

# Canada Law Journal.

VOL. XXII.

FEBRUARY 1, 1886.

No. 3.

## DIARY FOR FEBRUARY.

1. Mon....Hilary Sittings of Divl. Court of Q. B. and C. P. [Div. begin. Sir Edw. Coke born 1552.
5. Fri.....W. H. Draper, and C. J. of C. P., 1856.
7. Sun .....*6th Sunday after Epiphany.*
10. Wed....Canada ceded to G. B. 1763. Union of U. & L. C. 1841.
11. Thur...Last day for giving notice for next sitting of Div. Court, Ch. Div.
13. Sat.....Hil. Sittings of Divl. Cts. Q. I & C. P. Div. end, [unless extended by Ct.
14. Sun .....*6th Sunday after Epiphany.*

TORONTO, FEBRUARY 1, 1886.

THE rumoured appointment of Mr. Gorst to the Bench in England has not been made. Our readers will therefore please strike out his name in our sheet almanac, and insert that of Sir William Grantham. Also note that the sittings of the Supreme Court of Canada begin on February 16th, May 14th and October 26th, instead of January 18th and June 7th as there stated.

WITH reference to the question whether the late decision of the Privy Council with respect to Sir John A. Macdonald's Liquor License Act in any way affects the validity of the Scott Act, we have been favoured with a printed copy of the draft of a Bill, and of an opinion or argument prepared by a well-known draftsman for, and given to a member of the Dominion Parliament at the time the Scott Act was on the tapis. The preamble to the Bill and the opinion seem to indicate the motive of Parliament in dealing with the subject, and establish its authority to deal with it. The preamble and opinion are as follows:—

*Preamble.*—Whereas the statistics of crime in Canada show clearly that the greater number of criminals become such by the intemperate use of

intoxicating liquors, for which the too great facilities afforded by taverns or places, licensed or unlicensed, where such liquors can be readily obtained, offer temptations which many cannot resist, and which it is necessary for the repression of crime and immorality to remove; and inasmuch as it has been found that they cannot be removed by any system of licensing, and the system of partial prohibition by municipal action, tried in Ontario and Quebec, can be adopted only in those Provinces, and is there found inefficient from defects which the powers of the Provincial Legislatures do not enable them to remedy; and it is necessary to make provisions on the subject which shall be common to the whole Dominion.

*Opinion.*—The power of the Dominion Parliament to interfere and the necessity of its interference are briefly set forth in the preamble. Parliament alone has power to deal with trade and crime. Drunkenness is a crime by Act of the English Parliament, passed before Canada became a British Province, and is the parent of all the more violent offences. Where there is power to punish crime there must be power to prevent it. There is morally no crime in carrying arms, or in playing a game of cards in a railway car, and yet Parliament has passed laws to prohibit either, because either may lead to crime,—and in the case of contagious diseases of animals it has given the Governor in Council power to make provisions on subjects usually entrusted to the municipal authorities (32, 33 V., c. 37), and has expressly enacted (s. 21) that the order of the Governor, relative to an infected place shall supersede any order of a local authority inconsistent with it. It has prohibited the sale of intoxicating liquors where public works are being carried on; and has the same right to prohibit or regulate the sale elsewhere, for the same purpose,—the prevention of crime. Many more instances of such legislation by our Parliament might be adduced. Indeed, the avowed purpose of criminal law is to prevent crime rather than to punish it; it is punished to prevent its occurrence.

There were some provisions in this draft Bill which might, perhaps, have been adopted with advantage, but they do not affect the point in question.

It may, we think, fairly be said that sufficient attention has not been paid to

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the fact that the Scott Act is virtually "An Act for the Prevention of Crime," and that this quality distinguishes it from any of the other cases, turning on the right of the Dominion or Provincial Legislatures to deal with the questions of the sale of intoxicating liquors. The argument in the opinion is on the whole sound, though its statement that drunkenness "is the parent of *all* the more violent offences," is too wide, though it is directly or indirectly of a vast number of them.

## THE NEW RULES.

On the 4th January last a batch of new Rules was passed by the Supreme Court. For some reason or other, known only to the initiated, these new Rules are called "Orders." Probably this is due to a somewhat Chinese copying of the mode in which the English Rules of 1883 are framed. Not being among the initiated, however, we should have preferred the word "Rules," to have been continued, if only for the sake of uniformity.

The first of these new Orders or Rules, Nos. 550-581, relate to the Accountant's office, and, with some slight variations and additions, appear to be adapted in the main from the General Orders formerly in force in regard to the Accountant of the Court of Chancery. The Chancery Orders, however, which regulated the payment of money into and out of Court, for some reason not apparent to us, have not been adopted.

So far as they go, the new Rules are better adapted to the regulation of the Accountant's department than the provisions of sec. 121 of the C. L. P. Act, which, by Rule 476, was made applicable thereto. Rule 476 is not in terms rescinded; and the Accountant, therefore, is still by law required in the month of January in every year to prepare a statement of all moneys paid into and out of Court,

and a statement of the condition of the various accounts upon the 31st day of the preceding December, and transmit a copy thereof to the Provincial Secretary, and to each of the thirteen judges of the Court, verified by a declaration of its accuracy. As the number of accounts in Court probably exceed a thousand and extend through some two dozen large folio ledgers, this must prove a very simple and useful proceeding! It seems, however, a pity that while the judges were about it they did not get rid of what is a manifest absurdity, and abolish a regulation which, from the nature of the case, cannot possibly be carried out. Rule 567 provides for the appointment of one or more auditors of the books in the Accountant's office. We understand Messrs. J. H. Mason and W. Fitzgerald, the lately appointed Inspector of Insurance Companies, have been appointed auditors.

Passing to the other Rules, No. 582 provides that all judges' orders made in chambers at Toronto are in future to be signed by the Clerk in Chambers. This assimilates the practice in the different Divisions. Rule 583 provides for the entry, in the same manner as judgments, of all orders made in chambers for administration or partition, also for the entry in full of various other orders, and is an adaptation of Chancery Order 594.

Rule 584 once more restores to the Master in Chambers the power of ordering money to be paid out of Court, except upon applications under Chy. Ords. 639-640. The Rule is expressly declared, however, not to extend to any Local Master or local judge.

All applications for sale, mortgage, or lease, or other disposition of infants' estates are, under Rule 585, henceforth to be made to the Master in Chambers, and no reference is to be directed to any Local Master except by leave of a judge of the Chancery Division; and by the following

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Rule the Official Guardian is to have notice of all such applications. Rule 587 removes a discrepancy which existed between R. S. O. c. 40, s. 78, and Chy. Ord. 532, and provides that no infant under fourteen need hereafter be examined in support of a petition affecting his estate, unless required by a judge; the production of the infant to the officer, however, is still necessary. Rule 588 provides that the Official Guardian is to be appointed guardian *ad litem* to lunatics in all proceedings in which it is necessary to appoint a guardian *ad litem* for them.

For the further protection of infants, Rule 589 provides that when money is recovered in any action on behalf of an infant, other than for costs, it is to be paid into Court, and any executions issued to recover the same are to be endorsed by the officer issuing them with a memorandum to that effect.

By Rules 590-592 important changes are made in reference to the trial of actions. Under these Rules an action in any of the Divisions which is to be tried without a jury may be entered for trial without any order, either at the assizes or at the sittings of the Chancery Division; and any jury case in the Chancery Division is to be entered for trial at the assizes holden at the place named for trial, without any order, and without transferring the action to any other Division. These Rules will probably be found a most salutary improvement in the practice and a saving of expense.

Rules 593-594 relate to costs. All costs in which infants or lunatics are interested, or which are payable out of any estate in which they are interested, are to be revised by one of the taxing officers in Toronto. All writs of execution are hereafter to bear an indorsement by the officer issuing them of the amount to be levied for the writ or renewals, the fee for which, in the High Court, is fixed at \$5 for writ and \$4 for re-

newals, and in the County Court at \$4 for the writ and \$2.50 for renewals.

