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DIARY FOR APRIL.

20. Sun.....1st *Sunday after Easter.*
23. Wed.....St. George's Day.
24. Thur...Earl Cathcart, Governor-General, 1846.
27. Sun.....2nd *Sunday after Easter.*
29. Tues...Primary Examinations for Students-at-Law and Articled Clerks.

TORONTO, APRIL 15, 1884.

WE have a great admiration for the critic of the *Canadian Law Times*. He makes his office no sinecure. He is paid to criticize, and criticize he does. Sometimes, perhaps, he shows *trop de zele*, but that is a failing of all earnest benefactors of their species. In his criticism of Mr. Holmested's "General Rules and Orders of the Courts of Law and Equity," he has covered himself with glory. We were weak enough to find nothing in the book but matter of praise. Not so the critic of the *Canadian Law Times*. He places his finger with telling force (and this is the only criticism attempted) on the "Addenda and Corrigenda" appended to Mr. Holmested's volume. With piquant sarcasm he calls it a "rather lengthy treatise on addenda and corrigenda," and observes with much irony that the "subject has been exhausted by previous authors." We ourselves prefer to gather instruction from the *Canadian Law Times*, rather than in any way criticize its utterances. We repudiate any idea in this instance of criticizing, but we ask for "more light." To our feeble intellects a long list of "addenda and corrigenda" appended to a book is an indication of two things—industry and honesty. Our contemporary cannot object to industry and honesty. It is itself a monument of the one and the guardian of the other. *Addenda*, as the critic of the *Canadian Law Times*, being a scholar, is well aware, means "things to be added;" *corrigenda*, means "things to be corrected." Now when an author appends to a book a long list of *addenda*, he seems to us to give a proof of industry, inasmuch as he shows he is working at his subject up to the last moment, and is in fact adding to the information contained in his book, and in the case of Mr. Holmested's book it will be found that the number of "addenda," containing new citations and authorities, are far in excess of the *corrigenda*. But *corrigenda*, in their turn, are a proof of honesty to our view. For among the common crowd of readers who are not writers in the *Canadian Law Times*, errors, misprints, and slips on the part of an author are extremely likely to to go undetected, unless the author himself for the sake of accuracy candidly calls attention to them.

RECENT ENGLISH DECISIONS.

THE January and February "Law Reports" comprise 25 Ch. D. pp. 1-242; 12 Q. B. D. pp. 1-141; and 9 P.D., pp. 1-26.

In the first of these a great number of the cases are on points of bankruptcy law, and others on points of practice. The former do not require mention here, and the latter will be noted in due course among Recent English Practice Cases. Of those which do not fall under either of these denominations, the following require special notice.

FOREIGN PATENT—"RIGHT TO SELL ARTICLES IN ENGLAND"—INJUNCTION.

The first case, *Société Anonyme des Manufactures de Glaces* v. *Tilghman's Patent*

Sand Blast Company, was an application for an interim injunction under the following circumstances: The defendants were owners of a certain patent in England, and of a similar patent in Belgium, and granted a license to use the patent in Belgium to the plaintiffs; and the plaintiffs under this license, manufactured articles in accordance with the patented invention in Belgium, and sold them in England; whereupon the defendants issued a circular warning persons engaged in the trade that the importation and sale of articles made in foreign countries, except by themselves, would be a violation of their patent. The plaintiffs then brought this action to restrain the issue of this circular, and applied for an interim injunction. The Court of Appeal held that Pearson, J., was right in refusing the injunction. It was contended by the plaintiffs that although there was not in express terms in the license any grant of a right to sell the articles in England when manufactured under the license in Belgium, yet this was necessarily implied, and was a right which was necessarily carried to the plaintiffs by the grant of the license which the defendents had made to them. This is pointed out to be fallacious reasoning, for that though it was the consequence of the plaintiffs being in Belgium lawful manufacturers and lawful owners of the goods, and incident to that ownership, that they could sell anywhere where the law of the country did not prevent them selling; yet the mere fact that the grantors of the license had a monopoly in England would not impart, as a matter of construction into the license, the grant to interfere with that monopoly, when there had been no express grant of a right to sell in England. As Cotton, L.J., says at p. 8: "The license is merely a license, and puts the plaintiffs in no better position than if they were grantees of the Belgian patent." And as to the circular complained of, he says: "I may say, for my own part, I think that where circulars of this kind are honestly issued the Court ought not to interfere, at least till the hearing of the cause, to stop the circulation of them, unless there is a very strong *primâ facie* case in the evidence before the Court that there is a violation of some contract entered into between the plaintiffs and the defendants." *Betts* v. *Wilmott*, L. R. 6 Ch. 239, is commented on and distinguished.

FACTOR—LIEN—RESTRICTION PLACED BY PRINCIPAL ON POWERS OF FACTOR.

At p. 31 is a case, *Stevens* v. *Biller*, to which it is merely necessary to state that the point decided is that an agent who is entrusted with the possession of goods for the purpose of sale, does not lose his character of factor, or the right of lien attached to it, by reason of his acting under special instructions from his principal to sell the goods at a particular price and to sell in the principal's name. The case would from the report appear to be one of first impression.

COMPANY—COSTS OF FORMATION OF COMPANY.

At p. 103 is the case of *In re Rotterdam Alum and Chemical Company*, where P., who on the retainer of M. had acted as solicitor in respect to the formation of a certain limited company for the purpose of taking over M.'s business, now, the company having been formed, preferred a claim against it for his costs incurred about its formation, and, failing to prove any contract on the part of the company to pay him, nevertheless urged that he was entitled to recover on the ground that the company having had the benefit of his services ought to pay for them. The Court of Appeal held that this argument could not prevail. Lindley, L.J., says, p. 111: "it is said that P. has an equity against the company, because the company has had the benefit of his labour. What does that mean? If I order a coat

and receive it, I get the benefit of the labour of the cloth manufacturer; but does any one dream that I am under any liability to him? It is a mere fallacy to say that because a person gets the benefit of work done for somebody else he is liable to pay the person who did the work." And Fry, L.J., points out in like manner that it is by no means universally true that where a person takes property on which labour has been expended and gets the benefit of that labour he must pay for it:—"It is not true," he says, "where the work was done for the vendor of the property, and that was the case here, these costs having been incurred on the retainer of M."

TRANSFER OF SHARES PENDING WINDING UP—COMMITTEE OF ONE.

The next case calling for special notice, is *In re Taurine Company*, at p. 118. The question is here raised and decided whether shareholders, who know that the company is on the eve of being wound up voluntarily, can, nevertheless, make a valid transfer of shares? The Court of Appeal decides that they can. As to this Cotton, L.J., says, at p. 130: "The argument urged was this, that when it was apparent the company would be wound up for whatever reason, then the power of transfer given by the articles was at an end, and could not be exercised . . . In my opinion it cannot be held that the power of transfer given by the articles, and allowed by the Act of Parliament, was at an end when notice was given that there would be a meeting to wind up this company. The time which the Companies' Act (cf. 41 Vict. c. 5, s. 8, ss. 1, O.) fixes as the time after which no transfers can be made is the commencement of the winding up, and in the case of a voluntary winding up, even after that time, transfers may be made if they are allowed by the liquidators, which is not quite consistent with the view urged on us by Mr. B. He contended that the powers were given with reference to the company as a going concern, and not with reference to the company when known to be coming to its end, and to be on the eve of being wound up. We need not go through the books to show how constantly honest transfers registered before the commencement of the winding up have been treated as effectual, although made when it must have been known that the company could not go on."

Another curious point arose in this case: one of the articles of the company provided that "the board (of directors) may from time to time delegate to any such local or other committee, managing director, manager, agent or representative, all or any of powers, authorities and discretions of the board." One of these discretions was the approval of transfers of shares. Acting under the above article, the board of directors appointed one of their number, "a committee with all the powers of the board"; and he subsequently, sitting alone, approved of several transfers. The Court of Appeal held that he had power to do so, for that a committee of the board of directors need not consist of more than one person. Cotton, L.J., says, at p. 132: "There is nothing in my opinion, in the articles to prevent the appointment of a committee of one. It is very unusual, but still it may be done. . . . A committee means a person or persons to whom powers are committed which would otherwise be exercised by another body"; and Fry, L.J., at p. 142: "No doubt it is an extraordinary power, but it is contained in the articles, and no creditor can complain that it was exercised."

