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DIARY FOR JANUARY.

1. Wed. ..New Year's Day.
2. Thur ..Christmas Vacation in Court of Appeal ends.
5. Sun. ..2nd Sunday after Christmas.
6. Mon....Christmas Vacation in Chancery ends. Mun. Elec. held. Heir and Dev. Sitt. begin. Co. Ct. Terms begin. Hamilton assizes.
7. Tues ..Toronto Assizes.
8. Wed...Christmas Vacation in Exchequer Ct. ends.
10. Fri....Christmas Vacation in Supreme Court ends.
11. Sat....County Court Term ends.
12. Sun....1st Sunday after Epiphany. Sir Chas. Bagot, Gov.-gen., 1842.
14. Tues...Court of Appeal sits.
19. Sun. ..2nd Sunday after Epiphany.
20. Mon ..Supreme Court sits. First meeting of Mun. Councils (ex. Co. Council.)
21. Tues..Heir and Dev. sitt. end. County Councils hold first meeting. Primary Examination.
22. Wed..Primary Examination.
23. Thur..Primary Examination.
25. Sat ..Sir F. Bond Head, Lt.-Gov. U. C., 1836.
26. Sun....3rd Sunday after Epiphany.
28. Tues...1st Intermediate Examination.
29. Wed ..2nd Intermediate Examination.
30. Tues ..Examination for Attorneys.
31. Frid..Earl of Elgin, Gov.-Gen., 1847. Examination for Call.

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LAW SOCIETY OF UPPER CANADA ....

Canada Law Journal.

Toronto, January, 1879.

The last *Canada Gazette* announces that Herbert Stone McDonald, Esquire, Junior Judge of the County Court of Leeds and Grenville, has been appointed Judge of that Court, *vice* R. F. Steele, Esquire, who died in the month of January, 1875.

It was at one time thought improbable that the Supreme Court would sit on the 20th of January, as in due course it should, as Sir W. B. Richards is still absent on sick leave, and the last appointed Judge cannot be sworn in, as the law stands at present, until the Chief's return. It is said now, however, that arrangements have been made which will prevent the necessity of any adjournment.

A fourth edition of Harrison's Municipal Manual has just been published, edited by Mr. Frank Joseph, Barrister-at-Law. The editor tells us that the annotations to the third edition have been retained with but trivial alterations, and that the new matter was compiled almost entirely from notes prepared by the late Chief Justice. We are satisfied that Mr. Joseph has done his part of the work well, as he has already proved himself an intelligent, careful, and painstaking compiler and editor in other works. There is a melancholy interest attaching to this edition of Mr. Harrison's popular law book, in that even during the last days of his illness he made suggestions relating to its concluding pages. The present volume is much larger and more complete than any previous edition.

Now that stenography has become an "institution" of the Courts, it will be well to have this system of taking the evidence as nearly perfect as possible. One great defect at present is, that one reporter is not able to read the notes of another, and this, we understand, is chiefly owing to arbitrary symbols being used which are peculiar to the individual reporter. One can see at a glance the immense disadvantages of this, in case of death or illness of a reporter. All the reporters in the Courts should have a common system of writing, so that each could write out at large the evidence taken by another. So also in the event of a dispute as what language was used by the witness, the stenographer should be able to check the notes of the other, and so corroborate or correct his report.

In *McDonald* v. *Notman*, 25 Gr. 608, the Court of Chancery held that no implied promise to pay a debt extinguished by a discharge in insolvency will revive such a debt; but that for such a purpose an express undertaking to pay the amount must be established. The late cases in England do not appear to have been cited, which would, perhaps, have led the Court to state their conclusions more broadly. In *Heather* v. *Webb*, 46 L. R. C. P. 89, it is laid down that a promise by a debtor to pay a debt barred by a discharge is *nudum pactum*, and its breach affords no cause of action. Lord Coleridge observed that the aim of the Act being to give the bankrupt a new start, to allow such promises to be good would be, by a side-wind, to reverse the whole policy of the Act. See also *Jones* v. *Phelps*, 20 W. R., 92, therein cited.

Lord Justice Christian, of the Irish Bench, has retired from that position. He is spoken of in the *Irish Law Times* in the following terms:—"The recorded judgments delivered by Mr. Justice Christian will ever command the highest respect of the profession—a respect likely to increase yet more in future years. They were ever distinguished by exhaustive research, profound erudition and perspicuous instruction; they were pronounced with logical precision, incisiveness and force; they were guided by inflexible impartiality and independence." Whatever may have been the eccentricities and faults of this eminent Judge, there can be no question of his learning ability and uprightness. His hearing had become seriously impaired of late years, and it was mainly owing to this that he resigned. He is said not to have had the sweetest temper possible; but it is generally admitted that his failing in this respect was only conspicuous when attacking what he believed to be abuses.

The following appointments have been made in Ireland, consequent upon the death of Judge Keogh, and the resignation of Lord Justice Christian:—

Gerald Fitzgibbon, Esq., Q.C., Her Majesty's Solicitor-General for Ireland, to be Lord Justice of Her Majesty's Court of Appeal, Ireland, in the room of the Right Hon. Jonathan Christian.

The Hon. Michael Harrison, Judge of the Court of Bankruptcy, Ireland, to be a Judge of the Common Pleas Division of the High Court of Justice in Ireland, in the room of the late Hon. W. Keogh.

Mr. Hugh Holmes, Q. C., to be Her Majesty's Solicitor-General for Ireland, in the room of Mr. Fitzgibbon.

Mr. Serjeant Robinson, Q. C., to be Judge of the Bankruptcy Court, Ireland in the room of the Hon. M. Harrison.

Several of the leading Dublin papers

say that Mr. Sergeant Robinson should have had the seat vacated by Mr. Justice Keogh ; and they insinuate what we should be much inclined to doubt, that Mr. Harrison's appointment was solely owing to his being allied by family ties to Lord Cairns. The appointment of Mr. Fitzgibbon is considered a very good one.

In the "Notes of Cases" in this issue will be found the decision in the Niagara Election Case, on the preliminary objection filed by the respondent denying the jurisdiction of the Court. A Rule of Court was passed by the Courts of Queen's Bench and Common Pleas shortly after this judgment was given, the Judges, doubtless, thinking that such a Rule would fortify the position taken by the majority of the Court of Common Pleas and subsequently followed by the Queen's Bench and accepted, so far as the point has come before them by the other Court of the Dominion. The question may eventually come up for further discussion, though the Judges have so far expressed their belief that there can be no appeal from the decision on the preliminary objection. The Rule of Court is as follows :—

"It is ordered by the Judges of the Courts of Queen's Bench and Common Pleas —by virtue of the statutory powers which they possess and exercise, and by virtue of the other powers and authority which the said Courts jointly or severally possess and exercise, to make rules and orders for the effectual execution of the Dominion Controverted Elections Act of 1874, and of any other Act of the Dominion Parliament, connected with or relating to controverted elections, or to corrupt or other illegal practices at such elections or at any prior election, or to enquiries which may be made into or in any way concerning the same—that the procedure in the said Acts, and in each of them respectively enacted and provided in the cases above mentioned, and in each and every of them, shall be the course of procedure in such cases in these Courts in all respects as if the said procedure had been and was, as it now is, specially provided for, prescribed, and regulated by the said Courts, and by each of them, in the like manner and to the like tenor and effect as the said procedure in such cases is prescribed and enacted by the said respective Acts.—Mich. Term, Dec. 14, 1878."

We had occasion some time ago to call attention to a notice similar to the following, which has been used by a firm of country shopkeepers in the Town of Barrie for the purpose of collecting accounts. The document is as follows :—

"FINAL NOTICE,
BEFORE PROCEEDING IN THE

DIVISION COURT.

P. Marrin & Co. *vs.* James Crawford.

Take Notice, that unless the sum of $11.60 and cents, due from you to Plaintiffs, be paid within 10 days from the date hereof, you shall be proceeded against under the above Act ; which enacts that, after ten free days, execution pass hereon for the said amount, by arresting and poinding, but with certification, that if the Defender agrees to pay by instalments, and he or she allow two instalments to run into the third unpaid, then, and in case, the indulgence of paying by instalments shall cease ; and ordains execution to pass by the diligence aforesaid, for the whole sum decerned for and unpaid, in terms of the said Act of Parliament.

Dated at Barrie, this 8 day of November, in the year of our Lord, one Thousand Eight Hundred and Seventy 8.

Expenses.		
Original debt	11	60
Interest	2	00
Cost of this application ...	1	00
Postage	0	00
Total	14	63

P.S —If you prefer settling with P. Marrin & Co., before going into Court, bring this notice with you and save all further costs."

The document is, in form and appearance, like a Division Court summons, and is in print, except as to names, date and figures.

The impudent concoctor of this precious circular is not aware, probably, of the danger he runs of a conviction for felony under sec. 181 of C. S. U. C. cap. 19. If this is not "professing to act under a false colour of process of the Court," it is sufficiently near it to make the contemplation of the consequences anything but pleasant for the enterprising firm of P. Marrin & Co.

It is scandalous that this sort of thing should go unpunished. The County Attorney should look into the matter, and, if the offence is within the Statute, the parties should be made examples of. A reference to the law on this subject will be found in O'Brien's Division Court Manual, p. 91.

PROFESSIONAL AND OTHERWISE.

We had last month a full average crop of correspondence in relation to professional etiquette. One subscriber, in referring to our observations on the "card" of a Barrister at Leamington, says we "decidedly sat upon" that unfortunate person; but whilst admitting that the production was objectionable, claims that the Barrister is entitled to a large measure of sympathy. He puts his point forcibly in the following words: "All these country places are infested with a class of vermin called by politeness 'Conveyancers,' a class controlling the great bulk of the conveyancing (pretty much the only legal business in the country) in their various neighbourhoods. This Barrister referred to, no doubt, finding he could not live without practising this branch of his profession, very improperly threw aside professional dignity and degraded himself to the level of these quacks, whereas he should have wrapped himself in his gown and starved like a gentleman."

The writer says the statute requiring notaries to pass an examination is a step in the right direction, but it is, in effect, a dead letter. He also suggests that all laymen desiring to practise as conveyancers should be compelled to pass an examination in real property law, and pay a fee, or be made liable to the same extent as professional men.

The lawyers in the House of Assembly could probably obtain justice for themselves and their brethren in the matter of unlicensed conveyancers, if they chose, but we presume their seats, as a rule, depend more upon popular favour than upon any necessity that the country is in to retain their services. Why should there not be the same united action by the profession as there has been on the part of the less numerous but more hungry classes, such as registrars, sheriffs, official assignees, &c. Hunger seems to combine in formidable hunting packs others besides wolves.

