Canada Law Journal.

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DIARY FOR FEBRUARY.

2. Wed....Final Examination for Attorneys.
3. Thurs..Final Examination for Call.
4. Fri......Final Examination for Call with honours.
6. Sun....5th Sunday after Epiphany. Hagarty, C. J., C. P.,
7. Mon...Hilary Term begins. [sworn in, 1856.
10. Thurs..Queen Victoria married, 1840.
11. Fri......R. E. Caron, Lieut.-Governor of Quebec, 1873.
13. Sun....Septuagesima Sunday.
14. Mon...Last day to move against Municipal Elections.
15. Tues...Supreme Ct. sitt.
[goode, first C. J. of U. C., died 1824.
17. Thurs.-Re-hearing Term in Chancery begins. William Os-
18. Fri......Canada settled by the French, 1534.
19. Sat......Hilary Term ends.
20. Sun.....Sexagesima Sunday.
27. Sun.....Quinguagesima Sunday. Sir John Colborne, ad-
28. Mon....Indian mutiny began, 1857. [ministrator, 1838.

TORONTO, FEBRUARY 1st, 1881.

WE publish in another place the report of a decision in the Maritime Court of Ontario by His Honor Judge McKenzie, which will be found of interest to those who occupy their business in these inland seas of ours. We shall, as soon as we find space, give our readers the benefit of an elaborate opinion by an American Judge touching upon the effect of the sale of American vessels under our Act.

THE member for Carleton in the Local Legislature has given notice of a bill to abolish precedence and preaudience at the Bar. We understand that the act will contain a clause, preventing increased Counsel fees being taxed to Queen's Counsel by reason of their holding that position. This looks as if Mr. Monk were not very hugely impressed with the sacredness of the privilege lavishly accorded of late years, of wearing silk instead of stuff.

THE Supreme Court of the United States is very far behind with its judicial work. If that court were to work steadily for two years, no new appeals being entered in the meanwhile, it could not dispose of the business now before it. But, as is well known, appeals are accumulating and increasing, so that the Court finds itself every month more and more "snowed up." The remedy suggested is to cut down the list of appealable cases, by confining to State tribunals as courts of ultimate appeal many causes of action now brought into the Federal Courts. But it is easier to see the mischief than provide a remedy.

IT may very possibly have occurred to some that the defendants in the prosecution against the Land Leaguers in Ireland are not only taking the matter very coolly, but have possibly over-stepped their legal rights in absenting themselves from Dublin during the trial. The former they certainly are doing, but not the latter. The case is thus stated by the *Law Journal*:—"The prisoner charged with felony is bound to be present during his trial, but there is no such obligation on a defendant charged with a misdemeanor, as in the case in question. The defendants in the trial at Dublin did not even 'appear' in the technical sense of the word, in person; by the practice in informations in the Queen's Bench they appeared by attorney, and one of them, we believe, has not as yet been present at all. If a verdict is returned for the Crown, the defendants must appear to receive judgment; but at present there is no obligation on them to be in Court, or even to be in Ireland. The practice is hardly compatible with the dignity of a criminal trial, and is one of the unreasonable distinctions which exist between felony and misdemeanor."

AN interesting paper might, with a little research, be prepared referring to some of the many anomalies still remaining in English jurisprudence. One very striking one in connection with criminal procedure occurs to us at present. There is a record kept of the smallest judgments recorded in a Division Court, but this is not so as to sentences pronounced against prisoners. The observation "*sus. per col.*" may or may not be inserted in the calendar opposite the name of a man condemned to death for murder; and by some investigation it might be possible to arrive at what became of some unfortunate who had been sentenced to imprisonment for life, but as to any record, or entry of judgment or other judicial registration of the sentence, it is not to be found. We are not aware that any great injustice has arisen from this peculiarity of the law, but it strikes one that the omission is somewhat singular and that a little more formality in the premises would be desirable.

EQUITABLE EXECUTION.

It is much to be desired that some author "learned in the law" should write a treatise upon the subject of Equitable Execution. We are not aware of any text-book which deals with this topic, except in the most cursory manner. In a country like this, where it is very often difficult to realize the fruits of judgment, and creditors are "beaten on the execution," it is desirable that the law for the benefit of creditors should be in a well-defined and satisfactory state, which is certainly not the case at present. While so many changes are foreshadowed in the names of things and the times of doing them, as appear in the contemplated Judicature Act, the weightier matters of substantial justice should not be overlooked. Is it right that a debtor should beneficially enjoy property which his creditor cannot touch? Should he be able to live at ease, and put at defiance every one to whom he is justly indebted? Yet substantially that is the law in this highly civilized province of Ontario.

The origin of this equitable jurisdiction in aid of the law is given by Vice-Chancellor Leach in *Kirkby* v. *Dillon:* C. P. Coop. 504. He points out that it was very common for debtors to convert their legal estates into equitable ones in order to defeat their creditors who obtained judgment. That gave rise to numerous bills for equitable execution. In many cases of the kind, he says, the legislature has given relief to creditors in courts of law by the Statute of Frauds, which enables the sheriff to levy upon lands held in trust for the debtor. But, notwithstanding this, it is obvious that there are many cases in which a debtor has a beneficial interest in land and yet no one can be said in a legal sense (*i. e.*, as understood in a court of common law) to be seized or possessed in trust for him; and also there are many cases in which no process at law can get at that estate of which some one is possessed in trust for the debtor. In such cases as these, the Vice-Chancellor says, presenting impediments which the common law courts cannot remove, bills for equitable execution must continue to be filed.

But the courts of equity have not yet given effect to these words in their obvious scope, and have introduced many limitations on their own power. Thus, so far as it regards personal estate, it has been held by the highest court in this Province that if the execution debtor is entitled to a definite share of the annual proceeds of the estate of a deceased person, yet that this valuable interest cannot be reached at law or in equity for the benefit of his execution creditors: *Gilbert* v. *Jarvis*, 16 Gr. 265. And in *Robertson* v. *Beamish*, 15 Gr. 676, the right is limited to those cases in which the bill seeks to impose on the equitable interest the liability which would attach at law on a corresponding legal interest. And this was held by our highest court to be a proper limitation in *Fisken* v. *Brooke*, 4 App. R. 8. It is noteworthy, also

that in this last case Moss, C. J. observes that the necessity of obtaining equitable execution would seem to be very mnch diminished by the extension of the sheriff's powers to the sale of every interest over which the execution debtor has a disposing power exercisable for his own benefit without the assent of any other person (p. 23.). But a very marked limitation has been indicated as the true construction of this clause of the statute by Proudfoot, V. C., in *Allen* v. *Edinburgh Life Assurance Company*, 29 Gr. 310: namely that the words "disposing power" must receive their ordinary meaning as estates which the party can deal with by means of the exercise of some power in that behalf without the assent of other persons. In an earlier case the Chancellor thought the statute was meant to embrace any and every interest which the execution debtor might possess for his own benefit disposable by himself: *Williams* v. *Reynolds*, 25 Gr. 49. But this point was not argued, and the Vice-Chancellor adheres to his view in a later adjudication upon the same case: *Allen* v. *Edinburgh*, 26 Gr. 192. So that the present judicial construction is rather embarrassing as to the effect and comprehensiveness of this enactment.

The unsatisfactory position of the law is also clearly brought out by the decision in *Fisken* v. *Brooke* already referred to. Real and personal estate was there left by the defendant's father in such a way that the whole formed one fund out of which the defendant and his wife were to have their support and maintenance in a manner suitable to their rank and station. But it was held that the handsome income derived from this source was not to be reached by any process or by any court for the satisfaction of the husband's creditors. This we submit is not a satisfactory state of the law, but is one which urgently demands a legislative remedy. And if it be within the bounds of possibility, let that law be so plainly expressed that the wayfaring man, unless he be withal a fool, may understand what he reads. It is surely a matter of extreme regret that the time of everybody should be wasted, and much money of the long-suffering client spent in endeavouring to find out what is meant by current legislation. What a commentary upon lucidity of legislative expression is the long line of discordant authorities upon the law relating to married women, and the law relating to mechanics' liens. It would certainly be desirable in these and similar cases to invoke the aid and experience of the judges in framing new laws or in modifying old laws on such subjects. And such emphatically should be the case in reference to the new laws relating to process and procedure impending over us; the views of the judges should be ascertained, and, as far as possible, given effect to.

