／# Canada Law Journal.

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The use of electricity for industrial purposes gives rise to many interesting and practical questions. One of these was recently decided in the Supreme Court of the District of Columbia, and is referred to in a recent issue of the *Albany Law Journal*. It appears that the plaintiff, one Danenhauer, was the proprietor of a hotel in Washington, and also a subscriber of the Chesapeake & Potomac Telephone Co. The litigation arose on an attempt by the company to remove the telephone, on the plea that plaintiff allowed guests to use it. The judge before whom the case came held that an hotel telephone must be used strictly for legitimate hotel business, and for the private business of the proprietor; that it might also be used for the benefit and accommodation of guests in connection with their position as guests, but was not to be used by them for any purposes of a purely private character. This decision appears to lay down a reasonable rule, which will commend itself to the common sense of the public, and will doubtless be satisfactory to the telephone companies.

THE CANADIAN FISHERIES APPEAL.

In the current number of the *Law Quarterly Review* will be found some interesting comments upon the recent Fisheries Appeal by the learned author of "Legislative Power in Canada." The passage singled out for criticism is the remark that "if the legislature purports to confer upon others proprietary rights where it possesses none itself, that in their lordships' opinion is not an exercise of the legislative jurisdiction conferred by section 91" (of the British North America Act). These words are considered by Mr. Lefroy

to be wholly irreconcilable with the principle that the legislative powers granted by the British North America Act are "as plenary and as ample within the limits prescribed as the Imperial Parliament in the plenitude of its power possessed and could bestow."

I am not unmindful of the unpleasant consequences which a controversy with an expert upon his own ground is apt to entail. *Impar congressus Achilli.* But after a perusal of the ingenious arguments which Mr. Lefroy has adduced in support of his position, I own that I cannot help feeling very strong doubts whether the sentence quoted can, when construed reasonably and with due reference to the context, be regarded as fraught with the very grave significance which is ascribed to it. A brief recital of some of the considerations which have given rise to these doubts will form the subject of the following article.

The effect of the principle laid down by Lord Herschel may, if I understand Mr. Lefroy's position aright, be stated thus: The Dominion and Provincial Legislatures may be said to "possess" the property vested in the Crown as represented by the Dominion and Provincial, but neither legislature possesses the property of individuals. Therefore the Privy Council, in declaring that the power to confer proprietary rights exists only where such rights are possessed by the legislature itself, virtually renounces the principle laid down in several of its earlier decisions, that the powers of the Canadian legislatures are plenary.

The vice of this reasoning would seem to consist in the assumption that, under any circumstances, which it is here necessary to take into consideration, a legislature can be said, in the strict technical sense of the word, to "possess" any property whatever. Normally the control exercised by a legislature over property is not accompanied by that present and subsisting *physical* power which, according to the authorities, is an essential element of possession: See Sweet's Law Dictionary, sub voc. "Possession." In this regard I cannot see that there is any distinction between the property of the Crown and the property of individuals. The dominion wielded

over property by the lawmaking agents of a State is, as we ordinarily think of it, limited to determining, within the prescribed jurisdictional limits what rights shall exist with respect to the various kinds of property under their authority. That authority may be extensive enough to enable them to shift, by their mere fiat, the possession of property from the State to the individual, or from the individual to the State, or from one individual to another, but through all these transmutations from one possession to another, the legislature will always be an entity outside of, and distinct from, the actual possessor of the property. It is not intended of course to deny that such a body may specially provide that certain property should pass into its own possession. But it would be idle, in the present connection, to consider the effect of such an exceptional transaction.

If this view is correct, it would seem that Mr. Lefroy should have cut much deeper in his criticism than he has done. Instead of taking it for granted that "possession" might in some cases be predicated of the control exercised by a legislature, he should at the very outset have joined issue with Lord Herschel upon this point by calling in question the correctness of his Lordship's terminology. Until other authorities are produced for this use of the word "possesses" with respect to the ordinary exercise of its functions by a legislature, it appears not unreasonable to suppose that that eminent jurist has inadvertently fallen into a verbal blunder, and that the control to which he was referring was rather that which finds its active exercise in laws declaring to whom proprietary rights shall belong than that which amounts to "possession," properly so called. One reason for adopting this view is that it will enable us to escape the very formidable difficulties involved in the hypothesis that the Privy Council intended to overthrow by a sort of side-wind the doctrine which it had previously laid down as to the plenary powers of the Canadian legislatures.

The real meaning of Lord Herschel's words I believe to be merely this—that the inference of an excess of power by the Dominion Parliament in the given case necessarily

followed from the fact that it was undertaking to confer proprietary rights in regard to a subject matter which the British North America Act did not authorize it to control *to this extent.* It is clear that, as the power of Provincial Parliaments to make laws respecting property and civil rights is exclusive under that Act (sec. 92, sub-sec. 13), the Dominion Parliament can possess a like power only in cases in which it has been expressly given by section 91, or some other power has been conferred which is of such a nature that its exercise necessarily involves the creation of proprietary rights in favour of the Dominion. For example, the former predicament arises under sub-sec. 1, the latter under sub-secs. 9, 11, 24, 28. All that the Privy Council now decides is that sub-sec. 12 is not one of those which fall into the second category.

The principle announced by Lord Herschel therefore, so far from being inconsistent with the doctrine as to plenary legislative powers, applies that doctrine in the only form in which it can be applied in a country of co-ordinate legislatures, both deriving their authority from the same source, and each supreme within the jurisdictional domain allotted to it. Obviously the legislative powers conferred upon any of the Canadian Parliaments, whether Dominion or Provincial, can be regarded as plenary only in so far as their exercise will not derogate from or trench upon the exclusive powers reserved to some other Parliament. In other words, that totality of plenary legislative power which must be lodged somewhere in every self-governing state is in Canada portioned out among several law-making bodies. Whether the Dominion Parliament, or one of the Provincial Parliaments, is to [illegible]rcise any given part of that totality of power, is a question to be settled, as in the case under review, by a reasonable construction of the organizing statute. It is manifest, in fact, that, under any other theory of the constitution, the effect of the section of the Act which declares certain powers to be lodged exclusively in one or other of these Parliaments would be completely nullified.

This conception of the distribution of the entire sum of legislative jurisdiction among several bodies is, we imagine,

quite adequate to explain the point of view of the Privy Council when it gave utterance to the proposition quoted by Mr. Lefroy (p. 390) from the judgment in *Dobie* v. *The Temporalities Board.* Plenary power over proprietary rights created by any of the legislatures is there considered to be vested in that legislature alone, the authority of other legislatures being confined to regulation, the nature of which will necessarily vary according to the nature of the property. The only difference in the practical application of this principle in the case of the Dominion Parliament and of a Provincial Legislature will be that which results from the fact that the jurisdiction of the former extends over the whole of Canada, while the jurisdiction of the latter is confined to a certain territorial area.

If this line of ratiocination is followed out it will be difficult to agree with Mr. Lefroy in his argument (p. 388) that, as " the Provincial Legislature no more possesses the property of individuals in the Province by virtue of their legislative jurisdiction over property and civil rights than the Dominion Parliament by virtue of its legislative jurisdiction over sea-coast and inland fisheries, the conclusion would seem to force itself upon one that neither the Dominion Parliament nor Provincial Legislatures could pass an act granting a fishing lease or license upon the land of private individuals in Canada." If it is assumed that the term "possession of proprietary rights" is incorrect in its application to a legislature, and that the only control such a body normally exercises over those rights is to declare the circumstances under which they shall be created, modified, transferred, or extinguished, it would seem that the case in question is completely provided for by the provision of the British North America Act, which authorizes the Provincial Legislatures to make laws as to "property and civil rights." This power is given without any restriction or limitation, and must therefore be so far plenary in its nature as to validate even an Act which has the effect of cutting down private rights in realty. And even if I am in error as to the meaning of the phrase "possession of proprietary rights," I venture to think it is a matter of some doubt whether, in view of the enabling pro-

vision just referred to, the Privy Council would, as a matter of course, hold that the principle laid down as to the Dominion Parliament is equally applicable to a Provincial Legislature.

The further difficulty suggested by Mr. Lefroy that Lord Herschel's doctrine involves the corollary that the expropriation clauses of the Railway Acts are invalid, will cease to appear formidable, if it is remembered that the right of eminent domain is one inherent in every State. Railway companies are permitted to take land and other property for the reason that, although they are in some respects private corporations, they are, in an enlarged view of their functions, acting as agents of the public in the creation and operation of a certain description of highway. It follows, therefore, that the question, in what cases the right of expropriation may be exercised by them, is one which is wholly independent of the extent of the power of the legislature to make ordinary laws affecting the property of individuals. Such exercise must, upon perfectly familiar principles of statutory construction, be valid wherever the legislature, Dominion or Provincial, has acted within the scope of its powers in authorizing the building of that particular railway for which the land is to be taken. In other words it must be assumed that the British North America Act in granting the power of making laws in regard to railways, has by implication granted the power to derogate from the proprietary rights of persons who may hold land along the lines of such railways. Whether the Dominion or a provincial legislature is to be regarded as the grantee of this implied power in any given case depends upon the construction of the Act itself (s. 92, s.s. 10), 10), which fixes the limits of their respective fields of jurisdiction. It is not unworthy of notice in this connection that sub-division *c* of the section referred to, is apparently quite adequate to obviate the deadlock, which Mr. Lefroy suggests (pp. 389, 390) as a result of the possible determination of a provincial legislature to play "dog in the manger," and interpose obstacles to the building of a line serviceable to the other parts of the Dominion.

Upon the whole, therefore, I am inclined to think that the

sentence criticized by Mr. Lefroy, if at first sight it appears to justify his description as "a bolt out of the blue" for constitutional lawyers, will be found, upon a closer examination, to be pretty much of a "brutum fulmen," so far as any revolutionary consequences are concerned.

C. B. LABATT.

OBITER DICTA.

"E'en on the groaning table of the Law
We've kickshaws—cultured palates else were damned."

—ANON.

To the lawyer whose sympathies are with the welfare of the "Establishment" in the mother country in these distempered days—with Parliamentary menaces on the one hand and Kensit brawlings on the other vexing her peace—it is comforting to read what Erskine May (Cons. Hist., Vol. 11, p. 455) said of the Church of England, in even more parlous times than these in her history: "The fold of the Church has been found wide enough to embrace many diversities of doctrine and ceremony. The convictions, doubts and predilections of the 16th century still prevail with many of later growth; but enlightened Churchmen, without absolute identity of opinion, have been proud to acknowledge the same religious communion—just as citizens divided into political parties are yet loyal and patriotic members of one State." It remains to be said, however, that the ritualists are losing sight of the via media of the old Tractarian school.

* * *

Notwithstanding our honest desire to do justice to the memory of Sir Edward Coke, we are continually having our dislike kindled against him by meeting with examples of his mean jealousy and caddishness such as the following:—Being presented with an autograph copy of the *Novum Organum* (*Instauratio Magna*), he wrote under the great philosopher's autograph:

"Auctori consilium.
Instaurare paras veterum documenta sophorum,
Instaura legis justitiãque prius;"

while over the device of the ship passing under the pillars of Hercules he inscribed the sorry couplet:—

> "It deserveth not to be read in schools,
> But to be freighted in the ship of fools."

However, it seems to be quite in accord with the eternal fitness of things that Bacon should be roasted by Coke, and that, all the better for such roasting, the former is eaten and digested and absorbed by living souls, while the latter, its usefulness being gone, is relegated to the ash heap of forgetfulness.