Another correspondent sends us a printed circular of a newly fledged Barrister, not a hundred miles from Bowmanville, who addresses the litigating public in his neighbourhood, as follows:

"I beg to inform you I have opened an office at ———, for the practice of the law in all its branches, and would, therefore, solicit your patronage, feeling confident, from my experience with A. B. C. & D. (who will doubtless be charmed to hear of the enterprise of their former student), and by devoting, &c., to any business, &c., see fit, &c., will be able, &c., satisfaction, &c." This gentleman is, like every attorney, country storekeeper, conveyancer, or J.P., the agent of a wealthy and reliable loan company; (and, by the way, we may here observe that the facility of insuring one's

property is now only exceeded by the facility there is for disposing of it at a good price to some "wealthy and reliable loan company.") We agree with the American humourist that things are very "mixed." It may be all right, but the distinction between modern professional advertisements and those of small tradesmen is very slim. There is a strong family likeness between the circular before us and those which are promulgated on the "opening of our spring goods," or when "large reductions are made for cash," and such like.

DOWER AS AFFECTED BY THE STATUTE OF LIMITATIONS.

A farmer dies leaving a widow and three or four small children; makes no will, but has little to bestow, save his farm and its belongings. The widow stays on the homestead, works the place and brings up the children, till they come to years of discretion and can do for themselves. Twenty-five years elapse from the husband's death, and the children then of age claim the farm, as theirs absolutely. The widow has thought nothing of her legal rights, or of asserting her claim for dower, and she is told that, under such circumstances, her rights are extinguished. Can it be possible that such is the law in a civilized country? There are decisions plainly pointing in this direction; but if cruel injustice be thus legalized, is there not here scope for the Attorney-General's amending hand to some better purpose, than a re-distribution of Administration suits, or a development of Division Courts?

In *Laidlaw* v. *Jackes*, 25 Gr. 301, the cases are collected and their effect considered by Vice-Chancellor Proudfoot, and his conclusion is that the decisions at law indubitably establish that a widow must bring her action for dower under the statute then in force limiting actions within twenty years from the death of the husband. Of course, the time is known to be now still further limited to ten years from the husband's death, by Rev. Stat. c. 108, sec. 25. This, however, does not affect the discussion of the principles of law involved in the holding that the widow is barred of her claim for dower after the statutory period, even though she remain in possession with her infant children. This position was first laid down in *McDonald* v. *McIntosh*, 8 U. C. R., 388, which the Vice-Chancellor refers to as a case remarkable from the fact that the widow had been long in possession, though it seemed absurd that she should be held to have forborne the remedy when she had no occasion to resort to any, not being kept out of the estate, and when her bringing the action would only have had the effect of circumscribing what she was actually enjoying. The reason of the decision is put upon this, that the bar of the statute applies against the widow, even when in possession of the land in the absence of an actual assignment of dower. Such a psssession is not in respect of the estate of dower, because no such estate by the Common Law vests in her until actual assignment. This is the explanation which satisfied the mind of a judge, eminently well-skilled in real property law, the late Vice-Chancellor Esten: (*Leach* v. *Shaw*, 8 Gr. 498.)

The position of the widow, in this regard, is much more disadvantageous than that of the widower, as to his tenancy by the curtesy. To complete this estate of the surviving husband, no entry or formality is necessary. Upon the death of the wife, the law adjudges the freehold to be in the husband forthwith: 1 Cruise, 149, pl. 28. But the law doth not cast the dower on the widow: she takes by her own act. She has no *jus posses*

sionis, since it was not of absolute necessity that she should claim her dower, but it is of absolute necessity that the law should cast the freehold on the heir: Gilb. Ten., 26, 27. So that, by the endowment, the possession is avoided that the law cast on the heir: *Ib.* This "absolute necessity" depends altogether upon reasons of feudal policy. It is explained in Cruise's Digest, that the widow holds of the heir by fealty; the assignment of dower by the heir being a species of sub-infeudation not prohibited by the statute *Quia Emptores*, because the heir does not depart with the fee: 1 Cruise, 165, pl. 26. An estate in dower is a continuation of the husband's estate, but it is a tenancy of the heir: *Ib.* 169, pl. 8; 163, pl. 15. This distinction between the present estate in curtesy on the death of the wife, and the possible estate in dower on the death of the husband does not appear to have been present to the minds of the Legislature, when the statute was enacted which now appears in the Rev. Stat. c. 105, sec. 40, where it is said that the estate of the husband as tenant by the curtesy, or of a widow as tenant in dower shall not be affected.... but all such estates shall remain, pass, and descend, &c.

Under the copyhold system of tenure, the widow's right are preserved, as we submit they might well be by direct enactment under the socage tenure of this country. In *Vaughan* v. *Atkins*, 5 Burr, 2787, Lord Mansfield says, "the law casts the free-bench upon the widow, just as it casts the descent upon the heir." This sentence suggests the text of a short statute, which would secure incontestably the rights of the widow by providing that an estate in dower for one-third of the land should vest in the widow, at and upon the death of the husband. The effect of this would be that the widow would become at once a tenant in common with the heirs; and this is the law as declared by statute in Vermont and Connecticut. Some progress has been made in this direction by the Partition Act, which recognizes the right of the widow, irrespective of the assignment of dower (Rev. Stat., c. 101, s. 49), and which also provides that "doweresses and parties entitled to dower" may be compelled to make or suffer partition: *Ib.* see 4. This last Act in effect carries out the suggestion of Lord Loughborough in *Mundy* v. *Mundy*, 2 Ves. Jr., 124, when he asked: "Cannot a doweress come here, as a coparcener can come for a partition?"

When we think of the very slight formality required to vest a present estate in dower in the widow: that it may be done by word of mouth, without any setting apart of a specific parcel of land by metes and bounds (*Leach* v. *Shaw*, 8 Gr. 497, and *Reeve* v. *Power*, 2 Bos. & Pul, N. R., 33 Dom. Proc), we can see no reason why it should not be the law that the estate should vest, as of course, on the death of the husband.

In a succeeding paper, some considerations will be suggested, which may perhaps go to invalidate the doctrine laid down in *McDonald* v. *McIntosh*.

(*To be continued.*)

THE CHARITABLE SPIRIT OF THE LAW.

(*Continued.*)

A former article on this subject in the November number of this Journal aimed at showing how strong the presumption of English law in favour of innocence is, and how absolute is the proof that is required in order to convict a person of a criminal or illegal act. So much is this the case that Paley, in his Moral and Political Philosophy (Bk. vi. chap. ix.), complains of the state of the law in this respect as doing much harm. to the

community: (and it is in accordance with this charitable and merciful spirit, that the English law disapproves of the maxim of the civilians and canonists, *In atrocissimis leviores conjecturæ sufficient, et licet judici jure transgredi*, which Beccaria justly calls (Ess. on Crimes, chap. 13), "an inhuman maxim, dictated by the most cruel imbecility." We find the very reverse laid down in *Sarah Hobson's* case, L. C. C. 2, 261—where Holroyd, J., says, "The greater the crime the stronger is the proof required for the purpose of conviction," and Burnet in his Criminal Law of Scotland (p. 612, Ed. of 1811) speaks to the same effect.

Nor does the law presume against infringements of criminal and penal statutes only, but also against all fraud and dishonesty. Thus, in the case of *Chancellor of Oxford* v. *Bishop of Coventry*, 10 Co. 53 b. (11 Jacobi 1), we find it was resolved that "covin shall never be intended or presumed at law if it be not specially averred, *quia odiosa et inhonesta non sunt in lege præsumenda, et in facto quod se habet ad bonum et malum, magis de bono quam de malo præsumendum est.* And again, *Nullum iniquum est in jure præsumendum*: *Hynde's* case, 4 Co. 72 a. Accordingly in *Master* v. *Miller*, 4 T. R. 320 (1791), Buller, J., says "Fraud or felony is not to be presumed, and unless it is found by the jury the Court cannot imply it. *Minet* v. *Gibson*, 3 T. R., 481, 1 H. B. 569, is a most decisive authority for that proposition if any be wanted." And in *Middleton* v. *Barned*, 4 Exch. 241 (1851), an action of trover against some bankers for a bill of exchange, where the case turned on the question whether a clerk had duly delivered a message as ordered, it was held that the presumption that the message was duly delivered was met by one of a stronger character, viz., that the proceeding on the part of the defendants was fair and honest, and that they had a good title to the bill unless it were shown affirmatively that the message had been delivered. Again, in *Shaw* v. *Beck*, 8 East, 400 (1854), where it was attempted to prove fraud attending the execution of a certain deed, it was held (per Parke, B.), that, "the defendants who seek to set the instrument aside as fraudulent must establish fraud, upon the universal principle that every transaction in the first instance is assumed to be valid." And the same presumption against fraud applies in the case of third parties. Thus, in *Ross* v. *Hunter*, 4 T. R. 33 (1790), an action by the assured of goods against the underwriters for a loss by the barratry of the master, the Court refused to presume that the captain went out of his course by the directions of his owner, on the ground that "the Court cannot presume fraud in another person," (per Buller, J., p. 38).

So again, no species of ouster will be presumed without proof, either direct or presumptive; and possession is never considered adverse if it can be referred to a lawful title. Thus, in *Hornblower* v. *Read*, 1 East, 568 (1801), one tenant in common levying a fine of the whole, and taking the rents and profit afterwards for five years, was held no evidence of an ouster of his companion at the time of the fine levied, and Lord Kenyon said, "Without an ouster be found by the jury, the possession of one tenant in common must be taken to be the possession of all." The same point is illustrated by *Fairclaim* v. *Shackleton*, 5 Burr., 2604 (1770), and *Fishar* v. *Prosser*, 1 Cowp., 217 (1774). A strong example is *Milner* v. *Brightwen*, 10 East, 583 (1809). Here a party had taken possession of copyholds on the death of his wife, by an adverse title, and lived

more than twenty-one years afterwards, and upon its being then found that there was an old custom of the manor by which he had a right to curtesy, his possession was referred to that title, which was consistent with the title of the other party (see per Wood, V. C., in *Thomas* v. *Thomas*, 2 K. & J. 79.) This last-named case, decided in 1855, is itself in point. Here it was held that if a father has entered upon the estate of his infant children, the presumption is that he entered as their guardian and bailiff. So too in Co. Litt. sec. 375-377, it is said, "If a feoffment bee made by deed poll upon condition, and for that the condition is not performed, the feoffor entereth and getteth the possession of the deed poll, if the feoffee brings an action for this entrie against the feoffor,—when the feoffor hath the deed in hand, and is pleaded to the Court, it shall be rather intended that he cometh to the deed by lawful means, than by a wrongful mean." And the general presumption against crime, fraud, covin, and immorality is equally applicable to acts done abroad: (Best on Ev., 6th Ed., p. 538.)

