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THE case of *Roe* v. *Village of Lucknow*, decided by the Junior Judge of the County Court of the County of Huron, will be read with interest. Whether or not the decision will be upheld should it be appealed, it is hard to say; but the learned judge advances substantial reasons for his opinion, and has gone into the matter very carefully, citing a number of cases. We note, however, that he does not refer to *Rosenberger* v. *G.T.R. Co.*, 8 A.R. 482, a decision which was afterwards affirmed by the Supreme Court in 9 S.C.R. 311. See also *Hill* v. *Portland R.W. Co.*, 55 Maine 438, and the recent case of *Connell* v. *Town of Prescott*, 20 A.R. 49.

VOLENTI NON FIT INJURIA.

In the *Law Quarterly Review*, vol. 8, p. 202, Mr. Thomas Beven, the learned author of "Beven on Negligence," discusses at some length the decision of the House of Lords in the case of *Smith* v. *Baker*, (1891) A.C. 325. The case, it may be remembered, arose under the Employers' Liability Act, from which our Workmen's Compensation for Injuries Act, 1892, is to some extent derived; the ground of the action being that the plaintiff, a workman engaged in a quarry, was injured by a stone falling on him while in process of being swung over his head. The defendants sought to escape from liability on the ground that the plaintiff, after having knowledge of the danger to which he was exposed, continued in the defendants' employment, and they claimed that he thereby accepted the risk.

It is somewhat curious to note the different opinions expressed by Mr. Beven and Sir F. Pollock, the learned editor of the *Review*, as to the effect of the decision. For example, Mr. Beven says: "The sole point actually decided in *Smith* v. *Baker* is that, where a workman is engaged in work not in its nature dangerous, he is not precluded from recovering for an injury

received from dangerous surroundings, which it is not necessary he should appreciate for the purposes of his work, merely by having gone on with the work he was engaged to do with the risk from which he receives the injury full in front of him."

On the other hand, Sir F. Pollock thus states his conclusion as to the effect of the decision: "In *Smith* v. *Baker*, as I read it, the danger was not the necessary danger involved in stones being swung over the workmen's heads, but (according to the finding of fact not open to review) the unnecessary danger of their being less firmly secured in some way than they might and ought to have been." The difficulty about Sir F. Pollock's view, however, seems to be that the unnecessary danger he refers to as constituting the cause of action would appear to have been the result of the negligence of fellow-servants, which would not give any cause of action to the servant injured against his employers, either at Common Law or under the Employers' Liability Act.

At the risk of being thought presumptuous in a case where such eminent doctors differ, we venture to suggest a *tertium quid*, and that is this: that the plaintiffs were found liable because the system on which they carried on their business was one that was unnecessarily dangerous to the plaintiff as one of their employees, and therefore they were liable to the plaintiff at common law, quite independently of the statute, and that the plaintiff could not be presumed to have assented to run this unnecessary risk because he continued in the defendants' employment after knowledge that the defendants' system of carrying on their business exposed him to danger.

The statement of the case shows, and Lord Halsbury, L.C., explicitly states, that "from some cause not explained, and not attempted to be explained, the stone slipped from the crane." It was argued in the House of Lords that there was no evidence of negligence, but their lordships refused to entertain that point because it was not taken at the trial. The key of the case, we think, is found, not in the fact that there was any actual negligence in fastening the stone, but that the swinging of stones over the heads of other workmen was *per se* an unnecessarily dangerous mode of carrying on the work; and the observations of Lord Halsbury later on seem to us conclusive that on that ground, and that alone, the decision really rests, so far as the question of negligence is concerned. He says: "I think the cases cited at

your Lordships' bar of *Sword* v. *Cameron*, 1 Ct. Sess. Cas., 2nd series, 493, and the *Bartonshill Coal Co. v. McGuire*, 3 Macq. 300, established conclusively the point for which they were cited, that the negligent system, or a negligent mode of using perfectly sound machinery, may make the employer liable, quite apart from any of the provisions of the The Employers' Liability Act." Lords Watson and Herschell adopt the same view. Lord Watson says: "Accordingly, the first answer of the jury appears to me to affirm that the system of using the crane was not reasonably fit for the purpose, inasmuch as it exposed workmen in another department to unnecessary danger." Not, it will be observed, that the crane itself was unfit, but that *the system of using it* was so. And he says further on: "As I understand the law, it was also held by this House, long before the passing of the Employers' Liability Act (43 & 44 Vict., c. 42), that a master is no less responsible to his workmen for personal injuries occasioned by a defective system of using machinery than for injuries caused by a defect in the machinery itself." But it must be admitted that these observations are mainly directed to showing that the verdict of the jury, finding negligence on the part of the defendants, was justified by the facts; and at the same time Lords Watson, Herschell, and Morris all treat the question of whether the maxim of *volenti non fit injuria* was applicable as really the only question for decision by them.

CURRENT ENGLISH CASES.

The Law Reports for February comprise (1893) 1 Q.B., pp. 209-375; (1893) P., pp. 37-58; (1893) 1 Ch., pp. 213-402; and (1893) A.C., pp. 1-126.

ELECTION PETITION—PLACE OF TRIAL—CHANGE OF VENUE—SPECIAL CIRCUMSTANCES—31 & 32 VICT., C. 125, S. 11, S-S. 11—(R.S.O., C. 10, S. 39).

In *Lawson* v. *Chester*, (1893) 1 Q.B. 245, an application was made to change the venue for the trial of an election petition to some place outside of the electoral district on the ground that it would be more convenient, and a saving of expense; but it was held by a Divisional Court (Lord Coleridge, C.J., and Cave, J.) that these facts were not "special circumstances" within the meaning of the statute 31 & 32 Vict., c. 125, s. 11, s-s. 11 (see R.S.O., c. 10, s. 39), and the application was therefore refused.

CONTRACT—OFFER BY ADVERTISEMENT—PERFORMANCE OF ADVERTISED CONDITIONS —WAGER—INSURANCE.

In *Carlill* v. *Carbolic Smoke Ball Co.*, (1893) 1 Q.B. 256, the Court of Appeal (Lindley, Bowen, and Smith, L.JJ.) have affirmed the decision of Hawkins, J., (1892) 2 Q.B. 484, (noted *ante* vol. 28, p. 518). It may be remembered that the defendants had advertised that they would pay to any purchaser of one of their smoke balls £100 if he should catch the influenza after using it three times daily for two weeks. The plaintiff purchased and used one of the balls, but, notwithstanding, contracted influenza, and claimed now to recover the £100. Hawkins, J., gave judgment for the plaintiff, which judgment the Court of Appeal affirmed. The Court of Appeal were unanimous that the offer made by the advertisement constituted a valid and binding contract on any of the public who chose to accept the terms proposed; that the user of the ball for three weeks, as stipulated, constituted a sufficient consideration for the defendant's promise; that a person fulfilling the condition becomes a *persona designata* within the contract; that it was not necessary to notify the defendants of the acceptance of their offer; and that the performance of the proposed conditions was a sufficient acceptance. We see by the English newspapers that the defendants are not deterred by the result of this action and now offer £200, but have taken the precaution to surround the offer with more stringent conditions.

PRACTICE—SPECIALLY INDORSED WRIT—BILL OF EXCHANGE—CLAIM FOR "BANK CHARGES."

In *Dando* v. *Boden*, (1893) 1 Q.B. 318, a Divisional Court (Day and Collins, JJ.) held that where to an indorsement on a writ of a claim on a bill of exchange, there is added a claim for "bank charges," that that is tantamount to a claim for the expenses of noting, and that therefore it was properly the subject of a special indorsement.

CRIMINAL LAW—CARNAL KNOWLEDGE OF FEMALE UNDER THIRTEEN BY BOY UNDER FOURTEEN—INDECENT ASSAULT—48 & 49 VICT., C. 69, SS. 4, 9—(R.S.C., c. 162, S. 39—CRIMINAL CODE, 1892, S. 269).

In *The Queen* v. *Williams*, (1893) 1 Q.B. 320, a case was stated for the opinion of the court by Wright, J., whether a boy under fourteen, indicted for carnally knowing a girl under thirteen, though entitled to be acquitted of that offence, could nevertheless

be found guilty of an indecent assault. The court (Lord Coleridge, C.J., and Hawkins, Cave, Day, and Collins, JJ.) were unanimously of the opinion that he could. Hawkins and Cave, JJ., thought that he might also be convicted of an attempt to commit the felony created by 48 & 49 Vict., c. 69, s. 4 (see R.S.C., c. 162, s. 39; and Criminal Code, 1892, s. 269). Lord Coleridge, C.J., expressed a contrary opinion, but these are mere *obiter dicta*.

PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL—UNDISCLOSED PRINCIPAL—UNAUTHORIZED ACTS OF AGENT, PRINCIPAL, WHEN BOUND BY.

Watteau v. *Fenwick*, (1893) 1 Q.B. 346, is a case in which the plaintiff sued the defendant as undisclosed principal on a contract made with his agent. The contract in question was the purchase of certain goods for the business the agent was carrying on, and which the agent was expressly instructed by his principals not to buy. The goods were sold to the agent in ignorance of his being an agent, and upon his own credit; but the Divisional Court (Lord Coleridge, C.J., and Wills, J.) held that the goods in question being such as would be ordinarily purchased for such a business as the agent was carrying on, his principals were liable.

PRINCIPAL AND AGENT—SALE OF REAL PROPERTY—DEPOSIT ON SALE PAID TO VENDOR'S SOLICITOR—SOLICITOR OF VENDOR, LIABILITY OF, FOR DEPOSIT—DEPOSIT, ACTION TO RECOVER.