* * *

We trust that we may be pardoned in venturing to express our satisfaction that the views we briefly expressed in January last as to Sir Henry Maine's status in the pantheon of English jurists are shared by so capable a critic as Mr. Woodrow Wilson. We claimed that to Maine belongs the honour of being the first to bring about an enlightened investigation by English lawyers of the history and philosophy of jurisprudence. In the course of a most instructive monograph upon Maine in the September Atlantic Monthly, entitled "A Lawyer with a Style," Mr. Wilson thus speaks of the great jurist's didactic quality: "It was his suitable part in the world to clarify knowlege, to show it in its large proportions and long significance to those who could see. His mind was an exquisitely tempered instrument of judgment and interpretation. It touched knowledge with a revealing, almost with a creative power, and as if the large relationships of fact and principle were to it the simple first elements of knowledge." The faculty of rendering a theme transpicuous was Maine's punctum saliens as a teacher, and his gift in its fulness is possessed by none of his successors.

* * *

Apropos of lawyers who possess literary style, we recall a remark once made by a reviewer, in the late lamented, but singularly brilliant, "Chap-Book," to the effect that Blackstone and Sir William Jones were the only stylists to be found in the whole literature of the law. When we ventured to

demonstrate the painful incorrectness of this very sweeping declaration by quoting the names of Maine, Pollock, Maitland, Kent, Story, Greenleaf, Holmes, and some others, who have enriched the domain of pure literature both in England and America by their treatises upon the law, our reviewer answered, with the most sublime inconsequence, "but wasn't Maine something more than a mere lawyer?" As if, forsooth, all of the names above enumerated do not belong to men whose intellectual stature it is not possible to measure by any standards within the ken of the "mere lawyer."

* * *

It is such an appalling event as the recent assassination of the Empress of Austria that gives us pause in lauding the great moral advancement of our time. Shakespeare's remark that "uneasy lies the head that wears a crown" has much greater force in these end-of-the-century days than in the period when it was uttered. What are we to do with Anarchism? It would seem that capital punishment is not the Hercules able to destroy this modern hydra. Its devotees revel in their "martyrdom" for the mistaken cause which they seek to further by such inhuman deeds. To do the rulers of mankind to death, and to die for such exploits, has become a religion with them. Capital punishment has no terrors for such madmen; on the contrary it but stimulates their appetite for assassination. Anarchism is a festering sore on the body of our civilization, which penologists may well exercise their skill in attempting to cure.

* * *

Prompted thereto by the latest fin de siécle performance of a certain English judge, our office-boy has handed us the following as a suggested epitaph for this unrivalled jurist when Providence calls him to the court of last resort:—

> Here lies a quondam Darling of the Bench,
> Who judged a Frenchman bad in worser French.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

(Registered in accordance with the Copyright Act).

NEGLIGENCE—PUBLIC BODY—CONTRACT TO EXECUTE WORKS FOR PUBLIC BODY—LIABILITY OF EMPLOYER FOR NEGLIGENCE OF CONTRACTOR—PAYMENT INTO COURT BY CO-DEFENDANT.

Penny v. *Wimbledon Council* (1898) 2 Q.B. 212, is one of that class of cases, in which an employer is held liable for the negligence of his contractor. The action was against a municipal corporation and its contractor for the repair of a highway, to recover damages for the negligence of the contractor in carrying out his contract, by leaving a heap of soil and grass on the road unlighted and unprotected, over which the plaintiff fell and injured herself, in the dark. The action was tried before Bruce, J., who held that the corporation, having control of the works, were liable for the negligent acts which their contractor had committed. Another question in the case was one of practice arising on the fact that the defendants delivered separate defences both denying liability, and the contractor paid into Court £75 in satisfaction of the plaintiffs' claim. This payment was referred to in the defence of the corporation, who alleged that the money so paid in was sufficient to satisfy the plaintiffs' claim. The damages of the plaintiff having been assessed at £50, the question was, whether any, and what, judgment could be awarded against the corporation. Bruce, J., held that though they could have joined with their co-defendant in the defence of payment into Court, so as to have made it available for them both, yet as they had not done so, but had chosen to deliver a separate defence, they could not therein avail themselves of the payment into Court by their co-defendant; the defence of the corporation, he therefore held, simply amounted in law to a denial of liability, and as on that defence they had failed, he gave judgment against them, as the damages had been obtained from the other defendants, simply for costs.

STATUTE OF LIMITATIONS—MONEY CHARGED ON LAND—DERIVATIVE MORTGAGE—PAYMENT OF INTEREST BY CO-DEBTOR—REAL PROPERTY LIMITATION ACT, 1874 (37 & 38 VICT., C. 57), S. 8—(R.S.O., C. 133, S. 23)—21 JAC. 1, C 16, S. 3—THE MERCANTILE LAW AMENDMENT ACT, 1856 (19 & 20 VICT., C. 97), S. 14.

Barnes v. *Glenton* (1898) 2 Q.B. 223, is a decision of Lord Russell, C.J., on a point arising on a defence of the Statute of Limitations, and upon which it would seem that in Ontario the Courts might possibly come to a different conclusion. The facts were tolerably simple. The plaintiffs lent the defendants, who were trustees, money on the security of a mortgage, to which they were beneficially entitled, and which they procured to be assigned by their trustees to the plaintiff. This assignment contained no covenant by the defendants for the repayment of the money advanced; nor were they parties to it; but by a contemporaneous deed, to which they were parties, it was agreed that the money advanced should be a first charge on the mortgage money assigned, and that the plaintiffs would not realize the mortgage without first giving the defendants an opportunity to redeem. This deed also contained no express covenant for repayment of the advance. In 1882 Lewis, one of the defendants, retired from the trust, but the other trustees continued to make payments in respect of the amount advanced, until 1897, when the action was commenced to recover from the defendants the balance remaining due. The action, so far as appears from the report, was not to realize the money out of the mortgaged land, but simply to enforce the claim against the defendants personally. The defendant Lewis contended that there being no covenant for repayment of the moneys advanced, the plaintiff's action was barred as against him in 1888, under the joint effect of 21 Jac. 1, c. 16, and the Mercantile Law Amendment Act, 1856 (19 & 20 Vict., c. 97), s. 14, whereby payments by one joint debtor are insufficient to keep the debt alive as against another joint debtor. Lord Russell, C.J., was of opinion that this defence could not prevail, but that the plaintiff's claim was for money charged on land, and was therefore within the Real Property Limitation Act, 1874, s. 8 (see R.S.O., c. 133, s. 23), and being

within that section, he also held that the claim was unaffected by the other Statutes of Limitations above referred to. It is on this latter point that it is possible a different view may be taken by the Courts in Ontario, due, in part, to the difference in the wording between the Real Property Limitation Act, s. 8, and R.S.O. c. 133, s. 23, the latter reading "No action or other proceeding shall be brought *to recover out of any land*," the words italicized not being in the English Act. In Ontario the personal liability of the debtor, and the liability of the land have, we believe, been considered as distinct, and not necessarily conterminous, nor governed by the same statute of limitations: see *Allan* v. *McTavish*, 2 A.R. 278; *Boice* v. *O'Loane*, 3 A.R. 167.

STATUTE—Construction—"Transmit."

Mackinnon v. *Clark* (1898) 2 Q.B. 251, furnishes a judicial construction of the word "transmit" when used in a statute. The action was to recover a penalty. The statute in question required a candidate at an election to "transmit" within a specified time to the returning officer a return of his expenses, and it was held by the Court of Appeal (Smith, Rigby and Williams, L.JJ.) that "transmit" meant "send"; and that the depositing of the return in the post office within the time named, was a sufficient compliance with the statute, though the return did not actually reach the returning officer till after the time limited for its transmission had expired.

LANDLORD AND TENANT—Proviso for re-entry.

Horsey Estate v. *Steiger* (1898) 2 Q.B. 259, was an action by a landlord to recover possession under a proviso for re-entry. The proviso in question was to take effect if the lessees, a joint stock company, "shall enter into liquidation, voluntary or compulsory." The lessees were solvent, but voluntarily entered into liquidation for the purpose only of reconstruction with additional capital. Hawkins, J., however, was of opinion that this constituted a liquidation within the meaning of the proviso, and that the plaintiff was therefore entitled to possession as claimed.

INNKEEPER—Guest—Loss of property.

In *Orchard* v. *Bush* (1898) 2 Q.B. 284, the plaintiff sued the defendant, an innkeeper, for the loss of his coat; and the question argued was whether under the circumstances of the case the plaintiff was a "guest" in the defendant's inn. The plaintiff was on his way home from business, and went into the defendant's hotel, and entered the dining room to get a meal. He put his overcoat in the place where coats were ordinarily kept, and when he had finished his meal, it was missing. Sleeping accommodation was provided for those guests who required it, but the evidence showed that a great many people used the hotel for dining there only. Wills and Kennedy, JJ., held that there was sufficient evidence to establish the relationship of innkeeper and guest, so as to make the defendant liable without any proof of negligence on his part. Wills, J., says, "I think a guest is a person who uses the inn, either for a temporary or a more permanent stay, in order to take what the inn can give. He need not stay the night."

TRADE MARK—False description, application of—Oral statement—Description in invoice at purchaser's request—Criminal liability of master for act of servant.

Coppen v. *Moore* (1898) 2 Q.B. 300 and 306, are decisions turning on the English Merchandise Act, 1887 (50 & 51 Vict., c. 38), which differs somewhat from the R.S.O. c. 166, s. 6, but which may, nevertheless, be of some utility in considering the construction to be placed on the latter Act. The case arose upon a prosecution for selling goods to which a false description was applied, and in the case stated by the justices it appeared that the prosecutor asked a salesman in the accused's shop for an English ham; the salesman pointed to some American hams, and said "These are Scotch hams." The prosecutor chose one, and asked for an invoice containing a description of the ham bought, and was given one, stating the purchase of a "Scotch" ham. It was held by Wright and Darling, JJ., that the oral statement that the ham was Scotch did not amount to a breach of the Act, but the statement in the invoice was an application of a false

description to the goods sold, within the meaning of the statute; but they reserved the question of whether the employer was liable for the act of his servant, for the consideration of the Court for Crown Cases Reserved. On this point it appeared that the employer was not present at the time of the sale; that he had issued a printed circular to his employees, forbidding the sale of the hams under any specific name or place of origin, but there was evidence that the American hams were dressed so as to deceive the public; on the strength of which it was found that the employer had not taken all reasonable precautions against committing an offence against the Act, and the Court (Lord Russell, C.J., Jeune, P.P.D., Chitty, L.J., Wright, Darling and Channell, JJ.) therefore held that under the circumstances the employer was criminally responsible for the act of his servant, as he had not discharged the onus of showing that he had acted innocently. On this point Lord Russell says, "We conceive the effect of the Act to be to make the master a principal liable criminally (as he is already, by law, civilly) for the acts of his agents and servants, in all cases within the section with which we are dealing, when the conduct constituting the offence was pursued by such servants and agents within the scope or in the course of their employment, subject to this: that the master or principal may be relieved from criminal responsibility when he can prove that he had acted in good faith, and done all that it was reasonably possible to do to prevent the commission by his agents and servants of offences against the Act."

NUISANCE—Fence adjoining highway—Injury to child using highway—Proximate cause of—Liability of owner of fence.

