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THE publishers will pay full price for a few copies of Nos. 3, 4, 6, 7 and 8, of THE CANADA LAW JOURNAL for 1888.

Re Prittie and Crawford, a very recent decision by BOYD, C., under the Vendor and Purchaser Act, is of value to those who have to do with agreements for the purchase and sale of land. A. was the vendee of certain lands under an agreement such as is usually made for the purchase of lands where the purchase money or the greater portion of it is payable at a future date. He assigned his interest in the agreement to B., and B. completed the purchase and agreed to sell to C. When A. made the agreement to purchase the lands there was a writ of *fieri facias* in the hands of the Sheriff, binding his lands. C. contended that A.'s interest in the lands was liable to seizure and sale under the writ (which was kept renewed), but that if the lands were not seizable under the writ, it bound them by way of, or as a step to, equitable execution, and that the execution was a cloud upon the title. Upon an application under the Vendor and Purchaser Act, it was held that the execution against the lands of A. did not affect such an interest as he had under the agreement, and that it was no objection to the title.

LAW FOR LADIES.

IF a man out West wishes to keep his wife he must not play practical jokes upon her, nor treat her ailments, whether real or imaginary, with derision, deception or contempt. If he does so she may get a divorce from him in Illinois and leave him. The judges out in that State are (in some respects) the *creme de la creme* of politeness—veritable Admirable Crichtons. They hold that the perpetration of a practical joke shows one to be "a coarse man"; "no one of any refined sensibilities will ever practice a practical joke upon, *or relate one concerning his friend*." The sentiment is that of one of the Illinois judges. The italics are ours, and lead us to remark,

> "Alas for the rarity
> Of refined sensibility
> Under the sun!"

But about the couple that forms the subject of our present discourse, Mr. and Mrs. Sharp. Mr. Sharp complained often of Mrs. Sharp's medical expenses; he said he didn't "believe in paying doctor's bills," and that she "ought to die and go to heaven." The Court didn't like these expressions of his. (Will the learned Editress of the *Chicago Legal News* tell us why? Was the judge an

unbeliever in the pleasures and delights of heaven? Did he think that no doctor presents his bill in heaven? Or did he think that the husband, if he had been a loving one, would have expressed the wish devoutly that his wife might go to the other place—the warm place—because of her neuralgic pains?) However, to proceed. The Court went on—"On one occasion when she had the neuralgia, she wanted the 'extract of lettuce.' He (Sharp) took an empty bottle and pretended to get it for her, and instead of doing so he filled the bottle with foul water taken from a tub outside the house. After she had used it, he said she expressed herself as much benefited by its use . . . He then told her it was not the 'extract of lettuce' at all, but that it was a vile liquid . . . The excuse given for the deceit does not relieve the defendant (Sharp) from the severest censure. The least that can be said of it is, it was a 'practical joke,' the perpetration of which shows he is a coarse man. No matter what his motive may have been, his wife had serious grounds for complaint on account of the deception practised upon her. It was very unkind, to say the least of it." (We would add, "it was sharp practice too.") She got a divorce for this and sundry other ills of his. By the way, what would this learned Judge say of medical men and their pills of bread and draughts of sugar and water? *Sharp* v. *Sharp* 116 Ill., 509.

"Silence is golden," say the Persians. "If a word be worth a shekel, silence is worth a pair," say the Hebrews; but the Western Court in *Sharp* v. *Sharp* (*supra*) belonged to a different school of philosophers, and held that to live in the same house with a wife for ten years and not to address her "either in anger or in kindness," "ill accords with the duty of a husband to his wife." "It is difficult to imagine anything more disagreeable and exasperating than the presence of one who from mere sullenness will not utter a word. The veriest solitude, where no living creature is visible, would be preferable." Out West, taciturnity appears to be a ground for divorce.

In New Jersey, if a man talks too much and steals the engagement ring from his wife, she may get a divorce. The period of conjugal felicity which McKean and his wife—according to the judgment of Bird, V.C—enjoyed, was measured by a few months. Then came separations and wanderings, charges and recriminations: But," says the judge, "after her return to her parents, he (McKean) called upon her and had a private interview with her. During this interview he asked for her engagement ring, and promised her upon his honor to return it to her. He did not return it. He left her then and took the ring with him. He says that he told her she could have it again if she would live with him. She says that he took and kept it without any qualification whatever. In my judgment, this act of the husband in taking this ring and carrying it away, without any subsequent efforts at reconciliation, is most ample proof of a determination to separate himself from his wife and to desert her, unless it is made to appear that she was first in fault, and had taken some step to sever the marital relation. I find no such fault in her conduct, although not in all respects of the highest rectitude. Why did the husband want a private interview? He asked her father for such an interview. I conclude it was for the sole purpose of securing the engagement ring, and of thus proving to her the

entire absence of all affection or regard." The wife got a divorce notwithstanding his assertion that he loved her, and was willing and anxious to live with her as his wife. Alack, alack, well-a-day! the difficulties that now beset a poor man's path! A private interview with a man's own wife, with her own father's consent, may now be brought up in judgment against him. Formerly the danger lay in private interviews with other men's wives: *McKean* v. *McKean*, New Jersey Ct. of Chy, 34 Albany L. J. 242.

We understand from what others have told us, that one of the most difficult things a young lady ever has to decide is what to do with the rings, photos, books, etc., which her Romeo has given her during the happy engagement days, when the love of Romeo has grown cold and the engagement is broken off. To return or not to return? That is the question. With regard to some gifts, such as candies, ice-cream, sweets and kisses, no such troublesome query occurs; they have all melted away. Miss Kraxberger has settled for the benefit of her unmarried sisters, that the engagement ring may be returned to him who has broken his plighted troth, while at the same time she may make him pay heavily in damages for trifling with her affections, and injuring her prospects of settling with some other one for life. List to the graphic way in which the Judge of the Supreme Court of Missouri speaks: "Fully realising then" (because he had just told her so), "that she had indeed lost the love that he had once assured her was hers, and upon the faith of which she had engaged herself to him, and that his determination not to marry her was final and conclusive, she takes from her finger the engagement ring once given her as a token of his sincerity and fidelity, now a memento only of his fickleness and treachery, and in her express words, 'gave it up to him,' and went crying from his presence. This, forsooth, is claimed to be evidence that the plaintiff agreed to rescind the contract and release the defendant from the obligations thereof.

. . . The defendant by his own action had left her no choice in the matter: nothing that she could do but accept the situation he made for her, abandon all hope of the marriage, give up the symbol of that hope, and seek such compensation in damages as the law could give her for the injuries she had suffered, without fault on her part, at the hands of the defendant; and this, the only remedy left her, she seeks in this case." And she got it: *Kraxberger* v. *Roster*, 91 Mo., 404.

Evidently it is dangerous trifling with an engagement ring; steal it and you lose your wife; take it when offered and you may lose your money; leave it and you may lose your quiet repose, peace of mind—everything.

Though it appears to be a risky thing for a husband to steal his wife's rings—at least when the matter comes before a dissolving judge—still a wife is not guilty of felony if she steals her husband's goods; because as husband and wife are considered but one in law, and the husband by endowing his wife at the marriage with all his worldly goods, gives her a kind of interest in all of them. Nor is she guilty of larceny if she steals goods deposited with her husband in which he has a joint property; for instance, if he is a member of a friendly society and the treasurer of the funds, she may take them without being a thief. And even a third party to whom the wife may give these abstracted

goods cannot be held guilty of larceny. If, however, the wife elopes with a lover, taking with her the goods of her husband, and gives them to her naughty companion, who takes them away, this would be larceny, for in such a case the consent of the husband cannot be presumed: *Rex* v. *Willis*, R. & M.,C.C.C.R., 375; *Rex* v. *Solfree*, R & M., C.C.R. 243; *Reg.* v. *Kenny*, 2 Q.B. 307 Schouler Dom. Relations, sec.

This state of the l seems rather hard in the present age, when the wife is so highly favored and protected as to her own goods and chattels, *lares et penates*, and when every man does not now at the altar say to his bride, "with all my worldly goods I thee endow."

If a married woman be canny enough to keep her husband always by her, she may go through the world running amuck like a wild Malay, and do a great many queer things, for the law in its chivalry and gallantry will presume her to be innocent, and that she is coerced by her husband into doing these unfeminine actions: Russell on Crimes, ch. 1. Schouler Domestic Relations, sec. 49, 50. For *mala prohibita* she will not be punished, but for *mala in se* she is. Who can forget the words of Mr. Bumble on this point, when he began to fear the unfortunate little circumstance in which his wife had been engaged might deprive him of his "porochial office," and had remarked, "It was all Mrs. Bumble, she *would* do it." Mr. Brounlow said to him, "You are the more guilty in the eye of the law, for the law supposes that your wife acts under your direction." The parish beadle, squeezing his hat emphatically in both hands, replied, "If the law supposes that, the law is a ass, a idiot. If that's the eye of the law, the law is a bachelor, and the worst I wish the law is that his eye may be opened by experience—by experience." Oliver Twist, ch. 51.

Speaking of bachelors in these days of increasing taxation and deficits, and when the number of marriageable young women in the settled parts of the country is constantly and persistently becoming greater than that of marrying young men, and when the ballot is passing into the hands of the fair sex, how is it that a tax is not put upon bachelors? William III. of great, glorious, pious and immortal memory, gave his assent to such an act in April, 1695 (not on the first, but on the twenty-second of that month). The act was intituled, "An Act for granting His Majesty certain rates and duties upon marriages, births, burials, and upon bachelors and widowers, for the term of five years, for carrying on the war with vigour." By this, bachelors and widowers above 25 years old paid yearly one shilling, but a marquis who was a bachelor or widower, had to pay yearly ten pounds, while a duke in that solitary state had to pay £12 10s. These taxes were kept on until 1706. The laws of Rome had severe penalties for those who remained celibates after a certain age, and Lycurgus authorised criminal proceedings against those who eschewed wedlock. Louis XIV., throughout the length and breadth of Canada, whipped Hymen, if not Cupid, into a frenzy of activity—as Parkman says. Twenty livres were given to each youth who married before the age of twenty, and to each girl who married under sixteen. Any father of a family who without showing good cause, neglected to marry his children when they had reached the ages of twenty and sixteen, was

fined. Young men were ordered to marry within a fortnight after the arrival of the yearly cargo of women from France. No mercy was shown to the obdurate bachelor. They were forbidden to hunt fish, trade with the Indians, or go into the woods under any pretence whatsoever. So active was the market, that one young lady was married at twelve years of age, and a widow went to the altar afresh before her late husband was buried (The Old Regime). Ladies are in the legal profession without a doubt; in fact, it is only for them and their edification and delight that this article is written, printed and published: and one is almost led to believe that some of them have already donned the ermine, and sat down upon the bench, when one meets a judicial utterance such as the one in this case: A son-in-law sued for boarding his mother-in-law twenty-six and a half weeks (fortunately for the man this was not all at one time, but on five different occasions extending over four years); sometimes the lengthening out of these visits was made at the suggestion of the daughter, sometimes the doctor voiced the idea. The mamma-in-law never promised to pay, nor did the son-in-law succeed in proving that she had ever expected to be charged board. The Court—surely a mother-in-law—said, "It would be a crime against nature and humanity to give all the courtesies, favors, and visits that are exchanged between parents and children, the mercenary quality of dollars and cents: *Lawyer* v. *Hebard*, 58 Vt., 375.