In *Ellis Goulton*, (1893) 1 Q.B. 350, the plaintiff had entered into a contract for the purchase of certain real estate, and had paid a deposit of the purchase money to the defendant Jackson, who was the vendor's solicitor. The sale having fallen through, the plaintiff became entitled to a return of his deposit, and sued both the vendor and the defendant Jackson therefor. The learned judge who tried the case (whose name is not mentioned in the report) ruled at the trial that the defendant Jackson was liable because he failed to show either that he had paid the deposit to his client, the vendor, or had, by his direction, expended it on his behalf. The Court of Appeal (Lord Esher, M.R., and Bowen and Smith, L.JJ.) were, however, unanimous that the defendant Jackson was not in any way liable to the plaintiff, that he was neither agent, trustee, nor stakeholder for him, but that he had received the money as agent for the vendor, and was only liable to him therefor. We may note that in the case of sale by the court a different rule prevails, and that a solicitor of a vendor who receives the

deposit at the sale is liable personally as well as his client, and may be compelled to pay it into court. See Con. Rule 102, and notes in Holmested & Langton.

PROBATE—WILL—TESTAMENTARY CAPACITY—EVIDENCE—REPORT REQUIRED BY STATUTE TO BE DESTROYED.

In *Roe* v. *Nix*, (1893) P. 55, a question on the law of evidence arose which deserves attention. By a certain statute persons were authorized to visit lunatics, and were required to make reports on any cases they saw fit to the Lord Chancellor. These reports were to be filed and kept secret in the office of the visitors, and the statute expressly provided that they were to be destroyed on the death of the patient to whom they related. The will of a person who had been a lunatic was contested on the ground of want of testamentary capacity, and on the trial of the action it was sought to compel the production of reports made pursuant to the statute above referred to, and which were still in existence; but Barnes, J., after consultation with Lord Esher, M.R., and all the Lords Justices, held that such reports were inadmissible, and must be regarded for all purposes as though they were actually destroyed on the death of the patient.

WILL - ADEMPTION—SPECIFIC DEVISE—DEVISED ESTATE SOLD, AND MORTGAGE TAKEN FOR PURCHASE MONEY—WILLS ACT (1 VICT., C. 26), SS. 23, 24 (R.S.O. C. 109, SS. 25, 26).

In re Clowes, (1893) 1 Ch. 214, a testator had, by his will, devised a parcel of land, and after the making of the will had sold the land and taken back a re-conveyance in fee of the property by way of mortgage to secure part of the purchase money. The testator having died without altering his will, the question was raised whether or not under the devise of the land the mortgage would pass to the devisee. The Vice-Chancellor of Lancaster held that it did, but the Court of Appeal (Lindley, Bowen, and Smith, L.JJ.) was unable to agree with him. As Lindley, L.J. puts the point, "Money charged on land does not pass under a devise of land," and that rule, he said, cannot be got over by reading the will as provided by the Wills Act, ss. 23, 24 (R.S.O., c. 109, ss. 25, 26). According to the learned judge, the effect of reading the will as provided by those sections was to make the devisee, devisee of the house, but only as trustee for the persons entitled to the beneficial interest in the money secured thereon. In other words, the

testator most probably intended to give the devisee bread, and the Court of Appeal has presented him with a stone. It may, perhaps, be deemed somewhat presumptuous to question the propriety of this decision; we cannot, however, forbear saying that it does not appear to us to effectuate the very probable intention of the Wills Act, s. 23 (R.S.O., c. 109, s. 25). That section provides that no act done after the will, relating to the property comprised therein, is "to prevent the operation of the will with respect to such estate, or interest in such real or personal estate, as the testator had power to dispose of by will at the time of his death." One would think, but for this decision, that the meaning of that provision must be that a legatee, or devisee's interest in the property bequeathed or devised, was to be that beneficial estate or interest which the testator himself had in it at the time of his death, whatsoever it might be. But how often it happens that a legislature fails to express its meaning so that it will stand the test of judicial exposition!

COPYRIGHT—COMMERCIAL DIRECTORY—MATERIALS OBTAINED BY SERVANT FOR HIS MASTER'S BUSINESS—INJUNCTION.

In *Lamb* v. *Evans*, (1893) 1 Ch. 218, the defendants appealed from the decision of Chitty, J., which we noted *ante* p. 57, and the Court of Appeal (Lindley, Bowen, and Kay, L. JJ.) dismissed the appeal with costs.

ARBITRATION—BIAS—UNFITNESS OF ARBITRATOR—INJUNCTION.

Jackson v. *Barry Railway Co.*, (1893) 1 Ch. 238, somewhat resembles in its facts the case of *Hendrie* v. *The Belt Line Railway Co.*, which was last year before Robertson, J., in the Chancery Division, but is not yet reported, and the late case of *Farquhar* v. *Hamilton*, 20 Ont. App. 86. The action was brought to restrain the defendants from proceeding further with an arbitration on the ground that the arbitrator to whom the reference was made was disqualified by reason of bias. The plaintiffs were contractors for the building of a dock for the defendant railway company, and the contract provided that in the event of any dispute as to the meaning of the contract, or as to the quality or description of the materials to be used, it should be referred to the arbitrament of the company's engineer. A dispute having arisen as to whether the contract required the interior of an embankment to be made of stone, or whether rocky marl was allowable, so that if the plaintiffs used stone by the direction of the engineer

it would be chargeable as an extra, correspondence took place between the plaintiffs and the engineer, in which the engineer stated his view to be that the contract required the plaintiffs to use stone, and that it was not an extra. The company then referred the dispute to the arbitration of the engineer, and he, on the day of the first appointment for proceeding with the reference, wrote another letter to the plaintiffs reiterating his former view, whereupon the present action was commenced to restrain the company from proceeding with the reference. Kekewick, J., held that the letter showed that the engineer had made up his mind, and therefore was disqualified; but the Court of Appeal (Lindley, Bowen, and Smith, L.JJ.) was of the opinion that from the fact of the engineer's position as engineer of the company it would inevitably happen that he must have necessarily expressed some opinion on the point in dispute, and his writing after the commencement of the arbitration expressing the same opinion would not disqualify him, unless his letter indicated that he had so made up his mind as not to be open to change it upon argument; but whether the letter in question was open to that construction the Court of Appeal was not unanimous, Lindley and Bowen, L.JJ., thinking that it was not, and Smith, L.J., taking the opposite view. The injunction granted by Kekewich, J., was therefore dissolved. Lindley, L.J., makes some observations suggesting a doubt as to the jurisdiction to grant an inujnction in such a case. His doubt, however, does not appear to have been shared by the other members of the court.

PRACTICE—DISOBEDIENCE OF ORDER FOR ATTENDANCE—CONTEMPT—ATTACHMENT—COMMITTAL.

In re Evans, Evans v. *Noton*, (1892) 1 Ch. 252, the point again came up for consideration as to the difference between a committal and an attachment, and as to the cases in which they are respectively applicable. In this case the defendant had failed to appear in the action: he was directed to attend for examination before an officer of the court upon certain inquiries directed in the action. The defendant having failed to attend, an order had been made requiring him to attend at his own expense, which he had also disobeyed. Whereupon, without personal service of the notice of motion, the plaintiff applied for and obtained an order for an attachment. The defendant, having been arrested, applied to be

discharged from custody on the ground that the notice of motion for the attachment had not been personally served on him, and also on the ground that as the defendant had not appeared in the action the defendant was in the position of a stranger, and that the proper procedure for punishing his contempt was by committal. Kekewich, J., refused the motion, and the Court of Appeal (Lindley, Bowen, and Smith, L.JJ.) affirmed his decision. In a note to the case is set out *in extenso* a certificate of Mr. Registrar Lavie. which contains an interesting account of the practice on this point, and discusses the difference between committal and attachment.

FORECLOSURE ACTION—PERSONAL REMEDY CLAIMED AGAINST MORTGAGOR—SUBSEQUENT ACTION FOR ARREARS OF INTEREST.

Poulett v. *Hill*, (1893) 1 Ch. 277, is a decision of the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.), to the effect that where a mortgagee brings a foreclosure action claiming a personal remedy against the mortgagor, a second action against the mortgagor for subsequently accruing arrears of interest will not lie, as the personal remedy in the first action extends to all such arrears. The decision of Kekewick, J., to the contrary, was therefore reversed.

Notes and Selections.

CHURCH PEW.—Upon the sale of a place of worship, and the removal of a religious society therefrom, it is the duty of the trustees to tender to a pewholder a pew in the new edifice corresponding in location to that which he owned in the former building upon the payment of such a sum as, in equity, he ought to pay if the cost of the new structure exceeds the proceeds of the sale of the old property together with the sums in the treasury of the society; and if they fail to allot him such a pew, he has a cause of action to be indemnified in damages for his loss. *Mayer* v. *Temple Beth El.*—*New York L.J.*

PROFIT COSTS OF A SOLICITOR-MORTGAGEE.—It is a thoroughly well-established principle that, in the absence of express contract, a mortgagee is not entitled to receive remuneration for his own personal services in relation to the mortgage debt or the mort-

gage security; and a solicitor who advances money on mortgage—as was decided by Lord Justice (then Mr. Justice) Kay in *In re Roberts, ex parte Evans*, 59 Law J. Rep. Chanc. 25; L.R. 43 Ch.D. 52—cannot charge the mortgagor with profit costs for the preparation of the mortgage.* As the learned judge pointed out in that case, the reason why such costs are not allowed is not because of any fiduciary relationship existing between the solicitor and the mortgagor, but because they are not mortgagor's costs at all. They are mortgagee's costs, as a moment's consideration will show. The only case (said his lordship) in which such costs could be allowed is where there is a mortgagee against whom they could be charged, and who would have to pay them to his own solicitor, and who could then charge them to the mortgagor. It is obvious that if the mortgagee employs no solicitor to prepare the mortgage, but does the work himself, he cannot charge any costs, inasmuch as they have never been incurred at all. In the more recent case of *Field* v. *Hopkins*, 59 L.J. Rep. Ch. 174; L.R. 44 Ch.D. 524, Mr. Justice Kay adhered to and explained his decision in *In re Roberts* (*ubi sup.*). At the time it was pronounced that decision gave rise to some little controversy and adverse comment, but it has been acted upon and acquiesced in in several subsequent cases—notably by the Court of Appeal in *In re Wallis ex parte Liquorish*, 59 L.J. Rep. Q.B. 500; L.R. 25 Q.B.D. 176—and must therefore be regarded as perfectly sound law.