WILL—"MONEY" EQUIVALENT TO "PERSONAL ESTATE."

At p. 154, *In re Cadogan, Cadogan* v. *Palagi*, is a curious decision in which a bequest of "one half of the money of which I am possessed to H., and the remainder equally between O. and S., and after them to their children," was in the light of the context, and circumstances of

the estate, held by Kay, J., to pass all the personal estate consisting of cash, securities, leasehold, and furniture. He says: "It is said quite truly, that there is a popular and colloquial use of the word 'money' which is equivalent to personal property, and that in this will this larger meaning should be given. Speaking for myself, I must say I have not the smallest doubt that the testatrix used the word in that larger sense, and I believe that would be the opinion of any person, not a lawyer who read this will. Am I bound by authority to decide otherwise?" He answers this question in the negative, and cites *Prichard* v. *Prichard*, L.R. 11 Eq. 232, as "at least an expression of opinion, that there should be no absolute technical meaning given to such a word as 'money' in a will, but that its meaning in every case must depend upon the context, if there is any which can explain it, and upon those surrounding circumstances, which the Court is bound to take into consideration in determining the construction."

TRADE-MARK—PATENT.

In *re Ralph's Trade-mark*, *Ralph* v. *Taylor*, p. 194, a *semble* of Pearson, J., is to be noted to the effect that the name of a patented article which has become known in the trade is not a fitting trade-mark after the expiration of the patent, since it would have the effect of extending the patent beyond its legal limit. He says, at p. 199: "that point was taken and considered by my predecessor, the present Lord Justice Fry, in the *Linoleum case*, L. R. 7 Ch. D. 834. Fry, L.J., then came to the conclusion that it was impossible for this Court so to construe the Trade-marks Act, as to do away with what has been the law of the land from the time of King James downwards, namely that the patent comes to an end at the expiration of a period of fourteen years, unless it is renewed and a further grant given, as is done in some cases."

"TRADE OR BUSINESS"—LEAVE—CHARITABLE INSTITUTION.

In *Rolls* v. *Miller*, at p. 206, the question was whether a "Home for Working Girls," being a charitable institution, where the inmates were received upon payment of a small sum for board and lodging, but from which no profit was derived, was a "business," within the meaning of a covenant in a lease of a house that the lessee should not "use exercise or carry on, in or upon the premises hereby demised, any trade or business of any description whatsoever." Pearson, J., decided that it did. He says: "To my mind the word 'business' is a very much larger word than 'trade,' and you are not to reduce, in a covenant of this kind, the word "business" simply to that which would be a trade. . . . Now is this or is it not a business? The persons who hold the house are not the persons who live in it; the persons who manage the house are not the persons who are entertained in it. Those who come to the house come there and go from there at their own free will, and apparently they come there for a shorter or a longer period; they pay certain rents and other sums of money according to what they have in the house, whether it be simply for bed-rooms or whether it be for bed-room and board as well. Under these circumstances I think the occupation of this house is an occupation of something very different from that of a private dwelling-house, and I know no other word in the language which would express the purpose for which the house is open better than the word 'business.' I am of opinion that it is open for a 'business,' for something about which people employ themselves sedulously, something of a nature which would be an ordinary business if it were carried on by an individual with the inten-

tion of making a revenue out of it. . . . Then if that be so, I cannot say that there is any distinction made in this covenant between a business carried on for profit and a business carried on for charitable reasons only." A. H. F. L.

SELECTIONS.

STATEMENTS BY PRISONERS' COUNSEL.

"B.," who is generally supposed to be Lord Bramwell, writes to the *Times*:—"Till Chief Justice Cockburn ruled as he did, no one ever supposed that a prisoner or his counsel had a right to state facts the existence of which he had no evidence to prove. The decision was an entire novelty. There had never been a doubt or question on the matter. It is impossible to add to the authority of the opinion recently expressed by the judges, but, without being presumptuous, one may be permitted to do what of course they did not—viz., give reasons for that opinion. The statement of facts is either that the jury may act on it as true or it is idle. But to hold that the jury may act on it, is to hold that it is evidence, and then this consequence follows—that a prisoner who cannot give evidence on oath and subject to cross-examination, may give it not on oath, and, what is much more important, without being cross-examined. Such statements may not be made in civil cases. I repeat there is neither precedent, reason, nor analogy to justify the allowing of such statements, nor till it was so ruled was there authority. Let me not be mistaken. It is, and always was, and must be allowed for a party to a suit, civil or criminal, to contend that the evidence was consistent with and tended to prove that of which there was no direct evidence. But though this is clear to me, it is equally clear that there are cases in which the prisoner must of necessity be allowed to make these statements. As is truly said in your yesterday's leader, the unhappy prisoner in the dock with all eyes on him is 'dazed or confused,' and when he is asked if he will put any questions to the witness called against him, all he understands is that he may speak, and he immediately begins to tell his story. To tell him that that is wrong, as is sometimes done by an officious turnkey in the dock, is to add to his confusion and to shut his mouth. To say that such a man must defend himself according to rule is in effect to say he must be undefended. He must be allowed to say what he wants to say. It would be the most grievous injustice if he were not. For it constantly happens that what he says contains in it the materials for a question which the judge suggests to him to put or puts for him. As for instance, 'he hit me first.' I say therefore of necessity a prisoner undefended by counsel must be allowed to 'run on,' and in so doing state facts which, perhaps, he cannot prove. Further, it cannot be told while he is stating them that he cannot prove them. But this allowance should not go beyond the necessity for it, and that does not exist where the prisoner is defended by counsel. It is monstrous that counsel should be able to say that for their client which he could not, perhaps would not, say for himself. Of course the Bar may be trusted; but to save a man's life and win a difficult case is tempting, and 'lead us not into temptation.' I quite agree with your leader that the defendant, in a criminal case, ought to be able to give evidence if he wishes to do so, on oath and subject to cross-examination. And I agree that the time will come when it will be as much a matter of astonishment that the law was once otherwise as it now is that the law formerly shut out the evidence of parties to civil cases. But that will not get rid of the necessity for letting the defendant tell his own tale his own way when he is not defended by counsel. Mr. Justice Stephen first pointed out the necessity of dealing with prisoners in this way."

REPORTS.

ONTARIO.

(Reported for the CANADA LAW JOURNAL.)

MASTER'S OFFICE.

WILEY V. LEDYARD.

Mortgage — Taking account in M.O. — Collateral security—Statute of Limitations—Arrears of interest—Pleadings.

On a reference to take accounts in a mortgage case, it is not open to the defendants to contend that the original loan was *ultra vires*, nor can any defence be raised in the Master's Office, which, if allowed, might result in determining that the Court had made a nugatory order of reference.

When certain securities had been assigned as collateral for the payment of a promissory note of $1,000, which note was partly paid and a new note given, such securities may be held until *the debt* is discharged by payment.

Though the remedy of a creditor to recover a debt be barred by the Statute of Limitations, he may hold the collateral securities for such debt until paid.

When no claim for arrears of interest is specially made by the pleadings, and where there is no covenant to pay interest, only six years arrears of interest can be recovered.

Only such claims for debt as are set out in the pleadings can be recovered in the Master's Office under an order of reference to take accounts.

[Toronto, Dec. 10, 1883.

The facts of the case and the arguments appear in the judgment of the Master in Ordinary.

J. R. Roaf, for plaintiff.

W. A. Foster, and *G. H. Watson*, for defendants.

MR. HODGINS, Q.C.—The plaintiff claims as assignee of a mortgage in respect of certain loans originally made to the defendant Ledyard by the Rent Guarantee Loan Aid and Investment Company. These loans were held to be *ultra vires* of the Company in a suit for the winding up of its affairs: *Walmsley and Rent Guarantee Co.*, 29 Gr. 484.