Moreover, even where guilt or illegality can be established only by proving a negative, that negative must, in most cases to which no special statute is applicable, be proved, although the general rule of law devolves the burden of proof on the party holding the affirmative. An old example of this appears in *Monke* v. *Butler*, 1 Rol. 83. (12 James I.) Here, in a suit for tithes in the Spiritual Court, the defendant pleaded that the plaintiff had not read the Thirty-nine Articles according to the statute, and the Court put the defendant to prove it though a negative. The defendant prayed a prohibition, "que n'est possible a producer homes a jurer que il ne unque lie les articles car n'est ascun home que ad estre touts tempts al praiers." But this was refused, and the Judges, Coke and Doddridge, laid it down: "La ley presume que il lie les articles . . . et lou la ley presume l'affirmative la ley negative serra prove come si ne unque accouple en loyall matrimonie soit plede c'est negative doit estre prove." This case of *Monke* v. *Butler* is cited as a very strong case in *Powell* v. *Milburn*, 3 Wils. 355 (1772), which is itself very analogous, as is also the case of *Rex* v. *Hawkins*, 10 East, 211 (1808). In *Williams* v. *East India Co.*, 3 East, 192 (1802), the plaintiff declared the defendants had caused the loss of his ship by putting on board a dangerous commodity *without due notice*; and it was held to lie with him to prove this negative averment. So, again, in *Sisson* v. *Dixon*, 5 B. & C. 758 (1826), where a common carrier, charged with the loss of a parcel, contended that the plaintiff should have proved that the goods were duly entered at the custom house, it was held that this was not so, for that the presumption always is that the party complies with the law. And in *Rodwell* v. *Redge*, 1 C. & P. 220 (1824), when it was objected that the plaintiffs had not proved that their theatre was duly licensed, Abbott, C. J., said: "I shall presume the license from the fact that the performance went on. If it were not so, they would all be rogues and vagabonds."

The presumption against illegality appears again in that class of cases which illustrates the rule that ambiguous instruments or acts shall, if possible, be construed so as to have a lawful meaning. Thus in Co. Litt. 42 a, it is said, "If tenant in taile make such a lease (*i.e.* for life) without saying for whose life, this shall be taken, but for the life of the lessor for two reasons, First, be-

cause when the construction of any act is left to the law, the law which abhorreth injury and wrong, will never so construe it, as it shall work a wrong. . . And it is a general rule, that whensoever the words of a deed, or of the parties without deed, may have a double intendment, and the one standeth with law and right, and the other is wrongful and against law, the intendment that standeth with law shall be taken. Secondly, the law more respecteth a lesser estate by right, than a larger estate by wrong." And again, Co. Litt, 36 a, "*Verba intentioni, non e contra, debent inservire. . . Benignæ sunt faciendæ interpretationes cartarum propter simplicitatem laicorum ut res magis valeat quam pereat.*" And so in *Lewis* v. *Davison*, 4 M. & W. 654 (1839), where in consideration that the plaintiff would not press one J. D. for a debt, the defendant agreed that if a *ca. sa.*, should be issued against, J. D., he would surrender J. D. to the Sheriff to be arrested, it was held on demurrer, that the agreement was not necessarily illegal since it must be assumed that the defendant would obtain the arrest of J. D. by lawful means, and Lord Abinger said, "when the Act which is the subject of the contract may, according to the circumstances be lawful or unlawful, it shall not be presumed that the contract was to do the unlawful act, the contrary is the proper inference."

But the presumption in favour of innocence, strong as it is, may of course be over-ruled by stronger presumptions, if any such appear in the case. For instance it is often over-ridden by the presumption of the continuance of things in the state in which they have once been proved to exist. Thus, in *Rex* v. *Budd*, 5 Esp. 230 (45 Geo. III.) on an indictment for libelling a man in his capacity of public officer, on proof of the prosecutor having held the office previously to the publication of the libel, his continuing to do so was presumed. Another instance is *Rex* v. *Harborne*, 2 A. & E, 540 (1835). This was a case regarding the settlement of a female pauper, and it was proved that her husband, who had been previously married, had received a letter from his former wife, written from Van Diemen's land, and dated twenty-five days before he married the said female pauper. It was held that the presumption of innocence could not shut out the presumption of the continuation of life under such circumstances as appeared here, and it must be presumed that the first wife was living at the time of the second marriage. Yet how strong the former presumption is appears from the analogous case of *Rex* v. *Twining*, 2 Barn. & Ald. 386 (1819), where it was decided that the presumption of the continuance of life derived from the fact of the first husband having been shown to be alive about a year previous to the second marriage, ought not to outweigh the presumption against the commission of crimes, and Bayley, J., said: "The presumption of law is that he (*i.e.* the husband) was not alive when the consequence of his being so is that another person has committed a criminal act." The two cases are discussed at some length in Best on Ev. 6th Ed. pp. 447-450.

In other cases the conflicting presumption *omnia præsumuntur rite esse acta* has been held to override the presumption of innocence. Thus in *Rex* v. *Gordon*, 1 L. C. L. C. 515 (1789) it was held that on an indictment for the murder of a constable, the fact of the deceased having publicly acted as constable, was *primâ facie* proof of his having been such, without producing his appointment. And in *Rex* v. *Verelst*, 3 Camp. 432 (1813) it was held,

on an indictment for perjury in taking a false oath, before a Surrogate, to be sufficient *primâ facie*, to prove that the party administering the oath acted as surrogate.

So too, the presumption of law in favour of sanity is a stronger presumption than that in favour of innocence. Thus in 8 Scott, N.R. 601 (1844), where is contained the answer of the judges to the questions propounded to them by the House of Lords in relation to the law respecting alleged crimes committed by persons afflicted with insane delusions, we find the opinion of the judges to be "that the jury ought to be told in all cases that every man is presumed to be sane, and possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction." And in his summing up in *Rex* v. *Stokes*, 3 C. & K. 188 (1848) Rolf, B. says: "If the prisoner seeks to excuse himself upon the plea of insanity, it is for him to make it clear that he was insane at the time of committing the offence charged. The *onus* rests on him; and the jury must be *satisfied* that he actually was insane. If the matter be left *in doubt*, it will be their duty to convict him; for every man must be presumed to be responsible for his acts till the contrary is clearly shown."

Before proceeding to adduce fresh examples of that charitable spirit which it is contended animates English law, there remain to be noticed certain apparent departures from that spirit in respect to this presumption against crime and fraud, after which it is purposed to show that the general presumption in favour of innocence extends not only to crime and fraud, but also to all vice and immorality.

(To be continued.)

LAW SOCIETY.

Michaelmas Term, 42nd Victoriæ.

The following is the Resumé of the proceedings of the Benchers during this Term, published by authority of Convocation.

Mr. Hodgins moved, seconded by Mr. Martin, that D. B. Read, Esq., Q.C., be Chairman of Convocation in the absence of the Treasurer. Carried.

The minutes of last meeting were read and approved.

The Report of the Examiners for Call was read and adopted, and the following gentlemen were called to the Bar, viz: Messrs. J. A. M. Aikins, E. L. Dickinson, D. D. Riordan, W. B. Northrup, W. H. Best, A. O. Jeffrey, J. Rollo Slaght, Walter Macdonald, J. B. Dow, Robert Hodge, B. E. Bull. and F. Pimlott Betts

The Report of the Examiners for Certificates of Fitness was read and adopted, and the certificates were issued to the following gentlemen, viz: Messrs. Aikins, Dickinson, Northrup, McDonald, Connor, Eccles, Barrett, Webster, Blake, Wright, Andrews, Towers, Kennin, and Bull.

The Report of the Examiners on the 1st and 2nd Intermediate Examinations was read and approved.

The Report of the Committee on the Preliminary Examinations was read and approved.

The Report of the Legal Education Committee on the petitions of Messrs. Hellmuth, Riordan, Taylor, Brown, and others, was received and read, and the 19th instant appointed for its consideration.

The petitions of Messrs. Lefroy, Beemer, Jex, and Orr were read and referred to Legal Education Committee.

Mr. Hector Cameron gave notice of motion for Saturday, 22nd inst., on the subject of the desirability of assisting in the formation of libraries in the County Towns.

Mr. Hector Cameron also gave notice of motion for the same day, on the subject of appointing a Committee to superintend the writing up of the Rolls of the Society.

Mr. Martin gave notice of motion for the same day, on the subject of obtaining the Statutes of the Province and Dominion at a reduced price for the members of the Society.

Mr. McCarthy gave notice of motion for same day on the subject of the annual fees of attorneys and solicitors, with a view to their reduction.

Mr. Hodgins gave notice of motion for same day, for the appointment of an Executive Committee.

The resolutions adopted by the Bar on 2nd Nov. instant, relative to the death of the Hon. R. A. Harrison, Chief Justice of Ontario, were laid before Convocation, and ordered to be entered on the minutes.

Mr. Martin moved, That the Chairmen of the Finance, Library, Reporting, and Legal Education Committees be requested to enquire as to what, or any, assistance is required by the Secretary, Sub-Treasurer, and Librarian, and the best mode of providing such assistance if required, and to report without delay.

Tuesday, 19th Nov.

The minutes of last meeting were read and approved.

The Report of the Legal Education Committee, on the petitions referred to them, was read and adopted.

The report of the Special Committee appointed to consider the subject of assistance required by the Secretary, Sub Treasurer, and Librarian, and the best mode of providing such assistance was considered, when it was moved by Mr. Blake, seconded by Mr. Crickmore, and resolved: That having regard to the Report of the Library Committee dated 5th December, 1871, which has been adopted by Convocation, and which adequately provides for the existing emergency, it is not desirable to take any action on the report of the Committee before Convocation.

The petition of W. J. Read was received and referred to Legal Education Committee.

Mr. Robertson moved, seconded by Mr. Blake, That in future no Certificates of Fitness be signed or issued to the parties entitled till after the rising of Convocation, on the day on which the order for their admission has been adopted. Carried.

Saturday, 23rd Nov. 1878.

In the absence of the Treasurer of the Society, Æmilius Irving, Esq., Q. C. was elected Chairman of Convocation.

The minutes of last meeting were read and approved.

The Report of the Legal Education Committee of 19th November instant was read and adopted.

The Report of the Finance Committee dated 22nd November, 1878, was received.

The Financial Statement for the first three-quarters of 1878 was read.

A letter from George S. Holmested, Registrar of the Court of Chancery, dated 2nd Nov. 1878, was read, which pursuant to Rule No. 15 of this Society was ordered to be entered at length upon the Journals of Convocation, which letter contained the Order of the Court of Chancery made in the matter of Adam Henry Wallbridge, one of the Solicitors of the Court, on the 2nd Oct. 1878, and the certificate of the said Court in refer-

ence to the said matter, dated 22nd October, 1878.

The letter of Mr. Morgan Lane, of Belleville, dated 4th Nov. 1878, was read and referred to the Legal Education Committee.

Mr. Hector Cameron's notice of motion in reference to the formation of Law Libraries in the County Towns was read and ordered to stand till next meeting of Convocation.

Mr. Hector Cameron's notice of motion to appoint a Committee to superintend the writing up and completion of the Roll of the Society was ordered to stand till next meeting.

Mr. Martin moved that the Reporting Committee be requested to make enquiry as to what arrangement can be made with the Dominion and Ontario Governments for the supply of the Statutes to the Members of the profession at a reduced price.