THE LATE CHIEF JUSTICE MOSS.

It is always a difficult task to frame, in language adequate to the subject, a just estimate of a departed friend, especially when he has filled with distinction, positions of honour and responsibility. The language of eulogy naturally wells up from the heart; and by the indifferent reader it is interpreted with some deduction on the score of partiality more or less to be expected. And yet, when all is done, a writer has too good reason to fear that some effective strokes are wanting to complete the picture. It is a standing reproach to eulogies of the sort, whether graven in marble or imprinted on paper, that they art apt to be fulsome. Certainly, vanity or affection has often erred in this respect, wilfully sometimes, but often with a vision blurred by the mist of tears. On the other hand, truer and more vivid impressions are gained under bereavement, not clear to the inward sight before. Forgotten or heedlessly noted beauties of character are disclosed with a fullness not hitherto attained; and those faults and foibles which may have assumed undue proportions for us in life, are dwarfed in the immeasurable distance across the gulf

which separates this mortal existence from that which lies beyond the grave.

Chief Justice Moss was gifted with a personal character attractive almost to fascination. By those who knew him, and enjoyed, in any degree, the privilege of his intimate friendship—and the circle is wide and comprehensive—he will be chiefly regretted, after all, not for what he did, but for what he was. No more manly or honest heart ever beat beneath the stuff gown of the undergraduate, or the purple cape of the judge. Possessed of more than ordinary ability, successful to an unprecedented degree in all he set his hands to work upon, he had no impatience at dullness, no jealousy in rivalship, no superciliousness in high station. What he was discovered to be in the promise of youth, he remained to the last—hopeful, helpful, self-sacrificing, nobly and manfully generous. Those who met him in academic or professional intercourse did not so much admire as love him; and this warm and tender appreciation of an essentially chivalrous character acted as a talisman against all the petty passions which mar and often poison men's intercourse in the rough competition of active life. Chief Justice Moss had no enemies, simply because it was impossible to be a man and yet be an enemy to him.

It is well to linger over these features of his character because they are those which unite together, in a common bond of sympathy, friends who are otherwise apart in taste and professional pursuit. Many an Upper Canada College boy of twenty odd years ago remembers Thomas Moss; many a graduate of his Alma Mater has watched his brilliant career with something like brotherly interest; many a legislator, many a member of the profession feels the same common attraction to the departed judge, and suffers the same inward pang at his premature removal by death.

But there was more in the late Chief Justice than geniality and kindly feeling. He possessed an intellect singularly acute and receptive, a wonderful aptitude for the mastery of any subject before him, and a singularly tenacious memory touching what it was of importance to know and retain. To many, these talents serve as a substitute for hard work and constant, assiduous application. It is at once flattering to human pride and soothing to that aversion from toil natural to men, to believe that one is clever enough to dispense with the drudgery of study; but if any student or practitioner of law strives to find a crucial instance in the late Chief Justice, he will make a serious mistake. He certainly possessed a wonderful power of insight; yet, because of it, he saw clearly that without a solid foundation, acuteness of mental intuition is as likely, indeed more likely, to lead astray than to guide aright. No substantial basis of knowledge, no matter what may be its subject-matter, can be acquired as by inspiration. Labor alone conquers all things, and Chief Justice Moss was a conscientious and painstaking laborer from youth upwards.

It is easy to attribute success in life to chance; but if we do so, the facts will prove that where we do so, it is because we have taken no pains to ascertain the truth. No man ever rose to so high a position in Canada, or elsewhere, as did the subject of this obituary without having, not merely a good intellect, but a well-stored and cultured one also. The history of a life, all too short for the Province and the Dominion, contains but few stirring incidents; still it may be well to recapitulate its main data.

Chief Justice Moss was born at Cobourg, on the 20th of August 1836, and, therefore, died at the early age of forty-four. He belonged to the middle-class, and owed nothing to social or official connections so long as he lived. At an early age his father and the family removed to Toronto, and there his entire active life was almost wholly passed. He was first known to the outer world as a distinguished prizeman at Upper Canada College. There he laid the foundation for a yet more brilliant success at the University of Toronto.

Our higher academies do not always receive credit for the work they accomplish in disciplining youths for the battle of life. Mr. Moss, at all events, was throughout life a visible evidence of the admirable training of old Upper Canada. It had a reputation for severity in those days, and more than one of the masters had a reputation for not spoiling the child by sparing the rod. At any rate, the future judge acquired in the halls of the college a sound basis of learning, and, what is better, systematic habits of studious industry. When he left the institution, bearing off with him the Governor-General's prize, he was the most popular, as well as the best mentally equipped pupil who ever left the highest form. His career whilst there is the best possible apology for the institution which can be offered; since not only did he, in after years, vindicate the character of its tuition, but proved, to demonstration, the value of its dicipline in the formation of a vigorous, manly, and thoroughly practical habit of mind.

In 1854, Mr. Moss entered the University of Toronto, receiving a first-class scholarship in the two departments of classics and mathematics. Those who were his contemporaries there will be the first to acknowledge the abilities he possessed, and to do justice to the thorough grounding he possessed in his special departments. There was not so much competition in those days of Alma Mater, as now; still Mr. Moss had no child's play of it even then, and, fortunately for himself, was not by any means permitted to walk the course. That he triumphed in the end and won the honorable race upon which he had entered, was a credit at once to his training, his abilities, and his persevering industry. Of his career at the University we have gathered some interesting reminiscences, which however might not prove of interest to the reader. It must suffice to remark that throughout his course of four years he was not so much a rival as a friend to those who now lament his premature death, and cherish his memory as one of the most sacred and precious possessions of their youth. It was the season of hope and aspiration then, and those who admired the vigorous form of their friend in those bygone years, welcomed the cheery smile, and grasped the warm hand of their fellow-student with more than a merely academic civility, indulged in prognostications of a bright future for him and perhaps for themselves, fulfilled in his case, but nipped, alas! in the hour of fruition. In 1858, Mr. Moss graduated with unprecedented distinction, receiving no less than three gold medals, awarded in the departments of classics, mathematics and modern languages respectively. It may be said that in at least two of these he was practically unopposed. But that in no wise detracts from the conspicuous merit of the achievement. As a matter of fact, the absence of competition should, in the natural order of things, have made Mr. Moss less diligent. Examiners, however, have ways of their own which do not coincide with the ways of the perfunctory student; and when an undergaduate had enjoyed his own way freely for a year or two, they very properly put him upon his mettle. As Prof. Cherriman used to say in those days, with truly mathematical brevity, at Commencement, "Here is Mr. ——, who has won honours in the department over which I preside, and all I need say is, that if he had failed to deserve them, he would not have obtained them." The results did not depend, in fact, merely upon a majority of marks, since under the standard, no man, even if he stood alone, could secure a first-class, without obtaining the necessary proportion.

By the death of Chief Justice Moss, Alma Mater has lost her most ardent and affectionate son. In the capacity of Vice-Chancellor, and member of the Senate, he was always foremost in suggesting and promoting schemes for the advancement of the University, and the extension of its sphere of usefulness. It now appears that he had it in contemplation to deliver lectures in the college on constitutional law and

jurisprudence—a branch of instruction strangely wanting in our Provincial scheme of liberal culture. At the first meeting of Convocation, he was unanimously elected, by his fellow-graduates, to the post of chairman, and he died whilst occupying both offices—one in the gift of the Senate, the other voluntarily offered by his brethren of the University. It is gratifying to hear that the Senate has determined to establish a permanent memorial of the Chief Justice in the form of a scholarship; still more gratifying to record that his sons, so early bereft of their distinguished father, are to be adopted as foster-children of the University of which he was so conspicuous an ornament.

Mr. Moss entered upon the study of the law in the office of Messrs. Crooks & Cameron almost immediately after his graduation; and, on a dissolution of their partnership remained with Mr. Hector Cameron, whose partner he became in 1861, on his call and admission. Thereafter he entered into partnership with the Hon. James Patton and Mr. (now Judge) Osler, and subsequently with the late Chief Justice Harrison, the firm being known as Harrison, Osler & Moss. The future Chief Justice's abilities as an equity barrister were recognized by his appointment in 1871 as Equity Lecturer for the Law Society; in 1872 he was made a Q. C. by Sir John Macdonald, and during the same year declined the offer of a Vice-Chancellorship. Mr. Moss had the advantage of being thoroughly grounded in Chancery procedure; but he was also attracted to the study of common law—a necessary condition of success in equity practice. Unconsciously, perhaps, he was preparing himself for the loftier position which awaited him.