Mr. Foster, for the defendants, contended that it was open to him to show that the loan, being beyond the powers of the company to make, could not be assigned or recovered in this action; but I ruled against his contention on the ground that the subordinate Court of the Master was not the forum before which such an issue could be decided; for if it entertained and adjudicated in favour of his contention it would be in effect determining that one of the Divisional Courts—to which the tribunal of the Master is subordinate—had made a nugatory order of reference. This view is sustained by the judgment of the Supreme Court in *Bickford* v. *Grand Junction Railway Company*, 1 S. C. R. 696. Mr. Justice Strong, who delivered the judgment of the Court, says on page 726: "The general practice of the Court of Chancery of Ontario, according in this respect with the practice which prevailed in England before the abolition of the office of Master, is that a question such as this, the invalidity of a mortgage deed, should be raised by the pleadings, and adjudicated by the Court on the hearing of the cause. We can find no exception to this cardinal rule of equity procedure, save in some few respects where the general orders of the Court of Chancery have authorized the Master to deal with matters of account which formerly required special directions in the decree, and which have no relation to this case. If the doctrine of the Court of Appeal (23 Gr. 340) were to prevail, it is hard to suppose any case in which the Master, under a reference to take the account in a mortgage suit, might not assume the jurisdiction to decide upon the validity of the mortgage deed. If the mortgagors are to be at liberty to say in the Master's Office that there is nothing due on this mortgage deed, because it was beyond the powers of the respondents as a corporation to make it, why should they not also be heard to say there is nothing due because the deed was obtained by fraud? Unless some arbitrary line is to be drawn, the right of the Master, under such a reference, to enquire into the validity of the deed would, according to the doctrine of the Court below, be co-extensive with that of the Court at the hearing. We know of no authority for any such delegation of the functions of the Court to the Master."

The plaintiff claims to be allowed a loan of $975, being a part renewal of a loan of $1,000 secured on the lands in question, and other lands mentioned in a receipt dated the 29th of January, 1875, and which concludes thus, "All of which securities are deposited as collateral security for the payment of a promissory note dated this day, made by the said T. D. Ledyard, payable three months after date to the order of T. D. Ledyard, at the Royal Canadian Bank, in Toronto, for the sum of one thousand dollars; and if said note is not paid at maturity it shall bear interest at the rate of two per cent. per month until paid."

The original note for $1,000 mentioned in the receipt was taken up by the defendant by a part payment in cash and by a renewal note for $975. The defendant contends that by this means the original note was paid, and that the plaintiff has now no right to hold the securities for the renewal note. It is true the original paper with the promise to pay the $1,000 thereon is not in the plaintiff's possession, but *the debt*, or the unpaid portion of it, represented by the renewal note of $975, and for the repayment of which debt the securities were given, has not been paid. Had the present contention of the defendant been the actual agreement between the parties he should have demanded a re-assignment of the securities at the time of the part payment and renewal on the 6th October, 1875; but he made no such demand, and has allowed them to be held up to this time, which circumstances may reasonably be assumed to negative his present contention. Besides the case of *Brownlee v. Cunningham*, 13 Gr. 586, is decisive on this point. In dealing with a similar contention, Mowat, V.C., said: "I am satisfied if I were so to hold I would be defeating instead of giving effect to the original intention of the parties; and that I shall be carrying out the intention of the original transaction and correctly construing the whole evidence by holding that the mortgage was given to secure the indemnification of the mortgagees, and each of them, in respect, not merely of the first note, but also of any subsequent transaction with the mortgagor growing out of it, whether in the shape of renewals, new notes, or otherwise. The parties have acted throughout as if this was the transaction, and I see no reason why I should not give that effect to the mortgage."

Another claim made by the plaintiff is for a cheque drawn by the defendant on the Canadian Bank of Commerce for $283.85 dated the 10th November, 1875, and still unpaid. This is by an agreement which I hold to be binding on the defendant, also covered by the securities held by the plaintiff. The defendant contends that as the remedy for this debt is barred by the Statute of Limitations, the collaterals cannot be held for it. I find the law to be thus stated in Banning on Limitations, p. 16: "The fact that a creditor has collateral security for a simple contract debt will not prevent the debt from becoming barred (as respects other remedies), though he will, of course, retain his lien upon the security." *Higgins* v. *Scott*, 2 B. & Ad. 413, is referred to as the authority for this—where it was held that though the remedy of an attorney on his bill of costs was barred, he had a lien on the fund recovered by the judgment, though such fund was recovered more than six years from the entry of the judgment.

The plaintiff claims to be entitled to interest at two per cent. per month on each of these sums. As to the first mentioned sum the receipt which I have quoted shews that the debt is to bear such interest until paid. As to the second sum the evidence as to the agreement to pay two per cent. a month is not satisfactory; the defendant swears that there was no agreement for subsequent interest beyond that stated in the receipt of 29th January, 1875, and letter of 6th Oct., 1875. I have come to the conclusion on the whole evidence that there was no agreement such as the plaintiff contends for, and as the parties did not embody their agreement as to interest in writing, I must hold that as to this debt the plaintiff is only entitled to interest at the rate of six per cent.

The plaintiff claims interest from the date of the respective loans, 6th October, 1875, and 10th November, 1875, up to the time for redemption. No claim for arrears of interest is specially made by the pleadings; and in order to obtain more than six years arrears the question must be raised on the pleadings: *Sinclair* v. *Jackson*, 17 Beav. 405.

But a more formidable difficulty meets the plaintiff's claim for such arrears. There is no covenant by the defendant to pay interest, and which covenant, when secured by deed, would have made the plaintiff a specialty creditor of the defendant in respect of such interest. A mortgagee under an ordinary mortgage is in the position of a secured creditor for six years, and of an unsecured creditor for the remainder of the ten years: that is he would have two rights of action—an action of foreclosure, and an action on the covenant for arrears of interest.

In the case of *Hodges* v. *Croydon Canal Company*, 15 Beav. 86, the defendants conveyed their works to a mortgagee to hold until repayment of certain moneys borrowed, and interest; but there was no covenant in the mortgage to repay either principal or interest. The Master of the Rolls held, that although the mortgagee could sue for the principal within twenty years, yet his remedy for arrears of

interest was limited to six years. See further on this: *Brocklehurst* v. *Jessop*, 7 Sim. 438; *Re Stead's Mortgaged Estates*, 2. Ch. D. 713, and *Henry* v. *Smith*, 2 Dr. War. 381. The plaintiff therefore can only recover six years arrears of interest on each of the above loans.

The plaintiff is entitled to the amount paid by him for taxes to redeem the lands. The original mortgagee had obtained a tax deed of the property, but he was disqualified as a mortgagee to purchase it for his own benefit: *Scholfield* v. *Dickinson*, 10 Gr. 326; *Smart* v. *Cottle*, 10 Gr. 59; *Kelly* v. *Macklem*, 14 Gr. 29; but the money paid by the mortgagee to redeem the lands from such taxes is a lien on the land, and the mortgagee has a right to claim the same as a just allowance, with interest at six per cent. from the date of payment.

The plaintiff also claims to be allowed the amount paid by Barrett, the trustee for mortgagee company on a judgment against him for calls on thirty shares of the Electric and Hardware Company assigned by the defendant, Ledyard, to Barrett as collateral security for the original loan. When the stock in this company was assigned to Barrett sixty per cent. of it had been paid up, but subsequent calls were made on which Barrett was sued and judgment obtained against him about 4th April, 1882. Barrett paid this judgment, and the plaintiff now claims to add this to his debt as a lien on the lands.

There is no case made in the pleadings, for this claim, and the plaintiff has not yet obtained any assignment of the stock or of the judgment from Barrett, and Barrett is no party to this suit. The plaintiff's counsel, however, states that he can procure a formal assignment of the stock and judgment from Barrett.

Apart from other substantial reasons which it is unnecessary to refer to at length, I think I am precluded by the terms of the order of reference from allowing this to the plaintiff as "an amount *due to the plaintiff* in respect of the loans to the defendant, Thomas D. Ledyard," or as an amount for which the plaintiff is entitled to a *lien on the lands and premises* in question.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

[March 4.

DOBELL v. ONTARIO BANK.

Sale of Timber.

The judgment of the Court below was reversed on the ground that the appellants (the bank) were not bound by the contract for sale of the deals between R. and the plaintiffs.

S. H. Blake, Q.C., and *W. H. Walker*, for applicants.

Robinson, Q.C., for respondents.

[March 4.

VANSICKLE v. VANSICKLE.

Will, Construction of.

The judgment of FERGUSON, J. was reversed. Per SPRAGGE, C.J.O., and MORRISON, J.A., the judgment on the construction of the will was right. But the evidence established the fact that the testator was a trustee of the land in question for the defendant claiming as devisee.

Osler, Q.C., and *Smyth* (Brantford), for appeal.

Robertson, Q.C., and *Robertson*, contra.

[March 4.

BRAYLEY v. ELLIS.

Chattel mortgage—Preference.