Horrold v. *Watney* (1898), 2 Q.B. 320, has some resemblance to the recent case of *Smith* v. *Hayes*, 29 O.R. 283, but it had the additional element of nuisance, which seems to have been wanting in *Smith* v. *Hayes*, and which enabled the plaintiff to succeed in the action. The plaintiff was an infant of four years, who was passing along a highway bounded by the defendant's fence, and being attracted by the

noise of some boys at play on the other side of the fence he clambered up it to see what was going on; the fence being in a rickety condition, fell upon the plaintiff and injured him. One line in the judgment of A. L. Smith, L.J., covers the whole ground, "a rotten fence close to a highway is an obvious nuisance." This, coupled with the extreme youth of the plaintiff, was held by the Court of Appeal (Smith, Rigby and Williams, L.JJ.), to be sufficient to entitle him to recover upon the authority of *Lynch* v. *Nurdin*, 1 Q.B. 29.

COSTS—Payment into Court—Acceptance in satisfaction—Defendant's subsequent costs—Ord. xxii. r. 7—(Ont. Rule 423)

Lomer v. *Waters* (1898) 2 Q.B. 326, is a decision on a simple point of practice. The defendant after defence, and after the action had been entered for trial, paid into Court a sum in satisfaction, which the plaintiff accepted, and requested the defendant to consent to the case being struck out of the trial list, but which he refused, except upon an undertaking to pay the defendants' costs, incurred subsequent to the payment in, which the plaintiff declined to give. The cause came on for trial, when Darling, J., made an order for the defendant to pay the plaintiff's costs up to the date of the payment into Court, and for the plaintiff to pay the defendant his costs subsequently incurred: but the Court of Appeal (Smith, Chitty and Williams, L.JJ.) held that there was no jurisdiction to order the plaintiff to pay the defendant's costs.

GAMING—Bet on horse race—Illegal consideration 9 Anne, c. 14—Gaming Act, 1835 (5 & 6, W. 4, c. 41), s. 1

In *Woolf* v. *Hamilton* (1898) 2 Q.B. 337, the plaintiff sued to recover the amount of a cheque given in payment of a bet on a horse race. The plaintiff was indorsee of the cheque, with notice of the consideration for which it had been given. 16 Car. 2, c. 7 and 9 Anne, c. 14, made all such securities null and void, but the Gaming Act, 1835, repealed these Acts so far as it made the securities void, and enacted that they should be deemed to have been given for an illegal consideration, and the result of that Act was to prevent the plaintiff

from recovering, he having become the holder with notice of the illegality. The judgment of Darling, J., dismissing the action, was therefore affirmed by the Court of Appeal (Smith, Williams and Rigby, L.JJ.) 16 Car. 2, c. 7, would seem to be still in force in Ontario. This case again suggests the desirability of having a careful revision of the Imperial statute law of England prior to 15th Oct., 1792, with a view to accurately determining how much of it is still in force in Ontario. Many statutes then in force in England, have since been repealed there, but still remain in force in Ontario, and if there is any value of certainty in the law, it is surely desirable that a volume should be compiled giving in an authoritative shape the Imperial Statutes which it is desirable to retain, and formally repealing those that should be repealed, so far as Ontario is concerned. The work of the English Statute Revision Commission ought to facilitate this being done without much trouble, or any very great expense.

PARTIES—PRACTICE—ACTION BY ONE OF TWO JOINT PROMISEES—REFUSAL OF OTHER TO JOIN AS PLAINTIFF—JOINT PROMISEE AS DEFENDANT.

In *Cullen* v. *Knowles* (1898) 2 Q.B. 380, a well recognized principle of equity practice is established as being a proper method of procedure under the Judicature Act. The action was brought by one of two joint promisees to recover a debt, but the other joint promisee refused to join as plaintiff in the action, though tendered an indemnity against costs; and he was therefore made a defendant. It was contended that the action was improperly constituted and would not lie; but Bigham, J. held that the Equity practice on this point was applicable and that the action was properly framed.

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Que.] GRAND TRUNK R. W. CO. *v.* COUPAL. [June 14.

Railways—Eminent domain—Expropriation of lands—Arbitration—Evidence —Findings of fact—Duty of appellate court—51 Vict., c. 29 (D.).

On an arbitration in a matter of the expropriation of land under the provisions of The Railway Act, the majority of the arbitrators appeared to have made their computation of the amount of the indemnity awarded to the owner of the land by taking an average of the different estimates made on behalf of both parties according to the evidence before them.

Held, reversing the decision of the Court of Queen's Bench, and restoring the judgment of the Superior Court (TASCHEREAU and GIROUARD, JJ., dissenting), that the award was properly set aside on the appeal to the Superior Court, as the arbitrators appeared to have proceeded upon a wrong principle in the estimation of the indemnity thereby awarded.

Lafleur, for appellant. *Lafontaine*, for respondent.

SMITH *v.* ST. JOHN CITY RY. CO. CONS. ELECTRIC CO. *v.* ATLANTIC TRUST N.B.] CO. CONS. ELECTRIC CO. *v.* PRATT. [June 14.

Appeal—Costs—Consolidation of suits—Discretion of Court appealed from.

On the hearing of a suit in Equity before PALMER, J., late Judge in Equity for New Brunswick, he directed said suit and two others involving similar issues to be consolidated. No order for consolidation was taken out, and separate interlocutory decrees were afterwards issued in the three suits. The hearing subsequently proceeded before another judge, who held that the suits had been consolidated, and directed the costs to be taxed on that basis. The Supreme Court of New Brunswick having affirmed this order, an appeal was taken to this Court.

Held, that it is only when some fundamental principle of justice has been ignored, or some other gross error appears, that the Supreme Court will interfere with the discretion of provincial courts in awarding or withholding costs, and this was not a case of the kind. Appeal dismissed with costs.

Pugsley, Q.C., for appellants. *W. Cassels*, Q.C., *Stockton*, Q.C., and *Tilley*, for the several respondents.

PROVINCES OF ONTARIO AND QUEBEC *v.* DOMINION OF CANADA.
IN RE COMMON SCHOOL FUND AND LANDS.

Constitutional law—B.N.A. Act, s. 142—Award of 1870, validity of—Upper Canada Improvement Fund—School Fund—B.N.A. Act, s. 109—Trust created by—Effect of Confederation on.

The arbitrators appointed in 1870, under s. 142 of the B.N.A. Act, were authorized to "divide" and "adjust" the accounts in dispute between the Dominion of Canada and the provinces of Ontario and Quebec, representing

the former Province of Canada. In dealing with the Common school fund established under 12 Vict., c. 20 they directed the principal of the fund to be retained by the Dominion, and the income therefrom paid to the provinces.

Held, that even if there was no ultimate "division and adjustment," such as the statute required, yet the ascertainment of the amount was a necessary preliminary to such "division and adjustment," and therefore intra vires of the arbitrators.

Held, further, that there was a division of the beneficial interest in the fund, and a fair adjustment of the rights of the provinces in it, which was a proper exercise of the authority of the arbitrators under the statute.

By 12 Vict., c. 200, s. 3 (Can.), one million acres of the public lands of the Province of Canada were to be set apart to be sold, and the proceeds applied to the creation of the Common school fund provided for in section 1. The lands so set apart were all in the present province of Ontario.

Held, that the trust in these lands created by the Act for the common schools of Canada did not cease to exist at confederation, so that the unsold lands and proceeds of sales should revert to Ontario, but such trust continued in favour of the Common schools of the new provinces of Ontario and Quebec.

In the agreement of reference to the arbitrators appointed under Acts passed in 1891, to adjust the said accounts, questions respecting the Upper Canada improvement fund were excluded, but the arbitrators had to determine and award upon the accounts as rendered by the Dominion to the two provinces, up to January, 1889.

Held, that the arbitrators could pass upon the right of Ontario to deduct a proportion of the school lands, as the amount of which was one of the items in the accounts rendered.

Province of Ontario.

COURT OF APPEAL.

From Rose, J.] HANNUM *v.* MCRAE. [Oct. 4.

Contempt of court—Witness—Local manager of bank—Production of bank books—Disclosure of bank accounts—Inconvenience—Privilege—Motion to commit—Service of papers.

The local manager of a chartered bank was subpœnaed to attend as a witness before a Master upon a reference in an action to which neither he nor the bank was a party, and there to produce the books of the bank, and give evidence. The testimony sought was relevant to the matters in question in the action, and no party thereto objected to its being adduced, nor to the means by which it was sought to be obtained. Upon appeal from an order, made upon a motion to commit the witness for his contempt in refusing to produce the books or give evidence of their contents, requiring him to attend at his own expense and do so:

Held, that inconvenience to the bank was no ground for refusing to pro-

duce the books. Unless exempted by legislation, a banker is not excused from producing his books, or testifying as to his customer's balance, when relevant to the issue. Discussion of the English Bankers' Books Evidence Act, 1879.

Prima facie the custody and control of the books of the branch of which he was manager fell within the scope of the witness' duty, and it was incumbent upon him to make it clear that he was expressly forbidden to produce them.

If a subpœna duces tecum is served upon an officer who has the absolute control and the ability to produce, he must do so. *In re Dwight and Macklem*, 15 O.R. 148, approved and followed.

Evidence as to a customer's account is not privileged at common law, and s. 46 of the Bank Act is no more than a prohibition against a bank voluntarily permitting any examination of customers' accounts, save by a director. Even if the prohibition of the directors would justify nonproduction, it would not protect the witness from speaking the facts within his knowledge. Where a motion to commit is made, it is not, in this Province, necessary to serve with the notice of motion copies of the affidavits on which it is based. *Hannum* v. *McRae*, 33 C.L.J. 722, 17 P.R. 567, affirmed.

Travers Lewis, for appellant. *Watson*, Q.C., and *Latchford*, for respondent.

HIGH COURT OF JUSTICE.

Ferguson, J.
Trial of actions. } [Sept. 6.

SUTHERLAND MINES CO. *v.* TOWNSHIP OF ROMNEY.

Drainage by-laws—Municipal Act—Registration—Motion to quash—R.S.O. 1897, c. 223, s. 396 (1).

Held, that the provisions of 55 Vict., c. 42, s. 351, (O.), as amended by 60 Vict., c. 45, s. 7, sub-s. 1, and s. 47 (R.S.O. 1897, c. 223, s. 396 (1)), with reference to registration of by-laws creating debts, apply to drainage by-laws.

Semble, also, that a by-law so registered and not attacked, and the certificate registered within the term prescribed is valid and binding, even though one which the municipality had not proper power to pass.

Atkinson, Q.C., and *G. Douglas*, for plaintiff. *Aylesworth*, Q.C., and *Rankin*, for defendants.

Ferguson, J., Robertson, J., Meredith, J.] [Sept. 8.

RE LEAK AND TORONTO.

Municipal corporation—"Injuriously affecting" lands—Arbitration with landowner—Award—Compensation—Interest on.

Interest may be allowed by an arbitrator on the amount of compensation awarded to a landowner against a municipality for injuriously affecting his lands in the exercise of its powers.

Per ROBERTSON, J.: The act causing the injury is not tortious or illegal, and compensation is not to be treated as damages.

Per MEREDITH, J.: The municipality is not a wrong-doer, and, therefore, it is not a case of assessing damages for a wrong done.

Per FERGUSON, J.: Interest should not be allowed upon mere unascertained damages, and damages in respect of lands "injuriously affected" are damages of that character.

Re McPherson and the City of Toronto (1895) 26 O. R. 558 referred to.