Ordered that the matter be referred to the Reporting Committee for consideration.

In pursuance of a notice given by Mr. D'Alton McCarthy on the 18th instant, it was moved by Mr. Mackelcan, seconded by Mr. Robertson, and resolved That the sum of fifteen dollars be the fee payable by each attorney or solicitor for his annual certificate in Michaelmas Term of each year, under Rule 143 of this Society, such sum of fifteen dollars not to include the fee of two dollars per annum payable by each barrister under Rule 81 of this Society, and that if any fees in excess of said sum of fifteen dollars shall have been paid in or shall be paid in before the first day of Hilary Term next, for the annual certificate for the now ensuing year, such excess shall be refunded.

The above resolution was read a first and second time.

Mr. Hodgins' notice of motion relative to the appointment of an Executive Committee was ordered to stand until the next meeting of Convocation.

Dr. Smith, on behalf of Mr. Bethune, gave notice that he would, on the next meeting of Convocation, move to amend Rule 148, by adding thereto the following words, that is to say: "And the Secretary of the Society shall, after the receipt of the Order of any of the Superior Courts and the entry thereof upon the Books of Convocation, notify by letter each of the Judges of the Superior Courts, and the Judge of the County Court of the County in which the attorney or solicitor affected by the said Order has practised, that such Order has been made."

Dr. Smith, again on behalf of Mr. Bethune, gave notice of motion for Wednesday, the 27th November instant, to amend the Rules of the Society as to the admission and enrolment as attorneys and solicitors of members of the Bar of England, Ireland, or Scotland.

Mr. Martin gave notice that he would on the last Friday of Michaelmas Term, move that the Resolution of Convocation adopting the Report of the Library Committee dated 5th December, 1871, be rescinded, and that the Report of the Committee on the 18th instant, to consider the subject of whether further assistance was required by the Sub-Treasurer be adopted and carried out.

Mr. Boultbee's petition was received and referred to the Legal Education Committee.

Convocation adjourned until Wednesday, the 27th instant.

Wednesday, Nov. 27th.

Convocation met, pursuant to motion at last meeting.

In the absence of the Treasurer, Æmilius Irving, Esq., Q.C., was elected Chairman of Convocation.

The minutes of last meeting were read and confirmed.

The petitions of F. J. Dunbar, J. G. Kelly and others were referred to the Legal Education Committee.

Two letters as to exchange of Reports received from the State Librarian of Iowa were referred to the Library Committee.

Mr. Mackelcan moved, seconded by Mr. Robertson, that the Rule which was read a first and second time at the last meeting of Convocation in reference to the reduction of the annual fee for Certificates from $20 to $15, be read a third time.

The said Rule was then read a third time.

Mr. Hodgins' notice of motion for the appointment of an Executive Committee was ordered to stand to the next meeting of Convocation.

Upon the consideration of the notice of motion given by Mr. Bethune, on the 23rd instant, relating to Rule No. 158,

It was proposed by Mr. Blake, and seconded by Mr. Mackelcan, that the following be adopted as a Rule of the Society:

"The Secretary of the Society shall, after the entry upon the Journals of Convocation of the Order of any of the Superior Courts ordering a member of this Society to be struck off the Roll of Attorneys or Solicitors of such Courts, notify by letter each of the Judges of the Superior Courts, and the Judges of the County Courts of the Counties in which the member of the Society affected by the said Order has usually practised, and also the said member himself that the said Order has been made and transmitted to the Treasurer of the Soeiety, and the Secretary shall enclose therein, for the information of the person addressed, a copy of the General Rule of the Society, No. 148."

Which was carried, and upon motion was read a second time, and ordered to be read a third time at the next meeting of Convocation.

Mr. Bethune's notice of motion of the 23rd instant, relative to the admission as Attorneys of persons called to the Bar of any of the Superior Courts of England, Ireland or Scotland was ordered to stand for the next meeting of Convocation.

Mr. Cameron's notices of motion relative to the establishment of Libraries in the County Towns, and relative to the appointment of a Committee to superintend the completion of the Rolls of the Society were ordered to stand for the next meeting of Convocation.

Mr. Blake gave notice of motion for the next meeting of Convocation to add to Rule 3 of the Order of Proceedings in Convocation the words following:

"And that every such petition shall forthwith, on its receipt by the Secretary stand referred to the Legal Education Committee, and shall be transmitted by the Secretary to the Chairman of that Committee for its Report."

Messrs. Read, Crickmore, Hodgins, and Robertson were appointed a Committee to superintend the examinations of Mr. Jex and Mr. D. B. Robertson, according to the practice of Convocation.

December 6th, 1878.

In the absence of the Treasurer, D. B. Read, Esq., Q.C., was elected chairman of Convocation.

The minutes of last meeting were read and approved.

The Report of the Legal Education Committee on the Petitions referred to them was read and adopted.

The Report of the Committee on Reporting was read and adopted.

The Report of the Examiners on the Scholarship Examinations was read and adopted.

A communication was received from Clarke Gamble, Esq., in reference to the Portraits of the Chief-Justices.

A communication from the Hon. R. W. Scott was received and referred to the Finance Committee.

A communication from J. B. Read, Esq., in reference to the Annual Certificates, was referred to the same Committee.

A communication from G. M. Evans, Esq., in reference to a bust of the Hon. Sir John Beverley Robinson, was referred to the Library Committee.

A letter feom the Hon. M. C. Cameron was read resigning his seat as a Bencher of the Society, on the occasion of his appointment to a Judgeship in the Court of Queen's Bench.

The Secretary was directed to call a meeting of the Benchers for the first Tuesday of next term, to elect a Bencher to fill the vacancy.

Mr. Hodgins withdrew his motion on the subject of an Executive Committee.

Mr. Scott entered and took his seat as a Bencher.

Mr. Bethune's motion on the subject of the admission of English, Scotch and Irish Barristers as Attornies and Solicitors was discussed, when Mr. Hodgins moved an amendment, which was lost. The original motion was then put and lost.

Dr. Smith's motion to amend Rule 148 was read a third time and passed.

Mr. Hector Cameron's motion relating to the Roll of the Society was ordered to stand till next Term.

Mr. Martin's motion as to Assistant in Library stands adjourned till First Tuesday of next Term.

SELECTIONS.

WESTERN LAW.

We have recently been taking a tour, for our recreation and health, in the far west, by the vehicle of the legal reports of some of the new occidental States and Territories. This expedition has given us some new ideas of law, and of manners and customs. On our return our heads are so full of gold dust, gulches, quartz mills, ditches, mining claims, discovery shafts, and the like, that we find it a little difficult to settle down to the more ordinary and less wonderful subjects of litigation in our eastern communities. Some of the law books of the new west are quite breezy and entertaining. There is, to be sure, a good deal of elaboration in the opinions on questions which are firmly and familiarly settled in the older communities this side the Alleghanies, and there is a perfectly surprising amount of statutory construction, all of which is characteristic of new communities. We have noted a few odd and amusing cases which we thought would give our readers some idea of the state of society in the bonanza country.

In *Kennon* v. *King*, 2 Montana, 437, it was ruled, that it is a question for the court and not for the jury to decide whether the game of cards, usually denominated "poker" is a game of chance and within the statute, requiring the keepers of houses where games of chance are played for money, to pay license therefor. In this case the court charged the jury that the game of "poker," as played with cards, is a game of chance. The court say: "Juries cannot be permitted to pervert, vary, or change the established meaning or use of the English language. And it is improper to submit to a jury, upon the testimony of witnesses, the meaning of an unambiguous word in common use. Experts may explain the meaning of 'technical or ambiguous words,' but the word 'poker,' as applied to a game of cards, has, so far as we know, but one meaning, and its definition was correctly given in the instructions of the court. We see no reason for calling proof as to the meaning of this word that would not apply, with

equal propriety, to the words deed, lease, contract, river, city, church, or any word in general use, and whose meaning is universally understood." Now it is a little singular that we do not find the word "poker," as a game of cards, in Webster's dictionary of 1856, although it does appear, as an Americanism, in the edition of 1870. It is, therefore, evident that the word in question is an interloper in the good society of the other words cited by the court. Besides, an accomplished card player at our elbow (we know nothing of the game ourselves) suggests that poker is not a game of chance, but rather a game of "cheek," or "bluff," so to speak. This matter ought to be referred for final adjudication to General Schenck. But the judge ought not to associate the word "church" with the word "poker."

In *Milligan* v. *Jefferson County*, 2 Montana, 543, it is held that calves are not heifers or steers. The court announce the point at issue as follows: "Are sucking calves the subject of taxation under the Revenue Act?" The court continue: "It is urged that the sixteenth section of the Act qualifies the foregoing provisions and excludes calves from taxation until they are one year old. It is said that calves under one year of age are not specified in the list. There is no specification of calves. 'Heifers and steers between one and two years old' are specified. Does the term 'heifers and steers' include calves? A heifer is a young cow: Webster's Dict. In defining the word 'yearling,' Webster uses as an illustration the term 'yearling heifer.' A heifer is a young cow which has not had a calf: 1 Bouv. L. D., tit. 'Heifer.' A steer is 'especially a castrated taurine male from two to four years old:' Webster's Dict. According to Webster, the Legislature used a proper phrase in speaking of heifers between one and two years old, and an improper one in referring to steers of that age. Our statute provides that 'all words and phrases shall be understood and construed according to the approved and common usage of the language:' Cod. Sts. 389, § 1. Taking this as a guide, I am sure that the term 'heifer' or 'steer' nowhere includes calf. The words describe animals of the bovine species which have advanced to an age beyond that of a calf. When one of these animals has reached the age of one year, in this territory, it is usually called a yearling; and if a more definite description is desired, it is termed a yearling heifer or a yearling steer. This is probably the manner in which our legislative assembly intended to classify cattle of that age, and calves would not properly come under the head of 'heifers and steers between one and two years old.'"

In *Charles* v. *People's Insurance Company*, 3 Colorado, 419, we find it decided that it is not commendable practice to stop the trial of a cause, and adjourn it, on the ground that the plaintiff is intoxicated. We have a suspicion that adherence to this doctrine would put a good many plaintiffs in Colorado at a disadvantage.

Before we went west (in manner and form aforesaid) we had been led to suppose that they did not tolerate actions of libel, slander, and assault and battery out there, but that if any gentleman deemed himself libelled, slandered, or assaulted and battered, he usually took the administration of the law into his own hands, and shot the offender at the first convenient opportunity. But we find a libel case, *Downing* v. *Brown*, 3 Colorado, 571, and a most aggravated one, too, the offender being the editor of the *Denver Tribune*, and having published in his newspaper the "following false, scandalous, malicious, and defamatory matter, of and concerning the plaintiff, to wit:

> 'My conscience (meaning the conscience of the the said plaintiff) hath a thousand several tongues,
> And every tongue brings in a several tale,
> And every tale condemns me (meaning the said plaintiff) for a villain.
> Perjury, foul perjury in the highest degree;
> Murder, stern murder, in the direst degree;
> All several sins, all used in each degree;
> Throng to the bar crying all, Guilty! Guilty!'
> —RICHARD III.