R. S. O. cap. 118.

On appeal from the Chancery Division (1 O. R. 119), the judges of this Court being equally divided, the appeal was dismissed with costs.

Gibbons, for appeal.

W. Cassels, contra.

[March 4.

SIEVEWRIGHT v. LEYS.

Trustee and cestui que trust—Auction sale—Puffing.

The judgment of PROUDFOOT, J. (1 O. R. 375.), affirmed.

Osler, Q.C., and *Black*, for appeal.

Moss, Q.C., and *Kingsford*, contra.

[March 4.

RE JARRARD'S EXTRADITION.

Forgery—Alteration of account books—Official books.

The Court of Appeal affirmed the judgment of the Common Pleas Division (4 O. R. 265).

Osler, Q.C., for appeal.

E. Martin, Q.C., contra.

[March 22.

PATTERSON v. THOMPSON.

Distress for rent—Joint ownership of goods.

The judgment of the Court below (46 U. C. R. 7) was reversed, as the plaintiffs had not shown that they were solely entitled to possession of the logs, the subject of distress. SPRAGGE, C. J. O., dissenting, who thought that if the logs were the joint property of the plaintiffs and one of the tenants, and had been delivered to B. for the purpose of being manufactured into lumber, they could not be distrained on; their being so on the premises had the effect of exempting them from distress; and under the circumstances there should be a reference back to the Judge which had already tried the case to find the facts. In the event of that being impracticable there should be a new trial.

McCarthy, Q.C., for appeal.

Lount, Q.C., contra.

[March 22.

NORVELL v. CANADA SOUTHERN RAILWAY COMPANY.

Award under Railway Act, ch. 66, C. S. C.—Effect of Dominion legislation on an Ontario Corporation brought under the jurisdiction of the Dominion—Necessity of adhering strictly to the provisions of the statute in making awards.

Held, that the Canada Southern Railway, although brought under the jurisdiction of the Dominion before proceedings had been taken for expropriation, was still subject to the Railway Act then in force in Ontario, ch. 66, C. S. C.

Held, also, that where the company's arbitrator had not been notified pursuant to the statute of the time and place appointed for signing awards between the company and land owners, such awards were invalid, and that, although he had notified the other arbitrators that he would not attend.

Crooks, Q.C., and *Cattanach*, for the appellants.

S. H. Blake, Q.C., and *W. Cassels*, contra.

[March 28.

PROCTOR v. TRIPP.

Trustee and cestui que trust—Trustee purchasing trust estate.

The plaintiff had become trustee for W., who subsequently sold to the plaintiff at a great under value. W. remained in possession for a number of years, and it was shown that his mental faculties had become greatly impaired by intemperance. In an action by the plaintiff to recover the land.

Held, that he must still be considered a trustee for W., and that under the circumstances a lapse of sixteen years did not prevent W. from asserting plaintiff's fiduciary character as a defence to the action.

Moss, Q.C., and *Clute* for the appellant.

H. J. Scott, Q.C., and *Northrop*, for the respondent.

FAULDS v. HARPER.

Mortgage—Statute of Limitations—Equity of redemption.

Held, reversing the judgment of the Court below (2 O. R. 405), that the disability clauses of the Real Property Limitation Act do not apply to actions of redemption, and therefore in this case all the mortgages were barred; but,

Semble, it it were otherwise the decree of BLAKE, V.C., adjudging that the titles of those tenants in common against whom the statutory period of limitation had run were barred, while the title of those against whom the time had not run were not barred, was right.

It appeared that the mortgagees took proceedings for sale, and one H. bought under the decree, and was declared the purchaser by the report on sale. The mortgagor was in reality the purchaser, having procured H. to bid at the sale.

Per SPRAGGE, C. J. O.—The sale to the mortgagee was a fraud upon the plaintiffs, and they had not disentitled themselves to relief by delay.

Per BURTON, J. A.—An action to redeem a mortgage is not an action to recover land, within the meaning of the Real Property Limitation Act.

Street, Q.C., for the appellant.

Cassels, Q.C., for the respondent.

VICTORIA MUTUAL INSURANCE COMPANY v. THOMPSON.

Mutual Insurance Company—Assessment illegal in part—Notice.

The directors of the plaintiffs' company assessed the defendant, a policy holder, for several sums, one of which being fire insurance of certain risks was illegal.

They sent one notice to him, claiming the amount of all the assessments, including the illegal one, in one sum.

Held, that the plaintiffs were not entitled to recover any of the assessments.

Robinson, Q.C., and *A. Bruce*, for the appeal.

J. H. Macdonald, and *J. R. Roaf*, contra.

WRIGHT v. HURON.

Member of Synod—Vested rights.

The judgment of PROUDFOOT, J., reported 29 Gr. 341, reversed, the Court holding on appeal that there was not any contract between the parties; and that the Synod had power to vary and repeal its by-laws, and that the plaintiff must be assumed to have accepted his stipend with knowledge of those facts; and, therefore, the by-law depriving him of that amount was binding.

S. H. Blake, Q.C., for the appeal.

Idington, Q.C., contra.

HILLIARD v. THURSTON.

Negligence—Fire—Steamboats.

Held, affirming the judgment of PROUDFOOT, J., that a person navigating a steamboat without legal sanction is liable for loss occasioned to property in the neighbourhood, by fire communicated thereto by sparks issuing from the funnel of the steamer, without any proof of actual negligence.

Moss, Q.C. and *Hudspeth*, Q.C., for appeal.

S. H. Blake, Q.C., and *Peck*, contra.

O'DONOHOE v. WHITTY.

Solicitor and client—Costs—Negligence.

This Court affirmed the judgment of the Court below, reported 2 O. R. 424, on the grounds that the solicitors had not been guilty of such negligence as to relieve the client from liability for their costs.

Osler, Q.C., for appeal.

Moss, Q.C., contra.

MCDONALD v. CROMBIE.

Preferential judgments—R. S. O. ch. 118.

The judgment given in the Court below, as reported 2 O. R. 243, was affirmed on appeal.

J. H. McDonald, for the appeal.

Thomson, contra.

BADDIN v. SUTHERLAND.

Appeal from unanimous decision of Divisional Court—Special leave—Judicature Act, sec. 34.

On a motion under sec. 34 of the Judicature Act, from the unanimous decision of a Divisional Court, refusing a rule for a new trial where the verdict was for $500, the Court refused leave because there was not reasonable prospect for an appeal being successful, though they thought the verdict not entirely satisfactory and that the Court below in the exercise of their discretion might with propriety have granted a new trial.

Osler, Q.C., for the motion.

[March 28.

HAMILTON PROVIDENT LOAN CO. v. DUMBLE.

Leave to appeal—Unanimous decision of Divisional Court—O. J. A., sec. 34.

Where a Divisional Court has probably erred upon a point of law upon which the case turned, leave to appeal under sec. 34 of the Judicature Act may properly be given, especially if other cases are depending upon the solution of the question; but where the question is one of fact upon which the Court below has exercised its judgment, an application for leave to appeal ought not to be entertained. Therefore, where the agent of the plaintiff company had made the affidavit of *bona fides* on a chattel mortgage, the learned judge at the trial left it to the jury to say whether or not the agent was aware of all the circumstances connected therewith as required by the statutes. The jury answered in the negative, whereupon a verdict was entered for the defendant for $244, which was moved against in banc, and the Divisional Court discharged an order *nisi* to set aside the verdict on the ground that the finding of the jury was contrary to the evidence.

Held, that leave to appeal should not be granted.

Aylesworth, for the motion.

G. H. Watson, contra.

[March 28.

BANK OF MONTREAL v. HAFFNER.

Mechanic's lien—Action against owner—Mortgagee.

The plaintiffs, who were assignees of a mechanics lien, instituted proceedings against the owner and a prior mortgagee, but which action was dismissed as against the mortgagee for want of prosecution. Having established their lien as against the owners, they then commenced the present action after the lapse of thirty days from the time of filing their lien, for the purpose of having it declared that their lien took precedence over the prior mortgagee to the extent to which the work done increased the selling value of the land.

Held, reversing the judgment of FERGUSON, J., that the lien had ceased to exist as against the mortgagee; for, in order to enforce the lien against all parties having estates or interests in the land, they must be proceeded against after the time prescribed by the statute for filing the lien.

Cassels, Q.C., for appellants.

