The Canada Law Journal.

VOL. XXV. JUNE 1, 1889. No. 10

THE TORRENS SYSTEM.

THE annual report of the Master of Titles reveals a steady amount of progress in the development of the Torrens System of registration of titles. During the past year, although only thirty-five applications were made for first registration, yet the aggregate value of the property covered by these applications was $654,120. The total number of instruments registered to the end of 1888 was 4,105; of these, 3 were registered in 1885; 645 in 1886; 1,196 in 1887; and 2,261 in 1888. The fees of the office last year amounted to $5,855.70, which was nearly $600 more than the expenses of the office. The Master of Titles is able to report that the great majority of the legal profession and of dealers in real estate, now that they have become acquainted with the routine of the system, are heartily in accord with it. In the districts to which the Torrens System has been extended we see there have been already 518 titles registered. The Assurance Fund amounts now to $7,467.40, and so far there have been no drafts upon it. On looking through the schedule containing the list of applications during the past year, the fees paid to the office on first registration do not appear to have been very heavy; the heaviest amount being only $108.85 for the registering of the title to a property valued at $28,875. On the other hand, for a property valued at $50,000 only $39.50 was paid. The average of the office fees paid for first registration amount, we find, to not quite 16 mills on the dollar of the value of the property registered. Of course to this must be added the solicitor's fees, and the payment to the Assurance Fund, but even with these additions—considering the great benefits conferred by the registration—we do not think the expense can be said to be very heavy.

We are somewhat surprised to find that, notwithstanding the experience which has thus far been gained in Toronto of the merits of the system, no attempt appears to have been made to extend its operation to other counties in Ontario. The facility it affords for the rapid transfer of property when cut up into small lots, has no doubt led to its adoption in Toronto to a considerable extent, but security of title and facility for rapid transfer, are boons which the system offers to all owners of land, whether their holdings are large or small, and these are boons which we should think most land owners would like to secure even at some little sacrifice.

THE FOLLIES OF LITIGATION.

In the recent case of *Conway* v. *Fenton*, 40 Ch. D. 518, Kekewich, J., observed, "I know of nothing which requires more careful exercise of judicial power than the deciding on, or granting applications when there is no real argument; the consent business of the Court being, according to my experience, as a rule even more difficult than the contentious business." This opinion perhaps is not shared in by all the members of the Bench, but we think, notwithstanding, that it is none the less true. In contentious cases the Court has generally the assistance of the Bar, all the facts are presented, and the authorities bearing on the case are usually brought to the notice of the Court. On the other hand in consent motions, or *ex parte* applications, the Court usually gets very little assistance from the Bar, as the only parties represented are those who are interested in getting the Court to make the order asked.

Point is given to Mr. Justice Kekewich's remarks by a matter which was lately before the English Court of Appeal. The matter in question was an application to strike a solicitor off the rolls for improper conduct, and though the Court of Appeal reversed the order striking the solicitor off the rolls, they, nevertheless, felt constrained to make some strong observations on the scandalous state of affairs which the facts of the case disclosed.

It appeared that a man named William Coppin, who had acquired a possessory title to a house, died, leaving a will whereby he devised the house to his widow for her life, with remainder to his six children. The widow died, leaving a will whereby she (although having only a life estate) purported to devise the house in fee to a daughter who lived with her, and under this will the daughter claimed to be solely entitled; her eldest brother also claimed the property as heir-at-law. The brothers and sisters quarrelled bitterly amongst themselves. The mother's devisee then went to the solicitor in question, and the opinion of counsel was taken, who advised that the property was divisible between all the brothers and sisters under their father's will, and he advised that they should all consent to a sale and a division of the proceeds amongst them; and if this could not be done, then that it would be necessary to apply in the County Court for a partition. The daughter, who claimed as devisee of her mother, refused to get the consent of the other parties to a sale, and instructed the solicitor to go on with a partition suit. This suit was accordingly brought, and resulted in a sale of the property for £360: and the solicitor concluded the proceedings by sending a bill for his costs of the suit, amounting to £400! and it was in consequence of this outrageous disproportion between the costs and the fruits of the litigation, that the application was made against the solicitor.

The Queen's Bench Divisional Court considered the solicitor had been guilty of misconduct, and struck him of the rolls; but on appeal the Court of Appeal reversed the order. On referring to the proceedings in the County Court suit, it appeared that although the property was producing only 10 shillings a week, yet the County Court judge had, on an *ex parte* application, granted an order for a receiver; and that in pronouncing the judgment for partition he had included in

it a number of absurd and useless inquiries, which were proposed by the plaintiff's solicitor, and not objected to by the defendant's solicitor; *e.g.*, an inquiry was ordered whether William Coppin (the father) had any and what children, and if so when they were born and whether they were living at the time of his decease, (all of the children being actually parties to the suit). "Whether Edwin Smith is alive, and whether he was living at the time of the decease," (Edwin Smith being a client of the plaintiff's solicitor). "Whether Mr. Coppin was entitled to any *other* real estate," etc., all of which inquiries were perfectly useless, the material being before the judge on which he could have at once declared that the plaintiffs and defendants were entitled to the property in equal shares. We may mention that the judgment was drawn up with a blind adherence to some book of forms, without any regard to the real requirements of the case and under the supposition that it was the *usual form* in all partition suits.

The Court of Appeal relieved the solicitor from the imputation of having acted dishonestly, but at the same time came to the conclusion that neither he, nor the judge of the County Court, nor the defendant's solicitors, could have known anything about the proper mode of proceeding in such cases—which goes to show the truth of the proposition of Kekewich, J., with which we started.

Some judges seem to assume that because a motion is consented to, that that relieves them from any responsibility of seeing to the propriety of the order they are called on to make, but we think this is a mistaken view. The case we have referred to, shows that solicitors may sometimes, through ignorance of the proper practice, consent to proceedings which are very far from being in the true interests of their clients; and it is not too much to expect that judges shall not sanction, as a matter of course, proceedings which may prove a perversion and mockery of justice. Can a judge be said to have done his duty when he has, without proper consideration, sanctioned needless proceedings leading to the eating up of the whole subject of litigation in costs? We think not.

The procedure of the law for the enforcement of the rights of litigants, is, in the main, well adapted to its purpose; but in unskilful and ignorant hands it is capable of becoming an instrument of destruction. It is like placing a loaded gun in the hands of a child, and it is quite possible to work much ruin from the sheer ignorance and incompetence of the practitioner, without any admixture of fraud on his part. The case we have referred to, may seem an extraordinary and unparalleled instance of the folly with which litigation is sometimes carried on, but it so happens that in this Province an almost identical case has just come to light, in which a squabble over a dead man's estate has resulted in the estate selling for about $1,100, and the costs of the various solicitors for litigation to settle the rights of the parties has amounted to over $1,400. The facts of this case, we understand, were somewhat as follows: B. being the owner of the lot in question, died; a woman who had lived with him as his wife, and by whom he had had four children, survived him, together with the children. This woman after B.'s death married C., and she and C., with one of the children of B., continued to live on the place. It seems to have occurred to C. that if his wife would deny her marriage with B. he might claim the property as his own by possession.

So proceedings were commenced by C. to quiet his title. During the proceedings he died, and the proceedings were subsequently continued by his representatives. The child of B. then appeared as a contestant, and after fighting out the question whether there had been any marriage between B. and the widow of C., it was ultimately agreed that there should be a compromise on the basis that the land should be sold, and the proceeds divided in certain proportions "after payment of the costs of all parties." Here again the solicitors of all parties consented to, and the Court sanctioned, the compromise: but it very soon appeared when the costs came to be taxed, that the lawyers in consenting to this arrangement were merely consenting to divide the proceeds of the litigation between themselves, and still leave a large balance of costs, to be made good by their unfortunate clients. And the question naturally arises, Would the Court have sanctioned a compromise on the consent of solicitors which handed over to them the whole fruits of the litigation, if the whole facts had been placed before them?

It is possible that in this case as in the other which has been referred to, a certain amount of retributive justice has been done. In the first case the land in question had been virtually stolen from its rightful owner by the testator, and in the latter case it would appear as if the litigation was set on foot with a view to depriving the rightful heirs of the deceased of their property. Certain it is that where a woman comes forward to bastardise her own issue, as the basis of proceeding to deprive them of property, to which, if legitimate, they would be entitled, even though her claim be well founded, it can hardly hope to escape being regarded with the greatest suspicion; but even though this retributive aspect of the case may lead one to entertain somewhat less sympathy for some of the litigants than would otherwise be the case, it, nevertheless, can hardly be denied that it is mockery of justice that such a result can in any case be arrived at under the forms of law with impunity.

RECENT LEGISLATION.

THE law relating to Bills of Lading received an important amendment at the recent session of the Dominion Legislature. By 52 Vict., c. 30, which recites that by the custom of merchants a bill of lading is transferable by indorsement, whereby the property in the goods passes to the indorsee, but nevertheless all rights in respect of the contract contained in the bill of lading remain in the original shipper; and also that it frequently happens that the goods, in respect of which bills of lading are signed, have not been laden on board: it is enacted that the consignee and every indorsee of the bill of lading to whom the property in the goods passes shall have vested in him all such rights of action, and be subject to all such liabilities in respect of such goods, as if the contract contained in the bill of lading had been made with himself, without prejudice to the right of stoppage *in transitu*, or any right of an unpaid vendor under the civil code of Lower Canada, or any right or claim for freight against the original shipper or owner, or any liability of the consignee or indorsee. The bill of lading in the

hands of a consignee or indorsee for value, is made conclusive evidence of the shipment of the goods, as against the person signing the same. But the person signing may exonerate himself from liability by showing that the misrepresentation was caused without any default on his part, and wholly by the fault of the shipper or holder, or of some person under whom the holder claims.

The Dominion Winding Up Act has been amended in some important particulars by 52 Vict., c. 32 (D). Chief among these amendments is the power conferred on the Court to make a winding up order at the instance of the company or a shareholder, when the period fixed by the charter for the duration of the company has expired, or when an event has occurred, on the lapsing of which by the charter the company is to be dissolved; also where the company at a special meeting of the shareholders passes a resolution requiring the company to be wound up; or where the company is insolvent within the meaning of the Winding Up Act: and also at the instance of a shareholder for at least $500, where 25% of the stock has been lost and it is shown that the lost capital will not likely be restored within a year: or when he can show to the Court that it is just and equitable that the company should be wound up. Provision is made enabling the Court to adjourn the proceedings, and appoint an accountant to inquire into the affairs of the company, when the company opposes of the application. The Court is empowered to dispense with the notice to creditors, contributors, shareholders, or members of the company required by the Winding Up Act; and the liquidator may be authorized to exercise any of the powers conferred on him by the Act without the sanction or intervention of the Court; and the Court may limit and restrict the powers of interim liquidators. Liquidators are empowered to require creditors to attend and prove their claims when they consider they should not be allowed without proof. Certain verbal amendments are made to the principal Act, and the Court is to have "the same power and jurisdiction to cause or allow service of proceedings under the Act on persons out of the jurisdiction, as in ordinary suits within the ordinary jurisdiction of the Court." It remains to be seen how far this provision will be of any effect. According to some recent English decisions it would seem that the Court has in ordinary cases no inherent jurisdiction to authorize service of its process on persons beyond the jurisdiction, and that its power to do so is strictly governed by statute. The Act is also amended so as to enable the Court to refer matters to its officers under the Winding Up Act as in an ordinary suit, subject to an appeal, according to the ordinary practice of the Court; and proceedings under a winding up order are to be carried on as nearly as may be in the same manner as any ordinary action within the jurisdiction of the Court.

