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DIARY FOR MAY.

1. Fri.....Prince Arthur born, 1850.
2. Sat.....J. A. Boyd, Chancellor, 1881.
3. Sun.....*4th Sunday after Easter.*
5. Tue.....Sitting of Supreme Court of Canada—First Intermediate Examinations.
7. Thur.....Second Intermediate Examinations.
10. Sun.....*5th Sunday after Easter.* Hagarty, C.J.. Ont., and Wilson, C.J., Q. B., 1884.
12. Tue.....Ct. App. Sitt. and Co. Ct. Sitt. (York) commence. Solicitors' Exam.
13. Wed.....Barristers' Examinations.
14. Thur.....Ascension Day.

TORONTO, MAY 1, 1885.

THE dinner of the Osgoode Legal and Literary Society on the 22nd ult., of which we publish a notice in another place, was a great success and reflected much credit upon the committee who had the matter in hand. The dinner itself, considering the difficulties to be contended with, was good, the speeches better, those of the juniors being comparatively the best of all. This Society is evidently doing a good work, and we commend to our readers the remarks of the chairman in reference thereto. To those who are "given to change," and especially to those *radix*-ical reformers in the conservative ranks of Her Majesty's loyal opposition in the Local Legislature, we would commend his very sensible observations (those of a prominent and rising member of that party) on the subject of decentralization.

The entertainment was really more a Bar dinner than anything else. We trust it may be continued as such, but with this change, the price of the tickets, at least for students, to be placed at a much lower figure, so that they may be able to attend without going beyond their means. Various ways of effecting this end present themselves, some of which will, we trust, ere next year be thought out and arranged.

WE had a feeling of respect for Mr. De Souza, who pluckily went to work to fight the Bench, Bar and Law Society single handed. But "there is a limit to everything," and "enough is as good as a feast." He has now become an "irrepressible," and must, of course, be suppressed. This time he hurled himself against the Court of Appeal, and again found the Bench an immovable body; probably by this time he has come to the conclusion that he is not an irresistible force. His courage failed him at the crucial point, and, instead of being taken in charge by the sheriff, as appeared to have been his aim, he simply "wilted." If he had further persisted, the Chief Justice of the Court of Appeal would either have had to adjourn the Court, or maintain its order by ordering his removal as an obstruction to business, in which latter case this much ill-used person would doubtless have found some newspaper prepared to laud his heroism, lament his woes, and abuse the judges for a tyrannous abuse of their powers, whilst a rather disgusted Bar and an amused populace would have concurred in the verdict of "served him right."

SOME of our most respected judges have recently been subjected to most objectionable criticism imputing improper motives and political bias. The subject of commitment by judges for contempt of Court has also been discussed, or rather this power has been reviled, as a relic of bar-

barism, and an engine of tyranny, which should be got rid of at once. There is generally an outburst of this kind following on some case coming before the Courts in which party politics are more or less mingled. Judges have, of course, in such cases, to give a judgment of some sort which is necessarily displeasing to the losing side, and the political allies of the latter at once go into a phrensy of indignation and abuse the judge much in the same way as the other side would if his judgment had been the other way. In connection with this we venture to express a regret that Chief Justice Cameron should have taken the trouble to allude to any of these attacks. Newspaper criticism of this kind has now arrived at such a point that it has very little effect upon readers at large, and none at all upon intelligent thinking people.

A PERSON signing himself "Barrister," produced lately in the columns of a daily paper an effusion which Chief Justice Cameron, unnecessarily, we think, honoured by referring to in terms all too courteous, if worth noticing at all. Few laymen could have written anything more childish, or evincing more absolute want of any thought on, or knowledge of, the subject discussed by this person. We have too high an opinion of the intelligent education of our Bar to believe that a barrister of Ontario ever wrote the letter at all. One would suppose from the tone of it that hundreds of respectable citizens were pining in our prisons as the victims of the personal malice and wounded spleen of the various Jeffreys of our Bench. One would hardly suppose that, so far as we can remember, there has not been for some thirty years or more, one single lawyer or litigant committed for contempt of court; though it would occasionally have saved much valuable time to the country and pleased an indignant public if the power had been exercised. The power is a most wholesome one, and one that the judges *ought* to have for the benefit of suitors and the public generally. When the judges get into the habit of using it for vindictive purposes it will be time enough to talk about taking it away. At present there is no such indication. "Barrister" and others interested would do well to read and digest the admirable judgments of Willes, J., and Byles, J., in the case of *Re Fernandez*, 10 C. B., N. S. 3, where the whole subject of commitment for contempt is discussed, and the necessity for the existence of the power maintained.

LEGISLATION IN ONTARIO.

WE publish in another column a letter from a correspondent as to recent legislation as affecting decided cases.

In connection with this matter there can be no doubt chapter 26 of the last session of the Ontario Legislature is intended to set at rest some of the difficulties which have arisen under the Fraudulent Preference Act, R. S. O. cap. 118. The opinions of our judges under the last-mentioned Act have been numerous and diverse, and the true interpretation of the Act has not yet been fully settled by the Supreme Court. The main difficulty arose in dealing with the words "with intent to defeat," etc.

Some of the decisions go to show that where a conveyance, assignment, or other instrument mentioned in the Act has the effect of defeating, hindering, or delaying a creditor, the law presumes it to have been executed with that intent.

Such was the decision in *McLean* v. *Garland*, 32 C. P. 524; 10 A. R. 405, where the exact question arose. See, also, *Clark* v. *Hamilton Provident Company*, 21 C. L. J. N. S. 57. So far as the actual intent to

prefer or delay was concerned, all the judges who pronounced upon the case considered that there was no such intent; and in the Court of Appeal, Cameron, C. J., and Patterson, J. A., dissenting from the rest of the Court, thought that the appeal should be allowed and the assignment upheld. The case has been already argued in the Supreme Court, and is standing for judgment.

The new Act, after reciting that difficulty is experienced in determining cases arising under the present law (R. S. O. cap. 118), and it is desirable to remedy the same, goes on to provide that "every gift, conveyance, assignment, etc., made . . . with intent to defeat, etc., or which has such effect," shall, as against creditors, be utterly void. This is evidently aimed directly at such a case as *McLean* v. *Garland*, and supports the decision hitherto given. But if every conveyance which has the effect of defeating, hindering, delaying or preferring a creditor of an insolvent is utterly void, why should the former provision relating to conveyances made "with that intent" be still retained? It appears to us that in removing one difficulty the Legislature have created a much more formidable one, for it is scarcely possible to draw an assignment which shall not have the effect, to some extent or other, of hindering or delaying a creditor. (See the remarks of Osler, J., in *Gallagher* v. *Glass*, 32 C. P. 641, and Patterson, J. A., in *Alexander* v. *Wavell*, 10 A. R. 135.) We fear that the effect of this Act will be to increase manifold the difficulties attending this branch of our law, and instead of cutting the Gordian knot, to add one more loop to its tangles.

Chapter 27 of the recent Acts is a beneficial amendment to the law of bills of sale and chattel mortgages. The point intended to be met was decided against the mortgagee in *Pinkerton* v. *McLean*, 7 A. R. 490, which is therefore now no longer law.

RECENT ENGLISH DECISIONS.

THE April numbers of the Law Reports comprise 14 Q. B. D. pp. 377-560; 10 P. D. pp. 33-61; and 28 Ch. D. pp. 333-469.