H. J. Scott, Q.C., for respondents.

CHANCERY DIVISION.

Furguson, J.,] [January 12.

RE MUSIC HALL BLOCK.

DUMBLE v. MCINTOSH.

Discharge of mortgage—Registry Acts—Dower—Insolvency.

Application under Vendor and Purchasers' Act.

In respect of discharges of mortgage, what the Registry Act makes tantamount to a reconveyance is the certificate of discharge *and the registration of it*, not the execution of the certificate merely.

Therefore, when in 1868 R. O'N. in partnership with J. O'N. executed a mortgage on certain real property, and his wife joined to bar her dower; and the mortgage money was subsequently paid, and a discharge of the mortgage signed but not registered; and afterwards, the partnership became insolvent, and the mortgagee's executors conveyed the property to the assignee in insolvency, who had now contracted to sell to a purchaser.

Held, that the wife of R. O'N. could not have dower at law in the land in question; neither could she have dower out of the equitable estate because that had passed away from her husband to the assignee, and he could not now die seized of it.

In 1868 J. O'N. and R. O'N. executed a mortgage on certain lands, which was in full force and unsatisfied at the date of their insolvency. Afterward in 1879 it was declared by judgment of the Court to have been extinguished by lapse of time. Neither of the wives of J. O'N. and R. O'N. joined in this mortgage.

Held, nevertheless, that, in the face of the assignment in insolvency, the extinguishment

of the mortgage did not have the effect of again vesting the estate in J. O'N. and R. O'N. so that the dower of their wives attached.

It appearing that certain lands owned by J. O'N. and R. O'N. were part of the assets of the partnership, having been purchased with partnership funds, and the rents afterwards collected and received by the partnership, and treated in all respects as partnership moneys:

Held, that the wives of J. O'N. and R. O'N. had no inchoate right of dower in these lands.

Mowat, *Maclennan* and *Downey*, vendors' solicitors.

Dumble and *Henry*, purchaser's solicitors.

Ferguson, J.] [Feb. 28.

LANGTRY V. DUMOULIN.

Constitutional law—29-30 Vict. c. 16—Evidence —Journals of Parliament.

The Act of the late Province of Canada, 29-30 Vict. c. 16, being An Act to provide for the sale of the rectory lands of this Province is a valid Act. and not *ultra vires*. The Imp. 17-18 Vict. c. 118, s. 6 removed the restrictions upon legislation on the subject matter of 29-30 Vict. c. 16, which previously existed by force of Imp. 31 Geo. III. c. 31, s. 42, and Imp. 3-4 Vict. c. 45, s. 42. Nor does the case of *Dobie* v. *The Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada*, L. R. 7 App. Cas. 136 apply to the case of 29-30 Vict. c. 16, so as to shew it be *ultra vires*.

Certain alleged copies of Journals of Parliament were tendered in evidence for the purpose of shewing what the Legislature must have meant by certain words in a certain Act of Parliament. It was not satisfactorily shewn that originals of which the copies tendered were said to be copies ever existed, nor was it shewn by legal evidence that the copies tendered were copies of any original. It was, however, shewn that the copies came from the Parliamentary Library at Ottawa; and most of the copies purported to have been printed by the Queen's Printer.

Held, that, in the absence of a statute in this country making them receivable in evidence, they were not admissible.

Held, on the whole case, that all the lands in question were within the description contained in 29-30 Vict. c. 16, s. 1, and the plaintiffs were entitled to a declaration that the defendant, Dumoulin, held the said lands as trustee merely pursuant to the provisions of the said Act, and of 39 Vict. c. 109, and to an account as claimed.

H. Cameron, Q.C., and *J. Maclennan*, Q.C., for the Synod of Toronto.

J. Bethune, Q.C., and *W. Barwick*, for the plaintiffs other than the Synod.

C. Robinson, Q.C., *S. H. Blake*, Q.C., *B. B. Osler*, Q. C., and *H. D. Gamble*, for the defendant, Dumoulin.

E. D. Armour, for defendant, Baldwin.

A. Hoskin, Q.C., for the township Rectors.

Ferguson, J.] [March 17.

BURN V. BURN.

Undue influence—Father and son—Parties—Privity —Action against executor and surviving partner —Corroborative evidence—R.S.O. c. 62, s. 10.

On June 23rd, 1873, D. B., by will, gave the residue of his property to the plaintiff absolutely, and nominated the plaintiff to succeed to his interest in a certain joint savings bank business, known as Burn & Co. He appointed the defendant, L., executor of his will.

D. B. died April 23rd, 1874, at which time he, and the defendant W. D. B., constituted the firm of Burn & Co.

W. D. B. was the father of the plaintiff in this action. The articles of partnership was dated April 12th, 1873, and provided that the partnership should continue during the joint lives of the two partners, D. B. and W. D. B., who were to halve the profits and expenses. This was the business referred to in the will.

On Dec. 23rd, 1872, according to the allegation of W. D. B., D. B. transferred to him by way of gift $100 shares of Dominion stock—part of the assets of the firm.

On May 6th, 1874, L. gave W. D. B. a full and general power of attorney to act for him, as executor of the will of D. B.

In the present action the plaintiffs alleged that after the death of D. B., W. D. B., with L.'s connivance, entered into an agreement with the Dominion Bank, whereby the said bank took over the partnership business, and carried the assets for the benefit of the partnership till it could be advantageously wound up, and that large portions of such assets had since been realized which had, together with the

profits of the business and the private estate of the testator, been received by W. D. B. and converted to his own use.

The plaintiff did not come of age till July, 1879, soon after which he asked W. D. B. for a statement of the amount and payment or settlement. On Nov. 16th, 1880, according to arrangement, the plaintiff went to the office of W. D. B., his father, and was offered a document to sign, and did sign it, and received from his father a cheque for $8,000. This purported to be a receipt of the $8,000 in full of all claims on the estate of D. B.

The plaintiff now brought this action against W. D. B. and L., asking to have this document or receipt declared void, an account from the defendants, or one of them, of the estate of D. B., and an account of the partnership estate of the firm of Burns & Co. come to the hands of the defendants, and to have the said partnership estate wound up, and be paid the share of the profits to which he was entitled; and to have administration by the Court of the personal estate of D. B.

Held, that as to the alleged settlement of Nov. 16th, 1880, the plaintiff and his father, W. D. B., could not be said to have been on equal terms. The plaintiff was not in possession of such knowledge as enabled him to make a rational settlement in respect of the estate of which he was really the owner. It was clearly the duty of his father, before making any settlement with him, to give him the fullest possible information regarding his estate and his dealings with it, even if then, under the circumstances, a settlement binding on the plaintiff could have been made. There appeared, also, to have been parental influence operating on the plaintiff's mind. Therefore the document in question was not binding on the plaintiff.

W. D. B. amongst other things contended that this action was wrongfully brought against him by the plaintiff for want of privity between them; and that he, W. D. B., was liable and ready to account to L., and to him only.

Held, that the suit in its present shape was maintainable, for though the general rule is that persons who have possessed themselves of the property of the deceased, or are debtors to the estate generally, cannot be made parties to a suit against the executor; yet this rule is relaxed in the case of surviving partners of the deceased, whom it is allowed to make parties with the executor in order that the plaintiff may have an account of the personal estate entire. At all events such an action may be supported in all cases where the relationship between the executors and the surviving partners is such as to present a substantial impediment in the prosecution by the executors of the rights of the parties interested in the estate against the surviving partners, as seemed the case here; although it did not appear that there had been actual collusion between L. and W. D. B.

As corroborative evidence of the alleged transfer of 100 shares by the testator in his lifetime to him, the defendant, W. D. B., proved the transfer of the stock to him, and a re-transfer afterward on Jan. 30th, 1873, which re-transfer, he said, was to prevent the surplus of the savings bank appearing to be less, and also produced the printed statement of the savings bank of Dec. 31st, 1872, showing this stock.

Held, that this was not such corroborative evidence of the gift as satisfied the statute, R.S.O. c. 62, s. 10.

Held, on the whole case, that the plaintiff was entitled to the account asked, and that as regards the increase or profits in the dealings with the capital of the estate, these should be apportioned in accordance with the amount of such capital owned respectively by the testator and the defendant, W. D. B., and the defendant, W. D. B. should be allowed a liberal remuneration for his exertions, care, time and trouble in the management of the estate.

Osler, Q.C., and *T. S. Plumb*, for the plaintiff.

