Vol. III. JUNE—JULY. No. 6

The BARRISTER

CONTENTS.

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19	.61	7.32	32	.74	8.88	45	1.30	15.60
20	.62	7.44	33	.75	9.00	46	1.40	16.80
21	.63	7.56	34	.76	9.12	47	1.60	19.20
22	.64	7.68	35	.78	9.36	48	1.90	22.80
23	.65	7.80	36	.80	9.60	49	2.20	26.40
24	.66	7.92	37	.82	9.84	50	2.50	30.00
25	.67	8.04	38	.84	10.08	51	2.60	31.20
26	.68	8.16	39	.86	10.32	52	2.70	32.40
27	.69	8.28	40	.90	10.80	53	2.85	34.20
28	.70	8.40	41	.95	11.40	54	3.00	36.00
29	.71	8.52	42	1.00	12.00			
30	.72	8.64	43	1.10	13.20			

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The Barrister.

VOL. III. TORONTO, JUNE-JULY, 1897. No. 6.

With the present number this magazine passes into new hands and under new management. THE BARRISTER is now the property of R. R. Cromarty, 2 Toronto St., Toronto, manager of the *Canada Law Journal*, and all outstanding accounts are payable to him. It is intended that THE BARRISTER shall in future devote special attention to county court decisions not now reported, and the profession in all the provinces will confer a favor by sending us notes of any important local court judgments in their vicinity involving questions of general interest.

London Weekly Court Sittings will be held on September 10th, 16th, 23rd and 30th.

The Ottawa Weekly Court Sittings for September are fixed for the 9th, 16th, 24th and 30th.

The date of the Cornwall, Ontario, jury sittings has been changed from December 14th to December 7th.

The Commercial Law League of America hold their annual convention at Put-in-Bay, Lake Erie, on July 27, 28, 29, 30.

It is expected that the new rules of the Ontario Supreme Court will be ready for distribution in August, and will take effect 1st September.

Many names are mentioned for the Court of Appeal additional Judgeship made necessary by recent legislation. They cannot all have it and it seems that no one will be appointed until after the next session of the Dominion House for want of the necessary appropriation.

The regular sittings of the Court of Appeal for Ontario appointed for September 7th have been adjourned to September 14th, but this will not affect the dates for setting down appeals and filing Reasons against appeal, which are respectively the 3rd and 6th of September.

The September Sittings of the Divisional Court of the High Court of Justice at Toronto will commence on Tuesday, September 7th, and continue for two weeks (Saturdays and holidays excepted). Sir William Meredith, C.J., C.P., Mr. Justice Rose and Mr. Justice MacMahon are assigned for the first week and Chief Justice Armour, Mr. Justice Falconbridge and Mr. Justice Street for the second.

By Act of Parliament assented to on 29th June (Chap. 34, Sec. 2), it is provided that Judges of the

Supreme Court of Judicature for Ontario shall reside at the City of Toronto or within five miles thereof, but leave to reside elsewhere in the Province for any specified time may be granted from time to time by order of the Governor-in-Council.

The annual convention of the Canadian Bar Association is to be held on August 31st either at Toronto or Halifax, of which due notice will be given to the profession throughout Canada. It is hoped that there will be a large attendance and that all who can will keep the date open from other engagements. Excellent arrangements will be made for greatly reduced fares. Amongst the attractions offered it is expected that the Rt. Hon. Sir Henry Strong, Chief Justice of Canada, will read a paper, and that addresses will be given by Sir Charles Hibbert Tupper, Q.C.; Dr. Weldon, Q.C., and by Ontario's veteran judge, Sir John Hawkins Hagarty.

The Canadian Bar Association might well copy a recent amendment to the By-laws of the New York City Bar Association which was recently adopted as follows:

"The executive committee shall from time to time appoint a member of the association to be the attorney of the grievance committee, whose duty it shall be to investigate, when his attention shall be called thereto, any matter touching the administration of justice, upon which the committee is by this by-law authorized to act, and all cases (1) of misconduct of a member of the association in his relation to the association or in his profession, (2) of alleged fraud or unprofessional conduct on the part of any member of the bar of this state ***, (3) of persons pretending to be attorneys or counsellors at law, but not regularly licensed and admitted to practice."

The latter evil is one for the suppression of which further legislation should be applied for not only in the interests of solicitors but for the protection of the public.

ONTARIO APPEALS.

Attention is called to the restriction on Ontario Appeals to the Supreme Court of Canada made by the new Act (60-61 Vic. C. 34 Dom.) as follows:

1. No appeal shall lie to the Supreme Court of Canada from any judgment of the Court of Appeal for Ontario except in the following cases:

(*a*) Where the title to real estate or some interest therein is in question.

(*b*) Where the validity of a patent is affected.

(*c*) Where the matter in controversy in the Appeal exceeds the sum or value of one thousand dollars, exclusive of costs.

(*d*) Where the matter in question relates to the taking of an annual or other rent, customary or other duty or fee, or a like demand of a general or public nature affecting future rights.

(*e*) In other cases where the special leave of the Court of appeal of Ontario or of the Supreme Court of Canada to appeal to such last mentioned court is granted.

LAW SCHOOLS.

Henry Wade Rogers, in an address before the Illinois State Bar Association, on July 1st, gave some interesting information regarding the development of law schools in the United States:

There were no law schools in the United States until the Litchfield School was established in Connecticut in 1784, and none other was established until 1817, when the Harvard Law School opened its doors. The early lawyers of the country got their training in the office, and they naturally held to the

opinion that the method they pursued was the one best calculated to prepare men for the bar. It is only in recent times that the American lawyer has been able to emancipate himself from this conviction. The American Bar Association is now on record in favor of the schools, and the astonishing increase in the number of students studying in law schools at the present time as compared with a few years ago, shows the change of conviction which has occurred. The number enrolled in law schools in 1895-96 was 9,607, while in 1889-90 it was only 4,518. The action of the New York Court of Appeals is significant in this connection. Until 1894, that court had made office work compulsory on all law students. It is now optional and the time allowances made to those who have studied in law schools favors them as against those who have studied in offices. The number of the students coming to the bar in New York by way of the law schools is greatly in excess of those coming through the law offices—793 out of 1,050 received the training of the law schools, and the superiority of the training of the law school men is shown by the fact that only fourteen per cent. of the number failed to pass the examination for admission, while the number of those who had not been at a law school and who failed was twenty-six per cent. The fact has gradually come to be recognized that while experience in an office is valuable, the student must have the training and the discipline which comes from systematic study in a law school. "The time has gone by," said Chief Justice Waite, "when an eminent lawyer, in full practice, can take a class of students into his office and become their teacher. Once that was practicable, but now it is not The consequence is that law schools are a necessity."

They are a necessity in the same way that a medical school is a necessity. And there is a growing conviction that is gaining in strength each year that it would be wiser to require those preparing for the law to pursue their studies in a law school, as those preparing for medicine are obliged to study in a school of medicine.

JUDICIAL ROBES.