Meanwhile, political life, for a brief period, engaged him. What he might have accomplished in Parliament had he surrendered himself entirely to public affairs, it would be hazardous to conjecture; certainly he left the arena with some reluctance at the last. Mr. Moss was elected to the Commons for West Toronto in 1873, and re-elected in 1874. Shortly after the latter victory he was appointed a Judge of the Court of Appeal, and bade adieu for ever to the hazardous vicissitudes of parliamentary life. On the death of Chief Justice Draper he became President of the Court, and upon the demise of Chief Justice Harrison, became Chief Justice of Ontario.

In casting a rapid retrospect over the Chief Justice's career upon the bench, the first feature which strikes one is the indefatigable industry and brilliant versatility of his Lordship. Few British judges can boast, within the narrow limit of six years, a range of judicial experience so varied in character, or of a discharge of public duty more thoroughly painstaking and conscientious. Those who knew him merely as a friend of courteous and affable manner will perhaps cherish the notion that care and business sat lightly upon him. Nothing certainly could be wider from the truth. In this respect he bore a notable resemblance to the lamented Lord Chief Justice of England. His grace, ease of manner and geniality in social intercourse, only veiled an immense capacity for solemn and earnest work. Wherever duty called him, and it was sometimes unconscionable in its demands upon his strength, he was found ready at the allotted post; and whatever he essayed to do, he did it with his might. At trials of election petitions, in criminal *causes célèbres*, at Nisi Prius, in Chambers, or in Banco, he never shirked responsibility or marred his work by slovenly execution. We have referred to his powers of mental insight into principles; on the bench he found them of essential service. The Chief Justice at once struck the key-note of the case before him; yet he did not improvise law for the occasion. Having got at the heart of the mystery, he at once fortified himself by authorities which he examined and appraised in the most delicately adjusted intellectual balance. No one could detect more clearly where a pre-

cedent failed to be relevant, and wherein it was distinctly in point; nor did he ever rest until he had satisfied himself that the principles he enunciated rested upon an irrefragable basis. In marshalling facts, conflicting and involved, he has hardly been excelled on the Canadian bench; and in unravelling skillfully wrought webs of fraud he was equally successful. His judgments, as recorded in the reports, are always marvels of clearness; indeed they are so generally convincing from that lucidity which attracts non-professionals who mistake deep intuition and sound knowledge of law for what it is the fashion to term "common-sense" decisions—judgments readily evolved from the inner consciousness. Chief Justice Moss never yielded to the temptation to indolence, or for a moment substituted, even in thought, his inner light for the *lex scripta* of the statutes and the books.

Some of the principal cases in which the learned Chief Justice delivered judgment may be noted for reference. In *Fisken* v. *Brooke*, 4 App. R. 8, will be found an admirable exposition of the law relating to equitable execution. It was a case of joint ownership, and Moss, C. J., urged that to permit the execution creditor, in effect to administer the estate, would be contrary to any principle of justice or equity, where the defendant was merely a beneficiary under the will, and owned no estate in the land. In *Yeomans* v. *Wellington*, 4 App. R. 301, the reciprocal rights of municipalities and property-owners are defined, and the decision affirmed that if a highway be constructed so as to injure property, the owner is entitled to compensation. That judgment is chiefly notable for its exhaustive review of all the precedents in point, both English and American. *Rice* v. *Bryant*, 4 App. R. 542, discloses a wonderful power in analyzing and co-ordinating facts. It also illustrates the keen penetration which the Chief Justice possessed in diving down into the heart of concealed fraud. In *Fitzgerald* v. *G. T. R. Co.* 4 App. R. 609, he delivered a judgment of great importance to the mercantile community and to railway corporations. The case was one in which the Company's agent had agreed to send petroleum by covered cars; he neglected to do so, and the Company pleaded that the words "at the owners' risk" covered them from responsibility. "The correct rule," said the Chief Justice, "seems to be to pay regard to the degree of diligence which the situation assumed by a person demands, rather than to his carelessness. The words 'at the owners' risk' do not free the carrier from all liability for negligence." The verdict of the jury was therefore left undisturbed. A railway case of a different kind may be noted in *Erb et al.* v. *G. W. R. Co.*, where an agent had given a fraudulent bill of lading which had been negotiated. The judgment of the Chief Justice is remarkable for its ample discussion of conflicting views—"opposite and irreconcilable" as he proved them to be. He had the candour to admit he had not after all succeeded in banishing doubts from his mind. More than usual pains were bestowed upon this judgment, since the view adopted by the Chief Justice and Mr. Justice Burton was at variance with opinions given by brother judges of age and experience. *Re Lincoln* Election, 2 App. R. 324, decided a question relating to defective description of a voter's qualification, and was decided in favor of the elector. In *Inglis* v. *Beatty*, 2 App. 324, he delivered a most exhaustive judgment extending over forty pages. The case turned upon the liability of trustees, and especially to the question whether compound interest should be charged to a trustee under the circumstances. In *Wiley* v. *Smith*, 1 App. R. 191, another case in mercantile law arose on the important question of stoppage *in transitu*. Here the Chief Justice held, after a thorough sifting of the authorities, that the *transitus* had come to an end. The case of *Stratford and Huron Railway Co.* v. *Perth*, 38 U. C. R. 112, may be also noted as governing the matter of bonuses granted by

municipalities. One sentence from the judgment here may be cited as an evidence that the deceased judge was not disposed to adopt merely "common sense" views: "There is no sound reason for leaving discretion, in such cases, to be exercised on arbitrary principles, or according to the ideas of natural justice of the particular judge or court." We have referred to these judgments, commending them to the special notice of the profession, because they abundantly illustrate our previous remarks upon the Chief Justice's peculiar merits as a judge. To read them with care and attention is to form a high estimate of the judicial qualities of our departed friend. The touching tributes paid to his memory by Vice-Chancellor Blake and by Mr. Justice Burton on behalf of the bench, and by Mr. Robinson, Q. C., on behalf of the bar, are the surest evidence that can be adduced of the sterling qualities of the Chief Justice.

What he might have been, had his life been spared to his family and to the Province, who shall say? With abilities so striking, with a conscientious industry so persistent with a fervent zeal in the discharge of judicial duty so ardent, what might he not have done? It was not too much to hope that his organizing hand would, at no distant day, have been at work upon the Supreme Court, for the Chief Justiceship of which, not only his talents but his temperament and breadth of view would have eminently fitted him. At all events his premature death is a serious loss to this Province. No judge could more ably and sympathizingly have smoothed the way for the easy and satisfactory working of the new Judicature Act than he. He was young in years, comprehensive as to his legal opinions, and generously tender to old prejudices. Unhappily he has been removed in the flower of his age, with success attained early and snatched from his grasp only too soon for his countrymen—for Canada which he loved so well, and was so proud of boasting as his native land. We have all suffered a bitter bereavement; and although our grief cannot be so poignant as that of those who were so near and dear to him, it is with no formal or ostentatious show of sympathy that we condole with the widow and orphans left alone in the world—yet not alone, for, out through the gloom they may see sorrowful helpers who, though they cannot heal, may soothe and bind up the cruel wound inflicted by the hand of death.

LAW SOCIETY.

Proceedings of Convocation on 28th Dec., 1880, published by authority.

Present—Messrs. Irving, Smith, Hoskin, Martin, Osler, Crickmore, Maclennan, McCarthy, Read, Kerr, Mackelcan, McMichael.

Mr. Maclennan was appointed chairman in the absence of the Treasurer. The minutes of last meeting were read and approved.

The report of the Discipline Committee, on the petition of William Lamour recommending further enquiry, was received, read, and adopted.

The report of the Legal Education Committee, recommending that the examinations for Call and Call with Honours be respectively held on the Thursday and Friday before Term, at 9 a. m., and suggesting a design for the medals proposed to be presented to honor men at the said examination, was received, read, and adopted.

The report of the Committee on Reporting was received and read as follows:

The Committee on Reporting beg leave to report as follows:

1. A proposal has been received from Mr. Carswell for the printing of the reports for Convocation; your Committee does not recommend that the proposal of Mr. Carswell be entertained.