Mothers-in law, as one would naturally expect from their number, have been before the Court prior to the time of 58 Vermont. *Mach* v. *Parsons* (1 Am., Dec. 17) sets forth a rule of comfort to husbands, namely, that a son-in-law cannot be held liable for the support of his wife's parents. And in New Hampshire it was decided that a coffin and grave clothes purchased by a man for his mother-in-law, who died a member of his family were necessaries, so as to charge a trust fund: *Thompson* v. *Smith*, 57 N.H., 306.

In a certain stage of society one of the most extensive classes is that of "cousins." To the question, "Who is that down stairs, Jane?"—how promptly and universally comes the answer, "My cousin, ma'am." How important, therefore, is the query "Who is a cousin?" The Justices in her Majesty's Court of Appeal a couple of years ago wrestled with the question, but, alas! they differed in their decisions. Bowen L. J. was profound—went to the bottom—was geologically accurate and narrowly limited the genus. He said, "I start with the word 'cousin' being a term of which the dominant idea is consanguinity!" (Yea, verily, many a Betsy Ann and Eliza Jane would start too at such an idea). He proceeds, "It is not accurate to say that the wife of one's cousin is, even in a secondary sense, one's cousin . . . . The word cousin cannot be used in a secondary, or even in a tertiary sense, for a person not a relation in blood, though it can be used for a more distant relation than a first cousin." Fry, L. J. took a more extended view, and one more in accord with the notions of "life below stairs." We do not for a moment suggest that he knew the cook, but she must have known him by name. He said, "I agree with Lord Justice Bowen as to the proper signification of the word 'cousin,' that it properly means the children of brothers and sisters (we would have called those nephews and nieces), and implies consanguinity; but I think that it is sometimes used in a loose and vague

sense which does not imply consanguinity, as when the Queen addresses a nobleman, or a member of her Privy Council, as a 'cousin,' and when we speak of our 'country cousins.' I think that in popular language the word does apply to persons who are not related by consanguinity." L. R. 34 Ch. Div. pp. 259, 260. It must be satisfactory to mistresses to know that their helps may call all male visitors cousins, and still be consistent members of the Church, or of the Salvation Army.

No one has a right to complain that his next door neighbour plays upon the piano at reasonable hours, nor of the cries of children in his neighbour's nursery, nor of any of the ordinary sounds which are commonly heard in dwelling houses; but if a Ladies' Decorative Art Club take a house on a square filled with dwelling houses, and conduct classes in the art of metal working and hammering brass, so that the unusual and disturbing noises are of a character to affect the comfort of the household of the man living next door or the peace and health of his family, and to destroy the comfortable enjoyment of his home, the law will declare the ladies—or rather their classes—a nuisance, and stretch out its strong arm to prevent the continuance of such injurious acts. We never cared for hammered brass anyway: Re *Ladies Decorative Art Club of Philadelphia*, 37 Alb. L.J. 447.

One by one the beliefs of childhood's happy hours are dispelled. We used to believe in the reality of St. Nicholas, the shooting skill of Tell, the blue-beard character of Henry VIII., the greatness of Elizabeth, the goodness of Charles I., the beauty of Mary Stuart; but we don't know now. We used to think, moreover, that every woman could put any number of pins in her mouth without inconvenience; now the law papers tell us that at Greenwich (England) County Court, a widow sued a baker for damages, medical fees and loss of time, caused by a pin, which had been negligently left in a bath-bun, sticking in her throat, and the Judge said, "Of course it was an unfortunate accident for both parties, but he must give a verdict for the widow": 37 Albany L.J. 206

Talking of pins and women, a lady in Detroit fell upon a defective side-walk, and claimed that her right side was paralysed; on the trial to demonstrate to the jury the loss of feeling in that side, she allowed her medical man to thrust a pin into her. The city authorities objected to the jury pinning their faith to this sort of evidence, but the Court opined that there was no objection to her showing the extent of the paralysis which had supervened by reason of the accident, and that evidence that her right side was insensible to pain certainly tended to show this paralysed condition. The pin by which the experiment was performed was shown to the jury. There was nothing which tended to show any trickery. Counsel were certainly at liberty to examine the pin, and to ascertain whether in fact it was inserted in the flesh, and having failed to exercise this privilege, the Court's opinion was that after verdict it was too late to raise the objection that the exhibition was incompetent: *Osborne* v. *Detroit*, 26 Alb. L.J. 343. The judge overlooked the possibility of the City Attorney being a modest bachelor, and not accustomed to conduct cases against Phrynes.

Apparently ladies do not like to be called "cats," nor even to have their mothers called "cats." The funny newspaper reporter published an interview between the plaintiff and himself, in which, the plaintiff is represented as saying that her mother had been bitten by a cat and had hydrophobia, that she dreaded the approach of water . . . . that she acted like a cat purring and mewing, and assuming the attitude of a cat in the effort to catch rats, and did other like acts, and that a wonderful cure of this disease had been effected by a certain medicine called S.S.S., sold by defendants. It was held that all this was libellous: *Stewart* v. *Swift Specific Co.*, 76 Ga. 280. This seems a strange decision, because our own experience has been that girls like to be called Kitty, Pretty Kitty, Dear Kitty, or even Pussy.

It has been decided in Iowa that a wife has no right to chastise her husband, nor provoke him to retaliation by her own violence, foul abuse, and misconduct: *Knight* v. *Knight*, 31 Iowa, 451; nor has a husband now the right to correct his wife corporally, even though she be insolent to him or drunk (*Com.* v. *McAfee*, 108 Mass. 468). The Iowa decision just mentioned accords with the Laws of Menu: here we are told that "a faithful wife who wishes to attain in heaven to the mansion of her husband, must do nothing unkind to him, be he living or dead; she must always live with a cheerful temper, with good management in the affairs of the house, with great care of the household furniture, and with a frugal hand in all her expenses. Though enamoured of another woman, or devoid of good qualities, yet a husband must constantly be revered as a god by virtuous women; nor is a second husband allowed to a virtuous woman (chap. v, secs. 156, 150, 154, 162). It is evident that at some time or other the ladies in Persia must have interfered with the men while saying their prayers, now it is the law that no man may perform his devotions in the presence of any woman, who either at his side or before him is also praying; but it will be all right if there is a curtain between the two, or some object which prevents him seeing her; or if the woman is behind the man at such a distance that in prostrating herself she cannot touch his feet (Extract from the Shahr in Persia and the Persians, by S. G. W. Benjamin). This sapient law-giver must have had his sole tickled at some time or other.

Apropos of divorces the Koran says: "The husband may twice divorce and twice take back the same woman; but if he a third time divorce her, she cannot again become his wife till she have married and been divorced from some other man: *Sura II.* 230. With a little modification, this law might be useful in some of the States.

Speaking of second marriages at an early period in Vermont, by some strange perversion of legal principles people were led to believe that whoever should marry a widow who was the administratrix of her husband's estate, and should through her come into possession of anything that the late lamented departed had purchased, would render himself administrator in his own wrong, and himself liable for the estate and debts of his predecessor. The fascinating widows, however, found a way to overcome the difficulty, and smooth the way by which number two might approach Hymen's altar hand in

hand with number one's relict. Here is how the widow of Major Peter Lovejoy married Asa Averill. "By the side of the chimney in the widow's house was a recess of considerable size. Across this a blanket was stretched in such a manner as to form a small enclosure. Into this Mrs. Lovejoy passed with her attendants, who completely disrobed her, and threw her clothes into the room. She then thrust her hand through a small aperture purposely made in the blanket. The proffered member was clasped by Mr. Averill, and in this position he was married to the nude widow on the other side of the woolen curtain. He then produced a complete assortment of wedding attire, which was slipped into the recess. The new Mrs. Averill soon appeared in full dress, ready to receive the congratulations of the company, and to join in their hearty rustic festivities :" Hall's History of Eastern Vermont.

R. VASHON ROGERS.

COMMENTS ON CURRENT ENGLISH DECISIONS.

THE Law Reports for December comprise 21 Q.B.D. pp. 461-588 ; 13 P.D. pp. 165-224 ; 39 Chy. D. pp. 185-696 ; and 13 App. Cas. pp. 505-835.

PRACTICE—CHARGING ORDER AGAINST MONEY IN COURT—STOP ORDER—ORDER ABSOLUTE, DATE FROM WHICH IT OPERATES.

In *Brereton Edwards*, 21 Q.B.D. 488, the Court of Appeal appear to have practically come to the conclusion that the jurisdiction of the Court to grant charging orders against moneys standing in Court to the credit of an execution debtor, has been extended by the Judicature Act. The line of reasoning adopted by the Court of Appeal (Lord Esher, M.R., and Lindley and Bowen, L.JJ.) appears to be substantially as follows : By 1 and 2 Vict., c. 110, s. 12 (see R.S.O., c. 64, s. 17) the Sheriff was empowered to seize cash and cheques; formerly the Court of Chancery would assist the Sheriff to seize a cheque drawn by the Accountant in favor of an execution debtor (*Watts* v. *Jefferyes*, 3 Mac. & G. 422); and that following out this principle, there is now no reason why the Judge of any division of the High Court should not make an order charging money standing in Court to the credit of the execution debtor, in favour of the execution creditor. They also held that where an order *nisi* had been made, followed by an order absolute, that the latter related back to the date of the order *nisi* ; and further, that after the making of a charging order, it was unnecessary either to appoint a receiver of the fund, or to obtain a stop order against it.

PRACTICE—PLEADING—STATEMENT OF DEFENCE—AMENDMENT—MATTER IN MITIGATION OF DAMAGES CANNOT BE SET UP IN DEFENCE.

Wood v. *Earl of Durham*, 21 Q.B.D. 501, was an action to recover damages for a libel charging the plaintiff, a professional jockey, with unfairly and dishonestly riding horses in a particular stable. The defendant having pleaded a justification, subsequently applied for leave to amend his defence by adding a

paragraph alleging that at the date of the publication of the alleged libel, the plaintiff was commonly reported to have been in the habit of unfairly and dishonestly riding horses in races so as to prevent them from winning. But leave to make this amendment was refused by Manisty and Hawkins, J J. (affirming the order of Charles, J.) on the ground that as general evidence of the plaintiff's bad reputation (if admissible), could only be given in reduction of damages, and not in answer to the action, that the proposed amendment did not contain a statement of material facts on which the defendant relied for his defence within the meaning of Ord. 19, r. 4 (C.R. 399), or a ground of defence which must be raised under Ord. 19, r. 15 (C.R. 402), but was a denial or defence as to damages, within the meaning of Ord. 21 and 4, and therefore ought not be pleaded. Ord. 21, r. 4, of which we appear to have no counterpart, is to the following effect: "No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted." But the effect of this Rule is probably covered by C.R. 403, which provides that 'save as otherwise provided, the silence of a pleading as to any allegations contained in the previous pleading of the opposite party is not to be construed into an implied admission of the truth of such allegation,' etc. In *Pursley* v. *Bennett*, 11 P.R. 64, however, facts were allowed to be set up in a defence in mitigation of damages.

PRACTICE—PRODUCTION OF DOCUMENTS—PRIVILEGED DOCUMENTS RELATING TO STATE AFFAIRS.

