THE

CANADA LAW JOURNAL

VOLUME XXIV.

FROM JANUARY TO DECEMBER, 1888.

Toronto:

J. E. BRYANT & CO. 64 BAY STREET

1888.

TABLE OF CANADIAN CASES,

REPORTED AND NOTED IN THIS VOLUME.

TABLE OF ENGLISH CASES,

NOTED IN THIS VOLUME IN "CURRENT ENGLISH DECISIONS."

The Canada Law Journal.

VOL. XXIV. JANUARY 16, 1888. No. 1.

ANNOUNCEMENT.

IT affords us much pleasure to announce to the members of the legal profession throughout Canada, as well as to all others who may be interested in obtaining early and accurate information concerning legal topics, that wholly new arrangements have been made for the publication and management of THE CANADA LAW JOURNAL. Beginning with this number, the LAW JOURNAL will be published by J. E. BRYANT & CO., already well and favourably known for their enterprise as publishers. Their name is a sufficient guarantee, not only of the excellence of the mechanical work which will, we trust, in future make this JOURNAL more attractive in form and more readable than heretofore, but also of the infusion into it of an amount of energy and enterprise sufficient to maintain it in the very front rank of periodicals of its class on this Continent. The present number is printed from new type, ordered specially for use in the printing of THE CANADA LAW JOURNAL. The paper is of a superior quality, and every effort will be made to maintain a high standard of excellence in paper and typography. The editorial staff has been increased, and special arrangements having been entered into to secure articles on topics of current interest by eminent members of the legal profession in Canada, with occasional contributions from Great Britain, all that is new and important in legal literature, books and periodicals—Canadian, English and American—will receive our most careful attention, and we shall seek to keep our readers fully informed in that wide field. Our columns will be open to correspondents for the discussion of legal questions of general interest; the space given to original and contributed articles will be greatly increased, and the notes of recent English, American and Canadian decisions will be fuller and more comprehensive than heretofore. Special pains will be taken to secure accurate reports of important decisions in the County Courts and Division Courts. Other additions and improvements have been suggested, which will be embodied in future numbers. To aid in the accomplishment of the end we have in view, we have decided to increase the size of each number, which will now contain 32 pages, instead of 20 as formerly. We hope that in its new form THE LAW JOURNAL will receive that hearty support and encouragement which it will be our constant aim to merit. The subscription is as formerly, $5.00 per annum, in advance. All communications relating to subscriptions, advertising, accounts, or arrears, should be addressed to the publishers. They desire us to state that they regret they have been unable to procure paper for the cover of this issue of the kind and quality which they purpose using in future; it had to be ordered specially, hence the delay.

The Dominion Loan and Investment Company v. *Kilroy*, 14 O. R. 468, may serve as an illustration of the present muddle in which the recent decisions have brought the law relating to married women's rights of property. In this case the husband failed in business, and then, under power of attorney from his wife, he applied to a firm and obtained a stock of goods on her credit and responsibility. She had no capital whatever at the time the goods were purchased. The husband carried on the business as his wife's agent, and it was held that the goods were the goods of the wife and not of the husband. But if the wife had been sued for the price of the goods she would have had, according to *Palliser* v. *Gurney*, 19 Q. B. D. 519, a good defence, because she had no separate property at the time the contract for the purchase of these goods was made! so that the creditors of both husband and wife would be effectually baulked.

AN old subscriber and correspondent takes exception to the advertisement of a legal firm in a country town wherein they are called "Barristers, etc.," the fact being that the only member of the firm who is entitled to that distinction is a Q. C., living in Toronto, his country partner being a solicitor only. This sort of thing is wrong and unprofessional, because in the first place it states what is not a fact, and secondly because it tends, whether intended or not, to deceive the public, and looks like an attempt to gain an improper advantage over other professional men in the same locality. If the young man who desires to be thought a barrister cannot make a living as a solicitor on his own merits, and without the thoughful assistance of the shadow of a Q. C. living a hundred miles or so distant, he had better turn his attention to some other calling. The Q. C. himself would do well to take the hint and consider the situation.

IN a recent case before the Divisional Court of *Watt* v. *Clark*, a judgment was set aside and a new trial ordered upon payment of all costs, on the ground that the judgment was entered by consent of counsel who had acted without authority. The action was for defamation, and at the trial, in the defendant's absence, his counsel agreed to a compromise whereby the action was practically withdrawn, the defendant paying all costs. On the settlement being communicated to the defendant he repudiated it, and subsequently moved the Divisional Court to set aside the judgment with the result above stated. This case is an instance of the way in which the same state of facts sometimes receives a diametrically different treatment by different Courts, for it appears that on the 28th November, just a few days before, the English Court of Appeal had refused to set aside a judgment obtained under just the same circumstances. That case is *Matthews* v. *Munster*, noted 84 L. T. 79, which was an action for malicious prosecution. In the course of the trial, in the absence of the defendant, his counsel agreed upon a compromise. Upon coming into court later he repudiated it, and subsequently moved the Divisional Court for a new trial. But the Divisional Court (Stephen and Wills, JJ.) refused the motion, and their decision was affirmed by the Court of Appeal, which court held that the client hands over to the advocate complete

control over the conduct of the cause in court, and that settling the action is part of the conduct of the cause, and that the defendant was consequently bound by the settlement.

IF there are many cases like the following, related by a gentleman in England familiar with the facts, one would cease to wonder at Socialism or any other form of lawlessness; rather would we be surprised at there not being more violent protests against wooden-headed and stony-hearted maladministration of a law somewhat questionable as to its wisdom. In England the law requires all children of a certain age to go to school, under penalties against parents in case of neglect. The incident and its result is thus reported:—

The case is that of a decent man, a labourer out of work, who for some time past has been endeavouring to earn a precarious living by cleaning boots at a stand opposite the People's Palace. He has a family of three children, the eldest being twelve, the second nine, and the youngest a little girl of four years. Not having the money to pay for their attendance at one of the East-end Board schools, he was summoned before the Thames Police Court; but on the day when the summons was returnable he had a prospect of work at Walthamstow, and did not in consequence appear. The case was dealt with in his absence, and sentence was pronounced of seven days' imprisonment. He was at twelve o'clock the same night dragged out of bed, and immediately conveyed to prison. He had, of course, to wear the prison dress during his incarceration; he was fed on bread and water, and the task of picking oakum was allotted to him. His only fault being that, not having money to purchase bread, he had, of course, none to pay for school fees, which the Board would not remit. If that which the poor in London are compelled to suffer were endured by persons in a different rank of life, or if the element of party politics could be infused into the cases, the whole world would wonder at the harshness and barbarism with which the provisions of the law are carried out.

POWER OF LOCAL LEGISLATURES TO IMPOSE TAXES.

BY the British North America Act, s. 92, ss. 2, the Local Legislatures of the various Provinces comprising the Dominion of Canada are empowered to make laws for "direct taxation within the Province, in order to the raising of a revenue for Provincial purposes." This power is, however, not altogether absolute, but is to some extent restricted by the fact that in the Dominion Parliament is vested certain other exclusive rights, in consequence of which it has been held that the Provincial Legislatures cannot properly exercise the powers given them under s. 92 in a way that will infringe on the exclusive powers of the Dominion Parliament. Thus in *Severn* v. *The Queen*, 2 S. C. R. 70, the Supreme Court held that a licence tax imposed on dealers in liquors under the authority of an Act of the Legislature of Ontario was invalid, because the act conflicted with the powers conferred on the Dominion Parliament for the regulation of trade and commerce. But it is not in this respect alone that difficulties arise in the exercise of the powers of Local Legislatures to impose taxes. One of the principal obstacles is the determination of what does, and what does not, fall under the term "direct taxation."

According to John Stuart Mill—"Taxes are either direct or indirect. A direct tax is one which is demanded from the very persons who, it is intended, or desired, should pay it. Indirect taxes are those which are demanded from one person, in the expectation and intention that he shall indemnify himself at the expense of another: such are the excise or customs." Mill also lays down the proposition that to be strictly a direct tax, it must also be general.

Political economists, however, are not altogether agreed on this definition of "direct" and "indirect" taxation, and it is obvious that these definitions, though useful for the purpose of discussions on the subject of political economy, are too often based on principles which can hardly be safely or wisely adopted in the construction of Acts of Parliament.

Prima facie all taxes payable by individuals, or corporations, are direct taxes, and it is only an artificial distinction to assign to some taxes the character of direct, and to others the character of indirect taxes. The attempt to determine whether a tax imposed by a Local Legislature is, or is not, a direct tax, by a consideration of the question whether or not the primary payer is actually able to shift the burden of its payment on some other person, though apparently undertaken by the Privy Council in *The Attorney General of Quebec* v. *Reid*, 10 App. Cas. 141, seems virtually to have been abandoned by their Lordships in the more recent case of *Bank of Toronto* v. *Lambe*, 57 L. T. N. s. 377. In *Attorney-General* v. *Reid*, the tax which was contested was a fee of 10c. imposed on exhibits in legal proceedings. This was held to be invalid because it was held to be an indirect tax, and Lord Selborne, C., who delivered the judgment, arrived at that conclusion on the ground that the ultimate incidence of the tax could not be ascertained, that it depended on the result of the proceedings by whom it would be ultimately borne, and that the Legislature in imposing the tax could not have had in contemplation, one way or the other, the ultimate determination of the suit, or the final incidence of the burden. Therefore he said it could not be a tax demanded "from the very person who it is intended or desired should pay it," for, in truth, that is a matter of absolute "indifference to the intention of the Legislature." And it might be well doubted whether any tax whatever could be said to be a direct tax, if that question were to depend on the intention of the Legislature as to the person by whom it should be finally borne.

The absurdity of construing the B. N. A. Act upon any such principle as that seems to have been felt by their Lordships themselves in the later case of *Bank of Toronto* v. *Lambe*, for Lord Hobhouse justly remarks that the "Legislature (by which he means the Imperial Parliament) cannot possibly have meant to give a power of taxation valid or invalid according to its actual results in particular cases. It must have contemplated some tangible dividing line referable to, and ascertainable by, the general tendencies of the tax and the common understanding of men as to those tendencies." In the latter case, too, their Lordships were emphatically clear that the question of whether a tax is direct or indirect, could not as a matter of law be affected by the fact of its not being general.