Rule 595 enables the officers of a corporation to make affidavits in suits in which the corporation is interested. This, but for this action of the learned judges of the Supreme Court, we should have thought they had already full power to do without any Rule of Court.

Rule 596 in effect introduces the old Chancery procedure of the note *pro confesso*, in cases where interlocutory or final judgment cannot be signed for default in pleading.

Rule 597 abolishes the necessity of the affidavit formerly required in the Queen's Bench and Common Pleas Divisions to ground an examination for discovery. It however, restricts the power to take the examination to special examiners. Under the C. L. P. Act, s. 159, the examination was authorized to be taken before a deputy clerk of the Crown. Under the new Rule the local registrars, deputy registrars and deputy clerks of the Crown would appear not to have any jurisdiction to act unless they also be special examiners.

Rule 598 is adopted from Chy. Ord. 266-7, and in effect assimilates the practice in all the Divisions as to obtaining oral evidence in support of motions.

The somewhat vexed question as to where reports should be filed, is set at rest by Rule 599, which provides that they are to be filed "in the office where the proceedings are carried on." Perhaps we are wrong in saying "set at rest," for the somewhat ambiguous language used in this Rule seems calculated to create even greater confusion and obscurity than has even heretofore prevailed. Formerly the doubt was whether the Chancery practice, which required all reports to be filed at the head office of the Court, was to be followed, or whether reports were to be filed in the office where the writ issued.

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The Rule in question appears to have introduced a *tertium quid*, and what its meaning is, only judicial decision can settle. A writ may issue in Toronto, and proceedings to judgment may be carried on there, but the judgment may, as is frequently the case, direct a reference to Whitby, Sarnia, or some other place where the proceedings on the reference will be carried on. Under such circumstances, where is the report to be filed? Is it to be filed in the office where the writ issued, or in the office of the Master who conducts the reference, or the office of the local registrar, deputy registrar, or deputy clerk of the Crown at the place where the reference is carried on? This would do as a poser in practice at the law students' examinations, but we fear the Examiner himself could not answer it. Before the report can be acted on by issuing execution, or payment of money out of Court thereunder, it must be duly confirmed. How is the officer, called upon to act under it, to be certified that it has been filed in the proper office? It is really a pity so simple a matter should be involved in so much unnecessary obscurity and confusion.

The old practice in the Chancery Division as to setting down causes to be heard at the weekly sittings of the Court is abrogated by Rule 600, and causes may now be set down the day before the Court sits.

Rule 601 provides that whether the cause of action does or does not survive, the death of either party between verdict and judgment shall not prevent the entry of the judgment. This Rule is taken from the English Rules of 1883, Ord. 17, r. 1; a somewhat similar provision is to be found in R. S. O. c. 50, s. 236. The latter section, however, provided that the judgment must be entered with two Terms after the verdict.

Rules 602-603 provide for there being

henceforth but one Roll of solicitors of the Supreme Court, which is to be in the custody of the Registrar of the Common Pleas Division.

Rule 604 says: "*Mutatis mutandis*, the Roll and Rolls for barristers shall be in the same form and custody as the solicitors' Roll and Rolls," and this we take leave to say, in conclusion, is a very slipshod way of framing a Rule.

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## TRINITY TERM, 49 VICT. 1885.

The following is the Resumé of the proceeding of the Benchers published by authority:—

Proceedings of Convocation on

FRIDAY, 18TH SEPTEMBER, 1885.

Convocation met.

Present — Messrs. Falconbridge, Ferguson, Foy, Fraser, Hoskin, Irving, Kerr, MacLennan, Morris, Moss, Murray, Robinson and Smith.

Mr. Irving was appointed Chairman in the absence of the Treasurer.

The minutes of last meeting were read and approved.

Mr. Moss, from the Legal Education Committee, reported on the cases of Messrs. Forin, Flint, Howard and Brooke, that under the North-West resolutions they were all entitled to be called to the Bar, and receive Certificates of Fitness.

And on the cases of William Morris and E. W. H. Blake, that they were entitled to be allowed their second intermediate examinations.

The report was received, read, adopted and ordered accordingly.

Ordered, that Mr. A. C. Gibson be allowed his first intermediate examination under the same resolutions.

On the report of the Legal Education Committee, it was ordered that Mr. A. C.

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Gibson's name be entered on the books as a Student-at-Law, in the Graduate Class, as of Easter Term, 1884, it having been omitted by mistake.

The Legal Education Committee having reported in the cases of H. H. Macrae, and A. V. Lee,

Ordered, that Mr. Macrae's second intermediate examination be allowed him as student and articulated clerk, provided he places himself under articles, and serves for nine months; and that Mr. A. V. Lee's second intermediate be allowed him as a Student-at-Law only.

In the case of Mr. A. H. Coleman,

Ordered, that he receive his Certificate of Fitness.

The Legal Education Committee presented their Special Report on the examinations and prizes in the Law School.

On the motion of Mr. Murray, it was

Ordered, that W. D. McPherson be awarded the 1st prize for the Senior Class of 1885, of \$25 in books.

Ordered, that the Secretary and Examiners be directed to enforce the rule regarding the attendance of competitors for the Law Society prizes.

Mr. Moss, on behalf of the Legal Education Committee, stated that they were not prepared to report during the present term (Trinity Term) upon the subject of the rules for the admission and call of English Barristers, and the admission of Scotch and Irish Solicitors, which had been referred to them for report.

Mr. Ferguson moved that his notice of motion upon the subject of admission of Barristers and Solicitors in special cases do stand until the second day of Michaelmas Term next.

Ordered accordingly.

Mr. MacLennan, from the Reporting Committee, presented their report which was received and read.

The report was considered and adopted, and the Committee was authorized to take action in accordance with the recommendation of the report.

Ordered, that a copy of this resolution be sent to the reporter of the Court of Appeal this day.

The petition of Norman McLeod was read and referred to the Legal Education Committee.

Ordered, that Mr. Falconbridge be placed upon the Finance Committee in

place of Mr. Morris who desires to withdraw from that Committee.

Convocation adjourned.

J. K. KERR,

Chairman, Committee on Journals.

## MICHAELMAS TERM, 49 VICT., 1885.

During Michaelmas Term the following gentlemen passed the examination for Barrister-at-Law, namely:—Messrs. Edward Kirwan Cornwall Martin, William David McPherson, Josiah James Godfrey, Allan Malcolm Dymond, William Fenwick Williams Creelman, Henry Charles Fowler, Theophilus Bennett, James Smith, William Elzar Stevens, Thomas Chalmers Milligan, Edward George Grahame, William Hume Blake, Thomas Brown Lafferty, A. W., Aytoun Finlay, Frederick William Garvin, Patrick McCullough, Alexander Skinner.

The following gentlemen passed the Solicitors' Examination, namely:—Messrs. E. K. C. Martin, E. G. Grahame, E. F. Gunther, H. C. Fowler, A. M. Dymond, J. J. Godfrey, F. W. Hill, J. M. Duggan, F. R. Latchford, H. T. Kelly, G. G. S. Lindsay, W. H. Blake, P. McCullough, W. F. W. Creelman, C. R. Atkinson, M. E. Mitchell, A. M. Lafferty, A. G. Chisholm, D. Fasken, T. E. Griffith, J. M. Macnamara, James Smith, A. C. Macdonell, L. Harstone, A. Skinner.

The following gentlemen passed the First Intermediate Examination, namely:—Messrs. H. S. W. Livingston, with honours, first scholarship; W. Green, with honours, second scholarship; and A. Morphy, W. E. Fitzgerald, E. D. Cameron, N. F. Davidson, W. Smith, C. McIntosh, T. Scullard, W. C. Fitzgerald, R. J. MacLennan, G. F. Bradfield, A. F. Lobb, S. R. Wright, F. A. Drake, A. D. Dickson, H. N. Roberts, R. Ruddy, W. H. Stafford, T. C. Robinette, C. R. Hanning, J. S. Walker, D. R. Anderson, G. F. Cane, J. F. Wills.