By chap. 36 further provision is made for the extradition of criminals. The list of crimes includes amongst other offences, larceny, embezzlement, obtaining goods under false pretences, so that many persons who have committed such crimes in foreign countries will find Canada no longer a safe harbour of refuge.

The Supreme Court Act has been amended by chap. 37; among other things, by preventing a judge whose decision is appealed from, or who took part in the trial of the cause or matter, from sitting as a judge on the hearing of the appeal.

The object of this section, we presume, is to prevent a judge of an inferior Court who is appointed judge of the Supreme Court from taking any part in appeals in any action in which he has taken any judicial part whilst a member of the inferior Court. Two additional cases have been added to the list of cases in which appeals may be had to the Supreme Court: 1st, from judgments of the Court of last resort in reference to the assessment of property for provincial or municipal purposes, where the judgment appealed from involves the assessment of property at a value of not less than $10,000: 2nd, from judgments of any Court of Probate where the matter in controversy exceeds $500. Provision is also made for entering a suggestion on the death of a sole plaintiff or defendant, pending an appeal, in order to enable the appeal to be prosecuted by or against the representatives of the deceased.

The Exchequer Court is, by chap. 38, empowered to direct references, to take accounts, etc., and to make rules: and the Finance Minister is authorized to pay interest on judgments recovered in the Exchequer Court at the rate of four per cent. It does not say "per annum," but we presume that is what is meant.

By chap. 40 the Superior Courts are authorized to make rules for regulating the procedure and practice in criminal proceedings.

Chap. 41 embodies the legislative effort of the session to punish trade combinations in undue restraint of trade: how far it will be successful is extremely problematical.

We are glad to see that bribery, corruption, intimidation and deceit of members or officers of municipal councils have, by chap. 42, been made indictable offences.

A wise and, we think, an exceedingly beneficial amendment has been made by chap. 44 in the criminal law, by enabling judges to release prisoners convicted of a first offence punishable with not more than two years' imprisonment, on their finding sureties for their good behaviour, and to appear when called on to receive judgment. The reclamation of offenders should, we think, be a distinct object of all penal legislation, and not merely the visitation of punishment; and it is much to be doubted whether in the case of first offenders, the confinement in gaol, instead of producing a wholesome effect, has not too often the effect of destroying the prisoner's self-respect, and rendering him a permanent member of the criminal class. The power of release, however, is one that will have to be very carefully and judiciously exercised.

The last session of the Ontario Legislature was not remarkable for any original legislative enactments, but several statutes came in for the annual process of amendment. We observe by chap. 10 that the Thellusson Act is declared "to have been and to be in force in Ontario." The Act was passed in 1800: whether the Act is to be deemed to have been in force from that date or any other is not very clear. The Act is not to affect any action or proceeding heretofore brought or now pending. See *Harrison v. Spencer*, 15 O.R. 692.

By chap. 11, local judges of the High Court are empowered to grant interlocutory injunctions for a period of 8 days in actions in the High Court, when it is proved to the satisfaction of the local judge that the delay required for an

application to the High Court is likely to involve a failure of justice. We are not aware that in the 38 years which have elapsed since the reorganization of the Court of Chancery that any public inconvenience has been felt, sufficient to warrant this enactment; it is, however, in accordance with the policy of decentralisation which appears to be in favor just now. By the same statute sheriffs are empowered to sell debts due to an absconding debtor, and the purchaser thereof is empowered to sue for their recovery in his own name.

By chap. 12 several amendments are made to the Division Courts Act. Among other things bailiffs are authorized to recover fees on executions, when the action is settled after seizure and before sale, and such fees are to form a lien on the goods. Among other amendments made, is one, whereby the County Attorney becomes *ex officio* Division Court Clerk, in the event of a vacancy in the office, until a successor is appointed. We also see that by sec. 24, after a transcript has been issued under section 217 of the principal Act, no further proceedings are to be taken in the Court from which the transcript issued, without the order of the judge, unless the creditor files an affidavit that the judgment remains unsatisfied, and that the execution issued in the division to which the transcript issued, has been returned *nulla bona*, and that deponent believes the defendant has not sufficient goods in that division to satisfy the judgment.

By chap. 13 some sensible provisions have been made in reference to arbitration. This Act, however, does not take effect until the 1st of July next, and is not to apply to any award or certificate made before that day. Under this Act the old formality of taking out an order, making a submission an order of Court, is done away with, and the filing of the award a certificate of the arbitrator, in cases where an appeal does not lie under R.S.O. c. 53, is to have the same effect as making the submission a rule or order of Court, and every agreement or submission which may under R.S.O., c. 53, s. 13 be made a rule of the High Court is for the purpose of any application to enforce or set aside the award, to be deemed to be a rule of Court without even filing it, or drawing up or issuing any order for the purpose. The time for moving against an award as to which an appeal does not lie under R.S.O., c. 53, is to be within 14 days after the filing of the certificate or award and the giving of notice of its filing to the opposite party; and an application to set aside an award as to which an appeal does lie cannot be made after the expiration of three months from its making and publication.

The law of libel and slander is amended by chap. 14, by rendering it unnecessary in an action for defamatory words spoken of any woman, imputing to her adultery, fornication, or concubinage, to allege or prove any special damage, but the plaintiff may recover nominal damages without proving any special damage. Where, however, the benefit of this Act is relied on, the statement of claim must allege that the action is brought under its provisions; and in such an action, if the plaintiff is not possessed of means to answer costs, the defendant may apply for security for costs.

By chap. 18, R.S.O., c. 110, s. 30 is amended so as to enable trustees, unless forbidden, to invest trust funds in debenture stock of companies mentioned in that section.

By chap. 19 sundry amendments are made to the Registry Act; amongst the rest, is one requiring that where a will is registered by production of the original will, there must be an affidavit proving the death of the testator. Cases have occurred, where wills have been registered before the death of the testator, and the devisees named therein have attempted to make title thereunder without waiting for the testator's death. Provision is made for a division of the Toronto City Registry office. It is a pity that no other means can be found for rewarding political supporters.

The Act respecting assignments and prefences by insolvent persons (R.S.O., c. 124) is amended by chap. 21, so as to prevent assignments being made to others than *bona fide* residents of this province, and also to prevent the removal of the assets out of the jurisdiction.

By chap. 23 numerous amendments are made to the Workmen's Compensation for Injuries Act (R.S.O., c. 141). The definition of superintendence is now to cover such general superintendence as a foreman, or a person in the position of a foreman, exercises, whether he is, or is not, ordinarily engaged in manual labour. This amendment is made to obviate the effect of the decision in *Kellard* v. *Rooke*. 21 Q.B.D.,367 (see ante vol. 24, p. 520). "Employer" now includes a body of persons corporate or incorporate, and the legal personal representatives of a deceased employer. "Railway servant" includes a tramway servant and street railway servant. This latter amendment is made, apparently, in consequence of the decision in *Cook* v. *North Metropolitan Tramways*, 57 L.T.N.S., 476, but it may be remarked that the English Act does not contain the words "any railway servant" in the section corresponding to R.S.O., c. 142, s. 2, s.s. 3, which defines the meaning of "workman." Section 7 seems to be designed to get over the effect of the decision in *Thomas* v. *Quartermaine*, 18 Q.B.D., 685, by providing that a workman continuing in an employment with knowledge of the defect, etc., which causes the injury, is not to be deemed to have voluntarily incurred the risk. The compensation recoverable is not to exceed $1,500 (see section 10.) The principal Act requires one month's notice of action, and an amendment has been made enabling the Court, when the objection of want of notice is raised, to adjourn the trial and enable a notice to be given on such terms as may be thought best. Section 14 enables the Court to distribute the compensation recovered between wife, husband, parent and child of the deceased; and section 15 gives a right of action under the Act against the personal representative of a deceased employer, but the Act is not explicit on this point.

Some important changes have been made by chap. 32 in the law of life insurance, by rendering nugatory conditions, stipulations, etc., impairing or modifying the effect of any contract of life insurance unless they are set out in full on the face or the back of the instrument. And no policy hereafter granted is to be avoided by any untrue statement in the application therefor unless it be material to the contract. Provision is also made by section 6, regarding representations as to age, which are not to avoid the policy though untrue, if made *bona fide*, but in case of a mis-statement as to age, the insured is only to be entitled to recover what would be due if the policy had been issued on the basis of his actual age at the time of effecting the insurance.

COMMENTS ON CURRENT ENGLISH DECISIONS.

THE Law Reports for May comprise 22 Q.B.D., pp. 537-642; 14 P.D., pp. 49-63; 40 Chy.D., pp. 517-656; 14 App. Cas., pp. 1-105.

BOND—ACCORD AND SATISFACTION TO ONE OF TWO OBLIGEES—SPECIALTY DEBT—PLEADING—PRACTICE.

Steeds v. *Steeds*, 22 Q.B.D. 537, is a decision of Huddleston, B., and Wills, J. The action was brought by two obligees on a bond, and the defendant pleaded that he delivered to one of the plaintiffs goods which he accepted in satisfaction and discharge of the money due on the bond; but it was held that this afforded no defence, in the absence of anything to rebut the *prima facie* presumption that the money advanced on the bond was advanced by the obligees as tenants in common and not as joint tenants. A motion to strike out the defence, however, was refused, but the defendant was ordered to amend by setting up the necessary facts to show that payment to one of the plaintiffs was a sufficient payment to both, and in default of his doing so, judgment was ordered to be entered for the plaintiffs for one-half the amount claimed. The Court remarked on the undesirability of disposing of a case on such a motion, before all the facts were before the Court.

PRACTICE—COSTS—ORD. 65 R. 12—COSTS OF COUNTER CLAIM—(ONT. RULE 1172.)

In *Amon* v. *Bobbett*, 22 Q.B.D. 543, the Court of Appeal (Lord Esher, M.R., Bowen and Fry, L.JJ.) reversed a Divisional Court on a point of practice. The plaintiff recovered in the action on his claim £48. He was also successful in resisting a counter claim in which the defendant had claimed £123. By Ord. 65 R. 12 a plaintiff who recovers less than £50 in an action of contract is entitled only to costs on the County Court scale (see Ont. Rule 1172). The Court of Appeal, however, held that this *Rule* did not apply to the costs of the counter claim; and that for the purpose of taxation, the claim and counter claim must be treated as independent actions, and that the plaintiff was entitled to costs in respect of his claim according to the County Court scale, but that he was entitled to costs on the High Court scale, in respect of his defence to the counter claim.