It is difficult for Canadians whose judiciary and bar have always been gowned, to appreciate fully the extent of antipathy with which the assumption of a gown by a judge is regarded by a large portion of the profession in the neighboring republic. It is now proposed that the Supreme Court of Illinois shall be robed in sombre black, and our contemporary, *The American Lawyer*, waxes indignant at the suggestion and says:

"The rapid strides of civilization have done away with many useful customs, but there never was any use for a gown to be worn by a judge of any court. The uncivilized man might be excused for bedecking his body with ram's horns, buffalo tails, etc., but for a judiciary of an enlightened country, in this century, to be wrapped up in a gown—never! The assumption of the gown by the judges is an arrogant cloth of preposterous foreign airs, bordering on royalty itself; that, too, by men who are but the servants of the people, to whom such a display of an obnoxious custom is an inexcusable impertinence, fostered by men who know such display to be an evasion by a people who know no caste, nobility or flunkyism. With as much reason, wrap a horse blanket around the country peace justice, when he sits in judgment on a $2 claim, as to robe the judges of our courts in black gowns during their sittings in court."

Had robes of scarlet and ermine such as our own Supreme Court are adorned with, been proposed, it is probable that the English language would not have been complete enough to express our contemporary's wrath.

COMPANIES AND THEIR CONTRACTS.

The conception of a company as an abstract legal entity independent of the individuals who compose it is a truth not easy to grasp. It eluded even the trained intelligence of the Court of Appeal in *Salomon's Case*, but it stands out in clear relief in the speeches of the law lords. It is, no doubt, as Lord Justice Lindley lately said in *In re The London Electrical Institute*, very far reaching in its effect, but would not the effect of the original decision, if it had stood unreversed, been even more far reaching and revolutionary? It would hav eundermined the foundations of thousands of private companies now carrying on a prosperous business, and gone far to wreck company enterprise generally. The point at which the attack was delivered in *In re The London Electrical Institute*—a one-man company very similar to Salomon & Co.—was the vendor's debentures. Here, it was said, is a man selling his business to a company which is his puppet, and taking payment in first mortgage debentures overreaching the whole assets of the company. The company begins trading under his auspices, runs up debts, becomes waterlogged, and goes into liquidation, and then the vendor seizes all the assets, resumes possession of his late property, and leaves the general creditors, unpaid, to lament their misplaced confidence; and what adds to the grievance, it was urged, is that creditors cannot even get a winding-up order and an investigation because there are no assets to administer. The answer to all this specious special pleading is to be found in *Salomon's Case*, and the recent case of *In re Wragg*, and it is this: When once a company is recognized, as it now is, as an independent legal *persona*, it must be credited with intelligence and the contractual capacity of an ordinary person who is *sui juris*; and if, being so, it enters into an agreement to buy property and to pay for it in debentures or in fully-paid shares, the Court cannot go behind the agreement and weigh the consideration in its own scales, so long, that is, as the company honestly regards the consideration given as fairly representing the value of what it is buying. This is only another way of saying that the Court will not make contracts for persons. It would be exceedingly mischievous if it did. Promoters, it must be remembered, who form a company to buy their property, are bound, as Lord Cairns said, to protect the company they create by furnishing it with an independent and competent board of directors. If they fail to do so, the company may rescind the contract of purchase. Persons dealing with the company know, or can know, what debentures have been issued, what is the consideration other than cash which the company has given for the shares issued as fully paid; and if they see reason to distrust the solvency of the company, they should refuse to deal with it except for cash. As a matter of fact, they seldom, if ever, trouble themselves to inquire, but take their chance, and their grievance accordingly is not one entitled to much sympathy.—*Law Journal.*

CONTRIBUTORY NEGLIGENCE.

A definition frequently given of the term "negligence" is that stated by Baron Alderson in Blyth v. Birmingham, 11 Ex. 784, as follows: "Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do." Later definitions, however, of which

there have been many, have attempted to incorporate more clearly the fact that the omission or act relied upon as constituting negligence in law must also be a breach of some legal duty. An exact definition of legal negligence is perhaps as far from being reached as one of legal fraud, but one of the more satisfactory of those more recently advanced is, that juridical negligence is the inadvertent omission to do something which it would be the legal duty of a prudent and reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, to do, or the inadvertently doing something which it would be the legal duty of a prudent and reasonable man not to do; such act or omission being on the part of a responsible human being, and being such as in ordinary natural sequence immediately results in the injury complained of.

In considering the question of contributory negligence it is important that the relative liabilities in respect of the primary negligence should be kept always in mind. If what is relied upon as constituting the primary negligence fails in some essential particular, it then becomes unnecessary to consider to what extent a plaintiff has co-operated by his own neglect to bring about the accident. In Noverre v. City of Toronto, 27 O. R. 651, Ferguson, J., held, the plaintiff not entitled to recover for personal injuries while proceeding upon an open track or way belonging to defendant corporation not opened for public travel, as the plaintiff knew, which had become obstructed by the dumping of refuse thereupon. There being no invitation, inducement or allurement held out by the defendants to the public or to anyone to use the track mentioned, they were under no legal duty to keep it free from obstruction. Another recent case illustrative of the above is Spence v. Grand Trunk, 27 O. R. 303. The plaintiff in attempting to post a letter on a moving train tripped over a stake in the depot yard and was injured. The judges of the Queen's Bench Division affirmed a non-suit entered by Meredith, C. J., at the trial, upon the ground that the plaintiff did not go upon the premises upon the express or implied invitation of the defendants and was in the position of a bare licensee and there was in consequence no obligation cast on the defendants to guard the bare licensee from danger. The law as to the duty owed by occupiers of premises to a bare licensee as laid down in Sullivan v. Waters, 14 Jr. C. L. R. 460 and 475 is quoted with approval in Spence v. Grand Trunk. "A mere license given by the owner to enter and use premises which the licensee has full opportunity of inspecting, which contain no concealed cause of mischief, and in which any existing source of danger is apparent, creates no obligation in the owner to guard the licensee against danger." Were there any question as to the source of danger being apparent and any evidence that it was not, it is submitted that such question must be given to the jury for decision. That it involves a pure question of fact would seem to be much more apparent than where contributory negligence is the issue. The latter is said to resolve itself into two necessary elements; (a) "Did the plaintiff exercise ordinary care under the circumstances?" (b) "Was there a proximate connection between his act or omission and the hurt he complains of?" (Beach on contributory negligence, 2nd Ed. 8). The leading principles governing the law of contributory negligence are succinctly stated by Lord Penzance in Radley v. London & North Western, 1 App. Cas. 754. "The first proposition is a general one to this effect, that the plaintiff in an action for negligence cannot succeed if it is found by the jury that he has himself been guilty of any negligence or

want of ordinary care which contributed to cause the accident. But there is another proposition equally well established and it is a qualification upon the first—namely, that though the plaintiff may have been guilty of negligence and although that negligence may in fact have contributed to the accident, yet if the defendant could in the result, by the exercise of ordinary care and diligence have avoided the mischief which happened, the plaintiff's negligence will not excuse him."

