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THE Bench of the United States has suffered a great loss by the death of Mr. Justice Miller of the Supreme Court. Although he did not enter law until his thirty-second year, he showed that he had found, at that comparatively late period, the avocation for which he was pre-eminently fitted. With a natural aptitude for law, he quickly discerned and decided on, in his own mind, the real issues of a case; and with a great practical experience of constitutional questions, he has left an imprint on the jurisprudence of that country which time will not readily efface.

THE Land Titles Act is being firmly established in Manitoba, and the day of the old registration system is past. Even now a considerable part of the province, and the larger portion of the more densely settled districts, has come under this Act. The new soil appears to be more congenial to this species of "titles" than the soil of our older province. We do not, of course, mean that the possibilities are equal in each province, but undoubtedly the Land Titles Act has thrived in the Province of Manitoba to a degree that it will take many years to attain with us.

We alluded in our last number to the disadvantages our brethren there were laboring under in matters of practice, and now we hear that the promised revision of the statutes will be a consolidation only. As it is ten years since the last revision, this announcement will cause much regret. It is considered by many in our own Province, that the benefit that would accrue to the profession by a quinquennial revision of our statutes would more than justify the expense. A similar improvement would seem applicable to Manitoba.

A PECULIAR motion for an injunction was made recently before the Superior Court at Indianapolis. The plaintiffs, two young Democratic lawyers of that city, are seeking to restrain their landlady from compelling them to vacate their room in her house. They allege that they cannot find another boarding-house in the precinct; that if they move they will lose their votes; and that their landlady, who is aware of this, is a Republican; and that, having no other cause of complaint against them, her only object in ordering them to leave is that they may be deprived of their suffrage at the ensuing election. The injunction was granted until trial. In this country where, fortunately for us, party feeling does not run quite so high, the rule *de minimis non curat lex* would probably apply to such a case, notwithstanding the value and importance of a vote; for

even under *The Judicature Act* (under which some surprising things are done), we doubt whether any of our Courts could be found to say that it is either "just or convenient" to compel a boarding-house keeper, against her will, to keep boarders under her roof for an indefinite time.

AMONG recent decisions of practical interest to the profession may be mentioned the deliverance of the Chancellor *In re Graydon & Hammill*, which was an application under the "Vendors and Purchasers' Act," in which an important point of real property law was decided, contrary, we believe, to what has been the common opinion current in the profession. The question was whether future accruing instalments of local improvement taxes are incumbrances which a vendor selling "free from incumbrances" is bound to remove. The late case of *Cumberland* v. *Kearns*, 17 Ont. App., 281, had established that where the vendor had himself joined in the petition for the improvements in respect of which the taxes were imposed, such taxes constituted an incumbrance within his covenant against incumbrances, which he was bound to remove. *Re Graydon & Hammill* carries the law a step further, and according to this case, even though the vendor has not in any way participated in the proceedings which have resulted in the imposition of the local improvement tax, it is nevertheless an incumbrance, which he. in ordinary course, is bound to pay or commute, unless he has, by his conditions of sale, protected himself from the liability. Sellers of city property, where local improvement by-laws are in force, will therefore have need to take warning and be careful to protect themselves by special conditions of sale, if they wish to escape liability to commute local improvement taxes on the property they may offer for sale.

AN old and esteemed friend of THE CANADA LAW JOURNAL, and one for whose judgment we have the greatest respect, calls in question the justice of our remarks in a recent issue on the cases of *Robertson* v. *Grant* and *Hall* v. *Prittie*, and thinks that, after all, there may be no conflict between the two cases. He suggests that an element may have existed in *Robertson* v. *Grant* which was wanting in *Hall* v. *Prittie*, viz., that the letter in the former case may have directed payment out of a particular fund; whereas, in the latter case, the direction was simply to charge the payment to the creditor, without designating the fund out of which the order was to be satisfied. We are inclined to think the point may possibly be well taken. Unfortunately the case of *Robertson* v. *Grant* is very meagrely reported, and the exact words of the letter, which was there held to constitute an equitable assignment, are not stated. In order, if possible, to clear up the point, we have endeavored to see the original papers in that case, but find that the letter was merely produced as an exhibit, and was not filed; and on application to the solicitors who produced it, they were unable to find the papers in the case, and believe they have been destroyed. Our efforts were therefore unavailing. Whatever may have been the form of the letter in *Robertson*

v. *Grant*, and whether the decision in that case does or does not in fact conflict with the recent decision of the Court of Appeal in *Hall* v. *Prittie*, 17 Ont. App., 306, we think it is quite plain that the latter, at all events, is in entire conformity with the well-settled principle of law: that in order to constitute a good equitable assignment, there must be a specific designation of the fund intended to be affected; and although, as Lord Hardwicke said in the leading case of *Row* v. *Dawson*, 1 Ves. Sr., 332, in order to constitute a good equitable assignment of a *chose in action*, "any words will do, no particular words being necessary thereto," yet the words employed must at least clearly indicate the *chose in action* intended to be assigned; or to use the words of Sir John Leach, V.C., in *Watson* v. *Duke of Wellington*, 1 Russ & My., 602, "in order to constitute an equitable assignment there must be an engagement to pay out of a particular fund"(p.605). The authorities are too numerous and too unanimous on this point to leave any room for doubt.

MEETING OF THE COUNTY JUDGES.