MARRIED WOMAN—ANTE NUPTIAL DEBT—JUDGMENT AGAINST WIFE—PROPERTY SUBJECT TO RESTRAINT ON ANTICIPATION—MARRIED WOMEN'S PROPERTY ACT, 1870 (33 & 34 VICT., C. 93) S. 12—(R.S.O. C. 132, SS. 3, 20.)

In *Oxford* v. *Reid*, 22 Q.B.D. 548, judgment had been recovered against husband and wife in 1881 for a debt contracted by the wife in 1879, before her marriage. The judgment was signed against both defendants personally for debt and costs. The wife now appealed from the judgment, contending that it should not in any case have been signed against her personally, but only as against her separate estate; and also that it should not have been signed against

her at all, because the only property she had was certain property she had acquired under the will of a former husband, which, on her marriage to her present husband had been settled subject to a restraint on anticipation. The plaintiff submitted to the judgment being varied by limiting it against the wife's separate property only, and on the other point the Court of Appeal held that as under the Act of 1870 (33 & 34 Vict., c. 93) s. 12 "*any property* belonging to her for her separate use shall be liable to satisfy such debts as if she (*the married woman*) had continued unmarried." The Court could not restrict the judgment to property "not subject to a restraint on anticipation," which limitation of liability was only created by the Act of 1882, s. 19. The Court of Appeal (Lord Esher, M.R., Fry and Bowen, L.JJ.) therefore dismissed the appeal and affirmed the decision of Lord Coleridge, C. J., and Hawkins, J. (Compare R.S.O., c. 132, s. 3, s.s. 2 and *Ib.* s. 20.)

MINES AND MINERALS—RESERVATION—BRICK EARTH AND CLAY.

In *Jersey* v. *Guardians of the Poor*, 22 Q.B.D. 555, the short point decided by the Court of Appeal (Lord Esher, M.R., and Bowen and Fry, L.JJ.) on appeal from Day, J., was, that where a conveyance in fee of land reserved "all mines of coal, culm, iron, and all other mines and minerals whatsoever, except stone quarries," a deposit of brick earth, and clay, was included in the reservation, there being nothing in the context to show that the reservation should have a more limited meaning; their Lordships being of opinion that the recent decision of the House of Lords in the *Lord Provost of Glasgow* v. *Fairie*, 13 App. Cas. 657 (see *ante* p. 109), does not overrule the earlier case of *Hext* v. *Gill*, 7 Ch. 699. Speaking of the latter decision Bowen, L.J., observes that it was the decision of Mellish and James, L.JJ. "than whom no greater authorities, I venture to say, have sat in our time in courts of law," and he says, "the result of the authorities, as they say, is this, that a reservation of minerals includes every substance which can be got from under the surface of the earth for the purpose of profit, unless there is some thing in the context or in the nature of the transaction to induce the Court to give it a more limited meaning."

LUNATIC—INQUIRY AS TO SANITY—CHARGES OF WITNESS ENGAGED ON BEHALF OF LUNATIC, RIGHT OF ACTION FOR.

Brockwell v. *Bullock*, 22 Q.B.D. 507, was an action brought by a medical man to recover from a lunatic charges for examining him with a view to giving evidence on behalf of the defendant on an enquiry as to his sanity directed under the Lunacy Act. That Act empowers the Court to direct the costs of such inquiry to be paid by the petitioner, or by the party opposing the petition, or out of the estate of the alleged lunatic. As no such order had been made, the judge of the County Court had non-suited the plaintiff, and on appeal to the Queen's Bench Division that decision had been affirmed. The Court of Appeal (Lord Esher, M.R., and Bowen and Fry, L.JJ.), however, held that the plaintiff's right of action was not taken away, and therefore ordered a new trial.

INFANT—NEXT FRIEND—CONDUCT OF CAUSE—COMPROMISE.

Rhodes v. *Swithenbank*, 22 Q.B.D. 577, is important as showing the limits of the power of the next friend of an infant, to bind the infant by a compromise. The action was brought to recover damages for personal injuries sustained by the infant through the alleged negligence of the defendant. The plaintiff was non-suited at the trial, and it was agreed by the plaintiff's counsel that there should be no appeal, and in consideration thereof the defendant would not ask costs. The judgment was entered without costs. The plaintiff was without means, and notwithstanding the agreement, applied for a new trial. The Queen's Bench Division refused the application on the ground that the plaintiff was bound by the agreement at the trial, but the Court of Appeal (Lord Esher, M.R., and Bowen and Fry, L.JJ.) were unanimously of opinion that the agreement was of no benefit to the infant and therefore not binding on her. Lord Esher, M.R., at p. 578, after remarking that the next friend of an infant plaintiff has the conduct of the action in his hands, goes on to say: "If, however, the next friend does anything in the action beyond the mere conduct of it, whatever is so done must be for the benefit of the infant; and if, in the opinion of the Court, it is not so, the infant is not bound." Of course, as the infant was not bound neither was the defendant, and it was agreed that the judgment should be altered as to the costs.

"HEREDITAMENTS," MEANING OF—JURISDICTION.

In *Tomkins* v. *Jones*, 22 Q.B.D. 599, an inferior Court was by Act of Parliament prohibited from exercising jurisdiction in any action "in which the title to any corporeal or incorporeal hereditaments shall be concerned." In an action to recover an annuity under an agreement made in consideration of the plaintiffs assigning to the defendants certain leaseholds, the defendant pleaded that the plaintiff's title to the leaseholds had not been made out. The question, therefore, was whether the title to any "hereditament" was in question. The Court of Appeal (Lord Esher, M.R., Bowen and Fry, L.JJ.) affirmed the Queen's Bench Division in holding that the word "hereditament" was not used as describing the quantum of interest in the subject matter, but as describing the subject matter itself, namely, the land. An application for a *certiorari* was therefore granted.

ACCORD AND SATISFACTION—CHEQUE SENT IN SATISFACTION—RETENTION OF CHEQUE ON ACCOUNT.

Day v. *McLea*, 22 Q.B.D. 610, is a decision of the Court of Appeal, which settles a point of law on which there has been probably a good deal of doubt in the minds of the profession, and which though concerning a matter of every-day occurrence, seems nevertheless never to have been submitted to judicial decision, except in a case of *Miller* v. *Davies*, decided by the Court of Appeal, 10 Nov., 1879, and not reported in the regular reports. A note of the decision, however, may be found in 68 L.T. Jr. 43. The facts of the case were simply these: The plaintiffs had a claim against the defendant for a sum of money as damages for

breach of contract. The defendants sent the plaintiffs a cheque for a less amount than that claimed, stating that it was in full of all demands. The plaintiffs kept the cheque, stating that they did so on account, and brought an action for the balance of their claim. The defendant pleaded accord and satisfaction, and the question was whether the payment in question was, under the circumstances, a satisfaction of the plaintiff's claim. The Court of Appeal (Lord Esher, M.R., and Bowen and Fry, L.JJ.) agreed with Charles, J., that there was no presumption of law that the cheque had been accepted as satisfaction, but it was a question of fact on what terms the cheque was kept. The judgment given in favour of the plaintiffs for the balance of their claim was upheld. Lord Esher says at p. 612: "It is said that the inference of law must be drawn (i.e., *that the cheque is accepted in satisfaction*), even though the person receiving the cheque never intends to take it in satisfaction and says so at the time he receives it. All I can say is that if that is a conclusive inference it would be one contrary to the truth. I object to all such inferences of law."

EXECUTION CREDITOR—WRONGFUL SEIZURE, LIABILITY FOR—INDORSEMENT ON FI. FA.—SHERIFF.

Morris v. *Salberg*, 22 Q.B.D. 614, is a case which shows the care which a solicitor should exercise in indorsing a *fi. fa.* or in giving directions to a sheriff. In this case the action was brought for a wrongful seizure under the following circumstances: The defendant was an execution creditor of G. Morris. His solicitor delivered a *fi. fa.* to the sheriff, and on the writ indorsed a memorandum that the debtor resided at Sarnan Park, etc. This was not the address of the debtor, but the address of the plaintiff in this action, who was the father of the debtor. Acting on the memorandum, the sheriff seized the plaintiff's goods, and the jury found that he was misled into doing so by the direction he had received from the defendant's solicitor. Under this state of facts, the Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.) held, reversing Stephen, J., at the trial, that the execution creditor was liable, on the ground that the indorsement on the writ amounted to a direction to the sheriff to seize the plaintiff's goods.

PENAL ACT—ENFORCEMENT OF.

The Queen v. *Cubitt*, 22 Q.B.D. 622, is useful to note, because it decides that where an Act creating certain offences provided "the provisions of this Act shall be enforced by sea fisheries officers," that the effect of this was to limit to the officers named, the right to prosecute for an offence against the Act, and a rule calling upon justic to hear and determine a summons for an offence against the Act taken out by a private individual, was therefore discharged.

PRACTICE—EXTENSION OF TIME TO APPEAL—RIGHT OF THIRD PARTY INTERVENING.

Esdaile v. *Payne*, 40 Chy.D. 520, is the first case in the Chancery Division calling for attention. In its circumstances it was a little like the case of

Casey v. *Gabourie*, 12 P.R. 252. The action was brought against several defendants to recover tithes. Some of the defendants pleaded the Statute of Limitations, and on an appeal to the House of Lords succeeded in making good that defence. Two defendants, Lane and Neeve, did not set up the Statute, and did not appeal to the House of Lords, and in fact, after judgment against them in the Court below, stated to the solicitor of an intending purchaser of the tithes that they did not intend to appeal, and on the strength of this the purchase was closed. Hill, another defendant, pleaded the Statute of Limitations, but being unsuccessful in the Court below, did not appeal to the House of Lords along with the other defendants. Lane, Neeve and Hill applied, after the decision of the House of Lords, for leave to appeal, notwithstanding that the time had expired, on the ground that their cases were precisely the same as those of the defendants who had appealed. At first the leave was granted to Neeve and Lane to appeal and also to set up the Statute, but on a re-argument of the application, and on its being shown that after the judgment the tithes had been sold on the strength of there being no appeal, the Court (Cotton, Lindley and Lopes, L.JJ.) refused to grant leave to appeal to any of the applicants.

ADMINISTRATION—EXECUTORS EMPOWERED TO CARRY ON BUSINESS—RIGHT OF EXECUTORS TO INDEMNITY—RIGHTS OF CREDITORS OF TESTATOR, AND SUBSEQUENT CREDITORS OF EXECUTORS.

In re Gorton Dowse v. *Gorton*, 40 Chy.D. 536, a contest arose between the creditors of a testator, and the creditors of his executors, who were empowered to carry on the testator's business, as to their relative rights in the assets of the estate. It was held by the court of appeal (Cotton, Lindley and Lopes, L.JJ.) that as against the assets of the testator existing at his decease, the creditors of the testator were entitled, in priority to any claim by the executors to indemnity in respect of the trading liabilities, and that the trade creditors were in no better position than the executors. But as against assets acquired in carrying on the business, the executors had a claim to indemnity out of those assets in respect of trade liabilities in priority to the creditors of the testator, and that the trade creditors were entitled to stand in the executors' place in enforcing their claim to indemnity, but that if the executors were themselves indebted to the estate, their claim to indemnity, and the claims of the trade creditors through them, must abate by the amount of such indebtedness. Cotton, L.J., remarks at p. 539: "Where a business is carried on after the death of the testator, of course the persons who supply goods are in no way creditors of the testator. They cannot make any claim against the executors as executors; but they can make a claim against the executors as the persons who dealt with them, and on whose order they supplied the goods. Then if the executors are entitled to be indemnified, they will stand in the place of the executors in enforcing this indemnity."