The following gentlemen passed the Second Intermediate Examination, namely:—Messrs. C. J. Atkinson, with honours, first scholarship; W. A. J. Bell, with honours, second scholarship; C. E. Weekes, with honours, third scholarship. And Messrs. E. C. S. Huycke, D. O.

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Cameron, S. McKeown, A. M. Denovan, J. McKay, H. A. Percival, G. J. Leggatt, R. H. J. Pennyfather, W. H. Sibley, R. A. Bayley, J. A. Macdonald, W. B. Willoughby, W. M. Sinclair, W. J. McWhinney, C. J. T. Gould, F. E. O'Flynn, J. P. Lawless, J. H. A. Beattie, W. H. Dean, S. T. Hamilton, F. F. Lemieux, T. Hislop, F. N. Raines, G. S. Willgress, E. M. Young, H. H. Dewart, G. R. O'Reilly, N. McDonald, L. H. Baldwin, J. L. Snedden, J. Vance, P. F. Young.

The following candidates were admitted as Students-at-Law, namely:—

*Graduates.*—Andrew Allison Adams, Arthur Collins, John. Wakeman Evans, Malcolm Smith Mercer, Henry Warrington Church.

*Matriculants.*—Edward Samuel Blake Cronyn, Walter Mills, James Francis Turnbull, W. Cameron Smith.

*Juniors.*—John Fosbery Orde, Donald Grant, Stewart Charles McDonald, John Alexander McIntosh, James Fraser Macdonald, R. G. Widdowson, Arthur Clayton Sutton, Charles R. Ball, William Lough-ton Morton, Ernest William McIntyre, Thomas Walter Horn, John James O'Meara, John Franklin Hare, Henry Woode Maccomb, James Francis O'Brien, John Reeve, Henry Albert Simpson, Harold Jamieson, Freeman Harding, Herbert Wilkes Stewart.

*Articled Clerks.*—Frederick McMahon and Arthur Lincoln Decker.

MONDAY, 16TH NOVEMBER, 1885.

Convocation met.

Present—Messrs. Beaty, Cameron, Falconbridge, Ferguson, Foy, Irving, Kerr, MacLennan, Martin, Morris, Murray, McMichael, Osler.

Mr. Irving was appointed Chairman in the absence of the Treasurer.

The minutes of the last meeting were read, approved and signed by the Chairman.

Mr. Ferguson, from the Legal Education Committee, reported on the petitions of Messrs. Boyd, Helliwell and Dignan under the North-West resolutions, recommending that Mr. Boyd be allowed his first intermediate examination and Messrs. Helliwell and Dignan their second intermediate examinations.

The report was received, read, considered, adopted and ordered accordingly.

Mr. Ferguson also reported on the case of A. M. Taylor, recommending that his petition be not granted, he not having been on the books of the society for five years as a student.

The report was adopted.

Mr. Ferguson also reported on the case of J. A. Fleming, who employed one Owen, a high school teacher and English university graduate, to personate him at his primary examination, recommending that the matter be referred to the Discipline Committee.

The report was received, read, adopted and referred to the Discipline Committee with all papers connected with the case.

Mr. Murray, from the Finance Committee, reported on the sanitary condition of the building.

The report was read, received and ordered for immediate consideration.

The report of the Finance Committee on sanitary matters was adopted.

The petitions of Messrs. Latchford, Fowler, Gunther and Harstone were referred to the Legal Education Committee for consideration and report.

The letter of P. H. Allen was read in reference to a return of a portion of his Primary fee.

Ordered, that the Secretary reply that no return can be made.

Mr. Ferguson, from the Legal Education Committee, reported that A. C. Macdonell had completed his service and was entitled to a Certificate of Fitness.

The report was adopted, and ordered that he receive his Certificate of Fitness.

The secretary reported that H. C. Fowler had completed his papers and was entitled to be called to the Bar.

Ordered accordingly.

Mr. Osler gave notice of motion for 17th inst:—"That it is expedient to form a branch library at the Court House in the City of Toronto, to consist of a complete set of the statutes, a complete set of the Upper Canada and Ontario Reports, and the English Reports, beginning with the Law Reports series, with a selection of text books in common use at *nisi prius*, and that the City Council be requested to provide accommodation in the New Court House for such library."

Mr. Murray gave notice for 17th inst:—"That he will move that the use of the Examination Hall be granted to the

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Osgoode Legal and Literary Society for their weekly meeting, subject to such rules as may be laid down by and under the direction of the Finance Committee."

Mr. Morris gave notice that he would move for the appointment of a committee to report to Convocation upon a system whereby Benchers living a certain distance from Toronto be paid their travelling expenses in attending Toronto during Convocation.

Convocation adjourned.

TUESDAY, 17TH NOVEMBER, 1885.

Convocation met.

Present — Messrs. Cameron, Falconbridge, Ferguson, Foy, Hardy, Hoskin, Irving, Kerr, Martin, Morris, Moss, Murray, McCarthy, Pardee.

Mr. Irving was appointed Chairman in the absence of the Treasurer.

The minutes of the last meeting were read and confirmed.

On the report of the Examiner and his explanation of the facts connected with the examination passed by Mr. Widdowson before him for admission to the Law Society as a Student-at-Law it is ordered that the examination be allowed to Mr. Widdowson in the junior class in the rank in which he stands in the Examiner's Report.

The Examiners having reported that Mr. P. McCulloch had passed his oral examination for call to the Bar, and that such examination had been held in accordance with the order of Convocation of 16th inst., and the Secretary having reported also upon the regularity of his call papers.

Ordered, that Mr. McCulloch be called to the Bar.

The petitions of Messrs. Gunther and Fowler were referred to the Finance Committee for report. Mr. Falconbridge presented the petition of Mr. Cæsar Grace, which was referred to the Legal Education Committee.

On the motion of Mr. Murray, seconded by Mr. Martin, it was ordered, "that the use of the Examination Hall be granted to the Osgoode Legal and Literary Society for their weekly meetings, subject to such rules as may be laid down by and under the direction of the Finance Committee."

Mr. Osler moved, pursuant to notice, "That it is expedient to form a branch library at the Court House in the City of

Toronto, to consist of a complete set of the statutes, a complete set of the Upper Canada and Ontario Reports and the English Reports, beginning with the Law Reports series, with a selection of Text Books in common use at *nisi prius*, and that the City Council be requested to provide accommodation in the New Court House for such library."

Ordered, that the matter be referred to the County Libraries' Aid Committee for consideration and report, and that Mr. Osler be added to the said Committee in respect of the matter of his notice.

Mr. Hoskin presented the report of the Discipline Committee on the case of J. A. Fleming; the report was adopted, and the matter referred to the Discipline Committee to deal with in accordance with the powers in the statute contained.

Convocation adjourned.

SATURDAY, 21ST NOVEMBER, 1885.

Convocation met.

Present—Messrs. Blake (S. H.), Cameron, Falconbridge, Ferguson, Foy, Hudspeth, Irving, Mackelcan, Maclellan, Morris, Moss, Murray, McMichael, Osler and Smith.

Mr. Irving was appointed Chairman in the absence of the Treasurer.

The minutes of the last meeting were read and approved.

Mr. Moss, from Legal Education Committee, reported on the cases of Messrs. Fowler, Hill, Latchford, Harstone and Grace.

The report was received, read and adopted.

Ordered, that certificate of H. C. Fowler be granted on completion of service; that certificate of F. W. Hill be granted; that certificate of F. R. Latchford be granted on proof of completion of forty-two days service; that Leonard Harstone do receive his Certificate of Fitness without further examination on proof of his service for one year from Oct. 1st., 1884.

Ordered, that the petition of J. C. Grace be not granted.

The Secretary reported that Messrs. Gunther, Godfrey and J. Smith had completed their service, and papers proving it, and were entitled to their Certificates of Fitness.