2. Your Committee recommend that 1350 copies of Mr. Hodgins' forthcoming volume of election cases, be ordered at a rate not ex-

ceeding the average cost of the regular reports of the Society.

Signed, JAS. MACLENNAN,
Chairman.

The report was ordered to be considered forthwith.

The first clause was adopted.

Mr. Read, seconded by Mr. Mackelcan, moved,

That that part of the report of the Committee on Reporting, relating to the publication of election cases, be not now adopted, but that the consideration thereof be adjourned until next term.

Amendment lost.

Mr. McCarthy moved,

That the report be referred back to the Committee on Reporting, with an instruction that the Committee be empowered, if, on an examination of Mr. Hodgins' proposed reports of election cases they deem it expedient, to agree with Mr. Hodgins for procuring 1350 copies thereof for distribution at a cost not exceeding the sum of $1 per volume, in addition to the average cost now paid by the Society for printing the ordinary reports.

Mr. McCarthy's amendment was carried.

Mr. Hoskin moved the adoption of the following rule relating to discipline:—

For the purpose of upholding the honour of the Bar and maintaining discipline amongst Barristers, Solicitors, Attorneys, Students, and Articled Clerks, Convocation shall have the power, in pursuance of sections 38 and 41 of "An Act respecting the Law Society of Upper Canada," in any case where a Barrister, Solicitor, Attorney, Student-at-law, (a member of this Society,) or an Articled Clerk, has been guilty of professional or other misconduct, to order that such Barrister, Solicitor, Attorney, Student, or Articled Clerk, shall be deprived of or suspended from the exercise of all and singular the rights, powers, and privileges belonging to him in this Society as a member thereof, or as such Articled Clerk; and Convocation shall have the power to order that the name of any such Barrister, Solicitor, Attorney, Student, or Articled Clerk, shall be erased from the books of this Society, and notice of such deprivation or suspension shall at once be given by the Secretary to the Superior Courts of Law and Equity, and to such other Courts as Convocation may order.

Which was read a first time.

Ordered, that the rule be printed and distributed to members of Convocation and to the visitors before next term.

Mr. Read presented the Report on the Consolidation of the Rules of the Society which was read a first time.

Second reading ordered for first Tuesday of next Term.

Mr. Read presented the Report of the special committee on the new building, which was read as follows:

To the Benchers of the Law Society in Convocation Assembled:

The Building Committee beg leave to report.

That on the 23rd instant the Committee met and opened the tenders for the new building submitted to them by Mr. Storm the architect.

That the lowest tenders were as follows:

1. For the whole work, Lionel Yorke, $36,795.

2. For the following portions of the work:

1.	Excavator, mason, bricklayer and stone cutter, Lionel Yorke....	$17 550
2.	Carpenter and joiner, E. Stephenson & Co....	11 540
3.	Gravel roof, D. Forbes........	117
4.	Slater, L. A. Wismer..........	249
5.	Galvanized iron, Wheeler & Bain....................	375
6.	Plasterer, C. R. Roundle......	364
7.	Plumber, gas and steam fitter, Bennet & Wright..........	2 750
8.	Smith and iron monger, W. Hamilton, jr..................	1 100
9.	Painting and glazing, Alex. Hamilton..................	2 573
		$36 618

And by another mode.

L. Yorke, excavator, mason, bricklayer and stone cutter......	$17 550
E. Stephenson & Co.,— Carpenters and joiners, Gravel roof, Slater, Galvanized iron, Plasterer..................	12 605
Bennet & Wright.— Plumber, gas and steam fitter....	2 750
W. Hamilton, jr.— Smith and iron monger........	1 100
Alex. Hamilton.— Painter and glazier............	2 573
	$36 578

The committee submit the foregoing to Convocation for their approval, having been advised by the architect that the tenderers are all capable mechanics.

The committee had before them a letter from the Secretary of the Department of Public Works to the Treasurer containing a copy of the order-in-Council approving of the erection of the building by the Society, provided it is erected in substantial conformity with the details contained in the memorandum of Mr. Storm, and the plans in that behalf submitted to the Commissioner.

The committee with this Report submit this communication to Convocation.

All which is respectfully submitted.

D. B. READ,
Chairman.

Dec. 23, 1880.

Mr. Irving moved that the consideration of the above report be deferred, until a special meeting of Convocationto be held on Saturday Jan. 8th, and that a Call of the Bench be made for that day, and that notice of such meeting together with a printed copy of the Report be sent to each Bencher.—*Lost.*

The report was adopted.

Mr. Kerr moved, seconded by Mr. Read, that it be referred to the same special committee who are hereby authorized to accept such of the tenders referred to in the adopted report, as may appear to them to be most advantageous, to enter into contracts and proceed with and supervise the execution of the work in accordance with the plans and specifications, the committee to require a drawback of 15 per cent. of the contract price and such collateral security by bond or otherwise as they may deem expedient, to the amount of 35 per cent. of the respective contracts.—Carried.

Mr. Creelman's letter relative to larcenies committed in the Hall, was laid on the table.

A letter from Mr. Douglas Armour, relative to a new publication called the *Canadian Law Times* was read and referred to the committee on Journals, with power to act.

A letter from Mr. Barrett, relative to certificate fees, was referred to Finance Committee, with power to act.

A letter from the Treasurer to the President of the Osgoode Legal and Literary Society, relative to prizes to be given at examinations to be held in connection with the course of lectures established by the Society and the reply thereto were read.

Mr. McCarthy moved, seconded by Mr. Read, that the resolutions of last Michaelmas Term, respecting the bestowal of prizes to the members of the Osgoode Legal and Literary Society be amended as follows, that is to say, that prizes be awarded to two classes, namely members of the said Society, who are over three years standing on the books of the Law Society, either as students or articled clerks, and to those who are on the books under three years and that the prizes be as follows, namely :—

IN EACH CLASS.

First..........................	$25
Second..........................	15
Third..........................	10

to be given in books.—Carried.

A letter from Langley & Co. relative to their account was referred to the Finance Committee.

Ordered, that Mr. B. B. Osler's name be substituted for Mr. Miller's name on the Finance and County Library Committees.

The Special Committee on prizes to County Legal and Literary Societies was re-appointed, and Mr. Osler's name added thereto.

Mr. Irving moved, pursuant to notice, the rescission of the resolution relating to the portrait of Chief Justice Osgoode.—Lost.

Convocation adjourned.

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

EXCHEQUER COURT OF CANADA.

Fournier, J.] [January 12.

DOUTRE, *Suppliant*, AND THE QUEEN, *Defendant*.

Treaty of Washington—Employment and remuneration of Canadian Counsel—Right of Counsel to recover by Petition of Right—35 Vic., c. 25.

Under article 25 of the Treaty of Washington it is provided "that each of the high contracting parties shall pay its own commissioner and agent or counsel, all other expenses shall be defrayed by the two Governments in equal moieties."

By 35 Vic., c. 25, D., the fisheries articles of the treaty of Washington were made part of the law of Canada, and under the authority of that treaty and that statute the Government of Canada engaged and retained the services of the suppliant, a Queen's Counsel, residing in the city of Montreal, as one of the Canadian counsel before the Commission sitting at Halifax. There was evidence showing that the agreement entered into between the Minister of Marine and Fisheries and the suppliant at Ottawa, was to the following effect:—That the suppliant was to receive $1000 on account of his expenses and his services per month whilst the Commission was sitting at Halifax, and that a further sum, to be settled after the award of the Commissioners, would be paid. The suppliant removed with his family from Montreal to Halifax, and was exclusively engaged in connection with this matter for two hundred and forty days. The Government paid suppliant $8,000 and by his petition the suppliant claimed that the amount received only paid his expenses, and that he was entitled to a further sum of $10,000 for the value of his services. The amount involved before the Commission was $12,000,000, and the amount awarded in favor of Canada was $5,500,000.

Held: 1. That this agreement constituted a valid contract, and that the suppliant was entitled to recover, by petition of right, the amount due him under said agreement.

2. That the agreement entered into having been made at the city of Ottawa, the rules of evidence in force in the Province of Ontario were applicable, and the suppliant's evidence on his own behalf was, therefore, admissible.