PRACTICE—EVIDENCE OF FOREIGN LAW—ACTIO PERSONALIS MORITUR CUM PERSONA.

In *Concha* v. *Murrietta*, 40 Chy.D. 543, two points came up for consideration by the Court of Appeal (Cotton, Lindley and Lopes, L.JJ.), the first being

whether, where the witnesses called to prove a foreign law in their evidence refer to passages in the code of their country as containing the law applicable to their case, the Court may look at the passages and consider what is their proper meaning. The Court as to this decided in the affirmative. The other point was this: By the law of Peru a father is entitled to manage the estate of his infant child and to receive for his own benefit the income during the child's minority. A father during the infancy of his daughter sold a portion of her property, improperly as was alleged, and for less than its value. After his death the daughter claimed to recover compensation out of his estate, and the question was whether the maxim *actio personalis moritur cum persona* applied. As to this point the Court held that the father stood in such a fiduciary position to his daughter that the maxim did not apply to the demand, and that the father's estate must account for what would have been received from the property, if it had been retained in specie.

PRACTICE—REFERENCE TO REFEREE—JUDICATURE ACT 1873 (36 & 37 VICT., C. 66, S. 56), (R. S. O. C. 44, S. 102).

In *Weed* v. *Ward*, 40 Chy.D. 555, the Court of Appeal (Cotton, Lindley and Lopes, L.JJ.) set aside an order of North, J., directing a reference to a referee under the Judicature Act 1873, 356 (R. S. O., c. 44, s. 102), under the following circumstances: The action was brought by the plaintiff for the recision of a contract of partnership between himself and the defendant, on the ground that he had been induced to enter into it by misrepresentation of the defendant as to his profits. The defendant by his defence denied having made any positive statement as to the amount of his income, and stated that the plaintiff had for months prior to the partnership attended at his office as a clerk, and had full access to the books, and had expressed himself satisfied with the business, and that the plaintiff had continued nearly four years in the partnership, which was then dissolved by consent, and that he had never complained to the defendant of misrepresentation. North, J., after notice of trial had been given, on the application of the plaintiff, ordered a reference to a referee as to the amount of the defendant's profits for six years prior to the partnership, but on appeal this order was set aside, the Court holding that such a reference can only be properly directed respecting some question necessary to be tried, and that the question of what the defendant's profits were, would only be material in case the plaintiff established that the defendant made a positive statement as to the amount, and that the plaintiff had entered into the partnership in reliance on that statement, and had not by his conduct lost the right to complain of the misrepresentation. The question referred was one that might never arise, and therefore ought not to have been referred.

VENDOR AND PURCHASER—CONTRACT TO PURCHASE AT A VALUATION—INTEREST—DAMAGES.

Marsh v. *Jones*, 40 Chy.D. 563, involved a very small point. A landlord agreed with his tenant to purchase at a valuation machinery erected on the

demised premises. The term expired at Michaelmas, 1885, but the tenant continued in possession without rent as caretaker until March, 1886, when the landlord took possession. He refused to purchase the machinery, and this action was brought for specific performance, which was decreed; no specific claim was made in the statement of claim for interest or damages. The plaintiff succeeded in obtaining judgment for the payment of the value of the machinery, to be ascertained by a reference, and on a motion to vary the minutes he claimed that he should be allowed interest on the amount ascertained by way of damages, from the termination of the tenancy. The Court of Appeal (Cotton, Lindley and Lopes, L.JJ.) decided that he was only entitled to interest from the time the defendant took possession in March, 1886.

Notes on Exchanges and Legal Scrap Book.

IS THE TAXING MASTER A FAILURE?—For all the information that it affords to the average lay mind, a modern bill of costs might as well be written in the language of the ancient Hittites. The miserable recipient finds himself charged for instructions which he has never given, for advice which he does not know that he has received, and for "copies to keep" which have not been kept. The one part of the document which he finds perfectly to be understanded by him is the total, and the amount of this, in most cases, so far exceeds his wildest fears that he flings aside all philosophic suspense of judgment, and hastily pronounces the whole thing to be "a d—d swindle." If he is a wise man, he will then hasten to abase himself before the man of law, who will generally (for solicitors are seldom unreasonable in this respect) let him off with a much smaller payment than that for which he was at first asked.

If, however, he is one of those who let the sun go down upon their wrath, he will probably insist upon having the bill taxed. If he does, woe to his father's son! He will have great difficulty in appearing by champion, for solicitors (for very obvious reasons) dislike taxing each other's bills, and he will of course have to pay his champion's charges in any event. As few persons care to throw the helve after the hatchet in this fashion, we assume that the wrathful one decides to tax in person. After months of waiting, when his recollection of the facts has naturally become somewhat misty, he is admitted into the presence of the taxing master. If the matter is a Chancery one, this official is a successful solicitor, who has managed to amass a sufficient fortune by the very system on which he is now expected to act as a check. If the cause of the dispute arose out of common law proceedings, he turns out to be a barrister whose practice while at the bar certainly did not include the preparation or investigation of bills of costs. By whichever side of the profession he has climbed to eminence, he has generally about twenty minutes to devote to a case the thorough understanding of which would demand at least a week's

patient study. He is, therefore, but little disposed to listen to the client's confused though impassioned statement of his wrongs. The solicitor, on the other hand, has from his youth been trained to speak with taxing masters in the gate. He knows their foibles, their mode of working, and their hatred of interruption and argument. He knows, too, that the bill through which the taxing master is now wading, striking out an item here and marking for verification a payment there, has been prepared with an eye to this very process, and that he must have been either very careless or very inexperienced if anything like the fatal sixth can be subtracted from what are facetiously called his "profit charges." Hence at the end of the audience, when the litigant is pushed out of the room to make way for those engaged in the new case, he generally finds that he has succeeded in recapturing from his former ally but present foe a very small part of the spoil. And then, when he believes that fate has exhausted her quiver, she pierces him with her sharpest arrow! He learns that as the law has not adjudged his late adviser to disgorge as much as a sixth of the booty, he, the already plundered and tormented client, must pay not only for the copy of the bill on which the taxing master has just operated, not only for the tax that a wise legislature has laid upon taxations (breaking the bruised reed with a vengeance), but also for the time that the persecutor has expended in defending his ill-gotten gains. Can we wonder that he goes down to his house breathing vows of impotent vengeance, and declaring that in future he will submit meekly to any injustice rather than again trust himself to the mercies of the law?

If now we dissect the bill of costs that has caused all this pother, we shall notice that there are some charges which the taxing master has passed as a matter of course, or the amount of which he has rectified without protest from the solicitor whose bill is under taxation. Such are (in the case of an action or other "contentious" proceeding) the instructions to sue and defend, the charges for issuing writs and summonses, the service of notices and other documents, and the invariable "sittings fee," which is supposed to cover the cost of postage and the like. The amount to be charged for each of these items has long ago been decided by Rules of Court, and if any overcharge has been made in any of them, it has certainly been by mistake. These formal charges, however, form but a very small part of any bill of costs, and probably would not afford a decent living to the clerks employed in the conduct of the action out of which they arise. Of the remaining items in the bill, some consist of the numerous payments made out of pocket in the course of the action to counsel and others, and also for court and witnesses' fees. On some, though not on all, of these payments is charged a commission so extraordinary as to afford some ground for the old slander that, when a lawyer puts his hand into his own pocket instead of his client's, he expects to be paid handsomely for his trouble. Thus in London almost invariably, and in the country pretty generally, all the longer documents required to be copied for the use of the court and of counsel are sent to a law stationer. For this the stationer receives 1d. or 1½d. for each folio of seventy-two words. Yet the solicitor is allowed by the taxing master to receive 4d. a folio, or a commission of 300 per cent. for paying the stationer's bill, and the

same practice is followed with regard to the printing of documents. Again, to draw a cheque for a large amount would seem to demand no greater expenditure of time on the solicitor's part than is required for a small one, yet we find that there is in existence a regular "sliding scale" by which a solicitor who "attends counsel with papers" on which 5 guineas is marked gets only 6s. 8d. from his client, while his luckier professional brother who is charged with the delivery of a brief on which 40 guineas appear, receives 2 guineas for exactly similar services. In all these cases the taxing master has really no judicial function at all. If the folios are correctly counted and the fees to counsel have been really paid, he is bound to allow the items without further question. There then remain to be dealt with the costs of drawing the different documents required for the purposes of the action, such as briefs and affidavits. These are paid for strictly according to their length, 1s. a folio being charged in all cases, with a further sum under the head of instructions if they are very important or intricate. With regard to these last, the taxing master *has* a discretion, although from the pressure on his time it can seldom be exercised with much judgment. If, however, he thinks that any of the documents so drawn are unnecessarily prolix, he can (and sometimes does), in addition to docking the amount allowed for "instructions," insist on a smaller number of folios being reckoned than that actually earned. Under these circumstances a brief of one hundred folios is sometimes reduced to fifty, but as, in order to determine what is and what is not unnecessary prolixity, a prolonged study of the whole case would have to be made, it cannot be said that exact justice is always done in this particular to the client or even to the solicitor. Finally, there remain to be dealt with the communications between the solicitors on both sides, and also between the client and the solicitor whose bill is in dispute. In all these items the taxing master's discretion is absolute, but as he can neither, in the time at his disposal, read all the letters that have passed, nor consider in detail the necessity of the interviews that have taken place between the several parties, he generally compounds for them by allowing letters and attendances to an amount which, in the phraseology of the taxing office, the case will "stand."

We have hitherto considered the case of a bill in an action where the costs are paid by a client to his own solicitor. When an unsuccessful litigant has to pay that of his successful rival, a further anomaly appears. In this latter case certain of the costs, such as those attending the employment of extra counsel and the like, are certified by the taxing master, not indeed as being unnecessary, but as meet to be paid, not by the unsuccessful, but by the successful litigant. Hence the latter sometimes finds himself saddled with a bill of so-called "extra" costs exceeding in amount the subject matter of the action. Sometimes, also, bills for "non-contentious" business find their way to the taxing master. Of late these have been much decreased by the order which provides that whenever landed property changes hands for valuable consideration, a commission on the consideration-money shall take the place of the older detailed charges. Settlements, wills and disputes which do not attain to the dignity of an action are still the subject of costs under the old system. In these cases, all

documents are charged for by the length, and the taxing master has absolute discretion both as to these and as to the letters and attendances which make up the greater portion of the bill.