It appears to be now well established that contributory negligence is absolutely and essentially a question for the jury, not only where there is conflict on the facts in proof, but where there is doubt or conflict as to the proper inference to be deduced from the facts in proof. (Wakelin v. London & South Western, 12 App. Cas. 41.). As was said by Brett, M.R., in that case in the Court below, whose decision, reported as a foot note to Smith v. South Eastern, 1896—1 Q.B., 189, was affirmed on appeal; if the plaintiff shows what he has done then it is for the jury to say whether in what he has done or what he has omitted to do, he was under the circumstances guilty of negligence. The last named case also confirms that proposition of law and it may be concluded that a case must now present very rare and exceptional circumstances to justify its withdrawal from the jury on the ground that the facts are equally consistent with the plaintiff's own want of care as to the proved negligence of the defendant. That there *may* be such a case is assumed by the House of Lords in the Wakelin decision but an example is not vouchsafed. The Supreme Court of Canada decided Toronto Ry. v. Gosnell (24 S.C.R., 582) before the decision on Smith v. South Eastern above mentioned and there took occasion to say referring to the public use of a street and the relative rights and duties of the street railway and the public that the Court is to be "careful not to fetter the public right by rules of law as to what specifically constitutes reasonable care or the want of it and the matter is essentially one for the jury." See also Ferguson v. Southwold 27, O.R. 66, and Morrow v. C.P.R. 21 Ont. App. 149.

It may be observed that a plaintiff is not contributarily negligent if he uses *ordinary* care and if placed suddenly in a position of danger may do what seems to him best under the circumstances to avoid injury. A recent example of this is to be found in Canton v. Simpson (March 1896) 2 N. Y. App. Div. 561. Whether the plaintiff could have escaped by going in another direction and whether the latter course would have been the more prudent, was entirely immaterial, and it was held that one who under such circumstances "exercises the best judgment of which he is capable cannot be said to have been guilty of negligence or want of care."

W. J. TREMEEAR.

"Did prisoner admit his guilt?"

"Practically. He sent for the most distinguished criminal lawyer in town."—*Chicago Journal.*

WHAT IS AN ACCIDENT?

The Jefferson Circuit Court decided against Sallie Omberg, who sued the United States Mutual Association for a $5,000 accident policy on the life of her husband.

It developed that the man died as the result of a mosquito bite, and the lower court held that this was not an "accident" in the meaning used by insurance companies.

The Court of Appeals has, in an opinion by Judge Hazelrigg, reversed the lower court and gives peremptory instructions for a judgment for Mrs. Omberg for $5,000, holding that the mosquito bite was an accident.—*Frankfort (Ky.) Journal.*

NOTES OF CASES, ONTARIO.

C. A.] [JUNE 25.

IRWIN v. TORONTO GENERAL TRUSTS CO.

Administration — Creditor's Claim — Compromise.

Appeal by Richard Irwin, plaintiff, from judgment of Rose, J., at the trial at Toronto, dismissing the action, which was brought to restrain the defendants from carrying out an agreement by which the defendant company, the administrators of the estate of William Irwin, deceased, agreed to convey to defendant Martha Irwin, his widow, a house and lot, being part of the estate of the deceased, in lieu of dower, and in settlement of a claim advanced by her as a creditor of the estate. The plaintiff is the principal legatee, and devisee under the will. He contended that the administrators' sole power was to sell the land, and give the widow a sum in gross in lieu of dower or the income of a part, and that they had no power to compromise a claim against the estate.

Per Ferguson, J., delivering the judgment of the Court:—The dower or right of dower is an estate in the land, and cannot be treated or dealt with as an incumbrance on the land. The widow has not made any election under the provisions of sub-sec. 2 of sec. 4 of R.S.O., ch. 108. She simply claims her dower, though she is willing to take the conveyance of one of the lots in fee in satisfaction of dower out of the whole of the lands, and in satisfaction of an alleged claim against the estate. This is the conveyance, or proposed conveyance, objected to by the plaintiff. This right of dower did not devolve upon the defendants at all; it was no part of the estate to be administered by them. They could not properly, without the consent of all who are interested, pay out moneys of the estate to purchase this right of dower, any more than they could properly purchase with such moneys a separate parcel of land. It is also clear that the defendants have no power or authority to convey away one of the parcels of land as the price or purchase money for this dower or right of dower. The defendants have not the power to compromise the other claim as creditor of the widow, they being administrators and not executors; R.S.O., ch. 110, sec. 31. The plaintiff should on the merits succeed in both his contentions; but the action should not have been brought. It is not the proper course for a party who is dissatisfied with a matter in the course of an administration of an estate to bring an action, and claim an injunction while there is a summary method of obtaining an order for administration by the Court in all proper cases. Appeal allowed, and judgment below reversed without costs here or below to either party; this, however, not to interfere with any right these defendants may have to recoup themselves for costs out of the estate in their hands. If either party desires it, there may be an order for administration by the Court, the necessary amendment being made. If neither party elects to have administration by the Court within one month the action will be dismissed without costs.

G. G. S. Lindsey for appellant.

T. W. Howard for defendant company.

Skeans for defendant Martha Irwin.

* * *

TRIAL COURT, ROBERTSON, J.] [JUNE 23.

BAIN v. I. O. F.

Insurance—Total Disability.

Action tried without a jury at Sarnia. Action by Robert A. Bain, an engineer, residing in the township of Enniskillen, upon an endowment certificate issued by defendants, whereby they contracted to pay plaintiff $500 in the event of his

becoming disabled. On 13th March, 1893, plaintiff lost his left hand, and a part of his left arm. Held, that his disability is not, having regard to his occupation and other circumstances, total and permanent. Action dismissed with costs.

A. Weir (Sarnia) and W. E. Fitzgerald (Watford) for plaintiff.

J. A. McGillivray, Q. C., for defendants.

TRIAL COURT, ROSE, J.] [JUNE 23.

* * *

WILSON v. LYMAN.

Trade Mark—Infringement.

Action tried without a jury at Hamilton. Action by Archdale Wilson & Co., wholesale druggists of Hamilton, against Lyman Bros. & Co. (Limited), wholesale druggists of Toronto, for an injunction restraining defendants from imitating and infringing upon the plaintiffs' trade marks, labels, envelopes, and boxes, and from imitating and infringing upon the pads manufactured by plaintiffs, and sold under a registered trade mark consisting of the words, "Wilson's Fly Poison Pads." The defendants describe their goods as "The Lyman Bros. & Co. (Limited) Fly Paper Poison." The word "pad" only appears upon the envelopes as printed at the top, as follows: Three pads in a package, five cents." "Six pads in a package, ten cents." The plaintiffs' contention was that the defendants should be restrained from using the word "pad" in any form upon the package. The defendants' contention was that unless the court had the right to restrain the defendants from putting up fly paper in the form of pads, there was no right to restrain them from stating on the envelopes that there were pads inside. Held, that the plaintiffs were not entitled to have the defendants restrained from using the word "pads" as they do upon their envelopes. If the defendants will make such changes in their envelopes, ornamentation of boxes, and advertisements, as will remove the probability of any misleading by them, there will be no judgment or order, except that each party shall pay their own costs. If the parties cannot agree upon the changes to be made, they may apply, and they may also apply for any other purpose with reference to the judgment.

S. H. Blake, Q.C., and J. J. Scott (Hamilton) for plaintiffs.

D. E. Thomson, Q. C., and D. Henderson for defendants.

* * *

DIVISIONAL COURT.] [JUNE 17.

DALE v. PEOPLES LOAN CO.

Title to Goods—Husband and Wife—Possession.