In *The Attorney General of Quebec* v. *The Queen Insurance Co.*, 3 App. Cas. 1090, a stamp duty imposed on policies and renewal receipts issued by insurance companies, varying with the amount of the premium, was held to be an indirect tax. The Act purported to impose the tax in question as a licence, but the Privy Council held that in substance it amounted simply to an Act imposing a stamp duty, and stamp duties were held to come under the head of indirect taxation. On the same principle a stamp duty on exhibits in legal proceedings was held invalid (*Attorney-General of Quebec* v. *Reid*, 10 App. Cas. 141, already referred to.) In *Bank of Toronto* v. *Lambe*, 57 L. T. N. s. 377, the tax in question was one imposed on Banks and Insurance Companies doing business in the Province of Quebec, varying with the amount of paid-up capital, and an additional sum for each office or place of business. This was held to be a direct tax, for the reasons that it was demanded directly from the persons intended to pay it; that it was not a tax on any commodity the banks and insurance companies dealt in, and could sell at an enhanced price to their customers, and it was not a tax on their profits, nor on their several transactions, but was a direct lump sum assessed by simple reference to the amount of paid-up capital and the number of places of business; and, though it might happen that the banks or insurance companies might find some way of recouping themselves out of their customers, yet the process of doing so would be necessarily circuitous, and the amount of recoupment could not bear any direct relation to the amount of the tax paid. Moreover, their Lordships held that the Act in question was no interference with the regulation of trade and commerce, and therefore no infringement of the powers of the Dominion Parliament. And although it was admitted by the Privy Council that the powers given to the Local Legislatures by s. 92, ss. 2, were literally in conflict with s. 91, ss. 3, which empowers the Dominion Parliament to make laws for "The raising of money by any mode or system of taxation," yet their Lordships re-affirmed the opinion expressed in *The Citizens' Insurance Co.* v. *Parsons*, 7 App. Cas. 96, that the general powers given by s. 91, ss. 3, could not be held to override the specific power conferred by s. 92, ss. 2, but on the contrary, as regards direct taxation within the Province to raise revenue for provincial purposes, that is a subject which falls wholly (and we presume by this is meant "exclusively") within the jurisdiction of the Local Legislatures.

This is a subject which, as time goes on, will likely become of importance here. So far, we have in this Province been free from the necessity of resorting to direct taxation, but with the large expenditure for Parliament Buildings and the necessarily diminishing revenue to be derived from our Crown Lands, the day is probably not very far distant when the Dominion subsidy will have to be supplemented by a resort to the powers to impose direct taxes.

THE LAW OF DIVORCE.

Several volumes of the Statutes which have been issued since Confederation, under the authority of the Parliament of Canada, contain private Acts passed "for the relief" of some burdened wife who has had a bad husband, or of some injured husband who has had an abandoned wife. In the session of 1887 bills were passed for dissolving the marriages of no less than five couples. These marriages are thereby declared to be thenceforth "null and void to all intents and purposes whatsoever." Since Confederation twenty-two divorces have been granted by Parliament. Sixteen of these were Ontario cases; the other six were from the Province of Quebec. Five applications are already in for the next session.

In the case of Susan Ash, peculiar features presented themselves, which we shall notice further on. She was declared competent to contract matrimony again, *i.e.*, to marry any other man whom she might have lawfully married if the dissolved marriage had not been solemnized. A similar enactment was made in regard to each of the other women whose marriages were dissolved. In the event of their marrying thereafter, they and the men whom they so respectively marry, and the issue, if any, of such marriages, are to have and possess the same rights as if the first marriages, now dissolved, had never been solemnized. In the case of each of the men whose marriages are dissolved, the first marriage is annulled, and he is declared to be at liberty to marry any other woman whom he might have lawfully married if the first marriage had not taken place. There is no provision that, in the event of any of these men marrying again, he and the wife that he so marries, and the issue, if any, of such subsequent marriage, shall have and possess the same rights as if the dissolved marriage had never been solemnized.

We do not quite understand why this distinction was made between women and men: husbands, and the issue of all their marriages, generally speaking, have marital, heritable, parental and filial rights, growing out of their respective relations, similar to those of wives and their children. We can, therefore, see no reason why all the clauses were not inserted in each of these five Acts, and made applicable for the relief of all alike.

The proceedings, in order to procure a divorce in the Provinces of Ontario and Quebec, are taken before the Federal Legislature, and are, in the absence of comprehensive rules of procedure, necessarily uncertain, cumbersome, tedious, dilatory and expensive. Some members of the Senate act with the strictest technicality, while others do exactly the reverse. Conducted before a Committee of the Senate, the members of which may or may not be professional men acquainted with the forms, modes, and ordinary safeguards of procedure, divorce measures are more or less uncertain in their results. In all such proceedings an uncertain amount of laxity, or an uncertain amount of technicality, is sure to be indulged in. Indifference to the seriousness of the problem is thereby manifested.

We feel it our duty to take this matter up, and raise our voice in warning

against the present mode of conducting such investigations. They deeply affect the morals and the best interests of that class of persons who are wealthy enough to seek for and obtain relief in circumstances which justify divorce. We need not say that, by the existing mode of proceeding in Parliament, those who are too poor to seek and pay for the ever-so-much needed relief must put up with their wrongs and bury their sorrows in some other way. This ensues simply because the Parliament of Canada has not deemed it wise to give them a relief which ought to be within their reach. They nominally possess the right to have the marital ties which bind them sundered for sufficiently grave reasons; but it is too expensive for any man of even moderate means—much more so for a woman without means—to seek to enforce that right. This thought is well expressed in an article in the *St. Thomas Daily Times*, as follows:—"Divorce is allowed to the rich and denied to the poor, and because one man has money in his purse to meet the necessary contingencies of employing counsel and of applying for an Act of Parliament by which alone, in those Provinces, divorce can be procured, he may obtain it by paying for it, whilst any other person may not do so. This state of the law is promotive of, and a direct incentive to, polygamy and immorality. A poor man in the year 1845 was convicted before the late Justice Maule of bigamy, and the absurdity of the then existing law was grimly brought out in the Judge's satire. The prisoner's wife had robbed him and ran away with another man. In passing sentence the Judge told him, 'You should have brought an action and obtained (?) damages, which the other side would not have been able to pay; and you would have had to pay your own costs, perhaps £100 or £150. You should then have gone to the ecclesiastical courts and obtained a divorce *a mensa et thoro*, and then to the House of Lords, where, having proved that these preliminaries had been complied with, you would have been enabled to be married again. The expense might amount to five or six hundred or perhaps a thousand pounds. You say you are a poor man, but I must tell you that there is not one law for the rich and another for the poor.' The trouble with the law, as it is administered by Parliament, is that although there be only one law for the rich and the poor, the remedy is placed so far above the means of the poor that they are like sheep stalled with the taller animals: they cannot reach the fodder upon which the bullocks are fed from high racks." Surely that is a one-sided, irremedial, incomplete and poorly administered law which cannot be invoked by every wronged one, man or woman, rich or poor.

Many persons have gone from Canada to the United States to take proceedings in a divorce court against a husband or a wife who lived in the Dominion, and who had never set foot on the soil of the United States or out of Canada. In one instance within the knowledge of the writer, a Canadian woman (once supposed to be a lady), whilst still living with her husband, betook herself to a Detroit divorce lawyer, a well-known affidavit broker and specialist. She retained him to procure a judicial separation *a mensa et thoro*, on account of incompatibility of temper. The papers were served on the husband just when she thought it about time to quit his house; and he, not caring enough about that kind of a wife to fee a lawyer, and looking upon it as rather amusing than otherwise, let

the matter go by default. In due time a decree was taken out and served upon him. Divorced after that form and fashion, they thereafter separated, and each mated with a more congenial, but equally easy-going, companion.

In the case of Susan Ash, already mentioned, a few more votes would have established the doctrine that these decrees of United States and other foreign courts, purporting to divorce British subjects married and residing in Canada, were binding upon our tribunals, and in every way valid. The temper of the Committee before which this case came, and the tenor of its discussions, were such that but a few more votes would have disposed of it in such a way as to go to the very tap-root of all morality and establish a doctrine most dangerous to our social well-being. The effect of such a decision would have been that, as in the case of the woman mentioned before, people dissatisfied with their spouses might pop over the lines, be divorced, and come back ready to marry (?) again.

We again quote from the article already referred to:—"We admit that this question is surrounded by difficulties, as a social question generally is; and, as a religious question, we find that all Parliamentary and judicial separations granted by civil tribunals are opposed by one denomination of Christians, whose members in the Legislature invariably vote against every divorce bill; but when in point of fact bills of this character pass almost every session of the Legislature, as the statute books show they do, we do not see why one set of persons should be denied or debarred from the remedy or relief of a social wrong any more than should another set. It has resolved itself into a sort of class legislation, as we view it from its results. If the Roman Catholic Church will not sanction divorces granted by a civil tribunal, or by that highest court, the Parliament of the land, it surely has a right to confine its voice to, or exercise its veto upon, Roman Catholic marriages, or marriages celebrated by Roman Catholic clergymen. We suggest, too, that if the Senate of Canada is to continue exercising the functions of a court of divorce for people who are suffering from social grievances and that form of family affliction for which divorces should be granted, the wronged ones, if necessity requires it, should have the power of petitioning Parliament *in forma pauperis*, or of showing that they have not the means of prosecuting or proving the case in the ordinary way, and praying that the evidence may be taken before a judge in the place or places where the facts are known or where the parties reside, under commission, to be returned to the Senate, and that the return of the facts made by the Judge should be taken and read in all respects the same as if they had been proven before the Parliament itself."

We insist, however, that, as these measures of relief cause inevitable divisions, and always result in votes adverse to the religious principles and scruples of the minority, it would be far better that all proceedings in divorce should cease at once and forever, or that the law of divorce should be settled and dealt with definitively. To that end a well-considered and final procedure should be adopted. The existing courts, which possess the power to settle rights of property and to determine questions of alimony, legitimacy and lunacy, as well as the care and guardianship of minors and infants, must be as competent to deal with and administer the law of divorce as any casual committee of

the Senate can possibly be, and, indeed, much more competent. It is well known that, in a body constituted as the Senate is, a certain amount of inertia must be expected; and as the sacredness of the marriage tie so deeply affects the moral, religious and social well-being of families and the peace of the home, as well as the best interests of the community, we trust that licensed polygamy may never obtain a foothold on our fair soil, as it has in some of the States of the neighbouring Republic.

We trust also, that if the Government will not now take up the problem, and deal with it in a statesmanlike manner, some private and independent member will bring in a measure to improve the present law. If there be a law at all, it should be administered in a judicial spirit. As we have insisted, the law, such as it is, as now administered, is found to be deficient, and any case which may be presented for the purpose of procuring a divorce, is neither hopeful nor hopeless. A committee is appointed on motion of a member who desires to promote the Bill. In this, as in most other cases, a strong man can have things to suit his own mind, and a rough and ready mode of dealing with the matter is pursued. This disturbs the sensibilities of those who duly appreciate the importance of the decision to be reached, whilst men who have no sensibilities are inert and apathetic.

In most of the States of the American Union a sort of licensed polygamy exists under the forms and sanction of law, and this evil our legislators in Canada may possibly take pattern from, in course of time, unless safeguards are established. These safeguards may be somewhat difficult to devise; but surely they are attainable by wise and moderate legislation, in the same way as other moral, social, and legal reforms. We may not secure all that we wish, but we obtain nothing by inaction, or by stupid conservation of haphazard, imperfect and unsatisfactory procedure. We have no hesitation in saying that, in some form, a Divorce Court should be established, or existing courts should have this jurisdiction conferred on them. This must not be for the purpose of facilitating divorce, or enlarging or extending the causes for which divorces should be granted. We hold to the scriptural rule, whatever others may hold. We trust that others will discuss this suggestion as we have endeavoured to do, upon the grounds of expediency and merit. The present mode of hearing and disposing of divorce measures is inexact and unsatisfactory, and we desire to direct attention to the absolute need which exists for rules of procedure, so that everything may be duly planned and settled in such a way as to avoid hasty, improvident, or prejudiced action.