3. That as the evidence adduced proved that the remuneration received by the suppliant, when engaged as counsel in important cases, was $50 per diem, with an additional sum of $20 per day for expenses, when his services were required outside of his own province, the Court would grant him $8,000 out of the $10,000 claimed by his petition, being at the rate of $50 per diem, and $20 for expenses for the 240 days he was employed before the Commission.

Haliburton, Q. C., and *Ferguson*, for suppliant.

Lash, Q. C., and *Hogg*, for defendant.

COMMON PLEAS.

VACATION COURT—JAN. 14,

BUCKELL *et al.* v. MCGUIRE *et al.*

Partnership—Dissolution of—Payments by continuing partner—Appropriation—Giving of time—Discharge.

When a partnership has been dissolved, and one of the partners continues to deal with a creditor of the firm, and in such dealing the partnership and separate accounts are blended and mixed together, the payments made by the continuing partner, though without any express appropriation, must be applied to the partnership indebtedness.

In this case also the retiring partner was held to be discharged by the giving of time to the continuing partner, and leave was granted to add a plea setting up this defence, if deemed necessary.

Bruce (of Hamilton) for the plaintiffs.

Maclennan, Q. C., for the defendants.

CHANCERY.

Spragge, C.] [Jan. 12.

GOODERHAM v. THE TORONTO AND NIPISSING R. COMPANY. FOX v. THE SAME COMPANY.

Receiver—Passing accounts—Unauthorized payments—Allowance of items paid without authority—Costs.

The Receiver appointed to receive the proceeds of a railway company and apply the same in carrying on the business of the company, paid $55.97 to the owner of land over which the line ran for the right of way over his lands, he having threatened to obstruct the passage of the company's trains unless paid; on passing his accounts the Master refused to allow the payment in favor of the Receiver, which ruling of the Master was affirmed on appeal, as such payment did not properly come under the head of "outgoings" for the road, and which alone the Receiver was authorized to pay; but the court (SPRAGGE, C.) gave the Receiver liberty to take out an order now for the allowance of this disbursement on payment of the costs of the appeal—but refused to make such an order in respect of fees paid to the Solicitor of the company for the examination of titles, as there was not any evidence to show that the payment was such as would have been sanctioned by the court if applied to in the first instance for permission to pay the same.

Spragge, C.] [Jan. 12.

HALLERAN v. MOAN.

Statute of frauds—Promise not be performed within a year—Executed consideration.

The Court will enforce a verbal agreement, although it is to do an act which is not to be performed within a year from the time making the agreement where the consideration therefor has been executed.

Proudfoot, V. C.] [Jan. 19.

TYRWHITT v. DEWSON.

Will—Construction of—Legacy on termination of life estate.

By his will and codicil a testator devised to his son J. on the death of his mother, certain land in consideration for which he was to pay the sum of £150 to the executors in four years. In the event of his dying without heirs the land was to be sold and the amount received therefor over and above £150 "to be equally divided amongst my surviving children."

Held, (1) that J. took a fee tail in remainder after an implied life estate in favor of the mother as the "dying, without heirs" must be taken to mean heirs of the body, not heirs general, he having brothers and sisters still living:

J. died during the lifetime of his mother.

Held, (2) that the period of division should be the death of the tenant for life, and the survivors at the time of such death were to take the whole amount realized by the sale of the lands upon which, however, the £150 was to form a charge.

Proudfoot, V. C.] [Jan. 19.

WOOD v. HURL.

Construction of Statutes—Grouping clauses in Acts—Head lines—R. S. O. cap. 49, s.s. 10 & 11.

Held, following *Eastern Counties &c., R. Co.* v. *Marriage*, 9 H. L. Cases 32: *Long* v. *Kerr*, L. R. 3 App. Cas. 529, and *Van Norman* v. *Grant*, 27 Gr. 498, that both sections 10 and 11 R. S. O. cap. 49, are to be governed by the head-line immediately preceding section 10; and so where the interest sought to be reached by the creditor has not been concealed by a fraudulent conveyance, the judge has not any authority to give summary relief thereunder; and an order made by the referee for the sale in a summary manner of the interest of two of four tenants in common was reversed.

Crown v. *Chamberlain*, 27 Gr. 551 followed: *Donovan* v. *Bacon* 16 Gr. 472 n. doubted.

Proudfoot, V. C.] [Jan. 19.

GOUGH V. PARK.

Taxation of costs—Solicitor and client's costs Special attendance before Master—G.O. 608.

A decree was drawn up by consent, whereby the plaintiff agreed to pay the defendant's costs to be taxed between solicitor and client. The bill was filed at Toronto and the defendant's solicitor being conversant with the case, was requested by his client to attend at Toronto and examine the plaintiff. The solicitor occupied two days in going and returning, and attending before the examiner, and expended $15.50. The defendant paid him $6. 00 for these services. The Master allowed $6. 00 for a special attendance of three hours: Held on appeal (1) that the plaintiff would be bound to pay what the solicitor could recover from his client, (2) that though under the authority of *Re Geddes and Wilson* 2 Ch. Cham. R. 447, the solicitor could not contract for a higher recompense than the tariff specifies, yet, as it was reasonable that the solicitor should have personally attended to the examination, and as the amount was not excessive for the time occupied, it was not probable that the client could have reduced it on taxation; and being taxable against the client, it should be allowed against the plaintiff.

Proudfoot, V. C.] [Jan. 19.

RE DUNHAM.

Quieting titles Act—Assent to devise implied till disclaimer.

A. went into possession of land upon the invitation of P. who promised to give him a deed but subsequently refused to do so. A. thereupon determined to remain upon, and succeeded in making a living from the land. P. died several years afterwards, having devised the land to A. and his wife for their joint lives with remainder to J.J.C.P., one of the contestants. A. occupied the land for about forty years, and executed a conveyance thereof in fee to the petitioners.

Held, on appeal from the Referee of Titles, allowing the claim of the contestants, that A. by his entry had become tenant at sufferance to P. and that as A. was aware of the devise to himself, and never did any act showing a determination not to take the estate so given to him, the estate for life had vested in him.

Some thirty years after A's entry he granted part of the land to one B. and J.J.C.P. joined in the conveyance:

Held, a sufficient admission of the title of J. J. C. P. as a remainder-man, and so an admission that the will was operative on the land; J. J. C. P., having no claim to the land except under the will.

CHANCERY CHAMBERS.

Spragge C.] [November, 1880.

RE BENDER.

Will—Specific disposition of property—Improvements.

A will contained specific directions as to the disposition of real property until the coming of age of infant children and no provisions for making improvements.

The Court, on the application of the executrix, the tenant for life, allowed certain improvements to be made, which it appeared would be beneficial to the estate.

Murray for petitioner.

Spragge C.] [January 17.

RE HENDERSON & SPENCER.

Vendor and purchaser—Title by foreclosure—Presumption—Rev. Stat. Ont. cap. 109, sec. 3.

A final order of foreclosure will be presumed to have been regularly obtained till the contrary is shewn—It is not necessary between vendor and purchaser to show that a defendant was alive when a final order of foreclosure was granted—the service of the bill being personal, and made within seven years of the making of the order.

Small, for petitioner (vendor).

Hamilton, contra (purchaser).

REPORTS.

MARITIME COURT OF ONTARIO.

(Reported by John Bruce, Esq., Registrar to the Court.)

IN RE TUG "ROBB."

Merchant Shipping Act, 1854, Sec. 189—Seaman—Wages or damages.

Held, 1. That the Merchant Shipping Act of 1854 is not to be read in connection with the Vice Admiralty Act of 1863, which gives jurisdiction to the Maritime Court of Ontario, and that therefore this Court has jurisdiction over any claim for wages.

2. That under the facts set out in the petition, the petitioner was a seaman within the meaning of the Acts, and the claim was for wages and uot for damages.

[Toronto, Oct. 6, 1880.

The facts of the case appear in the petition filed by Joseph Dunbar, who made a claim for seaman's wages. This petition was as follows:—

1. "The said tug or vessel, called the tug *Robb*, is a vessel of — tons registered tonnage, and belongs to the port of Toronto, and is now lying in the said port of Toronto, etc., and was during the times hereinafter mentioned engaged in trade and commerce upon, or navigating the rivers, lakes, canals or inland waters, the whole or part of which are in the Province of Ontario.