Judgment of STREET, J., reversed. FERGUSON, J., dissenting.

Armour, C.J., Falconbridge, J., Street, J.] [Sept. 12.

RE GUINANE.

Assignment for benefit of creditors by one member of firm—Examination of manager as agent, clerk, servant, officer, or employee of assignor—R.S.O. 147, s. 34.

A manager of a firm composed of two partners comes within the designation "agent, clerk, servant, officer or employee" in s. 34 of R.S.O., c. 147, and is examinable as such, although the assignment is made by one partner only, and the partnership had been dissolved previous to the assignment. Judgment of Meredith, C.J., reversed.

Clute, Q.C., for the assignee. *W. J. Boland*, for the manager.

Armour, C.J.] REGINA *v.* GIBSON. [Sept. 12.

Police magistrate—Summary trial before—Court of record—R.S.O., c. 83—Habeas corpus.

The defendant was charged before the police magistrate for the city of Hamilton with the offence of procuring females for immoral purposes, an offence triable at the General Sessions of the Peace, but elected to be tried summarily, and was tried by the magistrate, and by him convicted and sentenced to imprisonment and fine. An application for a habeas corpus was made under R.S.O., c. 83, which provides for the issue of such a writ where a person is confined or restrained of his liberty, except persons imprisoned for debt or by process in any action, or by the judgment, conviction, or order of a Court of record, Court of Oyer and Terminer, or General Gaol Delivery, or Court of General Sessions of the Peace.

Held, that the words "a Court of record" are intended to include only Superior Courts or principal Courts of record, and do not include any Courts of record inferior to or less principal than the High Court of Justice: *Gregory's Case*, 6 Co. 20 b.; *O'Reilly* v. *Allen*, 11 U.C.R. 526. If all Courts of record had been intended, there would have been no necessity for adding "Court of Oyer and Terminer," etc., for these were all Courts of record: *Regina* v. *St. Denis*, 8 P.R. 16, and *Regina* v. *Goodman*, 2 O.R. 468, not followed, the liberty of the subject being involved.

J. Dickson, for defendant.

Boyd, C., Robertson, J.] MAGANN *v.* FERGUSON. [Oct. 4.

Money in court—Payment in with defence—Election to take out—Time—Extension—Judgment—Rules 353, 419, 424.

A defendant brought money into Court with his defence under Rule 419,

in full satisfaction of one of the alleged causes of action. The plaintiff did not elect to take the money out of Court within the time limited by Rule 424, and judgment was given in favour of the defendant upon the cause of action in respect of which the money was paid in. The judgment did not dispose of the money in Court.

Held, that it remained in Court subject to the final order of the Court after the determination of the action, and must be disposed of in accordance with such determination. The plaintiff, having elected to take the money out within the proper time, was not entitled, after judgment, to have the time extended by an order nunc pro tunc, under Rule 353.

J. T. C. Thompson, for plaintiff. *Rowell*, for defendant.

Boyd, C., Robertson, J.] ARTHUR & CO., LTD. *v.* RUNIANS. [Oct. 5.

Discovery—Production of documents—Application before statement of claim—Pleading—False representations.

Production of documents should not be ordered to a plaintiff before he pleads, unless the judge is satisfied that the documents called for are essential to the statement of the plaintiffs' claim. In an action for damages for false representations made by the defendants whereby the plaintiffs were induced to supply them with goods and money, and to enter into agreements with them, to the plaintiffs' loss :

Held, that it was enough for the plaintiffs to aver in their statement of claim that the goods and money were supplied on the faith of statements, oral and written—specifying them—falsely and fraudulently made ; and this they could do without the production of the defendants' balance sheets, books of account, etc. If particulars were afterwards claimed, it would then be time enough to apply for discovery.

F. E. Hodgins, for the plaintiffs. *Swabey*, for the defendants.

Rose, J.] REGINA *v.* GIBSON. [Oct. 6.

Criminal law—Procuring female for prostitution—Commitment—Recital of invalid conviction—Duplicity—Criminal Code, ss. 185, 800.

A commitment of the defendant to gaol recited a conviction for "unlawfully procuring or attempting to procure a girl of seventeen years to become, without Canada, a common prostitute, or with intent that she might become an inmate of a brothel elsewhere."

Held, that the commitment was bad on its face, as it recited a conviction which was invalid for duplicity and uncertainty. The commitment alleged a conviction, and might have been supported under s. 800 of the Criminal Code, if there was a good and valid conviction to sustain it. The conviction returned was that the prisoner, at H., etc., did unlawfully procure a girl of seventeen years, I. D., to become, without Canada, an inmate of a brothel, to wit, a brothel kept by the prisoner at L., in the State of New York, one of the United States of America.

Held, not a good and valid conviction, because it did not come within any of the provisions of s. 185 of the Code.

Wallace Nesbitt, for prisoner. *J. R. Cartwright*. Q.C., for the Crown.

Robertson, J.] REGINA *v.* PONTON. [Oct. 7.

Venue—Change of—Criminal cause—Fair trial—Evidence as to.

Upon a motion made by the Crown under s 651 of the Criminal Code to change the venue for the trial of three persons charged with the offence of breaking into a bank in the town of Napanee, and stealing money therefrom, from the town of Napanee to some other place, upon the ground that the sympathy felt for two of the accused in the town, and in the county of Lennox and Addington, of which it is the county town, was such that a fair trial could not be had,

Held, that the rule that all causes should be tried in the county where the crime is supposed to have been committed ought never to be infringed unless it plainly appears that a fair and impartial trial cannot be had in that county; and mere apprehension, belief, and opinion, are not to be relied on as evidence. And, under the circumstances appearing upon affidavits filed, the motion was refused.

L. G. McCarthy, for Crown. *Wallace Nesbitt*, for defendant Ponton. *C. J. Holman*, for defendant Mackie. *W. E. Middleton*, for defendant Holden.

Boyd, C., Robertson, J.] DAWSON *v.* LONDON STREET R. W. CO. [Oct. 8.

Discovery—Examination of officers of street railway company—Conductor and motorman.

In an action for damages for bodily injuries sustained by a pedestrian, as alleged, by reason of the negligent management and operation of a car of the defendants, an incorporated company:

Held, that the conductor and motorman of the car were officers of the company examinable for discovery; but as the plaintiff had already examined the general manager, she should, under Rule 439 (2), not be allowed to examine both the conductor and motorman, but only one of them.

W. J. Harvey, for the plaintiff. *Hellmuth*, for the defendants.

Falconbridge, J., Street, J.] LAZIER *v.* HENDERSON. [Oct. 8.

Landlord and tenant—Assignment for benefit of creditors—Future rent—Preferential lien—Distress—R.S.O., c. 170, s. 34.

By the terms of a lease of shop premises, the rent was payable quarterly in advance. Thirteen days after a quarter's rent in advance had become due, the lessee made an assignment for the benefit of his creditors. There was a proviso in the lease that if the lessee should make any assignment for the benefit of creditors, the then current quarter's rent should immediately become due and payable, and the ter.. forfeited and void, but the next succeeding current quarter's rent should also nevertheless be at once due and payable.

Semble, that the latter part of the proviso was in fraud of creditors and void.

Held, that the expression "arrears of rent due for three months following the execution of such assignment," in s. 34 of the Landlord and Tenant's Act, R.S.O., c. 170, means "arrears of rent becoming due during the three months following the execution of such assignment;" and the landlord was, therefore, apart from the proviso, entitled to the quarter's rent payable in advance on the quarter day next after the date of the assignment.

Held, also, that the expression "the preferential lien of the landlord for rent," in s. 34, has the same meaning that it had under the Insolvent Acts; and the landlord was entitled to be paid the amount found due to him, as a preferred creditor, out of the proceeds of the goods upon the premises at the date of the assignment, which were subject to distress, although there was no actual distress.

E. G. Porter, for the plaintiff. *V. J. Hughes*, for the defendant.

Rose, J., MacMahon, J.] SMYTHE *v.* MARTIN. [Oct. 10.

Pleading—Statement of claim—Extension of claim made in writ of summons—Rule 244.

An appeal by the defendants from an order of ARMOUR, C.J., in Chambers, reversing an order of one of the local judges at Windsor, whereby part of the statement of claim was struck out, and restoring such part. The writ of summons was indorsed with a claim for an injunction to restrain waste. The statement of claim went further, and claimed to recover possession of the land in respect of which the injunction was sought.

Held, that what was claimed by the pleading was an "extension" of what was claimed by the writ, within the meaning of Rule 244. *United Telephone Co.* v. *Tasker*, 59 L.T.N.S. 852, and *Cave* v. *Crew*, 41 W.R. 359, 3 R. 401, distinguished. Appeal dismissed with costs to the plaintiff in any event.

F. C. Cooke, for defendants. *H. Cassels*, for plaintiff.

Armour, C.J.] IN RE YOUNG. [Oct. 11.

Infants—Custody—Paternal right—Maternal right—Separation of family.

Application by Andrew Young, upon the return of a writ of habeas corpus, addressed to Maggie Young, his wife, and William Taylor, her father, for an order for the delivery of the applicant's seven children, the eldest of whom was fifteen years old, to him, and upon the petition of Maggie Young, their mother, for an order awarding her the custody of such children.

Held, on the evidence, that the father was guilty of adultery with a woman, a servant in his own house, and was also guilty of making loose and unfounded insinuations against his wife's chastity, and of using foul and indecent language to her and their children, and of being harsh and unkind, and at times cruel to her and them.

Held, that the provisions of R.S.O., c. 168, recognize the maternal right, as well as the paternal right, and require equal regard to be paid to the wishes of the mother as to those of the father, differing from the English statute in this respect, and rendering the decisions thereunder to some extent inapplicable here. The result of this is that where the wishes of the mother are

opposed to those of the father, the principal matter to be considered is the welfare of the children. It certainly could not be for the welfare of such of the children as were under five years, that they should be removed from the custody of their mother; and that being so, it was impossible to give the custody of any of the children to the father, for it is wrong to separate the children: *Warde* v. *Warde*, 2 Ph. 786; *Re Ellerton*, 25 Ch. D. 220; *Smart* v. *Smart*, (1892) A.C. 425. Order made that the mother should retain the custody of the childen, and that the father should have access to them at such times as might be agreed upon, or in case of failure to agree at such times as should be fixed by the Chief Justice. Costs to be paid by the father.

L. F. Heyd, for father. *J. H. Moss*, for mother and maternal grandfather.

Armour, C.J.] IN RE HENDERSON AND CITY OF TORONTO. [Oct. 15.

Municipal corporation—By-law—Registration—Non-conformity with plans—"Instrument"—Notice.

Motion by James Henderson to quash by-law 3519, of the corporation of the city of Toronto, being a by-law "to provide for borrowing money by the issue of debentures secured by local special rates on the property fronting or abutting on Rosedale Valley road, between Yonge street and the River Don, in Ward 2, for the cost of opening the said street." By-law 2164 provided for the opening of the Rosedale Valley road, and one of the grounds upon which it was sought to quash by-law 3519, was that by-law 2164 was never registered, and the road was therefore never validly opened, and no assessment could be made for its cost. By-law 2164 was passed on the 27th July, 1888, and the law then, as now, was that "every by-law passed since the 29th March, 1873, or hereafter to be passed by any municipal council under the authority of which any street, road, or highway has been, or is opened upon any private property, shall, before the same becomes effectual in law, be duly registered:" R.S.O. 1887, c. 184, s. 547. A duplicate original of by-law 2164, certified under the hand of the clerk and the seal of the city corporation, was received at the proper registry office on the 22nd August, 1888, and a $2 fee for registry was then and there paid, but it was never registered or entered in any of the books of the registry office, because it did not conform and refer to the plans filed with the registrar of the lands through which the road was opened, as required by R.S.O. 1887, c. 114, s. 84, s.-s. 2.