In conclusion we may, we trust, be allowed to observe that, in the Divorce Bills of the past, no provision was made for permitting the delinquents to marry again. It has been strongly argued that, in the interests of morality, they should be allowed to do so upon the dissolution of the marriage tie.

The few discussions which have taken place on the subject of divorce in the different Church courts have not been followed by very definite action. No other Church has expressed so definite an opinion as has the Reformed Episcopal Church, which, at the meeting of its General Council, held at Philadelphia last

June, came out boldly with no uncertain sound, and, so far as one denomination could do so, spoke to all and sundry by passing the resolutions which we give below. They are the standing canons of that communion, and may be suitably read in this connection:—1. That the Reformed Episcopal Church recognizes adultery as the only scriptural ground for divorce. 2. That this Church forbids its ministers to perform the marriage ceremony for any divorced party, unless the person from whom that party is divorced has been guilty of, or is living in, adultery. 3. That nothing in these resolutions forbids the re-marriage of former husband and wife.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The first instalment of the *Law Reports* for December comprise 19 Q. B. D. pp. 565-683; 12 P. D. pp. 193-207; 36 Chy. D. pp. 261-700; and 12 App. Cas. pp. 471-651. Owing to the large number of cases included in these numbers our notes of them must be necessarily very brief.

COMPANY—DEBENTURES—MORTGAGE OF COMPANY'S ASSETS—BILL OF SALE—REGISTRATION—EXECUTION CREDITOR.

Commencing with the cases in the Queen's Bench Division *Jenkinson* v. *Brandley Mining Co.*, 19 Q. B. D. 568, is to be noted. In this case debentures were issued by a limited company in the form of bonds whereby the Company covenanted to pay the bearer the principal and interest, and each bond contained a clause stating that its payment was secured by an indenture of mortgage made in favour of certain trustees. The mortgage deed was not identified in the debentures by its date or by any further particulars of its contents; and the debentures themselves did not purport to pass any property of the Company to the holder. The mortgage deed itself which bore even date with the debentures was an ordinary mortgage deed purporting to convey all the land, plant, fixtures, etc., of the Company to the mortgagees; it contained no trust for the benefit of the debenture holders. It was not registered as a bill of sale. Goods and chattels of the Company having been seized under execution, a claim was made to them by a debenture holder, and it was held by Grave and Huddleston, JJ., that the mortgage was void for want of registration under the Bills of Sales Act, and that the debentures created no charge enforceable by the claimant against a *bona fide* execution creditor.

NEGLIGENCE—EMPLOYERS' LIABILITY ACT, 1880, s. 1, ss. 2 (49 VICT. C. 28, s. 3, ss. 2-3, O.)—NEGLIGENCE OF FELLOW-WORKMAN.

Kellard v. *Brooke*, 19 Q. B. D. 585, is an action under the Employers' Liability Act, from which our Provincial Statute, 49 Vict. c. 28, is adapted. The plaintiff and other workmen were employed by the defendant to stow bales of wool in the hold of a ship. The workmen were divided into gangs, the foreman of the plaintiff's gang being B. The bales were hauled to the hatchway and dropped down to the workmen below. B., who worked on deck, giving a signal

to the men below before the bales were dropped. The plaintiff was injured by a bale coming down, according to his statement, without any warning. Hawkins and A. L. Smith, JJ., held that the plaintiff was not entitled to recover because there was no evidence that the injury was caused by the negligence of a person who had any "superintendence" intrusted to him whilst in the exercise of such superintendence, or by reason of negligence of any person in the service of the defendant, to whose orders or directions the plaintiff was bound to conform.

NEGLIGENCE—EMPLOYERS' LIABILITY ACT, 1880 (49 VICT. C. 28, O.)—VICIOUS HORSE—RISK VOLUNTARILY INCURRED—"WORKMAN," "PLANT," DEFECT IN CONDITION OF.

The only other case we think it necessary to refer to in the Queen's Bench Division is *Yarmouth* v. *France*, 19 Q. B. D. 647, another case under the Employers' Liability Act, 1880, in which the much canvassed case of *Thomas* v. *Quartermaine*, 18 Q. B. D. 685, again came under consideration. The plaintiff was in the employment of the defendant, who was a wharfinger, owning carts and horses for the purpose of his business. It was the duty of the plaintiff to drive the carts, and load and unload goods carried by them. Among the horses was one of a vicious nature, and unfit to be driven even by a careful driver, which the plaintiff objected to drive, and which he told the foreman of the stable was unfit to be driven, to which the foreman replied that he must go on driving it, and if any accident happened his employers would be responsible. The plaintiff continued to drive the horse, and, while sitting on the proper place in the cart, was kicked by the animal and his leg broken, on account of which injury the action was brought. It was held by Lord Esher, M. R., Lindley and Lopes, L.JJ., sitting as a Divisional Court, that the plaintiff was a "workman" within the definition in s. 8 of the Act; but here the agreement of the Court ended.

Lord Esher, M. R., and Lindley, L. J., held that the horse which injured the plaintiff was "plant" used in the business of the defendant, and that the vice in the horse was a "defect" in the condition of such plant; on this point Lopes L. J., expressed no opinion. Lord Esher, M. R., and Lindley, L. J., were also of opinion that upon the facts the jury might find the defendant liable, because there was evidence of negligence on the part of the foreman, and the circumstances did not conclusively show that the risk was voluntarily incurred by the plaintiff. But Lopes, L. J., on the other hand, thought that there was no case to go to the jury, because he was of opinion that the evidence showed that the plaintiff, with full knowledge of the risk to which he was exposed, had elected to continue in the defendant's employment.

The view of the majority of the court on this point may perhaps be best summed up in the following passage in the judgment of Lindley, L. J.:

"If in any case it can be shown as a fact that a workman agreed to incur a particular danger, or voluntarily exposed himself to it, and was thereby injured, he cannot hold his master liable. But in the cases mentioned in the Act, a workman who never in fact engaged to incur a particular danger, but who finds himself exposed to it and complains of it, cannot, in my opinion, be held as a

matter of law, to have impliedly agreed to incur that danger, or to have voluntarily incurred it, because he does not refuse to face it, nor can it, in my opinion, be held that there is no case to submit to a jury on the question whether he has agreed to incur it, or has voluntarily incurred it or not, simply because, though he protested, he went on as before."

None of the cases in the Probate Division appear to require notice here.

SALE OF GOODS INDUCED BY FRAUD—RESTITUTION OF GOODS ON CONVICTION—SALE IN MARKET OVERT.

Turning now to the appeal cases, the first we find requiring notice here is *Bentley* v. *Vilmont*, 12 App. Cas. 471, in which the House of Lords affirms the case reported *sub nom*, *Vilmont* v. *Bentley*, 18 Q. B. D. 322, noted *ante*, vol. 23, p. 142. This was a civil action brought by a person who had been induced by fraud to sell his goods, to recover them from a third person who had bought them in market overt before conviction of the fraudulent purchasers, and without notice of the fraud—no order for restitution had been made. The Court of Appeal overruling *Moyce* v. *Newington*, 4 Q. B. D. 32, held the plaintiff entitled to recover, and this decision was affirmed by the Lords, though in pronouncing the judgment their Lordships said they had come to the conclusion with very great reluctance. As Lord Watson points out, there is a material distinction between the case of stolen goods, and goods obtained by fraudulent practices. In the former case the original owner and the purchaser in market overt are in *pari casu*, and neither has done aught to mislead the other; whilst in the latter case, the original owner has intentionally given his fraudulent vendee an *ex facie* absolute and valid title to the goods upon which purchasers, without notice of the fraud, are entitled to rely. But their Lordships held that the statute allowing restitution had made no distinction between the two cases, and therefore in both cases the right to the goods remained in the original owner.

MARINE INSURANCE—CONCEALMENT OF MATERIAL FACTS—PRINCIPAL AND AGENT—CONCEALMENT BY AGENT, THROUGH WHOM POLICY NOT EFFECTED.

It must be confessed that the Court of Appeal, when it differs from its Chief, has been unfortunate in the result of the appeals from its decisions reported in this number. In the important case of *Blackburn* v. *Vigors*, 12 App. Cas. 531, their decision in 17 Q. B. D. 553, noted *ante*, vol. 22, p. 377, which came with something like a shock upon the profession, has been reversed in the Lords. It will be remembered that in this case the plaintiffs instructed a broker to insure an overdue ship. Whilst acting for the plaintiff this broker received information which cast grave doubts on the safety of the ship. Without communicating this information to the plaintiff, he recommended him to apply to another broker, which the plaintiff did, and effected an insurance through this other broker, "lost, or not lost," on which the action was brought. The ship had in fact been lost some days before the insurance was effected; but neither the plaintiff nor the broker through whom the insurance was effected knew it, and they acted in good faith. The Lords held that the knowledge of the first broker was not the knowledge of the plaintiffs, and that the plaintiffs were entitled to recover.

SHIP—BILL OF LADING—PERILS OF THE SEA—COLLISION.

In *Wilson* v. *Owners of Cargo* per "Xantho," 12 App. Cas. 503, the House of Lords reversed the decision of the Probate Division in "The Xantho," 11 P. D. 170, noted *ante*, vol. 23, p. 26. The action was brought against ship owners for non-delivery of goods pursuant to a bill of lading, which contained the usual exceptions of "dangers and accidents of the sea." The non-delivery was due to the fact that without fault of the carrying ship it had come into collision with another vessel and foundered. The Probate Division held that this was not *prima facie* a loss within the exception, but the Lords were of a different opinion, and overruled *Woodley* v. *Michell*, 11 Q. B. D. 47, which the court below had followed.

BILL OF LADING—PERILS OF THE SEA—DAMAGE CAUSED BY RATS.

In *Hamilton* v. *Pandorf*, 12 App. Cas. 518, their Lordships also overruled the Court of Appeal, whose decision *sub nom. Pandorf* v. *Hamilton*, 17 Q B. D, 670, was noted *ante*, vol. 22, p. 396. In this case rice was shipped under a charter party and bills of lading, which excepted "dangers and accidents of the seas." During the voyage rats gnawed a hole in a pipe on board the ship, whereby sea water escaped and damaged the rice without neglect or default of the ship owners or their servants. The court below held that this was not a damage within the exception, but their lordships reversed this decision and restored the judgment of Lopes, L. J., 16 Q. B. D. 629.

B. N. A. ACT, 1867, s. 91, ss. 2, 3, 15; s. 92, ss. 2—DIRECT TAXATION—POWERS OF LOCAL LEGISLATURES.

In *Bank of Toronto* v. *Lambe*, 12 App. Cas. 575, the Judicial Committee of the Privy Council held, that under the B. N. A. Act, the Local Legislature of Quebec had power to impose a tax upon banks and other corporations doing business in the Province of Quebec, varying in amount with their paid-up capital and number of offices, and that such a tax was "direct taxation."

MUNICIPAL CORPORATION—46 VICT. C. 24 S. 4 (D.)—EFFECT OF ORDER OF RAILWAY COMMITTEE—RIGHT OF RAILWAY CO. TO COMMENCE OPERATIONS—TRESPASS—PRINCIPAL AND AGENT.