2. "That on the 9th September, 1880, the master or mate of the said tug *Robb* hired your petitioner, Joseph Dunbar, to work on board the said tug *Robb*, as a deck hand, for the period of one month, including the afternoon of the said 9th September, 1880, and your petitioner went on board the said vessel and commenced working thereon about 4 o'clock in the afternoon of the 9th September, and worked thereon until your petitioner was wrongfully discharged on the morning ot the 10th September aforesaid.

3. "That under and by virtue of the said contract of hiring, your petitioner, Joseph Dunbar, was to have his board and lodging in the said vessel over and above the said sum of 15 dollars per month, and your petitioner was on board the said tug under the said contract of hiring, and remained thereon until he was wrongfully discharged on the morning of the 10th September aforesaid.

4. "That your petitioner, Joseph Dunbar, has received no sum or sums of money on account of said month's wages, and your petitioner was always ready and willing to perform his duties as deck hand aforesaid.

5. "Your petitioner submits that by reason of the wrongful dismissal aforesaid, he is entitled to the sum of fifteen dollars, the amount of his wages under said contract of hiring.

6. "The said tug is now lying as aforesaid at the port of Toronto aforesaid, and will, unless detained by the warrant of this honourable Court, immediately leave the said port and sail elsewhere; and your petitioner fears that, in such case, his said claim will be lost.

"Your petitioner therefore prays," &c., &c.

William Hall, the owner of the tug *Robb*, intervened and demurred to the plaintiff's said petition as follows:

"William Hall, &c., who is the owner of the above-mentioned tug *Robb*, the subject matter of this suit, by A. R. C., his Proctor, hereby intervenes in the cause, and not admitting any of the matters and things in the plaintiff's petition contained to be true in such manner and form as the same are therein set forth and alleged, demurs in law to the said petition, and for causes of demurrer shews:

1. "That it does not appear from the said petition of the plaintiff that the plaintiff was at the time of the alleged hiring a seaman within the meaning of the statutes in that behalf.

2. "That even if the plaintiff were at the time of the alleged hiring a seaman, his claim as set forth in the said petition is not one within the jurisdiction of this honourable Court, being a claim for damages on account of an alleged breach of contract, and not for wages which had accrued due.

3. "That the plaintiff's claim, as set forth in the said petition, is not one within the jurisdiction of this Court, it appearing from the said petition that the said claim is for a less sum than 50 pounds, and it not being alleged that the said William Hall, the owner of the said tug *Robb*, is, or was at the time of the filing of the said petition, adjudged bankrupt or declared insolvent, or that the said tug was at the time of the filing of the said petition under arrest, or was about to be sold by the authority of this honourable

Court, or that the claim of the plaintiff had been referred to be adjudged by this honourable Court, by any justices acting under the authority of the Merchant Shipping Act of 1854, or that neither the owner of the said tug *Robb*, nor the master thereof, was or resided within 20 miles of the place where the plaintiff alleges that he was discharged.

"Wherefore, and for divers other good causes of demurrer appearing in the said petition, the defendant demurs thereto, and prays judgment whether he ought to be compelled to make further or other answer to the said petition, and he prays to be hence dismissed with his costs."

McCarthy, Q. C., appeared to support the demurrer.

The Court has no jurisdiction at all in a matter of the amount stated in the petition. The Maritime Jurisdiction Act, 1877, creates the Court, the first section of which defines the jurisdiction in the following words: "Save as by this Act excepted, all persons shall after this Act comes in force in the Province of Ontario, have the like rights and remedies in all matters (including cases of contract and trust, and proceedings *in rem* and *in personam* arising out of or connected with navigation, shipping, trade or commerce on any *river, lake, canal or inland* water, of which the whole or part is in the Province of Ontario), as such person would have in any existing British Vice-Admiralty Court, if the process of such Court extended to the said Province." The jurisdiction of a Vice-Admiralty Court is defined in the Merchant Shipping Act of 1854, sec. 189, which was to the effect following: "No suit or proceeding for the recovery of wages under the sum of £50 shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty, or in the Court of Sessions in Scotland, or in any Superior Court of Record in Her Majesty's Dominion, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest or is sold by the authority of such Court, as aforesaid, or unless any justices acting under the authority of this Act refer the case to be adjudged by such Court, or unless neither the owner nor the master is or resides within 20 miles of the place where the seaman or apprentice is discharged or put ashore." Section 188 of the Merchant Shipping Act of 1854, gives seamen the power to go before two justices of the peace to recover small amounts, and it is only when the amount exceeds £50 that there is a necessity for proceedings *in rem*. The section 188 is in force here now, and is the proper authority under which proceedings should be taken to recover small amounts. The Imperial Act, 26-27 Vict., cap. 24 (The Vice-Admiralty Courts Act, 1863) is to be read in connection with the existing laws, and in connection with section 189 of the Merchant Shipping Act of 1854. The repealing clauses in the Vice-Admiralty Courts Act, 1863, make no reference to section 189. See *The Margaretta Stevenson*, 2 Stuart's Reports 192. This claim is not a claim by a seaman for wages within the meaning of the Acts, but is in the nature of damages. The petitioner signed no articles, and cannot invoke the jurisdiction of this Court: see *The City of St. Petersburgh*, 2 Stuart, 343; *Tecumseth*, 3 W. Rob. 109; *Mona*, 1 W. Rob. 137; *Riby Grove*, 2 W. Rob. 61; *City of London*, 1 W. Rob. 88; *Deorecsia*, 3 W. Rob. 33.

Hall for the petitioner. In 1861 the Merchant Shipping Act was amended so as to give the Court jurisdiction in all cases, only reserving the question of costs. See 24 Vict. cap. 24, sec. 10. The Vice-Admiralty Courts Act, 1863, must govern the contention. The preamble of the Act shows that the jurisdiction of the Vice-Admiralty Courts is to be extended and their practice amended. By section 10 the Act declares that the matters in respect of which the Vice-Admiralty Courts shall have jurisdiction are as follows, amongst others:—Claims for seamen's wages, &c., without any restriction or limitation as to amount whatever. The Imperial Act, 26-27 Vict. cap. 24, and the Vice-Admiralty Courts Act, 1863, were passed for the purpose of extending the jurisdiction of the Vice-Admiralty Courts, and it must be considered that this Court has jurisdiction in regard to seamen's wages. As to the case of *The Margaretta*, The Vice-Admiralty Act, 1863, is not mentioned or referred to in the judgment of the Court or otherwise. The point made that the petitioner is not a seaman within the Acts is not tenable: see Seamen's Agreement Act of 1875. The master of the vessel having violated the law, cannot defend himself against the wages of the petitioner. On the question of wages being claimed when the seaman is dismissed, see *The Great Eastern*, 1 Ad. R.;

The Blessing, L. R. Prob. Div. 35; *The City of London*, 1 W. Rob. 88; Roscoe's Practice 40.

McCarthy, Q. C., replied.

MACKENZIE, Co. J. (JUDGE OF MARITIME COURT). The Merchant Shipping Act of 1854 came into operation on the 1st of May, 1855. The Vice-Admiralty Courts Act, 1863, passed on 8th June of that year. The Dominion Act, 40 Vict. cap. 21—the Maritime Jurisdiction Act, 1877—under which this Court was established and organized, was passed on 28th April, 1877. The Court was organized under and by virtue of a proclamation of the Governor in Council on the eighteenth day of February, 1878. It is proper to bear in mind those dates in determining the question of jurisdiction as affected by the Merchant Shipping Act of 1854.

The first point presented on behalf of the defendant is that this Court cannot entertain a claim for wages under £50, under section 189 of the Merchant Shipping Act of 1854. The words of the section are, "No suit or proceeding for the recovery of wages under £50 shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty," and section 188 points out how seamen may proceed to recover in a summary way before two Justices of the Peace for wages under £50.