Ordered, that certificates be granted to Messrs. Gunther, Godfrey and Jas. Smith.

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Mr. Murray, from the Finance Committee, presented the report of that Committee and Mr. Storm's report (the architect) on the condition of the ceiling in the library, which was received and read.

Ordered, that the Committee renew their representations to the Government by waiting on them, and meantime that they will take such steps as will ensure the safety of those using the library.

Mr. Moss, from the Legal Education Committee, presented their report in reference to the call of Barristers and admission of Solicitors as special cases, which was received and read.

Ordered, that the report and draft rules be printed and distributed to members of Convocation, and that the report be ordered for consideration on Saturday, 5th December inst.

Mr. Hector's petition was read.

Dr. McMichael moved that the prayer of the petition be granted.

On reference to page 135 of Vol. vii. of the Journals, where the former action of Convocation in the case is recorded, it was ordered that the petition be referred to a special committee, consisting of Messrs. MacLennan, S. H. Blake and D. McMichael, to investigate the facts, and give the reasons arrived at with respect thereto, in order that Convocation may finally settle the subject-matter of the petition.

The report of the Finance Committee on the petitions of Messrs. Fowler and Gunther, asking for the return of their fees under the North-West resolutions, recommending that the prayers of the petitions be not granted, was received, read and adopted.

Ordered, that the prayers of the petitions be not granted.

The petition of A. Skinner was received and read.

Ordered, that the prayer of the petition be granted to the extent of dispensing with his examination both as Barrister and Solicitor, but no further.

Convocation adjourned.

FRIDAY, 27TH NOVEMBER, 1885.

Convocation met.

Present—Messrs. Britton, Falconbridge, Foy, Irving, Martin, Morris and Murray.

Mr. Irving was appointed Chairman in the absence of the Treasurer.

The minutes of the last meeting were read and confirmed.

The Secretary reported that Messrs. Fowler, McCullough, Chisholm and Skinner had now served their full time, and were entitled to receive their Certificates of Fitness, also that Mr. Alex. Skinner had filed his call papers, and was entitled to be called to the Bar.

Ordered, that Messrs. Fowler, McCullough, Chisholm and Skinner receive Certificates of Fitness, and that Mr. Skinner be called to the Bar.

Mr. Murray, on behalf of the Finance Committee, presented their report on the Library ceiling, which report was read, received and adopted.

Mr. Murray, on behalf of the Reporting Committee, presented their report, which was received and read.

The report was adopted.

Mr. Murray, in connection with the above report, presented the letters of the Editor-in-Chief and Mr. E. B. Brown, which were read.

The petition of Mr. Alan Cassels, *re* W. H. Sibley, was read and referred to the Discipline Committee for report to Convocation.

The petition of Mr. F. S. O'Connor, praying that he might be excused from advertising a second period in the *Ontario Gazette* his notice of intention to present himself for call, was received, read and the prayer of the petition granted.

Mr. Martin drew attention to the manner in which the Examiners furnished the Benchers in Convocation with printed examination questions.

Ordered, that the Secretary direct the examiners to furnish him with one complete set of the examination questions, properly assorted and fastened together, of each examination held by them; and that such complete set be delivered to him immediately after the several examinations are concluded; and that he direct the examiners further to supply him with twenty-four sets of the examination papers, not assorted.

Mr. Britton moved that the Finance Committee be directed to apply for leave to put up a telephone in the room adjacent to the Common Pleas Divisional Court, such telephone to be limited to the despatch of messages by Barristers and Solicitors only, or to report if any other suit-



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able place for a telephone upstairs can be procured.

The Secretary drew attention to No. 6 of the standing orders of Convocation, page 47 of the Rules.

Ordered, that the consideration of the subject be deferred until the return of the Treasurer.

Mr. Murray gave notice that he would move a rule at the next meeting of Convocation dealing with the resolution of Convocation of 23rd May last, relating to the salary of the second assistant in the Library.

Convocation adjourned.

SATURDAY, 5TH DEC., 1885.

Convocation met.

Present—Messrs. Blake (S. H.), Cameron, Falconbridge, Ferguson, Foy, Hoskin, Kerr, Mackelcan, MacLennan, Martin, Morris, Moss, Murray, McMichael, Osler, Robinson, Smith.

In the absence of the Treasurer Dr. L. W. Smith was appointed Chairman.

The minutes of last meeting were read and approved.

The report of the Discipline Committee on the case of James A. Fleming was received, read, ordered for immediate consideration and adopted.

Ordered, that the name of James A. Fleming be erased from the roll of law students and from the report of the Legal Education Committee on the Primary Examination for Easter Term, 1885, and from the minutes of Convocation of that Term; and that the sum of fifty dollars paid by him to the Law Society be returned to him, and that he be notified of the action of Convocation by the Secretary.

The Chairman thereupon erased the name of James A. Fleming from the roll of law students, from the report of the Legal Education Committee on the Primary Examination of Easter Term, 1885, and from the minutes of Convocation of that Term.

The report of the Discipline Committee on the case of W. H. Sibley was received.

After some discussion Mr. Alan Cassels was called in to ascertain if he was prepared to prosecute Mr. Sibley for the acts complained of before his case is considered by Convocation. Mr. Cassels expressed his willingness to prosecute.

Ordered, that the report of the Discipline Committee in the case of W. H. Sibley be not now considered; but that the consideration of the complaint against him be deferred until it shall appear whether or not action is to be taken to prosecute him criminally.

The report of the special Committee on the petition of Mr. John Hector, Q.C., was read by Mr. Blake, whereupon it was moved by Mr. Hector Cameron, seconded by Dr. McMichael, that the sum of \$350, being the amount of actual disbursements claimed in Mr. Hector's petition to have been made by him, be allowed to him.

It was moved in amendment by Mr. MacLennan, seconded by Mr. Mackelcan, and carried, that the prayer of Mr. Hector's petition be not granted.

The report of the Finance Committee on the subject of placing another telephone in the Common Pleas barristers' room was read by Mr. Murray.

Ordered, that the report be received, but that no action be taken thereupon.

The petition of Arthur Lincoln Decker was read.

Ordered, that Mr. Decker's petition be granted, and that he be admitted as an articled clerk as of the present term.

Mr. Murray moved, pursuant to notice, that Rule 119, sub-section 2, be amended by striking out the word "four" in the third line and substituting therefor the word "five," and that said amendment date back and take effect from the first day of Easter Term, 1885. Carried.

This rule was read first, second and third time, by unanimous consent, and passed.

RULES FOR THE CALL OF BARRISTERS IN SPECIAL CASES UNDER REVISED STATUTES, ONT. CH. 138, SEC. 38.

On the motion of Mr. Charles Moss, seconded by J. H. Ferguson,

It is ordered, that Rules 94, 95, 96, 97, 98 and 99 of the Society, and the rules passed 2nd September, 1882, amending the same be, and the same are hereby repealed, and the following rules substituted therefor, namely:—

94. The following persons may, as special cases, be called to practise at the Bar:

(1.) Any person who has been duly admitted and enrolled, and has been in actual practice as a Solicitor of the Supreme Court of Ontario, or an Attorney or Solicitor in the Superior Courts of any

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of the other Provinces of the Dominion in which the same privilege is extended to Solicitors of the Supreme Court of Ontario.

(2.) Any person who has been duly called to the Bar of England, Scotland, or Ireland (excluding the Bar of merely local jurisdiction), when the Inn of Court, or other authority having power to call or admit to the Bar by which such person was called or admitted, extends the same privilege to Barristers from Ontario, on producing sufficient evidence of such call or admission, and testimonials of good character and conduct to the satisfaction of the Law Society.

(3.) Any person who has been duly called to the Bar of the Superior Courts of any of the other Provinces of the Dominion in which the same privilege is extended to Barristers of Ontario.