The decision of the Court of Appeal in *In re Wallis* (*ubi sup.*) was to the effect that a mortgagee who is a solicitor, and who in that capacity acts on his own behalf in proceedings relating to the mortgage security, is not entitled, in the absence of express contract, to recover profit costs from the mortgagor, but will be limited to disbursements out of pocket. The decision of Vice-Chancellor Bacon in *In re Donaldson*, 54 L.J. Rep. Ch. 151; L.R. 27 Ch.D. 544, that where one of a body of mortgagees is a solicitor acting as a solicitor in enforcing the security he is entitled to profit costs, must therefore be considered as practically overruled by *In re Wallis* (*ubi sup.*). The principle is that a solicitor-mortgagee is not to receive remuneration for his own trouble; and it can make no difference in the application of that principle whether the trouble is taken by the solicitor on his own behal solely or behalf of himself jointly with some one else.

Mr. Justice Kay, in *In re Roberts* (*ubi sup.*), had referred with approval to *Sclater* v. *Cottam*, 3 Jur. (N.S.) 630, where Vice-Chancellor Kindersley laid it down that a solicitor-mortgagee, acting for himself in a suit in defence of his own title, could not, as against a second mortgagee, claim more than his costs out of pocket. This was founded upon the principle enunciated by Lord Eldon in *Chambers* v. *Goldwin*, 9 Ves. 254, 271. The Court of Appeal, in *In re Wallis* (*ubi sup.*), also spoke in favourable terms of *Sclater* v. *Cottam* (*ubi sup.*). Lord Esher remarked that, the decision then having stood for over thirty years, the court would not now override it, even if it would not have to come to the same conclusion in the first instance.

In the case of *Field* v. *Hopkins* (*ubi sup.*), to which we have already briefly alluded, it was held by the Court of Appeal, affirming the decision of Mr. Justice Kay, that, in taking the mortgagee's accounts in a foreclosure action, charges ought to be disallowed for costs incurred by one of the mortgagors to the solicitor-mortgagee as her solicitor subsequently to the mortgage and in matters unconnected with it. Mr. Justice Kay, in the course of his judgment, reiterated the observations that he had let fall in *In re Roberts* (*ubi sup.*), adding that a mortgagee cannot charge his mortgagor with more than his principal, interest, and costs; and that he is not entitled to charge the mortgagor with any sum payable for his (the mortgagee's) own benefit, such as professional or profit costs for the preparation of the mortgage deed, if he is a solicitor. The learned judge, moreover, went so far as to assert that, on the principle that a mortgagee cannot clog the equity of redemption with any by-agreement, he cannot contract with the mortgagor for any such payment as before mentioned. This latter proposition, however, does not seem quite to accord with the view taken by the Court of Appeal in their judgment in the same case, nor in their later decision in *In re Wallis*. An express bargain for a payment of that description appeared feasible both to Lord Justice Cotton in *Field* v. *Hopkins* and Lord Esher in *In re Wallis*.

It will be noticed that none of the foregoing cases touched upon the question whether the partner of a solicitor-mortgagee, who is a member of a partnership firm of solicitors, is entitled as against the mortgagor to charge profit costs in respect of business relating to the mortgage. It remained for Mr. Justice Stir-

ling, in the very recent cases of *In re Doody; Fisher* v. *Doody*, and *Hibbert* v. *Lloyd*, 62 L.J. Rep. Ch. 14, to deal with that novel question. And his lordship answered it in the affirmative. Although there was no authority precisely in point, said the learned judge, on principle there was nothing to prevent the partner of a solicitor-mortgagee from receiving remuneration for his trouble in matters concerning the mortgage security. The mortgagee-solicitor himself could not, of course, retain his share of the profit costs as against the mortgagor. But, in the absence of any agreement between the parties that the mortgagee-solicitor was not to share in the profits arising from the mortgage transaction, the proper course appeared to Mr. Justice Stirling to be to ascertain the profit costs and then allow to the partner of the mortgagee-solicitor the same share in the profit costs as he was entitled to in the general profits of the partnership business.

This ruling seems perfectly just and equitable, and coincides with the opinion expressed by Mr. Justice Kay in *In re Roberts* (*ubi sup.*) in the words quoted above, when speaking of a mortgagee having to pay costs to his own solicitor, and then charging them to the mortgagor. If a solicitor-mortgagee employed another solicitor, unconnected with himself in any way, to do professional work connected with the mortgage security, which manifestly he would be justified in doing, he would be at liberty to charge the full costs of such solicitor to the mortgagor. On the other hand, if the partner of a solicitor-mortgagee acts instead, it is quite right and proper that the mortgagor should be only made liable for such a share of the profit costs as the partner would ordinarily receive for transacting business on behalf of the parnership firm. The plaintiffs in *Hibbert* v. *Lloyd* carried their case to the Court of Appeal (see 62 L.J. Rep. Ch. 21), but did not succeed in inducing the learned Lords Justices to say that Mr. Justice Stirling had come to a wrong conclusion. On the contrary, their lordships unanimously approved of the learned judge's decision and the reasoning upon which it was founded. The case of *In re Donaldson*, which, as we have already remarked, was practically overruled by *In re Wallis*, was even more effectually disposed of by the Court of Appeal in *Hibbert* v. *Lloyd*.—*Law Journal.*

DIARY FOR APRIL.

2. Sunday.....*Easter Sunday.*
3. Monday.....London Chy. sitts. Guelph Assizes. Co. Ct. sitts. for motions. Surrogate Ct. sits.
4. Tuesday.....Exchequer Court sits at Toronto. Co. Ct. non-jury sittings, except in York.
5. Wednesday..Canada discovered, 1499.
6. Thursday....St. Catharines Chancery sittings.
7. Friday.....Great fire in Toronto, 1847.
9. Sunday.....*Low Sunday. 1st Sunday after Easter.*
10. Monday.....Co. Ct. non-jury sitts in York. Kingston Assizes.
13. Thursday....Toronto Criminal Assizes begin.
16. Sunday.....*2nd Sunday after Easter.*
17. Monday.....Exchequer Court sits at Ottawa. Brantford Assizes. Last day for notice for call.
18. Tuesday.....Belleville Chancery sittings.
23. Sunday.....*3rd Sunday after Easter.*
24. Monday.....Peterboro Assizes. Earl Cathcart, Gov.-Gen., 1846.
25. Tuesday.....Ottawa Chancery sittings.
27. Thursday. ..Toronto captured (Battle of York), 1813.
29. Saturday....Last day for filing papers for certificate and call and payment of fees.
30. Sunday.....*4th Sunday after Easter.*

Reports.

COUNTY COURT OF THE COUNTY OF HURON.

(Reported for THE CANADA LAW JOURNAL.)

ROE *v.* VILLAGE OF LUCKNOW.

Use of highway—Steam whistle close to road frightening horse of traveller—Liability—Courts.

Defendants built on their own land close to a highway an engine house, attached to which was a steam whistle used to signal workmen at the other side of the village. The plaintiff was driving along the road, and as he was passing the whistle sounded. The noise frightened the horse, which ran away. The plaintiff sued for the damage which resulted.

Held, (1) that the defendants were liable without proof of negligence.

(2) There was no contributory negligence on the part of the plaintiff even if he were, as was contended, driving with a loose rein, the negligence of the driver not being the proximate cause of the accident.

[GODERICH, February 20, 1893.

This was an action tried at the last December sessions held at Goderich, before DOYLE, J.J., without a jury.

The facts were that the defendants built an engine house within the village limits on their own land, immediately adjoining the highway, for fire protection and street-watering purposes, and placed a steam whistle on the roof, about twenty feet from the street. The whistle was intended to signal the branchmen when to take or cease taking water from the pipes laid through the village. The village stands on uneven ground, and if the pipes in the lower part of the village are left open after the engine quits pumping the water escaping will

leave a vacuum in the higher pipes, and, it is said, cause them to burst, when the water is afterwards forced into contact with the air in the empty pipes above. The defendants claimed that there was a necessity for the whistle as a signal to to close or open the pipes, as occasion requires.

The road adjoining is higher than the land on which the building stands, being described as level with the top of the door-case of the engine house, thus exposing the roof and the whistle to view from the highway.

On the occasion complained of the plaintiff's stallion, in charge of his servant, happened to be coming out of the village along the highway, and when about 120 feet from the engine house the defendants' engineer blew the whistle; the noise and escaping steam frightened the stallion, causing him to turn suddenly round, upset the buggy and run away, doing the damage complained of. The engineer knew before he blew the whistle that the branchman had finished watering the streets, and had returned to the engine house. But, he explains, that he blew it "to warn any one else who might have a branch key to cease taking water." It appears a few branch keys are held by the firemen for public use in case of fire, and that they sometimes use the water for their own private purposes.

Owing to a rise in the road between the engine house and the village, a person travelling on the highway cannot be seen farther away than about three hundred feet from the engine house.

The plaintiff, in his statement of claim, alleged "that the defendants erected certain buildings and machinery for waterworks and fire protection purposes, containing a steam whistle, which, when blown, would, from its loudness and shrillness, naturally frighten horses passing near, and carelessly and negligently, and in breach of their said duty, erected the same so close to the said highway as to constitute and be a nuisance and source of danger to persons lawfully travelling with horses thereon."