In *Hennessy* v. *Wright*, 21 Q.B.D. 509, the action was brought by the Governor of a colony to recover damages for a libel published by the defendant in a newspaper, alleging that the plaintiff had sent to the Secretary of State for the Colonies garbled reports of certain proceedings in the colonial assembly. The defendant pleaded that the statement was true. On an application for discovery of documents, the plaintiff made an affidavit that he had in his possession certain specified documents to the production of which he objected on the ground that they were copies of despatches and reports and other communications, with the conclusions referred to, which passed between the Secretary of State for the Colonies and the plaintiff, and between the plaintiff and the Royal Commissioner appointed to inquire into the affairs of the colony, and the plaintiff as such Governor, or between the Commissioner and the Secretary of State—that the attention of the Secretary of State had been drawn to the nature and dates of the documents, and he had directed the plaintiff not to produce or disclose the documents, and to object to their production. And in consequence of these instructions the plaintiff was unable to produce them. No affidavit or statement was made on behalf of the Secretary of State. It was nevertheless held by Field and Wills, JJ., affirming Denman, J., that it sufficiently appeared that the documents in question were privileged from discovery.

PROHIBITION.—APPLICATION AFTER JUDGMENT—DISCRETION TO REFUSE WRIT OF PROHIBITION.

In *Broad* v. *Perkins*, 21 Q.B.D. 533, an application was made after judgment to prohibit further proceedings in an inferior Court. The action was for libel, and

the ground on which the writ was claimed was that there had been no publication of the alleged libel which would give the inferior Court jurisdiction. The Court of Appeal (Lord Esher, M.R., Cotton, Lindley, Bowen, Fry & Lopes, L.JJ.) were unanimously of opinion that when the defect is not apparent, and depends upon some fact in the knowledge of the applicant, which he had an opportunity of bringing forward in the Court below, and he has thought proper, without excuse, to allow the Court to proceed to judgment without setting up the objection, and without moving for a prohibition in the first instance, the Court will consider the conduct of the applicant, and the importance of making an end of litigation, and that the writ, though of right, is not of course, and the Court will decline to interpose, except perhaps in an irresistible case, and an excuse for the delay, such as disability, malpractice, or matter newly come to the knowledge of the applicant. This rule, however, does not apply to the Crown, which may claim a prohibition at any stage.

TROVER—NEGOTIABLE SECURITIES—HOLDER FOR VALUE.

London & County Bank v. *The London & River Plate Bank*, 21 Q.B.D. 535, is an important decision of the Court of Appeal on the law of trover. In this case, certain negotiable securities were stolen from the defendants by their manager, and came into the possession of the plaintiffs for value, and without notice of any fraud. Subsequently, the manager obtained the securities from the plaintiffs by fraud, and restored them to the defendants, who did not know that the securities had been out of their possession. A portion of the restored securities were not the bonds actually stolen, but bonds of a like kind and value. The Court of Appeal (Lord Esher, M.R., and Lindley & Bowen, L.JJ.) affirming Manisty, J., held that in the absence of evidence to the contrary, it must be presumed that on the return of the securities to the defendants, they accepted them in discharge of their manager's obligation to restore them, and even though they were in actual ignorance of what was going on, and were therefore *bonâ fide* holders and entitled to retain the securities. Lord Esher, M.R., says at p. 539, "The defendants, when Warden stole these securities, could not only have indicted him for the theft, but they could have brought an action against him for the wrongful conversion of the securities. When he restored them, they lost their right, for how could they bring an action for the conversion of instruments which were in their own possession? I am of opinion that the destruction of this right of action is a value moving from them, and that it is immaterial that they did not know what they were doing. There is therefore a sufficient valuable consideration to make the case come within the ordinary rule applicable to holders of negotiable instruments obtained for a valuable consideration, and without knowledge of any kind, and therefore their right to hold these securities is complete."

CONSPIRACY—COMBINATION TO KEEP UP RATE OF FREIGHT—ENGROSSING PARTICULAR TRADE—EXCLUSION OF RIVAL TRADERS FROM COMBINATION.

The case of *The Mogul Steamship Co.* v. *McGregor*, 21 Q.B.D. 544, was noted *ante* vol. 21, p. 408, upon the motion for an interim injunction. The

defendants, who were firms of shipowners trading between China and Europe, with a view of obtaining for themselves a monopoly of the home tea trade, and thereby keeping up the rate of freight, formed themselves into an association, and offered to merchants and shippers in China who shipped their tea exclusively in vessels belonging to the defendants, a rebate of 5% on all freights paid by them. The plaintiffs, who were rival shipowners trading between China and Europe, were excluded by the defendants from all benefits of the association, and in consequence of such exclusion suffered damage. Lord Coleridge, C.J., before whom the action was tried, came, not without considerable hesitation, to the conclusion that the combination of the defendants was not wrongful and malicious, and that the acts done in pursuance of the combination were not unlawful, wrongful, or malicious, and that therefore the defendants were entitled to judgment.

DIVORCE—MARRIED WOMAN—CONTEMPT OF COURT—SEQUESTRATION—ENFORCING ORDER—CUSTODY OF CHILDREN.

The case of *Hyde* v. *Hyde*, 13 P.D. 166., though a matrimonial cause, embodies some points of general interest which it may be useful to refer to. The husband had obtained a decree *nisi* for divorce, and an order was made requiring the wife to give up the custody of his children to him. The order was not served personally on the wife, but it appeared that she knew of the order and had kept out of the way to avoid service. The children were not delivered up, and the father could not find out where they were. A further order was therefore made for a sequestration against the estate of the wife, and directing her mother, sister and brother-in-law, who were shown to be in communication with the wife, to attend to be examined as to their knowledge of the whereabouts of the wife and children. The wife was entitled under her marriage settlement to an income for her separate use, subject to a restraint on anticipation. On appeal from the order for sequestration, it was held by the Court of Appeal (Cotton, Bowen & Fry, L.JJ.), firstly, that the sequestration was properly issued without personal service of the previous order. Secondly, that it was no objection to the writ that it was in general terms, without expressly defining the property of the wife which was subject to sequestration. Thirdly, that the sequestration could not during coverture be enforced against future income which the wife was restrained from anticipating, but that the writ bound the arrears which were due when the order for the sequestration was made; but it was held that the order to examine the third parties could not be sustained. The power of the Court was limited, in this latter respect, to the power of the Court of Chancery to enforce its orders. And on this point Fry, L.J., says at p. 179: "Now I do not perceive that the Court of Chancery had any power to summon before it persons for the purpose of obtaining disclosure or discovery in aid of the execution of its orders. I am not speaking now of the power of the Court to summon persons to give information with regard to wards of Court—that is quite a different thing—but only so far as relates to discovery in aid of execution of orders of the Court. I am not aware of any such jurisdiction, and no case has been cited to us which supports the affirmative contention upon that point."

COLLISION—DAMAGES—REMOTENESS OF DAMAGE.

In *The Argentine*, 13 P.D. 191, the Court of Appeal was called upon to decide what was the proper measure of damages in the case of a collision. Previous to the collision the owners of one of the vessels had made an oral arrangement with a firm of ship brokers that the vessel upon the completion of the voya upon which she was then engaged, should go to Antwerp, and there load a cargo in turn as one of a line of steamers and proceed by a particular route to the Black Sea. In consequence of repairs, necessitated by the collision, the ship was unable to fill this engagement, and by arrangement another smaller vessel was substituted for the injured vessel, the latter taking the place of the substituted vessel on a less remunerative route The owners of the injured vessel claimed to recover against the owners of the colliding vessel a sum representing (1) the additional profit (calculated on the profits actually made by the substituted vessel) which would have been earned but for the substitution ; (2) the loss of profit due to the difference in size between the two vessels ; (3) the loss of time in loading the injured vessel for the substituted route. But it was held by the majority of the Court of Appeal (Lindley and Bowen L.JJ.) that the evidence of the profits made by the substituted vessel was inadmissible, and that the damages must be assessed at such a sum as would represent what a vessel of the description of the injured vesssel might ordinarily and fairly be expected to earn, having regard to the fact that a contract had been entered into for her profitable employment. But Lord Esher, M.R., was of opinion that damages in respect of the loss of the agreement for the future hiring of the vessel were too remote to be recovered. All the members of the Court of Appeal were of opinion that the principle on which damages are to be assessed in such cases is the same in the Court of Admiralty as in a Court of Law, but they differ in its application. While Lord Esher, M.R., thought the damages occasioned by the loss of a contract for future employment were too remote, the other members of the Court (Lindley and Bowen, L.JJ.) were of the opinion that the existence of the contract for future service was an element which might properly be considered in estimating the damages.

LUNACY—SURPLUS OF INCOME—ALLOWANCE TO COLLATERAL RELATIONS OF LUNATIC.

In re Darling, 39 Chy. D., 208, was an application on behalf of the cousins of a lunatic to obtain an allowance out of his estate. The lunatic was 82 years of age, and his next of kin were ten cousins. Prior to his lunacy he had made small allowances to three of them, and after he became of unsound mind these allowances were continued by the Court. By his report the Master recommended a larger allowance should be made to these three cousins, and also that weekly allowances should be made to three others of the lunatic's cousins who were proved to be in very poor circumstances and to have difficulty in obtaining the necessaries of life, and it appeared that after payment of the proposed allowance there would still be a surplus income of £545 per annum. But on the application of the committee for the sanction of the Court to their allowance it was held by

the Court of Appeal (Cotton, Bowen & Fry, L.JJ.) that there being nothing to show that the lunatic would have done what the Court was asked to sanction, the mere fact that these collateral relatives were in humble circumstances and had difficulty in providing themselves with the necessaries of life, was not sufficient to warrant the Court in granting the application, which was therefore refused, and that it is not the duty of the Court to deal with a lunatic's estate benevolently or charitably, and applications for allowances to collateral relatives who have no legal claims upon the lunatic are to be discouraged.

COMPANY—ISSUE OF UNPAID SHARES AS FULLY PAID UP ISSUE OF SHARES AT A DISCOUNT—ULTRA VIRES.

In re London Celluloid Co, 36 Chy. D. 190, an agreement was entered into between an English limited company and a French company that the French Company should render to the English company certain services, in consideration of which the English company agreed to transfer to the French company or their nominees 1000 shares in the English company, to be credited as fully paid up, with a proviso that before the shares were issued the English company should cause the agreement to be registered. The services were rendered and the 1000 shares issued, 800 to the French company and 200 to S, their nominee and a director of the French company. S subsequently transferred the shares to H, a director of the English company, who afterwards transferred 100 of them to B, another of the directors. The agreement between the two companies was, owing to the neglect of the English company's solicitor, never registered. The English company was ordered to be wound up, and the liquidator called upon B and H to pay calls on the 200 shares held by them, and it was held that he was not estopped from doing so, and that they were liable to pay the calls because they knew that nothing had been paid in cash on the shares, which distinguished the case from *Burkinshaw* v. *Nicholls*, 3 App. Case, 1004, and that the liquidator was not debarred from requiring B and H to pay the calls on the ground that the company, having made default in their agreement to register the agreement, was taking advantage of its own wrong by suing for calls which could not have been sued for if the agreement had been registered; because the right to sue for the calls did not arise from the failure to register the contract, but from the fact of taking the shares, the liability to pay for which shares in cash could only be taken away by a duly registered contract, and not by an agreement to register one. This decision of Kay, J., was affirmed by the Court of Appeal (Cotton, Bowen & Fry, L.JJ.). Kay, J., also held, following *In re Almada & Tirito Co.*, 38 Chy. D. 415 (noted *ante* vol. 24, p. 457), that as to another class of shares issued to B and H at a discount, that such issue was *ultra vires*, a limited company having no power to issue shares at a discount.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

TRINITY TERM, 1888.