Appeal from judgment of Armour, C. J., in favor of plaintiff (claimant) in an interpleader issue directed upon the application of a sheriff who seized goods (certain furniture and animals) under the execution of the defendants (execution creditors) against one Thomas W. Dale, which were claimed by the wife of the execution debtor, by gift and purchase from her husband. The appeal dismissed with costs, the court following Ramsay v. Margrett (1894), 2 Q.B., 18, and holding that the purchase of the furniture by the wife from the husband did not come within the Bills of Sale Act, both the property and possession passing by the purchase. As to the animals the court held that there was a good gift, completed by delivery, by the husband to the wife, as a wedding present, of the brood mare, the progeny of which were in question.

Aylesworth, Q.C., for creditors.

W. Nesbitt for claimant.

* * *

CHAMBERS CARTWRIGHT, O. R.] [JUNE 29.

WEBSTER v. DALE.

Solicitor—Lien—Change of Solicitor.

Upon a change of solicitors for the plaintiff pending action and the

subsequent recovery of the parts of the action by the second solicitor, the first solicitor is entitled, if his costs have not been paid, to an order requiring an account and bill of costs and taxation thereof as against the second solicitor for the purpose of enforcing his lien for costs.

L. F. Heyd for first solicitor.

L. V. McBrady for second solicitor.

* * *

CHAMBERS] JUNE 1.
Moss, J. A.]

WELSBACH v. STANNARD.

Appeal—Security for Costs.

Welsbach Incandescent Gaslight Co. v. Stannard; Welsbach Co. v. Mair; Welsbach Co. v. Christie. Motion by plaintiffs for security for costs of defendants' appeals to Court of Appeal from judgment of Boyd, C., in favor of plaintiffs, upon the ground of the defendants' inability to pay the plaintiffs' costs, in case the appeal should prove unsuccessful. Held, that there being no reason to suppose that defendants are not intending to prosecute their appeal in good faith, and as they are conforming to the injunction obtained by the plaintiffs at an early stage, and as their ability to answer for costs has not been put to the test of an execution; and the proof of their alleged inability rests in a great measure upon statements founded upon information and belief. It is not a case for ordering security. McCormick v. Temperance, Etc., Co., 17 P.R., 175; Confederation Life Association v. Kinnear, referred to in that case; Donnelly v. Ames, 17 P.R., 106; and McDougall v. Copestoke, 34 Sol. J., 347, referred to. Application refused. Costs in the appeal.

R. McKay for the motion.

* * *

CHAMBERS,] [JUNE 26.
Moss, J. A.]

DALE v. WESTON LODGE, I.O.O.F.

Costs—Scale of.

The action was tried before Meredith, J., without a jury, and judgment given for the plaintiff, the amount of which was reduced on appeal to the Court of Appeal, the result being that defendants were adjudged liable to pay to plaintiff $40 for funeral benefits, and also to pay plaintiff her costs of the action, to be taxed. Upon taxation the officer ruled that plaintiff was only entitled to costs on the County Court scale. Plaintiff appealed on the ground that the taxing officer had no jurisdiction to determine the scale, for it was not a case in which judgment was being entered without trial or the decision of a court or judge or order as to costs, and so rule 1,174 did not apply. Held, that there having been a trial, and the plaintiff having thereat been awarded her costs of the action, rule 1,174 gives no jurisdiction to the taxing officer to deal with the scale of costs. Brown v. Hose, 14 P.R., 3, distinguished. Andrews v. City of London, 12 P.R., 44, applied and followed. McGarvey v. Town of Strathroy, 11 P.R., at p. 59, referred to. Appeal allowed without costs.

Masten for plaintiff.

F. C. Cooke for defendants.

* * *

RE CANADIAN MINERAL WOOL CO.

Falconbridge, J.,] [July 20.

Company—Winding-up—Costs.

Petition of Edward Major, a creditor, for an order under the Dominion statute for the winding up of the company. The vice-president of the company swore that it was hopelessly insolvent, and was willing that the order should go. Counsel appeared on behalf of the company objected that the costs of a former unsuccessful application have not been paid, and so this motion ought not to be heard. Held, that rule 1,243 was applicable, and, following Campbell v. Elgie, 16 P. R., 440, that there was no reason for staying

proceedings. Order made as prayed.

Starr for the petitioner.

J. R. Roaf for the company.

R. L. Johnston for vice-president.

* * *

Re GORDON v. PICKERING.

DARTNELL, Co. J.] [June 8th.
Co. Ontario.]

By-Law—Scrutiny—Power of judge on —55 Vict. cap. 42, sec. 323.

A by-law to repeal a Local Option By-Law was defeated by a majority of fifty-eight votes on application to the County Judge for scrutiny under the Consolidated Municipal Act 1892, sections 323 et seq. Held

That farmers' sons are entitled to vote on a Local Option By-Law, and the proper voters are those entitled to vote on municipal elections. Croft v. Peterborough, 17 A.R. 21 followed.

That the judge on such a scrutiny has power to enquire into the qualifications of voters, and that a number in excess of the majority against the by-law having been disallowed, the voting on by-law was declared invalid.

DuVernet for the petitioner.

Farewell, Q.C., for the Township of Pickering.

Dow for the Pickering Temperance Alliance.

NEW BRUNSWICK.

COUNTY COURT.] JUNE 25.
In Chambers]
FORBES, J.]

MILLER v. FLEWWELLING.

City Court of Saint John—Misnomer in Summons—Review—Counsel Fee.

The plaintiff was correctly named in the particulars of the cause of action but misnamed in the summons by the deputy clerk of the court. At the trial the defendant did not appear and judgment was given for the plaintiff. On review, held that the judgment should be set aside, but without counsel fee to the appellant as his reasonable course was to have appeared and have taken the objection at the trial.

J. R. Dunn for the plaintiff.

G. H. V. Belyea for the defendant.

UNITED STATES.

YOUMANS v. SMITH.

New York,] [June, 1897.

Counsel—privilege—defamation suit.

This action was commenced in May, 1890, by William Youmans, a practicing attorney, residing in the village of Delhi, against the defendants, who published a newspaper and carried on a printing business at the same place, to recover damages for the publication of certain printed matter alleged to be a libel upon the plaintiff. The defendants, by their answer, admitted that they printed the matter in question, but denied that they published it, and alleged that whatever they did was privileged. On the trial it appeared that, in November, 1888, one Richard Wigham had presented a petition to the General Term of the Supreme Court, alleging that the said William Youmans had "for a long time been guilty of disreputable and unprofessional conduct, and corrupt and venal acts and practices," and asking that he be deprived of his right to practice law. Thirty-five specifications of assault and battery, perjury, defamation, malicious prosecution, dishonesty, oppression of clients and others, and the use of vile epithets towards neighbors, etc., etc., were set forth and supported by the affidavits of eighteen witnesses. Mr. Youmans filed a denial, supported by the affidavits of fifty-four witnesses, and the court sent the matter to a referee to take the proofs and report the same at a later term. In preparing for the hearing before the referee, Calvin H. Bell, the attorney for the petitioner, prepared a list of "questions to be asked" during the investigation, and taking it to the printing office of the defendants, in their absence, and without their knowledge, employed the foreman

in charge to print fifty copies of the same, stating that "he wanted them printed for the purpose of handing a copy to each witness, to be used in the disbarment suit." The copies were printed accordingly and delivered to Mr. Bell, who paid for them, and neither of the defendants knew anything about the matter until afterwards. The questions which were not published either in the newspaper or otherwise, as herein stated, were as follows:

"QUESTIONS TO BE ASKED:

"From the speech of people, what is Mr. Youman's general character in the community in which he lives? Good or bad?