C. Moss, Q.C., for the defendant, W. D. Burns.

Boyd, C.] [March 26.

RE SHAVER.

Will—Evidence—Error in description—Quieting Title Proceedings—Infant heir-at-law—Jurisdiction of Referee.

A testator by his will devised as follows:—"I devise the south-west quarter of lot 5, con. 2 of Westminster, containing fifty acres more or less, to H. P. S., his heirs and assigns, in fee simple."

The evidence shewed the testator did not own the south-west quarter of the lot, but did own the south-east quarter; that he and the devisee had lived on it for many years, and that he did not own any other part of the lot except the fifty acres of the south-east quarter.

Held, that evidence was admissible to explain the error and cause the will to operate on the south-east quarter.

You may reject the erroneous part of the description in a will if you have enough left to identify the subject matter devised.

Summer v. *Summers*, 18 C. L. J. 442, distinguished.

Quære, whether an order made by the referee of titles barring the claims of an infant heir-at-law, would have the effect of divesting the estate of the infant.

Sanderson, for the petitioner.

Boyd, C.] [April 9.

THE BRITISH CANADIAN LUMBER AND TIMBER CO.

45 *Vict. c. 23 (D)—Insolvent Co.—Winding up.*

Upon a petition by B., a creditor to wind up a trading company incorporated in Scotland, and carrying on business both in Ontario and Quebec under licenses issued under the General Acts in both those Provinces, it was alleged that the company had become insolvent within the meaning of 45 Vict. c. 23, D. 1. "By exhibiting a statement shewing its inability to meet its liabilities," *s.* 9, *s.-s. c*; 2. "By otherwise acknowledging its insolvency," *s.-s. d.*, and 3. (By amendment to petition) "By procuring its money, goods, chattels, lands or property to be seized, levied on or taken under, or by any process of execution, with intent to defraud, defeat or delay its creditors," *s.-s. f.*

The petition alleged that the company had arranged to get a loan of $150,000, and that after upwards two-thirds of this loan had been advanced, their manager and solicitor, in an interview with the officials of a bank who had advanced one-third of the loan, had said that they could not carry the company on without a further advance of $35,000.

That, at a subsequent meeting between the same parties, a valuation lately made of some of the company's timber limits was discussed, and which valuation shewed the timber limits to be of a great deal less value than the company had believed them to be, and that in that interview the officers of the company had said that it would be a very bad thing for the shareholders.

The petitioner also alleged the solicitor for the respondent company had procured a judgment to be entered against it at the suit of another company whose agent he was, and that under the execution issued on that judgment the office furniture of the respondent company had been seized and sold.

That any remarks made by the managers as to the position of the company were based upon the assumption that the low valuation of the timber limits received was correct, but that they did not then, and do not now, believe that the same was correct. And they deny that any judgment obtained against the company was procured with intent to defraud, defeat or delay its creditors.

The question of the jurisdiction of the Court to wind up a company incorporated and having its head office and part of its assets, and transacting part of its business in a foreign country was argued at length by counsel for the petitioner and the company, as well as for a large body of creditors in the foreign country, but was not considered in the judgment.

Held, that in order to bring the company within *s.-s. c.* some written statement of a formal character, shewing a deliberate and intended representation of insolvency, should be made, and that none such is shewn here.

That the second statement (the report of the valuator as to the timber limits) does not appear, by the evidence, ever to have been adopted by the company or in any manner recognized or put forth as an accurate statement of values or results.

That to bring the company within *s.-s. d*, the manner of such acknowledgment, should as a matter of pleading be specifically stated.

That the calling of a meeting to consider the question of voluntary liquidation is not at all tantamount to such an acknowledgment.

That there is no evidence to shew what the resources of the company are in the way of uncalled capital, that, even if the company could not go on in Ontario without the $35,000 loan and failed to get it, does not involve as a

necessary conclusion that the company is insolvent, and nothing is to be assumed in favour of the application as the petitioner must make out a clear case for the intervention of the Court.

That this Act does not put the offence mentioned in *s.-s. f.* higher than it is put under the Statute of Elizabeth (13 Eliz. c. 5), and that under that statute it is competent for a debtor in failing circumstances to prefer one creditor to another.

Although the petition was dismissed with costs the respondents costs were deducted from the petitioner's debt, and the petitioner has the right to file another petition.

S. H. Blake, Q.C., and *Brough* tor petitioner.
Maclennan, Q.C., for the foreign creditors.
G. T. Blackstock for the company.

PRACTICE.

Boyd, C.] [March 31.

THIRD NATIONAL BANK v. QUEEN CITY REFINING COMPANY.

Receiver of Company—Application for direction as to collection of unpaid calls.

This was an application of a Receiver of the assets of the defendent company by petition for a reference to the master in ordinary to consider and give directions as to the collection of unpaid calls on the capital stock of the company.

Held, that, notwithstanding *Thomas* v. *Torrance*, 1 Grant's Chancery Chamber Reports 9, the practice is for a receiver to apply to the party having conduct of the cause or to a creditor to make such a motion, and that he is not justified in making the application, unless they refuse to do so.

Application granted on substitution of plaintiffs as petitioners.

G. W. Meyer, for Receiver
A. H. Marsh, tor Plaintiffs.

CORRESPONDENCE.

AMERICAN LEGAL HUMOURISMS.

To the Editor of the LAW JOURNAL:

SIR,—As an occasional contributor, I would ask leave to say a few words concerning a legal bi-monthly, hailing from Boston and St. Louis, called the *American Law Review*. This journal claims to have, using its own words, "the largest circulation of any legal periodical in the United States." (The typical Yankee always claims to have the biggest thing of the kind in his own line, and the biggest bragger is generally recognized by the initiated as such and nothing more.) It does not content itself, however, with legal matters, and thus delivers itself about the Dominion of Canada, apropos of nothing in particular:

> They are the tail end of an empire—destitute of distinction in arts, in literature, in agriculture, in manufactures, and in mechanical inventions. They turned the cold shoulder to our ancestors in the War of the Revolution; their country was the basis of an invasion to our country in the war of 1812; and they have reaped their reward for it. They have a Vice Regal Court with its dudism and low necked dresses. They have justices who would regard it as almost a contempt of court, to have an American law book read to them. There is really no hope for their young men; for every good place, etc., etc., is filled by young nincompoops imported from England, and from all the provinces, east and west, they (we presume the nincompoops) are making to the States in great numbers, etc., etc.

And so on for about a page.

There are gentlemen as well as men of general information and historical knowledge, even among those who are not *emigrés* from Canada; why, therefore, should a legal periodical which claims a high position bring discredit on the professional journalism, by employing the pen of a writer whose ignorance on some points is only exceeded by his bad taste and capacity for lying as to others.

The next issue speaks as follows:—

> The Montreal *Legal News* calls our mild and temperate observations (as above) on Canadian affairs, "a strange portrait." It traverses most of our statements, and wonders where we got our information. We got it from the stories told by Canadian *emigrés*, of whom their are a good number in this country, etc. These *emigrés* are among our very best citizens.

Very probably; they were possibly too smart for our detective force, and of course flew south; "birds of a feather," etc. We have a few more that we should like to present to our cousins south of us. It may be, however, that I am taking in earnest what was meant to be simply funny. When the *Albany Law Journal* makes a joke, the average intellect can fathom and appreciate it. But as for this ponderous joker we fear the Canadian mind is unequal to the task of understanding where his jokes come in; however, I would make an effort, and if possible ascertain the true inwardness of the situation. The title-page gives a clue. The *American L. R.* and the *Southern L. R.*, seem to have come together under one cover under the former title. Can it be that our contemporary is in the condition of a boa constrictor who is in a state of repletion after swallowing a donkey or some other morsel rather too much for his digestion? (This is merely an illustration, and it is immaterial which is the snake, and which the moke.) It really must be difficult to be witty under such circumstances. We presume it is intended as a joke, when the writer says that the gentlemen who have flitted from Canada to the United States, and are there recognized as shining legal luminaries and "prominent figures in our public affairs," might possibly have become Justices of the Peace in the Dominion. The joke here intended is evidently that men only fit for the lowest position in Canada, find their level in the highest position in the United States. This is really very funny, and not to say very complimentary on the part of the writer to the native American. And this is still harder on them when the reference is grammatically, to the "nincompoops" who have been said to be making their way to the States. It is to be hoped the boa will soon digest the moke, or the moke the boa; their present state and the uncertain result is very pitiable. Even the donkey (if his gastric juices should prove to be stronger) might be able to keep the fittest survivor out of trouble. It is of course a side-splitting humourism to speak of a city of over 100,000 inhabitants (referring to the City of Toronto) as a "village." Another joke doubtless comes in where the writer says his language was both "chaste and temperate." This must I think have been before the struggle for assimilation now going on began. I also note that this journal solicits articles for its columns (the honour of appearing therein being said to be sufficient compensation) from "men at a distance; from Englishmen; we could even endure one from a Canadian, if the general migration to the States has left any talented men in that country." This is also funny, but it would be still funnier if contributors of this kind could be found. It is nip and tuck now between the boa and the moke, but the donkey seems a "leetle ahead," and further dulcet notes may be expected.