E. L. Dickenson, for the plaintiff, contended that this case is governed by the rule of law laid down in that class of cases illustrated by *Fletcher* v. *Rylands*, 1 Exch. 265, and that therefore it was not necessary to prove negligence against the defendants. He cited the following authorities: *Fletcher* v. *Ryland*, L.R. 1 Exch. 265; *Hilliard* v. *Thurston*, 9 A.R. 523; *Powell* v. *Fall*, 9 Q.B.D. 597; Har. Mun. Man., 5 ed. 492. As to negligence: *Lawson* v. *Village of Alliston*, 19 O.R. 655; Smith on Negligence (Blackstone series), pp. 101, 104; *Stott* v. *G.T.R. Co.*, 24 C.P. 347. As to contributory negligence and proximate cause: *Sherwood* v. *City of Hamilton*, 37 U.C.R. 410; *Tyson* v. *G.T.R. Co.*, 20 U.C.R. 256; *Ridley* v. *Lamb*, 10 Q.B. 354; *Cornish* v. *Toronto St. R.W. Co.*, 23 C.P. 355; *Castor* v. *Uxbridge*, 39 U.C.R. 113; Smith on Negligence, *supra*, pp. 152, 157, and 165; *Forward* v. *City of Toronto and Chandler*, 22 O.R. 359.

Garrow, Q.C., for the defendants, on the contrary, contended that the case falls within the class of authorities to which belong *Wilkins* v. *Day*, 12 Q.B.D. 113, and *Brown* v. *Eastern Mid. R.W. Co.*, 22 Q.B.D. 391, and that in the absence of negligence defendants' are not liable. The defendants further contended that plaintiff's servant was guilty of contributory negligence, and they are therefore exonerated in either view. He cited the following: *Howe* v. *H. & N.W.*

R.W. Co., 3 A.R. 336; *Manchester R.W. Co.* v. *Fullarton*, 14 C.B.N.S. 54; *Stott* v. *G.T.R.W. Co.*, *ante*; *Maxwell* v. *Township of Clarke*, 4. A.R. 460; *Boyle* v. *Township of Dundas*, 25 C.P. 420; *O'Connor* v. *Otonabee*, 35 U.C.R. 74; *Brown* v. *Eastern Midland R.W. Co.*, 22 Q.B.D. 391; *Wilkins* v. *Day*, 12 Q.B.D. 113; *Nicholls* v. *G.W.R. Co.*, 27 U.C.R. 382; *Rastrick* v. *G.W.R. Co.*, 27 U.C.R. 396; *Bradley* v. *Brown*, 32 U.C.R. 463; *Hutton* v. *Windsor*, 34 U.C.R. 487; *Castor* v. *Uxbridge*, 39 U.C.R. 113; *Tuff* v. *Warman*, 5 C.B.N.S. 573; *Bridge* v. *Grand Junction R.W. Co.*, 3 M. & W. 244; *Davies* v. *Mann*, 10 M. & W. 546; *Radley* v. *London and North-Western R.W. Co.*, 1 App. Cas. 754; Add. Torts, 6 ed. (1890), pp. 23-28.

DOYLE, J.J.: I am of opinion that the facts of this case bring it clearly within the rule followed in *Fletcher* v. *Rylands*, as reported in 3 House Lords 330, where the judgment of the Court of Exchequer Chamber was unanimously upheld. The rule is, "That the person who for his own purposes brings on his land, and collects and keeps there anything likely to do mischief, if it escapes, must keep it in at his peril, and if he does not do so is *prima facie* answerable for all the damage which is the natural consequence of its escape."

There the trouble complained of was caused by water collected by defendants on their own land, which escaped through unknown defects in the bottom of the basin, and did injury to the plaintiff's mine below.

In the case of *Hilliard* v. *Thurston*, 9 A.R. 523, the injury was caused by fire—sparks—escaping from a passing steamboat, navigating the inland waters of Ontario without legislative authority. The principle of *Fletcher* v. *Rylands* was held to apply, and was adopted in that case, and the owner of the steamboat was held answerable, without proof of negligence, for the destruction by fire of plaintiff's sawmill, on the river bank.

So also in *Powel* v. *Fall*, 5 Q.B.D. 597, defendant was held liable for the destruction of a haystack by sparks from a traction engine passing along the highway, notwithstanding the fact that the use of the engine was authorized by statute. In that statute, however, the right to recover for damages caused was expressly reserved.

But since the cases of *Rex* v. *Pease*, 4 B. & Ad. 30, and *Vaughan* v. *Taff Vale R.W. Co.*, 5 H. & N. 679, the courts have shown a decided inclination not to imply exemption from common law liability in the construction of statutory enactments authorizing the use of dangerous machines: *Jones* v. *Festiniog R.W. Co.*, L.R. 3 Q.B. 733, and *Powel* v. *Fall*, L.R. 5 Q.B.D. 597. Lord Justice Bramwell, in the last case, at page 601, questions the correctness of the decisions in *Rex* v. *Pease* and *Vaughan Taff Vale R.W.Co.*

In the case of *Brown and Wife* v. *Eastern M.R.W.Co.*, L.R. 22 Q.B.D. 291, defendants placed a heap of dirt and rubbish on their own land, adjoining the highway. The plaintiff was driving along the highway, when his horse shied at the heap, upsetting the cart and injuring the plaintiff. The court, in giving judgment, said: "If a person erects on his own land anything whatever calculated to interfere with the convenient use of the road, he commits a nuisance. Every railway which, without express parliamentary sanction, ran by the side of a highway so as to frighten horses, etc., would be a nuisance but for the parliamentary authority under which it was made. So if a man keep a ferocious

and noisy dog so near a highway as to be likely to frighten horses on it by his barking." This judgment was affirmed on appeal.

In the case under consideration by me, the engine house and waterworks were admitted to be constructed under a by-law of the municipality, and the defendants contend that the use of the steam whistle is essential to the efficient managment of the works. It was not contended, however, that the use of the whistle was expressly authorized by the by-law, it having been added after the works were finished and tested, and some difficulty experienced, in the bursting of the pipes, caused, as it is said, by the enforced contact of the water with the air in the pipes on the higher ground.

If the whistle, then, be a thing likely to do mischief the defendants assume the common law liability in bringing it on their property, and "are bound to keep it there at their peril, and are answerable for all the damage which is the natural consequence of its escape," according to the rule in *Fletcher* v. *Rylands*. That noise and steam are likely to do mischief many decided cases attest. I need only refer to two—*Manchester R.W. Co.* v. *Fullarton*, 14 C.B.N.S. 54, and *Stott and Wife* v. *G.T.R. Co.*, 24 C.P. 347.

This whistle was described as one of unusual sound, between that of a steamboat and a railway whistle. One of the witnesses said that he remembered but once before to have heard a whistle like it, on a steamboat. Several of the witnesses described it as "more of a bass than a treble."

Situate, as it is, so near and in full view of the highway, with its escaping steam and unusual sound, it is well designed, in my opinion, to frighten horses passing along the highway. It is needless to add here that it is no justification for the use of a dangerous thing for defendants to say that it is essential to the efficiency of their waterworks. (See remarks of PROUDFOOT, J., in *Hilliard* v. *Thurston*, *supra*, at p. 516.)

The railway cases cited on the argument, and that class which, for distinction, we may call obstruction to highway cases, belong to a different class from *Fletcher* v. *Rylands*, though nearly related thereto, and I have therefore endeavoured to avoid, as far as possible, a reference to them, in this portion of my judgment. *Wilkins* v. *Day* and *Brown* v. *Eastern Mid. R.W. Co.* both belong to the obstructions to highway class.

The question of contributory negligence alone remains to be considered.

The defendants say that if plaintiff's servant had been holding a tight rein and giving special attention to the horse as he should, when driving along this portion of the road, on which there was a mill, and the engine house, etc., he could have prevented the accident, and the driver himself would not undertake to say what might have been the result if he had been holding a tight rein at the time the whistle blew. And some evidence was given to the fact that the driver, immediately after the accident, made remarks to the effect that if he had been paying more attention to the horse and less to his pipe the horse would not have got away from him.

It is quite in accordance with the frailty of human nature, and, perhaps, especially among horsemen, that the driver should endeavour to uphold his reputation as a skilful horseman by offering some such excuse for the horse's escape from him; but in his evidence, whilst he would not deny that he might

have made some such remark as that attributed to him, he does deny that he had his pipe out at the time, and though several witnesses were called by defendants to show the manner of his driving as he was approaching the place of the accident none of them say he had his pipe out at the time. They describe what he was doing with his hands. Besides, there is evidence that he is an experienced and very careful driver. It is also shown that he had driven along this highway, past the engine house, over thirty times previously; but although he saw the whistle, he had never heard it blown before, and was not then expecting it to blow.

There is a rise here in the road, between the engine house and the village, so that a conveyance coming from the village cannot be seen farther away from the engine house than about 300 feet. If the engineer had in this instance taken his usual precaution to look out on the highway immediately before blowing the whistle, as he should have done, he would have seen plaintiff's stallion, and could have avoided the accident. His explanation for not having taken that precaution was because he and the branchman had just come into the building about a minute before, and there was then no one in sight on the highway. That is quite consistent with the fact that the plaintiff's horse was concealed by the elevation in the highway when the engineer went into into the building, and that the horse, at an ordinary walking pace, had reached the point where the accident happened (120 feet from the building) when the whistle blew. It may be assumed that a horse will walk as fast as a man at a ordinary pace; now a man will walk over 240 feet in a minute without effort whilst plaintiff's horse required to walk only about 180 feet to reach the place of the accident after the engineer went into the engine house, and before he blew the whistle.

Assuming that if the driver had been on the alert, anticipating the trouble and holding a tight rein when the whistle blew, the accident might have been avoided, the fact that he was not do.s not establish contributory negligence on his part under the circumstances here.

The horse is described as unusually quiet and steady, accustomed to be driven with the reins hanging loosely when walking, as at this time; the driver had driven him along this road past the engine house over thirty times before this, and never saw any necessity for more than ordinary precaution. He was driving on this occasion in the manner and with the attention which he had found by previous experience to be sufficient for ordinary purposes with this horse. This was all he was bound to do.