CHARGE OF DEBTS ON LAND—STATUTE OF LIMITATIONS

Very few of the cases in the Queen's Bench Division seem necessary to be noticed here, most of them being decisions in bankruptcy; but the case of *In re Hepburn* (14 Q. B. D. 394), which was a bankruptcy case, deserves a passing notice for one of the points discussed in it. A testator had, by his will, charged his debts upon his real estate—he died without leaving any real estate—and the question was, whether the trust to pay debts contained in his will would prevent the running of the Statute of Limitations. Upon this point Cave, J., remarked: "John Hepburn's will does, in fact, contain a trust for the payment of his debts out of his real estate; but John Hepburn left no real estate whatever, and it seems to me that this case falls within the principle of *Scott* v. *Jones*, 4 Cl. & F. 382. In that case Mr. Donovan, by his will, charged his debts upon his real estate at Tibberton. It turned out that his estate there, which he supposed to be freehold, was leasehold only; and it was held that the operation of the statute was not prevented by the charge in the will, even as to that part of the personal estate which he had erroneously supposed to be realty. Now, if the charge does not affect that part of the personal estate which is erroneously supposed to be realty, how can it affect that part which is not supposed to be realty, or, in other words, how can it have any effect upon the personalty at all? I am of opinion that a charge upon real estate, where there is no real estate, has no operation whatever." The case is also worthy of notice for the observations

of the learned judge on the common form of expression that the Statute of Limitations bars the remedy but not the right. "This," he says, "although not an uncommon, is, in my judgment, an incorrect way of stating the effect of the Statute of Limitations. There is in law no right without a remedy; and, if all remedies for enforcing a right are gone, the right has, in point of law, ceased to exist. In the case of a debt the ordinary and universal remedy is by action against the debtor. There may, however, and sometimes does, exist another remedy, not by action against the debtor, but arising out of the possession of property of the debtor, which, by law or contract, may be detained by the creditor until the debt is paid. This latter remedy may exist although the remedy by action is barred; and, in that case, the debt continues to exist so far as is necessary for the enforcement of this right of lien, but not for enforcing the remedy by action. When the debt is barred by the statute, and the creditor has no lien, the debt is gone for all purposes."

EVIDENCE—ADMISSION OF DECEASED PERSON AGAINST HIS INTEREST.

The next case we find deserving of notice is that of *ex parte Edwards* (14 Q. B. D. 415), a decision of the Court of Appeal upon an application for leave to appeal to the House of Lords from the decision of the Court of Appeal in *ex parte Revell*, 13 Q. B. D. 720 D. One of the points upon which it was desired to appeal, was upon the question whether an admission by a bankrupt in his statement of affairs, that a debt is due from him, could, after his death, be used as evidence against his assignee to establish the debt. Leave to appeal was refused; and upon this point Brett, M. R., said: "It is said that the bankrupt's statement was an admission against his interest, made by a man who has since died. This is an attempt to enlarge the rules as to the admissibility in evidence of admissions against interest. The rule is, that an admission which is against the interest of the person who makes it, at the time when he makes it, is admissible; not that an admission, which may, or may not, turn out at some subsequent time to have been against his interest, is admissible. This statement does not, therefore, fall within the recognized rule."

WIFE'S SEPARATE PROPERTY—HUSBAND TRUSTEE FOR WIFE.

The next case, *ex parte Sibeth* (14 Q. B. D. 417), is a bankruptcy decision, but upon a point of general interest, inasmuch as it establishes that the rule that a husband is trustee for his wife of her separate property, when no other trustee has been appointed, applies to that which becomes her separate property by virtue of a marriage contract entered into in a foreign country.

The case which follows, viz.: *ex parte Whitehead* (14 Q. B. D. 419), is a decision of the Court of Appeal upon the same subject. In that case it was verbally agreed by husband and wife upon their marriage that a sum of money standing to the wife's credit at a bank in her maiden name should be her separate property. Nothing further was done, but after the marriage, the money, with the husband's consent, remained at the bank in the wife's maiden name, and she received the interest on it for two years after the marriage when she drew the money out of the bank. The husband became bankrupt and his trustee claimed the fund as part of the bankrupt estate, on the ground that there had been no part performance of the agreement to settle to take the case out of the Statute of Frauds, and Cave, J. held him entitled to it; but the Court of Appeal, without deciding the question on the Statute of Frauds, came to a different conclusion, on the ground that there had been a gift of the money by the husband

to the wife after the marriage, and that he had become a trustee of it for her, as her separate property. Brett, M. R., thus puts the case: "The only inference which I can draw from the facts is that the husband allowed the money to remain in his wife's former name in the bank, and allowed her to go on drawing cheques for the interest and the principal as she required the money, in order to carry into effect the promise which he had made to her before the marriage. There was a gift of the money to her, and he became her trustee."

TERMINATING TENANCY ON NOTICE—SERVICE OF NOTICE.

We have now to consider the case of *Hogg* v. *Brooks* (14 Q. B. D. 475), which was an action of ejectment brought against a tenant of a mortgagee of leasehold premises. The demised premises were held under a lease for twenty-one years, which contained a proviso that it should be lawful for the landlord or his assigns, to put an end to the lease at the end of the first fourteen years, by delivering to the tenant or his assigns, six calendar months' previous notice in writing of his intention to do so.

The lessee mortgaged the premises by way of underlease, and disappeared; the mortgagee entered into possession and sub-let the premises to the defendant. The plaintiff, as assignee of the reversion, had served written notice by sending it to the lessee's last known address (but which it was admitted never reached him), and also leaving it with the mortgagee, and also upon the demised premises; and the question for the consideration of the Court was whether or not the notice had been sufficiently served on the lessee in order to terminate the lease under the proviso; and the Court (Matthew, J.) was of opinion that the notice had not been duly served. "The lease makes no provision for any such constructive service, but provides for a direct service of the notice on the lessee or his assigns. Purkis (the mortgagee) is not assignee, but only a sub-tenant, and the notice could only be served by delivering it to Curtis (the original lessee). This has not been done, and the plaintiff must fail."

This concludes the cases which we think necessary to notice in the Queen's Bench Division, with the exception of *Tomlinson* v. *The Land and Finance Corporation, Limited*, a note of which will be found in our notes of English Practice Cases.

The first case in the April number of the Chancery Division is *Eden* v. *Weardale Iron and Coal Company*, of which a note will also be found in our notes of English Practice Cases.

PARTNERSHIP—FIRM OF SOLICITORS—LIABILITY OF PARTNERS FOR MISFEASANCE OF CO-PARTNERS.

The case of *Cleather* v. *Twisden* (28 Ch. D. 340) is an important decision, touching the liability of the members of a firm of solicitors, for the misappropriation of the securities of clients entrusted to the custody of one of the firm. In this case, the trustees under a will deposited certain bonds, payable to bearer, with Parker, a member of a firm of solicitors who were acting for the estate. His partner had no knowledge of this; but letters referring to the bonds, and admitting that they were in P.'s custody, addressed to the *cestui que trust*, were copied into the firm's letter-book, and were charged for in the bill of costs of the firm, and the bonds were included in a statement of account which the firm made out for the trustees. Parker paid some of the interest of the bonds by cheques of the firm, but on each occasion recouped the firm by a cheque for the same amount on his private account. Parker having misappropriated the bonds, the trustee sued his co-partner, Twisden, to compel him to make good the loss. Denman, J., had held him liable, but the Court of Appeal considered that, inasmuch as the custody of

bonds payable to bearer is not within the ordinary scope of the business of a firm of solicitors, the cheques, letters and entries were too ambiguous to affect the defendant with acquiescence in his partner, Parker, having the custody of the bonds as part of the partnership business, and that, therefore, he was not liable for their misappropriation. In connection with this case we may refer to a recent case before Kay, J., of *Mannus* v. *Mew*, noted in the *Law Times* for 28th March last, where a partner in a firm of solicitors was held liable for the misappropriation by his co-partner of the moneys of a client received by the firm for investment.

SPECIFIC PERFORMANCE—ALTERNATIVE CLAIM FOR DAMAGES.