The only remaining case we think it necessary to notice is *Parkdale* v. *West*, 12 App. Cas. 602, another appeal from the Supreme Court of Canada. This was an action brought by property holders against the corporation of Parkdale, to recover damages for trespass to their property, by the construction of a subway. The work was authorized to be done by railway companies by an order of the Railway Committee, under 46 Vict. c. 24 s. 4 (D.), but it was actually performed by the corporation as agents as they claimed for the railway companies, but it was held by the Privy Council that the order of the railway committee did not of itself, apart from the provisions of law thereby made applicable to the case of land required for the carrying out of the work, empower the railway companies to take any person's land or interfere with any person's rights except in the way pointed out by law, and that as the provisions of the Consolidated

Railway Act, 1879, as to the deposit of plans and book of reference relating to the proposed work had not been complied with, neither the railway companies, nor the corporation as their agents, had any right to commence operations. And it was also held that the payment of compensation to persons whose lands were required to be taken, or injuriously affected by the proposed works, was also a condition precedent to the right of the railway companies to take, or interfere with such lands.

Reviews and Notices of Books.

A Treatise on the Investigation of Titles to Real Estate in Ontario, with a Precedent for an Abstract. By EDWARD DOUGLAS ARMOUR, of Osgoode Hall, Barrister-at-law. Toronto: Carswell & Co., Law Publishers. 1887.

This book deals with a subject of general importance to the profession, and the position of the author, as one of the lecturers of the Law Society, led us to hope that the work would be found to be distinguished by thoroughness and exactitude, and for this reason we have made a careful examination of it to see how far our expectations are verified. While there is much to commend, we cannot help feeling that this work falls somewhat short of our, perhaps too sanguine, expectations.

The arrangement of the matter is on the whole judicious and the style generally clear, and the printer and proof-reader have certainly done their parts admirably, and the comparative absence of typographical blunders is quite remarkable in a Canadian law book.

In many respects the author has acquitted himself unusually well, considering that this is his first effort at book-making. His work is decidedly less sketchy than Chief Justice Taylor's little book on the same subject, on which to some extent it is founded. At the same time, we do not think it is justly entitled to unqualified praise. Mr. Taylor's book, though little more than a mere skeleton, was, nevertheless, as far as it went, strictly accurate and reliable, while Mr. Armour's, like most first editions, is by no means free from certain inaccuracies necessary to be noticed. Some matters which one would naturally expect to find in a work of this kind are not referred to. The author has entirely omitted the subject of tax titles, but his reason for so doing does not appear to us sufficient. The existence of American treatises, which omit all reference to the large number of Canadian cases upon that important subject, does not, by any means, supply the want. While the author gives his reasons for not including tax titles, he gives no reason for omitting all reference to estates tail, estoppel, restrictive covenants, and covenants running with the land, and the procedure under the Vendors and Purchasers Act for resolving questions of title, all of which matters, we should have thought, would naturally form an important part of a work of this kind.

We do not think we are too exacting in expecting that all the Canadian cases of importance bearing on the subject should be collected and collated, but in this respect, too, the work fails to come up to our expectations. This may be seen, when we say that no reference is to be found to such cases as *Van Wagner* v. *Findlay*, 14 Gr. 53; *Tylee* v. *Deal*, 19 Gr. 601; *Beattie* v. *Mutton*, 14 Gr. 686; *Dilk* v. *Douglas*, 26 Gr. 99, 5 A. R. 63; *Green* v. *Ponton*, 8 O. R. 471; *Muir* v. *Dunnet*, 11 Gr. 85; *Reg.* v. *Guthrie*, 41 Q. B. 148; *Mulholland* v. *Harman*, 6 O. R. 546; *Beaty* v. *Shaw*, 13 O. R. 21; *Scott* v. *Scott*, *Ib.* 551; *Smith* v. *Smith*, 5 O. R. 690; *Coleman* v. *Hill*, 10 O. R. 172; *McKay* v. *McKay*, 31 C. P. 1; *Imperial Bank* v. *Metcalfe*, 11 O. R. 467; *Laird* v. *Paton*, 7 O. R. 137; Re *Shaver*, 3 Chy. Ch. R. 379, and scores of other cases which might be named, bearing on the subject treated of.

While, however, the author has omitted many cases which we hope to see in a new edition, he has, in some instances, been unnecessarily laborious over minute points. For instance, ten pages, or nearly one twenty-eighth of the work, is devoted to the discussion of the question as to the precise moment when a document can be said to be legally registered, and three pages are devoted to an elaborate argument as to the right to search the Abstract Index; and a very ample discussion on the subject of curtesy is subsequently repeated to a great extent, when discussing the power of a married woman to convey her estate. We can not help thinking it would have made the book more useful to have shortened these passages and amplified others which are treated less fully.

The author is, for the most part reliable, but we think in some few instances he has fallen into error, and that the work, therefore, needs revision, and will in the meantime require to be used with caution. For instance, when he tells us, at page 131, that an equity of redemption, which is not saleable under *fieri facias*, may be safely purchased from the owner without searching for executions against him, we think he is altogether wrong. We are inclined to think it would be found that the existence of a writ in the sheriff's hands against the owner of the equity of redemption would, in equity, bind his interest, even though it might not be saleable under the writ, but might require the aid of what is called "Equitable execution," to make it available. See *Moore* v. *Clark*, 11 Gr. 497. We think the author is also wrong in stating that equitable execution can be obtained without issuing a writ. The practice settled by *Shea* v. *Denison*, 14 Gr. 513, also see *Wilson* v. *Proudfoot*, 15 Gr. 103, we think, is still obligatory. The only authority in our courts for the proposition stated by the author, that we are aware of, is *Johnston* v. *Bennett*, 9 P. R. 337, an unconsidered and *ex parte* judgment of Proudfoot, J., purporting to follow *Kerr* v. *Styles*, 26 Gr. 309, a case in which execution had been issued. So also it will be found that the cases of *Crookshank* v. *Humberston*, 6 O. S. 103, and *Ley* v. *Peter*, 3 H. & N. 101, do not bear out the propositions for which they are cited. In his citation of the latter case Mr. Armour, however, follows the blunder of English writers.

On page 153, we are told that if a married woman "dies intestate" her hus-

band will be entitled to her estate by the curtesy, unless her legal personal representative succeeds to her real property under 47 Vict. c. 19, s. 19. Further on, however, at page 156, we learn that since the passing of the Devolution of Estates Act, 1886, the real estate of a married woman upon her death devolves upon her personal representative, and the true position of the husband as to curtesy is stated.

On page 72, the statement as to the effect of possession under an unregistered instrument needs qualification, as will be seen by the case of *Latch* v. *Bright*, previously cited on page 57.

When the author tells us on page 99 that "trust estates descend to the eldest son," he has evidently forgotten to make the necessary changes which the "irritating" amendment, effected by the Devolution of Estates Act, 1886, rendered necessary in his text.

On page 167, it is said that when land is mortgaged after the commencement of work, for which a mechanic's lien may be claimed, the mortgage takes priority over the lien. We can only say that we would strongly advise no one to act on that view of the law. Even if the authorities referred to are sound, the bold statement in the text needs very considerable qualification.

On page 170, it is said that under our system of registration, the production of deeds is not a matter of much moment. To this we are not able to assent; on the contrary, a case occurs to us where a gross swindle was defeated by the simple fact that the solicitor concerned in the transaction insisted on the production of the original deeds.

On page 183, a trap is laid for the unwary by the suggestion that third parties may properly be served with a petition under the Vendors and Purchasers Act, a proceeding which, we may observe, has already been tried in practice with the sole result of saddling the petitioners with the costs of such parties: *Lewis* & *Thorne*, 14 O. R. 133.

In treating of titles by possession, we should have been glad to see more than a passing reference to the effect of payment of rent or interest, and it would have been well had the author collected the recent cases relating thereto.

On pages 215 and 223 it is said that letters of administration are no better evidence of intestacy now than they were before the Devolution of Estates Act, 1886. This, we think, is a mistake. We need hardly point out that formerly letters of administration were really only proof of intestacy as to personalty, and were consistent with the fact of the deceased having left a will as to his realty. Now, when letters of administration are granted, both as to real and personal estate, such letters will be just as good evidence of intestacy as to realty as they are in regard to personalty, because they cannot be granted except upon due proof that there is no will affecting either real or personal estate.

On page 224, the author states that a will thirty years old proves itself on production, and that the thirty years are to be computed from its date, and not from the death of the testator. We do not see why the authority in our court on this subject, *Iler* v. *Elliott*, 32 Q. B. 440, is not cited, and it would surely be useful to note that the point is not altogether free from doubt on principle, for

the testator might live more than thirty years after the date of his will. We think the author should also have cautioned his readers against relying on a mere registered copy of a will with no proof of the death of the testator, as it is possible to register a will in the lifetime of the testator, and such a case has actually occurred in practice.

While there is much patient industry manifested in the book, there are some few places where the author appears to have been napping. Thus, on page 57, an observation of Richards, C.J., is quoted as a part of a judgment of Draper, C.J., and the sentence given, though perfectly intelligible when taken with its context, when isolated, as it is by the author, serves to raise a doubt in the mind of the reader whether it supports or conflicts with the proposition in reference to which it is cited. Then *Boynton* v. *Collins*, and *Thompson* v. *Curzon*, are cited at page 251, but the reader is not informed that these decisions were subsequently overruled by *Reid* v. *Reid*, 31 Ch. D. 402. So also *Faulds* v. *Harper*, 2 Ont. R. 405, is cited on page 129, but the reader does not learn from the book before us that that case subsequently went to the Court of Appeal, and ultimately to the Supreme Court (see 9 App. R. 537 and Cass. Dig. 229.)

It is a great pity the author did not see his way to withholding the book from publication until the revision of the Statutes was completed, as it will unavoidably lose much of its value as a work of reference now that the revision has taken effect.

Notwithstanding the blemishes we have pointed out, we think this work is likely to prove a valuable addition to our legal literature; and though we have been at some pains to point out some of its defects, we hope that the author may soon be called on for a second edition, when he will no doubt see his way to removing them.

The Text-Book Series. Published monthly by the Blackstone Publishing Company, Philadelphia. 1887.

The last of the Law Text-Book Series, published by the Blackstone Publishing Co., of Philadelphia, for the year 1887, is *May on Fraudulent Conveyances.* This series contains a collection of the freshest, most authoritative and valuable text-books in the leading departments of law. The work mentioned above is a treatise on the Statutes of Elizabeth against fraudulent conveyances. It is reprinted from the second English edition, published in 1887, the first edition having been issued in 1871. It is the standard authority on the subject of which it treats, and it also discusses the Bills of Sales Act (Eng.) of 1878 and 1882, and the laws affecting the voluntary disposition of property. Additional value is given to this edition, in that reference has been made to some of our Ontario cases, as well as to some American decisions. The series for 1888 will contain an unusual number of exceptionally valuable works.

Proceedings of Law Societies.

THE LAW SOCIETY OF UPPER CANADA.

