367. RULE 1110 is amended by adding thereto the following clause:

"(*a*) In case a Sheriff makes a return that the whole or any part of the property has been eloigned, or that for any reason the same cannot be replevied

under the order, the plaintiff may, if he so elect, serve the writ of summons, and in his statement of claim, claim either an order for the return of the goods and damages for their detention, or damages for their conversion."

1368. RULE 1134 is amended by striking out the words "the two preceding rules" in line five, and by substituting therefor the words "*Rules* 1131, 1132, 1133 or 1135."

1369. The several headings in Chapter XII., part 8, of the Consolidated *Rules* relating to Interpleader, viz.:

"(i) *Generally.*

(ii) *Interpleader in County Courts.*

(iii) *Interpleader by Bailees and Carriers*"

are hereby expunged.

(*a*) RULE 1162 is rescinded and the following substituted therefor:

"1162. The Consolidated *Rules*, 1147 to 1161 inclusive, in cases under sections (*a*) and (*b*) of Consolidated *Rule* 1141, shall, in so far as it is not otherwise inconsistent with the provisions of those *Rules*, apply in the County Court in manner following:

(*a*) Where the debt, money, goods or chattels mentioned in the said section (*a*) are the subject of a suit against the applicant in the County Court, the application for interpleader may be to the Judge of the said County Court, and where no such suit is pending and where the debt, money, goods or chattels in question do not exceed in value $200, the application may be to the Judge of the County Court of the County or union of Counties in which the applicant resides, or in which the money, goods or chattels is or are situate.

(*b*) And in cases under section (*b*) of the said Consolidated *Rule* 1141 where the application is by a Sheriff or other officer in respect of a claim to any money, goods or chattels taken or intended to be taken in execution under any process issued by a County Court, or under an attachment against an absconding debtor issued out of the County Court, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued, such application for an interpleader order may be made to the Judge of the County Court of the County or union of Counties in which such money, goods or chattels are so taken or intended to be taken, notwithstanding that there are writs from two or more County Courts against the same goods.

(*c*) All subsequent proceedings shall be had and taken in the County or union of Counties where the application is made; provided that the Judge to whom any such application is made as aforesaid, if it appears more convenient and conducive to the ends of justice so to do, may order that the subsequent proceedings be had and taken in any other County.

1370. RULE 1163 is amended by adding thereto the following clause:

"(*a*) Where the amount of the execution or the value of the goods does not exceed $100 the issue may be directed to be tried in the Division Court, and thereafter all proceedings shall be carried on in said Court."

1371. RULE 1164 is amended by inserting after the words "County Court," the words "or Division Court as the case may be."

1372. RULE 1165 is amended by inserting after the word "Court," wheresoever it occurs, the words "or Division Court."

1373. RULE 1196 is amended by adding thereto the following words:

"(*a*) The costs of removing a bond from off the files of the Court for the purpose of bringing an action thereon, may be taxed as costs in the cause in the action brought thereon."

1374. RULE 1130 is amended by adding thereto the following clause:

"(*a*) The taxing officer shall hold the taxation open for what, under the circumstances of the case, he may consider to be a reasonable time in order to allow such objections to be carried in before him."

1375. RULE 1233 is amended by striking out the word "defendant" and by substituting therefor the words "judgment debtor," and by adding the following words:

"(*a*) In case the real estate or chattels real of the judgment debtor has or have been advertised under an execution, but not sold by reason of payment or satisfaction having been otherwise obtained on, or within one month before, the day on which the property has been advertised to be sold, or any day to which such sale may be adjourned, the Sheriff shall be entitled to the fees and expenses of the execution and the poundage, only on the value of the debtor's interest in the property not exceeding the amount indorsed on the writ, or such less sum as the Court or Judge may deem reasonable."

1376. RULE 1242 is amended by inserting after the word "præcipe," the words "after entering an appearance."

1377. RULE 1245 is amended by adding thereto the following words:

"(*a*) A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction."