In *Hipgrave* v. *Case* (28 Ch. D. 356), which is the next case to be noticed, the action was for specific performance of a contract of sale to the defendant of a house and goodwill, fixtures and stock-in-trade of a business. The statement of claim claimed specific performance of the contract, or in the alternative, for the payment of £100 as liquidated damages fixed by the contract. The statement of defence alleged false representations by the plaintiff as to the character of the business, and denied that plaintiff was able and willing to perform the contract on his part. After the close of the pleadings the plaintiff gave the defendant notice that unless the defendant would complete the purchase within a week he would re-sell the business, which he accordingly did. No amendment was made in the pleadings, and the action went to trial, when the plaintiff's counsel, while admitting that the claim for specific performance must be abandoned, claimed to recover the £100 as liquidated damages. Bacon, V.-C., before whom the case was tried, dismissed the action on the ground that the alternative right to damages did not arise until there had been a default in specific performance, and the plaintiff himself, having rendered specific performance impossible, was not entitled to damages. This decision the Court of Appeal now affirmed; the ground of the judgment is thus shortly stated by the Master of the Rolls: "I think that the plaintiff, having by the form of his pleadings and by his conduct of the case, elected to put his claim as one for specific performance, with an alternative claim for damages merely as a substitute for specific performance in case, for any reason, the Court should feel itself unable to give effect to his prayer for specific performance, the plaintiff cannot now be allowed to change the whole nature of his action, by turning it into an ordinary action for damages as at common law."

COMPANY—TRANSFER OF SHARES—REFUSAL OF COMPANY TO REGISTER TRANSFER.

In the case which follows of *ex parte Harrison, In re Cannock and Rugely Colliery Co.*, the Court of Appeal over-ruled the decision of Bacon, V.-C., on a question of company law, respecting the right of directors to refuse to register a transferee of shares. By the articles of association it was provided, that the directors might refuse to register a transfer of shares while the transferor was indebted to the company, or if they should consider the transferee an irresponsible person. It was also provided, that persons becoming entitled to shares on the bankruptcy of a shareholder, might be registered on the production of such evidence as might be required by the directors, and that any transfer, or pretended transfer, not approved by the directors, should be void. A shareholder, who was indebted to the company, executed a transfer of his shares to the nominee of a bank as a security for advances, and the directors refused to register the transfer. Subsequently, the shareholder became bankrupt, and his trustee, with the consent of the bank and

their nominees, applied to be registered. The bank, though consenting to the trustee's registration, had never waived their security; the directors refused to register the trustee. Bacon, V.-C., had held they were wrong, but the Court of Appeal held them to be justified in their refusal, and that their declining to register the transfer to the bank's nominee was not a disapproval of the transfer so as to render it void under the articles, and that the trustee was not entitled to the shares so long as the transfer to the bank's nominee remained in force, and was not entitled to be registered, notwithstanding the consent of the transferees. Lord Selborne who delivered the judgment of the Court (after stating that the proviso which made transfers void which were not approved by the directors applied to cases where the transferee was rejected as an irresponsible person, and not to the case of a refusal to register a transfer because the Company's interest is involved), proceeds to remark upon the effect of the bank's consent: "We had no evidence of the meaning of that consent, but the counsel for the trustee in liquidation has candidly told us that the bank had no idea of giving up their security. They consented in order to get rid of the right of the company to a set-off in respect of their claim; and if they could have procured the transfer of the shares into the name of the trustee, then some arrangement was to be made to give effect to their interest. It seems to me, that the company was entitled to say, that the twentieth article relates only to the title which the trustee in liquidation has under the Bankrupt Act, and does not enable a prior transferee and such trustee to combine their titles in this manner for the purpose of enabling the trustee to be registered on behalf of both, and so to get rid of the company's right under Article 17."

SOLICITOR—ARTICLED CLERK—PREMIUM.

Passing over several cases of no special interest or application in this Province, we come to the case of *Ferris* v. *Carr* (28 Ch. D. 409), in which the father of a solicitor's articled clerk sought to recover a proportionate part of a premium paid to a solicitor who had died, on the ground that, by the death of the solicitor, it had not been fully earned; but Pearson, J., not without some hesitation, came to the conclusion that there was no obligation in law to return any part of the premium under such circumstances, and neither could the Court, by virtue of its summary jurisdiction over solicitors, say that a different rule should be applied to a contract of this kind between a third person and a solicitor than would be applied to a like contract between other persons.

INFANT—JOINT TENANCY—SEVERANCE.

We have noticed the next case, *Drage* v. *Hartopp*, in our notes of recent English Practice Cases, and now proceed to consider that of *Burnaby* v. *Equitable Reversionary Interest Society* (28 Ch. D. 416), in which the short point was, whether an infant who was entitled in remainder jointly with two others to a share in Bank annuities standing in the name of trustees, had by her marriage settlement, which contained a proviso for the settlement of the present and after acquired property of the intended wife, thereby severed the joint tenancy. The wife attained twenty-one, and died without having attempted to repudiate or avoid the covenant in the settlement, but having made a will in pursuance of powers thereby given her. Two points were taken—first, that the infant's deed being voidable could not sever the joint tenancy, and, second, that being under coverture until she died, she could not deal with her reversionary property either by way of ratification of a voidable deed or otherwise. But Pearson, J., was

of opinion that the deed of the infant, although voidable, did not need confirmation, but if not avoided would bind her property, though it did not bind her personally, and that therefore the settlement had effectually severed the joint tenancy.

Parties—Action for account against members of church building committee—Attorney-general.

In the next case of *Strickland* v. *Weldon* (28 Ch. D. 426), five members of a Church Building Committee, on behalf of themselves and all other members of the committee, brought an action for an account against a former member of the committee, and it was held that the plaintiffs were merely agents for the subscribers to the building fund, and that the action could not be maintained by some of the agents against others, and that even if all the subscribers were suing, the action could not be maintained without making the Attorney-General a plaintiff. Pearson, J., observes: "In my opinion the plaintiffs are not trustees in the ordinary sense of the word; the members of the committee are nothing but agents—every one of them is an agent for the subscribers, and, to my mind, the notion that two agents out of three can sue the third for money which the principal has directed to be paid to him is an entire novelty.

"But, in addition to that objection, this fund is a charitable fund, and I conceive that if all the subscribers were named in the writ as plaintiffs, the action would nevertheless be defective, because the Attorney-General is not here. The Attorney-General is the only person who can really represent a charity, and sue on its behalf, and on that simple ground I must refuse to make any order upon the summons."

Will—Gift over—Remoteness—Period of ascertaining class.

The case of *Watson* v. *Young* (28 Ch. D. 436) is one concerning the construction of a will. The devise in question was upon trust for J. for life, and after his death for his children who should attain twenty-one, and the issue of any child who should die under twenty-one leaving issue who should attain that age; but in case there should be no child, nor the issue of any child of J. who should attain twenty-one, then in trust for the child or children of R. who should attain twenty-one. There was also a trust to accumulate the rents during twenty-one years from the day next before the day of the testator's death, and the accumulated fund was to be held in trust for the child or children of R. who should attain twenty-one. J. died without ever having had a child. R. had six children who attained twenty-one. The youngest of them was born after the eldest attained twenty-one, but before the end of the period of accumulation.

The question turned upon the validity of the gift over in favour of the children of R. It was said on the one hand that the gift was void for remoteness, because it was a gift in case there should be no child, nor the issue of any child of J. who should live to attain the age of twenty-one, which might not happen during a life in being and twenty-one years after. On the other hand it was contended that the gift over should be read as divisible into two alternative gifts, viz.: (1) in case there shall be no child of J.; and (2) in case there shall be no child or issue of a child who should attain twenty-one; and that the first of those alternative gifts was clearly valid. Pearson, J., gave effect to this contention, and held the gift over valid. On the question whether the child who had been born before the end of the period of accumulation, but after the eldest of R.'s children had attained twenty-one, was entitled to share in the accumulations, he came to the conclusion that all children born before the end of the period of accumulation were entitled to share. On this point he said: "So far as I can

judge from the expressions used by the judges in other cases, they seem to be of opinion that the period which closes the class, is the period when the first member of the class becomes entitled to the actual possession or enjoyment of his share."

ADMINISTRATION—TRUST FOR PAYMENT OF DEBTS—EXONERATION OF GENERAL PERSONAL ESTATE.