In Smith on Negligence, 2 Eng. ed., pp. 152-3 (Bla. Ser.), contributory negligence is thus defined: "When the plaintiff has proved, according to his evidence, that the act of the defendant has caused the injury of which he complains, the defendant in his turn may prove that the plaintiff, by his own act, contributed to cause the injury, and that the plaintiff might, by the exercise of ordinary care, have avoided the consequences of the defendant's negligence. But such proof is not in itself sufficient to destroy the plaintiff's claim, and the defendant must go farther, and show that the plaintiff's negligence was of such a character that the exercise of ordinary care upon the defendant's part would have prevented the plaintiff's negligent act from causing the injury, and this is the sort of negligence which the law calls contributory negligence."

And that is the interpretation given by our own courts to contributory negligence: *Forward* v. *City of Toronto*, *supra*, p. 359.

It must be borne in mind that the burden of establishing contributory negligence is on the defendants.

The defendants must prove not only that plaintiff's driver was guilty of negligence in not holding a tight rein, and not being on the alert when the whistle blew, but also that the driver's "negligence was such that the accident could not have been avoided by due diligence on their part; that is to say, that the negligence of the driver was the proximate cause of the accident."

It cannot be seriously contended that the driver's manner of holding the reins would have led to this accident if the whistle had not been blown.

"The party who last has a clear opportunity of voiding the accident, notwithstanding the negligence of his opponents, is considered solely responsible for it": *Forward* v. *City of Toronto*, *supra*, p. 361.

The defendants' engineer had here, clearly, the last opportunity of avoiding the accident by looking out on the highway immediately before blowing the whistle.

The blowing of the whistle was then, undoubtedly, the *proximate cause* of the accident. Pollock on Torts, pp. 291-5 (Bla. series); *Tuff* v. *Warman*, 5 C.B. N.S. 573; *Bridge* v. *Grand Junction Ry.*, 3 M. & W. 244; *Radley* v. *London & North-Western R.W. Co.*, 1 Appeal (H. Lords) 754; *Sherwood* v. *Hamilton*, 37 U.C.R. 410; *Tyson* v. *G.T.R. Co.*, 20 U.C. 25; *Forward* v. *City of Toronto*, *supra*.

It cannot be considered contributory negligence on the part of the driver merely because he has not anticipated the defendants' negligence, for the driver had a right to assume that defendants were going to act with ordinary care until he had some notice to the contrary, when it became his duty to take ordinary means to avoid it, that is, such means as a prudent man should: Smith on Negligence, 2 ed., p. 157, Blackstone series.

Nor is the fact that the driver had previously seen the whistle on the engine house and knew it was a steam whistle any answer to defendants' negligence, nor would that fact make it contributory negligence on his part not to have driven past with a tight rein. At page 158 of Smith on Negligence, *supra*, it is said: "The defendant is not excused merely because the plaintiff, knowing of a danger caused by the defendant, voluntarily incurs the danger; for the defendant may have so acted as to induce the plaintiff, as a reasonable man, to incur the danger.

So here, though the driver knew of the whistle, and had passed it over thirty times previously, he never heard it blown before, and had no reason to suppose it was going to be blown then.

It is without regret I find myself enabled to decline to assume the responsibility of approving of and thus continuing a state of affairs so fraught with danger to the public as the use by the defendants of this whistle in its present position.

It has not been attempted to be explained why this whistle would not have answered its purpose equally well by being placed in rear of the engine house, out of sight from the highway, as such whistles are usually placed.

Had I been called upon to consider the question of negligence, it seems to me doubtful that, even if the defendants were entitled to use the whistle in its present position in the management of their works, that would justify them in using it, as on this occasion, on the mere possibility that some person might be making an unauthorized use of the water. I have not searched for authority on this point, but see *Stott and Wife* v. *G.T.R. Co.*, 21 C.P. 347, *supra.*

The result is I find all the issues for the plaintiff, and assess his damages at $125 (the amount agreed upon by consent in case I should find for the plaintiff).

And I order judgment to be entered accordingly for that sum, with costs, after the second day of the next April sitting of the court.

Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.] [Feb. 20.

ATTORNEY-GENERAL OF CANADA *v.* CITY OF TORONTO.

Municipal corporation—Water rates—Discount by prompt payment—Property exempt from municipal taxation—Discrimination as to—R.S.O. (1887), c. 184, s. 480, s-s. 3; c. 192, ss. 19, 29.

By R.S.O. (1887), c. 184, s. 480, s-s. 3 (Municipal Institutions Act), it is the duty of a municipal corporation which has constructed waterworks to supply water to all buildings on land along the line of any supply pipe on request of the owner or occupant thereof. By c. 192, s. 19 (Municipal Waterworks Act) the corporation has authority to regulate the distribution and use of water and fix the process and time of payment therefor, and by s. 20 the corporation may pass by-laws, etc., for allowing a discount for prepayment.

Pursuant to these powers, the corporation of the city of Toronto passed a by-law allowing a discount on all water rates paid in the first month of the quarter for which they should be due, but the same was not to apply to government or other institutions which are exempt from city taxes. A tender was made to the city of the amount assessed on property of the Dominion Government, less the discount allowed by the by-law, which was refused, and the whole amount having been paid under protest an action was brought against the city for the rebate.

Held, reversing the decision of the Court of Appeal (18 A.R. 622), and that of FERGUSON, J., at the trial (20 O.R. 19), PATTERSON, J., dissenting, that the legislature intended and enacted that the rate for water supplied by the city should be an equal rate charged upon all consumers alike, and the city corporation had no power to impose a greater rate for water supplied to a consumer who is not subject to civic taxation than is imposed on consumers who are; therefore the by-law was *ultra vires* in so far as it makes a distinction between two classes of consumers.

Per PATTERSON, J.: The imposition of water rates is not a tax, and there

is no principle on which the city can be prevented from demanding a larger price for water supplied to consumers who have paid no part of the cost of constructing the works than it is willing to receive from those who have.

Appeal allowed with costs.

Reeve, Q.C., and *Wickham* for the appellants.

Robinson, Q.C., for the respondents.

New Brunswick.]

ELLIS *v.* THE QUEEN.

Appeal—Contempt of court—Criminal proceeding—Supreme and Exchequer Courts Act (R.S.C., c. 135), s. 68.

Contempt of court is a criminal matter, and an appeal to the Supreme Court from a judgment in proceedings therefor cannot be brought unless it comes within s. 68 of the Supreme and Exchequer Courts Act (R.S.C., c. 135). *O'Shea* v. *O'Shea*, 15 P.D. 59, followed. *In re O'Brien*, 16 S.C.R. 197, referred to.

The Supreme Court of New Brunswick adjudged E. guilty of contempt, but deferred sentence.

Held, that this was not a final judgment from which an appeal would lie to the Supreme Court of Canada.

Appeal quashed.

Weldon, Q.C., for the appellant.

Currey for respondent.

CANADIAN PACIFIC R.W. CO. *v.* FLEMING.

Appeal—Jurisdiction—Trial by jury—Withdrawal from jury—Disposal of questions of fact by court—Consent of parties.

In an action against a railway company for damages for an injury caused by an engine of the company, the counsel for both parties agreed at the trial as follows: "That the jury be discharged without giving a verdict, the whole case to be referred to the court, which shall have power to draw inferences of fact; and if they shall be of opinion upon the law and the facts that the plaintiff is entitled to recover, they shall assess the damages, and that judgment shall be entered as the verdict of the jury. If the court should be of opinion that the plaintiff is not entitled to recover nonsuit shall be entered." The jury were then discharged and the court *en banc*, in pursuance of such an agreement, subsequently considered the case and assessed the damages at $300, considering plaintiff entitled to recover. The company sought to appeal from such decision.

By the practice in the Supreme Court of New Brunswick all questions of act are to be tried by a jury, and the court can only deal with such questions by consent of parties.

Held, GWYNNE and PATTERSON, JJ., dissenting, that as the court took upon itself the decision of the questions of fact in this case without any legal or other authority therefor than the consent and agreement of the parties they acted as quasi-arbitrators, and the decision appealed from was that of a private tribunal constituted by the parties, which could not be reviewed in appeal or otherwise as

judgments pronounced in the regular course of the ordinary procedure of the court may be reviewed and appealed from.

Held, also, that if the merits of the case were properly before the court the judgment appealed from should be affirmed.

Held, per GWYNNE and PATTERSON, JJ.: That the case was appealable; and on the merits, it appearing from the evidence that the servants of the company had done everything required by the statute to give notice of the approach of the train, the appeal should be allowed and a judgment of nonsuit entered.

Appeal quashed with costs.

Weldon, Q.C., for the appellants.

Skinner, Q.C., for the respondent.

PETERS *v.* CITY OF ST. JOHN.

Assessment and taxes—Insurance company—Net profits—Deposit with government—Statement to assessors—Variance from form.

By s. 126 of the St. John City Assessment Law, 1889 (52 Vict., c.27), the agent or manager of any life insurance company doing business out of the province is liable to be assessed upon the net profits made by him as such agent or manager from premiums received on all insurances effected by him; and the better to enable the assessors to rate such company, the agent or manager is required to furnish at a certain time in each year a statement under oath in a prescribed form, setting forth the gross income and particulars of the losses and deductions claimed therefrom, and showing the ratable net profits for the preceding year

By the form prescribed, the deductions to be made from the gross income consist of re-insurance, rebate, etc., actually paid, and amounts paid on matured claims on policies issued by such agent or manager. In the form presented by the agent of a life insurance company in St. John, N.B., there was no amount entered for deductions of the latter class, but instead thereof an item was inserted of "75 per cent. of premiums deposited with government for protection of policy-holders," which was an addition to the form. The statement showed that the deductions exceeded the gross income, leaving no net profits to be taxed. The assessors, on receiving this statement, disregarded the result shown thereby and assessed the agent on net profits for the year of $6,300. A rule *nisi* for a certiorari to quash the assessment was obtained, in support of which it was shown by affidavit that the amount required to be deposited with the Dominion Government by the company assessed was about 75 per cent. of the premiums received, and that the amount of such deposits from time to time returned to the company was applied for the benefit of policy-holders and formed no part of the income or profits of the company. The Supreme Court of New Brunswick discharged the rule, and refused to quash the assessment on the grounds that the government deposit was a part of the income of the company held in reserve for certain purposes and formed no part of the expenditure, and that the agent had no right to strike out certain requirements of the form prescribed and substitute different statements of his own.