The seventeenth annual meeting of the County Judges of Ontario was held last June, but no official report of the proceedings was published.

These meetings, which are held annually at the expense of the Judges themselves, are productive of much good; and, while there are doubtless many and sufficient reasons why full reports of these meetings should not be made public, there were on this occasion, as on others, some matters discussed of general interest, which we have obtained leave to refer to, and to mention the conclusions arrived at by the Judges then present.

At the request of the Inspector of Legal Offices, a discussion took place regarding various questions relating to the Surrogate Court.

In reference to the practice of having a separate order approving of the Bond in Administration matters, it was considered that one order might be made to embrace the approval of the Bond and the grant of letters of Administration.

As to whether a charge should be made for the order for inventory, the conclusion was reached that the order was expedient and proper, and that it should direct that a full inventory be filed within sixty days. It was also considered that the words, "Of or about the value of," etc., used in the present affidavit of value, were too vague.

It was thought that orders requiring only trifling alterations should not be charged for; a very sensible conclusion, which possibly may enable certain of the "deceased," who would like to take their worldly goods with them, to rest more easily in their six feet of freehold.

The Judges were of the opinion that the Registrar is only bound to prepare papers when brought in by the parties themselves, or where the amount is under $400.00; in all other cases the papers for Probate should be presented through a solicitor, since the preparation and proof leading to Probate and Grant, being often difficult and important, should not be entrusted to incompetent or irresponsible persons.

Attention was called to the incongruity between the present form of Probate, which refers only to personal estate, and the "Devolution of Estates Act," but no action was taken.

It was suggested that the practice relating to guardianship applications should be more clearly defined, and that a form of affidavit should be prepared setting forth the facts in the petition, such as date of death, names, ages and places of residence of infants, value of property, etc.

In reference to the preparation of papers by the Surrogate Clerk above referred to, an opinion was advanced that the item of $1.00 for "preparing" the papers did not necessarily involve the "drawing up" the necessary papers leading to Grant, for the Registrar is entitled to the same fee even when the papers are drawn up and presented by solicitors; but that it was meant to cover a fee for examining the proofs, preliminary to their being laid before the Surrogate Judge.

A question was asked relative to Division Court procedure, as to whether a Judge of the Division Court, in a jury case, under section 146, or the Court of Appeal, under section 152 of the Division Courts Act, can enter a verdict or judgment in direct opposition to the finding of a jury on a material issue. The Judges were of opinion that the right to the verdict, as pronounced by a jury in the Division Court, is an absolute one, and no party can be deprived of the benefit of the finding. (*Lewis* v. *Ord*, 17 O.R., 610.) The sections might apply if special findings were left to a jury, and an erroneous judgment entered upon such findings.

Notes on Exchanges and Legal Scrap Book.

MIXED COURTS.—Dissatisfaction is felt at present in England at the delay involved in the trial of commercial causes in the ordinary courts, and with the difficulties besetting the trial of actions for the satisfactory decision of which any special mercantile knowledge is required. It has been suggested that a way out of the difficulty would be found in the establishment of courts similar in some respects to the tribunals of commerce which have worked so satisfactorily in countries on the continent of Europe. In line with this suggestion a bill has been introduced into the House of Commons for the establishment of district courts, each composed of a county court judge, and two merchant judges, and local courts composed of merchant judges, with a registrar as legal assessor. The bill provides for no appeal other than to a tribunal for that purpose stationed at London. The idea is to make the procedure of the proposed courts as simple as possible, and to avoid the delays which hedge about proceedings in the ordinary courts, as well as to provide a class of judges specially acquainted with mercantile questions. What the prospects are for the enactment of this legislation has not yet been made apparent.—*Bradstreet's.*

MR. MONTAGU WILLIAMS is reported to have recently laid down that wedding presents cannot be recovered back by the giver from the receiver in the event of the wedding in view of which they were given not taking place. This may seem very hard in some cases, as where family jewels or other heirlooms have been presented, or where the receiver breaks off the marriage without any cause whatever just before the day appointed for it. But whether hard or not, is it good law? We very much doubt it. Lord Hardwicke in *Robinson* v. *Cumming*, 2 Atk. 409, laid down that "if a person has made his addresses to a lady for some time, upon a view of marriage, and upon reasonable expectation of success makes presents to a considerable value, and she thinks proper to deceive him afterwards, it is very right that the presents themselves should be returned, or the value of them allowed to him; but where presents are made only to introduce a person to a woman's acquaintance, and by means thereof to gain her favor, such person is to be looked upon only in the light of an adventurer, and like all other adventurers, if he will run risks, and loses by the attempt, he must take it for his pains." As the defendent in *Robinson* v. *Cumming* was an adventurer, and was not allowed to have his presents back, we have only an *obiter dictum* here, but it is an *obiter dictum* of great weight, and we incline to the opinion that an action would lie to recover presents given in expectation of a marriage which did not take place, as for a gift upon a condition subsequently unfulfilled.—*Law Journal.*