THE following is a *résumé* of the proceedings of Convocation during Trinity Term, 1888 :--

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

September 3rd.—Robert James McLaughlin, with honours and gold medal; William Mundell, with honours and silver medal; William Henry Williams, Alexander James Boyd, Stuart Alexander Henderson, Clifford Kemp, John Kyles, Herbert Edward Irwin, Henry Newbolt Roberts, William John McWhinney, John Barrett Davidson, Charles Albert Blanchet, Edward Herbert Johnston, John Clark, Arthur Wellington Burk, Orville Montrose Arnold, Joseph Hood Jacks, Herbert Hamilton Macrae, Arthur Arnold Mahaffy, Robert Osborne McCulloch, William Wallbridge Vickers.

September 4th.—Robert Hall Pringle.

September 8th.—Henry Blois Witton, Edward Henderson Ridley, Ralph Robb Bruce.

September 14th.—Stephen Wesley Burns.

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

September 3rd.—W. H. Williams, E. W. H. Blake, C. A. Blanchet, W. W. Vickers, R. M. Dennistoun, W. A. F. Campbell, J. B. Davidson, A. MacNish, O. M. Arnold, E. H. Johnston, W. Lawson.

September 4th.—A. J. Boyd, C. Kemp, W. Mundell.

September 8th.—T. Browne, H. E. Irwin, J. Kyles, J. T. Doyle, J. L. Peters, E. H. Ridley.

September 14th.—M. Wright, A. W Burk, S. W. Burns.

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

A. E. Lussier, with honours and first scholarship; and Messrs. G. Ross, B. N. Davis, T. W. R. McRae, F. M. Young, F. S. Mearns, A. Weir, J. McCullough, W. A. Thrasher, C. E. Lyons, E. L. Elwood, J. W. Roswell, A. B. McCallum, R. Segsworth, J. F. Keith, G. E. K. Cross, S. B. Arnold, H. D. Cowan, W. J. Hanna.

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

W. Wright, with honours and first scholarship; A. G. McKay, with honours and second scholarship; J. A. Ferguson, with honours and third scholarship; and Messrs. A. J. Anderson, with honours; A. G. McLean, D. O'Brien, F. Pedley, W. E. L. Hunter, A. H. Northey, W. F. Smith, A. C. Boyce, S. E. Lindsey, R. C. Gillett, W. McBrady, G. T. Kerr, A. Crozier, H. L. Puxley, D.

Mackenzie, D. J. Hurteau, J. J. Drew, S. C. Macdonald, J. A. Mather, J. Armour, N. D. Mills, W. J. Kidd, H. Carpenter, W. H. Nesbitt, H. B. Travers.

The following gentlemen were admitted as Students-at-law and Articled Clerks, *viz:*—

Graduates—William Johnston, Philip Embury Ritchie, Alexander Andrew Smith, William Francis Robinson, Henry Anson Lavell, William Edward Burrett, George Francis Downes, John Graham Harkness, Franklin Arthur Hough, Newton Kent, William Alexander Lamport, William Arthur Leys, William Moore McKay, William Bernard Nicol, Edwin Arthur Pearson, Samuel Davis Schultz, William Llewellyn Wickett, Richard George Henry Perryn.

Matriculants—Richard John Sims, Samuel Verschoyle Blake, Hugh McConaghy.

Juniors—William Macfarlane, Leopold Trefusis Wells Williams, D'Arcy Rupert Tate, Edmund Foster Burritt, John Joseph Coughlin, Archibald Young Blain, Herbert David Smith, Thomas Joseph Anderson, Morley Punshon Vandervoort, Edwin Armitage Ead Halliwell, Frederick Moira Canniff, Henry Marshall Graydon, Nassau Brown Eagen, Columbus Calverley, Edward McMartin, Hugh Paterson Innes, John Troughton Thompson, jr., Dugald Campbell, Neil Hugh McIntosh, William Edgar Foster, Boulton Ramsay Kean, Alfred Ernest Fripp, Clarence George Powell.

Monday, 3rd September.

Convocation met.

Present—Messrs. Beaty, S. H. Blake, Foy, Fraser, Hoskin, Irving, Kerr, Lash, Maclennan, Morris, Moss, Shepley.

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

The minutes of last meeting were read and approved.

The Report of the Examiners on the Examinations for Honours was read and referred to Messrs. Moss, Morris and Shepley as a Special Committee for report.

Mr. Shepley presented the Petition of Mr. A. E. K. Greer.

Ordered, that the prayer of the Petition be granted in so far that his Certificate of Fitness do issue, but that notice for call be given by Mr. Greer for Michaelmas Term, and that his examination be then allowed.

The Petition of Mr. H. M. East was then read, suggesting that there was a miscount at the examination for call, and praying that a committee be appointed to examine the returns.

Ordered, that the same do stand until to-morrow.

The Petition of Mr. W. Mundell was read, and it was ordered that he be allowed an oral examination, and that the examiners be requested to hold such examination and report to Convocation.

The Petitions of Messrs. A. W. Burk and C. E. Lyons were read and referred to the Legal Education Committee for report.

The death of Mr. S. J. Vankoughnet, Q.C., Reporter of the Queen's Bench Division, was announced by Mr. Maclennan, and it was ordered that the usual advertisement for a candidate to fill the vacancy be issued by the Secretary, requir-

ing that all applications be in his hands not later than Thursday, 13th instant, and that the usual notice be given to every Bencher for the 14th September.

The Special Committee on Honours and Scholarships reported :—

(1.) That Robert James McLaughlin is entitled to be called with honours and to receive a gold medal.

(2.) That Messrs. W. Wright, A. G. McKay, J. A. Ferguson, A. J. Anderson and A. G. McLean passed the First Intermediate Examination with honours, and that Mr. Wright is entitled to a Scholarship of one hundred dollars, Mr. McKay to a Scholarship of sixty dollars, and Mr. Ferguson to a Scholarship of forty dollars.

(3) That Mr. A. E. Lussier passed the Second Intermediate Examination with honours, and is entitled to a Scholarship of one hundred dollars.

(4) That it appears that Mr. William Mundell was awarded marks sufficient to entitle him to be called with honours and to receive the silver medal of the Society, but it appears from the Records that Mr. Mundell was not in due course, but that on special application he had been awarded honours and scholarships in connection with his First and Second Intermediate Examinations, but the allowance thereof was not to prejudice the position in future examinations of other candidates with whom he might come into competition.

(5) It also appears that there is no other competitor entitled to the silver medal, and the Committee recommend that, notwithstanding the rules, Mr. Mundell be awarded honours and the silver medal.

The report was considered, adopted and ordered accordingly, and it was further ordered that Mr. Mundell be awarded honours and the silver medal in pursuance of the recommendation in the report.

Tuesday, 4th September.

Convocation met.

Present—Messrs. Beaty Bell, S. H. Blake, Britton, Cameron, Foy, Fraser, Hardy, Hoskin, Hudspeth, Irving, Kerr, Lash, McCarthy, McMichael, Maclennan, Morris, Moss, Murray, Osler, Robinson, Shepley.

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

The minutes of last meeting were read and confirmed.

The Report of the Examiners on the oral examination of Mr. William Mundell, directed by Convocation yesterday, was read, and the Secretary having reported that his papers were complete and that he was entitled to a Certificate of Fitness,

Ordered, that his Certificate be granted.

The Chairman announced that under the authority of rule 3, section 14, of the rules of the Society, he had appointed Mr. E. B. Brown, Reporter of the Q. B. Division, to act until Convocation should fill the present vacancy in that position.

Upon consideration of the report of the Discipline Committee in the matter of Mr. J. B. Hands, in accordance with the order of Convocation of the 26th June

last, it was ordered that Mr. J. B. Hands be called upon to show cause why the Report should not be acted upon by Convocation.

Mr. J. B. Hands, accompanied by his Counsel, Mr. Fullerton, being in attendance, they were then admitted to Convocation. Mr. Fullerton stated that he appeared as Counsel for Mr. Hands and was prepared to show cause on his behalf against Convocation acting upon the report of the Committee on his case, and he was then heard.

At the conclusion of Mr. Fullerton's remarks Mr. Hands was asked whether he desired to add to the observations made by Mr. Fullerton on his behalf.

Not making any further statement, he and his Counsel withdrew.

The consideration of the Report of the Discipline Committee was then proceeded with, and the following resolution was moved, viz:—

On hearing read the report of the Discipline Committee, and having considered the evidence adduced, and Mr. Hands having been duly called upon to show cause why the report of said Committee should not be acted upon by Convocation, and Mr. Hands having thereupon attended before Convocation upon hearing what was alleged by Mr. Hands by himself and through his Counsel, and it having been found after due enquiry that John Baldwin Hands has been guilty of conduct unbecoming a barrister or solicitor, it is resolved that the report of the said Committee be adopted, and it is further resolved that John Baldwin Hands is unworthy to practice as a solicitor, and that he be disbarred as a barrister.

There then being present twenty-two members of Convocation, the said resolution was passed unanimously.

The Secretary was directed to send Mr J. B. Hands a copy of the resolution above adopted.

Mr. Moss gave notice that at the next meeting of Convocation he will introduce a rule to amend sub-section 9 of section 6 of the rules by adding thereto, "Provided he has obtained at least 29 per cent. of the marks obtainable on the paper in each subject."

Saturday, 8th September.

Convocation met.

Present—Sir Adam Wilson and Messrs. Cameron, Irving, Mackelcan, Maclennan, Meredith and Moss.

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

The minutes of last meeting were read and confirmed.

Mr. Moss, from the Legal Education Committee, presented the report of that Committee.

In the case of H. B. Witton, recommending that he re-article himself for the requisite period of twenty-one days, and that his examination do stand for the consideration of Convocation, with the favorable recommendation of the Committee.

The Committee further report as to Mr. Witton's affidavit made on the 17th August that he had served until the 27th August, which he has explained to the

satisfaction of the Committee, and the Committee think, under the circumstances, his action be excused.

The report was received and adopted.

In the case of Mr. A. B. Thompson, the Committee recommend that he re-article himself for a sufficient time to cover the interval between the date of his original articles and the date of the presentation of his diploma to the Committee, and the examination he has passed be favorably considered next Term.

The report was received and adopted.

In the case of C. E. Lyons, the Committee report that he passed the Second Intermediate Examination sooner than he should have done, namely, six months after his First Intermediate, and that his explanation is that sickness was the cause.

The Committee report that there is no power under the Statute to grant the relief asked, and recommend that leave be given him to present himself next Term for the Second Intermediate.

Mr. Maclennan brought up the notice given by Mr. Hands by way of appeal, which notice had fallen through, but would be renewed.

Mr. Maclennan suggested the appointment of Counsel.

Ordered, that the Solicitor be directed to retain Mr. Reeve, Q.C., as Counsel.

The report of the Library Improvement Committee was read.

Ordered, that further consideration of the report be deferred until the second day of next Term, and that the report be printed and distributed to Members of Convocation with notice when the same is to be considered, and that the Committee be allowed to place six book racks on the north side of the Library, opposite those on the south side, at a cost not to exceed five hundred dollars.

Pursuant to notice, Mr. Moss, seconded by Mr. Meredith, moved the following rule to amend rule 9 of section 6:—

"That rule 9 of section 6 of the rules be amended by adding thereto, "Provided he has obtained at least 29 per cent. of the marks obtainable on the paper in each subject."

The rule was read a first and second time.

Ordered, for a third reading on the next meeting day of Term.