Held, that this by-law came within the prohibition of the last mentioned enactment, for the reason assigned by the registrar, and also because the by-law was an "instrument" within the meaning of that section, and as defined by section 2 of the Act. Section 96 of R.S.O. 1897, c. 136, must be read with section 100 of the same Act, and so reading it the effect of section 100 is not diminished, for this by-law was not, under the circumstances, capable of registration. And the by-law, never having been registered, never became effectual in law for any purpose. The provision for the registration of such a by-law did not at first appear in any Registry Act, but in a Municipal Act, 29 & 30 Vict., c. 51, s. 348, and it is not to be qualified by holding that the registration is only required for the purpose of notice under the registry laws. And this by-law

never having become effectual in law, never had any force or validity whatever, and nothing done under it could be justified by it; and therefore by-law No 3519 had no foundation and must be quashed.

F. E. Hodgins, for motion. *Fullerton*, Q.C., and *Caswell*, for city.

Meredith, C.J.] ECKHARDT *v.* LANCASHIRE INS CO. [Oct. 17.

Fire insurance—Variation from statutory conditions—"Co-insurance clause" "Not just and reasonable"—R.S.O., c. 203, s. 171.

The plaintiffs, by a contract with the defendants, insured their stock-in-trade against fire for $15,000, "subject to seventy-five per cent. co-insurance"—these last words being conspicuously printed in red ink on the face of the policy. The policy contained a "co-insurance" clause printed in red ink among the variations of the statutory conditions, as follows: "The premium having been reduced in consideration of this condition, the insured shall during the currency of this policy maintain insurance concurrent with this policy on each and every item of the property insured to the extent of seventy-five per cent. of the actual cash value thereof, and if the insured shall not do so, the companp shall only be liable for the payment of that proportion of the loss for which the company would be liable if such amount of concurrent insurance had been maintained." During the currency of the policy the plaintiffs sustained a loss by fire of $42,120.17, the cash value of the property insured being $115,000, and the whole amount of the insurance upon it, including the $15,000 named in the defendants' policy, $70,000. The defendants had two alternative rates of premium, one for insurance with, and the other for insurance without, the "co-insurance" clause, the former being substantially less than the latter, but the plaintiffs had no actual knowledge of this, except in as far as that knowledge was obtained from the terms of the policy.

Held, following *Wallace* v. *Lancashire Ins. Co.*, 23 A.R. 224, that the "co-insurance" clause was a condition and a variation of statutory conditions 8 and 9; and, as it could not, under the circumstances, be found to be "not just and reasonable," within the meaning of section 171 of the Ontario Insurance Act, R.S.O., c. 203, it was binding on the insured.

W. Cassels, Q.C., and *Anglin*, for the plaintiffs. *Osler*, Q.C., and *McInnes*, for defendants.

Meredith, C.J.] WARD *v.* CITY OF TORONTO. [Sept. 23.

Lessor and lessee—Covenant for renewal—Compensation for improvements—Notice.

Where a covenant in a lease to the effect that if at the expiration of the term the lessee should be desirous of taking a renewal lease, and should have given to the lessors thirty days notice in writing of this desire, the lessors would renew at a rental to be fixed as therein directed, provided that if the lessors did not see fit to renew the lessee should receive compensation for his permanent improvements.

Held, that in order to get the benefit of the proviso it was necessary tha

the defendants should make their election not to renew before the expiration of the term.

Wallace Nesbitt, for plaintiff. *Fullerton*, Q C., for defendants.

DIVISION COURT.

COUNTY OF OXFORD.

Finkle, Co. J.] MASTERS V. ADAMS. [Oct. 22.

Master and Servant Act—Set off—Jurisdiction of Police Magistrate outside of cities.

This was a summary proceeding under the Master and Servant Act, in which the Police Magistrate of the town of Woodstock found forty dollars wages due to the servant, but allowed a set off of three dollars to the master. On appeal to the Division Court from this judgment.

Held, that a Police Magistrate outside of cities has no jurisdiction under the Master and Servant Act to allow counter claim or set off against the servant.

J. G. Wallace, for appellant. *S. G. McKay*, for respondent.

Province of New Brunswick.

SUPREME COURT.

Vanwart, J.] GUNTER *v.* EDGECOMBE [Sept. 24.

Slander—Particulars—Order for, when made.

Action of slander. The declaration alleged that the defendant had falsely and maliciously spoken certain words of the plaintiff, setting them out, with an innuendo for larceny. After appearance the defendant applied for an order for particulars on his own affidavit, which stated he had no recollection whatever of ever using or speaking to the plaintiff or to any other person or persons the words alleged in the declaration, or of the time, place or to whom or of the circumstances under which such words were spoken.

Ordered that the plaintiff deliver to the defendant or his attorney an account in writing of the particulars showing where, and the persons to whom, the alleged slander in the declaration was spoken and published, but need not state the names of persons within hearing or passing at the time to whom the words were not addressed. The following cases were cited: *Wicks* v. *MacNamara*, 3 H. & N. 568; *Early* v. *Smith*, 12 Ir. Com. Law Rep. 35 Q.B.; *Bradbury* v. *Cooper* (1883) 12 Q.B.D. 94; *Roselle* v. *Buchanan* (1886), 16 Q B.D 656; *Gourand* v. *Fitzgerald* (1889) 37 W.R. 55; *Stern* v. *Sevastopulo* (1869) 14 C.B. N.S. 738.

Vanwart Q.C., for plaintiff. *W. McCready*, for defendant.

McLeod, J.] KANE v. KERRIGAN. [Sept. 24.

Criminal law—Abusive language—Breach of the peace—Place of offence—25 Vict., c. 17, s. 9 (N.B.).

By the above Act a penalty may be imposed "upon any person who shall by insulting or abusive language or behaviour, taunting epithets or threatening gestures, attempt to provoke another person to commit a breach of the peace in any public street, thoroughfare, alley, road, or by-road, or in any building, or whereby a breach of the peace may be occasioned." Defendant having been convicted under a by-law framed under the Act, for having used abusive language in a field fronting on a highway,

Held, that the offence must occur in a place named in the Act.

Mullin, for appellant. *Skinner*, Q.C., and *Ashe*, for respondent.

McLeod, J.] FRIGEAU v. COLLET. [Oct. 10.

Pleading—Signature of counsel—60 Vict. c. 24, s. 97.

Where plea was signed by attorney and not by counsel, and plaintiff relying upon the English practice treated the plea as a nullity and signed judgment, the judgment was set aside, and leave given to amend the plea, the defect being held to be an irregularity at most, and the English practice distinguishable.

Carter, for plaintiff. *Davis*, for defendant.

Barker, J.] CITY OF FREDERICTON V. MUNICIPALITY OF YORK. [Oct. 18.

Market place—Erection of scales—Crown grant—Abridgement of grant by statute—Construction of statute.

By crown grant, dated in 1817, the defendants' predecessors in title, were granted a block of land fronting on a public street "for a public market place." From that date until 1874 weigh scales were in use in front of the market building for weighing hay, straw and bulky articles, and were used in connection with the market. In 1874 the scales were voluntarily removed. In 1857, by 20 Vict., c. 17, s. 3, it was enacted that the land described in the grant "shall forever hereafter be under the sole control of the county council of the County of York, and their successors, and shall be used as a . . . street and square for the said . . . market house, and for no other purpose whatever. By s. 4 nothing in the Act "shall in anyway affect public rights." In 1898 the defendants began the erection of weigh scales in front of the market, and on land included by the grant, which erection it was now sought to restrain by injunction.

Held, that by 20 Vict., c. 17, the land in front of the market was not made a public street with the effect of making the proposed erection a nuisance as an encumbrance thereon, and that the right under the grant to erect the scales as part of the equipment of the market was not abridged by the Act.

W. Van Wart, Q.C., for plaintiff. *Black* and *Bliss*, for defendants.

Province of Manitoba.

QUEEN'S BENCH.

Killam, J.] HUTCHINSON *v.* COLBY. [Sept. 27.

Appeal from County Court—Practice—Abandonment of right to appeal—"Amount in question" in appeal.

Motion on behalf of plaintiff to strike out an appeal by defendant to the full court from an order of a County Court judge, dismissing a summons to set aside the writ of attachment issued in this action.

Plaintiff sued to recover $70.70, and issued a writ of attachment. Defendant took out a summons to set aside the writ of attachment, which summons was dismissed by the County Court judge on July 23rd, 1898. No order was then taken out, and the case went to trial, when judgment was entered for plaintiff for $47.70. This, bowever, was set aside on defendants' application, and a new trial granted, when judgment was entered for plaintiff for $65.70. Defendant, before the second trial, took out the order dismissing the application to set aside the writ of attachment, and appealed therefrom to the full court, when plaintiff moved before a judge to strike out the appeal on the following ground: That the defendant was estopped from appealing by reason of her proceeding with the trial of the action after the order dismissing the summons was made, by calling and examining witnesses and by applying for a new trial after the order had been made. That defendant acted on the order by issuing and taking out the same; by proceeding with a new trial and calling and examining witnesses; that defendant abandoned the order by neglecting to serve same upon the plaintiff or his solicitor within a reasonable time. That at the time the defendant commenced her proceedings in appeal the amount in question did not exceed the sum of $50, and the appeal should have been to a single judge.

Held, that the motion should be dismissed with costs, to be costs to the defendant upon the appeal in any event of the appeal. It could not be said that the defendant had acted on the order. She was throughout defending herself against the whole proceeding. The judge's decision was against her contention that the attachment should not have issued. The time for the trial had been fixed before the application to set aside the attachment was disposed of, but even if it had not, and if the defendant had sought afterwards to speed the trial in order to get rid of the attachment, it should not be considered that she was acting upon the order dismissing her application. It could not be said that she abandoned the order by not serving it. The order was against her and she could not abandon it. As to whether the appeal should have been to the full court or a single judge, so far as there can be said to have been an amount in question on the application to set aside the attachment, it was more than $50 when that application was pending, and it did not appear that this was altered by a judgment for a less amount which had been set aside when the appeal was entered.

Leech, for plaintiff. *Bonnar*, for defendant.

Killam, J.] MERCHANTS BANK *v.* MCKENZIE. [Oct. 3.

Fraudulent conveyance—Voluntary settlement—Statute of limitations—Evidence of parties to impeached transaction.

The plaintiffs brought this action to have it declared that certain lands held by the defendant McKenzie, and for which she had certificates of title under The Real Property Act, were held by her as trustee for the defendant McLean, against whom the plaintiffs had a registered judgment, or were transferred to her in fraud of McLean's creditors, and to enforce the judgment against the lands. These lands were vested in McLean in the year 1885, but were in that year sold for taxes to certain parties from whom the defendant McLean afterwards negotiated purchases of their rights under the tax sale certificates in the name of the defendant McKenzie, his niece, who kept house for him, and who had no money of her own. It was sought to be shown at the trial that McLean owed Miss McKenzie for wages about as much money as was required for the purchases, and had taken this way of paying off his indebtedness to her. It was not distinctly proved, however, that this had been done in consequence of any bargain or arrangement as to the matter, and McLean provided a considerable further amount to get the deeds from the municipality at the expiration of the time for redemption, after which certificates of title were procured for the lands in the name of Miss McKenzie.