Held, reversing the decision of the court below, FOURNIER and TASCHEREAU, JJ., dissenting, that the agent was justified in departing from the form to

show the real state of the business of the company, and the deposit was properly classed with the deductions, and the assessors had no right to disregard the statement and arbitrarily assess the company as they did.

Appeal allowed with costs.

Weldon, Q.C., and *Bruce*, Q.C., for the appellant.

Jack, Q.C., for the respondent.

TIMMERMAN *v.* CITY OF ST. JOHN.

Assessment and taxes—Taxation of railway—Statutory form—Departure from—Powers of assessors—53 Vict., c. 27, s. 125 (N.B.).

By the assessment law of the city of St. John (53 Vict., c. 27, s. 125 [N.B.]), the agent or manager of any joint stock company or corporation established abroad or out of the limits of the province may be rated and assessed upon the gross and total income received for such company or corporation, deducting only therefrom reasonable cost of management, etc., and such agent or manager is required to furnish to the assessors each year a statement under oath in a prescribed form, showing the gross income and the deductions of the various classes allowed, the balance to be the income to be assessed; and in case of neglect to furnish such statement, the assessors are to fix the amount of such income to be assessed according to their best judgment, and there shall be no appeal from such assessment.

The Atlantic division of the C.P.R. runs from Megantic, in the Province of Quebec, through the State of Maine into New Brunswick; it runs over a line leased from a New Brunswick company to the western side of the River St. John, and then over a bridge into the city, where it takes the I.C.R. road. The general superintendent has an office in the city, but all monies received there are sent to the head office in Montreal.

The superintendent was furnished with a printed form to be filled up for the assessors as required by said Act, which was as follows:

"Gross and total income received for (company) during the fiscal year of . . . next preceding the first day of April. This amount has not been reduced or offset by any losses," etc. This latter clause the superintendent struck out, and filled in the first clause by stating that no income had been received by the company; the remainder of the form, consisting of details of the deductions, was not filled in. This was given to the assessors as the statement called for, and they disregarded it, assessing the company on an income of $140,000 without making any inquiries of the superintendent as the Act authorized them to do. A rule for a certiorari to quash this assessment was obtained, but discharged by the court, on the ground that the superintendent had so far departed from the prescribed form that he had, in effect, failed to furnish a statement as required by the Act, and the assessment against him was final.

Held, reversing the decision of the court below, FOURNIER and TASCHEREAU, JJ., dissenting, that the superintendent had a right to modify the form prescribed to enable him to show the true facts as to the business of the company in St. John, and the assessors had no right to arbitrarily fix an amount

assessable against him without taking any steps to inform themselves of the truth or falsity of the statement furnished.

Held, also, that the provision that there should be no appeal from the assessment where no statement is furnished relates only to an appeal against over-valuation under C.S.N.B., c. 100, s. 60, and does not abridge the power of the court to do justice if the assessors assess arbitrarily or upon a wrong principle, or no principle at all.

Held, per GWYNNE and PATTERSON, JJ., that the assessment law of St. John does not apply to railway companies, there being no provision made for ascertaining the amount of business done in the city as proportioned to the whole business of the company.

Appeal allowed with costs.

Weldon, Q.C., for the appellant.

Jack, Q.C., for the respondents.

Quebec.]

STEVENSON *v.* CANADIAN BANK OF COMMERCE.

Insolvency—Knowledge of, by creditor—Fraudulent preference—Pledge—Warehouse receipt—Novation—Arts. 1034, 1035, 1036, 1169 C.C.

W.E.E., connected with two business firms in Montreal, viz., the firm of W E. Elliott & Co., oil merchants, of which he was the sole member, and of Elliott, Finlayson & Co., wine merchants, made a judicial abandonment on the 18th August, 1889, of his oil business. Both firms had kept their accounts with the Bank of Commerce. The bank discounted for W. E. Elliott & Co., before his departure for England, on the 30th June, a note of $5087.50, due 1st October, signed by John Elliott & Co., and endorsed by W. E. Elliott & Co. and Elliott, Finlayson & Co., and on the 5th July took as collateral security from Finlayson, who was also W. E. Elliott's agent during his absence, a warehouse receipt for 292 barrels of oil and the discount was credited to Elliott, Finlayson & Co. On and about the 9th July 146 barrels were sold; the proceeds, viz., $3528.30, were subsequently on the 9th August credited to the note of $5087.50. On the 13th July, McDougall, Logie & Co. failed, and W.E.E. was involved in the failure to the extent of $17,000, and on the 16th July Finlayson, as agent for W.E.E., left with the bank, as collateral security against W.E.E.'s indebtedness of $7559.30 on the paper of McDougall, Logie & Co., customers notes of the oil business to the amount of $2768.28, upon which the bank collected $1603.43, and still kept a note of J.P. & Co. unpaid of $1165.32.

On the return of W.E.E. another note of John Elliott & Co. for $1101.33, previously discounted by W.E.E., became due at the bank, thus leaving a total debit of the Elliott firms on their joint paper of $2660.53. The old note of $5087.50, due 1st October, and the one of $1101.33, were signed by John Elliott & Co., and on the 10th August were replaced by two notes signed by Elliott, Finlayson & Co., and secured by 200 barrels of oil, viz.: 146 barrels remaining from the original number pledged, and an additional warehouse receipt of 54 barrels of oil, endorsed over by W.E.E. to Elliott, Finlayson & Co., and by them to the bank.

The respondent, as curator for the estate of W. E. Elliott & Co., claimed that the pledge of the 200 barrels of oil on the 10th August and the giving of the notes on the 16th July to the bank were fraudulent preferences. The Superior Court held that the bank had knowledge of W.E.E.'s insolvent condition on or about the 16th July, and declared that it had received fraudulent preferences by receiving W.E.E.'s customers' notes and the 200 barrels of oil; but the Court of Appeal, reversing in part the judgment of the Superior Court, held that the pledging on the 200 barrels oil by Elliott, Finlayson & Co. on the 10th August was not a fraudulent preference.

On an appeal and cross appeal to the Supreme Court,

Held, (1) that the finding of the courts below of the fact of the bank's knowledge of W. E. Elliott's insolvency, dated from the 13th July, was sustained by evidence in the case, and there had therefore been a fraudulent preference given to the bank by the insolvent in transferring over to it all his customers' paper not yet due. GWYNNE, J., dissenting.

(2) That the additional security given to the bank on the 10th August of 54 barrels of oil for the substituted notes of Elliot, Finlayson & Co. was also a fraudulent preference. GWYNNE, J., dissenting.

(3) Reversing the judgment of the Court of Queen's Bench, and restoring the judgment of the Superior Court, that the legal effect of the transaction of of the 10th August was to release the pledged 146 barrels of oil, and that they became immediately the property of the insolvent's creditors and could not be held by the bank as collateral security for Elliott, Finlayson & Co.'s substituted notes. Arts. 1169 and 1034 C.C. GWYNNE and PATTERSON, JJ., dissenting.

Appeal allowed and cross appeal dismissed with costs.

Macmaster, Q.C., and *Geoffrion*, Q.C., for the appellant.

Lash, Q.C., and *Morris*, Q.C., for the respondent.

VAUDREUIL ELECTION CASE.

MCMILLAN *v.* VALOIS.

Election petitions—Separate trials—R.S.C., c. 9, ss. 30 & 50—Jurisdiction.

Two election petitions were filed against the appellant, one by A.C., filed on the 4th April, 1893, and the other by A.V., the respondent, filed on the 6th April. The trial of the A.V. petition was by an order of a Judge in Chambers dated the 22nd September, 1892, fixed for the 26th October, 1892. On the 24th October, the appellant petitioned the Judge in Chambers to join the two petitions and have another date fixed for the trial of both petitions. This motion was referred to the trial judges, who on the 25th October, before proceeding with the trial, dismissed the motion to have both petitions joined, and proceeded to try the A.V. petition. Thereupon the appellant objected to the petition being tried then, as no notice had been given that the A.C. petition had been fixed for trial, and subject to such objection filed an admission that sufficient bribery by the appellant's agent, without his knowledge, had been committed to avoid the election. The trial judges then delivered judgment, setting aside the election. On an appeal to the Supreme Court,

Held, (1) that under s. 30 of c. 9, R.S.C., the trial judges had a perfect right to try A.V. petition separately.

(2) That the ruling of the court below on the objection relied on in the present appeal, viz., that the trial judges could not proceed with the petition in this case because the two petitions filed had not been bracketed by the prothonotary as directed by s. 30 of c. 9, R.S.C., was not an appealable judgment or decision. R.S.C., c. 9, s. 50. SEDGEWICK, J., doubting.

Appeal dismissed with costs.

Bisaillon, Q.C., for the appellant.

F. X. Choquette for the respondent.

EXCHEQUER COURT OF CANADA.

BURBIDGE, J.] [Jan. 23.

ARCHIBALD *v.* THE QUEEN.

Construction of public work—Interference with public rights—Damage to individual enjoyment thereof—Liability—50, 51 Vict., c. 16, s. 16 (c.)—Construction of.

Where the Crown, by the construction of a public work, has interfered with a right common to the public, a private owner of real property, whose lands or any right or interest therein have not been injured by such interference, is not entitled to compensation in the Exchequer Court, although it may happen that the injury sustained by him is greater in degree than that sustained by other subjects of the Crown.

The injurious affection of property by the construction of a public work will not sustain a claim against the Crown based upon clause *(c.)* of the 16th section of the Exchequer Court Act (50, 51 Vict., c. 16), which gives the court jurisdiction in regard to claims arising out of any death or injury to the person or to property on any public work resulting from the negligence of any officer or servant of the Crown while acting in the scope of his duties or employment.