FORFEITURE OF LEASE.—A recent case in the Queen's Bench Division, *Kirkland* v. *Briancourt*, is instructive on the subject of waiver of forfeiture. Certain premises were held under an agreement at a yearly rent of £65, payable quarterly. The agreement contained a very usual stipulation that the lessor should have the right to re-enter the premises if the whole or any part of a quarter's rent should remain unpaid for twenty-one days after any one of the usual quarter-days, and should not be paid when subsequently demanded by letter. On January 16th a letter was sent to the defendant requiring payment of the rent due the previous Christmas. Later in the same month a distress was put in, by which part of the sum owing was recovered. Early in February an action was brought for the balance of rent, and for the possession of the premises. The tenancy was held to be forfeited by the provisions of the agreement, but the question then came in as to whether the distress was not in itself a waiver of the forfeiture, as it was made after the period at which the right to determine the tenancy had accrued to the plaintiff. A statute of Queen Anne gives a landlord the right to distrain at any time within six months of the termination of a tenancy, but former decisions show that this Act applies only where the tenancy is determined in the ordinary course, and not by a forfeiture. If a landlord distrains upon a person who has hitherto been in the position of his tenant, the distress is a recognition that he is so stilll, and is consequently a waiver of the forfeiture of non-payment due before the distress was made. Therefore the plaintiff lost his action of ejectment, but obtained judgment for the balance of rent owing to him, without costs, however. From this it appears that a person

who is desirous of enforcing the forfeiture of a tenancy must be careful not to distrain on his tenant's goods after he has acquired the right of re-entry, as such a distress is a distinct waiver of the forfeiture and replaces the parties in their original position of landlord and tenant under the agreement.—*Irish Paper.*

CONTRADICTORY STATUTES.—The question, What is the rule of construction to be adopted if two contradictory statutes should receive the royal assent on the same day? is one of very great interest. We think the right view is that the two contradictory enactments cancel one another, and we are confirmed in this opinion by a reference to 33 Geo. III., c. 13, by which "the clerk of the parliaments shall indorse on every Act," immediately after the title, "the day, month, and year when the same shall have passed, and shall have received the royal assent, and such indorsement shall be taken to be a part of such Act, *and to be the date of its commencement*, where no other commencement shall be therein provided." The other view, that a Court could take judicial notice of the order in which the royal assent was given, has in support of it the cases in which exceptions have been allowed (see *Clarke* v. *Bradlaugh*, 51 Law J. Rep. Q. B. 1; L. R. 8 Q. B. Div. 63) to the rule, that the law takes no account of the fraction of a day; but it has been expressly held that an Act becomes law as soon as the day of its date commences, so that a child born before the royal assent was given to an Act would have the benefit of it: *Tomlinson* v. *Bullock*, 48 Law J. Rep. M. C. 95; L. R. 4 Q. B. Div. 230; and this points to the royal assent fixing one and the same minute for the commencement of all the Acts receiving the royal assent on the same day. On the lists, of course, of bills awaiting the royal assent they must be separately distinguished, but they could not be numbered in chapters until after the royal assent had been given, for of any given number of contemporaneous bills *non constat* (in law) that all will be assented to by Her Majesty. Therefore a conflict, if it exists, must result in cancellation; but the rule (see "Maxwell on Statutes," 2nd ed. p. 186) that "the language of every enactment must be so construed, as far as possible, as to be consistent with every other which it does not in express terms modify or repeal," will, of course, apply with extra force to two contemporaneous enactments.—*Law Journal.*

MOOT COURTS AND LEGAL EDUCATION—In view of the Moot Courts recently established in connection with the Law School, a few words containing some practical ideas, suggested by a "Moot" at the University of Melbourne, may be of interest. Our friends at the antipodes, while a little behind us perhaps in this matter, are evidently nevertheless fully aware of the practical importance of a knowledge of pleading and evidence being acquired by students of the law. The following is from the *Australian Law Times*:—"So much has been said about the education of the legal profession at the University lately on various branches of law, and so many changes have been made in the curriculum with the view and hope of making perfect lawyers out of raw students, that it is refreshing to observe that

a piece of practical work has been done which will enable the student lawyer to become a useful advocate. We allude to the 'Moot' which was held last week in the law-courts at the suggestion of Professor Jenks of the Melbourne University. We have always contended that a real and proper examination as to the qualifications of a lawyer should be something like that which is demanded of the medical student before he is allowed to operate on the world at large. A medical student here, before he gets his degree, has to go through a course of practical work, such as anatomy, dissection and clinical lectures, the performance of which actually means that he has done while a student exactly similar work to that of the practising physician or surgeon. Can the same be said of the solicitor or barrister? Is it not a fact that the average efficiency of the fledgling solicitor or barrister is far less at the beginning of his professional career than that of any class correspondingly placed? We think the answer must be in the affirmative. And the result of this unsatisfactory state of things is, as regards the barrister at all events, that he has to wait as a rule a good number of years before he is allowed to do anything of much importance in the conduct of a case in court, and when the wished for opportunity does come, he finds rather late in the day that he has to learn the real business of his profession by conducting a case perhaps at considerable risk to the unfortunate client. All the law in the world is worth very little if one cannot use it, and use it in the very nick of time, so that, may be, an all important piece of evidence may not be rejected, or improperly admitted through inadvertence, the advocate discovering just too late that he has allowed his client to be improperly put out of court. It is for this reason we hail with satisfaction the installation of the Moot Court by Professor Jenks and hope that it may become a permanent and regular institution. . . . . The late Lord Lytton remarks in one of his essays that the first requisite of an orator is a sound pair of lungs, and the legend runs that the first studies of Demosthenes were devoted to curing himself of stuttering: we may go a step further than that, and assuming the tyro to have the first of these qualifications and to be able 'to speak the speech trippingly,' we may then confidently recommend him both to practise before the Moot as frequently as he may be suffered, and also to attend the most important trials of Nisi Prius, imagine himself briefed on one side and mentally take a witness through his evidence, cross-examine others, take proper legal objections, and argue with the judge, all of course *sub silentio;* and, when the last witness is finished, address an actual living jury in a fine imaginary speech. If he can do this fairly to his own satisfaction in imagination, he will have gone a long journey on the road to successful advocacy when he dons wig and gown for a real client with a real brief, and with guineas marked thereon which are to be paid."