Held, following *Barrach* v. *McCullough*, 13 K. & J. 117, and *Harris* v. *Rankin*, 4 M.R. 115, that the onus was upon Miss McKenzie to account for her possession of the money she claimed to have had and to have advanced in the purchases, and for the source from which the balance of the purchase money was derived, and that in the absence of satisfactory evidence upon these points, the Court should treat the purchases as made by McLean, and with his own money.

No evidence was given at the trial of any agreement that the land should be taken by Miss McKenzie for her claim, or in part payment, or as security for it, or that the purchase price furnished by McLean should be credited on account, and whether the transaction should be considered as one of voluntary settlement upon Miss McKenzie, or of a trust in McLean's favor; it was void against creditors, and the certificates of title in the name of Miss McKenzie could not stand in the way of granting relief to the plaintiffs.

Held, also, that the plaintiffs were not barred by the Statute of limitations, as the case should be treated as one of concealed fraud, and the fraud was not discovered, and could not by the exercise of reasonable diligence have been discovered, more than ten years before the commencement of the action. Judgment declaring that the plaintiffs are entitled to a lien upon the lands for the amount of their judgment, interest and costs, and to a sale of the property.

Tupper, Q.C., and *Phippen*, for plaintiffs. *Ewart*, Q.C., and *McPherson*, for defendants.

Bain, J.] LOPPKY V. HOFLEY. [Oct. 7.

County Court—Jurisdiction of—Prohibition—Unsettled account.

This was an application for prohibition to a County Court, under the fol-

lowing circumstances: Defendants in 1894 ordered a bill of lumber from th plaintiff, amounting to $615. This lumber was supplied, and afterwards a further quantity was ordered. Payments were made on account of the $615 order, some of which were after the second order was given. The plaintiff's claim in the action was limited as he contended to the lumber supplied on the second order. Defendant pleaded "never indebted." On the cross examination of the plaintiff at the trial, the order for $615 was mentioned, and defendant's counsel contended that the account sued on was a part of an unsettled account exceeding $600, that the two orders for lumber constituted a running account, and that some of the items charged in the account sued on were included in the $615 order. The County Court judge found that the $615 order was a separate transaction, and had been settled, and that the account sued on was a different account and had never been settled. After some evidence had been given, the trial was adjourned, when the defendant moved for prohibition.

Held, that it was competent, and indeed necessary, for the judge to inquire into and decide the facts which would determine the question of jurisdiction, and as the County Court judge had decided the facts in favour of jurisdiction, the Court above should not interfere by reviewing his decision, except under very exceptional circumstances. *Joseph* v. *Henry*, 19 L.J.Q.B. 368, and *Elston* v. *Rose*, L. R. 4, Q. B. 4 followed. Application dismissed with costs.

Wilson, for plaintiff. *McKerchar*, for defendant.

Bain, J.] WINNIPEG *v.* C. P. R. CO. [Oct. 15.

Municipality—Construction of contract—Municipal taxes do not include school taxes.

This was a demurrer to the plaintiff's replication in an action commenced before the coming into force of the Queen's Bench Act, 1895, against the defendants for school taxes levied upon their property. Defendants had pleaded exemption under a by-law of the city, passed in 1881, by which it had been enacted that all property of the defendants then or thereafter to be owned by them for railway purposes within the city should be exempt for ever from all municipal taxes, rates, levies and assessments of every nature and kind. The replication simply set out the by-law in full.

Held, that school taxes are not included in the term "municipal taxes" and that under section 135 of the Assessment Act, R.S.M., c. 101, as amended by 57 Vict, c. 21, s. 3, the plaintiffs had a right to sue for them, being merely constituted by the legislature as the agents through whom the school corporation levies the amounts they require for education purposes. Judgment for plaintiffs on the demurrer.

Howell, Q.C., and *Campbell*, Q.C., for plaintiffs. *Aikins*, Q.C., and *Culver*, Q.C., for defendants.

Province of British Columbia.

SUPREME COURT.

Walkem, J.] E. & N. RAILWAY CO. *v.* NEW VANCOUVER COAL CO. [June 3.

Practice—Pleading—Embarrassing statement of claim—General allegation of plaintiffs' title—Rule 181.

Summons to strike out the following paragraph of the plaintiffs' statement of claim as embarrassing: "The plaintiffs are the owners and occupiers of certain lands known as Newcastle Townsite, and of the foreshore rights in respect thereof, situate on Vancouver Island, and are the owners of the coal under the foreshore and sea opposite the said lands, and of the exclusive right of mining and keeping for its own use all coal and minerals under the said foreshore and sea opposite the said lands." The plaintiffs, who had never been in possession sued to recover certain coal seams, and the above paragraph of the statement of claim contained the only allegation as to how the plaintiffs claimed title.

Held, following *Phillips* v. *Phillips*, 4 Q. B. D. 127, that the defendants were entitled to full particulars of the title under which the plaintiffs claimed. Ordered that plaintiffs amend statement of claim by giving particulars within five weeks. Costs to be costs in the cause.

E. V. Bodwell, for plaintiffs. *Gordon Hunter*, for defendants.

ESQUIMALT ELECTION CASE.

Martin, J.] JARDINE *v.* BULLEN. [Oct. 5.

Election petition—Practice—Case stated—R.S.B.C., c. 67, s. 231, s.-s. 8.

Summons by petitioners that that portion of the case raised by the petition which alleged that the Returning Officer erroneously received certain ballot papers as votes for the respondent which were not marked according to law, and erroneously rejected certain ballot papers properly marked according to law as votes for David William Higgins, and which further alleged that the said David William Higgins was duly elected, be stated as a special case. Numerous charges of bribery and corruption were also set forth in the petition. S.-s. 8 of s. 231, of the Provincial Elections Act is as follows: "Where, upon the application of any party to a petition, made in the prescribed manner to the Court, it appears to the Court that the case raised by the petition can be conveniently stated as a special case, the Court may direct the same to be stated accordingly, and any such special case shall, as far as may be, be heard before the Court, and the decision of the Court shall be final; and the Court shall certify to the Speaker its determination in reference to such special case." Had the application been successful, the effect of it would have been to obtain a recount. It was objected on behalf of the respondent that the Court was not empowered under the section to do otherwise than to state the whole case.

Held, that where the case raised by an election petition embraces several distinct grounds of complaint, the Court has no power to state only one part of the case.

Duff, for the summons. *Hunter*, contra.

Martin, J.] [Oct. 19

NEW VANCOUVER COAL CO. v. ESQUIMALT & NANAIMO RAILWAY CO.

Practice—Interlocutory injunction—Undertaking as to damages.

Motion for an order for an injunction restraining the defendants, their servants, workmen and agents from proceeding under the arbitration proceedings of the Coal Mines Acts, R.S.B.C., c. 137, for the purpose of acquiring the right of way through the property of the plaintiffs in Nanaimo District, and for an injunction restraining the defendants, their servants, &c., from trespassing on the said property of the plaintiffs, under colour of the said Act or otherwise. On October 3rd an interlocutory injunction was granted until the hearing, but as counsel for the defendants asked that the plaintiffs should give an undertaking as to damages, and counsel for the plaintiffs submitting that it was not the practice of the Court to require such undertaking in cases where the interlocutory injunction had been obtained on notice, but only when ex parte, and further, that in any event the Court should exercise its discretion and dispense with the undertaking in the present case, the point was reserved for further argument.

Held, that an undertaking as to damages ought to be given by a plaintiff who obtains an interlocutory order for an injunction, not only when the order is made ex parte, but even when it is made upon hearing both sides.

Helmcken, Q.C., for plaintiffs. *Luxton*, for defendants.

EXCHEQUER COURT.

ADMIRALTY DISTRICT.

McColl, C.J.] COOK *v.* MANAUENSE. [Oct. 14.

Maritime lien—Arrest—Practice.

The plaintiff alleged breach of a contract for his passage from Liverpool, England, to St. Michael, and thence by steam launch and house boat to the Yukon gold fields. The contract was also that he should be supplied with provisions during the open season of 1898, if he remained in touch with the steamer and the steamer's boats, should be carried back to Victoria at the end of the season. The breach complained of was the failure to carry the plaintiff from St. Michael to Dawson. The contract was made with Captain Edwards, the master and owner of the ship, which was subject to a mortgage. The plaintiff claimed the condemnation and sale of the ship, and the application of the proceeds to the payment of the damages claimed, and costs. The action was brought against the ship itself. The plaintiff's counsel insisted that the contract was for such a special use of the ship as that, upon any breach, from that moment, a lien upon the ship was by law created for the damages sustained of the same nature, and enforceable in the same way as a maritime lien.

Held, that the lien claimed does not exist by the law of England: *The Pical Superiore*, 5 P.C.; *The Heinrich Bjorn*, 10 P.D.; *The Ella*, 13 P.D.; *The Queen* v. *Judge of City of London Court* (1892), 1 Q.B.; *The Gela* (1893) A.C., and *The Theta* (1894), P.D., and that the jurisdiction in Admiralty is exercised here upon the principles of the English law. Action dismissed with costs.

Russell, for plaintiff. *Bradburn*, for defendant.

Book Reviews.

Tudor's Leading Cases on Real Property and Conveyancing, 4th ed., 1898. London: Butterworths. Canadian agents: Canada Law Journal Company, Toronto.

Mr. Tudor's well known volume bearing the above title, contains a selection of leading English cases on the law of real property and conveyancing, and the construction of wills and deeds reported in full, and followed by copious and comprehensive annotations, which are in themselves equivalent to a text-book upon the law of real property. The new edition is a very satisfactory one, and an examination of the annotations proves them to be both accurate and complete, and to have been brought down to the present year. The book will be found exceedingly valuable to those interested in real property law.

American and English Encyclopædia of Law, 2nd edition, 1898. Edward Thompson Company, Northport, N.Y.

To those who have used the first edition of this valuable work—and who has not—one need only say that the second edition, seven volumes of which have been issued, is upon the same plan as the first. The plan of the work it would indeed be hard to improve upon. The varieties of type, and the numerous cross references and sub-divisions make it a matter of comparative ease to find any subject ordinarily sought for within the range of law books. The citation of Canadian and English authorities, in addition to those of the American courts, is made a special feature of the work. The edition is expected to be completed in 32 volumes, inclusive of index.

Analysis of Snell's Principles of Equity, by E. E. BLYTH, LL.D., Q.C., 6th edition; London: Stevens & Haynes, 1898.

This little work is, as it purports to be, very useful to law students, especially in preparing for examinations, and is intended to be used as a companion to Snell's Equity. There is no doubt of the value of the analysis used, however, for purposes of examination, and we fear at the expense of the original work.

Flotsam and Jetsam.