"What is his general character for truth and veracity? Good or bad?

"What is his general character in respect to bearing false witness? Good or bad?

"What is his general character in respect to insulting, traducing and villifying people? Good or bad?

"What is his general character in respect to the promotion of virtuous actions, good principles and good conduct? Good or bad?

"What is his general character in respect to licentious, obscene and vulgar conversation? Good or bad?

"What is his general character in respect to his attacking and doing bodily harm to people? Good or bad?

"Whilst you have known him, what has his influence as a lawyer been on the people where he resides? Good or bad?"

Mr. Bell mailed a copy of the questions to various persons who were subpœnaed by him as witnesses in said proceeding, but, so far as appears made no other use thereof. No evidence was given tending to show express malice on the part of the defendants or either of them. At the close of the evidence, the counsel for the defendants asked the court to direct a verdict in their favor, upon the ground that their action, through their foreman, was privileged; that they never published nor circulated any of the papers, and that the delivery of the copies to Mr. Bell, the attorney in the disbarment proceedings, for use therein, was a privileged delivery. The motion was denied, exception was taken and the case submitted to the jury, who found a verdict in favor of the plaintiff for the sum of $1,000. Upon appeal to the General Term that court affirmed the judgment rendered at the circuit, and the defendants now come here.

VANN, J.—The appellants do not deny that the jury could lawfully find the words in question to be libelous, but they contend that they were not published within the meaning of the law relating to the subject, and that even if published, they were privileged.

An action to recover damages for libel cannot be maintained upon proof simply that the libelous words were composed or were in existence as written or printed matter, without being known to anyone except the author and the victim. Unless communicated to some third person, no damage, either actual or presumed, can result. As said by a learned author, "until the publication the act is not complete in its mischief; before it is dispersed abroad it can produce no present or actual injury, either to the public or the individual, and until then there is a *locus penitentiæ* on the part of those concerned in the composing or writing." (Holt's Law of Libel, 281.)

Printing a libel is regarded as a publication when possession of the printed matter is delivered with the expectation that it will be read by some third person, provided that result actually follows. He who furnishes the means of convenient circulation, knowing, or having reasonable cause to believe, that it is to be used for that purpose, if it is in fact so used, is guilty of aiding

in the publication, and becomes the instrument of the libeler. (Trumbull v. Gibbons, 3 City Hall Rec. 97; Rex v. Burdett, 4 B. & Ald. 95, 243; Rex v. Clerk, 1 Barnard, 304; Baldwin v. Elphinstone, 2 W. Black. Rep. 1037; The King v. Paine, 5 Mod. 105, 107; Bishop's Criminal Law, § 927; Townshend on Slander and Libel, §§ 104, 115; Hall on Libel, 293; 2 Starkie on Slander, 225; Odgers on Libel and Slander, *157; Flood on Libel and Slander, 46; Cooke on the Law of Defamation, 138.)

It is very clear from these authorities that as the defendants, through their agent, printed the libel and delivered the printed copies to the author, knowing that he intended to submit them to various persons to be read, they became liable as publishers from the moment that any third person read the libelous matter, provided the words were not privileged.

The question of privilege is not so easily disposed of, not because the law relating to the subject is unsettled, but because its application to a novel state of facts is somewhat difficult. The law governing the privilege of parties and their counsel, so far as applicable to the case in hand, was well stated by Judge Grover in March v. Ellsworth (50 N.Y. 309. 311), as follows: "A counsel or party conducting judicial proceedings is privileged in respect to words or writings used in the course of such proceedings reflecting injuriously upon others, when such words and writings are material and pertinent to the questions involved; * * * within such limit the protection is complete, irrespective of the motive with which they are used, but such privilege does not extend to matter having no materiality or pertinency to such questions." (Gilbert v. People, 1 Denio, 41; Hastings v. Lusk, 22 Wend. 410; Ring v. Wheeler, 7 Cow. 725.) In applying this principle the courts are liberal, even to the extent of declaring that where matter is put forth by counsel in the course of a judicial proceeding that may possibly be pertinent, they will not so regard it as to deprive its author of his privilege, because the due administration of justice requires that the rights of clients should not be jeopardized by subjecting their legal advisers to the constant fear of suits for libel or slander. (Hastings v. Lusk, *supra*; Warner v. Paine, 2 Sandf. 195, 201; Brook v. Montague, Cro. Jac. 90; Hodson v. Scarlett, 1 B. & A. 232; Missouri Pacific R. Co., 4 L. R. A. 280, note; Cooke's Law of Defamation, 63.) Any other rule would be an impediment to justice, because it would hamper the search for truth, and prevent making inquiries with that freedom and boldness which the welfare of society requires. If counsel, through an excess of zeal to serve their clients, or in order to gratify their own vindictive feelings, go beyond the bounds of reason, and by main force bring into a lawsuit matters so obviously impertinent as not to admit of discussion, and so needlessly defamatory as to warrant the inference of express malice, they lose their privilege and must take the consequences. In other words, if the privilege is abused, protection is withdrawn.

Mr. Bell, the author of the words in question, was the attorney for the petitioner in a proceeding duly instituted in a court of competent jurisdiction for the disbarment of the plaintiff. The matter was pending and soon to be tried before a referee, who had power to compel the attendance of witnesses and to require them to answer under oath such questions as he should deem material. The issue was an unusual one, presenting a broad field of inquiry, and involving the personal and professional character of a member of the bar. It was the duty of Mr. Bell to make adequate preparation for the trial and to anticipate,

as far as he could, what questions the referee might allow to be asked, both on direct and cross-examination, during an investigation, wide in its scope in any event, and which, through liberal rulings of the referee, or the failure to object by counsel, might embrace almost any question reflecting light upon private character. He could draft "questions to be asked" so as to adapt them to the changing phases of such a trial, and submit the list to witnesses for consideration and reflection before they went upon the stand. (Delany v. Jones, 4 Esp. N.P.R. 191; Flood on Libel and Slander, 156; Holt, 184.) While such a course may be open to criticism, there can be no question that he had a strict legal right to do so, provided the questions were confined to such subjects as were, or might become, material during the progress of the trial. As it was reasonable to believe that the attorney proceeded against would be a witness in his own behalf, the usual questions put to impeaching witnesses in relation to character for truth and veracity were clearly material. But Mr. Bell was not compelled to stop there in his preparation of a list of "questions to be asked." He had the right to anticipate that witnesses would be called to sustain the character of Mr. Youmans and to prepare for a thorough cross-examination, which, in a proceeding of this character, would be apt to take a wide range. (Stape v. People, 87 N. Y. 390.) As some of the specifications involved accusations of serious crime, which might be sustained by circumstantial evidence, or by the testimony of witnesses of doubtful credit, proof of the general good character of Mr. Youmans might be received, the same as upon the trial of an indictment, in order to rebut the presumption of guilt arising from such evidence by creating a reasonable doubt. (People v. Parlie, 7 N. Y. Cr. Rep. 30, 2 Rice on Evidence, 1242.) If a sustaining witness should testify to good character generally, or to good reputation for truth and veracity, and that he would believe Mr. Youmans under oath, it would not be unreasonable to prepare questions for such a witness of the kind complained of in this action. Whether all of those questions would be strictly competent, even on cross-examination, if objected to, it is unnecessary to decide, for the attorney had the right to prepare for the contingency, which not unfrequently happens, of having the door of investigation as to character thrown wide open and the challenge broadly made to ask any question relating to the reputation of Mr. Youmans in respect to any subject. From the nature and extent of the charges, as well as the number of accusing and sustaining affidavits read before the General Term upon the presentation of the petition, it was probable that the deportment and reputation of Mr. Youmans in the community where he lived would be the subject of thorough investigation. In preparing for such a controversy and all its possible variations, we cannot say that anyone of the questions under consideration might not become material. We are hence of the opinion that Mr. Bell had the right to draft said question for use during the trial and in preparing therefor, and that they were privileged in his hands and in the hands of his agents, at least so long as they were used solely for those purposes. Whatever he could lawfully do himself in preparing for trial, he could employ others to do for him. As he needed more than one list, he could copy it himself, or employ a clerk to multiply copies with a pen, or a printer with a printing press. Whatever he had the right to do in conducting the matter for his client, according to the ordinary course of procedure, he was protected in doing by the broad shield of privilege, and could not be held liable in damages,