It is proposed, in future papers, to show at length the evils resulting from the present system, and then to point out the remedy which seems to be indicated by the disease. —*Pump Court.*

VEXATIOUS LITIGATION.—Whilst *bona fide* suitors are discouraged by the delay and expense of proceedings in the courts, the same causes are a powerful weapon in the hands of certain litigious persons, who endeavor by persistency to drive their opponents into giving that which the law refuses, or to satisfy their own ambition or personal spite against innocent people. Attempts have lately been made to check such proceedings, and in one case at least the attempt has proved successful. The powers of the court to deal with these cases are not very extensive, and it is important to know exactly what they are.

1. By Order XXV, r. 4, R.S.C.: "In case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court or a judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just." This rule has two defects: (1) It only applies when the pleadings themselves show that the proceedings are vexatious, and a party can generally so frame his pleadings as to avoid the operation of the rule. (2) An order made under the rule is itself subject to appeal, and there is nothing to prevent a defendant who seeks to get a frivolous action dismissed from being taken up to the House of Lords before he can finally get rid of his adversary.

2. But the court has also an inherent power to prevent abuse of its process by staying vexatious actions, though not shown on the pleadings to be so. This power has been exercised in a variety of cases—for instance, where an action was brought against a clerk of the Petty Bag Office for not sealing a writ which he was not bound to seal: *Castro* v. *Murray*, 32 L. T. Rep. N. S. 675; L. Rep. 4 Ex. 213. One of the first cases of the kind arose out of an action brought for false imprisonment against Mr. Justice Mellor by a prisoner whom he had tried and sentenced. The action failed, and the plaintiff then brought an action for libel against Mr. Justice Mellor's solicitor in respect of the pleadings in the former action. The action was stayed on the ground that it was a gross abuse of the process of the court: *Jacobs* v. *Raven*, 30 L.T. 366. The leading case on the subject is the *Metropolitan Bank* v. *Pooley*, 53 L.T. Rep. N.S. 163; 10 App. Cas. 210. That was an action brought by a bankrupt, whose adjudication in bankruptcy had not been set aside, against the defendant for maliciously procuring the bankruptcy. The House of Lords ordered the action to be dismissed as frivolous and vexatious, and Lord Selborne says that "Before the rules were made under the Judicature Act the practice had been established to stay a manifestly vexatious suit which was plainly in abuse of the authority of the court, although, as far as I know, there was not at that time either any statute or rule expressly authorising the court to do it. The power seemed to be inherent in the

jurisdiction of every court of justice to protect itself from the abuse of its own procedure." Perhaps the case that carries this principle furthest is *Ex parte Griffin*, 41 L.T. Rep. N.S. 415; 12 Ch. Div. 480, where the court refused to make an adjudication in bankruptcy, although there was a good petitioning creditor's debt, and an act of bankruptcy had been committed, upon its being shown that the bankruptcy petition was presented, not with the *bona fide* view of obtaining an adjudication, but as a means of extorting money. And the court will exercise this power, even where the facts are in dispute, if the court is satisfied that allegations are made on altogether insufficient ground: *Lawrence* v. *Lord Norreys*, 59 L.T. Rep. N.S. 703.

But the most important application of this principle is that of restraining a party from taking any further proceedings, except upon certain terms. This was first done in the cases of *Grepe* v. *Loam*, and *Bulteel* v. *Grepe*, 38 L. T. Rep. N. S. 100; 37 Ch. Div. 168. In these actions numerous applications were made by some of the parties for the purpose of setting aside or varying the judgments previously obtained in the actions. Upon one such application the Court of Appeal made an order "that the said applicants, or any of them, be not allowed to make any further applications in these actions, or either of them, to this court, or to the court below, without the leave of this court being first obtained, and if notice of any such application shall be given without such leave being obtained, the respondent shall not be required to appear upon such application, and it shall be dismissed without being heard." This was followed by the case of *Mrs. Davies*, 21 Q. B. Div. 236, against whom a somewhat stronger order was made, viz., "That the said Maria Anne Davies be not allowed to issue any writ or summons, or make any application against any person or persons without the leave of a judge at chambers being first obtained. And if notice of any application or motion be given without such leave being first obtained . . . the respondent shall not be required to appear unless the court shall otherwise order." This order has been acted upon several times, and the court have refused to hear applications made by Mrs. Davies without leave having been first obtained. The weakness of such orders is that they are themselves subject to appeal, and they cannot be made to bind any higher court than that in which they are made. An unfortunate defendant may still be dragged from court to court by a determined plaintiff, and he would be bound to appear in any court above that in which the order was made. It would be very desirable to give a judge at chambers a general power to make orders restraining all further proceedings by a particular party without leave, and relieving any other parties from the necessity of appearing upon appeals from such orders.

3. We must also notice that the court will grant an injunction restraining a party from taking proceedings of a particular kind in violation of an enforceable agreement not to take such proceedings, *Besant* v. *Wood*, 40 L.T. Rep. N.S. 445; 12 Ch. Div. 605, 630, or other entirely unjustifiable proceedings, *Cercle Restaurant Company* v. *Lavery*, 18 Ch. Div. 555.

4. When a frivolous or vexatious appeal is made to the Court of Appeal the appellant may be ordered to give security for costs, *Usill* v. *Hales*, 47 L.J. 380,

C.P., and a party is generally required to do so before appealing to the House of Lords.

5. In the cases of persons suing *in forma pauperis* the court has power to dispauper a party who conducts vexatious proceedings, and he may then be put upon terms as to costs, or compelled to give security, just as other persons may be: *Hawes* v. *Johnson*, 1 Y. & J. 10.

6. A defendant, against whom proceedings are taken maliciously, and without probable cause, has also remedy by action. if he can show special damage: *Quartz Hill Company* v. *Eyre*, 49 L. T. Rep. N. S. 249; 50 Ib. 274; 11 Q.B. Div. 674. But, as may well be supposed, this remedy is not often resorted to.—*Eng. Law Times.*

DEFECTIVE STREETS.—By the statutes of the State of Michigan it is provided that "Any person or persons sustaining bodily injury upon any of the public highways or streets in this State, by reason of neglect to keep such public highways or streets . . . in good repair, and in a condition reasonably safe and fit for travel by the township, village, city, or corporation, such township shall pay to the person or persons so injured just damages." The Supreme Court of Michigan in *Joslyn* v. *City of Detroit* reversed the decision of the Circuit Court, which refused damages to the fair plaintiff for injuries received while driving along Clifford Street, Detroit, in the dark. Persons building a house had a pile of sand on the street, from one and a half to four feet high, and extending half way across the street. The sand had been there for upwards of a month. There being no lights or other warning of the obstruction, the plaintiff's carriage came in contact with it, in the dark, overturning the carriage and injuring her seriously. It was contended for the city that it was not liable for damage resulting from obstructions placed there by private persons; but the court held that the city had been guilty of negligence in allowing the obstruction to remain in the street for so long a time.

CAPITAL PUNISHMENT.—The Minnesota Legislature have been imitating ours in respect to providing for capital executions. They have enacted that after sentence the condemned shall be allowed to see no one but his family, his spiritual adviser and his lawyer; that none but the officers and three persons whom he may select shall witness the execution; that it shall be a misdemeanour to print any details of it; and that the taking off shall be by hanging or electricity, as the governor may direct. Here is another blow at the free-and-easy-dom of the press. No reporter allowed to interview the condemned, nor to describe his dying actions! Now hark for a howl of execration from the Minnesota newspapers. For once those of St. Paul and Minneapolis will howl in harmony. But the Legislature have unconsciously bestowed a valuable franchise on the condemned. What a strife and struggle there will be for those three places! The newspaper men will bid high for them, and take their chances of the misdemeanour penalty. We are glad however to see this endeavour to invest capital executions with some dignity and solemnity.—*Albany Law Journal.*

DIARY FOR JULY.

2. Sun.....*First Sunday after Ascension.*
4. Tue.....Maritime Court sits. Lord Eldon born 1751.
8. Sat.....Easter Term and High Court Justice sittings end. Last day for call notices for Trinity Term.
9. Sun.....*Whitsunday.*
10. Mon.....County Court Sittings for motions in York end.
11. Tue.....General Sessions and County Court Sittings for Trial except in York. St. Barnabas. Lord Stanley, Governor-General, 1888.
15. Sat.....County Court Sittings for motions in York end. Magna Charta signed 1216. Emperor Frederick of Germany died 1888.
16. Sun.....*Trinity Sunday.*
18. Tue.....Battle of Waterloo, 1815.
19. Wed.....Battle of Blenheim, 1704.
20. Thur.....Accession of Queen Victoria, 1837.
21. Fri.....Longest day.
22. Sat.....Slavery declared contrary to the law of England, 1772.
23. Sun.....*First Sunday after Trinity.*
24. Mon.....Midsummer Day.
25. Tue.....Sir M. C. Cameron died 1887.
28. Fri.....Coronation of Queen Victoria, 1838.
29. Sat.....St. Peter.
30. Sun.....*Second Sunday after Trinity.*

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

[April 30.

Re SMART.

Appeal—Habeas Corpus—Commencement of proceedings—Filing case—Jurisdiction.

In the hearing on a writ of habeas corpus the trial Judge ordered that no further proceedings be taken on the writ, but allowed a petition to be filed under the Infants' Custody Act. By a judgment of the Divisional Court, affirmed by the Court of Appeal, that portion of the judgment relating to the habeas corpus was reversed, and the proceedings on the writ and the petition were ordered to be heard together. The judgment of the Court of Appeal was pronounced on Nov. 13th, 1888. Notice of intention to appeal was given a short time after, but the case was not filed in the Supreme Court until Feb. 18th, 1889.

Held, that in habeas corpus proceedings, where no security is required, nor notice necessary, the first step in the appeal is the filing of the case, and that must be done within sixty days from the pronouncing of the judgment, under s. 40 Supreme Court Act.

Appeal quashed.

S. H Blake, Q.C., for appellants.

Kerr, Q.C., and *Scott*, Q.C., for respondent.

[May 22.

O'SULLIVAN *v.* LAKE.

Appeal—From order for new trial—Jurisdiction—Costs.

By s. 24 (*d*) of the Supreme Court Act, R.S.C. c. 135, an appeal will lie to the Supreme Court from a judgment upon a motion for a new trial, on the ground that the judge has not ruled according to law.

A motion was made to the Divisional Court, supported by affidavits, for a new trial, on the grounds of misdirection, surprise, and of further evidence being necessary on certain points, and it was granted on the ground of misdirection. On appeal, the Court of Appeal held that there had been no misdirection, but sustained the rule on the other grounds.

Held, that no appeal would lie to the Supreme Court from the latter decision.

The respondent, in his factum, did not raise the question of jurisdiction, but objected to the appeal on the ground that the court should not interfere with the discretion of the court below, relying on *Eureka Woollen Mills Co.* v. *Moss*, 11 Can. S.C.R. 91.

Held, that the costs allowed would be costs as of a motion to quash only.

Appeal quashed.

W. Cassels, Q.C., and *Anglin* for appellant.

Robinson, Q.C., and *McLaren* for respondent.

[April 30.

THE QUEEN *v.* JACOBS.

Criminal law—Indictment—Murder—Name of deceased—Variance—Case reserved.

Where two or more names are laid in an indictment under an *alias dictus* it is not necessary to prove them all.