Yours, etc.,

A. B.

[We owe an apology to our correspondent. His letter should have appeared long ago, but has been crowded out by press of other matter. However, it is good enough not to spoil by keeping.—ED. C.L.J.]

LAW STUDENTS' DEPARTMENT.

EXAMINATION QUESTIONS.

Equity.

(*Honours.*)

1. Apart from statutory provision is there any, and if so, what distinction between the liability of a purchaser of land from a trustee under a will, to see to the application of the purchase money, where the trust is for payment of debts generally and his liability therefor when the trust is for payment of specified debts only?

2. A. having by separate instruments mortgaged all his real and personal property, respectively, in fee, dies intestate and without heirs or personal representatives. In whom does the equity of redemption of each respective mortgage vest?

3. The owner of a piece of land rents it for a term of years to A., and then mortgages it in fee to B., who after default in payment serves A. with notice of the mortgage, asking him to attorn, and claiming payment of the rent. The owner also serves A. with a notice alleging that the mortgage was obtained by fraud, forbidding him to attorn and claiming payment of the rent. What course would you advise B. to adopt?

Examination Questions.

4. In the event of partial failure of the purposes for which conversion is directed, what distinction is there, with regard to the character in which the object of the conversion reverts, between the case conversion directed by will, and conversion directed by instrument *inter vivos?*

5. Real estate is by a settlement vested in trustees for the sole and separate use of a married woman, free from the control of her present or any future husband, with restraint in anticipation. Her husband dies, and she and the trustees make sale of the property, after which she marries again and has children, who, after her death, seek by action to set aside the sale as being made in contravention of the restraint in anticipation. Is the action well founded? Give reasons.

6. A man dies intestate, leaving a wife, and also leaving real estate. The wife is ignorant of the law giving her a right to dower in the land, and at the solicitation of her son, who assures her that she has no interest therein, she, for a nominal consideration, joins the son in conveying to a purchaser, who is aware of all these facts. Has she any remedy? Explain.

7. A. owns certain lands, and he has a plan thereof made, upon which a portion of the land is laid out as a public park, and the remaining lands are divided into lots abutting on the park. He exhibits the plan to B., and sells him one of these lots. A. afterwards commences to build a residence upon the portion marked as park reserve, and B. brings his action to restrain the building. Who should succeed in the action, and why?

8. Give the general rule as to the liability of trustees for the acts of their co-trustees, and distinguish between such liability in cases of private trusts and trusts of a public nature respectively. Give reasons for answer.

9. A piece of land is by will directed to be sold and the proceeds divided between A. and B. Can A. elect to take his share in land? Give reason.

10. A. purchases land from B. by parol contract, in which it is agreed that A. shall not be entitled to possession until he has paid the purchase money, but without making such payment, and without B.'s assent, he takes possession and makes permanent improvements on the land. A. afterwards refuses to complete the purchase, and B. brings action for specific performance of the contract, to which A. pleads the Statute of Fraud. Who should succeed? Give reasons.

Harris on Criminal Law.—Broom's Common Law Books, 3 and 4.—Blackstone, Vol. I.

(*Honours.*)

1. Can a person ever be convicted of larceny for stealing his own goods? If so, when?

2. A. is standing on the middle of a bridge over a river. B. at one end of the bridge points a loaded gun at A., with intent to shoot him. A., knowing B. to be his deadly enemy, and believing that B. will shoot him, and having no other way of escape, jumps into the river and is drowned. Is B. guilty of any crime, and if so, what?

3. What is the difference between a constable and a private person, in regard to the right to arrest another without a warrant, on suspicion of felony?

4. In a case of bigamy, what effect will be produced on the liability of the accused to a conviction by (*a*) proof that the first marriage was void on account of consanguinity, or other like cause; (*b*) proof that the second marriage would have been void for a similar reason?

5. What is the true test to determine whether, in any particular case, an acquittal on a prior indictment is a bar to a subsequent indictment under the plea of *autrefois acquit?*

6. State whether or not the following offences committed in the night will or will not constitute *burglary:* (*a*) The thief gains admission through the outer door being open, and then breaks open the door of a room for the purpose of plundering. (*b*) The thief gains admission by raising a window already partly open, and plunders the house without breaking any inner door. (*c*) The thief is a servant who is lawfully in the house, but breaks the door of a room in order to steal. (*d*) A servant lawfully in the house, breaks open the door of a sideboard to steal the plate out of it.

7. Two persons agree to commit suicide together, one escapes, and the other dies. Is the former guilty of any offence in respect of the death of the latter, and if so, what?

8. A. is in actual possession of a lot of land to which he has no right or title. B., the lawful owner, enters upon the lot, without force, but in assertion of his title. Is either A. or B. a trespasser, and if so, which of them? Give reasons.

9. Explain briefly the doctrine of *ratification* in reference to torts.

10. Mention and explain the nature and effect of the *civil disabilities* affecting marriage.

Real Property and Wills.

(*Honours.*)

1. What are the respective rights of vendor, purchaser, and insurance company, when a loss by fire occurs on property contracted to be sold, before the sale is completed, where nothing is said as to insurance in the agreement for sale?

2. A. buys the growing timber on a piece of land. Subsequently B. advances money upon mortgage of the land, which is not a sufficient security for it without the timber, and registers his mortgage without notice of A.'s purchase. A. having commenced to cut the timber, B. issues a writ and applies for an injunction to restrain the cutting. What are the respective rights of mortgagee, owner, and purchaser of timber?

3. The owner of an estate, which is partly in the County of York and partly in the County of Ontario, mortgages the same. A creditor recovers judgment against him. He has no goods. How would you obtain payment out of the lands? Explain fully.

4. A testator directs that his debts and legacies be paid out of a certain portion (describing it) of his real estate, which he devises to his executors for that purpose. Is the purchaser of the lands bound to see to the application of the purchase money? Explain fully.

5. A. is in possession of land as tenant at will. The owner devises it to A. for life, remainder to B. in fee. A. attends at the reading of the will, but says nothing. He remains in possession as before, and nothing transpires until after the lapse of fifteen years from the date of his taking possession, when he executes a conveyance in fee simple to a purchaser. The purchaser files a petition to quiet the title, and B. is notified according to the usual practice, and appears as a contestant. Who should succeed? Why?

6. A. and B. verbally agree to buy land, and to share equally the profits gained by a re-sale. The conveyance is taken to A., and the land is sold at a profit, whereupon A. refuses to account to B. for his share, on the ground that the agreement should have been in writing. Discuss the rights of the parties.

7. Where no will is found at the death of a person who is known to have made a will, what is the presumption? How may it be rebutted?

8. Where it is shown that a will had been made by a testator and never revoked, but it cannot be found at his death, how can probate be obtained? State the nature and quantity of evidence to be adduced.

9. What is the effect of a condition of sale which reads that "the vendor will not be bound to produce any documents not in his possession?"

10. A purchaser's solicitor pays the purchase money to the vendor's solicitor, and obtains a conveyance in statutory form but without the receipt for the purchase money which is usually found in the margin of the statutory forms. The purchaser mortgages the land, and both deed and mortgage are duly registered. The vendor then claims a lien on the land for the purchase money, and it appears that he had never received it from the solicitor who acted for him in the sale. What are the respective rights of all parties? Discuss fully.

ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

University representation.—*Law Magazine*, Nov., 1883.

French and English criminal procedure.—*Ib.*

The future of the legal profession.—*American Law Review*, Sept., October, 1883.