It is admitted that the Merchant Shipping Act extends to this Province, and is in force here. On reading sections 188 and 189, pure and simple, without looking elsewhere, and to subsequent legislation, only one conclusion could be arrived at, namely, that this Court should rule that the petitioner had no lawful right to institute the present proceeding in the Maritime Court of Ontario. But subsequently to the Merchant Shipping Act, that is in 1863, the Imperial Parliament passed "The Vice-Admiralty Courts Act, 1863," intituled "An Act for facilitating the appointment of Vice-Admirals, and of officers in Vice-Admiralty Courts in Her Majesty's possessions abroad, and to confirm the past proceedings, and to *extend the jurisdiction*, and to amend the practice of these Courts." The 10th section of this Act defines the matters in respect of which the Vice-Admiralty Courts have jurisdiction, amongst others, as follows:

1. Claims for seamen's wages.
2. Claims for master's wages, and for his disbursements on account of the ship, &c.

In the last edition of Roscoe's Admiralty Practice at page 86, I find the following note in regard to seamen's wages:—"A suit for wages under £50 cannot be maintained in the Vice-Admiralty Court by section 189 of the Merchant Shipping Act; but the Act of 1863 (the Vice Admiralty Courts Act, 1863) contains no such limitation." The words used in section 10 are:—"The Vice-Admiralty Courts shall have jurisdiction in respect of claims for seamen's wages." The enacting words are without limitation or restriction. The Act was passed to extend, not to limit, the jurisdiction. And were it not for the judgment pronounced in the Vice-Admiralty Court of Quebec in the *Margaretta Stevenson*, I would see my way clearer than I do. The head note to the printed report is as follows:—"The Merchant Shipping Act, 1854, excludes the Admiralty jurisdiction in suits for wages, etc., where the amount is less than £50." That is good law so far as it goes. The Merchant Shipping Act certainly excludes this jurisdiction; but on reading the printed report of the case, I find no reference to the Vice-Admiralty Courts Act, 1863, in any shape or form. It is possible the 10th section was not brought under the consideration of the Court; and it does not appear that the point now contended was argued before the learned Judge at all. If this was a judgment of the Supreme Court on the point in question, I would yield my own opinion at once; but it is the judgment of the Vice-Admiralty Court of another Province, not binding here, although entitled to every respect and consideration. But I feel bound to pronounce the law as I understand it, that the Court has jurisdiction over causes for wages for sums less than £50 under section 10 of the Vice-Admiralty Courts Act, 1863. The Act was in force when the Maritime Jurisdiction Act, 1877, passed, and the Maritime Court under it organized. The Maritime Court of Ontario, under section 2, has in all matters enumerated in section 1 such jurisdiction as belongs in similar matters to any existing British Vice-Admiralty Court in similar matters within the reach of its process.

I may add as matter of information that this Court has acted upon the idea that it had jurisdiction in respect of claims for wages for amounts under £50. The first proceeding in-

stituted in the Maritime Court *in rem* was against the *Belle Sheridan*, when the claim was $129. Several vessels have been arrested and sales effected when the first proceeding *in rem* was for amounts under £50. On the 10th day of November last, 1879, owing to the improper and extravagant use made of the process of the Court in matters of costs in small amounts for wages, the Judge of this Court made the following rule, in addition to former rules, that is to say:—Additional rule 276: "Two or more persons having claims against the same property for wages or for necessaries may join against the same property in one petition, and unless the sum or sums adjudged to the claimant or claimants, in a petition in a cause of wages, or of necessaries, amount to the sum of $100 at least, no costs shall be allowed to the claimant or claimants, as the case may be, unless under all the circumstances the Judge or Surrogate Judge thinks proper to allow a sum in gross not exceeding $10 in lieu of all costs."

This rule was made here on the 10th day of November, 1879, sanctioned by the department of Justice at Ottawa, and approved by His Excellency the Governor-General in Council on the 21st of November, 1879. This rule acknowledges to all intents and purposes that the Maritime Court has jurisdiction when claim for wages is under £50.

I must rule this point against the defendant.

When framing the additional rule 276 in November, 1879, I tried to frame a rule to the effect that no proceeding *in rem* should be instituted in the Court or property arrested under its process unless in case of wages, the claim should amount at least to $100, or the joint claims of two or more petitioners should in the whole amount to at least $100, and that power should be conferred on the Police Magistrate or two Justices of the Peace to proceed in a summary manner to hear and determine cases of wages due to seamen, and for necessaries when the amount does not exceed $100. But on consultation I became satisfied that such a rule would be *ultra vires*, and that such a change would require to be effected by legislation, and I hope that a bill will be brought into Parliament to prevent proceedings *in rem* being instituted for wages and necessaries when the claim is under $100.

The next point is that the petitioner is not a seaman within the meaning of the Acts. The Seamen's Act, 1873, and the Seamen's Act, 1875, were cited in support of this contention.

I think there is enough set out in the petition to show that the petitioner was a seaman, hired according to law. It is alleged in the petition that the petitioner was hired by the master of the tug *Robb* as a deck-hand, and by virtue of the said contract of hiring he was to have had his board and lodging in the said vessel, and $15 a month for wages, and that the petitioner went on board the said tug under the said contract of hiring, and remained therein until he was wrongfully discharged. I do not think it necessary to allege as a matter of pleading that the contract of hiring was in writing.

In declarations on contracts that should be in writing under the statute of frauds and other statutes, it is not necessary to allege that such contracts were in writing. At the trial is the proper time to take objection, and if the contract ought to be in writing the petitioner must fail. It is competent to him on the present petition to prove a contract in writing. It is not necessary to decide here whether the contract specified in the petition should be in writing or not, under the Dominion statutes.

The next and last point urged on behalf of the defendant is that the claim is not a claim for seamen's wages, but a claim for damages for a wrongful dismissal. The head note to the case of the *Great Eastern*, L. R. 1 A. & E., 384, is as follows:—"In a cause of wages, the Court of Admiralty has jurisdiction to entertain a claim by a seaman for compensation in the nature of damages for wrongful discharge before the term of his engagement has expired." Dr. Lushington, the Admiralty Judge, pronounced through the Registrar the following judgment:—"The result is that the Court of Admiralty has, in a cause of wages, jurisdiction to entertain a claim for compensation for wrongful discharge of the seaman during the term of his engagement." *The Blessing*, L. R. 3 Probate Div. 35, was an appeal from the County Court of Durham demurring, for want of jurisdiction, to an action "for wages and wrongful carrying of certain goods." The appeal was argued before Sir Robert Phillimore, who held that the words "any claim for wages," in the 3rd section of the County Court Admiralty Jurisdiction Act, 1868, include a claim for damages for

wrongful dismissal by the master of a vessel engaged under special wages agreement. The words "claim for wages," used in the County Court Admiralty Jurisdiction Act, 1868, and in the Vice-Admiralty Court Act, 1863, are the same. In the face of the cases of the *Great Eastern* and the *Blessing*, just referred to, this point must be decided against the defendant.

On the whole, the judgment of the Court should be for petitioner, and the demurrer overruled.

Demurrer overruled.

IN THE FOURTH DIVISION COURT—COUNTY OF ONTARIO.

BURT V. WALLACE.

Mechanic's lien—Division in which to issue summons—Form of order.

Where a Mechanic's Lien is within the jurisdiction of the Division Courts, the summons should be issued and the order be made in that division in which the cause citation arose or the defendant lives.

This was an application by summons to the junior judges of the county of Ontario for an order for sale of lands, in the township of Uxbridge, under the Mechanics' Lien Act. The amount of the lien was $85, and the contract was made, and the defendant resided in Uxbridge.

His Honour refused a summons as County Judge, but directed one to issue, in the terms asked for, from the Uxbridge Division Court, that being the division in which the cause of action arose, and also in which the defendant resided. On the return of the summons, the parties were heard.

DARTNELL, J. J. The lien is proved and the defendant is shewn to have an equitable interest upon which it will attach. The order will be for payment in a month, or in default a sale. No sale can take place for 12 months, and as the Division Court has no machinery for the sale of lands, the sale will be by the judge, acting as if a Master in Chancery.

His Honour subsequently settled the following form of order:—

In the Division Court—In the matter of the Mechanics' Lien Act, and between A. v. B.

This matter and cause coming on before me G. H. D., J. J. C. O. upon reading the summons granted herein, and the several enlargements thereof, and upon hearing the parties by their agents, and the witnesses adduced on their behalf.