The prisoner, an Indian, was indicted for the murder of Agnes Jacobs, otherwise called Konwakeri Karonhienawita. At the trial evidence

was given identifying the deceased as an Indian woman, known by the Indian name laid in the indictment, but there was no evidence that she was known by the name of Agnes Jacobs. The prisoner was convicted of manslaughter.

Held, affirming the judgment of the Court of Crown Cases Reserved for the Province of Quebec, that proof of the Indian name was sufficient to justify the conviction. *Regina* v. *Frost* (Dears C. B. 474) distinguished. Appeal dismissed.

Cornellier, Q.C., for appellant.

Trenholme for the Crown.

[April 30.

RODEURN *v.* SWINNEY.

Mortgage—Power of sale—Exercise of—Sale under power of attorney—Authority of Attorney—Purchase money—Promissory note.

A mortgage authorized the mortgagees to sell in default of payment on giving a certain notice, and contained a clause that the purchaser at such sale should not be required to see that the purchase money was applied as directed. The mortgagee gave R. a power of attorney to sell under the mortgage, which he did, taking part of the purchase money in cash, and for the balance a promissory note, payable to himself, which he discounted and appropriated the proceeds. The note was paid by the maker at maturity. In a suit to have the sale set aside as fraudulent and made in collusion between R. and the purchaser:

Held, affirming the judgment of the court below, that R. had no authority to take the said note in payment, and the purchaser was bound to see that his powers were properly exercised. The sale was therefore void and must be set aside.

Appeal dismissed.

Geo. C. Gilbert, Q.C., for appellants.

F. E. Barker, Q.C., for respondents.

[April 30.

GEROW *v.* ROYAL CANADIAN INS. CO.
GEROW *v.* BRITISH AMERICAN INS. CO.

Marine Insurance—Constructive total loss.—Cost of repairs—Estimate of—Deduction of new for old.

A policy of insurance on a ship contained the following clause:

"In case of repairs the usual deduction of one-third will not be made until after six months from the date of first registration, but after such date the deduction will be made. And the insurers shall not be liable for a constructive total loss of the vessel in case of abandonment or otherwise, unless the cost of repairing the vessel, under an adjustment as of partial loss, according to the terms of this policy, shall amount to more than half of its value, as declared in this policy."

The ship being disabled at sea put into port for repairs, when it was found that the cost of repairs and expenses would exceed more than one-half of the value declared in the policy if the usual deduction of one-third allowed in adjusting a partial loss, under the terms of the policy, was not made, but not if it was made.

Held, affirming the judgment of the court below, PATTERSON, J. dissenting, that the "costs of repairs" in the policy means the net amount after allowing one-third of the actual cost in respect of new for old, according to the rule usually followed in adjusting a partial loss, and not the estimated amount of the gross costs of the repairs forming the basis of an average adjustment in case of claim for partial loss, and therefore the cost of repairs did not amount to half the declared value.

Appeal dismissed.

Weldon, Q.C., for the appellant.

Barker, Q.C., for the respondents.

[April 30.

MILLER *v.* WHITE.

Evidence—Admissibility of—Entries in defendant's books—New trial.

In an action for goods sold and delivered against McK. and M., the defence was that the goods were sold to C. McK. & Co., the defendant, McK. being a member of both firms. On the trial McK. was called for the plaintiff, and on cross-examination he produced, subject to objections, his books which showed that the plaintiff's goods were credited to C. McK. & Co., though he swore they had been delivered to McK. & M. In the plaintiff's books the goods were charged to C. McK. & Co., which plaintiff swore was done at the request of McK. A verdict having been found for the defendant, the Supreme Court of New Brunswick ordered

a new trial on the ground that the entries in McK.'s books were improperly admitted in evidence.

Held, reversing the judgment of the court below, that the evidence was properly admitted and the rule for a new trial should be discharged.

Appeal allowed.

Weldon, Q.C., and *C. A. Palmer* for appellants.

McLeod, Q.C., and *A. S. White* for respondent.

[April 30.

ALEXANDER *v.* VYE.

Evidence—Admissibility of—Action for libel—Proof of handwriting—Comparison—Recollection.

In an action for libel contained in a letter published in a newspaper and alleged to have been written by the defendant, the publisher of the newspaper was called as a witness to prove that it was so written. He swore that the original MSS. was enclosed in an envelope bearing the post-mark of the town where defendant resided, and that it was accompanied by a letter requesting its publication, which letter was signed by defendant's name; that the MSS. was destroyed after publication and that he had no knowledge of defendant or of his handwriting, but on receiving a letter from him some five weeks later he was able to say, from his recollection of the MSS., that it was in the same handwriting as such letter. This evidence was received, subject to objections, and submitted to the jury, who gave a verdict for the plaintiff.

Held, affirming the judgment of the Supreme Court of New Brunswick, Gwynne, J., dissenting, that the evidence was properly received.

Held, also, Gwynne and Patterson, J. J., dissenting, that evidence could be given to show that defendant had changed the character of his signature since the action was commenced.

Appeal dismissed.

Weldon, Q.C., and *Gregory* for the appellant.

Hanington, Q.C., for the respondent.

[April 30.

HALIFAX BANKING CO. *v.* MATTHEW.

Chattel mortgage — Action to set aside — Fraudulent as against creditors—13 Eliz., c. 5—Right of creditor of mortgagor to redeem.

Plaintiffs having recovered judgment against one H., issued execution under which the sheriff professed to sell certain goods of H. and gave a deed to plaintiffs conveying the "share and interest" of H. in said goods. H. had conveyed the goods to the defendant by a mortgage made six months before the recovery of the plaintiffs' judgment which mortgage covered all the goods proposed to be sold by the sheriff. The plaintiffs filed a bill to set this mortgage aside as fraudulent under Stat. of Eliz. and fraudulent in fact. The court below held the mortgage good and dismissed the bill.

Held, affirming this judgment, that no fraud being shown and the plaintiffs not offering to redeem the mortgage, the action was rightly dismissed.

Appeal dismissed.

W. B. Ross, for the appellants.

Fred. Peters, for the respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE FOR ONTARIO.

Chancery Division.

FULL COURT.] [March 18.

MCNEILL *v.* HAINES.

Sale of standing timber—Real estate or chattels—Sale of right to cut timber for 20 years—Subsequent sale to vendor of the same timber.

Where one sold and assigned to another all the pine timber he might choose to cut for 20 years, with the right to make roads to get to and remove the same, and a covenant that the grantee might, without let or hindrance from anyone, cut and remove the said timber,

Held, that this timber so sold together with the rights imparted to the purchaser were an interest in land.

When having first granted such timber and rights to the plaintiff's assignor, the defendant five years after sold the timber to W., who forthwith proceeded to cut the same,

Held, that the defendant was responsible to the plaintiff in damages, and per FERGUSON, J. that he would have been so, even if the timber sold were chatteled property, for the act of the defendant in selling to W., would in that case amount to a conversion of the property.

J. A. McCarthy, for the plaintiff.

Lount, Q.C., for the defendant.

BOYD, C.] March 25.

Re METCALFE.

Canada Temperance Act—Repeal—Indian Reserve—Indian electors—Prohibition.

Held, on motion for prohibition against the returning officer, that Indian electors resident in the township of Tuscarora, an Indian Reserve, were not competent to vote in the matter of the repeal of the Canada Temperance Act in that county.

Marsh, for the applicant.

Martin for the returning officer.

Irving, Q.C., for the Attorney-General.

FERGUSON.] [April 2.

THE TORONTO GENERAL TRUSTS COMPANY *v.* SEWELL.

Life insurance—Policy effected before marriage—Endorsement in favor of wife after marriage—Who entitled—Administrator or wife—R. S. O. c. 136.

C. B., husband of the defendant, had before his marriage effected three policies of insurance upon his life. After his marriage he endorsed declarations on each of them that all advantage to arise therefrom should be and accrue for the benefit of his wife, but did not sign the same and handed the policies to his wife.

After his death the plaintiffs as administrators of his estate and his wife both claimed the proceeds of the policies. In an inter-pleader issue in which the plaintiffs contended that as the policies were contracts made in the Province of Quebec the law of that Province governed them, and the defendant was not entitled because she could not show that any statute existed in that province similar to the one in Ontario, R. S. O., c. 136, sec. 5, respecting such endorsements on policies,

Held, following *Lee* v. *Abdy*, 17 Q. B. D., 309, that the plaintiffs could not succeed on that contention. But

Held, also, that as C. B. was not "a married man" at the time that he effected the policies he could not (except as provided for by 47 Vict. c. 20., sec 2), withdraw from the claims of his creditors the benefit of the policies effected before marriage by endorsements or declarations after marriage in favor of or for the benefit of his wife and that the plaintiffs should succeed on the issue.

Marsh, for the plaintiffs.

Moss, Q.C., for the defendant.

FERGUSON.] [April 4.

ADAMSON *v.* ADAMSON, *et al.*

Settlement—Trustees and beneficiaries as joint tenants and not as tenants in common—Executed trusts—Estate in fee—Tenants in common—Mesne profits.

J. A., by a settlement conveyed certain lands to trustees, "Upon trust to hold the said lands, ***, situated ***, being lot No. 2, ***, to the said G. A. And also lot No. 1, situated *** to the said A. A., sons of (the settlors) *** to the use of them, their heirs, and assigns as joint tenants and not as tenants in common *** and lastly upon trust, that the said trustees, ***, shall well and sufficiently convey and assure absolutely in fee to the said parties respectively, etc."

Held, that this trust was an executed trust in which the limitations were expressly declared and that neither a difficulty in ascertaining the true construction and legal meaning of the words used nor the final trust directing the trustees to make the conveyance of the legal estate, made any difference; and that the words must receive the same construction as if they were found in a common law conveyance.

Held, also, that an estate in fee in lot 2 passed to G. A., and that the words, "as joint tenants and not as tenants in common," were used to prevent G. A. and A. A. from taking as tenants in common, as it was supposed they would have taken under 4 Wm. IV., c. 1. s. 48, and that they were needlessly used.

Held, also, that A. A. died intestate and unmarried after January 1st, 1852, the defendants as the children of a deceased brother, took an equal share in the lands as co-tenants in common with the plaintiff, G. A., that they were as much entitled to the possession of the lands as the plaintiff, and that the plaintiff having obtained the legal estate from the trustees, should hold the same as a trustee for all the tenants in common, etc

Held also, that there being no proof or ouster of the plaintiff, he did not recover from the defendants any mesne profits in this action.

James MacLennan, Q.C., and *R. MacLennan*, for plaintiffs.
McCarthy, Q.C., for defendants, Chas. and Wm. Adamson.
Donald, for defendant, Mary Olive Anderson.
} *At the trial.*

and

The *Attorney General* of Ontario, and *T. Langton*, for plaintiffs.
McCarthy, Q.C., and *W. Nesbitt*, for defendants
} *On the argument.*

BOYD, C.] [May 13.

CORHAM *v.* KINGSTON.

Mortgage—Insurance moneys—Application upon mortgage—Appropriation of payments.