95. Every such person, before being called to the Bar, shall furnish proof,

(1.) That notice of his intention to apply for call to the Bar was given during the term next preceding that in which he presents himself for call and was also published for at least two months preceding such last mentioned term in the *Ontario Gazette*.

(2.) That he was duly admitted and enrolled and has been in actual practice as an Attorney or Solicitor as mentioned in sub-section 1 of Rule 94 and that he still remains duly enrolled as such and in good standing and that since his admission as aforesaid no adverse application has been made to any Court or Courts to strike him off the roll of any Court or otherwise to disqualify him from practice as such Attorney or Solicitor, and that no charge is pending against him for professional or other misconduct.

(3.) Or that he was duly called to and is still a member in good standing of the Bar, as mentioned in sub-sections 2 and 3 of Rule 94, and that since his call no adverse application has been made to disbar or otherwise disqualify him from practice at the Bar of which he claims to be a member, and that no charge is pending against him for professional or other misconduct.

(4.) That he has passed one or more examinations as hereinafter prescribed,

(a.) An Attorney or Solicitor of at least five years' standing on the Rolls of any of the Courts mentioned in the said sub-section 1 of Rule 94 shall be examined with the ordinary candidates for call in the subjects prescribed for the final examinations of Students-at-Law.

(b.) An Attorney or Solicitor under five years' standing on the roll of any of the Courts mentioned in the said sub-section 1 of Rule 94 shall be examined with candidates for admission in the subjects prescribed for the primary examination of Students-at-Law, and with the ordinary candidates for call in the subjects prescribed for the final examination of Students-at-Law, and such examinations may be passed at the one term or otherwise, as the candidates may desire.

(c.) A Barrister as mentioned in sub-sections 2 and 3 of Rule 94 shall pass such examination as may be prescribed at the time of his application for call.

96. The fees payable by such candidates for call to the Bar in addition to the ordinary fees payable for admission, and for call, shall be the sum of two hundred dollars.

**RULES FOR THE ADMISSION OF SOLICITORS IN SPECIAL CASES, UNDER REVISED STATUTES, ONTARIO, CHAPTER 138, SECTION 41.**

97. The following persons may, as special cases, be admitted and enrolled as Solicitors of the Supreme Court of Ontario.

1. Any person who has been duly called to practise at the Bar of Ontario, or in any of the Superior Courts not having merely local jurisdiction, in England, Ireland, or Scotland, or in the Superior Courts in any of the other Provinces of the Dominion.

2. Any person who has been duly admitted and enrolled as a solicitor of the Supreme Court of Judicature in England, or as an Attorney and Solicitor in the Courts of Chancery, Queen's Bench, Common Pleas, or Exchequer in Ireland, or as a Writer to the Signet, or Solicitor in the Superior Courts of Scotland, or as an Attorney or Solicitor of any of Her Majesty's Superior Courts of Law or Equity in any of Her Majesty's Colonies wherein the Common Law of England is the Common Law of the land.

98. Every such person before being admitted to practise as a Solicitor, shall after complying with provisions of Revised Statutes of Ontario, chapter 140, section 7, furnish proof:

1. A Barrister as mentioned in sub-section 1 of Rule 97 that he was bound by a contract in writing to a practising Solicitor in Ontario to serve, and has served him as his articulated clerk for the period of three years.

2. An Attorney, Solicitor, or Writer (as mentioned in sub-section 2 of rule 97) that he was bound by a contract in writing to a practising Solicitor in Ontario to serve, and has served him as his articulated clerk for the period of one year.

3. That he has passed the usual examination in the subjects prescribed for the examination of candidates for Certificate of Fitness to practise as Solicitors of the Supreme Court of Ontario.

4. That notice of his intention to apply for admission as such Solicitor was given during the term next preceding that in which he presents himself for examination and admission, and was also published for at least two months preceding such last-mentioned term in the *Ontario Gazette*.

99. The fees payable by such candidates for admission to practice, in addition to the ordinary fees for articulated clerks, and for admission, shall be the sum of two hundred dollars.

The rules were read a first time.

The rules were read a second time.

Third reading to take place on Tuesday, 29th December.

Convocation adjourned.

J. K. KERR,  
Chairman, Committee on Journals.

Ct. Ap.]

NOTES OF CANADIAN CASES.

[Q. B. Div.]

## NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE  
LAW SOCIETY.

## COURT OF APPEAL.

Q. B. D.] [January 12.  
SCOTT V. BENEDICT.

*Vendor's lien.*

The judgment of the Court below, 5 Ont. R. 1; 20 C. L. J., 106, was affirmed.

The appellant in person.

*W. Barwick*, for the respondents, Benedicts.

The Chancellor.]

TRAVIS V. TRAVIS.

*Donatio mortis causa—Gift inter vivos.*

The judgment of the Court below, 8 Ont. R. 516; 21 C. L. J., 197, was affirmed.

*McClive*, for the appellant.

*Muir*, for the respondent.

Q. B. D.]

BLEAKLEY V. TOWN OF PRESCOTT.

*Municipal corporation—Badly constructed sidewalk—Ice on sidewalk.*

The judgment of the Court below, 7 Ont. R. 261; 22 C. L. J., 55, was reversed.

*Watson*, for the appellants.

*Read*, Q.C., and *Walter Read*, for the respondent.

## QUEEN'S BENCH.

KLOEPFER V. GARDINER.

*Assignment f. b. o. c.—Repudiation by creditor—Rights.*

In an action by a creditor of an insolvent against the assignee under an assignment for the benefit of creditors to recover the amount of the dividend declared upon his claim, the defendant pleaded as a defence that the plaintiff, disputing the validity of said assignment, had as an execution creditor of the insolvent caused the goods assigned to be seized, and, on the trial of an interpleader issue directed, had endeavoured to impeach the said assignment; and that having thus repudiated the assignment he could not now claim the benefit of it.

Held (O'CONNOR, J., dissenting), a good defence, and that the plaintiffs were not entitled to recover.

It was contended for the plaintiffs that the said action not having been tried upon the merits, but that the Court having held that the plaintiffs being assenting parties to the assignment were estopped from afterwards impeaching it, formed no bar to the plaintiff's right to rank as a creditor upon the estate of the insolvent.

Per WILSON, C.J., that the mere bringing of the action was sufficient repudiation to disentitle the plaintiffs.

Per O'CONNOR, J., that by the judgment of the Court the plaintiffs were relegated back to their position and status under the assignment and therefore to the benefit of it.

*Cressor*, Q.C., in support of motion.

*W. Nesbitt*, contra.

GARDNER V. KLOEPFER.

*Damages—Remote and speculative—New trial.*

McR. & McR., being in insolvent circumstances, made an assignment for the benefit of their creditors to the plaintiff, the defendant K., and another. The defendant K. accepted the trust and acted on it. Afterwards, being desirous of disputing the validity of the assignment, he recovered judgment against the insolvents, issued execution thereon, and seized

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certain raw material intended to be worked up into buggies. The plaintiff claimed the goods, and an interpleader issue was directed which resulted in favour of the plaintiff, the Court having held that the defendants, having once assented to the assignment, could not afterwards impeach it. The plaintiff then brought this action to recover damages for the wrongful seizure and detention of the goods. The jury found a verdict for the plaintiff, but it appeared that the damages awarded were entirely for the loss of profits which it was claimed might have been made by working up into buggies the said material, and by having the buggies ready for sale at a period much earlier than if no seizure had been made.

*Held* (WILSON, C.J., dissenting), that the damages assessed were too uncertain, speculative and remote to have been legally recoverable, but as the learned judge excluded damages from the consideration of the jury which might have been legally recovered a new trial was directed.

*Creasor, Q.C.*, for plaintiff.  
*W. Nesbitt*, contra.

#### MILLER V. REED.

*Master and servant—Injury.*

*Held*, in an action by a servant against a master for injury received by the servant by reason of a circular saw which he was hired to run not being guarded, it is not sufficient to show that the master knew that it was not guarded; but it must also be shown that the servant was ignorant of it, and as the servant was skilled in the use of the saw and was hired to run it, it was his duty to see that it was guarded, and he would not therefore recover for what was his own neglect.