We have next to consider *Trott* v. *Buchanan* (28 Ch. D. 446). In this case a deed was made by a testator in his lifetime whereby he conveyed real and personal estate to trustees, in trust for himself for life, and after his death for payment of his debts and funeral expenses, and after such payment upon trust, for his sons and their children; and the question was, whether this deed had the effect of exonerating the testator's general personal estate from its primary liability for the payment of his debts, and it was held that it had not, but that the personal estate comprised in the deed was the primary fund for the payment of the testator's debts. Pearson, J., says: "I am not aware of any authority which makes general personal estate the primary fund for the payment of debts as against personal estate specifically appropriated to that purpose. I confess I should have thought, but for the technical rule of law as to real estate, that when a testator had created a trust for the payment of his debts, he must be taken to mean that the trust property, whatever it is, is to be applied in the first instance in the payment of the debts, so as to exonerate his other property. As regards real estate, however, that cannot be so by reason of the rule of law which says that the personal estate is to bear the debts, unless the testator has, in so many words, or by some expression of intention of the strongest kind, said that it is to be otherwise. I do not, however, understand that that rule applies to personal estate."

WILL—GIFT TO CHARITY—"CHARITABLE AND DESERVING OBJECTS."

The only remaining case in the Chancery Division for April necessary to be referred to here is *In re Sutton, Stone* v. *Attorney-General* (28 Ch. D. 464), a case of construction of a will whereby the testatrix devised "that the whole of the money over which I have a disposing power be given in charitable and deserving objects, the amount being £600 sterling." On behalf of the next of kin it was argued that the objects might be either deserving or charitable, and that this was too indefinite to constitute a good charitable gift. It was admitted that if the words were "be given in charitable objects," the bequest would be good; but Pearson, J., was of opinion that the words "charitable and deserving objects" meant only one class of objects, and that the word "charitable" governed the whole sentence. As he put it, it was a case of English and not of law, and as he considered the proper meaning of the words used was that the objects were to be at once charitable and deserving he held the bequest to be valid.

It was also held that the word "money" did not include money invested in consols.

REPORTS.

ENGLAND.

RECENT ENGLISH PRACTICE CASES.

TOMLINSON v. THE LAND AND FINANCE CORPORATION (LIMITED).

Interpleader issue—Security for costs.

In an interpleader issue directed upon the application of a sheriff, between an execution creditor upon whose execution the goods in question have been seized, and an adverse claimant, both parties to the issue are in the position of plaintiffs, and a defendant in the issue may be ordered to give security for costs in any case in which a plaintiff may be so ordered, and the rule that a defendant cannot be compelled to give security does not apply.

[14 Q. B. D. 539—C. A.

An interpleader issue had been directed on the application of the sheriff, between the claimant of goods seized under execution, as plaintiff, and the execution creditors as defendants. The execution creditors were an insolvent company, which was being compulsorily wound up. The plaintiff in the issue applied for security for costs. The Divisional Court of the Q. B. D. had ordered security to be given, and the Court of Appeal affirmed the order.

BOWEN, L. J.—"In the present case the issue has been directed on the application of the sheriff; and it seems to me that the substance and not the form of the proceeding must be looked at; in that point of view the defendant company is really a plaintiff, and being insolvent is liable to give security for costs."

EDEN v. WEARDALE IRON AND COAL CO.

Third party—Counter claim by third party against plaintiff.

Rules S. C. of 1883—*Ord.* 16, *rr.* 48, 52, 53—*Ord.* 19, *r.* 3 (*Ont. R.* 107, 110, 111, 127).

The Court has no power to give a third party who has been served with notice by a defendant under Ord. 16, r. 48, leave to file a counter-claim against the original plaintiff.

[28 Ch. D. 333—C.A.

FRY, L. J.—"The primary object of the introduction of a third party is to prevent the necessity of two actions. In the first place, it is for the determination of all questions between the plaintiff and the defendant who brings in the third party; and in the second place, for the determination of questions between the defendant and the third party, against whom the defendant claims contribution or indemnity. I think it is confined to these two classes of questions. If the procedure is extended to questions between the plaintiff and the third party, it will cause great inconvenience to litigants."

DRAGE v. HARTOPP.

Parties—Rules S. C. 1883, *Ord.* 16, *r.* 11 (*Ont. R.* 103).

[28 Ch. D. 414.

One of two executors having absconded, the other executor sued a mortgagor without adding the absconding executor.

The Court refused, on the application of the defendant, to add the absconding executor as defendant.

PEARSON, J.—"A question may arise whether he (the absconding defendant) is interested in the subject matter, and if any question of that sort does arise, the Court will be able to deal with it and protect the defendant. I have no power to add him as a plaintiff. If he is added as defendant he would be out of the jurisdiction, and I have no evidence of where he is, and there is no evidence that it would be possible for the Court to make an order for substituted service."

I refuse to make the order.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

ROMNEY v. MERSEA.

Municipal drainage—Assessments for.

A petition of ten proprietors for a by-law to construct a drain which benefited a great number of lots, and for which about 150 proprietors were assessed in two townships,

Held, not sufficient to support the by-law, which was therefore quashed.

Atkinson, for appeal.

Robinson, Q.C., contra.

YORK v. GRAVEL ROADS.

Injunction—Steam motor.

The Court being equally divided, the appeal was dismissed.

Per BURTON and ROSE.—The state having interfered by 44 Vict. cap. 57 (O.), there should be a reference under that Act to ascertain the compensation.

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

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

HOGG v. MAGUIRE.

Will—Obtained by undue influence.

E. B. made a will, whereby he gave the bulk of his property to the plaintiff, his sister. The defendant, another sister, claimed under a second will made an hour or two before the testator's death. The evidence showed that testator was a very determined man, and not easily influenced; that he was suffering from excessive drinking; that he latterly spoke in offensive terms of defendant, and had frequently, and as late as a few days before his death stated that if he died everything was arranged, and that the plaintiff would get his property. Shortly before his death the defendant had him brought to her house. On the night of his death the physician in attendance told defendant that if anything was to be settled it should be done at once. A solicitor was sent for to draw a will. The defendant instructed him before he saw the testator. When the will was drawn, which gave the bulk of his property to the defendant, but contained a legacy of $1,000 to plaintiff, the solicitor read it over to the testator and asked him if he approved of it. He made a sign of dissent. The defendant tried to persuade the testator to give plaintiff $1,000, but (as defendant said) he said $10 was enough. In its altered form the will was signed. The evidence of various witnesses for the defence was conflicting as to the incidents which happened during this time and until the testator's decease; but while they all spoke of the testator's unwillingness to give the plaintiff more than $10, there was no evidence other than that of the defendant of his desire to give the defendant the bulk of his property, or of any disposition of his property.

Held, reversing the judgment of Court below, that the second will could not be established on the uncorroborated evidence of the defendant, and the first will was declared to be the testator's last will.

Robinson, Q.C., for appeal.

S. H. Blake, Q.C., *Lash*, Q.C., and *Francis*, contra.

MCKENZIE v. DWIGHT.

Deceit—N.-W. Mounted Police warrant—Assignment of—Representation as to right of holder.

The Court being equally divided, the appeal was dismissed, and the judgment of the Court below, 2 O. R. 366, affirmed with costs.

McCarthy, Q.C., for the appellant.

McMichael, Q.C., and *Pearson*, for the respondent.

ELLIOTT v. BROWN.

Conveyance by married woman—Want of certificate of execution—Possession contrary to deed—R. S. O. ch. 128, secs. 13, 14.

A married woman in 1834, by deed joining with her husband, purported to convey the east half of a lot to T. in fee simple, but the deed was void for want of a magistrate's certificate. T. never took possession, but in 1852

conveyed to H., through whom the plaintiff claimed. Shortly after the conveyance to T., he told A. that he would not live on the land or have anything to do with it. A. then procured some one to look after it for her; and about sixteen years before this action two sons of A. went into possession of the west half of the lot on the understanding that they were to have the whole land, each paying her $50 on account, but no deed was executed till 1875. They paid taxes on the whole lot, and cut timber at times on the east half. In 1871 E. having obtained a conveyance of the east half, had a line run between the east and west halves, and cut timber on the east half. An action of trespass was brought against him by A.'s sons, which he settled. The east half was neither cleared, fenced nor cultivated.