The Secretary read the report of the examination on Second Intermediate Honours Examination, which should have been taken in Easter Term last, but was ordered by Convocation to be taken this Term.

The report was referred to a Special Committee composed of Messrs. Moss, Maclennan and Meredith, for consideration and report.

The Secretary read the Report of the Examiners on J. I. Poole's oral examination in respect of his Second Intermediate Examination.

Ordered, that he be allowed his Second Intermediate Examination, as of Easter Term, 1888.

The Secretary was directed to reply to the letter of the Reporters applying for the use of the western annex to the Library, that the room was not vacant and was required for Library purposes, and that it is not desirable that the Reporters should have keys to the Library.

Mr. J. A. Macdonell's letter to Mr. Read, the Solicitor of the Society, was read, and the Secretary was directed to write the Solicitor that he should deliver the statement of defence in the ordinary course.

The letter of J. B. Hands of 5th September was read, and the Secretary was directed to deliver to him the papers for which he applied, and which he has not already received.

The Special Committee on the Second Intermediate Honour Examination of Easter Term, 1888, presented their report.

The report was received and ordered to be considered at next meeting.

Friday, 14th September.

Convocation met.

Present—Sir Alexander Campbell, and Messrs. Beaty, S. H. Blake, Foy, Guthrie, Hardy, Hoskin, Lash, McCarthy, Martin, Meredith, Morris, Murray, Osler, Smith.

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

The minutes of last meeting were read and approved.

Mr. Lash from the Legal Education Committee reported on the cases of M. Wright and A. W. Burk, recommending that their Certificates of Fitness be granted.

The report was received, considered and adopted.

Ordered, that Messrs. Wright and Burk do receive Certificates of Fitness.

Mr. Lash also reported in the case of F. R. Blewett, recommending that his petition for allowance of First Intermediate Examination be not granted.

The report was considered and adopted.

Mr. McCarthy from the Reporting Committee presented the report of that Committee, which was received and ordered to be considered immediately.

The report was adopted.

Ordered, that Mr. E. B. Brown be paid the sum of twenty-six dollars, being balance due him for doing Mr. Vankoughnet's work, out of the two hundred and fifty dollars voted by Convocation for that purpose.

Ordered that Mr. Vankoughnet's executors be paid his salary up to the 30th June, and that Mr. Brown receive the salary of the office after that date.

Mr. Osler gave notice of a motion to amend and alter section 14 of the rules, so far as the same relates to the office and salary of the Reporter for the Court of Appeal, to provide for the reporting of cases in the Court of Appeal in any way which may seem best to Convocation, and to alter and amend the rules accordingly.

The Petition of S. W. Burns, whose time expires to-morrow, to have service allowed and Certificate granted, was read.

Ordered, that the prayer of the Petition be granted on condition that his service and papers are proved to the satisfaction of the Secretary to be in all other respects regular.

The Petition of H. M. East to have his examination for call reconsidered, on the ground of some mistake or miscalculation, was read.

Mr. Osler, seconded by Mr. S. H. Blake, moved that Convocation having perused the questions and the answers of the petitioner thereto, refer the Petition to the Legal Education Committee to consider the matters complained of and to report to Convocation.

A letter from Mr. Johnston, Deputy Attorney-General, enclosing a letter from Mr. L. H. Dickson, was read.

Ordered that no action be taken thereon.

The Report of the Special Committee on Honours and Scholarships in connection with the Second Intermediate Examination of Easter Term last, was received, considered and adopted.

Ordered that the Scholarships be paid in accordance with the Report of the Committee.

A telegram from Mr. S. B. Burdet, referring to some correspondence in connection with the Second Intermediate Examination of C. E. Lyons, was read.

Ordered unanimously that the former resolution in this case be reconsidered on account of the correspondence now produced for the first time between Mr. Lyons and the Secretary, such reconsideration to be postponed until next Term.

Mr. Meredith gave notice that at the next meeting of Convocation he will move to amend the rules relating to Scholarships so as to provide that where a candidate for honours is both a student-at-law and an articled clerk, he shall be deemed to be in his regular year, reckoning from the period when he became a student-at-law or articled clerk, whichever shall be the earlier period.

Mr. E. B. Brown was elected Reporter to the Queen's Bench Division in the place of Mr. S. J. Vankoughnet, Q.C., deceased.

Ordered that Mr. Brown be appointed to the office.

The rule to amend rule 9 of section 6 of the Consolidate Rules was read a third time and passed.

Convocation adjourned.

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

DIARY FOR JANUARY.

1. Tues....*New Year's Day.*
2. Wed....Toronto Assizes, Civil side. (Rose, J.) Hamilton Assizes. (Falconbridge, J.)
3. Thur....Lord Eldon died 1838, aged 87.
4. Fri.....Chief Justice Moss died at Nice, 1881.
5. Sat.....Last day for notices for Primary Exam.
6. Sun.....*Epiphany—Christmas Vacation ends.*
8. Tues....Court of Appeal Sittings. London Assizes. (McMahon, J.)
12. Sat.....Sir Charles Bagot, G. C., 1842.
13. Sun.....*First Sunday after Epiphany.*
14. Mon....County Court sittings for motions begin.
15. Tues....Primary Examination.
17. Thur....Admission of Graduates and Matriculants.
19. Sat.....Last day for filing papers and fees. County Court Sittings for motions end. Lord Langdale appointed M.R., 1836.
20. Sun.....*Second Sunday after Epiphany.*
22. Tues....First Intermediate Exam. Toronto Assizes, Criminal side. (Rose, J.) Lord Bacon born, 1561.
24. Thur....Second Intermediate Examination.
27. Sun.....*Third Sunday after Epiphany.*
29. Tues....Solicitors' Examination.
30. Wed....Barristers' Examination.

Reports.

ONTARIO.

THIRD DIVISION COURT, COUNTY OF ELGIN.

[Reported for the CANADA LAW JOURNAL.]

RAYMOND *v.* CLOSE.

Landlord and Tenants' Act—Distress for rent—Sale of sewing-machine to tenant's wife—Property of vendor is not to pass until paid for—Not exempt from seizure—Tender of rent—Possession.

The plaintiff sold a sewing-machine to the wife of the defendant's tenant, which was to become the property of the tenant's wife when it was fully paid for. In the meantime it was to remain the property of the plaintiff. The defendant seized and sold it for arrears of rent due to him. The plaintiff brought this action to recover the value of the machine as for an illegal seizure and sale.

Held, that it was liable to seizure, and that the plaintiff was not entitled to recover.

[HUGHES, Co. J.—St. Thomas, Dec. 26, 1888.

The defendant is the proprietor of a house and premises in the Township of Yarmouth—demised to one Haines, on a monthly tenancy. There was rent in arrear, unpaid. In the house was a clock and a sewing-machine. The last named article had been sold by the plaintiff to the wife of the tenant upon what is called the lien-holding system. The tenancy was created after the first day of October, 1887, that is to say on the 4th of July last, at a rental of three dollars per month, payable in advance. There was no tender of the rent to the landlord or bailiff, either before or after the seizure.

The machine was taken by the defendant's bailiff to New Sarum, and sold, and the plaintiff brought this action to recover its value as for an illegal seizure and sale.

Macbeth, counsel for the plaintiff, contended that the goods were the plaintiff's and protected from the distress: first, by the provision of the 27th section of the Landlord and Tenants' Act, because a sewing machine cannot be seized, but is exempt under the Executions Act, which has been made to apply to a distress for rent; and second, because by the provision of the 28th section of the Landlord and Tenants' Act, a landlord cannot distrain for rent on goods and chattels, the property of any person except the tenant or person who is liable for the rent, although this machine was found on the premises; and third, that as the machine was sold to the wife of the tenant, it was not subject to a distress:—That although it was in the house of the tenant at the time of the distress, it was not there under a contract for its purchase, made with the tenant but with his wife; nor was it in the possession of the tenant on the premises within the meaning of the exceptions referred to in the 28th section. And that because the property was not claimed by the wife of the tenant so as to justify its seizure, it was wholly restricted from the distress. He also contended that because the property in the machine had not passed and was not to pass until it was paid for, it was exempt from seizure under the general restrictions of the 28th section.

Macbeth for plaintiff.

McCrimmon for defendant.

HUGHES, Co. J.—Considering the state of the law as it affects the relation of landlord and tenant, and the right of the former to distrain for rent, and the very few exemptions from distress which existed before the passing of the Ontario Statute 50. Vict. c. 23, and that the exemptions which had been created by statute at the time of this distress were evidently intended for the benefit of poor tenants, (who had been frequently oppressed and stripped of everything by their landlords) and not for the protection of wealthy

corporations or merchants or manufacturers, who sell their wares and goods on the instalment system at enormous profits, retaining a lien for the price, and, considering that the 28th section of the Landlord and Tenants Act, explicitly withholds any application of its restrictions in favor of persons claiming title by way of mortgage or otherwise, or to goods on the premises in possession of the tenant under a contract for purchase, I think, after the mature consideration that I have given to the subject, that the plaintiff is not entitled to recover, and that my judgment should be for the defendant.

It is claimed by the plaintiff here that because a sewing-machine is exempted from seizure, under execution for debt, that by the 27th section of the Landlord and Tenants Act, it was not liable to seizure under this distress by this defendant for rent. Before the tenant could claim the exemption so as to enable this plaintiff to avail himself of that ground, it was necessary that the tenant, (who was then in default on account of non-payment of rent) should have given up possession of the premises forthwith, or been ready to do so; which means that it was to be an unconditional offer, such as is required in order to constitute a good and legal tender of any kind, whether in money or material. The offer here made by the tenant was restricted by a condition which he attached to it but which he had no right to impose. The evidence was "I wanted Mr. Close to bring the things back and I would pay the rent." He did not say "he would not bring them back—I could have got the money etc." This bears upon a continuance of the tenancy, by payment, or promise of payment of rent, rather than upon an offer unconditionally made, to give up possession of the premises, so as to create an exemption from seizure. A surrender of possession would have worked a determination of the tenancy.

I find, as a matter of fact, that there was no tender of rent, nor any actual offer to give up possession of the premises, but rather what I take to have been a menace on the part of the tenant, that he would make the defendant "bring the things back," or that the landlord would have to do so. Unless there was, as I said before, an actual and unconditional offer on the part of the tenant, to give up possession of the premises forthwith or an expressed readiness to do so, or a giving up of such possession forthwith, the tenant could not, nor can this plaintiff for want of such, claim the benefit of the exemption to which the tenant would have been entitled under the Act, had he acted properly.

The tenant being in default for non-payment of rent, not having given up possession of the premises, forthwith, and not being ready and not having offered to do so, could not claim the benefit of the exemption to which he would otherwise have been entitled, and the landlord, in order to seize the exempted goods, after that default, had a right, either before or at the time of the seizure, to serve the tenant with the notice, which the defendant did serve, to inform the tenant of what amount was claimed for rent, and to notify him that in default of payment, if he gave up possession of the premises after service of the notice he would be entitled to claim the exemption; but that as he neither paid the rent nor gave up possession, his goods and chattels were liable to the seizure and to be sold to pay the rent and costs.

The second question involved here is not at all affected by the Married Woman's Property Act, but, exclusively by the Landlord and Tenants' Act, under the provisions of which latter I find no decision pertinent to it. Although, under the law, as it stands now, a married woman may hold property, and have possession, in her own right, of chattels remaining in the mixed possession of both husband and wife, on the premises which they jointly occupy, which are no longer as formerly, in the possession of the husband, still that chattels upon the premises in which the husband and wife reside, may be in the possession of either, is equally consistent with the common occupation. (See Lush on Husband and Wife, 206, 207.)