PROCEEDINGS OF CONVOCATION—MICHAELMAS TERM, 1887.

THE following is a *resumé* of the proceedings of Convocation during Michaelmas Term, 1887 :—

The following gentlemen were called to the Bar during the above Term, *viz.*:—

November 21st—George Watson Holmes, Herbert Langell Dunn, Roderick James Maclennan, James Albert Page, Francis Foley Lemieux, Edward Holton Britton, Alexander Robert Bartlet, Robert James Leslie, Herbert Hartley Dewart, Robert Cleugh Le Vésconte, D'Arcy de Lessert Grierson, William John Millican, George Filmore Cane, Horace Osmond Ernest Pratt, Richard Alexander Bayley.

November 22nd—Abner James Arnold, William Percy Torrance.

November 26th—William Arthur John Bell.

The following gentlemen were granted Certificates of Fitness as Solicitors, *viz.*:—

November 21st—E. H. Britton, R. C. Le Vésconte, R. J. Maclennan, G. F. Cane, R. A. Bayly, G. R. O'Rielly, E. S. Wigle, E. A. Crease, A. F. May, G. J. Leggatt, R. H. Dignan, J. H. A. Beattie, E. Considine, A. D. McLaren, H. N. Roberts, H. Macbeth.

November 22nd—A. Stevenson.

November 26th—J. C. Grant, A. R. Bartlet, R. J. Leslie, G. W. Holmes, W. D. Gregory, W. A. J. Bell, G. A. Payne, J. P. Lawless, J. Y. Murdoch.

December 2nd—W. P. Torrance, J. M. Quinn.

December 10th—C. E. Weeks.

The following gentlemen passed the First Intermediate Examination, *viz.*:—

J. F. Orde, with honours and first scholarship; C. E. Burkholder, with honours and second scholarship; W. H. Hunter, with honours and third scholarship; A. Constantineau, with honours; and Messrs. J. Ross, D. Hooey, R. A. Widdowson, E. S. B. Cronyn, J. Webster, A. C. Sutton, M. Routhier, W. L. Morton, T. W. Horn, A. J. J. Thibodo, H. A. Simpson, A. H. Wallbridge, W. A. Smith, A. B. McCallum, J. F. O'Brien, C. Elliott, J. H. Hegler, J. Miller, H. W. Macoomb, W. P. McMahon, J. A. Ritchie, M. Scandrett, W. C. Smith.

The following gentlemen passed the Second Intermediate Examination, *viz* :—

J. A. V. Preston, with honours and first scholarship; A. Collins, with honours and second scholarship; C. D. Scott, with honours and third scholarship; and Messrs. F. W. Carey, G. C. Gunn, W. E. Tisdale, R. G. Smyth, H. Harvey, R. L.

Elliott, J. H. Hunter, R. M. Macdonald, C. McIntosh, J. F. Edgar, R. M. Thompson, J. F. Woodworth, C. A. Ghent, S. D. Lazier, W. G. Burns, H. Miller.

The following candidates were admitted as Students-at-law, *viz.*:—

Graduates—F. J. Fu[illegible]on, J. J. Maclennan, T. B. Gash, J. McEwen, T. D. Law, J. F. Carmichael, C. B. [illegible]upuis, W. Davis

Matriculants—A. E. Scanlon, H. T. Berry, J. E. Bird, W. J. Boland, W. I. Dick, W. Farnham, J. F. Jeffery, M. P. McDonagh, J. A. Oliver, R. S. Robertson, W. F. Scott, J. G. Shaw.

Juniors—H. G. Hamilton, D. E. Stuart, G. A. Kingston, H. F. Gault, A. L. Malone, H. M. McConnell, J. F. McMaster, H. E. A. Robertson, T. H. Lloyd, T. W. McGarry, E. Harley, L. B. C. Livingstone, T. B. M[illegible]tin.

Articled Clerk—W. J. McCamon.

Monday, 21st November.

Convocation met.

Present—Messrs. S. H. Blake, Britton, Bruce, Cameron, Fraser, Hudspeth, Irving, Kerr, Lash, Maclennan, McCarthy, Morris, Moss, Murray, Osler and Smith.

In the absence of the Treasurer, Mr. Irving was elected Chairman.

The minutes of last meeting were read and approved.

The case of C. R. Fitch was considered, and the case of Hon. G. W. Ross, who had not given a term's notice, was considered.

Ordered that the names of the above-named gentlemen appear in the list of those who have passed the examination this Term, and that their names appear in the list of gentlemen applying to be called to the Bar next Term.

Mr. Moss presented the report of the Committee on Legal Education, on the case of William Mundell, which was received and read.

Ordered for immediate consideration and adopted.

Mr. Moss, from the same Committee, presented the report on the case of A. W. Burk, recommending that he be allowed to present himself for examination and call in Easter Term.

The report was received and read.

Ordered for immediate consideration and adopted.

Mr. Moss, from the same Committee, reported on the case of W. E. Kelly, who passed his Oral Examination this Term, recommending that he be allowed his Second Intermediate Examination, as of Easter Term, last.

The report was adopted and ordered accordingly.

Mr. Moss presented the report of the Special Committee on Honours and Scholarships which was received and read, as follows:—

1. The Committee find that Messrs. J. F. Orde, C. E. Burkholder, W. H. Hunter and A. Constantineau passed the First Intermediate Examination with honours, and that Mr. Orde is entitled to a scholarship of one hundred dollars, Mr. Burkholder to a scholarship of sixty dollars, and Mr. Hunter to a scholarship of forty dollars.

2. The Committee further find that Messrs. J. A. V. Preston, A. Collins and

C. D. Scott passed the Second Intermediate Examination with honours, and that Mr. Preston is entitled to a scholarship of one hundred dollars, Mr. Collins to a scholarship of sixty dollars, and Mr. Scott to a scholarship of forty dollars.

3. That Mr. F. W. Carey obtained the necessary number of marks on the Second Intermediate Examination to entitle him to pass with honours, and to be awarded the third scholarship had he been in due course, but it appearing from the Secretary that Mr. Carey was entered on the books of the Society as a Student-at-law in Easter Term, 1883, and was articled on the 10th July, 1883, and passed his First Intermediate in Easter Term, 1886, he is not under the rules entitled, as of course, to be passed with honours or to be awarded a scholarship.

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

Mr. Hoskin presented the report of the Discipline Committee on the case of Mr. E. Meek, which was received and ordered for consideration on Saturday, 26th inst.

Mr. Hoskin, from the same Committee, laid upon the table the draft Bill to empower Convocation to examine witnesses on oath, and to suspend practitioners for a limited period, pursuant to the recommendation of the Discipline Committee.

Ordered that it be considered by Convocation on the 26th inst.

Tuesday, 22nd November.

Convocation met.

Present—Messrs. Ferguson, Foy, Irving, Mackelcan, Meredith, Morris, Moss, Murray and Osler.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of last meeting were read and approved.

The Secretary read the report upon the subject of the Buffalo Libraries, and his suggestions based thereupon.

The report was referred to the Library Committee, to act with Messrs. Mackelcan, Osler and Murray.

Saturday, 26th November.

Convocation met.

Present—Attorney-General Mowat, and Messrs. Cameron, Ferguson, Hardy, Hoskin, Irving, McMichael, Morris, Moss, Murray, Osler and Robinson.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of last meeting were read and approved.

Mr. Moss, from the Legal Education Committee, reported on the case of C. J. Atkinson—

That he had now completed his papers and that his time had now expired, but that he had made an affidavit on the 3rd October that he had served his time in full up to November 19th following.

The report was received, read and considered.

Ordered that Mr. C. J. Atkinson be not called to the Bar and do not receive a certificate of fitness until Hilary Term, 1888, and that on the first day of said

Term his certificate be granted, and that he be at liberty to present himself to Convocation for call to the Bar.

Mr. Hoskin, from the Special Committee on Legislation, read the report made by this committee and the proposed amendments of the rules under the Judicature Act to be submitted to the judges, which report was received by Convocation.

Mr. Hoskin presented the report of the Discipline Committee on the case of Mr. E. Meek, which was adopted.

Ordered that the Finance Committee be authorized to purchase the painting of the five judges.

The application of the Elgin Law Association was read and referred to the County Libraries' Aid Committee, with a request that they report at next meeting.

The Secretary presented the letter of Mr. Justice Falconbridge resigning his seat as a Bencher.

The Secretary was directed to call a meeting of the Benchers for the first Tuesday of next Term to elect a Bencher in the place of Mr. Falconbridge.

A letter from the Electric Light Co. was referred to the Finance Committee with power to act.

Friday, 2nd December.

Convocation met.

Present—Messrs. Beaty, Bruce, Foy, Hudspeth, Irving, Kerr, Lash, MacKelcan, Maclennan, Meredith, Morris, Moss, Murray and Smith.

The minutes of last meeting were read and approved.

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

On motion made, the book showing the attendance of Benchers was laid on the table.

Ordered that Messrs. Bruce, Foy and Hudspeth be a committee to examine the attendance-book to ascertain whether any Bencher has lost his seat by non-attendance for three consecutive Terms, under 34 Vict. c. 15, s. 23.

A letter from Mr. H. R. Hardy, dated November 23rd, was read, asking for the usual grant of $100 to enable him to issue his Annual Legal Chart for 1888, he agreeing to deliver twelve copies of his chart to the Secretary.

Ordered that the application of Mr. Hardy be granted, and that the copies of the chart supplied be distributed through the building.

Ordered that the Finance Committee be authorized to continue the renovation and furnishing of the old lecture and luncheon room, now the Benchers' luncheon room, as they may deem proper.

Mr. Bruce read the report of the Committee appointed to examine and report whether any Bencher had lost his seat by non-attendance.

The report was received and adopted.

The Secretary reported that the difficulty in the case of Ira Standish had been removed, and that he was entitled to be allowed his Second Intermediate Examination as of Trinity Term last.

Ordered that his examination be allowed as of Trinity Term last.

The Secretary reported on the case of R. J. Leslie that, after passing his final examinations this Term, he had died after a very short illness before he had received his certificate of fitness.

Ordered that under the circumstances the fees paid by the late Mr. Leslie, amounting to one hundred and sixty dollars, be refunded to his father.

A letter was read from Messrs. McColl Bros. & Co., dated 29th November, making complaint against a solicitor.

Ordered, that the Secretary reply to the letter, stating that it is not a case for Convocation to deal with.

Some discussion having taken place in regard to the increased lighting of the Library, it was ordered that the Secretary place himself in communication with the Gas Company, to ascertain what arrangement can be made for the introduction of gas as an illuminator in lieu of the arc light, the Electric Light Company being unable to introduce the incandescent light, and the arc not meeting the approval of Convocation.

The petition of the Examiners and Lecturers of the Law Society for an increase of salaries was read, and, by order of Convocation, referred to the Legal Education Committee for consideration and report.

Saturday, 10th December.

Convocation met.

Present—Sir Alexander Campbell and Messrs. Bruce, Foy, Irving, Kerr, Lash, McCarthy, McMichael, Moss, Murray, Osler, Robinson, and Smith.

In the absence of the Treasurer, Mr. Irving was elected Chairman.