Held, reversing the judgment of the Court below, 2 O. R. 352, OSLER, J.A., dissenting, that the acts of A.'s sons upon the east half were such actual possession and enjoyment thereof within the meaning of the proviso at the end of sec. 13 of R. S. O., ch. 128, as to prevent that act from having the effect of making the defective deed valid.

Per OSLER, J.A.—The actual possession and enjoyment of the statute is such a possession as would suffice to bar the owner under the Statute of Limitations.

Dickson, Q.C., and *G. H. Watson*, for the appellant.

G. T. Blackstock, for respondent.

CHANCERY DIVISION.

Full Court.] [Feb. 27.

REAL ESTATE LOAN CO. v. YORKVILLE AND VAUGHAN ROAD CO. ET AL.

Conveyance in fraud of creditor—"Creditors"—Locus standi—13 Eliz. c. 5.

The plaintiffs sought to set aside a certain conveyance dated Feb. 27th, 1880, and made by the M. Society to the Y. Company, as executed in fraud of themselves as creditors.

It appeared that the plaintiffs had not recovered judgment for the debt, in respect of which they claimed to be creditors, until July 23rd, 1883, but that this was a judgment in an action brought for damages for certain misrepresentations made to them by the M. Society in September, 1879, which misrepresentations had induced the plaintiffs on that day to enter into a contract with the M. Society to purchase certain mortgages from them, and transfer certain shares of their capital stock to the M. Society, which stock they did not, however, actually transfer until after Feb. 27th, 1880.

Held, *per* BOYD, C., that the plaintiffs did not really become creditors of the M. Society until they recovered judgment, and it was illusory to endeavour to trace back the origin of this claim to the alleged misrepresentations, which were not acted upon until after the impeached conveyance, and whatever cause of action the plaintiffs then had they did not prosecute it, or become creditors in respect of it. The legal and only position of the plaintiffs was that of subsequent creditors, and it was not pretended that the conveyance was given with a view to defeat subsequent creditors, and failing that the plaintiffs had no *locus standi* to recover under 13 Eliz. c. 13, even if the impeached conveyance was held to be of a voluntary character as to which *quære*.

Held, *per* PROUDFOOT, J., that though an action for damages could not be brought until the damage accrued, yet the agreement of Sept., 1879, being based on misrepresentations of the M. Society, the plaintiffs' right dated from the agreement. It was not necessary for the plaintiffs to be creditors, it was sufficient for them to have a right of action, and the impeached conveyance being voluntary they were entitled to succeed.

The Court being divided, judgment of judge of first instance affirmed.

Lash, Q.C., and *A. Galt*, for appellants.

McMichael, Q.C., for respondents.

Divisional Court.] [March 21

RE FOX, AND THE SOUTH HALF OF LOT NO. 1 IN THE 10TH CON. OF DOWNIE.

Quieting title—Devise—Condition—Power of sale.

The petitioner, in a quieting title application, claimed title as devisee under a will which contained the following provisions:—"Secondly, I devise to my son, J. F., the south half of Lot No. 1 in the 10th concession

of the township of D., in the County of P., containing fifty acres more or less, but he is to be known as a sober, steady and industrious man. Thirdly, If, at any time during the period of five years after my death, it appears to my executors hereinafter named, that my said son, J., does not remain sober, I give them power to sell and dispose of the said property for such charitable purposes as to them shall seem meet."

Held, That the power of sale in the will was good, and that the certificate of title could only issue subject to such power of sale.

Clement, for the petitioner.

Divisional Court.] [March 21.

CANADIAN LAND, ETC., CO. v. TOWNSHIP OF DYSART.

Assessment—Jurisdiction of Court of Chancery to entertain action without appeal from Court of Revision.

On an appeal from the judgment of FERGUSON, J., in this action (reported *ante* p. 76) to the Divisional Court, the Court was divided and the judgment appealed from was therefore sustained.

Per BOYD, C.—The claim of the plaintiffs to the interference of this Court is not one of absolute right, but one resting on judicial discretion, and that discretion was rightly exercised in dismissing the action. The stipendiary magistrate has power to deal with the matters in question in the most ample manner. The statute intends that the value of lands shall be fixed by the municipal authorities, and not until all statutory means have been exhausted should recourse be had to this Court for relief. No authority has been cited for making this Court subsidiary to the appellate tribunal created by Parliament, and making it undertake the duty of disposing of appeals which could be effectually done by the stipendiary magistrate. As to costs the defendants are to blame for not having placed a demurrer on the record, and so had the preliminary question of law decided before the trial, and they should not be allowed to withhold a demurrer and reap large costs which might not have been incurred if they had by their pleadings notified the plaintiffs that they would object to the plaintiffs' right to litigate. The costs of the motion for injunction should be given to the defendants, and further costs should be given thereafter as if the defendants had successfully demurred; and the costs of this appeal are to be given to the defendants.

Per PROUDFOOT, J.—The special act for the territorial division of Haliburton, R. S. O. c. 6, sec. 23, gives an appeal to the stipendiary magistrate against any *decision* of the Court of Revision. The action of the Court was a mere travesty of a judicial proceeding. The function of the Court was judicial, to hear and determine. The action of the Court in deciding in opposition to the only evidence given before them appears to establish that the whole was a fraudulent arrangement by the members of the Court of Revision. To give the stipendiary magistrate jurisdiction the Court of Revision must have given a *decision*. The admission that the action of the Court was fraudulent, in effect determines that there was no *decision*. A judgment is vitiated and void from the corrupt and fraudulent acts of the litigants, and a litigant has much more reason to complain of an unjust judge than he has of an unjust antagonist. It was not intended by the legislature that it should be the duty of the stipendiary magistrate to enquire into fraudulent proceedings of the Court of Revision, but to consider whether an honest decision was to be revised. In the case of an alleged fraudulent judgment the jurisdiction of the Superior Court is not taken away. The stipendiary magistrate's jurisdiction is confined to an appeal from a *decision*.

If this Court has jurisdiction, as it certainly has where the acts complained of are vitiated by fraud, we cannot refuse to entertain the suit because the plaintiffs may have another and perhaps a more convenient remedy.

I agree with the Chancellor as regards the costs.

S. H. Blake, Q.C., and *Cassels*, Q.C., for the plaintiffs.

McCarthy, Q.C., and *Hudspeth*, Q.C., for the defendants.

PRACTICE.

Mr. Dalton, Q.C.] [March 30.
Rose, J.] [April 13.

COOK ET AL. v. LEMIEUX.

Action for recovery of land—Judgment—Rule 322 O. J. A.

In an action for the recovery of land the plaintiffs moved, under Rule 322 O. J. A., for final judgment upon the pleadings, the depositions of the defendant, taken in his examination for discovery and upon an affidavit, verifying a lease of the land in question to the father and brother of the defendant.

The defendant in his examination admitted that his father told him there was a lease from the plaintiffs, but he did not admit any of the terms of it.

The lease put in and verified by affidavit was one from year to year, terminable at the end of any year on six months' notice, the lessees to pay all taxes and keep the fences in repair. It was not alleged that any notice to quit had been given, or that anything undertaken by the lessees had not been performed.

The defendant on his examination further admitted that he was in possession simply as his father's agent; that the title set up by his father was by possession, and that the only ground on which he expected to continue to hold was length of possession.

The plaintiffs sought to shew that the interest of the lessees under the lease was at an end, by proving from the defendant's examination that his father had disclaimed the title under the plaintiffs, and by the defendant's statement of defence in which he denied the plaintiffs' title.

Held, that much care must be taken in such cases not to take away the right of trial on *viva voce* evidence; that the plaintiffs' case was not conclusively made out, and the motion therefore failed.

Quære, whether the lease in question was a document that, under Rule 322 O. J. A., could be proved on this motion by an adverse affidavit without cross-examination?