even if what he wrote or said reflected injuriously upon the character of others. The privilege that protected him also protected his agents and employees in whatever they did at his request that he could have lawfully done himself. He had the right, by personal interviews, to ask the various persons, who were expected to be witnesses in favor of either side, upon the question of character, how they would answer the questions under consideration, or to send an agent to make the same inquiry, with a copy of the list as a memorandum. While we do not commend the practice, we cannot say that it is unlawful. The questions might have been prepared and printed for use in connection with a commission to examine absent witnesses, or to be used by counsel as a part of the trial brief. As they were not so manifestly immaterial that under no circumstances could they be asked upon the trial, we think that the drafting and the printing of the same was privileged and protected both the attorney and his employees against a prosecution for libel. Whatever he wrote, or they printed for him, that was material to the ordinary course of justice in the judicial proceeding pending at the time, was not libelous, because, upon grounds of public policy, the law made it privileged in order that counsel, having a duty to discharge, might write or "speak with that free and open mind which the administration of justice demands."

For these reasons we think that the judgment appealed from should be reversed, and, as the plaintiff has died pending the appeal, without awarding costs or a new trial.

All concur, except MARTIN, J., not sitting.

Judgment for plaintiff reversed.

(Court of Appeals, N.Y.).

* * *

MYGATT v. COE.

[46 N. E. Rep. 948.

Real estate—Covenant running with land—Possession.

Coe joined in a deed of his wife's separate real estate, with covenants of warranty and quiet enjoyment. He had been living on the land in question as head of the family, had paid the taxes and kept the premises in repair. It was, nevertheless, held by a divided court (four to three) that the husband was not in possession and that consequently his covenants did not run with the land. O'Brien, J., delivering the majority opinion, admitted a hardship to the plaintiffs but asserted the necessity of adhering to the old common law rule. There must have been transfer of possession from grantor to grantee, else there could be no land to which the covenants might be annexed. (Court of Appeals of New York.)

* * *

BOSTON AND MAINE RY. v. McDUFFEY.

[79 Fed. Rep. 934.

Conflict of laws—Foreign tort—Lord Campbell's Act.

The Circuit Court of Appeals for the Second Circuit has lately held, following *Dennick* v. *R. R. Co.*, 103 U.S. 11, that a right of action given by the statutes of Canada to the widow and children of one who has been killed in that country through the negligence of another, may be prosecuted to judgment by them in the courts of the United States, though the statute of the state within whose territory suit is brought (here Vermont) gives the right of action to the personal representatives of the deceased.

* * *

MINNEAPOLIS CO. v. REGIER.

[70 N.W. Rep. 934.

Malicious prosecution—Damages—Evidence.

Since the plaintiff in an action for malicious prosecution is entitled, if

successful, to recover damages for the injury to his reputation, he may prove newspaper publications containing plain accounts of the prosecution, without comment thereon. "A plain, uncolored statement of such proceedings in a newspaper is a privileged publication, and not in itself a tort. Such a publication is a natural and probable consequence, and a direct consequence of the institution of the prosecution; and the fact that the prosecution resulted in such a publication may properly be shown to aid the jury in estimating the damages;" (Supreme Court of Nebraska.)

* * *

ROCHESTER BAR ASSOCIATION v. DORTHY.

[46 N. E. Rep. 835.

Solicitor—Professional Misconduct—Stay of Proceedings.

Held, that upon a proceeding for the disbarment of an attorney, the fact that some of the charges of professional misconduct brought against him are such as also to involve liability to a criminal prosecution, does not entitle the respondent to a suspension of proceedings until he has had the opportunity for a jury trial upon those charges: (Court of Appeals of New York,) 46 N. E. Rep. 835, affirming 41 N. Y. Suppl. 1112.

ENGLAND.

HOPE v. BRASH.

Court of Appeal.] [June 28.

Discovery—Inspection—Libel in Newspaper—Manuscript of Libel—Admission of Publication and Liability.

Appeal of the defendants from an order of Bruce, J., at chambers.

The action was brought for a libel published in a newspaper belonging to the defendants. The defendants by their defence admitted the publication of the libel and pleaded that the libel was published by them without actual malice and without gross negligence; that before the commencement of the action they published in their newspaper a full apology for the libel, according to section 2 of the Imperial Libel Act, 1843; and they paid into Court a sum of money in satisfaction of the plaintiff's claim.

The defendants in their affidavit of documents stated that they had in their possession or power the documents relating to the matters in question in the action set forth in the first and second parts of the schedule thereto. In the second part of the schedule they stated that they had in their possession a manuscript of the matters published in their newspaper, but they objected to produce it on the ground that it was the original contribution to them, and was that which was published by them as admitted in the statement of defence, and as to which they admitted responsibility.

Bruce, J., made an order for the production of the manuscript for inspection.

The defendants appealed.

Hennessy v. Wright (No. 2), L. R. 24 Q. B. Div. 445n. and Bustros v. White, 45 Law J. Rep. Q. B. 642; L. R. 1 Q. B. Div. 423 referred to.

Their Lordships held that where in an action against the proprietors of a newspaper for a libel published in the paper the publication and responsibility for the libel are admitted, the Court as a general rule will not order the original manuscript of the libel to be produced for inspection. They were of opinion that there were no special circumstances in the present case by reason of which the Court ought to depart from the general rule, and they accordingly allowed the appeal.

Appeal allowed.

(Lord Esher, M.R., Smith, L.J., Rigby, L.J.).

[JUNE 18.

WHEELER v. YOUNG.

Bill of Exchange—Cheque—Time for Presentment.

Held (Bruce, J.) it is a question for the jury whether or not a cheque has been presented within a reasonable time under sec. 74, Imperial Bills of Exchange Act. (Canadian Act, sec. 73).

* * *

PLANT v. BOURNE.

[Court of Appeal.—LINDLEY, L. J., LOPES, L.J., CHITTY, L.J., June 24.

Vendor and Purchaser—Specific Performance—Contract—Statute of Frauds—Parcels—Uncertainty—Extrinsic Evidence.

Appeal from a decision of Byrne, J., reported 66 Law J. Rep. Chanc. 458.