The Minutes of last meeting were read and approved.

Mr. Murray, from the Reporting Committee, presented the report of that committee, which was received, read and adopted.

Mr. Bruce, from the County Libraries' Aid Committee presented the report of that committee, which was received, read, considered and adopted.

Ordered that the Finance Committee be authorized to pay the grant to the County of Elgin Law Association mentioned in the above report.

The letter of Mr. Langmuir respecting the portrait of the five judges was read and considered, and further authority was given to the Finance Committee.

The Secretary having reported that Mr. Meek had applied to him for the finding of the Discipline Committee on the complaint laid before them against him.

It was ordered that the Secretary be directed to communicate the same to Mr. Meek.

Ordered that the Secretary do report to Convocation on the first day of each Term, and at each meeting of Convocation held between Terms, the names of such elected Benchers, if any, who have failed to attend the meetings of the Benchers for three consecutive Terms.

That such report be then referred to the Committee on Journals and Printing for report to Convocation thereon.

That if such Committee report the seat of any Bencher vacant for the cause mentioned, a day be appointed for taking such report into consideration, and that the Bencher interested be notified of the report and of the time at which it is to be taken into consideration.

Ordered that the question of the retainer and fees to be paid by the Society to the Solicitor, or other system of payment of the Solicitor for his services, be referred to the Finance Committee, to report at the next regular meeting of Convocation

Convocation adjourned.

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

CHANGES IN THE CURRICULUM.

The following changes in the Curriculum of the Law Society come into force at the examinations before Easter Term, 1888:—

1. The second edition of *O'Sullivan's Manual of Government in Canada* is substituted for the first edition of that work in the Second Intermediate Course.

2. *Armour on Titles* is substituted for *Taylor on Titles*, in the course for Certificates of Fitness.

HAMILTON LAW ASSOCIATION.

TRUSTEES' REPORT, ADOPTED AT THE GENERAL ANNUAL MEETING, HELD JAN. 3RD, 1888.

THE Trustees beg to present their Eighth Annual Report, being for the year 1887.

During the year 1887 Mr. Robertson, Q.C., was elevated to the Bench; Mr. Kilvert accepted the Collectorship of Customs; while Messrs. Currell and Lavery ceased to practise in this county, and have thus severed their connection with the Association.

Three new members have been added, viz., Messrs. H. S. Osler, P. M. Bankier, and Thomas Hobson; while R. A. Pringle, who was said in last year's report to have ceased to practise in this county, is again a member, and the present membership is 70.

The annual fees to the amount of $330 have been paid, there being only $7.50 in arrear.

The number of volumes in the library is 2,298, of which 188 were added during the year. The following periodicals are received: English—*The Law Times, The Solicitors' Journal.* American—*The Albany Law Journal.* Ontario—*The Canada Law Journal, The Law Times.*

The Treasurer's Report is submitted herewith, giving a detailed statement of receipts and expenditures, of the liabilities and assets of the Association, and the same is also in the form required by the Law Society.

The Trustees have recently purchased a number of text-books, some of which are yet to arrive from England. In making selections they have availed themselves of the views of the members, and they trust suggestions will continue to be made from time to time.

Of the indebtedness of the Association, mentioned in last year's report, there is unpaid:

The temporary loan for library improvements	$162 76
The balance of McKeown's mortgage	250 00
Balance owing to Mr. Papps	135 00
	$547 76

and it is hoped that increased liberality on the part of the Law Society may enable these to be paid off at an early day, procure the reports still required to render the library reasonably complete, and leave the Association in the future free to devote all its funds to the purchase of the latest text-books and such reports as experience shall show to be required from time to time.

A Committee on Legislation was appointed at the last general annual meeting of the Association, and it is suggested that such Committee be continued.

The subject which has chiefly occupied the attention of the profession during the past year has been the revision of the Rules of Practice.

Owing to the action of the Law Associations throughout the country, and more particularly of those of York, Middlesex and Wentworth, there is every reason to hope that a complete fusion of the Courts with a uniform and consolidated practice may result from what at first promised to be but a collection of all known and existing rules.

The Committee, consisting of Messrs. Martin, Q.C., MacKelcan, Q.C., and Teetzel, have given much valuable time to this question, and the Report of the Joint Committee on Legislation from the County Law Associations, dated 19th November, 1887, shows how fully the suggestions made by this Association in the report dated 4th March, 1887, have been carried into effect.

The Trustees suggest that the same Committee be requested to act again and to use their best efforts to obtain by legislation, if necessary, the reforms which the Association has already expressed as desirable.

The Report of the Committee on Legislation also bears good testimony to the value and influence of the Associations throughout the country, which is flattering to this, the oldest Association in the Province.

The Trustees have obtained from the Law Society a set of text-books for the use of students, which are loaned on the same terms as the series at Osgoode Hall, and should be very useful. Only two students have thus far made the deposit necessary to entitle them to the use of the books.

The Trustees beg to draw attention to the First Annual Report of Mr. Winchester, the Inspector of Libraries, a copy of so much thereof as relates to this Association is laid on the table herewith.

EDWARD MARTIN, *Vice-President.*
E. E. KITTSON, *Secretary.*

Hamilton, 2nd January, 1888.

DIARY FOR JANUARY.

1. Sun ....*1st Sunday after Christmas. New Year's Day.*
2. Mon.... Heir and devisee sitt. begin.
3. Tues....Lord Eldon died, 1838, aged 87.
4. Wed....Chief Justice Moss died at Nice, 1881.
5. Fri.....Epiphany. Christmas vacation ends.
6. Sun ....*1st Sunday after Epiphany.*
9. Mon....C C. York sittings for motions, etc.
10. Tues....Court of Appeal sits.
12. Thur....Sir Chas. Bagot, G.-G., 1842.
14. Sat.....C. C. York sittings for motions end.
15. Sun ....*2nd Sunday after Epiphany.*
19. Tues....Lord Langdale appointed M. R., 1836.
22. Sun ....*3rd Sunday after Epiphany.* Lord Bacon born, 1561.
24. Tues....1st Inter. Examination.
26. Thur ...2nd Inter. Examination.
29. Sun ....*Septuagesima Sunday.*
31. Tues....Solicitors' Examination.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

PURDOM *v.* NICHOL.

From Q. B. D.] [Oct. 25, 1887.

P. indorsed a note at four years for the accommodation of N., which N. handed to R. as collateral security for a debt secured to R. by two mortgages on N.'s freehold, the second being in form an absolute conveyance.

After this B. entered into partnership with N., and R. agreed to throw off $1,000 of N.'s indebtedness, which was then $7,323.08, if B. became jointly liable with N. for it. To effect this R. conveyed the freehold to B. and N. for the express consideration of $6,323.08, and B. and N. gave a mortgage to R. at two years for the same amount.

The note was not taken into account in this transaction, and B. knew nothing of it. In less than a year after this B. and N. dissolved partnership, and, as between themselves, B. assumed the liability to R.

When B. came to settle with R., P. had paid the amount of his note, and R. gave credit to B. for the amount so paid. When P. paid the note he had no knowledge of B.'s connection with the matter.

P. claimed from B. the amount of the note on the ground that he had paid it as surety for the debt for which B. was liable, and that B. received the benefit of the payment by the credit given for it on the mortgage debt.

Held, that P. paid his money to the use of N., not of B. P.'s highest right was to be subrogated to the rights of N. as against B. *Semble*, the effect of the transaction between R. and B. and N. was to discharge P.

Idington, Q.C., for the appellant.

Moss, Q.C., for respondent.

Boyd, C., and Osler, J. A.] [Oct. 29, 1887.

Re DWIGHT AND MACKLEM.

Election Case—Contempt of Court—Telegrams—Subpœna—Privilege—45 Vic. c. 93, s. 18 (D.)—Telegraph Company, officers of.

Upon the trial of a petition under the Ontario Controverted Elections Act, a telegraph operator was examined as a witness, and was asked to produce the originals of certain telegrams alleged to have been sent by the respondent to certain voters the day before the election.

The witness said that he had burnt the telegrams in question with others after being subpœnaed, and while the trial was actually going on, upon instructions received from the General Manager of the Telegraph Company, in whose service he was. He stated that these telegrams, with others, should have been destroyed before, in accordance with a standing rule of the Company, but that he had neglected to do so at the proper time. The instructions to destroy the messages were in the form of a telegram from the General Manager, which was produced by the witness.

Upon the return of an order *nisi* to commit the General Manager and the operator for contempt of court, it was objected that no original subpœna had been exhibited to the operator when he was served with what purported to be a copy, and that none was produced in court; and it was argued that the making away with the messages was not a contempt unless the witness was duly subpœnaed to produce.

Held, that the question was not whether there had been a proper service of a subpœna; but whether there had been an interference with evidence which, but for that interference, would have been before the court. The documents were in existence at the beginning of the court; during the trial they were destroyed by the deliberate action of the General Manager, and the court was thereby hindered in the prosecution of an investigation of a public nature. The Manager and operator were guilty of contempt of court.

No privilege attaches to telegrams in the possession of a telegraph company.

45 Vict. c. 93, s. 18 (D.), should not be read as giving an absolute privilege.

The operator was the proper person to subpœna to produce the telegrams, as he had the control of them and the ability to produce them.

H. Cameron, Q.C., for Dwight and Macklem.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Full Court.] [Dec. 24, 1887.

EACRETT *v.* KENT.

Landlord and Tenant—Distress—Assignment.

The tenant of certain leasehold premises executed an assignment under 48 Vic. c. 26 (O.), and afterwards, but before possession of the tenant's property had been taken by the assignee, or such property removed from the demised premises, the landlord distrained for arrears of rent past due before the making of the assignment.

Held, that the landlord's right of distress was not affected by the assignment;

Held, further, that goods so assigned were not to be therefore deemed *in custodia legis*.

Gibbons, for motion.

Aylesworth, contra.

O'CONNOR *et al. v.* KENNEDY *et al.*

Marriage—Banns—License—Evidence—Bastardizing Issue—26 Geo. II. c. 33; C. S. U. C. c. 102, s. 103; 37 Vict. c. 6, s. 1—Legal presumption in favor of marriage.

In ejectment it appeared that M., one of the defendants, was married to N., 7th Feb., 1866, on one calling of banns, a dispensation having been procured from the Roman Catholic Archbishop for the other two calls, both parties belonging to that faith. Both husband and wife had immediate and continued possession of the land in question under deed to him. Of this marriage was born, 20th Feb., 1867, an only daughter. N. died 3rd May, 1868, and his widow M. on 11th Oct. 1870, intermarried with the defendant K., and they continued in uninterrupted possession until the issue of writ herein. On 11th Jan., 1886, the daughter of M. and N. intermarried with the plaintiff, to whom was born, in wedlock, 3rd July, 1886, though conceived before, the infant plaintiff, the mother dying on the following day. On the issue of the writ herein by the plaintiff, this infant daughter against M. and her husband, the defendant K., they claimed title by possession and denied the validity of the marriage between M. and N., on the ground of the non-publication of banns.