1378. RULE 1247 is amended by adding thereto the following words:

"(*a*) Upon filing a bond for security for costs with affidavits of execution and justification with the proper officer, either party may apply to the Court or a Judge to allow or disallow the said bond, and in case no application is made to disallow the same within fourteen days after notice of filing the bond is served, it shall stand allowed."

These *Rules* shall come into force on the first day of September, 1894.

APPENDIX.

FORM 88*a*.

Third Party Notice.

In the High Court of Justice,
Division.

Between *A.B.*, Plaintiff,

and

C.D., Defendant.

Notice filed

To Mr. *X.Y.*

Take notice that this action has been brougl y the plaintiff against the defendant [as surety for *M.N.* upon a bond con ned for payment of $2,000 and interest to the plaintiff.

The defendant claims to be entitled to contr ution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are his co-surety under he said bond, *or*, also surety for the said *M.N.*, in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of A.D., .]

Or [as acceptor of a bill of exchange for $500, dated the day of A.D. drawn by you upon and accepted by the defendant, and payable three months after date.

The plaintiff claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.]

Or [as acceptor of a bill of exchange for $500, dated the day of A.D. drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.]

Or [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C.D.*, or your liability to the defendant *C.D.*, you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant *C.D.*, and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to the *Rules* of the Supreme Court, 328 to 332 inclusive as amended.

(Signed) *E.F.*

or

X.Y.,
Solicitor for the defendant, *E.F.*

Appearance to be entered at

HIGH COURT OF JUSTICE.—AUTUMN SITTINGS, 189

DATE.	TOWN.	JURY OR NON-JY.	JUDGE.	REMARKS.
SEPT.				
Monday, 10th	Milton	Both.	Galt, C. J.	Supreme Court Sittings comence on the 2nd of October, 1894, and 19th of February, 1895.
" "	L'Orignal	Both.	Ferguson, J	
" "	Owen Sound	Jury	Rose, J	
Tuesday, 11th	Walkerton	Non	Boyd, C	
" "	Cornwall	Non	Armour, C. J	
" "	Belleville	Jury	Meredith, J	
Wednesday, 12th	St. Thomas	Jury	MacMahon, J	
Thursday, 13th	St. Catharines	Jury	Galt, C. J	Court of Appeal Sittings commence the 11th of September, and the 13th November.
" "	Ottawa	Jury	Ferguson, J	
" "	Chatham	Non	Falconbridge, J.	
Monday, 17th	Cobourg	Jury	Boyd, C	
" "	Brockville	Non	Rose, J	
" "	Sandwich	Jury	Robertson, J	
" "	Goderich	Jury	Falconbridge, J.	
" "	Toronto (1st Week)	Non	Street, J	Michaelmas Sittings of Divisional Courts (Q. B. D. and C. P. D.) commence 19th of November.
Tuesday, 18th	Brampton	Both	Armour, C. J	
Monday, 24th	Brantford	Non	Boyd, C	
" "	Toronto (2nd Week)	Non	Armour, C. J	
" "	Peterboro'	Jury	Ferguson, J	
" "	Woodstock	Jury	Robertson, J	
" "	Barrie	Non	Falconbridge, J.	Last day for serving Notice of Motion for Michaelmas Sittings against a Judgment or for a New Trial, 10th November.
" "	Sarnia	Jury	MacMahon, J	
" "	Kingston	Non	Street, J	
" "	Orangeville	Both	Meredith, J	
OCTOBER.				
Monday, 1st	Toronto (3rd Week)	Non	Rose, J	Motions must be set down for the Michaelmas Sittings on or before the 15th November.
" "	London	Jury	Robertson, J	
" "	Stratford	Jury	Street, J	
Tuesday, 2nd	Pembroke	Both	Boyd, C	
" "	Lindsay	Jury	Armour, C. J	
Monday, 8th	Toronto (4th Week)	Non	Armour, C J	
" "	Cornwall	Jury	Galt, C. J.	Sittings of Divisional Court in Chancery Division commence 6th of December.
" "	Whitby	Non	Ferguson, J	
" "	Perth	Both	Rose, J	
" "	Hamilton	Jury	Falconbridge, J.	
" "	Walkerton	Jury	MacMahon, J	
" "	Simcoe	Non	Meredith, J	
Thursday, 11th.	Guelph	Jury	Robertson, J	Last day for serving Notice of Motion for Chancery Sittings against a Judgment or for a New Trial, 28th of November.
Friday, 12th	Owen Sound	Non	Galt, C. J.	
Monday, 15th	Ottawa	Non	Boyd, C	
" "	St. Thomas	Non	Robertson, J	
" "	Toronto (Civil) 1st Wk	Jury	Falconbridge, J.	
" "	Toronto (5th Week)	Non	MacMahon, J	
Tuesday, 16th	Chatham	Jury	Armour, C. J	
Monday, 22nd	Toronto (6th Week)	Non	Boyd, C	Motions must be set down for the Chancery Sittings on or before 3rd of December.
" "	Sandwich	Non	Armour, C. J	
" "	Peterboro'	Non	Galt, C. J	
" "	Toronto (Civil) 2nd Wk	Jury	Ferguson, J	
" "	Belleville	Non	Rose, J	