"And yet Jack Downing (meaning the said plaintiff) affects to laugh with a low guttural sound, thus: Ha! ha!! ha!!! 'Thereby then and there meaning that the said plaintiff was and is guilty of the crime of perjury, and that he, the said plaintiff, being arraigned at

the bar of his own conscience, had then and there pleaded guilty to the charge of the crime of perjury.'" Another count charged that the imputation was murder. The same editor had also pleasantly alluded to the plaintiff as a second "Boss Tweed" and a ballot-box stuffer. In spite of all this abuse the defendant had a verdict. So, it seems, it would have been more effectual for the plaintiff to have whipped or shot the editor. But the court set aside the verdict on technical grounds, and the plaintiff has another chance.

Again, in *Moynahan* v. *People*, 3 Colorado, 367, an indictment for the murder of Patrick Fitz Patrick, where the true name was Patrick Fitzpatrick, was held fatally defective. The court observed: "Suppose the indictment to charge larceny of the goods of John King Mann, when in truth the name of the owner is John Kingman, or an assault upon William Green Field, or Henry Young Blood, where the surname of the injured person is, in fact, Greenfield or Youngblood; no one would for a moment suppose that a conviction upon such averment and such proof could be supported. The surname of the decased, as proven at the trial, is of similar formation with some of those which I have instanced. The first syllable was originally, it is believed, a mere prefix, the paternal name retaining independent form, and conveying a distinct idea. At the present day, however, the two are invariably written, pronounced and accepted as one name. I am unable, at least, to find in the voluminous tables of cases which accompany the digests of the reports of this country, or in any of the gazetteers, directories, or tables of names, which are accessible to me, any instance where they are written as the name of the deceased person is written in this indictment. Moreover, what here appears to be written as the middle name is occasionally found as a Christian name. It has also attained to the dignity of a surname, and, with a various orthography, is borne by a family which appears to be widely disseminated, as, if necessary, may be established by reference to the judicial reports: *Commonwealth* v. *Fitz*, 11 Mass. 540; *Brown* v. *Fitz*, 13 N. H. 283; *Alden* v. *Fitts*, 12 Shep. 238; *Fitts* v. *Cook*, 5 Cush, 596; *Aoston* v. *Fitz*, 4 id. 365; *Kendall* v. *Fittz*, 2 Foster; *Fitts* v. *Fitts*, 14 Texas, 443; *Harwell* v. *Fitts*, 20 Ga. 723; *Fitts* v. *Brown*, 20 N. H. 393; *Little* v. *Fitts*, 33 Ala. 343; *Fitts* v. *Whitney*, 32 Vt. 589; *Moore* v. *Fitz*, 15 Ind. 43; *Robbins* v. *Fitz*, 33 N. Y. 420; *Fitz* v. *Minnesota, etc., R. R. Co.*, 11 Minn. 414; *Fitz* v. *Reichard*, 20 La. Ann. 549; *Fitts* v. *Davis*, 42 Ill. 301; *Fitts* v. *Morse*, 103 Mass. 164. The name which follows is also a well known family name." Possibly the court might have been disposed to hold differently if they had recalled the fact that the prefix "Fitz" means "son," and so, in whatever shape it is written "Fitzpatrick" means "son of Patrick."

In *Eldred* v. *Malloy*, 2 Colorado, 320, it was held that a promise to pay a sum of money upon the condition that a railroad should be built to a place named on or before a specified day, is void as a wager. The court sternly observe: "The courts of this territory have enough to do without devoting their time to the solution of questions arising out of idle bets made on dog and cock fights, horse races, the speed of ox trains, the construction of railroads, the number on a dice or the character of a card that may be turned up. If we enter upon the work of settling bets made by gamblers in one case, especially on the time when the Colorado Central railroad reaches Golden, or when it will reach Georgetown, we may well despair of ever finding time for the dispatch of those weightier matters which affect the personal and property rights of the respectable people in this territory. If the gate is once opened for this kind of litigation, it is more than probable that we may be overrun with questions arising out of bets. The spirit of our laws discountenance gambling. Penalties are prescribed against gaming, and I can see no difference in principle in the bet that the faro dealer will turn up a jack in the next turn, and the bet that the railroad will be built to Table Mountain in so many days."

Our fear that there is a vein of irreligion in the western judges, excited by the association of the word "church"

with the word "poker," in the case on which we have commented, is confirmed by the following passage from the *Western Union Telegraph Co.* v. *Eyser*, 2 Colorado, 161: "We recognize the fact that corporations enter into almost all the concerns of life, political, financial, eleemosynary. They build churches, erect colleges, construct railroads, operate mines, run newspapers, distribute charities, and in some instances claim to be the sole custodians of the keys that unlock the gates of glory."

The editor of the *Rocky Mountain News*, as well as the editor of the *Denver Tribune*, must be a little careful of his utterances. Mr. Martin sued Mr. Byers, the *News* man, for publishing of a jury, of which Mr. Martin had been a member, the following: "We are not a little surprised at Judge Wells' lenient charge in the case. We are still more at the infamous verdict of the jury. . . . We cannot express the contempt which should be felt for those twelve men, who have thus not only offended public opinion, but have done injustice to their oaths." It was held that Mr. Martin might reasonably claim one-twelfth of this reprimand as intended for himself, and maintain an action of libel.—*Albany Law Journal.*

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED IN ADVANCE, BY ORDER OF THE LAW SOCIETY.

COMMON PLEAS.

IN BANCO, MICH. TERM.

December 7, 1878.

Regina v. Duff.

Bigamy—Former marriage—Evidence—Sufficiency.

On an indictment for bigamy, as evidence of the alleged prior marriage, a deed was produced, made by the prisoner some six years ago, after the alleged marriage, which contained a statement of his having a wife in England, named Sarah Duff, giving her address, and which purported to convey certain property to trustees in trust for the said wife. B., one of the trustees, proved that at the time of the execution of the deed, the prisoner made a similar statement to him; and B's wife proved that she heard the prisoner ask her husband to act as trustee for his wife in England.

Held, that this did not constitute sufficient evidence of the alleged prior marriage to warrant a conviction for bigamy.

J. G. Scott, Q.C., for the Crown.

Robertson, Q.C., for the prisoner.

Macdonald v. Township of Dorchester.

Bridge—Want of repair—Liability.

In an action by the plaintiff against the defendants, for damages sustained by him, by the breaking through of a bridge in the township, it appeared that the accident was caused through the centre one of three beams or string pieces, of which the bridge was composed, giving way by the weight of the plaintiff's horses alone, without the buggy to which they were attached, as they were stepping on to the bridge. It also appeared that the spring piece, at the place where it passed, was to two-thirds of its diameter, and at the outside, quite rotten; and that its condition was either not ascertained by the persons whose duty it was to inspect the bridge, and see that it was kept in proper repair, or, if ascertained, it had not been replaced by another sound one.

Held, that the defendants were liable.

O'Sullivan, for the plaintiff.

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

December 11, 1878.

Re Niagara Election Petition.

Preliminary objections—Jurisdiction—Procedure—Ultra Vires—37 Vict. cap. 10, D.

To a petition filed against the return of the respondent as member of the House of Commons, the respondent filed certain preliminary objections, alleging in substance that the Act 37 Vic. ch. 10, D. which enacted that the trial of controverted elections to the House of Commons should be referred to the Court of Common Pleas, and the other courts named in this Province,

was *ultra vires* of the Dominion Government.

Held, that the Dominion Parliament could lawfully empower and require the court to act in the matter, and the objection was disallowed.

A further preliminary objection alleged that even if the trials were lawfully referred to the court, there was no power to enact the procedure to govern the court in relation thereto.

Held (Wilson, C. J., diss.), that this must be disallowed.

Per Wilson, C. J. that there was no power to enact such procedure, and that the court had no procedure of its own applicable to the matter; that there was therefore no authority to file the petition, and that it should be removed from the files.

Semble (also per Wilson, C. J.), that under R. S. O. ch. 49, sec. 45, the court might have framed rules adopting the procedure in question, which, if done, might be applicable to future petitions.

Semble (also per Wilson, C. J.), that the Provincial Legislature should validate and authorize the courts named to entertain and dispose of petitions in the manner indicated in the Act, as if the procedure had been specially enacted by such legislature, or specially allowed and provided for by the courts under their inherent or statutory jurisdiction.

Robinson, Q.C., and *O'Brien* for the petitioner.

Hodgins, Q.C., for the respondent.

Re South Ontario Election Petition.

There were the same objections and judgment as in the above.

Hector Cameron, Q.C., for the petitioner.

J. D. Edgar, for the respondent.

Re West Hastings Election Petition.

In this case there were also the same objections and judgment.

Hector Cameron, Q.C., and *Howard*, for the petitioners.

Bethune, Q.C., for the respondent.

Re South Huron Election Case.

Corrupt Practices—Status of petitioner.

In this case also there were the same objections and judgment.

There were also the further preliminary objections, that the petitioner was (1), at the said election and during eight years previous to the filing of the petition and (2), at and prior to such election, guilty of corrupt practices and incapable of voting at said election, whereby he was disqualified from being a petitioner.

Held, that these objections must also be disallowed.

H. J. Scott, for the petitioner.

Hodgins, Q.C., for the respondent.

CHANCERY.

Blake, V.C.] [Nov. 26, 1878.

St. Michael's College v. Merrick.

Practice—Costs.

Costs of interlocutory motions were reserved until the hearing or other disposition of the case, and on a subsequent allowance of a demurrer filed by one of the defendants, the Court was not asked to include such costs. The final result of the suit was to find such demurring defendant entitled to the fund in question in the cause, and on a motion made by the defendant for an order to have these costs allowed, the Court granted the application, but under the circumstances without costs.

Blake, V.C.] [Nov. 26, 1878.

McKay v. Ferguson.

Sale for taxes.—List of lands liable for sale. Setting aside sale.

Where the clerk of a township had omitted to keep in his office the list of lands liable to sale, furnished to him by the treasurer of the municipality, or to deliver to the assessor a copy thereof—as provided by sec. 108 of ch. 180, R. S. O., in consequence of which omission, a lot worth $1,500 or $1,600, had been sold for $5.53 taxes due thereon; the Court on a bill filed impeaching the sale, set the same aside with costs, less the amount of taxes paid, interest and expenses attending the same.

QUEEN'S BENCH.

IN BANCO, MICH. TERM.

DECEMBER 16, 1878.

BENNETT AND WIFE V. CORPORATION OF THE COUNTY OF YORK.

Con. Stat. Can. cap. 28, schedule A.—Kingston Road—Liability of County for state of.