*Dickson, Q.C.*, for motion.  
*Burdett*, contra.

#### WANAMAKER V. GREEN.

*Municipal Act, sec. 546—By-law closing road.*

*Held*, that the notices required to be given by the Municipal Act, 1883, sec. 546, are conditions precedent, the due observance of which is essential to the validity of a by-law passed for the purposes referred to in that section.

*Held*, also, that a by-law closing a "certain road across lot 15, 7th con., Sidney," where there were more than one road across that lot, was void for uncertainty.

*Sherry*, for motion.  
*G. Henderson, Q.C.*, contra.

#### RICHARDSON V. RANSOM.

*Police magistrate—Power of appointment.*

*Held*, that a person could not be held to be a trespasser merely by laying an information charging another with a crime, and praying therein that a warrant might be issued for his arrest, before a police magistrate appointed by the Ontario Government.

*Per* WILSON, C.J., that the power to appoint police magistrates resided with the Ontario Government.

*Burdett*, for defendant.  
*Dickson, Q.C.*, for plaintiff.  
*Johnston*, for Attorney-General.

#### ROSS V. GRAND TRUNK RY. CO.

*Railway—Expropriation money—Statute of limitations.*

*Held*, that the right of compensation for land taken by a railway is not barred short of twenty years, and is not barred by the claimant's titles to the land being extinguished by reason of the railway having been in possession for ten years.

*Meredith, Q.C.*, for motion.  
*Lash, Q.C.*, contra.

#### LANCEY V. BRAKE.

*Contract—Parol agreement to alter.*

Defendant got six different sums of money from plaintiff amounting altogether to \$3,000 for which he gave receipts. Three of the receipts stated the defendant received so much money from the plaintiff, "loan on oil, usual rate of interest." The other three were similar to the others, but they concluded "payable within one year from date with interest at nine per centum per annum."

The defendant set up parol agreement with the plaintiff, by which the defendant had the

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right at any time to require the plaintiff to take in payment of the money so lent the oil which the defendant had in the plaintiff's tanks at the market price at the time when the defendant so required the plaintiff to take the oil.

*Held*, that such a parol agreement could not be set up to alter the terms of the receipt which showed such loans were to be repaid in money, although the jury found the parol agreement to have been made. The Court, having all the facts before them, directed the verdict and judgment to be entered for the plaintiff for the full amount of his claim.

*Osler*, Q.C., for motion.

*Meredith*, Q.C., contra.

#### CHANCERY DIVISION.

Boyd, C.]

[Dec. 23, 1885.]

#### CHARTERIS V. CHARTERIS.

*Will—Construction—Trust—Discretion—Failure of trustee—Reference to Master to work out a scheme.*

A testator having disposed of one-third of the residue of his estate, real and personal, devised and bequeathed the remainder to J. C. to hold to him, his heirs, executors and administrators or assigns in trust for the benefit of the testator's two sisters, and with all reasonable expedition to convert the same into money and apply the same or the proceeds thereof for the benefit of the said two sisters, or otherwise distribute the same equally among his said two sisters as he should consider just. And he directed that his other trustees should not enquire into or interfere with such distribution as J. C. might choose to make among the said two sisters, except when their concurrence should be necessary for conformity.

J. C. predeceased the testator.

*Held*, that the above was in substance an imperative declaration of a trust of the whole for the equal benefit of the two sisters with a discretionary power reposed in the trustee as to its mode of execution, and the Court would undertake to discharge vicariously what could not otherwise be done, owing to J. C. predeceasing the testator, by referring it to the

Master to ascertain the proper mode of carrying out the directions of the will.

*Re Charteris*, 25 Gr. 376, commented on.

Order made referring it to the Master to work out a scheme for the application and distribution of the fund.

*S. H. Blake*, Q.C., for the plaintiff.

*C. R. Atkinson*, Q.C., for the curator.

*MacLennan*, Q.C., for the infant defendants.

*Clement*, for the adult defendants other than the trustees.

*Wilson*, for the trustees.

Full Court.]

[Dec. 23, 1885.]

#### HICKEY V. STOVER.

*Will—Ambiguity—Extrinsic evidence—Guardianship—Express trust—Statute of limitations.*

A testatrix devised the south quarter of lot 20, con. 9, township of Raleigh to T., and east quarter of said lot to her two daughters.

It was sought to show that the testatrix had no other land than lot 20 in con. 8, Raleigh, and to make the will operate on this.

*Held*, that the judge below was right in rejecting evidence of extrinsic facts, and that even if it might have been shown that lot 20 in con. 8 was the only lot which the testatrix owned, the will could not operate to pass it.

The devise in the will was in its terms free from all ambiguity. It was not inherently absurd or insensible, not inconsistent with any context, and there was nothing else in the will which could be brought in to aid in its interpretation. The testatrix owned one thing and devised another, and evidence was not admissible to show that these were identical, or that one meant the other for the purposes of the will, nor was evidence of the intention of the testatrix admissible to explain the will containing, as it did, no latent ambiguity. To show that the testatrix did not own lot 20 in con. 9, was no evidence of an intention by her to devise lot 20 in con. 8.

*Held*, also, that though a guardian by appointment of the Surrogate Court was an express trustee during the minority of the ward, so that she could not acquire title against him by possession of his lands, yet the guardianship ended, and the trust ceased with the ward's minority, and since after that the guardian

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dealt with the property as her own for some 20 years, she had acquired a good title by possession against her former ward.

RE MONTEITH.

MERCHANTS' BANK ET AL. V. MONTEITH.

*Administration—Warehouse receipts—Possession of the goods—Evidence—43 Vict. c. 22, s. 7 (D).*

In administration proceedings in the M. O. certain unsecured creditors of the deceased sought to make certain other creditors account for the proceeds of certain goods which they, claiming to be entitled to them under warehouse receipts, by attacking the validity of the warehouse receipts. It appeared by the evidence of H. that he had in M.'s lifetime signed warehouse receipts at the request of M. for goods warehoused in M.'s cellar, on which M. had obtained advances, although he, H., never had possession of the goods. The Master found against the evidence of H. that the warehouse receipts were valid. On an appeal from the Master, it was

*Held*, that H. had acted as a warehouse keeper in issuing the receipts, and not as a mere bailee, and that the test of the validity of the warehouse receipts did not necessarily depend upon proving that he was actually, visibly and continuously in the possession of the goods from first to last. The receipts were not void at their inception. M. having disappeared, H. took possession of the goods, and allowed the secured creditors to take and sell them, which they had a right to do. The report should therefore not be disturbed. Query, as to rights of execution creditors against M., if there had been any before H. took possession of the goods; credibility of witnesses and evidence in criminal proceedings commented upon.

Rule of the Court in the administration of assets as laid down in *Wilson v. Paul*, 8 Sim. 63, and *Mitchelson v. Piper*, *ib.* 64, referred to.

*Per* PROUDFOOT, J., 43 Vict. c. 22, s. 7 (D), authorizes persons who are not warehousemen alone to give receipts, but such warehouse receipts are comprised in the definition previously given in the statute, which requires the goods to be in the actual, visible and continued possession of the bailee.

Ferguson, J.]

[December 14, 1885.]

WICKSTEED V. MUNRO.

*Insurance for benefit of child—Death of child during lifetime of insured—Right of administratrix to insurance money—R. S. O. c. 129.*

A. M. M. in 1868 insured his life for the benefit of his daughter, H. M. M., under 27 Vict. c. 17. H. M. M. married the plaintiff W. in 1879, and died during her father's lifetime in 1882, leaving a daughter for whose benefit she devised all her interest in the said policy to her husband by her will, in which she recited that she had paid the premiums which had been allowed to remain unpaid and kept the policy up for several years. A. M. M., subsequently, in 1877, married the defendant, M. A. M., and died intestate in 1884, leaving her his widow and one child by his second marriage without having made any further disposition of the insurance.