A. H. Marsh, for the motion.
Watson, contra.

Rose, J.] [April 13.

NORTH v. FISHER.

Security for costs—Amount—Rule 431 O. J. A.

The defendant having obtained on *praecipe* an order for security for costs, a local judge allowed the plaintiff to pay into Court $200 in satisfaction of it. This amount was afterwards increased to $250, but the local judge refused to make an order for further security.

An appeal from the order of the local judge refusing to direct further security was dismissed, as the $250 appeared to be sufficient.

But *quære* whether there is any power to make an order enabling a plaintiff to pay into Court a less sum than $400 where the plaintiff has taken out a *praecipe* order under Rule 431 O. J. A?

F. Fitzgerald, for the appeal.
Holman, contra.

Rose, J.] [April 14.

THE UNION LOAN AND SAVINGS CO. v. BOOMER.

Reference under sec. 47 O. J. A—Jurisdiction of Master in Chambers—Rule 323 O. J. A.

The Master in Chambers made an order under sec. 47 O. J. A., referring to an official referee to enquire and report the amount in which the defendant was indebted to the plaintiffs under the mortgage in question.

On appeal the order of the Master was set aside on the ground that he had no jurisdiction, following *White* v. *Beemer*, 21 C. L. J 122, but an order was made under Rule 323 O. J. A. for a reference as upon a substantive motion. No costs of either motion were given to either party.

Clement, for the appeal.
Shepley, contra.

Mr. Dalton, Q.C.] [April 18.

ROSENHEIM v. SILLIMAN.

Examination of witnesses before trial—Rule 285 O. J. A.

A order was made under Rule 285 O. J. A. on the application of the plaintiff for the examination before the trial of the manager of the defendant's branch business at Toronto,

and the clerk in the Toronto office, who accepted, in the defendant's name, the bill of exchange sued on, where the defendant himself lived out of the jurisdiction.

Holman, for the plaintiff.

Ogden, for the defendant.

Mr. Dalton, Q.C.] [April 18.

GRANT v. MIDDLETON.

Notice of trial—Irregularity.

A notice of trial in an action brought in the Queen's Bench or Common Pleas Division given for a special sittings for the trial of actions in the Chancery Division is irregular and will be set aside.

Holman, for the defendant.

A. H. Meyers, for the plaintiff.

Boyd, C.] [April 20.

MASSE v. MASSE.

Transferring action to another division—Jury notice—Rule 545 O. J. A.

In an action for the recovery of land, the writ of summons issued compulsorily in the Chancery Division pursuant to Rule 545 O. J. A., and a jury notice was served by the defendant. A motion was made by the plaintiff to strike out the jury notice, and a cross-motion by the defendant to transfer the action to another division.

Held, that the object of Rule 545 being to equalize the business in all divisions of the High Court, an action will not now be transferred from one division to another except on very strong grounds. It was impossible to say on the facts disclosed that this action would be better tried by a jury than by a judge alone, and the jury notice should therefore be struck out and the action retained in the Chancery Division. The decision in *Bank of B. N. A. v. Eddy*, 9 P. R. 468, is much affected by Rule 545.

J. C. Hamilton, for the plaintiff.

W. H. P. Clement, for the defendant.

Mr. Dalton, Q.C.] [April 21.

MACDONALD v. PIPER.

Costs—Action by solicitor against client—Reference to taxation—Rule 443 O. J. A.

In an action by a solicitor against his client to recover the amount of a bill of costs rendered, the defendant disputed the retainer, and the plaintiff moved for an order referring all the questions in the action and the taxation of the bill to one of the taxing officers.

Held, that by Rule 443 O. J. A. and Form 136, the former practice has been changed, and an order referring a bill of costs to a taxing officer should not direct the officer to do more than ascertain the proper amount of it.

Held, also, that an action having been brought on the bill in question it would not be proper to refer the question of liability which arises in the action to the decision of a taxing officer.

George Bell, for the motion.

Moffatt, contra.

Proudfoot, J.] [April 22.

MORTON v. HAMILTON PROVIDENT LOAN SOCIETY.

Costs—Scale of—Claim to equitable relief—Rule 515 O. J. A.

The plaintiff mortgaged certain lands to the defendants, and the mortgage becoming in default the defendants sold the lands under their power of sale, and afterwards rendered a statement claiming $182.61, as due to them under their mortgage in addition to the amount derived from the sale, and such amounts as had been paid by the plaintiff before the mortgage became in default.

The plaintiff brought this action claiming that the defendants had received much more than they were entitled to, and asked to have account taken of the sums due on the mortgage and of the sums received by the defendants, and that the defendants might be declared trustees of the plaintiff in regard to that money, and might be ordered to account for it.

The action was referred to a Master, who reported that he had taken the accounts, and that he found a balance due to the plaintiff of $123.27.

The judgment on further directions ordered the defendants to pay to the plaintiff the amount found due with costs.

The taxing officer taxed the costs on the higher scale.

Held, that the defendants' liability was not a legal one as for a money demand; but the claim was for equitable relief, and the action could not have been brought in the County Court, nor was it a case under Rule 515 O. J. A., for costs on the lower scale, for the amount involved was $305.88 ($182.61 plus $123.27), a sum beyond the former equitable jurisdiction of the County Court, and therefore the taxing officer was right in taxing the costs on the higher scale.

Muir, for the defendants.

Watson, for the plaintiff.

Boyd, C.] [April 22.

WALKER v. WALKER.

Interim alimony—De facto marriage denied.

Upon an application for *interim* alimony the plaintiff swore that she was married to the defendant, and gave the time, place and circumstances of the alleged marriage. The defendant denied and brought confirmatory evidence to support his denial that the marriage was celebrated at the time and in the manner and place alleged by the plaintiff; but he did not deny the existence of facts deposed to by the plaintiff, from which a marriage *de facto* might be inferred from conduct and reputation. Under these circumstances the order of a local Master, awarding the plaintiff *interim* alimony, was affirmed.

Held, that the principle which underlies all the decisions is that the allotment of alimony *pendente lite* depends upon the marital relationship of the parties existing *de facto*. The Court exercises a discretion in granting or withholding alimony *pendente lite* which is regulated by the circumstances of each case, and the defendant by his own act and conduct having clothed the plaintiff with the reputation of being his wife, the decision of the Master should not be interfered with.

Lash, Q.C. for the appeal.

Hoyles, contra.

BOOK REVIEWS.

THE ELECTOR'S POLITICAL CATECHISM. Compiled by Richard John Wicksteed (of the Law Department, House of Commons, Ottawa). Ottawa: *Citizen* Printing and Publishing Company, 1885.

This brochure of Mr. R. J. Wicksteed was issued some little time ago, and we crave his pardon for not noticing it before. It is intended to try to give electors a view of their position, duties and responsibilities as citizens of Canada. It is, speaking generally, an effort towards giving men thoughts beyond party, shaking off the abominable tyranny of partyism, and freeing them not only from those galling chains, but from the equally adamantine bonds of self-interest; an effort to clear away the mist obscuring the sight of this true heritage of freedom, whereby they can become free and strong to do the right without fear from without or reproaches from within. His aim is high and we shall not (for fear a doubt might help to mar the good work) question his statement, "that it ought not to be very difficult to elevate our elector and legislator to the *judge* standard, and to bring about a recognition of the principle that a vote at the polls or in Parliament influenced by undue considerations is as much an act of immorality as a corrupt decision by a judge."

The writer claims that what he deprecates must have its cause in the ignorance of the electors as to the constitution, and of their duties and responsibilities as citizens. His thoughts are large and high (not claiming them to be original, for he gives a list of his authorities in an appendix), though, in the form in which expressed, quaintly reminding us of childhood's days when we were taught with weary labour the old Church Catechism. Let us give some extracts:—

QUESTION. What is your name and state of life?

ANSWER. I am A B., an elector of the Dominion of Canada, a colony of the United Kingdom of Great Britain and Ireland, and a subject of Her Britannic Majesty.