Con. Stat. Can., ch. 28, Schedule A., declares that the Kingston Road, east of the River Don, shall not be held to be within the City of Toronto or liberties thereof, but shall remain under the control of the Commissioner of Public Works, or of any party to whom it may be transferred by Order of the Governor in Council. The defendants purchased this road from the Government, and with the permission of defendants, express or implied, the city put down a sidewalk upon it.

Held, that defendants were liable for the state of the road and sidewalk, and a verdict being rendered in favour of the plaintiffs, in consequence of an injury sustained by a female plaintiff, in falling on the sidewalk which was out of repair, the Court refused to interfere.

Donovan, for plaintiff.

J. K. Kerr, Q.C., *contra.*

VACATION COURT.

CAMERON, J.] [Nov. 22, 1878.

PARKINSON V. THOMPSON.

Costs of the Day—Order by Clerk of Crown and Pleas—Appeal from, to Court—R. S. O., Ch. 39, sec. 31.

Plaintiff being ready to proceed with his case at the Assizes when called on, defendant applied for a postponement, to which plaintiff did not object, though anxious to have the case disposed of. On the following day, when the case was again called on, plaintiff was not ready, owing to the absence of a witness, but the Judge insisted upon the case proceeding, whereupon the plaintiff withdrew the record to avoid a nonsuit.

Held, that defendant was entitled to the costs of the day, and an order made by the Clerk of the Crown and Pleas, setting aside a side-bar rule therefor, was accordingly rescinded.

Held, also, that the Single Court was not precluded from disposing of an application to rescind such order, on the ground that no application for the purpose had been made to a Judge in Chambers within four days after the making of the order, pursuant to the rule of Court of Hilary Term, 1870, the exception contained in sec. 31 of cap. 39, R. S. O., merely providing an additional or more speedy mode of appeal in that respect, and not taking away the right of resort to the Court for the purpose.

F. Osler, for plaintiff.

H. J. Scott, contra.

ARMOUR, J.] [Nov. 22, 1878.

IN RE THE TOWNSHIP OF NORTH NORWICH AND THE VILLAGE OF NORWICH.

Division of Municipality—Bonus to Railway —Arbitration.

On a division of the Township of North Norwich, constituting a certain portion of it into a village, an arbitration took place under the Municipal Act relating to a separation of a union of townships.

ARMOUR, J., *held*, that the disposition of the respective liabilities as to a bonus to a Railway Company, given under a by-law of the County of Oxford, within which the Township of North Norwich is situated was within the powers of the arbitrators, and properly dealt with by them.

Robinson, Q.C., for the award.

Bethune, Q.C., Contra.

COURT OF APPEAL.

From Q.B.] [Dec. 6, 1878.

HOWE V. HAMILTON, &c., RY. CO.

Negligence—Evidence of.

The defendants were empowered by the Corporation of the City of Hamilton to use Ferguson Avenue in that city for the purposes of their railway. The plaintiff, who

was driving, on arriving at Barton Street, which crosses Ferguson Avenue on a level, discovered that there was a freight train across the street, facing southward, and stopped his horse about 150 feet from it. Presently a pilot engine came down to the head of the train to assist it up the grade, but immediately upon the arrival of the pilot engine it was discovered that firewood was required for its use, and the train at once moved to the north to allow the pilot engine to go to the woodshed, which was situated to the north of Barton Street. The train had gone no farther than the other side of Barton Street, about 15 or 20 feet, when the plaintiff drove on his horse and attempted to cross, but the horse shied at the pilot engine, which had remained stationary, and the plaintiff was thrown out and injured.

Held, reversing the judgment of the Queen's Bench, that there was no evidence of negligence which should have been submitted to a jury.

Held, also, that under sec. 21 of R. S. O., the Corporation of the City of Hamilton had power to allow the defendants to run their railway along Ferguson Avenue.

C. Robinson, Q.C., (*Walker* with him) for appellants.

Osler, Q.C., (with him *Teetzel*) for the respondents.

Appeal allowed.

From C. C., York.] [Dec. 6, 1878.

McLeish v. Howard.

Action against Division Court Clerk for money had and received.

The defendant, Clerk of the Division Court of York, sent a transcript of the entry of a judgment recovered therein by the plaintiff to one M., the Division Court Clerk of Essex, with directions to remit all moneys which he should receive under the transcript by Post-Office order or by cheque. M., having recovered the money, paid it into his own account at McG. Bros., private bankers, and sent their cheque to the defendant for the amount, which he acknowledged by a postal card in the following words :—" McLeish v. Richards. Received from the Clerk of the D. C., Windsor, $70.40." It was shown that M. was accustomed to remit money to the defendant by the cheque of McG. Bros. Before the cheque was presented, McG. Bros. failed, and the plaintiff sued the defendant for the money.

Held, reversing the judgment of the County Court, that the cheque and receipt operated as payment as between M. and the defendant, and that the plaintiff was entitled to recover the amount from the defendant as "money received to his use." *Held*, also, following *Dale* v. *Cool*, 6 C. P., 544, that no notice of action is required in an action against a Division Court Clerk for money had and received.

Rose for the appellant.

Osler (with him *A. Galt*) for the respondent.

Appeal allowed.

From C.P.] [Dec. 6, 1878.

McArthur v. Southwold.

By law—Ingress and Egress—Closing up road—Compensation.

Held (reversing the judgment of the Common Pleas) that section 504, R. S. O., c. 174, only applies to cases where the only mode of egress and ingress was over the road closed up, and not where there is already another existing way of access to the land in question.

Held, also, that it is not a condition precedent under the above section that compensation should be provided for in the by-law closing up the road.

Becher, Q.C., (*Street* with him) for the appellant.

Hodgins, Q.C., (*Spragge* with him) for the respondent.

Appeal allowed.

From C.P.] [Dec. 6, 1878.

Burnham v. Waddell.

Distress—Purchase by landlord—Sale of goods—Change of possession.

The plaintiff caused the goods in question to be distrained for rent in arrear of a farm, and after an unsuccessful attempt by the bailiff to sell them they were sold, with the tenant's consent, to the plaintiff, and one

P. was put in charge. He, however, allowed the tenant to remain in possession as before. The goods were subsequently seized and sold by the Sheriff, under execution against the tenants, when the plaintiff brought trover.

Held, affirming the judgment of the Common Pleas, that he could not, as landlord, claim as purchaser at the bailiff's sale; nor could he claim as vendee of the tenant, it appearing that there was no registered bill of sale, nor any actual or continued change of possession.

H. Cameron, Q.C., for the appellant.

C. Robinson, Q.C., for the respondent.

Appeal dismissed.

From C. C. Grey.] [Dec. 6, 1878.

SLOAN v. MAUGHAN.

Chattel mortgage—Statement and affidavit on renewal.

Held, affirming the decision of the County Court, that where the statement and affidavit filed upon renewal of a chattel mortgage upon being read together, give all the information required by R. S. O., c. 119, sec. 10, the renewal is sufficient.

Morrison for the appellant.

Lane for the respondent.

Appeal dismissed.

From Chy.] [Dec. 6, 1878.

KEILY v. KEILY ET AL.

Corporation—Parties—Demurrer--Pleading.

The Act of incorporation of the Toronto Street Railway Company provided that there should not be less than three directors, &c., each of whom should be a shareholder. The corporation consisted of three shareholders, who were the directors of the Company. Upon the death of one of them a meeting was called to appoint a new director, when one S., to whom the deceased director had bequeathed his shares was declared elected by one of the two remaining directors, although the other director refused to concur in the appointment.

Held, upon demurrer to a bill filed to declare the election invalid and for other relief, reversing the decree of Proudfoot, V. C., that no election was needed to make S. a shareholder as there were only three shareholders, each of whom was qualified to be a director.

Held also, that the demurring defendants were not restricted to the statements in the bill of the Acts under which they were incorporated, but that they could refer to the Statutes as printed in the Statute Book

The Attorney-General, and *Biggar* for the appellants.

Blake, Q.C., and *W. Cassels*, for the respondent.

Appeal allowed.

From Chy.] [Dec. 6, 1878.

GOYEAU & GREAT WESTERN RAILWAY COMPANY.

Railway terminus—Land conveyed on condition.

The plaintiff, on the representation of parties that they had given land to the defendants for the purpose of having the terminus of the railway at Windsor, conveyed lot 83 to the defendants in 1847, by a deed wherein it was expressed that the same had been selected by the Company "for the purpose of establishing the western terminus of their road thereon, and the execution of which constituted the sole consideration for this grant. "At the time the plaintiff made this deed, he knew that one H. had conveyed lot No. 84 to the Company on exactly the same condition. In 1853 the Company built a passenger station on lot 83, and a freight house partly on lot 83 and partly on 84, which were destroyed by fire, and a passenger station was afterwards built partly on lots 83 and 84, and a freight house on 84, which the Company continued to use until lately, when they built a passenger station about a mile from the original one. It was shewn that the business of the terminus could not be conducted on so small a space as lot 83, the buildings on lots 83 and 84 beiug still used for freight alone. The evidence did not show that he lost any advantage by its removal which he looked for when he made the deed, which was to keep the terminus at Windsor. On

a bill filed for the specific performance of the agreement,

Held, reversing the decree of Spragge, C. that the terminus and depot were not confined to buildings alone, but extended to the whole premises necessary for conducting the business of a terminus, and that upon the true construction of the deed the plaintiff was only entitled to have lot 83 included in the terminus and depot, and had no right to have all the buildings or any particular building erected on lot 83.

Per PATTERSON, J. A., that even if the deed be read as requiring the establishment of buildings on the lot in question, that duty had been sufficiently fulfilled.

J. A. Boyd, Q. C., for the appellant.

Bethune, Q.C., and *C. Moss* for the respondent.

Appeal allowed.

From Q.B.] [Dec. 23, 1878.

MILLOY V. KERR ET AL.

Warehouse receipts—34 Vict. c. 5. D.

At the request of the Consolidated Bank to whom the Canada Car Company owed a large amount of money, the plaintiff consented to act as a warehouseman to the company for the purpose of storing certain car wheels and pig iron, so that they could obtain warehouse receipts upon which to raise money. The company granted him a lease of a portion of their premises upon which the car wheels and pig iron lay for a year, in consideration of $5. The Consolidated Bank then gave the plaintiff a written guarantee that the car wheels and iron now stored with him as warehouseman should be forthcoming whenever required, and he thereupon issued a warehouse receipt to the company for the property, which they endorsed to the Standard Bank, and obtained an advance thereon which they paid to the Consolidated Bank.

Shortly afterwards an attachment in insolvency issued against the company, and the defendants, as their assignees in insolvency, took possession of the goods covered by this receipt, claiming them as part of the estate.

It appeared that the plaintiff was a warehouseman carrying on business in another part of the city; that he only acquired this land for the purpose of giving warehouse receipts to enable the company to obtain an advance from the Consolidated Bank; that he used it for no other purpose; that he had not seen the property himself, but had merely sent his foreman to examine it before giving the receipt.