The Common Law and Statutory right of woman to office.—*Ib.*

Criminal law—Former jeopardy.—*Ib.*

Of the enforcement of debts contracted and liabilities incurred by Receivers of Railroads.—*Ib.*

Constructive notice, its nature and limitations.—*Ib.*

Burden of proof in criminal prosecutions.—*Ib.*

Criminal law—void sentences (Pretended judgment—No jurisdiction—No officer-at-Law—No authority to impose.)—*Criminal Law Magazine*, Nov., 1883.

Presumption and the burden of proof.—*Ib.*

Nolle Prosequi.—*Ib.*, January.

Irregularity in punishment.—*Ib.*, (*from Nineteenth Century.*)

Noise and vibration as elements of nuisance.—*American Law Review*, Oct., 1883.

The Remedies for the collection of judgments against debtors who are residents or property holders in another State or within the British Dominion.—*Ib.*, Nov., 1883.

Some points of comparison between English and American Legislation as to married Women's property.

Marginal notes and head-lines of statutes.—*Irish Law Times*, Oct. 13th, 1883.

Preamble to Statutes—*Ib.*, Dec. 15th., 1883.

Legacies given in a particular capacity.—*Ib.*, Oct. 27th.

The privilege of Counsel and Solicitors acting as advocates.—*Ib.*, Dec. 8th.

Interpretation of common words and phrases, from *Albany Law Journal.*

Move—Remove—Wheat—Vacant—Loading—Conceal—Cattle-guards—Threats—Trinkets—Manufactured Silk—Glass—Damages by the elements—Voluntary—Walking or being—*Ib.*, Oct. 27th.

Presence—Domicile—Residence—Clerk—Track—Absolutely necessary—Manufacturer—Confectionery—House—Family—Exclusive—Uninterrupted and Continuous.—*Ib.*, Nov. 10th.

Public-bar—Store—Manufacture—Operation of Railway—Additions—Good health—Open account—Olographic will—Tool—Between sundown and sunrise.—*Ib.*, Nov. 17th.

Apparatus and appendages—Bucket-shop—Device—Good faith—operation of Railway—Tools—Box.—*Ib.*, Dec. 1st.

Lost—Mislaid—Encroachment, obstruction—Ceased—Necessaries—Literary—Either—26th *Ib.*

The presumption of continuance.—*Ib.*, Oct. 27th.

The presumption of identity.—*Ib.*, Nov. 3.

Devise for life with power of disposal.—*Ib.*, Nov. 3.

Law Society of Upper Canada.

OSGOODE HALL.

HILARY TERM, 47 Vict., 1884.

During this term the following gentlemen were called to the bar, namely:—

Messrs. James Bicknell, gold medallist and with honours; George Walker Marsh; Donald Cliff Ross, John Young Cruikshank, Edward James Hearn, Wilmott Churchill Livingston, Robert Walter Witherspoon, George Frederick Cairns, Francis Stewart Wallbridge, Moses McFadden, Frederick Augustus Munson, Daniel Urquhart, Edward Guss Porter, James Burdett, Alexander Monro Grier, Edmund Campion, John James Maclaren. The last three being under Rules in special Cases.

And the following gentlemen were admitted into the Society as Students-at-Law, namely:—

Matriculants — John Frederick Gregory, William Edward Kelly, William Wesley Dingman, John Hind Hegler.

Junior Class — Michael H. Ludwig, Franklin Smoke, John B. McColl, Robert Wilson Gladstone Dalton, James Joseph McPhillips, Frederick Rohleder, Patrick Kernan Halpin, John Wesley Coe.

BOOKS AND SUBJECTS FOR EXAMINATIONS.

Articled Clerks.

1884 and 1885.
- 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.

In 1884 and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil, at their option, which are appointed for Students-at-Law in the same years.

Students-at-Law.

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis. B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.

Composition.

Critical Analysis of a Selected Poem:—

1884—Elegy in a Country Churchyard. The Traveller.

1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

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 instead of Greek:

FRENCH.

A paper on Grammar,

Translation from English into French prose.

1884—Souvestre, Un Philosophe sous le toits.

1885—Emile de Bonnechose, Lazare Hoche.

or NATURAL PHILOSOPHY.

Books—Arnott's elements of Physics, and Somervilles Physical Geography.

FIRST INTERMEDIATE.

Williams on Real Property, Leith's Edition; Smith's Manual of Common Law; Smith's Manual of Equity; Anson on Contracts; the Act respecting the Court of Chancery; the Canadian Statutes relating to Bills of Exchange and Promisory Notes; and Cap. 117, Revised Statutes of Ontario and amending Acts.

Three scholarships can be competed for in connection with this intermediate.

SECOND INTERMEDIATE.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Gov-

ernment in Canada; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three scholarships can be competed for in connection with this intermediate.

FOR CERTIFICATE OF FITNESS.

Taylor on Titles; Taylor's Equity Jurisprudence; Hawkins on Wills; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and Pleading and Practice of the Courts.

FOR CALL.

Blackstone, vol. 1, containing the introduction and rights of Persons; Pollock on Contracts, Story's Equity Jusisprudence; Theobald on Wills; Harris' Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, the Statute Law and Pleadings and Practice of the Courts.

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

1. 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 on the books of the society as a Student-at-Law, upon conforming with clause four of this curriculum, and presenting (in person) to Convocation his diploma or proper certificate of his having received his degree, without further examination by the Society.

2. A student of any university in the Province of Ontario, who shall present (in person) a certificate of having passed, within four years of his application, an examination in the subjects prescribed in this curriculum for the Student-at-Law Examination, shall be entitled to admission on the books of the Socity as a Student-at-Law, or passed as an Articled Clerk (as the case may be) on conforming with clause four of this curriculum, without any further examination by the Society.

3. Every other candidate for admission to the Society as a Student-at-Law, or to be passed as an Articled Clerk, must pass a satisfactory examination in the subjects and books prescribed for such examination, and conform with clause four of this curriculum.

4. Every candidate for admission as a Student-at-Law, or Articled Clerk, shall file with the secretary, six weeks before the term in which he intends to come up, a notice (on prescribed form), signed by a Bencher, and pay $1 fee; and, on or before the day of presentation or examination, file with the secretary a petition and a presentation signed by a Barrister (forms prescribed) and pay prescribed fee.

5. The Law Society Terms are as follows:

Hilary Term, first Monday in February, lasting two weeks.

Easter Term, third Monday in May, lasting three weeks.

Trinity Term, first Monday in September, lasting two weeks.

Michaelmas Term, third Monday in November, lasting three weeks.

6. The primary examinations for Students-at-Law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity and Michaelmas Terms.

7. Graduates and matriculants of universities will present their diplomas and certificates on the third Thursday before each term at 11 a.m.

8 The First Intermediate examination will begin on the second Tuesday before each term at 9 a.m. Oral on the Wednesday at 2 p.m.

9. The Second Intermediate Examination will begin on the second Thursday before each Term at 9 a.m. Oral on the Friday at 2 p.m.

10. The Solicitors' examination will begin on the Tuesday next before each term at 9 a.m. Oral on the Thursday at 2:30 p.m.

11. The Barristers' examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2:30 p.m.

12. Articles and assignments must be filed with either the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

13. Full term of five years, or, in the case of graduates of three years, under articles must be served before certificates of fitness can be granted.

14. Service under articles is effectual only after the Primary examination has been passed.

15. A Student-at-Law is required to pass the First Intermediate examination in his third year, and the Second Intermediate in his fourth year, unless a graduate, in which case the First shall be in his second year, and his Second in the first six months of his third year. One year must elapse between First and Second Intermediates. See further, R.S.O., ch. 140, sec. 6, sub-secs. 2 and 3.

16. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive certificates of fitness, examinations passed before or during Term shall be construed as passed at the actual date of the examination, or as of the first day of Term, whichever shall be most favourable to the Student or Clerk, and all students entered on the books of the Society during any Term shall be deemed to have been so entered on the first day of the Term.

17. Candidates for call to the Bar must give notice, signed by a Bencher, during the preceding Term.

18. Candidates for call or certificate of fitness are required to file with the secretary their papers and pay their fees on or before the third Saturday before Term. Any candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

FEES.

Notice Fees	$1 00
Students' Admission Fee	50 00
Articled Clerk's Fees	40 00
Solicitor's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fee	1 00
Fee in special cases additional to the above.	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

Copies of Rules can be obtained from Messrs. Rowsell & Hutchison.