REVOCATION OF WILLS BY CUTTING OR ERASURE.—A belief that a person could not wholly disinherit his children led to the trite phrase "to cut him off with a shilling." In the case of goods of Dinah Leach, the testatrix said that she had "cut G. out of her will." This was no figurative phrase, implying

simply that she had revoked a legacy previously given by her will to G., as she literally cut the name of G., whom she had appointed as an executor, out of the will with a pair of scissors. The testatrix, it seems, was G.'s mother-in-law, and some disagreement had taken place between G. and his wife. Mr. Justice Butt held that there had been only a partial revocation, and that the will was entitled to probate in the form in which was found at the testatrix's death. It would have been better for G. if his name had never been in the will at all, as, though notice had been given to him by direction of the judge, he was not allowed his costs on the application for probate. In the Goods of Maley, 57 L.T., Rep. N.S., 500, 12 P.Div., 134, the facts were somewhat similar. A testator appointed C. and M. trustees and executors of his will, and gave a legacy to C. if he should act as trustee. The testator and C. quarrelled, and legal proceedings took place between them. The former told a friend that he had cut "that rascal C." out of his will with a pair of scissors, and on his death it was discovered that the portion relating to appointment of executors and the legacy to C. had been cut off, the cut-off piece being found in the bag containing the will. The president expressed his opinion that by cutting out this part of the will the testator had revoked the legacy to C. and the appointment of executors. In the Goods of Henrietta Morton, 57 L.T., Rep. N.S. 501, 12 P.Div., 141, the testatrix erased, apparently with a penknife, the signatures of herself and the attesting witnesses. Mr. Justice Butt said, "I have no doubt about this case. When a person sets to work to scratch out he actually cuts away the paper. What this testatrix did may be regarded as a literal cutting out. The paper is not pierced, but the signatures are scratched away. I think the will has been revoked." On the other hand, a subsequent erasure of their own initials by the witnesses to the will of a dying man was held by the president to be no revocation in *Margery and Layard* v. *Robinson*, 57 L.T., Rep. N.S. 281, 12 P.Div., 8. In that case the witnesses, having duly attested a card on which the wishes of the testator, elicited from him with some difficulty, were written, thought that they had undertaken too great a responsibility, and erased their initials, telling the testator that they did not consider it a will, but only a memorandum. They said that the testator gave signs of assent to all this. The distinction between an erasure by the testator and by the witnesses is obvious, as the former has the power to revoke the will, the latter have not. Sir James Hannen, in delivering judgment, said: "Whether they (*i.e.*, the witnesses) thought it to be a valid will or a memorandum is immaterial. The function of witnesses to a will is simply to authenticate the testator's signature, and, this being done, their opinions or beliefs or intentions are irrelevant. I am further of opinion that the subsequent erasing of attestation by the witnesses is immaterial." His lordship, however, pronounced against the card on the ground that that the testator's mark was in the middle of the will instead of "at the foot or end thereof." In the Goods of Gosling, 11 P.Div., 79, the testator obliterated the whole of a codicil, including his own signature, and the subscription of the attesting witnesses, by means of thick black ink marks, and wrote at the bottom of it, signed by himself and two witnesses, the words "we are witnesses to the erasure of the

above." The effect of the obliteration, if it had stood alone, was not considered, as the words below the codicil were held to be words declaring an intention to revoke within the 20th section of the Wills Act. "If a testament was in the custody of the testator, and upon his death it is found among his repositories mutilated or defaced, the testator himself is to be presumed to have done the act; and it has already appeared that the law further presumes that he did it *animo revocandi.*" That proposition, laid down in Mr. Justice Williams' standard work on Executors, 8th ed., vol. 1, p. 160, received the sanction of Lord Penzance in *Bell* v. *Fothergill,* 23 L.T., Rep. N.S. 323, L. Rep. 2 P. & D., 148, where the testator appears to have repented of his revocation of the will, and to have gummed on the signature which he had previously cut off. His lordship held that the will had been revoked by the cutting, and that the subsequent gumming on was not sufficient to revive it.—*Law Times.*

CURIOUS WILLS.—W. D. Foster, the dramatic company promoter, would have no woman present at his funeral, says the London *Standard.* If his wife survived him, he would be cremated; otherwise he would be buried in the ordinary way. One of the strangest cases occurred in France a few months ago. M. Travers, declaring the French to be "a nation of dastards and fools," left his fortune to the poor of London, and further ordered that his body should be launched into the sea a mile from the English coast. An attempt was made to declare this unpatriotic Frenchman insane, but the Court of Appeals upheld the will.