R. G. Code for the suppliant.

W. B. A. Ritchie for the Crown.

[March 13.

THE QUEEN EX REL. ATTORNEY-GENERAL OF CANADA *v.* FARWELL

Information of intrusion—Appropriate remedies to be prayed for therein—Injunction to re-convey—Practice—Subsequent action between same parties—Res judicata.

Where, in a former action by information of intrusion to recover possession of land, the title to such land was directly in issue and determined, the judgment therein was held to be conclusive of the issue of title sought to be raised by the defendant in a subsequent action between the same parties.

An order directing the defendant to re-convey the land is not an appropriate part of the remedy to be given upon an information of intrusion.

Semble, that letters-patent for public lands situated within the railway-belt in British Columbia should issue under the Great Seal of Canada, and not under the Great Seal of British Columbia.

Richards, Q.C., *Pooley*, Q.C., and *Helmcken* for the Crown.

Bodwell, Q.C., and *Hunter* for the defendant.

THE QUEEN EX REL. ATTORNEY-GENERAL OF CANADA *v.* DEMERS.

Federal and provincial rights—Title to lands in railway-belt in British Columbia—Unsurveyed lands held under pre-emption record at time of grant of railway lands coming into operation—British Columbia Land Acts of 1875 and 1879—Terms of Union, section 11—Construction.

Held, (1) Lands that were held under pre-emption right, or Crown grant, at the time the statutory conveyance of the railway belt by the Province of British Columbia to the Dominion of Canada took effect are exempt from the operation of such statutory conveyance, and upon such pre-emption right being abandoned or cancelled all lands held thereunder become the property of the Crown in right of the Province, and not in right of the Dominion.

(2) Unsurveyed lands recorded under the British Columbia Land Acts of 1875 and 1879 are lands held under "pre-emption right" within the meaning of the 11th section of the Terms of Union between the Province of British Columbia and the Dominion of Canada. (See Statutes of Canada, 1872, xcvii.)

Richards, Q.C., and *Helmcken* for the Crown.

Attorney-General of British Columbia and *A. G. Smith* for the defendants.

[March 20.

MAGEE ET AL. *v.* THE QUEEN.

Rideau Canal—7 Vict. (Prov. Can.), c. 11; 9 Vict. (Prov. Can.), c. 42—Conditional gift—Expropriation—Acquiescence—Forfeiture for breach of condition subsequent—Remedy against the Crown for unauthorized use of land—Abandonment by Crown—Reverter—Solicitor and client—Privileged communication—Evidence.

The Act 9 Vict., c. 42, was passed with the object of removing doubts as to the application of section 29 of the Act 7 Vict., c. 11, to certain lands set out and expropriated from one S. at Bytown. By the first section of the first-mentioned Act it was enacted that the proviso contained in the 29th section of the Ordnance Vesting Act should be construed to apply to all the lands at Bytown set out and taken from S. under the provisions of the Rideau Canal Act, except

"(1) So much thereof as was actually occupied as the site of the Rideau Canal, as originally excavated at the Sapper's Bridge, and of the basin and by-wash, as they stood at the passing of the Ordnance Vesting Act; and excepting also

"(2) A tract of two hundred feet in breadth on each side of the said canal,

the portion of the said land so excepted having been freely granted by the said Nicholas Sparks to the late Colonel By, of the Royal Engineers, for the purposes of the canal; and excepting also

"(3) A tract of sixty feet round the said basin and bywash . . . which was then freely granted by the said Nicholas Sparks to the Principal Officers of Ordnance for the purposes of the said canal, provided that no buildings should be erected thereon."

The site of the canal, and the two hundred feet which were included within the limits of the land so set out and ascertained, had been given by an instrument, dated 17th November, 1826, under the hand of S. and one B., who was acting for the Crown, by which it was agreed that such portion of the land so freely given as might not be required for His Majesty's service should be restored to S. when the canal was completed. The canal was completed in 1832. Subsequent to the passing of the Act 9 Vict., c. 42, all the lands of S. so set out and ascertained were given up to him, except the portions above described, and deeds in the terms of the Act were exchanged between S. and the Principal Officers of Ordnance in regard to the land so given up and so retained respectively.

Held, (1) that, apart from the question of acquiescence and delay on the part of S. and those claiming under him, the Act 9 Vict., c. 42 and the deeds of surrender so exchanged, were conclusive between the parties so far as the area and boundaries of the lands to be retained and restored respectively are concerned.

(2) That the lands so retained are held by the Crown for the purposes of the canal, and that as to the tract of sixty feet around the basin and bywash there is attached a condition that no buildings are to be erected thereon.

(3) That the proviso that no buildings are to be erected on the said tract of sixty feet does not create a condition subsequent, a breach of which would work a forfeiture and let in the heirs, nor would the use by the Crown of a portion of the lands in question for purposes other than the "purposes of the canal" work such a forfeiture.

(3) The court has no power or authority to restrain the Crown for making any unauthorized use of the land, or to compel the Crown to remove any buildings erected thereon contrary to the terms of the grant.

Semble, that the Crown cannot alien the land or any portion of it, and if it should do so the suppliants would have their action against the grantee. If the Crown should abandon the land or any portion of it, the land or such part of it would revert to the suppliants, and they might enter and possess it

Held, also, that where a solicitor or counsel of one of the parties to a suit has put his name as a witness to a deed between the parties he ceases, in respect to the execution of the instrument, to be clothed with the character of a solicitor or counsel, and is bound to disclose all that passed at the time relating to such execution.

Robson v. *Kemp*, 5 Esp. 52, and *Crawcour* v. *Salter*, L.R. 18 Chy. 34, followed.

McCarthy, Q.C., and *Christie*, Q.C., for the suppliants.

Robinson, Q.C., and *Hogg*, Q.C., for the Crown.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [Feb. 6.

BEATTY *v.* FITZSIMMONS.

Mortgagor and mortgagee—Sale of equity of redemption—Indemnity against mortgage—Implied contract—Rebuttable presumption.

Where A. makes a mortgage upon his land to B. and then conveys the equity of redemption to C., the presumption or implication that C. is to pay off the mortgage or indemnify A. against it arises, not from anything contained in the mortgage or deed, but from the facts, and may be rebutted by parol evidence or otherwise.

The presumption or implication is of a contract.

Waring v. *Ward*, 7 Ves. 332, explained

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

Moss, Q.C., and *Atkinson*, Q.C., for the defendants.

QUICK *v.* CHURCH.

Husband and wife—Action by wife for alienation of husband's affections—Married Women's Property Act.

In an action by a married woman against another woman for alienating the affections of the plaintiff's husband and depriving her of her means of support, the jury found that the plaintiff's husband left her and went to live with the defendant by her procurement, and lived and continued to live in adultery with the defendant by her procurement; and assessed damages to the plaintiff therefor.

Held, that the finding of the jury constituted a good cause of action at the common law; that the difficulty in enforcing it which formerly existed had been removed by the Married Women's Property Act, allowing the wife to sue without joining her husband, and giving her the damages recovered as her separate property; and that the action was therefore maintainable.

Fullerton, Q.C., and *J. A. Macdonald* for the plaintiff.

McCarthy, Q.C., for the defendant.

FAULKNER *v.* FAULKNER.

Contract—Covenant with mother to educate child—Action by child for breach of—Trust—Action by executors of mother—Measure of damages.

The defendants' mother having conveyed her farm to them, they mortgaged it to her in consideration of the conveyance and of $2,500, and covenanted

in the mortgage, *inter alia*, to educate their younger brother. The latter was not a party to the covenant, nor was there anything in the mortgage giving him a right to maintain an action upon it, but there was a stipulation that if the defendants failed to educate him, the mother or her executors might distrain upon them for such sums as might be required from time to time to secure the due performance of the agreement. After the death of the mother, this action was brought by her executors and the younger brother for damages for breach of the covenant.

Held, that there was no trust in favour of the younger brother, and that the action was not maintainable by him.

Held, however, that it was maintainable by the executors to the extent that they might recover such sums as would enable them to perform the covenant to educate their co-plaintfff.

Aylesworth, Q.C., for the plaintiffs.

Elgin Myers for the defendant William Faulkner.

[Feb. 13.

CARROLL *v.* FREEMAN.

Negligence—Permitting child to drive mowing machine—Volunteer—Judge's charge.

The plaintiff, a boy of eight, came upon the defendant's land, where the latter was mowing hay. The defendant permitted plaintiff to sit upon the mower alone and to drive the horses. By reason of one of the wheels striking into a furrow the plaintiff was thrown out of the seat, and, falling upon the knives of the machine, was injured. The trial judge told the jury that if the defendant was not using reasonable care in allowing the plaintiff to be upon the machine, he was guilty of negligence.

Held, a proper direction : and verdict for the plaintiff allowed to stand.

The question whether the plaintiff was a trespasser, or volunteer, or a licensee was not material.

Aylesworth, Q.C., for the plaintiff.

C. J. Holman for the defendant.

Practice.

THE MASTER IN CHAMBERS.] [Feb. 7.

ONTARIO SILVER CO. *v.* TASKER.

Costs—Interpleader—Sheriff's fees and costs—Issue between execution creditors and claimant—Divided success.

Where an interpleader issue, ordered upon the application of a sheriff who had seized certain goods under the direction of the execution creditors, was determined as to part of the goods in favour of the claimant, and as to the remainder in favour of the execution creditors, and no costs to the issue were given to either party to it;

Held, that the execution creditors should pay the sheriff his fees and poundage on the value of the part of the goods they were found entitled to, and his costs of the interpleader application, and of a subsequent application to dispose of the costs, etc.; and that the execution creditors should have an order over against the claimant for one-half of such costs.

R. J. Maclennan for the sheriff.

W. H. P. Clement for the execution creditors.

F. W. Garvin for the claimant.

Chy. Div'l Court.] [Feb 16.

WEBB *v.* SPEARS.