The more restricted right of a landlord to distrain for rent is clearly and broadly defined by the 28th section of the statute; so that the goods and chattels found on the premises demised, which belong to any person other than the tenant or person who is liable for the rent, are not to be so distrained. But the restriction does not apply to goods on the premises in the possession of the tenant, under a contract for purchase or by which he

may or is to become the owner upon performance of any condition, and it is specifically provided that the restriction is not to apply where the property is claimed by the wife of the tenant, etc.

It is quite true that the provisional sale of this sewing-machine was made to the wife of the tenant, and not to him, and that when it was seized for the distress, it was not "claimed" by the wife, but it was there in the house in the "possession of the tenant under a contract for purchase" of which the wife was to become the owner upon payment of the purchase money, and it was, in my judgment, as much the subject of a distress for rent under the circumstances, as it was before the passing of the statute 50 Vict. c. 23, or the R. S. O., 1887, c. 143.

It mattered not whether the sale was to the tenant or to his wife, because the exemption only applies to the cases specially restricted by the terms of the statute; anything not so exempted would be subject to the state of the law as it stood before the statute as to exemptions for such seizures, was passed. It is specifically provided by the statute that the restriction is not to apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law, or son-in-law of the tenant or by any other relative of his, in case such other relative lives on the premises as a member of the tenant's family; so that neither the plaintiff who made the contract for the purchase of the machine with the tenant's wife, by which she was to become the owner thereof, nor the wife herself could claim any exemption under the 28th section, because the plaintiff could only claim the machine through any exemption to which the tenant was entitled, she had no such right whatever.

The wife of the tenant had no property in the machine, so that she could not claim it as hers; but whether she could or not, the only question is whether or not it was, in a proper sense, in the possession of the tenant, her husband.

I regard the word "possession" in the 28th section, as intended in its popular and not strict legal sense, because if there were a possession in the wife the exemption could not be claimed by her, and much less for her, even if she were the absolute owner of the machine. An action could have been maintained by the tenant against any wrong-doer who might take away the machine out of the house whilst he was in the occupation and possession of the premises, without shewing that he had any property in the machine, (3 Salk. 9) because there is a presumption of possession from the fact of the machine being upon the premises. I also consider that the object of the exceptions to the wide provisions set forth in the introductory part of the 28th section, was to protect landlords against being induced to admit persons as tenants of their houses and lands, who are only the apparent owners of goods and chattels in their possession, and which really belong to someone else, and to make persons who sell their wares to impecunious persons, under contracts for purchase, more cautious as to whom they trust the possession of them. I think, therefore, that this plaintiff cannot avail himself of any advantage that he might expect to derive from this point of supposed weakness in the defendant's right to distrain.

I find that reasonable opportunity was given by the bailiff for the tenant to determine what he would do, and that he would do neither.

I therefore find and give judgment for the defendant, because the tenant neither paid nor tendered the rent nor gave up possession of the premises, and the sewing-machine was therefore liable to seizure and sale to pay the rent in arrear, just the same as it would have been before the passing of the statute to which I have referred.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

[Dec. 14, 1888.

PURDOM *v.* BAECHLER.

Partnership—Dissolution—Debt of retiring partner—Mortgage of partnership property for—Liability of remaining partner—Accommodation note—Collateral security—Voluntary payment of.

N. borrowed an accommodation note from P. and gave it as security for part of the purchase of a mill. N. and B. afterwards went into partnership and gave a mortgage on partnership property for the debt partly

secured by said note which remained in the hands of the mortgagees. The partnership was eventually dissolved, B. assuming the payment of the debts, including the mortgage. P. paid the note and the amount was credited on the mortgage. In an action by P. to recover the amount so paid from B., the latter denied all knowledge of the note.

Held, reversing the judgment of Court of Appeal, RITCHIE, C.J., and FOURNIER, J., dissenting, that there was evidence to show that B. had, in settling the partnership accounts, agreed to pay the amount represented by the note, but if that was not so, the payment of the note by P. could not be regarded as a voluntary payment and he could recover the amount from B.

Appeal allowed with costs.

Park and *Purdom*, for appellants.

Idington and *Palmer*, for respondents.

[Dec. 14, 1888.

PALMER v. WALLBRIDGE.

Mining lease—Construction of—Reservation of rent—Conditional on quantity of ore raised—Dead or sleeping rent—Right to terminate lease.

In a lease of mining lands the reddendum was as follows: "Yielding and paying therefor unto the party of the first part one dollar per gross ton of the said iron ore for every ton mined and raised from the said lands and mine, payable quarterly on" (specifying the days.)

The lessees covenanted as follows: "That they will dig up and mine and carry away in each and every year during the said term a quantity of not less than 2000 tons of such stone or iron ore for the first year, and a quantity of not less than 5000 tons a year in every subsequent year of the said term, and that they will pay quarterly the sum of one dollar per ton as aforesaid for the quantity agreed to be taken during each year for the term aforesaid." There was a proviso in the lease that in case ore should not be found or obtained in reasonable or paying quantities the lessee could terminate the lease, and also a provision that if the rent paid in any quarter should exceed the quantity of ore raised such excess should be applied towards payment of the first quarter thereafter in which more than the said quantity should be taken.

Held, affirming the judgment of the Court of Appeal, RITCHIE, C.J., and FOURNIER, J., dissenting, that the proper construction of these provisions was to make the lessees liable to pay the rent reserved in any event, and not having exercised the right of terminating the lease, they were not relieved from the rent by the fact of ore not being found in reasonable or paying quantities.

Appeal dismissed with costs.

Bell and *Biggar*, for appellant.

F. T. Wallbridge, for respondent.

[Dec. 14, 1888.

MERCHANTS' BANK OF CANADA v. MCKAY.

Surety—Bank customer—Course of banking business—Renewals of notes—Forged renewals—Negligence of bank—Relief of surety.

M became surety to a bank to secure a named indebtedness of a firm dealing with the bank and also future advances. By the terms of his agreement of suretyship M was liable for all promissory notes, etc., of the customer, of a certain date, and "all renewals, substitutions and alterations thereof." The renewals of certain of the notes proved to be forgeries. In a suit by the bank against the surety:

Held, per RITCHIE, C.J., FOURNIER and TASCHEREAU, JJ., affirming judgment of the Court of Appeal, that the bank having parted with the good paper of the customer to which the surety had a right to look for security, and accepted therefor forged and worthless paper, the surety was, to the extent of such forged paper, released from his liability to indemnify the bank.

Held, per STRONG, J., that as the evidence showed the bank to have acted without negligence, the surety was not so relieved.

Per GWYNNE, J., that a reference having been ordered to take an account of the amount of the paper said to be forged, the consideration of the surety's liability should be postponed until a report was made on such reference.

Appeal dismissed with costs.

Smith, *Rae* and *Greer*, for appellants.

Macdonald, *Merritt* and *Shepley*, for respondents.

[Dec. 14, 1888.

HALDIMAND ELECTION CASE.

Controverted elections act—Wilfully inducing voter to take a false oath—Farmer's son—Loss of qualification—R.S.C. c. 9 ss. 91, 92 and 93.

At the trial of an election petition alleging that F. H., an agent of the respondent, did, at a polling station, induce one T. N. to take a false oath at the poll and to vote at said election though not qualified to do so, it was proved that F. H. represented the respondent as scrutineer at the poll under a wrirten authority, and that J. N., who was on the list qualified as a farmer's son, offered himself to vote at the polling place in that capacity. His vote being objected to and being requested to take the farmer's son's oath "T." he hesitated, and then F. H. told him to take the oath and that his vote was perfectly good. The farmer's son's oath "T." was then read to him by the returning officer and he took it and voted. As a matter of fact T. N.'s father had died before the final revision of the list, and at the time of the election T.N. was in occupation of the land as owner.

Held, that for the purposes of the election F. H. was the respondent's agent, and that he was guilty of a wilful offence against s. 90 of c. 8, 49 Vict., and the election was declared void under section 93, (STRONG and GWYNNE, JJ., dissenting.)

Per STRONG J.—That at the scrutiny of the votes before the trial judge the petitioner is entitled to prove that voters whose names were on the list as farmers' sons were not qualified as such at the time of the election.

Appeal allowed with costs.

Aylesworth and *Coulter*, for appellant.

McCarthy, Q.C., for respondents.

[Dec. 14, 1888.

GRINNELL *v.* THE QUEEN.

Customs duties—Importation of article composed of parts—Rate of duty—Duty on completed article—Subsequent legislation.

G, manufacturer of a device made of brass and called an automatic sprinkler, wishing to import it into Canada, interviewed the appraiser of hardware at Montreal, exhibited to him the sprinkler and explained its construction and use, and was told that it should pay duty as a manufacture of brass. G. imported a number of sprinklers in parts and paid the duty as directed by the appraiser. After three shipments had been made the sprinklers and tools for making it were seized by the customs officials, and an information laid against G., under sections 153 and 155 of the Customs Act of 1883, for smuggling, making false invoices, undervaluation, and knowingly keeping and selling goods illegally imported. There was no provision in the Act imposing a duty on parts of articles imported.

Held, reversing the judgment of the Exchequer Court of Canada, that the customs law not imposing a duty on parts of a completed machine imported as this was, and the importer having acted in all good faith and took all possible steps to ascertain his liability to the customs authorities, there was no foundation for the charges laid in the information, which should be set aside and the claimant's property restored to him.

Held also, that the passing of an Act subsequent to the proceedings against G., providing for the imposition of duties on such parts of completed articles, was a legislative declaration that such duty was not previously provided for.

Appeal allowed with costs.

D. Girouard, for claimant.

O'Connor and *Hogg*, for the Crown.

[Dec. 15, 1888.

BARNARD *v.* MOLSON.

Opposition en sous ordre—Moneys deposited in hands of prothonotary—C. C. P. Art. 753.

Held, per RITCHIE, C.J. and STRONG and TASCHEREAU, JJ., that where moneys have been deposited by a garnishee in the hands of a prothonotary, and the attachment of such moneys is subsequently quashed by the final judgment of the court, there being no longer any moneys subject to a distribution or collocation, such moneys cannot be claimed by an opposition *en sous ordre*: the claimant's recourse in such a case is by *saisie arret*, founded upon the affidavit and formalities required for that proceeding.

FOURNIER and GWYNNE, JJ., dissenting on the ground that as the moneys were still subject to the control of the court at the time

the opposition *en sous ordre* was filed, such opposition was not too late.

Appeal dismissed with costs.

Begue and *Lacoste*, for appellant.

Laflamme, Q.C., and *Robertson*, Q.C., for respondent.

[Dec. 15, 1888.

ALLEN v. THE MERCHANTS' MARINE INS. CO.

Marine insurance—Conditions of policy—Validity of—Art. 2184 C.C.

A condition in a marine policy that all claims under the policy should be void unless prosecuted within one year from date of loss is a valid condition and not contrary to Art 2184 C.C., and all claims under such policy will be barred if not sued on within the said time.

Per TASCHEREAU, J.—The debtor cannot stipulate to enlarge the delay to prescribe, but the creditor may stipulate to enlarge that delay.

Appeal dismissed with costs.

[Dec. 15, 1888.

BRISEBOIS v. THE QUEEN.

Reserved crown case—Ch. 174, secs. 246 and 259 R.S.O.—Construction of.