Frenchmen always have been more inclined to frivolity than we are in the disposal of their estates. One bright specimen actually provided that a new cooking recipe should be pasted on his tomb each day. There was more force, however, in the frivolity of the French lawyer who left $10,000 to a local madhouse, declaring that it was simply an act of restitution to his clients. For sheer levity no will of the last two years compares with that of the rich American, a cousin of the Vanderbilts, who left every dollar he possessed to a girl he used to watch in the theatre. He did not even know her, and the only reason he gave for the strange freak was that her turned-up nose amused him.

Another American gentleman, Horatio G. Onderdonk, has of late enjoyed an elaborate joke at the expense of his heirs. There was a good estate and many expectant relatives; but deep was their dismay when it was found that no one could benefit under the will who did not reach an almost unattainable exaltation of life. No one could so benefit who was an idler, a sluggard, a profligate, a drunkard, or a gambler. The use of liquor and tobacco would deprive a legatee of his portion. He was also debarred from entering any bar-room or porter-house, from getting married before the age of twenty-five, or even from not having risen, breakfasted, and got ready for business by nine o'clock in the morning. We have not heard if any heir has claimed, or if the money is still unappropriated, like the letter which still lies in an American post-office, addressed to "A Christian, Chicago."

An American young lady exhibited a depth of sentiment rarely equalled when she directed in her will that tobacco should be planted over her grave, that the weed, nourished by her dust, might be smoked by her bereaved lovers.

Cremation clauses are now becoming common, but these appear only in the wills of advanced and strong-minded people. Other provisions are made by nervous people, moved chiefly by the dread of being buried alive. This was the case with John Blount Price, a justice of the peace of Islington, whose will was recently published. Mr. Price declared in his will that, four days after death, two skillful surgeons were to be paid five pounds each to perform such an operation on his body as would prevent the possibility of his coming to life in his coffin.

The Viscount de Carros Lima, who threatened his heirs with the loss of their property if they buried him in the family vault, further enjoined on them to have his body watched until decomposition set in. A similar provision was made by Dennis Crofton, an Irish gentleman, last year. One Vienna millionaire was so anxious about his corpse that he would not let it be left in the dark. Not only did he provide for the vault to be lighted by electricity, but he also ordered the coffin to be so illuminated, science thus coming in a gruesome fashion to the aid of security.

Lord Newborough claimed by will the peculiar privilege of being twice buried. His remains are now finally laid at rest in Bardsey Island, off the Welsh coast; but to the dead peer's honor be it said that the strictest economy was enjoined in his obsequies, and the house-keeper at Bonveau, who watched his every glance, received a legacy of £5,000 and an annuity of $600 a year.

The "waiting will" is a constant source of irritation. The professors of Vienna University were delighted to learn this year that Count Hardegg had left their institution £50,000; but when it came out that the money was to accumulate for one hundred years, by which time it would have increased to $18,000,000, the wits decided that Count Hardegg should have been styled half-boiled. The most hard-headed business men occasionally like to keep their heirs waiting. Mr. McCalmont, the stock-broker, provided that his nephew, Captain McCalmont, must wait seven years for his inheritance of $30,000,000.

Perhaps the legatee, who has the least chance of realizing, is the one mentioned by a wicked Finn, who left all his property to the devil. Finland is now probably the only country where the devil is a land-owner. Some notice was taken at the time of the fact that the name of the legatee appeared in capital letters throughout the will. The inference was that the testator wished to make a good impression upon him, with an eye to securing indulgence when they met. Even the devil's name in the will is better than none, which has been the case with certain large properties this year and last.

A feature of the year has been the tendency of gentlemen to draw up wills in favor of ladies to whom they are engaged. Mr. Rawson, for instance, left all his property to Miss Vizetelly. In like manner a Miss Bessie Macdonald, a young lady of Glasgow, has become possessed of a handsome legacy and a hotel in New York, left to her by one who hoped to marry her.—*The Green Bag.*

THE COMPETENCY OF WITNESSES.—To advocates of legal reform, and to lovers of consistency, it must be a matter of regret that another parliamentary session has passed without any attempt being made to direct renewed attention to either of the Evidence Amendment Bills. These important schemes of practical reform, which a year or two ago attracted so much interest, still remain on the parliamentary shelf, and must be in some danger of getting dusty. That they will, by-and-by, be taken down, further considered, and finally moulded into law, no one need doubt. Moreover, the halting action of the legislature is quite in accord with the traditional treatment bestowed on proposals for removing the disabilities of witnesses. This remark applies not only to the primary eligibility of persons as witnesses, but also to the conditions upon which they are to be allowed to give evidence. The subject as a whole is of undeniable historic interest, and in its narrow aspect presents a most striking example of tardy legal evolution. It has been suggested, indeed, that from the familiar "oath" of the present day the student may travel back, step by step, to the superstitious ordeal of the dark ages, comprising as it did the various forms of test by red-hot iron, cold water, and even of "judicial pottage." So that, in one sense, the lady who goes into the witness-box in the Divorce Court to "deny on oath" the conduct imputed to her is merely doing in modern form what Queen Emma, mother of Edward the Confessor, did in another manner when she submitted herself to the ordeal of the nine red-hot ploughshares in the ancient city of Winchester.