Held, affirming the judgment of the Queen's Bench, that the plaintiff was not entitled to recover, as he was not a warehouseman of these goods within the meaning of 34 Vict., c. 5, D.

M. C. Cameron, Q.C., and *J. K. Kerr*, Q.C., for the appellants.

C. Robinson, Q.C., with him *G. Kerr*, Jr., for the respondents.

Appeal dismissed.

From Chy.] [Dec. 23, 1878.

TRUST & LOAN CO., V. CLARKE ET AL.

Construction of deed—Life estate—Trust—Costs.

One C., a lawyer, mortgaged certain property to the plaintiffs. When searching the title to this property the Company's solicitor found that a deed—made in 1848 between C. and his mother, after reciting that C. was his father's executor, and that all the property, real and personal, was devised to him in trust for his mother for life, and after her decease in trust for his sisters, the defendants, and that he was indebted to the said trust fund in the sum of £1200, and was "desirous of securing the same in accordance with the provisions of the said will" proceeded to grant the property in question "unto the said party of the second part *forever*." Upon inquiry by the plaintiffs' solicitor, C. informed him that the deed was only intended to convey a life estate to his mother who was then dead. The Company having contracted to sell this property after C's death, an objection to the title was raised on account of the deed of 1848. Proceedings were thereupon taken by them to quiet the title, and the sisters were made claimants.

No evidence was given to show what the real agreement between the parties to the

deed was. One of the sisters swore that certain payments were made to her by C. after her mother's death, but the evidence failed to establish that the rents as such were paid to her—it merely showed that they were made as a beneficiary under her father's will.

Held, reversing the decision of Proudfoot, V.C., that under the operative words of the deed a life estate merely passed, and that their effect could not be enlarged by the covenants, which were in the short form.

Held also, that although Equity has ample power to supply words of inheritance in a conveyance, no case was established for the reformation of the deed.

Held also, that even if C.'s evidence had been satisfactory, being that of one of the litigants and uncorroborated, it could not be made the foundation of a decree after C.'s death.

Held also, that the trust, if any, declared by the deed was an implied trust, and the Statute of Limitations was therefore a bar.

Held also, that inasmuch as the litigation was for the purpose of establishing the appellants' title, and as the claimants were brought into Court not of their own motion they should not be charged with any costs in this Court or the Court of Chancery.

Bethune, Q.C., for the appellants.

Murray and *Spragge* for the respondents.

Appeal allowed.

From C. P.] [Dec. 23, 1878.

GAGHAN V. THE ST. LAWRENCE AND OTTAWA RAILWAY CO.

Conversion of goods—Asportation.

The plaintiff, at Guelph, sold to B. & Co., at Ottawa, 65 barrels of pork, and shipped it by the Great Western Railway Company, the shipping receipt acknowledging the receipt of the same, addressed to the plaintiff's order at Prescott, and to notify B. & Co. at Ottawa. The pork was carried by Great Western Railway and steamer Passport to Prescott, her manifest shewing a delivery there into the defendants' charge, and stating that the plaintiff was owner, and that B. & Co. were to be notified. B. & Co. were large dealers in Ottawa, and all goods for them, or in which they appeared interested, were, by arrangements with the defendants, sent on to Ottawa. This pork was accordingly sent on, and inspected by B. & Co., who refused to accept it. The plaintiff, who was fully aware of all that had occurred, and that the pork was then at Ottawa, swore that he demanded the pork from the defendants agent at Prescott, and, at the same time, requested him to try and get B. & Co. to accept it; but the evidence of the demand was vague, and seemed rather to be a demand that it should be brought back to Prescott: and an absolute refusal was not shewn. It further appeared that afterwards, and before this action was brought, the defendants offered the plaintiff his pork at Prescott.

Held, affirming the judgment of the Common Pleas, that the asportation of the pork to Ottawa did not constitute a conversion. *Held*, also, that there was not sufficient proof of a demand and refusal to prove a conversion; but *semble* that even if such had been proved, an action of trover could not be maintained after the subsequent offer to give him the pork at Prescott.

McMichael, Q.C., for the appellants.

Becher, Q.C. (with him *Street*) for the respondent.

Appeal dismissed.

From Chy.] [Dec. 23, 1878.

WARSWICK V. CANADA FIRE AND MARINE INSURANCE CO.

Fire insurance—Condition—Warranty.

The plaintiff, who resided at a distance from a mill on which he held a mechanic's lien, applied to the agent of the defendants to effect an insurance thereon. One of the questions put to the applicant was, "Is a watch kept on the premises during the night? Is any other duty required of the watchman than watching for the safety of the premises? Is the building left alone at any time after the watchman goes off duty in the morning till he returns to his charge at night?" His answer thereto was, "The building is never left alone, there being always a watchman left in the build-

ing when not running." At the foot of the application was a condition that the foregoing was a full and true exposition of all the facts and circumstances in regard to the condition, situation, and value of the property so far as was known to the applicant, and material to the risk. The policy which issued thereon mentioned the application in these terms, "Special reference being made to the assured's application, which is his warranty and a part hereof." One of the conditions of the policy provided that any changes to avoid the policy must be material to the risk and within the control or knowledge of the insured. When the application was made a watchman was kept on the premises, but after the issue of the policy, and without the knowledge of the assured, was discontinued.

Held (affirming the decree of Proudfoot, V.C.) that the answer was not a warranty that a watchman would be kept during the existence of the policy, but merely a representation as to an existing state of things at the date of the application.

Held, also, that even if the withdrawal of the watchman was a change material to the risk, the assured was not responsible, as it was not within his control or knowledge.

Osler, Q.C., (with him *G. Patterson*) for the appellant.

Blake, Q.C., and *J. K. Kerr*, Q.C., for the respondent.

Appeal dismissed.

From Q. B.]

BARNARDS' BANKING CO. V. REYNOLDS.

Joint Stock Company—Jurisdiction.

The plaintiffs, a company formed and registered in England under "The Companies' Act, 1862," who were being wound up, sued the defendant as a past member, who had been placed on the list of contributories, to recover from him the amount of certain calls which he was ordered by the English Court to pay to one of the official liquidators at a designated place.

Held, reversing the judgment of the Queen's Bench, (Galt, J., dissenting) that the liability of a past member to pay calls is a debt which originates at the time he becomes a holder of shares, and the plaintiffs could sue in an Ontario Court for the amount thereof.

C. Robinson, for the appellant.

Richards, for the respondent.

Appeal allowed.

From Q. B.]

MOORE V. THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

Life insurance—Personal injury not communicated—Attendance by physician.

One M. obtained a policy of insurance on his life, issued and accepted on the conditions therein set out, one of which was, that the answers on the application which was made a part of the contract were warranted by the assured to be true in all respects, and that, if the policy had been obtained by any misrepresentation or concealment, it should be void. Among the questions and answers in the application were—7. Have you had any of the following diseases:—Dyspepsia? Answer, No. 8. Have you had any other illness, local disease, or personal injury; and if so, of what nature? How long since? What effect on general health? Answer, No. How long since you were attended by a physician? For what disease? Give name and residence of such physician. Answer, About thirty years ago. Lake fever. Dr. S., of, &c., now dead. Name and address of your usual medical attendant? Answer, Dr. B., who attended my family; has known me some years. Have you reviewed the answers to the above questions, and are you sure they are correct? Answer, Yes. At the end, was a declaration and warranty that the above were fair and true answers to the questions; and an agreement that if there should be in any of the answers any untrue or evasive statements, or any misrepresentations or concealment of facts, the policy should be void. The evidence showed that, about fourteen or fifteen years before, the deceased had been thrown out of a sleigh, and fallen on his head; that there was a depression and loss of part of his skull, which, the medical evidence showed, might have arisen from the fall, or from natural causes; that the fall had not affected his

general health; that his last illness had occurred soon after a blow upon his head received by striking against a bolt in his warehouse, close to the depression in his skull, that he was a reckless rider, getting frequent falls; that he occasionally suffered from indigestion, but never in a chronic form, and that during the last ten years he had been attended by three physicians besides Dr. B. above mentioned, but for trifling ailments only.

The jury, in answer to questions, found that the insured had not been afflicted with dyspepsia; that he had no personal injury which must have been present to his mind as something coming fairly within the term personal injury; that he had no serious or severe personal injury, which, through forgetfulness or inadvertence, he did not communicate, nor any personal injury which he might fairly be expected to communicate for the defendants' information, or which had any effect on his general health.

Held, (affirming the judgment of the Queen's Bench,) Burton, J. A., and Galt, J., dissenting, that the answer to the eighth question was a breach of the warranty, as the evidence clearly shewed that the injury arose from a fracture of the skull, which was produced by the fall from the sleigh, and that the assured was bound to mention an injury so severe and unusual, whether it affected his general health or not.

Per Burton, J. A.—That the personal injury in question was not within the warranty.

Per Galt, J.—That it was a matter of doubt upon the evidence whether the depression in the skull arose from natural causes or from the fall, and that it must be assumed from the answers of the jury to the questions put to them that they adopted the former view; and so there was no breach of the warranty.

Per Burton, J. A., and Galt, J.—That the answer to the fourteenth question was not a breach of the warranty, as the question was an ambiguous one, and may fairly have been interpreted by the assured as an enquiry as to the first occasion of his having to seek the service of a physician.

Per Galt, J., and Blake, V.C.—That if the Court below thought that the jury had decided contrary to the evidence, they should have ordered a new trial, but that they had no power to enter a verdict for the defendants.

Bethune, Q.C., for the appellant.

McMichael, Q.C., for the respondent.

Appeal dismissed.

Wilson v. Wilson.

Interpleader issue—New trial after payment over of money by Sheriff.

The execution creditor declining to admit the *bona fides* of a mortgage under which the property in question was claimed, an issue was directed by the Court of Chancery to be tried by the County Court. The parties agreed to try the case before the County Court Judge. At the trial, the good faith of the claimant was admitted, and the attack on the mortgage was confined to points of law. A formal verdict was entered for the claimant, which was afterwards set aside in Term. The execution creditor thereupon applied to the Referee for the usual order against an unsuccessful claimant, which was opposed by the claimant, on the ground that upon similar objections to a mortgage, the Court of Queen's Bench had lately decided in favour of its validity; but the Referee made the order as asked. An unsuccessful appeal against this order was made to a single Judge, whose decision was affirmed on re-hearing; but the Court, while affirming the order, gave the claimant leave to apply, within a month, for a new trial, which he did, when it was granted, but before the order for the new trial was made the Sheriff had paid over the money, which had been deposited in his hands to prevent a sale of the property, in accordance with the order of the Referee.

Upon appeal to the Court of Appeal, the order granting a new trial was reversed, on the ground that the Court of Chancery had no jurisdiction in the matter after the payment over of the money.

Donovan, for the appellant.

Fitzgerald, Q.C., and *O'Donohoe*, for the respondent.

Appeal allowed.

LINCOLN ELECTION PETITION.