Held, (1) That the onus of disproving the marriage was on the defendants. (2) That 26 Geo. II. c. 33, was in force in Canada as to publication of banns. (3) That 37 Vict. c. 6, s. 1, remedied any defect in the marriage. (4) That the invalidity was not established, inasmuch as defendants did not prove that no license had been issued for this marriage, so as to overcome the legal presumption in favor of marriage.

Maclennan, Q.C., and *Kean*, for motion.

Lennox and *McCosh*, contra.

Chancery Division.

Proudfoot, J.] [Nov. 18, 1887.

Re GILMOUR AND WHITE.

Mortgage—Power of sale—Departure from symbolical short form of power—Trustee as assignee—R. S. O. c. 107, s. 3.

A mortgage under the Short Form of Mortgages Act was made on August 24th, 1874, by E. F. and W. H. F. to T. H. and W. G. T., trustees under the marriage settlement of C. C. H. On October 20, 1877, R. G. was appointed trustee under the marriage settlement instead of T. H. and W. G. T., and the mortgage and lands were granted and assigned to him to hold under the trusts in the settlement. The mortgage contained a proviso for sale on default in payment for one month *without any notice*. Default was made, and R. G. offered the lands for sale by public auction, and T. L. W. became the purchaser, but objected to the title on the ground that R. G. had no power to sell under the power of sale in the mortgage. On an application under the Vendors and Purchasers Act, R.S.O. c. 109, s. 3, it was

Held, that by virtue of R. S. O. c. 107, s. 3, and Imp. Stat. 44 and 45 Vict. c. 41, s. 31, all the powers, authorities and discretions contained in the trust deed are to be exercisable by a new trustee as if he had originally been nominated a trustee by the deed creating the trust; that the original trustees had power to sell; that the new trustee stepped into their place, and could exercise all the powers for realizing the trust property; that they had not as an assignee of the estate, but as if appointed a trustee by the deed creating the trust, and that a good title could be made by R. G. to the purchaser.

R. L. Fraser, for the purchaser.

Jas. Reeve, for the vendor.

Ferguson, J.] [Nov. 30, 1887.

Re GREEN AND AITKIN.

Vendors and Purchasers Act, R. S. O. c. 109—Variation of power of sale in short form of mortgage—Month substituted for months.

G. was assignee of a mortgage made pursuant to the Act respecting Short Forms of Mortgages, which contained a power of sale in the words "Provided that the said mortgagee on default of payment for one month may, on giving notice in writing, enter on and lease or sell the said lands."

In an application under the Vendors and Purchasers Act, R. S. O. c. 109, when the purchaser contended that the substitution of "one month" for "months" was such a variation of the form that G. as assignee could not make title.

Held, that G. could make a good title, and the purchaser must accept it.

Muir, for the vendor.

F. E. Hodgins, for the purchaser.

Boyd, C.]

Re LONDON STEEL WORKS COMPANY—DELANO'S CASE.

Corporations—Contributory—Variation from prospectus in respect to amount of capital.

D. subscribed for 50 shares in a company to be formed, of which the capital was, according to the prospectus, to be $75,000 in 750 shares of $100. Subsequently the promoters obtained letters patent under the R. S. O. c. 150, by which the capital was fixed at double the amount, viz., $150,000 in $100 shares. This change was not communicated to D., nor was there any allotment of stock to him, no entry of his name in any stock book, no acting on his part as shareholder. The Company was in process of winding up.

Held, that D. was not liable as a contributory in respect to any shares.

The amount of a company's capital is one of of those things which, when fixed, cannot be varied without the consent of all who join the company. Here there was an important and material variance between the prospectus and the charter of the company, to which D. did not consent, and of which he was not informed till after the winding up had begun.

G. C. Gibbons, for the company.

M. D. Fraser, for the alleged contributory.

Full Court.] [Dec. 21, 1887.

MORGAN *v.* MORGAN.

Dower—Damages for detention—Alienation of husband.

Held, That a widow cannot recover damages for detention of dower when her husband did not die seized, even though she made demand for dower.

Lash, Q.C., for the defendant (appellant).

Idington, Q.C., for the plaintiff (respondent).

Full Court.] [Dec. 21, 1887.

JONES *v.* MCGRATH.

Husband and wife—Direct deed from husband to wife.

The plaintiff purchased the lands in question from Susan McGrath for $3,000, received a conveyance dated March 28th, 1887, and paid the purchase money. Susan McGrath was the wife of James McGrath, who had by a previous deed, dated October 18th, 1884, conveyed or purported to convey the lands to her for an expressed consideration of $100. The plaintiff now claimed possession of the lands against James McGrath, who defended on the ground, that his deed to his wife was void.

Held, That the non-suit directed by the trial judge must be set aside and a new trial ordered, for that the said learned judge had erred in holding that the conveyance from the husband to the wife was necessarily void to all intents and purposes.

Full Court.]

GUILDING *v.* DEEMING.

Chattel mortgage—Security for goods to be subsequently delivered—Insolvency—48 Vict. c. 26, s. 3.

Appeal from the judgment of Rose, J., on the trial of an interpleader issue. The plaintiff claimed, upon a certain chattel mortgage, certain goods of V., the judgment debtor. The defendant was the execution creditor. The mortgage was made on April 26th, 1886, upon furniture and stock-in-trade, present and future, of V. It was to secure advances on goods to be made within seven months, and to the extent of $1,000. Goods were supplied thereunder from time to time up to Nov. 12, 1886, to the value of $620.75. V. prosecuted her business till August 10th, 1887, when the sheriff seized. V. appeared to have been insolvent when the chattel mortgage was given, but not to the knowledge of the plaintiffs. There was no evidence of fraud and the transaction was an honest one throughout.

Held, That the transaction was within the meaning of 48 Vict. c. 26, s. 3, (1) and the mortgage was made by way of security for a present actual *bona fide* sale and delivery of goods. The mortgage became operative only as and when the consideration therefor from time to time arose by the delivery of the goods. And it then attached upon the chattel property only to the extent of the actual value of the goods supplied from time to time. The mortgage was therefore valid.

H. J. Scott, Q.C., for the plaintiff.

Akers, for the defendant.

Practice.

MacMahon, J.] [Dec. 22, 1887.

REGINA *v.* COLLIER.

Canada Temperance Act—Information—Date of offence—Irregularities—R. S. C. c. 178, s. 87—Warrant of commitment.

An information for an offence against the Canada Temperance Act charged that it was committed "within the space of three months last past," and did not state that the Act was in force in the place where the defendant was alleged to have committed the offence. No objection to the jurisdiction was taken before the Police Magistrate who tried the defendant; the defendant appeared, submitted to the jurisdiction, was called as a witness for the prosecution, gave evidence as to the offence alleged against him, and was convicted. The conviction showed that the Act was in force where the offence was alleged to have been committed.

Held, that it was no objection to the conviction that it did not state the particular date of the offence, or that the Act was in force in the place where it was alleged to have been committed; in any case, these defects in the information were mere irregularities and were cured by R. S. C. c. 178, s. 87.

Held, also, that it was no objection to a warrant of commitment in default of distress that it was issued prior to the expiration of a warrant of remand, provided that it was issued after the return of the distress warrant.

Held, lastly, that the commitment of the defendant to the gaole of the common gaol of the county in which the defendant was convicted was proper.

Osler, J.A.] [July 4, 1887.

In re LINCOLN AND NIAGARA DOMINION ELECTION PETITION, PATTESON *v.* RYKERT.

Election Petition — Alteration — Spoliator — Ratification—Amendment—Appeal allowed by consent—Costs.

After an election petition had been filed two clerks of the Toronto agents of the solicitor for the petitioner were allowed to compare it with an engrossed copy, and finding that the two were different, they altered the filed petition so as to correspond with the copy, adding in one place the word "treating," which had the effect of introducing a charge of a corrupt practice not in the original. The copy served upon the respondent, after this alteration, corresponded with the petition as altered. It was not shown, and it was denied, that the petitioner knew of the alteration.

Held, that the addition of the word "treating" was an alteration in a material part; but that the clerks in doing what they did were not the agents of the respondent or his solicitor. As the document was in the possession of the court, such an alteration, made by persons who were mere strangers or spoliators,

had not the effect of destroying it. The service of the petition in its altered condition could not, in the absence of knowledge of the alteration, be treated as a ratification by the respondent.

It was ordered that the petition served should be restored to its original state, and that the copy served should be amended to conform with the petition as it was when filed.

By consent of the petitioner, the Supreme Court of Canada allowed an appeal from the decision of Osler, J.A., and sustained the preliminary objections, but without costs.

Galt, J.] [29th October.
Chy. Divisional Court.] [7th Dec., 1887.

In re McQUILLAN AND THE GUELPH JUNCTION RAILWAY CO.

Arbitration—Disqualification—R. S. C. c. 109, s. 8, ss. 28—"The Judge"—Divisional Court—Appeal—Certiorari.

A motion was made to Galt, J., under R. S. C. c. 109, s. 8, ss. 28, to determine the validity of the cause of disqualification urged by land-owners against the arbitrator appointed by a railway company under the provisions of the Act. The objection was that the arbitrator was a ratepayer of a city largely interested in the railway company as a shareholder and creditor. He was not himself a shareholder, nor had he any personal interest in the matter, except as a resident of the city, in which he had no real estate, and was assessed on income only.

Held, by Galt, J., that the arbitrator was not disqualified.

Held, by the Chancery Divisional Court, that no appeal lay to the Divisional Court from the decision of the Judge acting under the Statute.

Held, also, that the Divisional Court had no power to remove the proceedings by *certiorari*.

J. L. Murphy, for the land-owners.

Aylesworth, for the Company

Ferguson, J.] [Nov. 25, 1887.

Re SMART INFANTS.

Infants—Custody—Habeas corpus—Petition.

A father was proceeding by *habeas corpus* to obtain an order awarding him the custody of his infant children.

Held, that a more comprehensive adjudication could be had upon a petition, and that there was jurisdiction to direct that a petition should be substituted for the *habeas corpus* proceedings; and such a direction was given where it appeared to be in the interest of the infants and all concerned.

J. Maclennan, Q.C., and *H. J. Scott*, Q.C., for the father.

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

Rose, J.] [Nov. 23, 1887.

ROGERS *v.* WILSON.

Mortgagor and mortgagee — Assignment of mortgage to third party—49 Vict. c. 20, s. 7 (O.)—Motion for judgment — Rule 322 — Admissions in affidavit on former motion.

The defendant made two mortgages to the plaintiff on the same property. The first mortgage being overdue, the plaintiff brought this action, asking for sale, payment, and possession. After service of the writ of summons the amount due and costs were tendered by the defendant, and also an assignment of the first mortgage to a third party for execution by the plaintiff, under 49 Vic. c. 20, s. 7 (O.). The plaintiff refused to execute this because of his second mortgage, although he was willing to execute a discharge, and the defendant moved for a *mandamus* to compel him to execute an assignment.

Held, that the plaintiff was justified, notwithstanding the above enactment, in refusing to execute the assignment.

This motion having been dismissed, a statement of claim was filed, and a statement of defence in which the first mortgage was admitted, and the tender and refusal were set up. The plaintiff then joined issue. There was no reference in the pleadings to the second mortgage. On motion for judgment under Rule 322:

Held, that the admissions in the affidavit of the defendant used on the former motion could be read upon this motion; and that, in view of what was held upon the former motion, there must be judgment for the plaintiff upon the pleadings and affidavit.