"It has been said that the object for which punishment is inflicted is not only to correct the wrong-doer himself, but to deter others from following his example. I sometimes doubt whether punishment deters. I had a little case at Chandler not long ago in which I had cause to doubt it. I defended a fellow for shooting quail. I succeeded admirably in the case. I got my client fined, and it cost him about eighty dollars. Two weeks afterward I saw the defendant in the field with a double-barrelled shotgun, two or three dogs, and as many coffee sacks. I called to him and asked: 'What are you doing there?' He answered: 'Killing quail to pay that fine with.'"—*Albany Law Journal.*

The case of the girl Kate Shoesmith, recently condemned to death for the murder of her illegitimate baby, has called public attention once again to the haphazard, Draconian character of our punishments for homicide. Between a half-demented girl and a cold-blooded poisoner the law knows no difference. An unwilling jury convict, and an unwilling judge sentences, imploring God to have mercy on an unhappy soul more sinned against than sinning, the mercy of man being postponed till "recommendations are forwarded to the proper quarter." Then, after a week of mental agony for the prisoner, the Home Secretary intimates that Her Majesty is graciously pleased only to inflict a punishment on the poor wretch some twenty times more severe than the usual punishment of a garrotter. Occasionally the law stretches its benignity to the uttermost. After five or ten years a Home Secretary may, if not otherwise occupied, give his attention again to the case, and the woman emerges, a battered gaol-bird of five and thirty, good for nothing more in this world. Yet the man escapes scot-free. Bentham, with whom punishment was a science as well as a sentiment, wrote of the subject long ago:—"The laws against this offence, under pretence of humanity, are a most manifest violation of it. Compare the offence with the punishment. The offence is what is improperly called the death of an infant, who has ceased to be, before knowing what existence is—a result of a nature not to give the slightest inquietude to the most timid imagination, and which can cause no regrets but to the very person who, through a sentiment of shame and pity, has refused to prolong a life under the auspices of misery. And what is the punishment?—the barbarous infliction of an ignominious death upon an unhappy mother whose very offence proves her excessive sensibility; upon a woman guided by despair, who, in hardening her heart against the softest instinct of nature, has harmed no one but herself. She is devoted to infamy because she has dreaded shame too much, and the souls of her surviving friends are poisoned with grief and disgrace.—*London Law Times.*

LAW SOCIETY OF UPPER CANADA.

EASTER TERM, 1898.

(*Continued from p.* 676.)

Mr. Osler, from the Reporting Committee, presented the following report in respect to the delays in issuing the reports, and on the reporting of cases on (winding-up) companies: Your Committee have enquired as to the delay in the issue of the reports by the publishers, and report as follows: That some delay arises from the difficulty in obtaining revisions of the draft reports as first printed from the judges, and that for this delay there seems to be no remedy. That there is a delay of from eight to fourteen days after the advance copies are delivered at Osgoode Hall before the edition is distributed to the profession, and that this is the necessary and ordinary time required for the publishers' staff to bind and deliver the numbers. Orders have been given that advance copies are to be sent to each county library, and this will to some extent put the country members on a par with those in the city. As to the reporting and winding-up cases before the Master-in-Ordinary, it will be found that many such cases have been reported, and Mr. Brown has been instructed to report all cases under the Winding-up Act that are of sufficient importance, whether such cases go to appeal or not.

It was ordered that the Reporting Committee be requested to consider what course, if any, can be taken to secure from the Supreme Court of Canada a proper system whereby causes before that Court should not be taken up, either by surprise to counsel, or without a fair opportunity to be in attendance, in view of the long distances which counsel travel in order to attend the Supreme Court. Convocation then rose.

TUESDAY, June the 28th, 1898.

Present, the Treasurer, the Attorney-General, Hon. A. S. Hardy, Messrs. Aylesworth, Barwick, Bayly, Bell, Britton, Clarke, Douglas, Edwards, Guthrie, Hoskin, Martin, Riddell, Ritchie, Shepley, Strathy, Watson and Wilkes.

Dr. Hoskin, from the Discipline Committee, presented the following report :

The Discipline Committee to whom the complaint of His Honour Judge Dartnell against Mr. Samuel Simpson Sharpe, of the city of Toronto, student-at-law, was sent for investigation, beg to report that your Committee appointed a day for the purpose of proceeding with the complaint in question. Before the day appointed for such investigation arrived, the said Mr. Sharpe in writing apologized for the act complained of by His Honour Judge Dartnell, whereupon the said Judge wrote to the Chairman accepting the said apology and withdrawing his complaint, whereupon the Chairman of your Committee notified the members not to attend on the said investigation, as the matter would not be proceeded with. Your Committee are of opinion that no action should be taken in the matter. The report was received and having been taken into consideration was adopted.

Dr. Hoskin, from the Discipline Committee, then presented the following report :—

The Discipline Committee to whom the report of the Finance Committee in the matter of one J. B. Dixon, had been sent for investigation, beg to report :—

1. That from the said report of the Finance Committee, it appeared that one J. B. Dixon had advertised himself in a Brampton paper as a solicitor.

2. That your Committee appointed a day to proceed with the said investigation and was attended by the solicitor for the Law Society and the said J. B. Dixon and his counsel, and the evidence submitted was taken by your Committee.

3. From said evidence it appeared that the said advertisement was inserted without the knowledge or concurrence of the said Dixon, and was withdrawn the moment it wa[illegible]ght to his notice.

4. It app[illegible] the said J. B. Dixon is an articled clerk who has not presented himself for [illegible]nination, and it did not appear from the evidence submitted to your Commit[illegible] [illegible]ne said J. B. Dixon had been acting as a solicitor directly or indirectly.

5. Your Committee is of opinion that no further action should be taken in the matter. The report was received, and having been taken into consideration was adopted.

Mr. Shepley, from the Legal Education Committee, reported upon the results of the First Year Examination of the Law School in Easter, 1898.

Ordered that the following gentlemen be allowed their first year examination :—W. N. Munro, A. E. McNab, W. A. Mackinnon, M. G. V. Gould, E. G. Long, T. Gibson, G. E. Buchanan, J. E. Wallbridge, G. E. Taylor, J. A. Peel, A. M. Fulton, W. A. Nisbett, C. W. Moore, P. W. O'Flynn, F. H. A. Davis and C. W. Goodwin (equal), H. A. Tibbetts, J. H. Parker, W. D. B. Turville, W. M. Kellock, J. L. Counsell, G. Bray, M. B. Tudhope, J. F. L. Embury and H. L. Jordan (equal), E. W. Clement, R. H. M. Temple, E. S. Senkler, C. McCrea, A. N. P. Morgan, O. D. Garbutt, J. L. O'Flynn, F. J. S. Martin and P. McDonald (equal), G. E. Kingsford, R. R. Bradley, C. K. Graham, W. B. Scott, T. D. McGee, T. I. McNeece, R. C. H. Cassels, W. B. S. Craig, H. G. Myers,

J. A. Primeau, L. G. D. Legault, H. V. Hamilton, G. J. McArthur, C. S. Tapscott, S. A. Armstrong.

Ordered that the following gentlemen be allowed their first year examination with honours: Messrs. W. N. Munro, A. E. McNab, W. A. Mackinnon, M. G. V. Gould, E. G. Long, T. Gibson, G. E. Buchanan, J. E. Wallbridge, G. E. Taylor, J. A. Peel and A. M. Fulton.

The report further proceeded upon the results of the second year examination held at Christmas, 1897, and Easter, 1898. Ordered that the following gentlemen be allowed their second year examination: W. T. White, J. A. Rowland, D. Donaghy, H. R. Smith, A. R. Clute, J. G. O'Donoghue, J. Jennings, M. W. McEwan, R. I. Towers, R. C. McNab, R. F. McWilliams, F. B. Proctor, C. F. Maxwell, G. H. Gauthier, J. C. Brown, J. W. Mahon, M. R. Gooderham, G. A. Ferguson, J. G. Merrick, O. S. Black, A. Spotton, W. C. Brown, J. W. Lawrason, E. C. Sanders and V. P. McNamara (æq.), N. H. Peterson, H. C. Osborne, T. F. Slattery, W. Wadsworth, J. H. Craig and J. P. Stanton (æq.), A. C. Kingston, C. F. W. Atkinson, W. T. Goodison, A. W. Holmsted, J. R. Osborne, J. D. Falconbridge, G. B. Henwood, G. F. Mahon, W. E. N. Sinclair, H. Boldrick, T. A. White, J. G. Stanbury, W. C. Armstrong, C. Garrow, F. K. Johnston, A. F. Healy, C. W. Bell, J. W. Crozier, T. H. Crerar, J. C. Milligan, J. S. Lundy, T. E. McKee, O. de Laplante.

On the same report it was ordered that Mr. J. C. L. White, who was in Hilary Term last given permission to write at this examination on the subject of Practice, and has now on the result of his examination upon all subjects of the Second Year obtained sufficient marks to entitle him to be allowed same, be allowed same accordingly.

It was further ordered that the case of Mr. Bowerman, who has passed the examination be referred back to the Committee on Legal Education for consideration and report; and it was ordered that Messrs. J. A. Milne and J. H. Campbell, who upon a supplemental return of the examiners appear to have obtained the necessary number of marks to entitle them to be allowed their second year examination, be allowed same accordingly. And also ordered that the following gentlemen be allowed their Second Year Examination with honours: W. T. White, J. A. Rowland, D. Donaghy, H. R. Smith, A. R. Clute, J. G. O'Donoghue, J. Jennings, M. McEwen, R. I. Towers, R. C. McNab, R. F. McWilliams, F. B. Proctor, C. F. Maxwell, G. H. Gauthier, J. C. Brown.

Mr. Shepley presented a further report from the Legal Education Committee, and it was ordered that the following gentlemen be admitted as students-at-law of the Graduate Class as of Easter Term, 1898:—Messrs. A. W. Anderson, T. F. Battle, E. W. Beaty, O. M. Biggar, S. E. Bolton, Ogle Carss, Gordon M. Clark, R. H. Greer, H. P. Hill, A. W. Hunter, J. A. Jackson, C. G. Jones, A. Macgregor, D. B. White, and Mr. E. S. Fraser of the Matriculant Class; and in the case of Mr. F. L. Davidson, ordered that he be admitted as a student-at-law of the Graduate Class, and that he be permitted to write for the first year examination at the Supplemental Examination in September next, and upon passing same to proceed with the second year of the Law School course, during the next school session, and to write for the second year examination at the end of the School Session in May, 1899. And in the case of Mr. L. M. Lyon, ordered that he be permitted to write at the Supplemental Examination of the third year in September next in the subjects prescribed for the examination at Christmas last.

Mr. Shepley, on behalf of the Legal Education Committee, reported in continuation of their Report of 3rd of June last, in respect to the Third Year Examination, and it was thereupon ordered that the following gentlemen be called to the Bar and receive their certificates of fitness: H. A. Burbidge, S. H. B. Robinson, A. C. W. Hardy, A. R. Hamilton, F. L. Pearson, T. H. Hilliar, J. B. T. Caron. And that Mr. D. M. Stewart, who upon a supple-

mental return by the examiners appears to have obtained the necessary number of marks to entitle him to be allowed his Third Year Examination, be allowed same.

Mr. Shepley, on behalf of the Legal Education Committee, presented their report on applications for relief, recommending as follows: That Mr. C. E. Hollinrake do re-article himself and serve under articles until the first day of Trinity Term next, that his notice do remain posted meantime, and upon the completion of his papers during Trinity Term he be, if no objection is made to appear, called to the Bar and do receive his certificate of fitness. That Mr. G. G. Moncrieff's service under articles since the 28th September, 1897, be allowed him. That Mr. F. E. Perrin, under the circumstances, upon filing the duplicate articles entered into by him and his papers being in all respects correct and regular, be called to the Bar and receive his certificate of fitness. That Mr. E. G. Osler's admission on the books of the Society be reckoned as of Easter Term, 1885, and that his papers being in all other respects correct and regular, he be called to the Bar to receive his certificate of fitness.