Q. What privileges do you enjoy by being an elector of Canada?

A. By being an elector of Canada, I am a greater man in my civil capacity than the greatest subject of an arbitrary prince; because I am governed by laws to which I give my consent—and my life, liberty or goods cannot be taken from me but according to these laws. I am a freeman.

Q. Who gave you this liberty?

A. No man gave it to me. Liberty is the natural right of every human creature; he is born to the exercise of it as soon as he has attained to that of his reason. But that my liberty is preserved to me, when lost to a great part of mankind, is owing, under God, to the wisdom and valour of my ancestors.

Q. Wherein does this liberty, which you enjoy, consist?

A. In laws made by the consent of the people, and the due execution of those laws. I am free not from the law but by the law.

Q. Rehearse the articles of your political creed, as a citizen of Canada?

A. I believe that the supreme or legislative power of this Dominion, in the subject matters over which it has jurisdiction, resides in the Queen, the Senate and the Commons; that Her Majesty Queen Victoria, is Sovereign or Supreme Executor of the law, to whom, upon that account, all loyalty is due; that each of the three branches of the Legislature is endowed with its particular rights and offices; that the Queen, by her royal prerogative, has the power of determining the time and place of meeting of Parliaments; that the consent of the Queen—that is, of the Governor-General, acting on behalf and in the name of Her Majesty—the Senate and the Commons is necessary to the enactment of a law, and that all the three make but one lawgiver; that as to the freedom of consent in the making of laws, these three powers are independent; and that each and all the three are bound to observe the laws that are made.

Q. What are the duties of your station?

A. To endeavour, so far as I am able, to preserve the public tranquillity, and, as I am an elector, to give my vote for the candidate whom I judge most worthy to serve his country, for, if from any partial motive I should give my vote for one unworthy, I should think myself justly chargeable with his guilt.

Q. You have perhaps but one vote in two thousand, and the member perhaps one of two hundred more—then your share of the guilt is but small?

A. As he who assists at a murder is guilty of murder, so he who acts the lowest part in the enslaving of his country is guilty of a much greater crime than murder.

Q. Is enslaving one's country a greater crime than murder?

A. Yes; inasmuch as the murder of human nature is a greater crime than the murder of a human creature, or as he who debases and renders miserable the mass of mankind is more wicked than he who cuts off an individual.

Q. Is it not lawful, then, to take a bribe from a person otherwise worthy to serve his country?

A. No more than for a judge to take a bribe for a righteous sentence; nor is it any more lawful to corrupt than to commit evil that good may come of it. Corruption converts a good action into wickedness. Bribery of all sorts is contrary to the law of God; it is a heinous sin, often punished with the severest judgments; and is, besides, the greatest folly and madness.

Q. How is it contrary to the law of God?

A. The law of God says expressly, "Thou shalt not wrest judgment; thou shalt not take a gift." As to the wicked it says, "His right hand is full of bribes;" the righteous "shaketh his hands from holding a bribe;" "that God shall destroy the tabernacle of bribery," etc.

Q. What do you think of those who are bribed by gluttony or drunkenness?

A. That they are viler than Esau, who sold his birth-right for a mess of pottage.

Q. Why is my taking a bribe at an election folly or madness?

A. Because I must refund tenfold in taxes what I take as a bribe, and the member who bought me has a fair pretext to sell me; nor can I in such a case have any just cause for complaint.

Q. Who is most likely to take a bribe?

A. He who offers one.

Q. Who is likely to be frugal of the people's money?

A. He who puts none of it in his own pocket.

While some might cavil at some of the propositions laid down in Mr. Wicksteed's Catechism, it would be well that it should be widely read as well by the juveniles who are to be the men of the future as the children of larger growth, who are ignorant of what law and freedom really mean.

CORRESPONDENCE.

RECENT LEGISLATION.

To the Editor of the LAW JOURNAL,

SIR,—I have just been looking over the April 15th number of the C. L. J., and notice the comments on the O. J. Act, 1885, in which reference is made to a case or two aimed at by the Act. My vanity prompts me to tell you that two other cases are distinctly aimed at in two other Acts of the same session. Cap. 26 sec. 2 is intended to set at rest a much vexed question under our R. S. O. cap. 118, namely, whether an assignment which has the effect of hindering or delaying, etc., a creditor, must be taken to have been executed with that intent. This point was decided in the affirmative by the C. P. and Court of Appeal in the case of *McLean* v. *Garland*, which was recently argued before the Supreme Court. Then cap. 27 aims at another decision of *Re Lyons*.

I remain, Sir,

Your obedient servant,

A BARRISTER.

ENFORCING JUDGMENTS OF FOREIGN BRITISH COURTS.

SIR,—The suggestion that some method of procedure should be devised whereby the judgments of the Queen's Courts in one part of her empire may be enforced in the Courts of any other part is a very reasonable one, and well worthy of consideration.

With a view to carrying out such a scheme of judicial reciprocity, I would suggest that it

might be provided that upon the filing of a duly authenticated copy of the judgment of any Court of Her Majesty's Dominions in any other Court in any other part of her dominions, having jurisdiction to entertain an action upon such judgment, the judgment shall become a judgment of the latter Court, and enforceable by process to be issued therefrom, as if originally recovered therein.

H.

OSGOODE LITERARY AND LEGAL SOCIETY.

THE annual dinner of this Society was held on the 22nd ult., in the new hall of Osgoode, which, by special leave of the Benchers, was given to the Society for the purpose.

The chair was taken by the President of the Society, Mr. G. T. Blackstock. Amongst the guests were the Lieutenant-Governor, Archbishop Lynch, the Bishop of Toronto, Chief Justice Hagarty, the Chancellor, Hon. Mr. Justice Burton, Hon. Mr. Justice Patterson. the Attorney-General, Sheriff Jarvis, Judge McDougall, Christopher Robinson, Q.C., S. H. Blake, Q.C., James Maclennan, Q.C., etc.

The arrangements were all that could have been desired, reflecting great credit on the committee, which consisted of Messrs. J. A. Mackintosh, A. Green, A. B. Cox, D. J. Symons, J. A. Carson, A. H. Lefroy and W. E. Raney.

The usual toasts were duly proposed, and received with wonted enthusiasm.

The Lieutenant-Governor, in the course of his reply to the toast of the Governor-General and the Lieutenant-Governor, related an incident apropos of the recent call to arms. His father, the then Chief Justice of Upper Canada, as, of course, all know, shouldered his musket as a private at the time of the Rebellion in 1837. Amongst the volunteers of that day was the present Premier of Canada. He had a case ripe for hearing before the Chief, and meeting the opposing counsel in the street was told that the latter had just argued his side of the case before the Chief Justice. Mr. Macdonald expressed doubt and surprise, as only a few days before he had met the Chief with his musket in his hand. When convinced that it was as stated he rushed off to Osgoode Hall and into Court, and argued his case before his fellow-soldier, none the less well because he had his uniform on and his musket beside him.' The Lieutenant-Governor, in the course of his remarks, emphasized a suggestion that it would be well to have portraits of the various Chief Justices of Upper Canada obtained and hung on the walls of the hall, and so complete the gallery begun by the portrait of Chief Justice Osgoode.

The Attorney-General replied to the toast "Canada," which was well given by Mr. Raney, the Vice-President of the Society. Mr. Mowat referred to various thoughts which have been expressed as to the future of the Dominion, which elicited a response from the meeting that those present were not favourable either to annexation or to independence, and he himself rejoiced in the fact that devotion to the interest of Canada was consistent with continued connection with the mother country.

The toast of "The Army and Navy, and Men at the Front" was eloquently proposed by Mr. A. H. Lefroy, and responded to by Mr. W. B. McMurrich, and was, of course, received with hearty cheers.