I declare that the plaintiff has a lien upon the estate and interest of the defendant in the following lands and premises, viz., under the Mechanics' Lien Act for the value of the materials provided and work done as hereinafter mentioned, but subject nevertheless to a vendor's lien for unpaid purchase money in favor of one C. M. for $

And I find there is due to the plaintiff for the said value of the materials provided and work done the sum of $ and I have computed interest on that amount from the 1st July, 1880, until the time hereinafter appointed for the payment and find the same amounts to $ and I find the costs of these proceedings amounts to the sum of $, which in all amounts to the sum of $, and upon the defendant paying that sum into the (*name of Bank*), to the joint credit of the plaintiff and the clerk of the said court, between banking hours of the 6th day of February next, I do order and declare that the said plaintiff do release and discharge his said lien; but in default of the defendant making such payment by the time aforesaid, I do order and decree that the estate and interest of the said defendant be sold by public auction, tender or private contract, with the approbation of the Judge of the said Division Court, and the purchaser is to pay his purchase money into the said Court to the credit of this cause, and the said Judge is to settle the conveyance to the purchasers, in case the parties differ about the same, in which all proper parties are to join as the said Judge shall direct.

And I do further order and decree that the purchase money, when so paid in, shall be applied: 1st. In payment to the said plaintiff of his costs of this suit. 2nd. In payment to the plaintiff of the amount so due to him for principal and interest; and the residue of the purchase money I direct to be paid to the said defendant But in the event of the purchase money being insufficient to pay the claim of the plaintiff, with subsequent interest and costs, I do order that the defendant do pay to the plaintiff the amount remaining due to him forthwith after service upon him of this order and the said Judge's certificate of such deficiency.

Dated, &c.

LAW STUDENTS' DEPARTMENT.

EXAMINATION QUESTIONS.

(Continued from p. 49.)

7. What provision as to costs is made by statute in case of an action against two or more joint contractors, where one is barred by the Statute of Limitations of King James the First, and the remainder are not so barred?

8. Why is it advisable that persons endorsing bills of exchange or promissory notes should write their P. O. address after their names?

9. Give a short sketch of the powers of our Supreme Court in relation to legislation.

SECOND INTERMEDIATE.

Leith's Blackstone—Greenwood on conveyancing.

1. Sketch the process by which lands were originally withdrawn from general ownership, and became vested in particular persons.

2. What disposition would natural law make of the estate of deceased persons? Trace the development of the law with respect to such dispositions, down to the period at which devises by will were permitted.

3. What laws govern in the case of one country being annexed by another?

4. Give the requisites of a rent.

5. What was the origin of the feudal system? Trace, shortly, the qualifications which it underwent down to its extinction in Ontario?

6. Enumerate the various estates in land, giving them according to their proper classifications.

7. Detail the practice between conveyancers upon a sale and conveyance of land.

CERTIFICATE OF FITNESS.

Equity Jurisprudence.

1. What transactions between the creditor and the debtor not communicated to the surety (1) will, and (2) will not, discharge the surety?

2. To what extent has the doctrine of equity respecting equitable liens, charges, or interests, affecting land, been affected by the legislation of Ontario?

3. What is the distinction between the cases of (1) a plaintiff seeking, and (2) a defendant resisting, specific performance of a contract?

4. Define waste; and explain the jurisdiction (1) of equity and (2) of common law with regard to waste.

5. What is the distinction between (1) terms in gross, and (2) terms attendant upon the inheritance?

6. Is it necessary that a married woman should sue in equity by a next friend?

7. On what grounds will equity relieve against a foreclosure for breach of covenant, other than a covenant to pay rent?

8. State the extent of equitable jurisdiction conferred upon the Courts of Common Law, and of jurisdiction in Common Law conferred upon the Court of Equity by recent legislation in Ontario.

9. What is the practice in reviving an abated suit (1) before, and (2) after decree?

10. State the provisions of the Ontario statute respecting voluntary conveyances.

EXAMINATION FOR CALL.

1. What three requisites are there to every simple contract?

2. What technical words must be used in indictments for (1) Murder, (2) Treason, (3) Felony, (4) Burglary, (5) Forgery, (6) Misdemeanor.

3. By what legislative authority are (1) Criminal Courts established, (2) Crimes defined, and (3) Criminal procedure prescribed?

4. In what cases is a wife not competent to give evidence for or against her husband?

5. In what criminal prosecutions other than for perjury must the evidence of an interested person be corroborated?

6. What are the statutory provisions in respect of (1) pleadings, and (2) right of set-off, where an assignee of a *chose in action* sues the original debtor?

7. What are the statutory provisions as to the liability of a person making representations respecting the (1) character, (2) credit, and (3) trade of another person?

8. To what places may subpœnas be issued in cases depending in (1) Criminal Courts, (2) Superior Courts in civil cases, (3) County Courts, and (4) Division Courts?

9. What is domicile, and how does it affect contracts in respect of real or personal estate?

10. Define "allegiance," and state how far recent Imperial legislation has affected that question?

CORRESPONDENCE.

Chattel Mortgages.

To the Editor of the CANADA LAW JOURNAL.

SIR,—If M. J. G. will examine again the case of *Gilleland* v. *Wadsworth*, 1 App. Rep. 82, I think he will find that he has, on the point he alludes to, drawn an erroneous conclusion.

The defendant was affected with notice of the assignment of the mortgage in question, because he purchased, or rather acquired, the lands by exchange, *after* the *registration* of the *assignment*—See *Trust and Loan Co.* v. *Shaw*, 16 Gr. 448, and Mr. Justice Moss's reference to it at page 91 of the report of *Gilleland* v. *Wadsworth.* Had the mortgagee paid Currie in ignorance of the assignment, though it had been duly executed and registered, he would have been protected. At the same page Mr Justice Moss says :—"The registration of the assignment would not be notice to Brown, because a mortgagor paying off his mortgage does not come within the class of persons to whom registration constitutes notice."

I still think that a mortgagor of chattels can pay or satisfy the mortgage to the mortgagee, even after its assignment and registration, if he does so in good faith and without actual notice of the assignment.

A purchaser would, of course, stand upon a different footing.

Yours, &c.,

LEX.

To the Editor of the CANADA LAW JOURNAL.

SIR,—In the LAW JOURNAL for October, under the heading of "Reviews," you have devoted considerable space to a notice of Mr. Barron's work upon Bills of Sale and Chattel Mortgages, and in it you quote from the author's remarks upon sec. 6 of the act; he there states of the words "hereinafter provided," "it is worth while observing them carefully. Mortgages within this section shall be valid and binding when *registered as hereinafter provided*; and there is nothing in the act subsequent to this section in any way limiting the period within which mortgages under this section are to be filed." He goes on to say "unless mortgages under section six come within the meaning of section one, it is quite clear that the statute has fixed no period of time within which mortgages under this section are to be filed." He then proceeds to argue that, in his opinion, "there can be but little doubt that they are not so included, because section one was passed 12 Vic. cap. 74, and section six not until 20 Vic."

I do not think Mr. Barron's reasoning is well founded.

The words "every mortgage," in section one, are wide enough to cover a mortgage under section six, and in section one it is required that "within five days from the execution thereof they shall be registered as hereinafter provided." Section five contains similar language as to Bills of Sale. Section six states, "and in case such mortgage is registered *as hereinafter provided*, the same shall be valid, &c."

By the Act of 20 Vic. cap. 3, the Acts of 12 and 14 Vic. were repealed, and their provisions embraced in that act, with the addition, among others, of what is now section 6 of R. S. O. cap., 119.

Section one provides that "every mortgage, &c., intending to operate as a mortgage of goods and chattels, &c."

Section six is confined to particular classes of mortgages only.

The time for registration of all mortgages is fixed by section one.

Seetion seven provides how or where they may be registered.

I think Mr. Barron has attached too much weight to the words "hereinafter provided." I understand those words to mean the manner in which they shall be registered, and to have no reference to time; and I think the Act clearly shows this, because the time for registering is repeated in section five, in the case of Bills of Sale, showing that the Legislature was fully alive to the fact that the words "every mortgage or conveyance intending to operate as a mortgage," in section 1, would not cover the case of an absolute sale under section 5. Further, it is common with lawyers in conveyancing to say "at the time and in the manner hereinafter stated," thereby always understanding that the manner of doing an act does not refer to the time of doing it. The word "as" in the Act is there used in the same sense and has the same meaning as the words "in the manner" would have.

For my part, whilst fully appreciating the merits of Mr. Barron's work as a desideratum, I cannot see that there was ground for his opinion upon section 6.

N. F. PATERSON.