DATE.	TOWN.	JURY OR NON-JY.	JUDGE.	REMARKS.
Monday, 22nd	Brockville	Jury	Falconbridge, J.	Hilary Sittings of Divisional Courts (Q. B. D. and C. P. D.) commence 4th of Feb., 1895.
" "	Brantford	Jury	MacMahon, J.	
" "	Berlin	Both	Street, J	
Thursday, 25th	Sarnia	Non	Armour, J.	
" "	Woodstock	Non	Meredith, J	
Monday, 29th	Barrie	Jury	Boyd, C	
" "	St. Catharines	Non	Galt, C. J.	Last day for serving Notice of Motion for Hilary Sittings against a Judgment or for a New Trial, 26th of January.
" "	Toronto (7th Week)	Non	Ferguson, J.	
" "	Toronto (Civil) 3rd Wk	Jury	Rose, J	
" "	Kingston	Jury	Falconbridge, J.	
" "	Cobourg	Non	MacMahon, J.	
" "	Welland	Both	Street, J	
NOVEMBER.				Motions must be set down for the Hilary Sittings on or before 31st January.
Monday, 5th	Toronto (8th Week)	Non	Galt, C. J	
" "	Napanee	Both	Ferguson, J.	
" "	Cayuga	Both	Rose, J	
" "	Simcoe	Jury	Robertson, J	
" "	London	Non	Falconbridge, J.	Sittings of Divisional Court in Chancery Division commence 21st of February.
" "	Toronto (Civil) 4th Wk	Jury	MacMahon, J.	
" "	Picton	Both	Street, J	
Wednesday, 7th	Toronto (1st Week)	Criminal	Meredith, J.	
Monday, 12th	Toronto (2nd Week)	Criminal	Boyd, C	
" "	Toronto (Civil) 5th Wk	Jury	Galt, C. J	Last day for serving Notice of Motion for Chancery Sittings against a Judgment or for a New Trial, 13th of February.
" "	Hamilton	Non	Rose, J	
" "	Goderich	Non	MacMahon, J.	
" "	Whitby	Jury	Street, J	
" "	Guelph	Non	Meredith, J.	
Monday, 19th	Lindsay	Non	Ferguson, J.	
" "	Toronto (Civil) 6th Wk	Jury	Robertson, J.	
" "	Stratford	Non	Meredith, J.	
Tuesday, 27th	Port Arthur	Both	Ferguson, J.	
DECEMBER.				Motions must be set down for the Chancery Sittings on or before the 18th of February.
Tuesday, 4th	Rat Portage	Both	Ferguson, J	
Tuesday, 11th	Sault Ste. Marie	Both	Ferguson, J.	