The witness's oath remains now, as it formerly was, a religious asseveration by one who invokes the Supreme Being, and renounces all claim to His mercy and calls for the Divine vengeance if the evidence given shall be false. It is to be observed, however, that the words "so help me God" are no part of the oath itself, but simply indicate the customary manner of administering it. Less than seventy years ago the general rule was that every witness must be sworn in the common form, and if, from want of religious belief, or from scruples of conscience, a person was debarred from invoking the Deity, his evidence, however important, became absolutely inadmissible. The first measure of relief applied only to Quakers and Moravians, to whom was conceded the privilege of making a solemn affirmation instead of taking the oath in the usual manner. This exemption was made in 1833, and in the same year the Separatists obtained by statute a like indulgence, in order that they might be no longer "exposed to great losses in their trades and concerns," nor be subject to fines and imprisonment for refusing to aid litigants with their testimony under the old conditions. A few years later the Act 1 & 2 Vict. c. 105 enacted that a person shall be bound by the oath administered, provided the same shall have been administered in such form and with such ceremonies as the witness himself shall declare to be binding, subject, of course, to the like consequences as those occasioned by perjured evidence. Hence arose the admissibility of those curious forms and ceremonies adopted by the Chinese, Mahomedans, and others when called as witnesses in English courts of justice.

It became necessary, however, in course of time, to make a further inroad on the old harsh and exclusive rules to which the community had for hundreds of

years meekly submitted. It was found that there were many persons who objected from conscientious motives to be sworn as witnesses, but who were not entitled to the privileges conferred already on members of a few religious bodies. It was not until the year 1854 that such persons were authorised to make a solemn affirmation in civil actions. Later on the like permission was extended to those who gave evidence in the Probate and Divorce Court; but, strange as it may seem, it was not until the year 1861 that a similar enactment was passed with respect to evidence in criminal cases. Even then atheists still remained outside the category of eligible witnesses. Hence the Act passed in 1869, which provided a form of solemn promise and declaration for any person objecting, or objected to as incompetent, to take the oath "provided the presiding judge is satisfied" that the oath would have no binding effect upon the witness's conscience. The unfortunate adoption of the phrase "presiding judge" defeated to some extent the object of the Act. It was found that the whole ground was not covered by the statute, and, accordingly, an amending Act was passed in the following year.

The final step in the process of legal evolution thus briefly sketched may be said to have been attained by the passing of the Oaths Act, 1888, the provisions of which are, of course, familiar to lawyers. No less gradual and tentative has been the operation of removing in part the disqualifications which formerly attached to various persons on the ground of crime or of interest. It is needless to trace this emancipation through its various stages, which may be said to have commenced when the County Courts were established (and parties and their wives in actions for small debts were made competent witnesses in their own causes), and to have terminated, as yet, with the passing of the Criminal Law Amendment Act, 1885. The last-mentioned Act, besides making prisoners charged with the commission of specified offences eligible to give sworn testimony in their own behalf, provides that where in a case under the Act any child of tender years who is called as a witness does not, in the opinion of the Court, understand the nature of an oath, her unsworn testimony may be admitted if the child appears sufficiently intelligent to understand the duty of speaking the truth, and provided such evidence is materially corroborated. Various other Acts might be mentioned by which exceptions have been made to the general rule that accused persons shall be debarred from giving evidence in their own behalf; but the Criminal Law Amendment Act unquestionably affected a far larger class than had been touched, or has since been relieved, by other statutes of the realm. The Act of 1885 created in fact a new departure of a really bold character, and, in the opinion of most persons whose experience commands respect, the experiment has been fully justified. In such a matter there can be no such thing as going back. The result of the tests thus gradually made must have served to encourage those who contend that the prisoner, or the defendant, in every case should be allowed to be examined as a witness in his own defence; and until the law makes provision to that effect it must be regarded as anomalous and incomplete.—*Law Times.*

THE MICROSCOPE AND THE CAMERA IN THE DETECTION OF FORGERY.—The subject of this paper is one of great practical importance in the administration of justice; and while not undertaking to treat the subject exhaustively, we shall endeavor to give some points which may be of value in subsequent cases.

The modes of committing forgery are various: (1) By alteration of the document in question, which may consist (*a*) of an erasure or erasures; (*b*) of additions to the instrument; (*c*) of both erasures and additions. (2) By the forgery of the entire writing, or of the signature. This may be accomplished in several methods:—(*a*) by tracing a fraudulent signature over a genuine signature by means of the pen or pencil; and (*b*) by copying or imitating the genuine signature otherwise than by tracing.

The methods of detecting frauds thus committed are various, according to the nature of the fraud:

First: Composite Photography has been proposed as a means of determining the authorship of disputed documents. While this method seems to be founded on correct scientific principles, yet in our opinion the cases in which it may be applied in practice will be very few, if any. In order to apply this method for the identification of a writing, whose authenticity is questioned, very much more material is required than is usually available in any case presented in court. As a rule, questions of authenticity arise principally with reference to disputed signatures; and under the rules of evidence applicable in England and in most of the States, it is very difficult, if not impossible, to procure other similar signatures, as a means of identification; and without a very considerable number of similar signatures, this method can not be adopted. Moreover, the difficulties of technique are such as to render it impracticable in the hands of an ordinary observer.