Counting votes—Admissions—Loss of papers.

1. *Held*, that admissions made by one of the parties during the counting of the ballots, where both parties were acting under an erroneous assumption as to the powers of the Registrar, are not binding.

2. *Held*, that votes may be properly counted for a candidate, where by taking into account the number of votes proved by inspection of documents to have been cast for each candidate, and the whole number cast, it is certain, as a mere matter of calculation that the votes in question must have been given for a particular candidate.

3. *Held*, that the statement of the voter cannot be received as evidence that he voted, or for whom he voted, either by proving statements so made, or by calling the voter as a witness.

4. *Held*, that where from loss of the papers and want or inadmissibility of other evidence, it cannot be ascertained if certain parties voted or how they voted, the petitioner is bound to establish affirmatively that the party claiming the seat was duly elected; if he fails in this, the respondent, who was duly returned as elected, may hold his seat.

Hodgins, Q.C., for the petitioner.

Bethune, Q.C., for the respondents.

QUEEN'S BENCH.

IN BANCO. MICH. TERM.

December 27, 1878.

FRANK v. BESWICK.

Partnership — Right to retire — Death of Partner—Dissolution of Partnership.

Plaintiff and two others entered into a partnership under certain articles of agreement, which provided that on the death of any one of the partners, the business was to be closed till stock was taken and the affairs of the firm settled, when there was to be a division of profits: that if any partner desired to withdraw after a year from the date of the articles, he should give the other two members the right of refusal of his share of the business, &c. There was a contemporaneous agreement as to what and how the plaintiff was to pay for his share of the business, and then there was one instrument providing for the purchase by the other two partners of plaintiff's interest on certain conditions, with the alternative proviso that if plaintiff desired to withdraw from the firm he should be repaid all moneys put by him into the partnership, two months' notice of purchase or sale to be given on either side.

One of the two other partners died within six months from the date of the articles of partnership, and plaintiff more than two months before the expiration of the year, gave notice of his desire to retire and get back his money.

Held, that the effect of the death in the partnership within the year, was to dissolve the firm, and that as plaintiff could only have obtained the benefit of the last in part recited agreement, in case the firm continued to exist until after the close of the year his right of action was defeated by the dissolution, and his only remedy was an account in the ordinary way.

Meredith, for plaintiff,

John Cameron, contra.

HALDAN v. BEATTY.

Interpleader—Common Law and Chancery writs—Jurisdiction—Estoppel—R. S. O. ch. 54, ss. 11, 12, 13.

After the issue of an interpleader summons founded on two writs of *fi. fa.*, issued respectively from this Court and the Court of Chancery, the writ from the former Court was set aside.

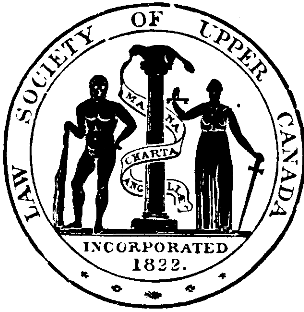
Held, that the Judge in Chambers had jurisdiction, notwithstanding, to continue the proceedings and make the interpleader act as to the latter writ.

But, quære, even if the want of jurisdiction had been clear, whether a party could avail himself of it after having agreed to the order, accepted the issue, defended it at the trial, and moved against the verdict, &c., &c.

Donovan for execution creditor.

Campbell for claimant.

F. Osler for Sheriff.



Law Society of Upper Canada.

OSGOODE HALL,

TRINITY TERM, 42ND VICTORIÆ.

During this Term, the following gentlemen were called to the Bar; namely :—

HENRY PIGOTT SHEPPARD.
ISAAC CAMPBELL.
A. BRISTOL AYLSWORTH.
RICHARD DULMAGE.
HARRY THATCHER BECK.
MATTHEW WILSON.
WILLIAM HENRY FERGUSON.
WILLIAM E. HIGGINS.
JAMES CARRUTHERS HEGLER.
FREDERICK WILLIAM PATTERSON.
EUGENE LEWIS CHAMBERLAIN.
MAXFIELD SHEPPARD.
NEIL A. RAY.

And the following gentlemen were admitted as Students of the Law and Articled Clerks, namely :—

Graduates.

WILLIAM RIDDELL.
DAVID PHILIP CLAPP.
ADAM JOHNSTON.
GEORGE GORDON MILLS.
GEORGE WILLIAM BEYNON.
JOHN HENRY MAYNE CAMPBELL.
CHARLES MILLAR.
THOMAS ALFRED O'ROURKE.
EDWARD ROBERT CHAMBERLAIN PROCTOR.
CONRAD BITZER.
JOHN RUSSELL.
JOHN WILLIAM RUSSELL.

Matriculants.

W. J. TAYLOR.
HARRY THORPE CANNIFF.
THOMAS PARKER.
A. DOUGLAS PONTON.
ALBERT EDWARD DIXON.

And as an Articled Clerk—

EUDO SAUNDERS.

Junior Class.

J. L. MURPHY.
A. G. CLARKE.
W. B. DICKSON.
W. G. WALLACE.
T. K. PORTEOUS.
D. H. TENNENT.
M. S. MCCRANEY
J. TELFORD.
C. H. CLEMENTI.
W. HAWKE.
J. B. PATTERSON.
J. W. HANNA.
C. H. CLINE.
G. W. DANKS.
C. A. HESSON.
R. E. HARDING.
C. HENDERSON.
J. CAMPBELL.
J. G. CHEYNE.
F. E. BERTRAND.
T MOFFAT.
S O. RICHARDS.

Articled Clerks.

A F. GODFREY and
HUGH MCMILLAN, as of Easter Term.

PRIMARY EXAMINATIONS FOR STUDENTS-AT-LAW AND ARTICLED CLERKS.

A Graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such Degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his diploma or a proper certificate of his having received his degree.

All other candidates for admission as students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects :—

CLASSICS.

Xenophon, Anabasis, B. I.; Homer, Iliad, B. I.; Cicero, for the Manilian Law; Ovid, Fasti, B. I., vv. 1-300; Virgil, Æneid, B. II., vv. 1-317; Translations from English into Latin; Paper on Latin Grammar.

MATHEMATICS.

Arithmetic; Algebra, to the end of Quadratic Equations; Euclid, Bb. I., II., III.

ENGLISH.

A paper on English Grammar; Composition; an examination upon "The Lady of the Lake," with special reference to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

English History, from Queen Anne to George III., inclusive. Roman History, from the commencement of the second Punic war to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography: Greece, Italy, and Asia Minor. Modern Geography: North America and Europe.

Optional Subjects instead of Greek:

FRENCH.

A Paper on Grammar. Translation of Simple Sentences into French Prose. Corneille, Horace, Acts I. and II.

Or GERMAN.

A Paper on Grammar. Musaeus, Stumme Liebe. Schiller, Lied von der Glocke.

Candidates for Admission as Articled Clerk. except Graduates of Universities and Studentss at-Law), are required to pass a satisfactory Examination in the following subjects :—

Ovid, Fasti, B. I., vv. 1-300; or,
Virgil, Æneid, B. II., vv. 1-317.
Arithmetic.
Euclid, Bb. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography — North America and Europe.

Elements of Book-keeping.

A student of any University in this Province who shall present a certificate of having passed within four years of his application, an examination in the subjects above prescribed, shall be entitled to admission as a student-at-law or articled clerk (as the case may be), upon giving the prescribed notice and paying the prescribed fee.

All examinations of students-at-law or articled clerks shall be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

After Hilary Term, 1879, the Matriculation Examination will be as follows:—

SUBJECTS OF EXAMINATION.

Junior Matriculation.

Classics.

1879 { Xenophon, Anabasis, B. II.
Homer, Iliad, B. VI.

1879 { Cæsar, Bellum Britannicum.
Cicero, Pro Archia.
Virgil, Eclog. I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1–300.

1880 { Xenophon, Anabasis. B. II.
Homer, Iliad, B. IV.

1880 { Cicero, in Catilinam, II., III., and IV.
Virgil, Eclog., I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1–300.

1881 { Xenophon, Anabasis, B. V.
Homer, Iliad, B. IV.

1881 { Cicero, in Catilinam, II., III., and IV.
Ovid, Fasti, B. I., vv. 1–300.
Virgil, Æneid, B. I., vv. 1–304.

Translation from English into Latin Prose.

Paper on Latin Grammar, on which special stress will be laid.

Mathematics.

Arithmetic; Algebra, to the end of Quadratic Equations; Euclid, Bb. I., II., III.

English.

A paper on English Grammar.

Composition.

Critical analysis of a selected poem:—

1879.—Paradise Lost, Bb. I. and II.

1880.—Elegy in a Country Churchyard and The Traveller.

1881.—Lady of the Lake, with special reference to Cantos V. and VI.

History and Geography.

English History from William III. to George III., inclusive. Roman History, from the commencement of the Second Punic War to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography: Greece, Italy, and Asia Minor. Modern Geography: North America and Europe.

Optional Subjects.

French.

A Paper on Grammar.

Translation from English into French Prose—

1878 and 1880 } Souvestre, Un philosophe sous les toits.

1879 and 1881 } Emile de Bonnechose, Lazare Hoche.

German.

A Paper on Grammar.

Musaeus, Stumme Liebe.

1878 and 1880 } Schiller, Die Bürgschaft, der Taucher.

1879 and 1881 } Schiller { Der Gang nach dem Eisenhammer.
Die Kraniche des Ibycus.

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination shall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C. S. U. C. c. 12), C. S. U. C. caps. 42 and 44, and Amending Acts.

The Subjects and Books for the Second Intermediate Examination shall be as follows:—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law, C. S. U. C. c. 88, and Ontario Act 38 Vic, c. 16, Statutes of Canada, 29 Vic. c. 28, Administration of Justice Acts 1873 and 1874.

FINAL EXAMINATIONS.

For Call.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Smith on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Stephen on Pleading, Lewis's Equity Pleading, Dart on Vendors and Purchasers, Best on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

For Call, with Honours.

For Call, with Honours, in addition to the preceding:—Russell on Crimes, Broom's Legal Maxims, Lindley on Partnership, Fisher on Mortgages, Benjamin on Sales, Hawkins on Wills, Von Savigny's Private International Law (Guthrie's Edition), Maine's Ancient Law.

For Certificate of Fitness.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Smith on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

Candidates for the Final Examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

SCHOLARSHIPS.

1st Year. — Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Hayne's Outline of Equity, C. S. U. C. c. 12, C. S. U. C. c. 42, and Amending Acts.

2nd Year.—Williams on Real Property, Best on Evidence, Smith on Contracts, Snell's Treatise on Equity, the Registry Acts.

3rd Year.—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Taylor's Equity Jurisprudence, Fisher on Mortgages, Vol. I. and chaps. 10, 11, and 12 of Vol. II.

4th Year.—Smith's Real and Personal Property, Harris's Criminal Law, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis's Equity Pleading, Equity Pleading and Practice in this Province,