Held, also, that a motion under this rule is properly a court motion.

A. M. Taylor, for the plaintiff.

C. C. Robinson, for the defendant.

Boyd, C.] [Dec. 14, 1887.

BRITISH CANADIAN LUMBER & TIMBER CO. *v.* GRANT.

Company winding up—Order of Foreign Court—Defence—Res judicata.

In the course of proceedings taken in Scotland for winding up the plaintiffs' Company, an order was made by a Scotch court for delivery by the defendant, as one of the officers of the Company, of certain books and papers said to be in his hands, and it was provided that in case of default the liquidator might proceed against the defendant who lived in Ontario, in any court in Ontario having authority to compel delivery, and upon default this action was brought for that purpose.

Held, that there was and could be no final adjudication of rights by the order, for it could only be operative by enforcing it against the person of the defendant by attachment for disobedience, and such enforcement could not be of extra-territorial efficacy. There was no power in winding-up a proceeding to pronounce an order equivalent to a final judgment on the merits based upon service of a person out of the jurisdiction of the Scottish court.

And an order striking out the defence in the action on the ground that it was *res judicata* by the order of the Scottish court was rescinded.

Semble, that the order should have been limited to such books and papers as in the hands of the defendant at its date

W. H. Lockart Gordon, for the plaintiff.

Hoyles, for the defendant.

Boyd, C.] [Dec. 14, 1887.

In re ALPHA OIL COMPANY.

Company winding up—Appointment of Liquidator—Costs.

Upon a contest for the appointment of liquidator in a winding-up proceeding, it is desirable to follow the rules for guidance to be found in the English cases under the Winding-up Acts. The court abstains from laying down any such rule as that the nominee of the petitioning creditors should have a preference. The court will consider the condition of affairs to ascertain what parties are most interested in the due administration of the estate in liquidation, and other things being equal, will act upon their recommendation.

And where upon an application under the Dominion Act, the creditors were those whose interests were most to be regarded, and the great bulk of them favoured the appointment of the Sheriff of Lambton, and opposed the nominee of the petitioning creditors, and the sheriff resided in the county where the Company's operations were carried on and where all its books and assets were, and was already *de facto* liquidator under voluntary proceedings taken pursuant to the Ontario Act, and was othewise well qualified for the position, the court appointed him liquidator.

The rule as to costs suggested in Re *Northern Assam Tea Co.*, L. R. 5 Ch. App. 644, followed.

Arnoldi, for the petitioning creditors.

Hoyles, for the Company and certain of the shareholders.

C. J. Holman, for the sheriff and certain of the creditors.

Mr. Dalton, Q.C.] [Dec. 16, 1887.

In re IRVINE, A SOLICITOR.

Attachment of debts—Order for costs only.

The person to receive payment under an order for payment of costs only, is entitled to an order attaching debts due or accruing due to the person to pay.

Any doubt existing upon the English cases and the Ontario Judicature Act Rules is cleared up by R. S. O. c. 66, s. 72.

W. M. Douglas, for the solicitor.

Chy. Divisional Court.] [Dec. 21, 1887.

MCKAY *v.* BAKER.

Costs, security for—Husband and wife—Nominal plaintiff.

Action to remove a cloud from the title to certain land of the plaintiff, a married woman, whose husband, when in embarrassed circumstances, had bought the land, and taken a conveyance in her name. The plaintiff had no separate estate, and her husband was not a person of substance. There was no trust between the husband and wife.

Held, reversing the order of Proudfoot, J., in Chambers, that though suing alone and

without separate estate, a married woman is not required to give security for costs. The only person who could be plaintiff in the title was the wife, and her husband could not be joined as a necessary, or even proper, party. This case did not come within the class of cases where a nominal and insolvent plaintiff is put forward, while the substantial litigant keeps in the background in order to avoid liability for costs; and an order for security for costs was set aside.

C. J. Holman and *A. D. Cameron*, for the plaintiff.

Lynch Staunton, for the defendant.

Chy. Divisional Court.] [Dec. 21, 1887.

PIERCE *v.* PALMER.

Appeal—Waiver—Motion to extend time for complying with order appealed from.

By an order of Boyd, C., 12 P. R. 275, a motion by the defendant to set aside a judgment for irregularity was refused, but the defendant was let in to defend upon paying into court or securing $700 within a month. The defendant moved for and obtained an order extending the time for paying the money in, and then appealed from the part of the order refusing to set aside the judgment for irregularity.

Held, that the defendant had waived his right of appeal from the order by obtaining an enlargement of the time for complying with it.

C. J. Holman, for the appeal.

Hoyles, contra.

Chy. Divisional Court.] [Dec. 21, 1887.

REID *v.* MURPHY.

Interpleader—Sale of goods—Sheriff's charges.

The decision of Proudfoot, J., 12 P. R. 246, was reversed on appeal.

After an interpleader order is made at the instance of a sheriff, the special jurisdiction of the court under the Act relating to interpleading arises, by which the writ of execution, as such, ceases to operate; and the sheriff, in selling the goods seized thereunder, acts not for the execution creditor, but for the court under the interpleader order. Where, therefore, a sheriff, under such circumstances, sold goods which were found by the event of an interpleader issue not to have been the goods of the execution debtor, but of the claimant, and paid the proceeds into court less his charges for possession money and expenses of sale, etc.

Held, that he was not liable to refund to the claimant the amount deducted for such charges.

The claimant's remedy is to recover the amount of such charges from the execution creditor, which he can do in a summary way.

Miscellaneous.

OSGOODE HALL LIBRARY.

Latest additions:

Abbott's American and English Patent Cases, 3 Vols., Washington, 1887.

Abbott's Patent Law of all Nations, 2 vols., Washington, 1886.

Abbott's Digest Cases Criticised, New York, 1887.

Alexander on Life Insurance, New York, 1887.

American and English Railroad Cases, 28 vols., Northport, 1881-7.

Archbold's Quarter Sessions, 4th ed., London, 1885.

Archbold's County Court Practice, 9th ed., London, 1885.

Armour on Titles, 6 copies, Toronto, 1887.

Beach on Receivers, New York, 1887.

Black's Proofand Pleadings in Accident Cases, Jersey City, 1886.

Blunt's Church Law, 4th ed., London, 1885.

Bray on Discovery, London, 1885.

Browne (J. H. B.) Law of Rating, 2nd ed., London, 1886.

Browne (W. W.) Law of Assessment and Taxation, Rochester, 1887.

Canada, Revised Criminal Law of, 6 copies, Ottawa, 1887.

Cavanagh's Law of Summary Judgment under Order XIV., London, 1887.

Colonial Conference, Proceedings of, London, 1887.

Clode on Petition of Right, London, 1887.

Craven on High Bailiffs, London, 1887.

Cripps on Church and Clergy, London, 1886.

Cuthbertson's Test of Domicile, London, 1887.

Deane's Drink Licensing Laws, London, 1887.

Derby's New Lien Law, New York, 1887.

Dickson's Law of Evidence, Edinburgh, 1887.
Dove's Public Rights in Navigable Rivers, London, 1887.
Drake on Attachment, 6th ed., Boston, 1885.
Federal Reporter, Digest to vols. 21-30, St. Paul, 1887.
Goodeve's Personal Property, London, 1887.
Hochheimer on Infants, Baltimore, 1887.
Horr & Bemis' Police Ordinances, Cincinnati, 1887.
Hutchinson on Banking, vol. 3, London, 1887.
Irish Law List, Dublin, 1887.
Jameson's Constitutional Conventions, 4th ed., Chicago, 1887.
Kinnear on Civil Government, London, 1887.
Lawson's Presumptive Evidence, San Francisco, 1885.
Lloyd on Divorce, Boston, 1887.
Lush's Married Women's Rights and Liabilities, London, 1887.
Merchandise Marks Act (1862) Report of, London, 1887.
Mitcheson on Charitable Trusts, London, 1887.
Morrill on Witnesses, New York, 1886.
Morrill on City Negligence, New York, 1887.
Morris' Patents Conveyancing, London, 1887.
McGrath on Doctrine of *Cy Pres*, Philadelphia, 1887.
Newmark on Sales, San Francisco, 1887.
New York State Railroad Laws, Albany, 1887.
North-eastern Reporter Digest, vols. 1-10, St. Paul, 1887.
North-western Reporter Digest, vols. 21-30 St. Paul, 1887.
O'Sullivan's Government in Canada, 2nd ed., Toronto, 1887.
Overton on Liens, New York, 1883.
Pacific Reporter Digest, vols. 1-10, St. Paul,
Porter on Insurance, 2nd ed., London, 1887.
Price & Stewart's American Trade Mark Cases, Baltimore, 1887.
Ramsay's Appeal Cases, Montreal, 1887.
Rapalje on Witnesses, New York, 1887.
Rawle on Covenants for Title, Boston, 1887.
Reeve on Descents, New York, 1825.
Robson on Bankruptcy, London, 1887.
Saint's Registration Cases, 2nd ed., London, 1887.
Schouler on Bailments and Carriers, Boston, 1887.
Scribner on Dower, 2nd ed., 2 vols., Philadelphia, 1883.
Sedgwick & Wait, Title to Land, New York, 1886.
Sharswood & Budd's Leading Cases in Real Property, 3 vols., Trenton, 1883-87.
Short's Informations, Mandamus and Prohibition, London, 1887.
Smith (G.H.) Right and Law, 2nd ed., Chicago, 1887.
Smith (J.W.) Leading Cases, 2 vols., 9th ed., London, 1887.
Smith (J.W.) Private Trading Partnerships, London, 1887.
Snyder on Clubs, New York, 1886.
Southern Reporter, vols. 1 and 2, St. Paul 1887.
Stewart's New Jersey Digest, 3 vols., Trenton, 1876-87.
Tarring's Consular Jurisdiction in the East, London, 1887.
Thomas on Mortgages, 2nd ed., New York, 1887.
Throop's Massachusetts Digest, 2 vols., New York, 1887.
U. S. Supreme Court Digest, 2 vols., Rochester, 1887.
Vaizey's Settlements of Property, London, 1887.
Wade on Attachment, 2 vols., San Francisco, 1887.
Walker's American Law, 9th ed., Boston, 1887.
Washburn on Easements and Servitudes, 4th ed., Boston, 1885.
Welty on Assessments, New York, 1886.
Wiltsie on Mortgage Foreclosure, Rochester, 1885.
Williams on Personal Property, 13th ed., London, 1887.
Williams on Real Property, 16th ed., London, 1887.
Wright & Carson's Criminal Conspiracies, Philadelphia, 1887.
Wright's Merchandise Marks Act, London, 1887.

THE *Ontario Legal Chart* for the year 1888, compiled by H. R. Hardy, Esq., of Osgoode Hall, Barrister-at-law, contains, as in former years, a great amount of valuable information. It has come to be regarded as indispensable in the office of almost every member of the legal profession. In appearance, contents, etc., the chart for the present year is similar to those of previous years. It has been carefully revised to bring all its statements down to date.