B. having been found guilty of feloniously having administered poison with intent to murder moved to arrest the judgment on the ground that one of the jurors who tried the case had not been returned as such. The general panel of jurors contained the names of Joseph Lamoureux and of Moise Lamoureux. The special panel for the term of the court at which the prisoner was tried contained the name of Joseph Lamoureux. The sherriff served Joseph Lamoureux's summons on Moise Lamoureux and returned Joseph Lamoureux as the party summoned. Moise Lamoureux appeared in court and answered to the name of Joseph Lamoureux and was sworn as a juror without challenge when B was tried. On a case reserved it was:

Held, affirming the judgment of the Court of Queen's Bench, that s. 246 c. 174 R.S.C. clearly covered the irregularity complained of, STRONG and FOURNIER JJ., dissenting.

Held, also, per RITCHIE C.J. and TASCHEREAU and GWYNNE JJ., that the point should not have been reserved by the judge at the trial, it not being a question arising at the trial within the meaning of s. 259 c. 174 R.S.C.

Appeal dismissed with costs.

Leduc, for appellants.

Mathieu and *Garmully*, for the crown.

[Dec. 15, 1888.

PROOPER v. THE QUEEN.

Criminal law—Trial for felony—Jury attending church—Remarks of clergyman—Witnesses—Medical expert—Admissibility of evidence of.

During the progress of a trial for felony the jury attended church in charge of a constable, and at the close of the service the clergyman directly addressed them, remarking on the case of one Millman who had been executed for murder in P.E.I., and told them that if they had the slightest doubt of the guilt of the prisoner they were trying they should temper justice with equity. The prisoner was convicted.

Held, affirming the judgment of the Court of Crown cases reserved for Nova Scotia, that although the remarks of the clergyman were highly improper, it could not be said that the jury were influenced by them so as to affect their verdict.

A witness on a trial for murder by shooting, called as a medical expert, stated to the crown prosecutor that "there were indicia in medical science by which it could be said at what distance from the human body the gun was fired." This was objected to, but the witness was not cross-examined as to the grounds of his statement. He then described what he found on examining the body of the murdered man, and stated the maximum and minimum distances at which the shot must have been fired.

Held, STRONG and FOURNIER, JJ., dissenting, that the opening statement of the witness established his right to speak as a medical expert, and not having been shown by cross-examination, or by other medical evidence,

that his statement was untrue, his evidence was properly admitted.

Appeal dismissed with costs.

Henry, Q.C., and *Harrington*, Q.C., for appellant.

J. W. Longley, Q.C., for respondent.

Man.] [Dec. 14, 1888.

CAMERON *v.* TAIT.

Principal and agent—Authority of agent—Excess of ratification by principal—Agent for two principals—Contract by.

M., a machine broker at Winnipeg, was appointed, by authority in writing, agent for P. T. & Co., manufacturers of mill machinery at Port Perry, to sell machinery in certain districts. M. was also agent for the D. Engine Co., manufacturers of steam engines and steam machinery at Toronto.

C. T. & Co., lumber manufacturers at Rat Portage, ordered from M. a saw mill and machinery complete, of a specified cutting capacity, for which they agreed to pay a fixed price. M. agreed by letter to furnish such mill and machinery at the price named. M. procured the mill and machinery from P. T. & Co., and the power for working it from the D. Engine Co. and delivered them to C. & M. at Rat Portage. It proved, however, that the mill would not cut the quantity of lumber agreed on, and P., T. & Co. undertook to put in new machinery, but on C. & M. refusing to make certain payments before delivery of the same, it was not put in. In an action by C. & M. against P., T. & Co. for breach of warranty:

Held, affirming the judgment of the court below, RITCHIE, C.J., and FOURNIER, J., dissenting, that the contract by M for the sale of both the mill and power as a single transaction and for a lump sum was in excess of his authority as agent of P., T. & Co., and the contract was, therefore, one with M. personally, and the judgment of nonsuit in the court below was right.

Held also, that unless both P., T. & Co. and the D. Engine Co. joined in adopting the contract and in warranting each other's goods, as well as their own, there could be no ratification of the sale by either.

Appeal dismissed with costs.

Aikins, Culver and Hamilton, for appellants.

J. W. E. Darby, for respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

[June 29, 1888.

FOLLET *v.* TORONTO STREET RAILWAY CO.

Negligence—Damaged by street car—Contributory negligence—Accident by carelessness of plaintiff.

While a car of the defendant's in charge of another servant of the company, the driver having temporarily gone to the rear of the car, was proceeding westerly at a slow rate along a street in the city of T., on which they had the right of way, the plaintiff, whose carriage was waiting at the kerb stone, without observing the near approach of the car, got into and drove her carriage for a short distance in the same direction as the car, when she suddenly turned north intending to cross, but in such a close proximity to the car, that, but for the prompt action of the driver in charge in turning his horse off the track, his horse would have collided with the plaintiff's carriage; as it was, notwithstanding the break was applied to the car the whiffletree struck the wheel of the carriage, when it was upset, and the plaintiff thrown to the ground and her leg was fractured.

In an action for damages, the jury found in favour of the plaintiff, which verdict the Divisional Court refused to disturb. On appeal, this Court [OSLER J. A., dissenting] being of opinion that there was no evidence of negligence on the part of the defendants, reversed the judgment of the C. P. D., and dismissed the action, with costs.

Osler, Q.C., and *Shepley*, for the appellants.

Robinson, Q.C., and *Fullerton*, for the respondents.

[Nov. 14, 1888.

SHEARD *v.* LAIRD.

Deed obtained by threats of legal proceedings—Undue influence.

The defendant had become liable as accomodation indorser for the husband of one of the plaintiffs, who, with his wife, became makers of a joint note to defendant as security, and which it was agreed should be paid out of the proceeds of certain lands that had been previously conveyed by the husband to his wife. Instead of doing so, however, the

husband sold the lands and absconded, leaving his wife behind.

The defendant, on learning this, went to the wife in a state of excitement, threatened to aid in proceedings criminal as well as civil unless he obtained security, and urged her to procure her mother to give security on a piece of land belonging to the latter.

This, the mother, after persuasion by the daughter, agreed to give, the defendant advising that plaintiff's legal adviser should not be consulted, and on the evening of the following day, a deed absolute in form, was executed by both the mother and daughter, the latter having dower in the land, in favor of the defendant, who, at the mother's request gave a separate memorandum of defeazance. There had been no direct communication between the defendant and the mother; nor were there any threats made or undue influence apparent at the time of execution of the deed, both grantors being aware that they were giving security.

In an action impeaching this deed as having been obtained by threats and undue influence, the trial judge [ARMOUR, C. J.] dismissed the action with costs, which judgment was set aside by the Divisional Court of the Common Pleas Division.

On appeal to this Court, the judgment of the C. P. D. was reversed, and the judgment of this trial Judge restored with costs.

W. H. Bowlby, for the appellant.

C. A. Durand, for respondents.

[March 6, 1888.

RYAN v. COOLEY.

Will, construction of—Vested interest—Contingent interest—Maintenance.

The testator made a residuary devise of real estate to his executors, in trust for his four children, "until they, or the survivor or survivors of them, shall have attained the age of twenty-one years, said real estate to be divided amongst the said four children, share and share alike, and in case any of them shall have died, leaving issue, the said issue shall take the share which otherwise would have gone to his, her or their parent." The will also directed the said four children should be maintained and educated out of the income of such property during their minority, and the surplus to be invested during such their minority, and upon the youngest, or the survivor or survivors of them, attaining twenty-one, to divide the personal estate, share and share alike. And upon any of the children attaining twenty-one, the executors were directed to advance such sum as might be necessary to establish such child in business, etc. And all the residue of his personal estate was to be held by his executors and divided at the same time as the lands.

Held, (1) [affirming the judgment of the Court below], that one of the sons who had attained twenty-one, was not entitled to maintenance out of the estate.

Held, (2) [varying the same judgment] that the four children took vested and not contingent interests in the residuary real and personal estates, the interest in the real estate being liable to be defeated as to any one or more of them, upon the condition subsequent of death before partition leaving issue, in which event the share of the deceased would go over to the issue.

Clute, for the appellant.

J. K. Kerr, Q.C., for infant devisees.

Lash, Q. C,. for future heirs.

DOMINION SAVINGS & INVESTMENT COMPANY v. KILROY.

Married Womens' Act—R. S. O. 187, c. 125, ss. 5-7—Wife's separate property.

A married woman carried on business in her own name, the business being managed for her by her husband. For the purpose of the business she purchased the goods constituting her stock in trade and which the vendor sold to her upon her credit exclusively, and not to her husband.

Held, that even though the business might not be the business of the wife, carried on by her separately from her husband, within the meaning of section 7, so as to protect the earnings from the husband's creditors, the goods so sold to the wife were her own property, under section 5 of the Act, and were not liable to be taken in execution at the suit of the husband's creditors.

Quære, Whether this would be so with regard

to goods purchased to be paid for out of earnings of such a business.

Meakin v. *Gampson*, 28 C.P., 360, doubted, per Burton J. A.

Judgment of the C.P.D.affirmed.

THE QUEEN *v.* THE CITY OF LONDON.

Criminal procedure—Indictment for nuisance—Appeal—R. S. C., chap. 174-268, 50-51 *Vict. ch.* 50 (D.)

The defendants having been convicted on an indictment for a nuisance, which had been removed into the Queen's Bench by *certiorari*, moved for a new trial, which was refused.

Held, that no appeal would lie to this Court from the judge refusing the new trial, and that it could make no difference that the indictment had been removed by *certiorari* and tried on the civil side.

Regina v. *Eli*, 13 A.R., 626,and *Regina* v. *Laliberte*, I.S.C.R., 117, referred to.

Quære, whether in any case of misdemeanor a new trial can now be granted. C.S.U.C. chapters 13, 112, 113; 32 & 33 Vict. ch 29,sect. 80 (D.)

DUNKIN *v.* COCKBURN.

Free Grant and Homesteads Act, R. S. O., 1877, *c.* 24, *s.* 4—31 *Vict., c. 8, s.* 3—*Patent—Reservation by order in council—Trespass.*

Plaintiff was a locatee of a Free Grant and Homestead lot, which at the time he located it, in May, 1879, was subject to a regulation of an Order in Council of the 27th of May, 1869, providing that holders of timber licenses should have the right to haul their timber or logs over the uncleared portion of any land so located, and to make necessary roads thereon for that purpose, etc. The patent in favor of plaintiff was issued in June, 1883, and contained only the usual reservations of mines, minerals and navigable waters. The defendant was the holder of a timber license issued after the date of the patent, and justified the trespasses complained of under the authority of the Order in Conncil.

Held, that the only reservations or exceptions from the grant were those mentioned in the patent, and that the plaintiff's land was not subject to the regulations of the Order in Council.

Semble, that such regulations apply only before the issue of the patent to lands located under the Order in Council, and then only so far as rights of way, etc., may be expressly conferred upon the licensee by the terms of his license.

Judgment of Q.B.D. affirmed.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Div'l Ct.] [Nov. 19, 1888.

MARSHALL *v.* MCRAE.

Master and servant — Wrongful dismissal—Written contract—Consideration—Remedy on covenant—Construction of contract—Right to dismiss—Reasonable grounds—Bona fide exercise of power—Manner of exercise.