Justice of the peace—Action against—R.S.O., c. 73, s. 12—Setting aside proceedings—Premature application.

In an action against a justice of the peace for false imprisonment and for acting in his office maliciously and without reasonable and probable cause, an application was made before statement of claim to set aside the proceedings under s. 12 of R.S.O., c. 73, on the ground that the conviction of the plaintiff made by the defendant had not been quashed. It appeared, however, that the plaintiff was arrested and imprisoned under a warrant issued by the defendant which, in fact, had no conviction to support it.

Held, not a case within s. 12.

Per ROBERTSON, J.: That the plaintiff had a complete cause of action without setting aside the conviction.

Per MEREDITH, J.: That the application was premature.

Kilmer for the plaintiff.

Russell Snow for the defendant Spears.

IN RE SARNIA OIL COMPANY.

Company—Winding up—Dominion Act—Jurisdiction of Divisional Court—Jurisdiction of Master in Chambers—Notice of appeal—Leave to appeal.

The Divisional Courts are not constituted appellate courts for the purposes of Dominion judicature under the Winding-up Act; and an appeal does not lie to a Divisional Court from an order of a Judge in Chambers in a proceeding under that Act.

The Master in Chambers, or other subordinate judicial officer, has no jurisdiction, except by delegation, to make an order in a proceeding under that Act.

Where a notice of appeal to the Court of Appeal from an order of a judge in such a proceeding has been given, but leave to appeal has not been obtained, it is not necessary to have the notice set aside.

Donovan v. *Haldane*, 14 P.R. 106, distinguished.

Aylesworth, Q.C., for certain creditors, the appellants.

Middleton for the liquidators.

E. R. Cameron for Russell A. Alger and the Buffalo Loan, Trust & Deposit Co.

FERGUSON, J.] [Feb. 25.

VIGEON *v.* NORTHCOTE.

Execution—Stay of—Appeal to Court of Appeal—Rule 804—Manifold judgment—Stay as to part—Attachment of debts.

The defendant was appealing to the Court of Appeal from a manifold judgment of the High Court directing the execution by him of a conveyance, the delivery of documents, etc., and also the payment of a sum for costs of the action. The defendant gave security for the costs of the Court of Appeal and for payment of the costs of the action, but did not execute the conveyance, deposit the documents in court, or otherwise comply with the judgment of the provisions of Rule 804, s-ss. 1, 2, 3.

Held, that upon the perfecting of the security there was a stay of execution amounting to a supersedeas as to the costs of the action by virtue of s-s. 4 of Rule 804, although the defendant had done nothing with respect to the parts of the judgment falling under the other sub-sections; and garnishing proceedings taken for the purpose of collecting such costs were not sustainable.

J. M. Clark for the plaintiff.

J. R. Roaf for the defendant.

Appointments to Office.

HIGH COURT JUDGES (ONTARIO).

County of Bruce.

William Barrett, Esquire, Junior Judge of the County Court of the County of Bruce, in the Province of Ontario; to be Judge of the County Court of the County of Bruce, in the said Province of Ontario, *vice* His Honour Judge Kingsmill, resigned.

William Barrett, Esquire, Judge of the County Court of the County of Bruce, in the Province of Ontario; to be a Local Judge of the High Court of Justice for Ontario.

Alphonse Basil Klein, of the Town of Walkerton, in the Province of Ontario, Esquire, one of Her Majesty's Counsel learned in the Law; to be Junior Judge of the County Court of the County of Bruce, in the Province of Ontario, *vice* His Honour William Barrett, appointed Judge of the said Court.

Alphonse Basil Klein, Esquire, Junior Judge of the County Court of the County of Bruce, in the Province of Ontario; to be a Local Judge of the High Court of Justice for Ontario.

County of Welland.

William Weir Fitzgerald, of the City of London, in the Province of Ontario, Esquire, one of Her Majesty's Counsel learned in the Law; to be Judge of the County Court of the County of Welland, in the Province of Ontario, *vice* His Honour George Baxter, deceased.

William Weir Fitzgerald, Esquire, Judge of the County Court of the County of Welland, in the Province of Ontario; to be Local Judge of the High Court of Justice for Ontario.

COUNTY COURT JUDGES (P.E.I.).

Prince County.

Neil McLeod, of the City of Charlottetown, in the Province of Prince Edward Island, Esquire, one of Her Majesty's Counsel learned in the Law; to be a Judge of the County Court of "Prince County," in the Province of Prince Edward Island, *vice* His Honour Thomas Kelly, deceased.

LOCAL MASTERS.

County of Haldimand.

Duncan McMillan, of the Town of Cayuga, in the County of Haldimand, Esquire, Judge of the County Court of the said County of Haldimand; to be Local Master of the Supreme Court of Judicature for Ontario, in and for the said County of Haldimand.

CORONERS.

United Counties of Leeds and Grenville.

John Alexander Jones, of the Village of Kemptville, in the County of Grenville, Esquire, M.D.; to be an Associate-Coroner within and for the United Counties of Leeds and Grenville, in the room and stead of Robert Lessley, Esquire, deceased.

County of York.

Joseph Henry Wesley, of the Village of Keswick, in the County of York, Esquire, M.D.; to be an Associate-Coroner within and for the said County of York.

DIVISION COURT BAILIFFS.

County of Lanark.

Patrick J. Lee, of the Town of Perth, in the County of Lanark; to be a Bailiff of the First Division Court of the said County of Lanark.

District of Parry Sound.

Joseph Gibson Dixon, of the Village of Rosseau, in the District of Parry Sound, Gentleman; to be Bailiff of the Third Division Court of the said District of Parry Sound, in the room and stead of Arthur Beanes.

County of Perth.

Warren H. Hay, of the Town of Listowel, in the County of Perth; to be Bailiff of the Sixth Division Court of the said County of Perth, in the room and stead of Robert Hay, resigned.

COMMISSIONERS FOR TAKING AFFIDAVITS.

City of Chicago (N.S.).

Robert Gilray, of the City of Chicago, in the State of Illinois, one of the United States of America, Gentleman, Attorney-at-Law; to be a Commissioner for taking affidavits within the said City of Chicago, and not elsewhere, for use in the Courts of Ontario.

City of Edinburgh (Scotland).

Andrew Newlands, of No. 30 Hanover street, Edinburgh, Scotland, Solicitor; to be a Commissioner for taking affidavits within and for the City of Edinburgh, for use in the Courts of Ontario.

Flotsam and Jetsam.

NOTES ON THE STATUTES.

(For the benefit of the students of the Law School.)

The Mechanics' Lien Act.

Its provisions are devised on the plan of Mr. Sprat;
The mechanics get the *lean*, and the lawyers get the fat.

The Married Women's Property Act.

In order to enable married women to contract,
They at length received the power by a legislative Act;
But whene'er the courts *construe* it, with one accord they say:
"Tho' *femmes couvertes* contract, we'll take care they never pay."

The Quieting Titles Act.

When the fee of your client's in a feverish state,
With blots running o'er it in horrible riot,
Take time by the forelock ere it is too late,
And petition the court his title to quiet.

IN a recent issue of the Chicago *Tribune* appears the following: "Experienced lawyer takes cases, $20; women favoured; damage suits on spec.; success guaranteed. For interview address K.K. 131, *Tribune*." We give him the benefit of a free advertisement in this journal. The "experienced lawyer" looks like the agent of our friends in Belleville whom we honoured with a notice a few months ago, and who are selling tickets for the World's Fair; but, if so, his advertisement does not yet equal the circus poster issued by his principals.

AMONG the Asiatics studying at Oxford is an Afghan named Fida Mohammed Khan. He is the only Afghan in England, and intends to become a barrister before returning to his country. The Ameer takes an interest in Mr. Fida Mohammed Khan, and wishes, it is said, to secure his services on the completion of his studies in Europe. This is the first instance on record of an Afghan being called to the English Bar.—*Law Notes.*

A CLEVER and prolific legal author of the city of New York says: "Do you know that I once had an office boy who on a certain occasion, when an unoffending law publisher sent around a new book to my office for examination and for my possible purchase, scornfully rejected it, saying: 'When we want any law books in this office, we've got a man here that writes 'em. Get out!'" —*Albany Law Journal.*

JUDGE BIDDLE, the wit of Court-house Row, had before the bar of justice a woman who wept most bitterly over her misfortunes. Her sobbing shook the court-room, and her tears, of no mean size, coursed in a great stream down her cheeks to the floor. While she wept thus profusely, a prominent lawyer chanced in, who, seeing the prisoner and hearing her cries, asked of the bench, "What's the matter with her?" "I'm sure I don't know," was the judge's reply. "Apparently she's waiting to be bailed out."—*Ex.*

It seems a great pity that the Columbian Exposition at Chicago is not to be open after the first of May! It would seem difficult to have it ready to open by that time, to say nothing of closing. But such seems to be the edict of Congress, if one may credit the phraseology of the Act which is published in the newspapers. "The exposition shall be open to visitors not later than the first day of May." Such is the phraseology attributed to Congress. It is highly probable that this was intended as a provision for opening rather than for closing, but it exactly defeats that intention, and if language can be made clear it explicitly provides that the show shall not be open after May 1! These law-makers are very trying.—*Albany Law Journal.*

IN the *Irish Law Times* appears the following announcement of a birth: "At Limerick, the wife of W. F. ——, solicitor, of a son, who only survived his birth by a few minutes." Now, what we want to know is, who died? Our first idea was that the solicitor died a few minutes after the birth of his son. Our next was that it was the wife who had unfortunately become deceased. Then, thinking that perhaps the son also had died, or that *he only* had died, we endeavoured to ascertain who "survived his birth," and whose birth. Manifestly the son's, for even a Division Court would take judicial notice that it would be practically impossible for a son to survive his father's birth by only a few minutes. Then, assuming for the sake of argument that it was the son's birth, who survived, the father, the wife, or the son? We become more hopelessly entangled as we go on, but we still have an impression that some one must have survived to tell the tale; but *who di'd* we wot not.