Second: Another means of identifying the authorship of a document is that proposed by Prof. T. C. Mendenhall, and published, I believe, in *Science* some years since. This method consists in what may be styled "Curves of Literary Style," the co-ordinates of which, if I remember correctly, consist of the number of words and the number of syllables which they respectively contain. This method, although very interesting and probably of considerable scientific value in cases to which it is applicable, is not, in the opinion of the writer, of any practical value in the ordinary administration of justice as cases are presented for adjudication in court; for the reason that it requires vastly more material than is ever accessible in ordinary practice.

Third: The ordinary method of identifying writing in use in courts of justice is that styled "Comparison of Hands." In this connection a brief review of the rules of law applicable to this case may not be inappropriate. By the English common law, a witness is competent to testify respecting the genuineness of a disputed writing—(1) If he has seen the party alleged to have made the writing in question, write; and it is sufficient for this purpose that the witness has seen him write but once, and then only his name. (2) The second mode of acquiring knowledge of the handwriting of another is by the receipt from such person of written communications purporting to be in his handwriting, either in the usual

course of business or in reply to letters written by the witness, provided such communications have been acted upon as genuine by the parties, or adopted as such in the regular course of business. (3) Another method is by means of the comparison of the specimen in question with fairly selected, undisputed specimens of the alleged handwriting. With respect to this third method, there is considerable conflict of authority. By the English common law such comparison was permitted in two cases—(*a*) where the writings in question are of such antiquity that living witnesses can not be had, and yet are not so old as to prove themselves. Here the course is to produce other documents, either admitted to be genuine or proved to have been respected, treated and acted upon as such by the parties, and to call experts to compare them and to testify their opinion concerning the genuineness of the instrument in question. (*b*) Where other writings admitted to be genuine are already in the case.

Considerable diversity of practice at present prevails in England and in the various States of the Union; this diversity has been brought about partly by statutory enactment, and partly by decisions of the courts. Without undertaking to go into the details of the subject, we may state that in the State of Illinois the English rule is applied with some strictness, and excluding the case of ancient documents, the only case, as we understand it, in which a comparison of hands by experts is permitted, is where other writings admitted or proved to be genuine are properly in evidence and pertinent to the case: *Brobston* v. *Cahill* (1872), 64 Ills. 356, in which the rule laid down in *Jumpertz* v. *The People* (1859), 21 Id. 408, is explained and qualified. See also in general, 1 Greenleaf on Evidence, Sec. 577 *et seq.*; Chamberlayne's Best on Evidence, Sec. 232 and Note; Rogers on Expert Testimony, Sec. 139, 140 *et seq.*

With reference to this third method, by comparison of hands, two cases arise —First, where the material upon which the judgment is based consists of the disputed and genuine signatures; and, second, where the material at hand consists of a letter or letters, or other documents more voluminous. In the former case, the judgment arrived at does not, of course, possess the same weight as where more material is at hand upon which to form a judgment; nevertheless, cases do arise in which the expert is warranted, upon a comparison of the signatures, in expressing a very clear opinion that the signatures were or were not made by the same person.

As to the method of arriving at an opinion upon the comparison of one or more other signatures, the cases are so diverse that no general rules can be laid down. Each case must be decided upon its own particular facts.

In the second case, not unfrequently a conclusion can be arrived at having a high degree of probability amounting almost to a moral certainty. In arriving at a conclusion, many things are to be considered—not only is the form of the letters important, but their manner of combination to form words is even more important. The use of capitals, punctuation, mode of dividing into paragraphs, of making erasures and interlineations, idiomatic expressions, orthography, mechanical construction, style of combination, and other evidences of habit, are important elements upon which to form a judgment. An interesting case of this

kind occurred in the Greenwich County Court; the party denied most positively that a certain receipt was in his handwriting. It read: "Received the Hole of the above." Upon being asked to write a sentence containing the word "whole," he took pains to disguise his hand; but used the above phonetic style of spelling, even writing the capital "H"; and then he ran away to escape prosecution for perjury: Roger's Expert Testimony, Sec. 146; Taylor on Evidence, Sec. 1669. Note: I Greenleaf on Evidence, Sec. 581, Note.

Some years since, two anonymous letters, together with a number of letters written by several different persons, and the minutes of a scientific meeting written by a party not suspected of being the author of the anonymous letters, were submitted to the writer for his opinion. A careful study of the documents led the writer to the conclusion that the anonymous letters were written by the writer of the minutes above referred to; this conclusion was so much at variance with the opinion of the party who submitted the documents for examination that he was disposed to reject it. The writer, however, persisted in his opinion, and upon confronting the supposed author of the anonymous letters with the opinion, and accusing him of the authorship of said anonymous letters, he broke down and acknowledged himself to be their author. In this case, while the form of the letters in the several documents was not by any means identical, yet the manner of combining the several letters to form the more common particles, such as "the," "and," "of," "to," "for," etc., was identical in every instance, thus demonstrating to the mind of the writer the identity of their authorship.

Perfect identity of two signatures is very strong, if not conclusive, evidence of fraud. No two autograph signatures by the same hand will be exactly alike. In the famous Howland Will case, Professor Pierce, at that time professor of Mathematics in Harvard University, testified that the odds were 2,866,000,000,000,000,000,000,000 to 1 that an individual could not with a pen write his name three times so exactly as were the three alleged signatures of Sylvia Ann Howland, the alleged testatrix of the will and two codicils. If, therefore, upon superposition against the light, two signatures exactly coincide, it is morally certain that one of them is forgery.