Convocation adopted the recommendations and ordered accordingly.

The Secretary reported that he had on the nineteenth day of June instant, pursuant to the order of Convocation of the third of June instant, issued notices to all Benchers of the Law Society of a meeting of Benchers on this day (Tuesday, 28th June), specially called for the purpose of supplying the vacancies caused by the failure of Messrs Colin Macdougall, Q.C., and Donald Ban Maclennan, Q.C., to attend the meetings of the Benchers for three consecutive terms, and in succession to the late D'Alton McCarthy, Q.C. Messrs. Colin Macdougall, Donald Ban Maclennan and Zebulon Aiton Lash were then elected Benchers, to hold office until the beginning of Easter Term, 1901.

Mr. Shepley, from the Legal Education Committee, reported in respect of the case of Mr. John Charles Elliott: The Committee has carefully considered the case; Mr. Elliott appeared before the Committee, and was heard on his own behalf. The Committee recommend that his application for Call to the Bar and for certificate of fitness be not granted. Ordered accordingly.

Mr. Shepley presented the following report from the Legal Education Committee, with respect to the Law School course: The Committee has considered the subject of providing for a full course of three years in the Law School compulsory on all students, and also so much of the Principal's report as relates to the Law School course, and begs to submit the following conclusions: 1. The three years' attendance should be continuous and unbroken. 2. Graduates should attend during their first, second and third years. 3. Matriculants should attend during their third, fourth and fifth years. 4. That the examinations held at Christmas should be made independent and complete in themselves so far as pass students are concerned, while with respect to Honour men the present system of combining the results of the Christmas and Easter examinations should be continued. 5. The above of course involves the abolition of the half year option referred to in the Principal's report. 6. The differentiation of Honour from Pass men in the second and third years suggested in a former report of the Principal to be by means of an examination in additional subjects to be prescribed by the Committee from time to time. 7. The rules necessary for carrying the first three paragraphs of this report into effect, should it be adopted by Convocation, should not become operative before the school session of 1899-1900.

The report was received and ordered to be taken into consideration clause by clause.

Mr. Shepley moved the adoption of the first, second and third clauses of the report.

Mr. Strathy moved in amendment that matriculants be required to take the first, fourth and fifth years in the Law School. Lost on a division.

The various clauses were adopted separately and the report then adopted as a whole.

Mr. Shepley presented the following report from the Legal Education Committee with respect to changes in the Law School building: The Committee has had under consideration that part of the Principal's sessional report which relates to the question of improved library and reading-room accommodation in the Law School. The Committee has had before it a report from the Librarian, showing that the average daily attendance of students in the reading room during the past session has been a fraction over 43, while the attendance has risen to the large figure of 81. The Committee has examined the premises, and reports that the provision now made is entirely inadequate. In the opinion of your Committee, the time has now arrived when the Law School building should be completed, and that some alterations may be found desirable in the completed portion of the building. The Committee thinks that the work should be undertaken with four objects in view: 1. The maintenance of sufficient lecture room accommodation. 2. The securing an adequate library and reading room accommodation. 3. The securing of a suitable common room for the use of the students. 4. The improvement (if at all feasible) of the present arrangements for heating and ventilation. The Committee reports accordingly, and recommends that this, or a special committee, should be entrusted with the carrying out of the work should it appear that it can be done between this date and the opening of the school in the fall, or if not, with the procuring of plans and estimates for submission to Convocation. Ordered that the Legal Education Committee do obtain and report to Convocation plans and estimates.

Mr. Shepley, on behalf of the Legal Education Committee, further reported: The Committee reports upon the reference by Convocation to this Committee on December 3rd, 1897, to consider whether any, and if so, what amendment should be made to Rule 150, that in the opinion of the Committee, no amendment to that rule is either necessary or desirable. On the contrary, your Committee is of opinion that effect should be given to the rule in all cases. The report was adopted.

Mr. Shepley, from the Legal Education Committee, presented their report on applications for relief, and recommended as follows: In the case of Mr S. A. Hutchison, that the certificate of service from Mr. G. Hutchison, now deceased, be dispensed with, and that the remainder of the petition do stand until Trinity Term In the cases of Messrs. W. Cain and E. M. Meighen, whose notices have remained posted pursuant to the order of 3rd June, 1898, that they be admitted as students-at-law of the Matriculant Class as of Easter term. In the case of Mr. Alfred Hall, that he be called to the Bar and receive his certificate of fitness. Convocation adopted the recommendations and ordered accordingly. The following gentlemen were then called to the Bar: Messrs. A. G. Slaght, E. J. Daly, H. A. Burbidge, D. R. Dobie, E. G. Osler, S. H. B. Robinson, A. C. W. Hardy, C. A. Macdougall, J. C. Hamilton, T. H. Hilliar, J. B. Noble, W. L. McLaws, A. Hall, A. R. Hamilton, E. T. Bucke, D. P. Kennedy, J. B. T. Caron, F. L. Pearson, I. R. Carling.

Convention adjourned until 2 p.m., when the complaint dated 13th June, 1898, of Mr. D. Ferguson, complaining of the conduct of Mr. A. E. Fripp, was read; ordered that the Secretary do inform Mr. Ferguson that his letter does not give sufficient particulars on which an opinion can be expressed by Convocation

The letter of Mr. Geo. Leighton, complaining of the conduct of certain practitioners in the county of Dufferin was read. Ordered that no action be taken thereon. The letter of Mr. W. S. Wilson of June 25th, 1898, to the Treasurer, drawing attention to the letter signed by D. Urquhardt, Gideon Grant, and Charles Elliott of June 10th, 1898, to collect funds to defend the suits brought against members of the "Select Knights" for calls, was read. Ordered that the communication be referred to the Discipline Committee to enquire whether there

be a primâ facie case against the parties signing the letter The complaint of Mr. E. W. Nelles against Mr. F. J. Travers, accompanied by a statutory declaration, was read. The statutory declarations of Mr. Travers and others volunteered in reply were read, and it was ordered that the complaint be referred to the Discipline Committee for investigation.

The report of the Committee on Journals and Printing upon the propriety of establishing a system for giving notice to members of the business to be laid before Convocation, which had been presented May 17th, 1898, and had been on that day ordered for consideration to-day, was read, and Mr. Watson moved the adoption of the report.

Mr. Edward moved in amendment that the report be referred back for further consideration. Lost. The report was then adopted.

Mr. Shepley moved for leave to introduce a rule providing that the Legal Education Committee shall consist of fourteen members. Granted. Mr. Shepley moved the first reading of the Rule as follows: That Rule 29 be amended by striking out the word "Committee" in the second line thereof, and inserting instead thereof the words "and Legal Education Committees respectively." The rule was read a first and second time, and Mr. Shepley moved the suspension of Rule 24 (as to stages). Granted. The rule was read a third time and passed.

Mr. Shepley moved for leave to introduce a rule to be numbered No. 31a. Granted. Mr. Shepley moved the first reading of the Rule as follows: "31a. If at any meeting of any Committee, either standing or special, a quorum of the members of such Committee should not be in attendance at the hour appointed, any member or members of Convocation not on the Committee may at the request of the chairman or convener of the Committee, or in his absence, of any two members of the Committee, sit in such Committee during such meeting, and a quorum so composed shall have all the powers, at such meeting, of a quorum wholly composed of members of such Committee." The rule was read a first and second time, and Mr. Shepley moved the suspension of Rule 24 (as to stages). Granted. The rule was read a third time and passed.

Ordered that Messrs. Lash and Barwick be elected as members of the Legal Education Committee, Messrs. Lash and Macdougall members of the Reporting Committee, Messrs. Lash and Maclennan members of the Discipline Committee, and Messrs. Macdougall and Maclennan, members of the Journals Committee.

The list of members of the standing committees for 1898-99 is as follows:

FINANCE.

G. H. Watson, Chairman; A. B. Aylesworth, B. M. Britton, A. Bruce, A. H. Clarke, E. B. Edwards, G. C. Gibbons, John Hoskin, W. Kerr, E. Martin, W. R. Riddell, C. H. Ritchie, G. F. Shepley, H. H. Strathy.

REPORTING.

B. B. Osler, Chairman; Walter Barwick, B. M. Britton, E. B. Edwards, D. Guthrie, W. D. Hogg, J. Idington, Z. A. Lash, Colin Macdougall, W. Proudfoot, C. H. Ritchie, J. V. Teetzel.

DISCIPLINE.

John Hoskin, Chairman; Walter Barwick, R. Bayly, A. Bruce, E. B. Edwards, D. Guthrie, W. D. Hogg, Z. A. Lash, D. B. Maclennan, C. Robinson, H. H. Strathy, G. H. Watson.

LEGAL EDUCATION.

G. F. Shepley, Chairman; Walter Barwick, R. Bayly, John Hoskin,

Z. A. Lash, E. Martin, B. B. Osler, W. Proudfoot, W. R. Riddell, C. H. Ritchie, C. Robinson, H. H. Strathy, J. V. Teetzel, G. H. Watson.

LIBRARY.

A. B. Aylesworth, Chairman; S. H. Blake, A. H. Clarke, W. Douglas, J. Idington, W. Proudfoot, W. R. Riddell, C. H. Ritchie, C. Robinson, G. F. Shepley, H. H. Strathy, G. H. Watson.

JOURNALS AND PRINTING.

A. Bruce, Chairman; A. B. Aylesworth, Walter Barwick, R. Bayly, John Bell, A. H. Clarke, G. C. Gibbons, W. Kerr, Colin Macdougall, D. B. Maclennan, M. O'Gara, J. V. Teetzel.

COUNTY LIBRARIES.

E. Martin, Chairman; B. M. Britton, A. Bruce, W. Douglas, G. C. Gibbons, D. Guthrie, J. Idington, W. Kerr, M. O'Gara, B. B. Osler, H. H. Strathy, A. J. Wilkes.

(By Rule 29 the Treasurer is ex officio a member of all standing committees.)

The petition of Charles Cyrus Grant, of St. Thomas, praying for admission as a student-at-law, accompanied by his letter of June 23rd, and the letter in his favour by Mr. R. Miller, of St. Thomas, were laid before Convocation and read. It was moved that Mr. C. C. Grant be admitted as a student-at-law. Lost.

Mr. Edwards, from the Reporting Committee, presented the letter of Mr. J. F. Smith, Q.C., compiler of the Consolidated Digest, reporting that sufficient progress with the work had been made to justify payment of the sum of $625. The letter was referred to the Reporting Committee for their report upon the said letter, in order that a certificate in accordance with the terms of the contract be furnished by the Committee.

Ordered that the following gentlemen be paid the scholarships found due them by the reports of the legal education committee:

First year: Mr. Munro, $100; Mr. NcNab, $60, and Messrs. McKinnon, Gould, Long, Gibson and Buchanan, each, $40.

Second year: Mr. White, $100; Mr. Rowland, $60, and Messrs. Donaghy, Smith, Clute, O'Donoghue and Jennings, each, $40.

Mr. Martin, from the County Libraries Committee, reported: That the Essex Law Association has applied for a loan to purchase books necessary for the efficiency of their library. Your Committee recommend that a loan of $360 be made to the Association, repayable in twelve yearly instalments of $30 each, the first payment to be made Dec. 31st, 1900, and yearly thereafter until the loan is paid off, security to be given for the due expenditure of the loan in the purchase of books. Ordered that the said sum of $360 be paid upon security being given for the due expenditure of the money, to the satisfaction of the Committee.