Mr. Christopher Robinson, who proposed "The Bench," was, on rising, received with an ovation which showed very clearly the feeling of respect, admiration and regard which his brethren have for so worthy a successor of his illustrious father. After suggesting that it was appropriate that one who had "talked the judges to death for nearly thirty years should now propose their health"; he referred in a most happy way to the traditions of the Bench and Bar of Ontario, which, for now nearly a century of our judicial history, was unbroken in their harmony and kindly feeling. His word of counsel to the youngsters was that by no act of theirs should this tradition ever be broken.

The Chief Justice responded in one of his witty and humorous speeches. He playfully alluded to the time when he had for the long and prosperous period of ten days held the reins of government in Ontario, during which time amongst the exports he noticed that there were some nineteen attorneys sent to Winnipeg, as was shewn in a return contained in one of the schedules of the Nuisances Removal Act, (this, he remarked, was a very good joke for the Court of Appeal, where anything in the nature of a witticism was always promptly frowned down). Although ably supported by the Attorney-General he at length succumbed to the arduous duties of the office; the last straw was his being compelled to join in the responsible task of appointing of Division Court Bailiffs. However, he appointed men who, as he was informed by his constitutional advisers, were "of good character, and their politics unexceptionable." The Chief Justice, in speaking of the good feeling which has always characterized the relations between the Bench and Bar of Ontario, said it was due to a great extent to the example of such men as the Mansfield of Canada, Sir John Beverley Robinson,

and the other distinguished men whose names were so well known to all present. He paid a compliment to the Bar in their presentation of their cases, but divided those who sometimes caused weariness to the Bench into two classes, first, those who laboriously sought to prove that two and two make four, and those who endeavoured to show that the same numbers make five.

The Chancellor also replied in a speech replete with anecdote and illustration, containing some admirable thoughts for those beginning professional life; that their profession was not one of merchandise, but (subject to their duty to the Court) one of unselfish devotion by the lawyer to the interests of his client. To the student he said that difficulties should be faced and overcome and not slurred over. When alluding to Oliver Cromwell's saying that the law was a "tortuous and ungodly jumble" some one at the table caused a laugh by the loud aside of "good old Oliver," whereupon the Chancellor, with ready wit, retorted "but our Oliver has got rid of the jumble."

"The Bar" was neatly proposed by Mr. Bowes, and answered by Mr. S. H. Blake, Q.C. who, after referring to the legislation of the last few years, spoke of an independent Bar as one of the safeguards of the people. As to the code of ethics their education make it a necessity that they should as a class stand on a higher level than any other class of men engaged in the vocations of a business life.

Mr. A. B. Cox made a very good speech on behalf of the Junior Bar, indulging in a little pleasant banter in reference to legislation affecting the profession, likening the action of the Attorney-General, who when asked to repress unlicensed conveyancers replied by passing the Torrens Act, to the action of the Fiji king who, when a troublesome petition was presented to him, got rid of the difficulty by chopping off the heads of the petitioners.

Mr. Greer, in a well put together and well-delivered speech, proposed the health of the President.

Mr. Blackstock as usual spoke well both as to matter and manner. He claimed an increased measure of support for the Osgoode Literary and Legal Society, which was doing a quiet but very useful work among the young men in the profession, that it had not received proper encouragement from the older members of the profession, but hoped that this most successful gathering was an augury of better things. He spoke of the frequent neglect by masters of the wants of their students both in a social and educational aspect, a wrong which it was only right should be remedied without delay. He alluded to the cry of the hour for decentralization, and strongly deprecated any further move in that direction. He instanced the state of things in the Province of Quebec and some of the United States as to the effect of splitting up the judiciary, and warned those who were agitating to this end that they were doing a serious injury to the Bench, the Bar and the State.

After a few more toasts this most successful and pleasant entertainment was brought to a close.

LAW STUDENTS' DEPARTMENT.

EXAMINATION QUESTIONS.

FIRST INTERMEDIATE.—HONORS.

ANSON ON CONTRACTS.

1. Indicate some of the consequences of the *peculiar* favour with which the idea of consideration as a necessary element of contract has been treated in *Equity*.

2. State and exemplify the position of parties who have entered into a contract specified in the fourth section of the Statute of Frauds, but have not complied with its provisions.

3. "The very nature of a corporation imposes some necessary restrictions upon its contractual power, and the terms of its incorporation may impose others." Illustrate what is meant in this quotation by examples.

4. Point out any difference in the rules of Equity respecting the right to rescind contracts entered into under (*a*) Undue Influence; and the rules which apply to Fraud.

5. "A contract may be discharged by express agreement that it shall no longer find either party." Explain this quotation as fully as you can.

6. What are the consequent rights to one party to a contract when the other in the course of the performance of the contract deliberately refuses performance of his part?

7. What is the effect of alteration by addition or erasure of a written contract? Answer fully.

REAL PROPERTY.—HONORS.

1. Explain why it is that there are no manors in Ontario.

2. What estate does a man take under a grant to him and his heirs male? Why?

3. What is meant by a resulting use?

4. It is said that powers cannot be engrafted upon a bargain and sale. Explain this.

5. What is the difference between a surrender and a release.

6. How does a court of equity regard a mortgage debt, and why?

7. What was, and what is now, the effect of the words *exchange* and *grant* respectively in a deed?

BROOM'S COMMON LAW AND O'SULLIVAN'S GOVERNMENT IN CANADA.—HONORS.

1. Give two examples to illustrate: (*a*) the class of cases in which privity is necessary to support an action ex delicto: (*b*) the class of cases in which privity is not necessary to support such an action.

2. Explain the difference between the rights which a proprietor of land has in reference to *natural* and *artificial* watercourses flowing through his land.

3. Give an example in which damages sustained by one man, through the tort of another, cannot be recovered, because they are *too remote*.

5. Explain and illustrate by examples, the meaning of *contributory negligence*.

5. Explain and illustrate by examples, the difference between *larceny* and *embezzlement*.

6. What effect has the want of *jurisdiction* on the liability of a magistrate for the imprisonment of a person by his warrant or order?

7. Explain briefly and generally what persons are *British subjects* and what are *aliens*?

FLOTSAM AND JETSAM.

MANY a man who has gone into Court has arrived at the settled conviction that he was an ass. He is not therefore startled at hearing that the Supreme Court of Texas has decided that a jackass is a horse—at least so far as the exemption law is concerned.

THE *Central Law Journal*, with a fine sense of the fitness of things, has opened a new department under the head of "Jetsam and Flotsam." Why the words are tumbled heels over head in this fashion does not appear. Possibly, it might be thought that to reverse the order of the words would infringe our patent in the time-honoured title that appears above.

IT has recently been decided by the Supreme Court of the United States in *Chicago, Milwaukee and St. Paul Railway Co.* v. *Ross*, that the conductor of a railway freight train is not a fellow-servant with the engineer in charge of its engine, within the meaning of the rule which exempts a master from liability for the negligence of his servant, whereby another servant engaged in the same employment is injured—but such conductor is the vice-principal of the company.

A CORRESPONDENT of the *Central Law Journal* thus writes to the editor imploring him if he has any influence with the English Court of Appeal to induce them to appoint one judge to deliver the opinion of the Court. "It is," he very correctly remarks, "an intolerable nuisance, after one judge has exhausted the case, to have another take it up, and go over all the points the first has made, and add a word or two by way of illustration, and agree with the first. It gets worse and worse when a third and fourth go through this same *formula*. We have to pay for these tautological reports. Our periodicals follow suit in this stupidity. They usually publish the opinions of all the judges, which are generally as much alike as two peas. Life is too short to read all this matter." We have before now called attention to this evil in this Province. Our contemporary uses the occasion to make some jocular remarks. After doubting its ability to do any good in the premises, the editor proceeds thus:—"Those learned judges are very conservative. It took them some two years to find out the whence of a draught of air in the Law Courts building, which brought constant sneezes to the judicial nose. Searches were made again and again, like the annual searches under the Parliament House for Guy Fawkes' barrels of gunpowder; when, lo and behold, it was an open window in the very rear of the judicial seat! After mature deliberation, said window has been (officially) closed. Thus the learned judges of Her Majesty's Courts proceed with deliberation. They hear (and feel) before they decide."