In an action by W. as executor of H. M. M. against M. A. M. as administratrix of A. M. M. to try the right to the insurance money. It was

*Held*, that the insurance money belonged to the estate of the insured, and was payable to the defendant M. A. M. as administratrix thereof.

*MacLennan*, Q.C., for the plaintiff.

*Miller*, Q.C., for the defendant.

COMMON PLEAS DIVISION.

Divisional Court.]

[January 2.]

RYAN V. CANADA SOUTHERN RY. CO.

*Railways—Accident—Contributory negligence—Withdrawing case from jury.*

On the undisputed facts disclosed in the plaintiff's case it appears that there was a switch stand erected in defendants' yard close to the track, the deceased, who was brakeman in the defendants' employment, being aware of its position and proximity to the track. On the day in question the deceased was engaged as a brakeman on a train passing through the yard. His position of brakeman was on the top of the car, but for some reason which did not appear, he was on the side of the car, holding on to a ladder, and, as his

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attention was drawn towards the end of the train, he did not see the switch stand, and was thrown under the wheels of the car and killed.

*Held*, that there was such want of care on the part of the deceased as disentitled the plaintiff, his administrator, to recover; and that the case was properly withdrawn from the jury.

*Falconbridge*, Q.C., for the plaintiff.

*Kingsmill*, for the defendant.

### HARRIS V. WATERLOO MUTUAL INS. CO.

*Insurance—Proofs of loss—Fraudulent statement as to amount of loss.*

By a policy of insurance against fire the plaintiff effected an insurance on buildings and contents, the amount placed on contents being \$200. In the proofs of loss, to induce the defendants to pay the loss, the plaintiff falsely and fraudulently stated that he had suffered loss on the contents to the amount of \$1,665.50, whereas the contents were proved to be worth only \$150.

*Held*, that this vitiated the whole policy, and was not confined to the property as to which the false statement was made.

*Lash*, Q.C., for the plaintiff.

*Osler*, Q.C., and *Ward Bowlby*, for the defendants.

### PARDEE V. GLASS.

*Trespass—Seizure—Interference with—Notice of action—Goods in custody of law.*

The Bank of Montreal placed an execution against M., plaintiff's son, in the hands of B., a Division Court bailiff, under which B. seized a stallion as belonging to M. The stallion was placed with an innkeeper, pending interpleader proceedings instituted on plaintiff claiming the horse as her property. Subsequently, an execution against the same parties at the suit of P. was placed in the sheriff's hands. P.'s solicitors informed the sheriff of all the circumstances, and the sheriff, on 3rd October, obtained from the innkeeper a written undertaking to keep the horse, stated to be under seizure by the sheriff, until further orders from the sheriff. On 14th October the sheriff was notified of the plaintiff's claim,

whereupon, at his instance, an interpleader order was granted. On 31st December the Division Court interpleader was decided in plaintiff's favour, whereupon the sheriff at once notified the innkeeper that he did not claim any further right to hold the horse. Before the innkeeper had heard from the sheriff plaintiff demanded the horse, but he refused to deliver it up until his charges for keeping it were paid, but did not assert any right to hold for the sheriff. On 17th November part of the charges were paid, either by the Bank of Montreal or P., and the balance was subsequently paid by B. On 3rd November an order was made barring P.'s claim, and directing the sheriff to forthwith deliver up the horse to the plaintiff. On 14th November an action was brought against P., the Bank of Montreal, the sheriff and the bailiff, for conversion, etc., claiming the value of the horse, damages for loss of earnings, etc. About 3rd December, after the commencement of the action, the horse was tendered to the plaintiff, who refused to accept it, except on payment of damages and costs. No notice of action was given.

*Held*, that there could be no recovery against any of the parties, (1) that the bailiff should have had notice of action; (2) that there was nothing to connect the Bank or P. with the seizure; (3) that though there was what constituted a seizure by the sheriff so as to entitle him to interplead and to make the innkeeper liable if he had not kept the horse for him, the sheriff in no way interfered with plaintiff's possession or control over it, or in any way converted it to his own use, it being at the time in the custody of the law.

*Osler*, Q.C., for the plaintiff.

*Hardy*, Q.C., for the Bank of Montreal.

*Falconbridge*, Q.C., for the sheriff.

*Fitzgerald*, for P.

*Aylesworth*, for the bailiff.

### ARSCOTT V. LILLEY ET AL.

*Magistrate—Action against—Conviction not quashed—Costs—R. S. O. ch. 73, secs. 4, 17—41 Vict. ch. 8 (O.)—O. J. Act, sec. 9, sub-sec. 2, Rule 428.*

*Held*, that the 4th sec. of R. S. O. ch. 73, as amended by 41 Vict. ch. 8 (O.), prevents an

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action being brought for anything done under a conviction, whether there was jurisdiction to make the conviction or not, so long as the conviction remains unquashed and in force.

*Held*, also, though doubting, that the 17th sec. of said Act, which entitles the magistrate to full costs as between attorney and client, where in such action he obtains a verdict in his favour, has been repealed by the O. J. Act, sec. 9, sub-sec. 2, and Rule 428; and that such costs are now in the discretion of the judge or Court.

*Oster*, Q.C., for the plaintiff.

*Hutchinson*, and *Aylesworth*, for the defendants.

#### CULVERWELL V. BIRNEY.

*Commission on sale of land.*

An agent selling land may recover commission from his principal, notwithstanding the agent has received commission from the purchaser, where the principal has agreed that the agent might receive such commission, or where the principal knows that the agent is selling and intends to obtain such commission, and does not object.

*J. K. Kerr*, Q.C., for the plaintiff.

*Fullerton*, for the defendant.

#### BAKER V. MILLS.

*Trespass—Damage to land—Entry by devisee.*

The plaintiffs claimed, as devisees of S., for damages alleged to have been sustained by them by reason of the cutting and removal of certain timber on land devised by S. to them. Prior to S.'s death he mortgaged the land to a building society who, after the alleged trespass, sold the land to the defendant. The land was uncultivated, and there had been no entry by the plaintiffs.

*Held*, that the action was not maintainable.

*Reeve*, Q.C., for the plaintiffs.

*Shepley*, contra.

#### CLEGG V. GRAND TRUNK RAILWAY CO.

*Accident—Negligence—44 Vic. ch. 22 (O.), 46 Vic. ch. 24 (D.)—Statement of claim—Omission of necessary averments.*

Action by plaintiff, an administrator of C., for damages under 44 Vic. ch. 22 (O.), by reason of the omission to pack a frog on the Midland Railway which defendants were operating.

*Held*, defendants were not liable, that the Midland Railway was a railway connecting with the defendants' railway, and under 46 Vic. ch. 24 (D.), was exempt from the operation of the Ontario Act.

*Held*, also, that by reason of the omission to state, as required by sub-sec. 2 of sec. 8 of said Act, and to prove in the statement of claim that the defendants knew that the frog was not packed, or that deceased did not know it, or that he had notified the defendants or any person superior to himself in the service of the defendants, or that such person was not aware thereof, would preclude any recovery.

*G. T. Blackstock*, for the plaintiff.

*Walter Nesbitt*, for the defendants.

#### AUSTIN MINING CO. V. GEMMEL.

*Company—Detention of books, etc., by secretary—Meeting for election of directors—Whether properly called—Quorum—Pleading.*

Action by plaintiffs, a mining company incorporated under the Canada Joint Stock Company's Act, 46 Vict. c. 43, by letters patent, against the defendant, whom it was alleged had ceased to be secretary of the company, for the conversion and detention of certain books, etc., of the company. The defendant set up as a defence that he was still secretary of the company, on the ground that the board of directors who had appointed a new secretary had not been legally elected, because the meeting for the election had not been duly called; and also that there was not a proper quorum to transact business.

*Held*, under the circumstances set out in the case, the meeting was duly called, and there was a proper quorum.