The plaintiff agreed to obtain patents for certain improvements in a machine of his invention and to assign them to the defendant, and the defendant, in consideration thereof, agreed to employ the plaintiff for two years for the purpose of demonstrating and placing the patents on the market, the defendant covenanting to pay the plaintiff a certain sum per month and expenses, during the two years, and to give him a share of the profits, and the plaintiff covenanting to devote his whole time and attention to the "business of the defendant."

By the 10th clause of the agreement it was provided that the defendant should be the absolute judge as to the manner in which the plaintiff performed his duties, and should have the right at any time to dismiss him for incapacity or breach of duty.

The defendant summarily dismissed the plaintiff within three months for alleged breach of duty in relation to work not within the terms of his employment as above specified.

Held, that the work to be performed not being the only consideration for the wages to be paid, but for the tenth clause the defendant would have had no right to dismiss the plaintiff at all, but would have been left to his remedy upon the plaintiff's covenant.

"The business of the defendant" meant the business for which the plaintiff was employed, and the defendant had no legal right

to dismiss the plaintiff for alleged breach of duty in connection with work not within the terms of his employment; and even if such work was within the terms of his employment the defendant had, upon the evidence, no reasonable grounds for dismissing the plaintiff.

Held, also, that where one party puts himself in the power of the other, the latter should exercise the power with entire good faith; and, upon the evidence, that the defendant had not exercised the power given him by the 10th clause, in good faith, but even if he had, that he had not exercised it in a legal manner, for he was bound to give the plaintiff an opportunity to be heard and to explain his alleged misconduct, which he did not do.

Carscallen, for the plaintiff.

Osler, Q.C., and *J. J. Scott*, for the defendant.

Robertson, J.] [Dec. 20, 1888.

DOMINION BANK *v.* DODDRIDGE.

Notice of motion for judgment—Dispensing with service of—Con. Rule 467—Sufficient cause.

Upon a motion to the Court for judgment on the statement of claim in default of defence, the plaintiffs asked for an order dispensing with service of notice of the motion upon the defendant under Con. Rule 467. It was not shown that defendant could not be served. The order was refused.

Held, that the fact that the defendant had been personally served with the writ of summons and statement of claim and had not appeared was not "sufficient cause" within the meaning of the rule.

Div'l Ct.] [Dec. 22, 1888.

ANDERSON *v.* FISH.

Sale of goods—Stoppage in transitu—Consignor and consignee—Right of carriers to prolong period of transitus.

The defendants, unpaid vendors of goods, shipped the goods over the Grand Trunk Railway to the vendee at W. When the goods arrived the railway company's agent at W, sent an advice note to the vendee, who refused to take it. After this the vendee assigned to the plaintiff for the benefit of his creditors, and the plaintiff, as soon as the assignment was perfected, produced it to the railway company's agent and claimed the goods, offering to pay the freight, but producing no advice note. The agent did not refuse to deliver the goods, but said that according to the rules of the company, when the person claiming the goods was an assignee for the benefit of creditors his duty was to telegraph to the company's solicitor for instructions. He did so telegraph, but before he received an answer, and on the same day, the defendants notified him not to deliver the goods to the vendee or his assignee, assuming a right to stop them in transitu.

Held, FALCONBRIDGE J., dissenting, that the action of the railway company's agent in delaying till he received instructions from the solicitor was not wrongful, that the *transitus* was not at an end when the defendants intervened, and the right of stoppage was well exercised.

G. T. Blackstock, for the plaintiff.

J. B. Clarke, for the defendants.

Div'l Ct.] [Dec. 22, 1888.

ISBISTER *v.* SULLIVAN.

Courts—Interpleader—Jurisdiction of District Court of Thunder Bay—Jurisdiction of High Court of Justice—R. S. O. c. 91, s. 56.

The District Court of the Provisional Judicial District of Humber Bay has jurisdiction in interpleader under R. S. O., c. 91, s. 56, for it has "the jurisdiction possessed by County Courts," which is by R. S. O. (1877), c. 43, s. 19, s.s. 6, "in interpleader matters as provided by the Interpleader Act;" and such jurisdiction is determinable in a sheriff's interpleader by the fact whether the process under which the goods were seized has issued out of the District Court, and not by the amount for which the recovery was had or the process issued. (See *R. S. O.* (1877), *c.* 54, *s.* 22.)

The High Court of Justice has no jurisdiction, by virtue of R. S. O. c. 91, s. 56, s.s. 2, or otherwise, to entertain a motion against a verdict or judgment obtained in the District Court in an interpleader issue.

Delamere, for the plaintiff.

Aylesworth, for the defendant.

Full Court.] [Dec. 22, 1888.

REGINA *v.* PERRIN.

Justice of the Peace—Summary conviction under R. S. O. c. 214, s. 15—Dog killing sheep—Award of compensation—Proving character of dog—Territorial jurisdiction of justices—R. S. C. c. 178, s. 87.

The owner of a sheep killed or injured by a dog can, under R. S. O. c. 214, s. 15, recover the damage occasioned thereby, without proving that the dog had a propensity to kill or injure sheep, and the Act applies to a case where the dog has been set upon the sheep.

It did not appear upon the face of the conviction in question that the offence was committed within the territorial jurisdiction of the convicting justices ot the peace, but upon the deposition, it was clear that it was so committed.

Held, that the saving provision of s. 87 of R. S. C., c. 178, should be applied, and the order *nisi* to quash the conviction was discharged.

Shepley, for the defendant.

Q. B. Div'l Ct.] [Nov. 19, 1888.

BANK OF HAMILTON *v.* ISAACS.

Evidence—Action against indorser of promissory note—Denial of indorsement—Admissibility of evidence as to circumstances connected with the indorsement—New trial.

I., the maker, and F., the indorser, of a promissory note, were sued upon it, and F. denied his indorsement.

At the trial an indenture of conveyance of land from I. to F. was put in without objection, and I. testified that it was given to secure F. against his indorsement of certain notes of which the one sued on was a renewal. There was nothing in the indenture to show that it was given for anything but the expressed consideration of $1,500, and it was not pretended that such consideration was paid.

Held, that it was competent for F. to show what the indenture was given for, that it was not given to secure him against such indorsement, and therefore evidence of the existence of an indebtedness from I. to F. upon an open account was receivable to support the proof that it was given to secure such indebtedness.

I. was asked whether F. did not say to him when he asked him to indorse one of the series of note, of which the one in question was a renewal, that he, F., never backed anybody's note.

Held, that this question was irrevelant, and I's answer to it conclusive, and evidence contradicting such answer was inadmissible.

Held, also, that, having regard to the whole case and the charge of the trial, judge adverting to evidence improperly received and to its importance, substantial injury and miscarriage were thereby occasioned, and there was sufficient ground for granting a new trial.

McCarthy, Q.C., for the plaintiff.

Lount, Q.C., for the defendant, F.

Chancery Division.

Div'l Ct.] [Sept. 22, 1888.

HUGHES *v.* ROSE *et al.*

Mortgagor and mortgagee—Power of sale—Notice of sale—Effect of second mortgage taken as collateral to first.

A, being a mortgagee from B, made him a further advance and took a second mortgage for the amount of both advances and as collateral to the first.

Held, that the remedies under the first mortgage were not surrendered, and that a sale under notice given under the first mortgage was a good sale.

The notice of sale was a double one: (1) "That the mortgagee would without further notice, enter into possession and sell and dispose of the lands," and (2) "That the sale would take place on 28th January." The latter became inoperative because service was not made two months (the required time) prior to that date. A sale was subsequently had two months after the notice, which was not complained of as being otherwise improper or improvident.

Held, a good sale.

The plaintiff appeared in person.

Moss, Q.C., *Delamere*, *Shepley*, *J. B. Clarke*, *C. H. Smith*, *J. M. Clarke*, *Dean* and *Campbell*, for defendants *contra*.

Practice.

Street, J.] [Dec. 11, 1888.

BURKE *v.* PITTMAN.

Indemnity—Relief against co-defendants—Proceedure where such relief claimed—Trial of questions raised.

No order is necessary to enable a defendant to plead a claim for indemnity against his co-defendant, but such a claim will not be tried without an order providing for the determination of the question so raised.

P. borrowed money from the plaintiff and then went into partnership with N.; P. and N. afterwards sold the business to B. The plaintiff, having judgment against P., brought this action against P., N. and B., to set aside the sale to B. as fraudulent. P. alleged in his defence that N. agreed to pay half his debts, including that to the plaintiff, and that B. agreed to pay the liabilities of P. and N. appearing on their books, which the liability to the plaintiff did, and he claimed indemnity against N. and B.

Held, that the trial of the question whether or not the sale to B. was fraudulent as against the plaintiff, would involve an inquiry as to the terms upon which B. purchased from the other defendants, and that the whole matter was one that might be advantageously disposed of at one hearing.

Geo. Macdonald, for the plaintiff.

Geo. Ritchie, for the defendant P.

Gunther, for the defendants, N. and B.

Q.B. Div'l Ct.] [Dec. 22, 1888.

SMITH *v.* FLEMING.

Costs—Covenant for renewal lease, construction of—Costs of lease—Costs of reference and award—Costs of action for arbitrators' fees.

The judgment of FERGUSON, J., 12 P.R. 520, affirmed on appeal, substantially on the same grounds.

Marsack v. *Webber*, 6 H. & N. I., referred to as an authority for the disposition made of the costs of the arbitration.

In re Autotheptic Steam Boiler Co., 21 Q.B.D., 182, distinguished.

J. K. Kerr, Q.C., and *Arnoldi*, for the appellants.

S. H. Blake, Q.C., and *Tilt*, Q.C., for the respondent.

Q. B. Div'l Ct.] [Dec. 22, 1888.

LEITCH *v.* GRAND TRUNK R.W. Co.

Discovery—Examination of officer of corporation—R. S. O. (1877), c. 50, s. 136—Railway conductor—Discovery before second trial from witness examined at first trial.

Held, (1) Affirming the decision of MACMAHON, J., 12 P.R., 541, that the conductor of a train of the defendant's, through whose alleged misconduct the plaintiff was injured, was an officer of the defendant's within the meaning of R. S. O. (1877) c. 50, s. 136, examinable for discovery in an action for the injuries sustained.

(2) Reversing the decision of MACMAHON, J. (FALCONBRIDGE, J., dubitante), that such conductor could be examined by the plaintiff before a second trial, notwithstanding that he had been examined as a witness at the first trial, and been cross-examined by counsel for the plaintiff, and had then offered to produce a certain book in his possession.

W. R. Meredith, Q.C., for the plaintiff.

Aylesworth, for the defendants.

Appointments to Office.

DIVISION COURT CLERKS.

Haldimand.

Thomas Bridger, of Cayuga, to be Clerk of the Second Division Court of the County of Haldimand, *vice* William Mussen, deceased.

Leeds and Grenville.

M. S. Denant, of Bastard, to be Clerk of the Sixth Division Court, *vice* W. H. Denant, resigned.

Algoma.

Robert E. Miller, of Bruce Mines, to be Clerk of the Second Division Court of the District of Algoma, *vice* Thomas Collins, resigned.

BAILIFFS.

Wellington.

William M. Franks, of Fergus, to be Bailiff of the Fourth Division Court of the County of Wellington, *vice* A. McMillan, resigned.

Brant.

Daniel Dunn, of Burford, to be Bailiff of the Fourth Division Court of the County of Brant, *vice* I. Jackson, resigned.

Stormont, Dundas and Glengarry.

Simon Warner, of Osnabruck, to be Bailiff of the Fourth and Eighth Division Courts of the united Counties of Stormont, Dundas and Glengarry, *vice* Lyman Warner, resigned.