Motion for injunction to restrain a mortgagee under a mortgage dated Dec. 16th, 1887, from exercising his power of sale, upon the ground that the mortgage was not in default.

The mortgage was to secure $300 with interest, to be paid yearly, together with an instalment of principal not less than $50, the first instalment of principal and interest to fall due on Dec. 16th, 1888.

On June 29th, 1888, a fire occurred, and the mortgagee received $195 insurance money.

Without communicating with the mortgagor, the mortgagee assumed to apply this in the following way: He reckoned the interest up to the receipt of the money, and deducting that credited the balance on the whole sum advanced; and no payment of the first instalment being made by the mortgagor on Dec. 16th, 1888, he proceeded to exercise his power of sale.

Held, that the rules as to appropriation of payments did not apply, the insurance money not constituting a payment in the ordinary sense of that word, and the mortgagor having had no opportunity of first directing its appropriation.

Held, also, that though the mortgagee had the right to apply the insurance money in satisfaction of the money that ought to be paid under the mortgage, it was not competent to him to accelerate the times of payment, or to alter in any respect the terms of the instrument without the consent of the mortgagor. The insurance money must be applied from time to time as payments fell due under the mortgage, unless otherwise arranged between the parties.

Hoyles, for the plaintiff.
A. H. Marsh, for the defendant.

BOYD, C.] [May 13.

MCGUGAN *v.* SCHOOL BOARD, SOUTHWOLD.

School law—Change of school site—Meeting of ratepayers.

This was an application to have it declared that a certain resolution changing the site of a public school passed at a public meeting of the ratepayers called for the purpose was void, and also that certain conveyances made in pursuance of such resolution were void. It appeared that at the meeting a proposition and also an amendment were submitted, both of which, in addition to the main question as to change of site, embraced matters collateral thereto.

Held, that the main question had not been so presented to the ratepayers as to give them a fair opportunity of voting upon the material point, and that the vote taken could not be considered as unequivocally indicating the mind of the majority on that particular point. Resolution declared invalid and conveyances set aside, but without costs.

Meredith, Q.C., and *Crothers*, for the plaintiff.
Doherty, for the individual defendants.
Glen, for the corporation.

BOYD, C.] [May 13.

Re GRAHAM AND RENFREW.

Trustees—Power to sell—Implied power to take back mortgage.

Petition under Vendor and Purchaser Act.

Under a certain conveyance power was reserved to the trustees named therein to sell

upon consent of the majority of the infants who had attained 21.

Three were of age and willing to consent. It was argued that they had no right to sell as they did, and take back a mortgage for part of the price.

The will gave them power to sell at public auction or private sale, as to them may seem best, etc. The sale was bona fide and a good price was obtained.

Held, that the right to sell existed, and that a subsequent provision as to the children buying from one another on attaining 21 was not inconsistent with or repugnant to the exercise of the power of sale at present. That provision would still be operative, if no previous sale were made.

Held, also, that the power of sale given by the will involved a power to secure part of the price by mortgage on the property sold, the manner of sale being left to the discretion of the trustees, and that, therefore, the vendors should have judgment in their favor on both points.

A. Morphy, for the vendor.

S. G. Wood, for the purchaser.

Practice.

ROSE, J.] [May 20.

Re BACKHOUSE *v.* BRIGHT.

Prohibition—Division Court—Ex parte order for new trial.

At the moment when a Division Court action was called for trial the plaintiff and his agent were accidentally absent from the court, and the action was dismissed without any trial. The plaintiff afterwards obtained from the Judge *ex parte* an order for the restoration of the case to the docket for trial at the next sittings. The defendant made a motion to rescind this order which was refused, and he then applied for prohibition.

Held, that the Judge had power to dispense with notice of motion for the order; and the motion for prohibition was refused.

Carter v. *Smith*, 4 E. & B. 696; *McLean* v. *McLeod*, 5 P. R. 467; and *Fee* v. *McIlhargey*, 9 P.R. 329, referred to.

Aylesworth, for the motion.

J. A. Paterson, contra.

Q. B. Div'l Ct.] [May 20.

BARLOW *v.* GREEN.

Jury notice—Action of ejectment—Equitable defence.

The action was for ejectment, but the defendant by his statement of defence alleged that he was in possession of the land in question under a contract made with his father, whose executors the plaintiffs were, that if he (the defendant) went on the land and worked it his father would give it to him at his death, and he prayed to have the agreement declared valid, himself declared the owner of the land, and the plaintiffs ordered to execute proper documents to perfect his title.

Held, that the action, upon the pleadings, came within the words of R.S.O. c. 44, s. 77: "All causes, matters, or issues, over the subject of which prior to the Administration of Justice Act of 1873, the Court of Chancery had exclusive jurisdiction"; and a notice for jury was therefore improper.

C. J. Holman, for plaintiffs.

F. R. Powell, for defendant.

Court of Appeal.] [May 28.

ROWLANDS *v.* CANADA SOUTHERN R. W. CO.

Appeal to Supreme Court of Canada—Judgment of Court of Appeal upon appeal from Divisional Court refusing new trial—Notice of appeal—R.S.C. c. 135, ss. 24 (d), 41—Extension of time—Circumstances of case.

The decision of MACLENNAN, J.A., at Chambers, *ante* p. 283, was affirmed by the full Court of Appeal.

R. M. Meredith, for the plaintiff.

H. Symons, for the defendants.

Mr. DALTON, Q.C.] [May 25.

KANE *v.* MITCHELL.

Payment of money into court—Taking out—Satisfaction—Rule 632.

The plaintiffs sued for work and labor as contractors, claiming a balance of $511. The defendant by his statement of defence denied all the allegations in the statement of claim, and also said that $300 was sufficient to satisfy the plaintiffs' whole claim, and he paid that sum into court in satisfaction of such claim.

Rule 632 provides that "the payment of money into court shall not be deemed an admission of the cause of action in respect of which it is so paid."

Held, that the plaintiffs were not entitled to take out the money paid into court, unless they took it in full satisfaction of their claims.

John Greer, for the plaintiffs.

Montgomery, for the defendant.

Q. B. DIVISIONAL COURT.] [May 27.

GILBERT *v.* STILES.

Arrest—Ca. sa.—Order for—Motion to set aside—New material—Copy of affidavit—Affidavit on information and belief—Rule 609—Exhibits.

Upon an application to set aside an order for a *ca. sa.* upon the ground that it is based upon insufficient material, as distinguished from a motion to discharge the defendant from custody upon the merits, no new material can be used.

Damer v. *Busby*, 5 P. R. at p. 389, followed.

In this case an order for a *ca. sa.* was granted upon two affidavits; one that of the Toronto agent for the plaintiff's solicitors, exhibiting a copy of an affidavit made by one of such solicitors, stating that he believed it to be a true copy, and that the original was stated to have been enclosed in a letter received by him that day, but was not so enclosed, but not stating that such an affidavit ever existed.

Held, that this could not be treated as forming any evidence upon which an order for arrest could be founded.

The other affidavit used, stated that the deponent was credibly informed and believed certain facts, not stating the name of his informant nor the grounds of his belief.

Held, that this statement did not comply with Rule 609, and was insufficient as proof of the facts stated, upon an application for such an order.

Gibbins v. *Spalding*, 11. M. & W., 173; *McInnes* v. *Macklin*, 6 U. C. L. J., 14, referred to. The copy of affidavit marked as an exhibit to the affidavit of the Toronto agent, was not filed as an exhibit, and was subsequently produced to the Court as an original affidavit, a new jurat having been added.

Held, per FALCONBRIDGE, J., that the exhibit, even though it was not actually in the hands of the officer of the Court, was part of the record of the case, and should not have been so dealt with.

ROSE, J.] [May 29.

HAMILTON PROVIDENT & LOAN SOCIETY *v.* MCKIM.

Notice of trial—No power to shorten time—Rules 485, 661.

A defendant is entitled to the full ten days notice of trial prescribed by Rule 661, unless he has consented to take short notice of trial, or unless short notice can be directed as a term for granting an indulgence sought by a defendant; and there is no power under Rule 485 or otherwise to compel a defendant to take short notice.

John Crerar, for plaintiff.

Aylesworth, for defendants.

Law Students' Department.

The following papers were set at the Law Society Examination before Easter Term, 1889:

FIRST INTERMEDIATE.

REAL PROPERTY.

1. What is an estate in land? Is a lien an estate?

2. What words are used in conveyancing for the purpose of creating an estate tail?

3. What was the decision in *Taltarum's Case*, and what was its effect?

4. How was a mortgage regarded at law, how in equity, and how at the present day?

5. Define *dower* and *estate by the courtesy*, stating the essentials of each.

6. A tenant in tail buys the fee simple. What is the effect? Why?

7. What is a term of years?

SMITH'S COMMON LAW.

1. What is the law as to the liability of a person for an injury done to another by *accident* or *mistake*?

2. Illustrate by example the difference between *direct* and *consequential* injury.

3. When will a person become of full age who was born on the first day of January, 1870? give the hour and minute.

4. Explain what is meant by *tenant's fixtures?*

5. Explain the meaning of *primary* and *secondary* evidence.

6. In what cases of defamation are *spoken* words actionable *per se?*

7. Are threats of bodily hurt ever actionable? If so, when?

CONTRACTS.

1. How far is the proposition true that an acceptance of proposal is complete as against the acceptor when it comes to the knowledge of the proposer.

2. "The consideration for a promise may be an act or a forbearance or a promise to do or forbear." Give an instance of each.

3. What are the limits to the contractual powers of a corporation?

4. What rights has an injured person in respect of affirmance or avoidance of a contract when fraud is discovered by him?

5. How far can a man be relieved from a contract which he knew to be unlawful?

6. A promissory note is drawn on the 2nd February, 1889, at three months. When is such note payable? Why?

7. Explain the difference between a *general* and *qualified* acceptance. How does it affect the duties of the holder?

EQUITY.

1. Explain the maxim "That equality is equity."

2. Into what different heads are trusts divided?

3. Define constructive fraud and give an example.

4. Distinguish between the relief granted in cases of specific performance: (1) In cases of contracts for sale of land. (2) Cases of contracts for chattels.

5. A. makes a mortgage to B. with interest at six per centum per annum, a clause is inserted in the mortgage that if the six per cent. be not punctually paid, seven per cent. shall be paid. State the effect of this.

6. State the law of satisfaction in cases of legacies to creditors.

7. Explain the doctrine of election, giving an example.

FIRST INTERMEDIATE HONORS.

REAL PROPERTY.

1. How is the descent of estates tail governed?

2. Explain the operation of the conveyance by *Lease and Release.*

3. What is now, and what was formerly, the effect of a conveyance to a husband and wife and a third person?

4. Has a wife dower in a remainder? Explain fully.

5. What is a covenant to *stand seised?* Explain fully its essentials, and operations.

6. What is meant by saying that there can be no use upon a use?

7. For what purpose was the statute of *Quia Emptores* passed? Explain fully.

SMITH'S COMMON LAW.

1. Give an example showing that two actions may be brought by different plaintiffs against a trespasser for the same trespass to land.