*Held*, also, that the defendant must be deemed to have unlawfully detained the books, etc. There was an election of directors *de facto*



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and a suit in the company's name; and an officer of the company could not, as against the company, be permitted to withhold what belonged to the company. In any event the defence set up was not the proper way to test the election of the directors, but should have been by motion to dismiss the action.

The effect of the statute discussed.

R. W. Scott, Q.C., for plaintiffs.

Chrysler, for defendant.

### ROBERTSON V DALEY.

*Statute of limitations—Possession—Squatter.*

In 1809, P., the owner of certain land, sold it to D., who went into possession and occupied till 1827 or 1828, when he was turned out by one Dufait who was put in possession and remained in possession until 1861, when he conveyed to one D., through whom the defendant claimed. D.'s actual possession had only been of about ten acres.

Held, that D.'s possession after 1828 would relate to the whole land, and could not be treated on the principle of a squatter so as to confer a possessory title only to the ten acres actually occupied.

Small, for the plaintiff.

Scane (of Chatham), for the defendant.

### PRACTICE.

Wilson, C. J.] [November 5, 1885.  
Common Pleas Div.] [December 19, 1885.]

### PAISLEY V. BRODDY.

*Action on foreign judgment—Defence—Covenant—Foreclosure—Concealment—Nudum pactum—Fraud—Matters pleadable in original action.*

The plaintiff sued upon a foreign judgment, which he had obtained against the defendant upon a covenant by the defendant to indemnify him against a mortgage made by the plaintiff to one G., who had foreclosed the mortgage and afterwards obtained judgment against the plaintiff on the covenant.

Held, that the effect of G. suing on the covenant in the mortgage after foreclosure

was to open the foreclosure, and an allegation that the plaintiff had improperly concealed the fact of the foreclosure from the foreign Court was no defence to this action.

Held, also, that an allegation that G. had agreed to take the land in full satisfaction of his debt showed no defence, but a mere verbal agreement without consideration.

Held, also, that an allegation that the plaintiff had sustained no damage by the judgment and execution against him, and that the writs of *fi. fa.* against him were retained in the sheriff's hands under a fraudulent agreement between G. and the plaintiff, in order to sustain the proceedings against the defendant, shewed no fraud and was no answer to the action.

Per WILSON, C.J., the defendant was not at liberty to set up in answer to this action matters which could have been pleaded in the original cause.

Schoff, for the plaintiff.

Tilt, Q.C., and T. C. Milligan, for the defendant.

Boyd, C.]

[January 13, 1886.]

### COTTINGHAM V. COTTINGHAM.

*Fund in Court—Assignment—Notice to Accountant—Stop order—Judgment—Payment out.*

The proper practice when money in Court has been assigned is to get an order to pay to the assignee only, or not to pay to the assignor without notice to the assignee.

Mere notice to the Accountant of an assignment of the fund is of no avail against a stop order afterwards obtained by another assignee under a prior assignment.

An assignee of a fund in Court has a right to apply for a stop order by virtue of his assignment, without any judgment in his favour.

The lodging of an assignment and power of attorney with the Accountant is sufficient under the practice to justify payment out in the absence of any other claim.

Watson, for the claimant Hudspeth.

Small, for the claimant Hargreaves.

## REPORTS.

## ENGLAND.

## RECENT ENGLISH PRACTICE CASES.

IN RE ISAAC.

JACOB V. ISAAC.

*Married woman suing alone—Security for costs—*  
(Ont. R. 97).

When a married woman is authorized to sue alone, as a *feme sole*, she cannot be required to give security for costs merely because she has no separate estate.

[C. A.—30 Chy. D. 418.]

COTTON, L.J. . . . This Court must deal with the Act as it stands, and that Act (Married Woman's Property Act, 1882) does say in sec. 1, ss. 2, that a married woman can sue as a *feme sole*. The Court never required a *feme sole* to give security for the costs of an action any more than any other plaintiff.

LINDLEY, L.J., concurred.

Appeal from BACON, V.-C., dismissed.

## FLOTSAM AND JETSAW.

## LAW LATIN IN THE TIME OF CHARLES I.—

"Robert Randle, of Ipplepen, was brought up for shooting a woodcock. Probably he was one of the first persons who ever succeeded in hitting one, and when we consider the 'hand gun and hail shot' of the period, the feat may appear worthy of admiration, rather than punishment. The witness, no doubt, spoke not of his shooting, but of his 'shutting' the woodcock, exactly as a Devonshire witness would speak at the present day. The clerk of the peace was evidently not much of a Latinist, but he was still less of a sportsman, and he saw no harm in translating shutting into *claudendo*. So he entered in his book that the prisoner was fined '*xx's pro claudendo cum hayle shott and killing a woodcocke,*' and bound over in £20, '*sub conditione quod non clauderet iterum.*' This nearly parallels the case where an offender was indicted for stealing '*duos suspensores et unum adolescentiorem*'—two hangers and one ladder."—A. H. A. *ton's Quarter Sessions*, p. 112.

## Law Society of Upper Canada.

## 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.

## LAW SOCIETY OF UPPER CANADA.

## OF NATURAL PHILOSOPHY.

*Books*—Arnot's elements of Physics, and Somerville's Physical Geography.

*First Intermediats.*

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 Promissory Notes; and cap. 117, Revised Statutes of Ontario and amending Acts.

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

*Second Intermediats.*

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 Government 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 Jurisprudence; 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 Society 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 Benchler, 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

LAW SOCIETY OF UPPER CANADA.

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 Benchler, 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.

F E E S .

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

PRIMARY EXAMINATION CURRICULUM

For 1886, 1887, 1888, 1889 AND 1890

Students-at-law.

CLASSICS.

1886.	{	Cicero, Cato Major.
		Virgil, Æneid, B. I., vv. 1-304.
		Cæsar, Bellum Britannicum.
		Xenophon, Anabasis, B. V.
1887.	{	Homer, Iliad, B. VI.
		Xenophon, Anabasis, B. I.
		Homer, Iliad, B. VI.
		Cicero, In Catilinam, I.
1888.	{	Virgil, Æneid, B. I.
		Cæsar, Bellum Britannicum.
		Xenophon, Anabasis, B. I.
		Homer, Iliad, B. IV.
1889.	{	Cæsar, B. G. I. (vv. 133.)
		Cicero, In Catilinam, I.
		Virgil, Æneid, B. I.
		Xenophon, Anabasis, B. II.
1890.	{	Homer, Iliad, B. IV.
		Cicero, In Catilinam, I.
		Virgil, Æneid, B. V.
		Cæsar, B. G. I. (vv. 1-33)
1890.	{	Xenophon, Anabasis, B. II.
		Homer, Iliad, B. VI.
		Cicero, In Catilinam, II.
		Virgil, Æneid, B. V.
1890.	{	Cæsar, Bellum Britannicum.

Translation from English into Latin Prose, involving a knowledge of the first forty exercises in Bradley's Arnold's Composition, and re-translation of single passages.

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

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar. Composition.

Critical reading of a Selected Poem:—1886—Coleridge, Ancient Mariner and Christabel.

1887—Thomson, The Seasons, Autumn and Winter.

1888—Cowper, the Task, Bb. III. and IV.

1889—Scott, Lay of the Last Minstrel.

1890—Byron, the Prisoner of Chillon; Child Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

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.

1886	}	Souvestre, Un Philosophe sous le toits.
1888		
1890		
1887		
1889	}	Lamartine, Christophe Colomb.
1887		

OR, NATURAL PHILOSOPHY.

Books—Arnot's Elements of Physics; or Peck's Ganot's Popular Physics, and Somerville's Physical Geography.

ARTICLED CLERKS.

Cicero, Cato Major; or, Virgil, Æneid, B. I., vv. 1-304, in the year 1886; and in the years 1887, 1888, 1889, 1890, the same portions of Cicero, or Virgil, at the option of the candidates, as noted above for Students-at-Law.

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.

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