The plaintiff and defendant signed a written agreement as follows: 'The said Robert Plant agrees to sell, and the said Robert Henry Bourne agrees to purchase at the price of £5,000 twenty-four acres of land freehold, and all appurtenances thereto, at Totmonslow, in the parish of Dracott, in the county of Stafford, and all the mines and minerals thereto appertaining, possession to be had on the 25th of March next, the vendor guaranteeing possession accordingly.' The defendant refused to complete, and the plaintiff brought this action. At the trial he proposed to call evidence to prove that the twenty-four acres mentioned in the agreement were twenty-four acres belonging to himself, surrounded by a ring fence, and well known to the defendant, who had examined the land just before signing the agreement.

Byrne, J., held that there was not in the agreement a sufficient description of the land to satisfy the Statute of Frauds, and that parol evidence to identify it was inadmissible.

The plaintiff appealed.

Their Lordships allowed the appeal. They said that it was settled by *Ogilvie* v. *Foljambe*, 3 Mer. 53, and *Shardlow* v. *Cotterill*, 50 Law J. Rep. Chanc. 613; L. R. 20 Chanc. Div. 90, that when there was an uncertain description of the property sold, parol evidence was admissible to show to what premises the agreement related. Here it was said that there was no description of any property at all, and that the evidence, if admitted, must prove a different contract. But the vendor was selling his own land, and although the word 'my' was not inserted before 'twenty-four acres,' the description was sufficient to make evidence for purposes of identification admissible.

* * *

MACAULAY v. POLLEY.

[L. T. 128; L. J. 336.

Has a solicitor power, in the absence of express authority, to compromise a claim on behalf of his client before an action has been commenced?

The Court of Appeal (Esher, M. R., Smith and Chitty, L.JJ.) held, on the authority of *Duffy* v. *Hanson* (16 L. T. Rep. 332), that a solicitor had no such power.

* * *

MAGNOLIA METAL COMPANY'S TRADE MARKS, RE

[W. N. 60; S. J. 573.

Is a name necessarily "geographical," within the meaning of the Patents, &c., Act, 1888, because there chances to be a place of that name somewhere?

No, said the Court of Appeal, remarking that "in the absence of special circumstances, the expression must be construed in accordance in some degree with the general and popular meaning of the words, and not be held to denote a name which is commonly known in a non-geographical sense, and the places called by which are hardly known, though however little known the places called by that name may be, yet if the name has been given to an article manufactured in one of

those places it is a geographical name, as, for instance, Apollinaris;" and the Court held in this case, where the name Magnolia had been applied to a compound metal with reference only to the name of the flower, that it was not disentitled to be registered as a trade mark because there were some obscure places in America called by that name, though it was held disentitled on other grounds.

* * *

MEXBOROUGH (LORD) v. WHITWOOD URBAN DISTRICT COUNCIL AND OTHERS.

[T. 443; L. T. 127; W. N. 59.

Can the Court make an order for interrogatories or discovery of documents against the defendants in an action for forfeiture of land for breach of covenant?

No, said the Court of Appeal (Esher, M. R., Smith and Chitty, L. JJ.), thereby overruling *Seaward v. Donnington* (44 W. R. 696). (P. 189.)

* * *

NORREYS (LORD) v. HODGSON.

[T. 421.

Can an agent ever retain, as against his principal, a commission paid him for introducing a life insurance?

The action was originally brought to recover £210, commission payable by the Imperial Insurance Company in respect of an insurance on the plaintiff's life for £15,000. The insurance company were made defendants in the action, but they paid the sum into the Court, and the action was continued against the defendant Hodgson only. The plaintiff was desirous of obtaining a loan of £20,000 upon some revisionary interests which would come to him upon his father's death. He went to the defendant Hodgson, who was an insurance broker, and asked him to effect the loan. Hodgson agreed to do so, part of the transaction being that the plaintiff's life should be insured. The plaintiff signed a commission note by which he agreed to pay Hodgson 1 per cent. on the amount of the loan. The loan and the insurance were carried out with the Imperial Insurance Company. The insurance company agreed to pay Hodgson £210 as commission for introducing the insurance. The question was whether Hodgson was liable to account to the plaintiff as his principal for the £210 commission. Mr. Justice Mathew gave judgment for the defendant, and ordered the money to be paid out of Court to him. The plaintiff appealed, and the Court of Appeal (Esher, M. R., Smith and Chitty, L.JJ.) held that there was nothing in the nature of a secret commission, and that the two commissions were for wholly different things, and that therefore he was entitled to keep the commission.

* * *

SOUTHPORT TRAMWAYS CO. v. GANDY.

]L.J. 302.

Can a claim for double value and mesne profits be made by a specially-indorsed writ.

The plaintiff company gave notice to quit to the defendant, their tenant. He refused to give up possession, and the company issued a specially-indorsed writ asking for possession and 80*l.* for mesne profits. In their affidavit in support they said that the 80*l.* was six months' rent at double value. Kennedy, J., gave the plaintiffs liberty to sign final judgment for possession of the premises and for mesne profits to be calculated up to the date of the plaintiffs obtaining possession. The defendant appealed on the ground that double rent for holding over was a penalty, and could not be claimed by a specially-indorsed writ; secondly, that there was no jurisdiction to give mesne profits after verdict—*i.e.*, after the decision of the judge; and, thirdly, that the notice to quit was bad, because the solicitors who served it

were not the agents of the company but of the secretary of the company. The Court of Appeal (Lopes and Rigby, L.JJ.), held that the writ was properly indorsed, that the order for mesne profits was correct, and that the notice was good.

* * *

OGILVIE v. LITTLEBOY.

[103 L. T., 105.

Mistake—Gift.

Action by the donor to set aside two voluntary deeds of gift founding two charities.

Held that, where there is no fraud, no undue influence, no fiduciary relation between donor and donee, and no mistake induced by those who derive any benefit from it, a gift (whether made by mere delivery or by deed) is binding on the donor, and such donor can only get back property which he has given away by showing that he was under some mistake of so serious a character as to render it unjust on the part of the donee to retain the property. Action dismissed. (Court of Appeal affirming, Byrne, J.)

* * *

LEOPARD v. LITOWN.

[41 S. J., 545.

An agreement not to bid against each other at a sale is valid.

A advertised a sale by auction. B and C agreed that C should buy some cases of sweet nitre to be afterwards disposed of to their mutual profit. C bought the cases for £5, and afterwards agreed to sell them to B for £6. B resold to D for £13 10s.; but meantime C had sold and delivered the cases to E. B sued C for £7 10s. damages.

Held that there is nothing illegal in a knock-out sale; if the vendor does not want to take the bids offered, he must put on a reserve price or reserve the right to employ the puffer; and that B was entitled to sue. (Grantham and Wright, J.J.)

* * *

EXCHANGE TELEGRAPH CO. v. CENTRAL NEWS AND COLUMN PRINTING TELEGRAPH SYNDICATE.

[N. W., 58; 32 L. J., 317; 103 L.T., 129.

Injunction.

A news agency collected information about horse races and telegraphed it to subscribers on condition that they should not communicate it to any other party.

Held that the news agency—having spent time, labor, and money in getting information which was not known to all the world when the agency got it and transmitted it to their subscribers—was entitled to an injunction to prevent one of their subscribers communicating it to a third party in breach of his contract and also to restrain the third party from inducing the subscriber to break his contract by communicating the information. (Stirling, J.)

PERSONAL.