2. Explain the doctrine of *privileged communication.*

3. What facts are necessary to establish the defence of *contributory negligence?*

4. Explain the extent of the liability of an executor for loss of the assets of the deceased testator.

5. Give an example of a transaction having a *contractive*, a *tortious*, and a *criminal* aspect.

6. Explain the law as to the liability of owners of cattle for trespasses committed by the cattle (*a*) irrespective of the existence of fences, (*b*) when the trespass is caused by defective fences.

7. What effect (if any) has the recovery of judgment against one of two joint wrong-doers upon the liability of the other? Reasons.

CONTRACTS.

1. At what time may protest of a dishonoured bill be made after non-acceptance?

2. A promissory note falls due to-day. It is unpaid and protested. From what date does interest run. The note reads thus: "Three months after date I promise to pay A.B., or order $x at the Bank of T. here, to bear interest at seven per cent. (Signed) C. D."

3. Distinguish "*void*," "*voidable*," and "*unenforceable*," as applied to contracts.

4. Give instances where rights and liabilities created by a contract pass to other than the original parties by operation of law.

5. A., a merchant in Hamilton, offers by letter to B., a merchant in Belleville, a number of patent reapers. B., by letter, accepts the offer, but after posting the letters changes his mind and telegraphs to A. withdrawing his letter. Letter and telegram both reach A., the latter first. How far is B. bound? Why?

6. A. intends to offer to B. three lots in West Toronto Junction for $600, three lots in Parkdale for $600, and one lot in the city at $1,600. By mistake in addition, he offers them all at $2,600, which B. accepts. Although A. sends B. notice that the offer was made by mistake, B. insists on holding the sale. Can he do so? Why?

7. What is the effect of acquiescence in a breach of condition?

EQUITY.

1. Define and exemplify constructive notice.

2. State the general law as to the liability of trustees and executors respectively for each others' acts.

3. "A." owes "B." at the present date several different sums, one of which is on a promissory note for $1,000 made in January, 1883, he pays in $500, saying nothing as to what item of account it is to be applied on. Can "A." apply it on the note and thereby take it out of the provisions of the Statute?

4. State the principle followed by the Courts in granting injunctions in cases of alleged breach of a patent of invention.

5. Under what (if any) circumstances will relief be granted in cases of contracts entered into under mistake of law?

6. State the relief granted by equity in cases of defective execution of powers and non-execution of powers respectively.

7. A. and B. enter into partnership for the term of five years, the time expires and they continue going on with the business in the same way as before, nothing being said about a new partnership. How would this transaction be considered in equity?

Miscellaneous.

A GOOD story is told about the two celebrated ecclesiastical lawyers, Mr. Jeune, Q.C., and Sir Walter Phillimore, Q.C. They appeared recently before the Archbishop's Court on behalf of the Bishop of Lincoln, to object to the jurisdiction of the court in his case. The archbishop, in full vestments, entered the court, and raising his hands, said: "Let us pray." Mr. Jeune, as became the son of a bishop, at once knelt, but Sir Walter, realizing that he was there to take objection to the court, remained standing. When the court was up, Sir Walter upbraided his colleague for his illegal praying. "My dear Phillimore," said Mr. Jeune, "I was praying without prejudice."

LITTELL'S LIVING AGE.—The numbers of *The Living Age* for the weeks ending May 18th and 25th contain The Migration of Plants, *Edinburgh;* Motley's Correspondence, *Quarterly;* Edmond Scherer, *Fortnightly;* Our Reign in the Ionian Islands, *Nineteenth Century;* The First Special Correspondent, *National;* The Young Sulpicius, and Leigh Hunt, *Macmillan;* Quite Out of the Way, *Murray's;* In Ninety-eight, *Time;* Father Damien and the Lepers, *Longman's;* The Country of a Thousand Lakes, *Chambers';* Tipping, *All the Year Round;* Clothes and Conduct on Board an Old Indiaman, *Athenæum;* The Italians and the Republic of the Plate, *Spectator;* Springs in the South of Europe, *Nottingham Express;* with instalments of "Little Sister," and "How 'the Crayture' got on the Strength," and poetry.

For fifty-two numbers of sixty-four large pages each (or more than 3,300 pages a year) the subscription price ($8) is low; while for $10.50 the publishers offer to send any one of the American $4.00 monthlies or weeklies with *The Living Age* for a year, both postpaid. Littell & Co., Boston, are the publishers.

Law Society of Upper Canada.

CURRICULUM.

1. A Graduate in the Faculty of Arts, in any University in Her Majesty's Dominions empowered to grant such Degrees, shall be entitled to admission on the Books of the Society as a Student-at-law, upon conforming with clause four of this Curriculum, and presenting (in person) to Convocation his Diploma or proper Certificate of his having received his Degree, without further examination by the Society.

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

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

4. Every Candidate for admission as a Student-at-law or Articled Clerk, shall file with the Secretary, four weeks before the Term in which he intends to come up, a Notice (on prescribed form), signed by a Bencher and pay $1 fee; and on or before the first day of presentation or examination file with the Secretary a petition and a presentation signed by a Barrister (forms prescribed), and pay prescribed fee.

5. The Law Society Terms are as follows:—

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

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

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

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

6. The Primary Examinations for Students-at-law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity, and Michaelmas Terms.

7. Graduates and Matriculants of Universities will present their Diplomas and Certificates on the third Thursday before each Term at 11 a.m.

8. Graduates of Universities who have given due notice for Easter Term, but have not obtained their Diplomas in time for presentation on the proper day before Term, may, upon the production of their Diplomas and the payment of their fees, be admitted on the last Tuesday of June of the same year.

9. The First Intermediate Examination will begin on the second Tuesday before each Term, at 9 a.m. Oral on the Wednesday, at 2 p.m.

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

11. The Solicitors' Examination will begin on the Tuesday next before each Term, at 9 a.m. Oral on the Thursday, at 2.30 p.m.

12. The Barristers' Examination will begin on the Wednesday next before each Term, at 9 a.m. Oral on the Thursday, at 2.30 p.m.

13. Articles and assignments must not be sent to the Secretary of the Law Society, but must be filed with the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

14. Full term of five years, or, in the case of Graduates, of three years, under articles, must be served before Certificates of Fitness can be granted.

15. Service under Articles is effectual only after admission on the books of the society as student or articled clerk.

16. A Student-at-law is required to pass the First Intermediate Examination in his third year, and the Second Intermediate in his fourth year, unless a Graduate, in which case the

First shall be in his second year, and his Second in the first seven months of his third year.

17. An Articled Clerk is required to pass his First Intermediate Examination in the year next but two before his Final Examination, and his Second Intermediate Examination in the year next but one before his Final Examination, unless he has already passed these examinations during his Clerkship as a Student-at-law. One year must elapse between the First and Second Intermediate Examination, and one year between the Second Intermediate and Final Examination, except under special circumstances, such as continued illness or failure to pass the Examinations, when application to Convocation may be made by petition. Fee with petition, $2.

18. When the time of an Articled Clerk expires between the third Saturday before Term and the last day of the Term, he should prove his service by affidavit and certificate up to the day on which he makes his affidavit only, and file supplemental affidavits and certificates with the Secretary on the expiration of his term of service.

19. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive Certificates of Fitness, Examinations passed before or during Term shall be construed as passed at the actual date of the Examination, or as of the first day of Term, whichever shall be most favorable to the Student or Clerk, and all Students entered on the books of the Society during any Term shall be deemed to have been so entered on the first day of the Term.

20. Candidates for call to the Bar must give notice signed by a Bencher, during the preceding Term. Candidates for Certificates of Fitness are not required to give such notice.

21. Candidates for Call or Certificate of Fitness are required to file with the Secretary their papers, and pay their fees, on or before the third Saturday before Term. Any Candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

22. No information can be given as to marks obtained at Examinations.

23. A Teacher's Intermediate Certificate is not taken in lieu of Primary Examination.

24. All notices may be extended once, if request is received prior to day of examination.

25. Printed questions put to Candidates at previous examinations are not issued.

FEES.

Notice Fee	$ 1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Solicitor's Examination Fee	60 00
Barrister's Examination Fee	100 00
Intermediate Fee	1 00
Fee in Special Cases additional to the above	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

BOOKS AND SUBJECTS FOR EXAMINATIONS.

PRIMARY EXAMINATION CURRICULUM for 1889 and 1890.

Students-at-Law.

1889.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.
- Cicero, In Catilinam, I.
- Virgil Æneid, B. 1 V.
- Cæsar, B. G. b, I.) 33.)

1890.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cicero, Catilinam, II.
- Virgil, Æneid, B. V.
- Cæsar, Bellum Britannicum.

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

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

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.

Composition.

Critical reading of a selected Poem:

1889—Scott, Lay of the Last Minstrel.

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

HISTORY AND GEOGRAPHY.

English History, from William III. to George III. inclusive. Roman History, from the commencement of the Second Punic War to the death of Augustus. Greek History, from the

Persian to the Peloponnesian Wars, both inclusive. Ancient Geography—Greece, Italy and Asia Minor. Modern Geography—North America and Europe.

Optional subjects instead of Greek :—

FRENCH.

A Paper on Grammar.
Translation from English into French Prose.
1889—Lamartine, Christophe Colomb.
1890—Souvestre, Un Philosophe sous le toits.

or NATURAL PHILOSOPHY.

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

Articled Clerks.

In the years 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidate, as noted above for Students-at-law.
Arithmetic.
Euclid Bb. I. II. and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography—North America and Europe.
Elements of Book-keeping.

RULE *re* SERVICE OF ARTICLED CLERKS.

From and after the 7th day of September, 1885, no person then or thereafter bound by articles of clerkship to any solicitor, shall, during the term of clerkship mentioned in such articles, hold any office, or engage in any employment whatsoever, other than the employment of clerk to such solicitor, and his partner or partners (if any) and his Toronto agent, with the consent of such solicitors in the business, practice, or employment of a solicitor.

First Intermediate.

Williams on Real Property, Leith's edition ; Manual of Common Law ; Smith's Manual of Equity ; Anson on Contracts ; the Act respecting the Court of Chancery ; the Canadian Statutes relating to Bills of Exchange and Promissory Notes ; and Cap. 123 Revised Statutes of Ontario, 1887, and amending Acts.

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

Second Intermediate.

Leith's Blackstone, 2nd edition ; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages, and Wills ; Snell's Equity ; Broom's Common Law ; Williams on Personal Property ; O'Sullivan's Manual of Government in Canada, 2nd edition ; the Ontario Judicature Act ; R.S.O., 1887, cap. 44, the Consolidated Rules of Practice, 1888, the Revised Statutes of Ontario, 1887, chaps. 100, 110, 143.

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

For Certificate of Fitness.

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

For Call.

Blackstone. Vol. I., containing the Introduction and Rights of Persons ; Pollock on Contracts ; Story's Equity Jurisprudence ; Theoba'd on Wills ; Harris's Principles of Criminal Law ; Broom's Common Law, Books III. and IV. ; Dart on Vendors and Purchasers : Best on Evidence ; Byles on Bills, the Statute Law and Pleadings and Practice of the Courts.

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

Michaelmas Term, 1888.