W. H. Barnum has opened an office at St. Thomas.

H. A. Little, another graduate, will practice in Toronto.

J. H. Clary, a recent graduate, has opened an office in Toronto.

S. J. Cooley, late of Trenton, is practicing at Mattawa, Ont.

William A. Moss, late of London, Ont., has removed to Glencoe.

S. Malcolmson, Local Master at Goderich, Ont., died on 8th inst.

A. Bedford-Jones, barrister, Toronto, is holidaying at Brockville.

C. M. Woodworth, of Edmonton, has removed to Slocan City, B. C.

J. M. Owen, of Annapolis, N.S., has started a branch office at Middleton.

James Miller, solicitor, Beaverton, who had been in poor health for some time, is dead.

H. W. Herchmer, late of Gretna, Man., is about to begin practice at Fort Steele, B.C.

The Hon. Mr. Justice Rose and family, of Toronto, are spending the vacation in Vermont.

Sidney S. Taylor, Q. C., late of Edmonton, N. W. T., is about to practice at Nelson, B. C.

Messrs. White & Williams, barristers, Pembroke, Ont., have started a branch office at Cobden.

Items of personal interest concerning members of the profession will always be gladly received.

Mr. Charles Morse, the well-known reporter of the Exchequer Court, paid Toronto an official visit recently.

F. R. Morris has opened a law office at Fort William, Ont., and will doubtless work up a good practice.

M. S. McCarthy, lately graduated from Osgoode Hall, has entered into partnership with J. Idington, Q. C., Stratford.

Mr. Richard J. Duggan, late of Chicago, but formerly of the law firm of Kilvert & Duggan, Hamilton, died on 6th July at Chicago.

Mr. Alex. Downey, official stenographer, Toronto, met with a bicycle accident recently and sustained a fracture of the arm.

Mr. "Smith-Premier" Will H. Newsome, the popular law stationer, has just returned from a very successful trip to the Maritime Provinces.

The firm of Lister, Cowan & Mackenzie, Sarnia, has dissolved. Messrs. Lister & Cowan remain together and Mr. D. Mackenzie opens an office of his own.

Chancellor Boyd has been appointed a Commissioner by the Dominion Government to inquire into and report upon certain charges preferred against Judge James P. Wood, of Stratford.

John Franklin Hare, of Windsor, Ont., barrister, has been appointed deputy district registrar in Admiralty for the port of Toronto Admiralty district of the Exchequer Court, comprised in the counties of Essex, Elgin, Kent, Lambton, and Middlesex.

T. R. Atkinson, W. B. Laidlaw, A. H. Beaton, H. C. Becher, F. R. Morris, W. H. Barnum, F. B. Goodwillie, J. E. Kerrigan, T. J. O'Connor, V. J. Hughes, W. A. Hodgson, H. A. Little, and D. A. J. McDougall were sworn in and enrolled as solicitors.

Amongst the distinguished visitors entertained at a dinner by the President and Council of the Incorporated Law Society of England on July 8th, were the Right Hon. Sir Samuel H. Strong, Chief Justice of Canada, and Sir W. Whiteway, Premier of Newfoundland.

The firm of Wilson & Campbell, barristers, Vancouver, B.C., has been dissolved. Mr. Campbell retiring therefrom and Mr. J. H. Senkler, a son of Judge Senkler, of St. Catharines, Ont., enters the new firm which will be known as Wilson & Senkler. Mr. Senkler is a graduate of Osgoode Hall

W. G. Murdoch, the well-known criminal lawyer of Toronto, died suddenly on 2nd July, aged 45. A few days previously Mr. Murdoch had received an accidental injury to his eye in a friendly contest with umbrella sticks, and although it was not at first considered serious, the wound resulted fatally.

On June 29th the following gentlemen were presented to the court by W. R. Riddell, a bencher of the Law Society of Upper Canada, and were sworn in and enrolled as barristers-at-law: — W. B. Laidlaw, A. H. Beaton, H. C. Becher, F. R. Morris, T. R. Atkinson, W. A. Fraser, W. H. Barnum, F. B. Goodwillie, J. E. Kerrigan, T. J. W. O'Connor, L. J. Kehoe, J. U. Vincent, V. J. Hughes, W. A. Hodgson, H. A. Little, D. A. J. McDougall.

IN VACATION.—Smith—"Is young Flywedge practicing law?"

William—"I think not. He was called to the bar, but I think he is practicing economy.—*Illustrated Bits.*

MISCELLANY.

CRIMINAL LAWYER :—

"You killed no one in your family excepting your nephew?"

Prisoner.—"No one excepting my nephew."

Criminal Lawyer.—"What a pity! Had you assassinated them all, I could have pleaded Insanity."

DISCLAIMING RELATIONSHIP. — A newspaper report that a man of the name of D had been fined 10s. for drunkenness was immediately followed, says the English "Law Notes," with a public notice by another man of the same surname that he was in no way connected with the other. But there was an echo to this. The next issue contained the following :

"Thanks.

"I, George D. who was fined 10s. for being drunk, beg to return thanks to Mr. Wm. George D. for publicly notifying that I am in no way connected with him or his family."

The Law Student's Helper (Detroit publishes the following :

"'A. Swindle' is the name that appears over the office door of a struggling lawyer in Stratford, Ont. A friend of the unfortunate gentleman suggested the advisability of his writing out his name in full, thinking that Arthur or Andrew Swindle, as the case might be, would look better than the suggestive A. Swindle, but the lawyer did not do it, for he was afraid that when people saw the legend "Adam Swindle" they would put the accent on the wrong syllable of his first name, and would draw inferences much more odious than those already mentioned."

Unfortunately for the story there is no lawyer of that name at Stratford nor in this province. We therefore return the article to the *Helper* for a better address.

THE LAWYER'S INVOCATION TO SPRING.

Whereas, in certain boughs and sprays,
Now divers birds are heard to sing,
And sundry flowers their heads upraise,
Hail to the coming in of Spring!

The song of those said birds arouse
The memory of our mirthful hours,
As green as those said sprays and boughs,
As fresh and sweet as those said flowers.

The birds aforesaid—happy pairs!
Love, 'mid the aforesaid boughs, inshrines
In freehold nests, themselves, their heirs,
Administrators, and assigns.

O busiest term of Cupid's court,
Where tender plaintiffs actions bring,
Season of frolic and of sport,
Hail, as aforesaid, coming Spring!

HENRY P. HOWARD BROWNELL.

AN AMUSING THING happened in Chatham, Ont., recently, whereby the tables were turned on the Junior County Judge, Police Magistrate Houston and W. E. Gundy, barrister. It appears that Messrs. Houston and Gundy were holding an argument before Judge Woods in his inner sanctum, Harrison Hall, Thursday last, and, in order not to disturb the senior Judge, who was having arguments on the equalization of county rates in the main chamber, the door between the two rooms was closed. The counsel appearing before Judge Bell having finished their arguments, he adjourned his court for dinner and locked the main entrance as he went out.

Judge Woods shortly afterwards got ready to adjourn and lo and behold they were prisoners, tight and fast. They tried ineffectually to get out by various ways without success, when finally it was proposed that Mr. Gundy, he being the youngest, jump out of the window and get a ladder for Judge Woods and P. M. Houston. He agreed to this and made a leap for life, landing on his feet without breaking any bones, he procured a ladder and liberated the others.