(4) Another means of detecting forgery is by the internal evidences of fraud, afforded by the writing itself, with or without the aid of comparison with other and genuine writing.

These internal evidences may consist of alterations, such as erasures, additions, etc., above described, or of tracings of the genuine signature by means of a pen or pencil, which tracings are afterwards inked over with a pen; or they may be found in a copy of a genuine signature otherwise than by tracing in the several manners above described. The copy or imitation of the genuine signature may be either freehand or composite, by which latter is meant that the signature is made discontinuously or by piece meal. The detection of frauds attempted in the manner first above described is comparatively easy. A very low power of the microscope will readily reveal the erasures, and not unfrequently the word erased may be made out. When the signature has been traced over a genuine signature,

usually the forger will be found to have failed to entirely cover the original tracings, the character of which, by the aid of a low power, can usually be satisfactorily made out. In this case, also, the signature will usually be found to be discontinuous, and the places where the pen has been put upon and removed from the paper, in endeavoring to cover up the original tracings, can be readily made out, and when thus made out this fact is strong, if not conclusive, evidence of fraud. When the signature has not been traced, but is composite, or made by piece meal, in the manner above described, this can almost always be satisfactorily made out by the use of a low power, and when this composite character is so made out, it is likewise strong, if not conclusive, evidence of fraud. Not unfrequently, by the aid of the microscope, it can be determined that alterations of the instrument were made with a different pen and with different ink; and, not unfrequently, the order in point of time in which they were made can likewise be determined. In questions of this sort, and in general in cases of disputed signatures, photography is of very great service. In the comparison of disputed signatures, the writing in question should, if possible, be compared with the original and not with a photographic copy, such copy being considered by most courts as secondary evidence; nevertheless, photographic enlargements of genuine and disputed signatures, the correctness of which is established by testimony, are very useful as a means of illustrating the evidence of the expert. Not unfrequently also, by the aid of photography, differences in ink may be made out which are insensible to ordinary observation. . . . .—*American Law Register.*

Reviews and Notices of Books

The Veto Power—Its Origin, Development, and Function, in the Government of the United States. By E. C. Mason, A.B. Boston: Ginn & Co., 1890.

This volume, the first of a series of historical monographs, is issued from the University of Harvard, where the author is Instructor of Political Economy. The origin of the veto power is traced back and is shown to be a remnant of the legislative power once held by the English sovereigns, and in time transferred to the chief executives of the American colonies, and finally included in the Constitution of the United States. The disappearance of the use of the power was gradual, and its exercise by Queen Anne, in the year 1708, is the last instance in English history in which the sovereign has directly refused assent to a bill passed by both Houses of Parliament. The history of the veto power in the Federal and the various state governments is enlarged upon, and interesting statistics of the bills vetoed, and the Presidents who exercised the power, are given. The many constitutional points and features involved are dwelt upon at length, but in such a way as to concentrate the interest of the reader.

DIARY FOR NOVEMBER.

1. Sat.....All Saints' Day. Sir Matthew Hale born, 1609. Last day for filing papers and fees for final examination.
2. Sun.....*22nd Sunday after Trinity.* O'Connor, J., Q.B. D., died, 1887.
7. Fri .....Battle of Tippecanoe.
9. Sun.....*23rd Sunday after Trinity.* Prince of Wales born, 1841.
11. Tues ....Court of Appeal sits. Battle of Chrysler's Farm, 1813.
12. Wed.....W. B. Richards, 10th C.J. of Q.B., 1868. J. H. Hagarty, 12th C J. of Q.B., 1878.
14. Fri .....Falconbridge, J. Q.B.D., appointed 1887.
15. Sat.....Sir M. C. Cameron, J. Q.B., 1878. Macaulay, 1st C.J. of C.P., 1849.
16. Sun.....*24th Sunday after Trinity.* Erskine died 1823, æt. 73.
17. Mon.....Mich. Term commences. High Court Just. Q. B. & C.P.D. Sittings.
19. Wed.....Armour, J., gaz. C.J. Q.B.D., 1887. Galt, J., gaz. C.J. C.P.D., 1887.
21. Fri .....J. Elmsley, 2nd C.J. of Q.B., 1796. Princess Royal born, 1840.
22. Sat.....Lord Clive, 1774.
23. Sun.....*25th Sunday after Trinity.*
25. Tues ....Marquis of Lorne, Governor-General, 1878.
30. Sun.....*Advent Sunday.* St. Andrews. Moss, J.A., appointed C.J. of Appeal, 1877. Street, J. Q.B.D., and McMahon, J. C.P.D., appointed 1887.

Reports.

ONTARIO.

COUNTY COURT, COUNTY OF YORK.

[Reported for THE CANADA LAW JOURNAL]

ABELL *v.* NICOL.

Creditors' Relief Act—Execution Creditors—Interpleader—Scheme of Distribution.

Certain execution creditors had contested a claim under a Bill of Sale successfully. The Bargainee, though his Bill of Sale covered goods which were sold by the sheriff for $1,734, had offered upon the motion for an interpleader issue to abandon all claims to the goods if his alleged *bona fide* claim for $380, and some small costs of taking possession were paid by the attacking creditors. This offer was refused and the creditors succeeded in getting the Bill of Sale set aside. The sheriff prepared a scheme of distribution, allotting the whole $1,734 amongst the execution creditors, plaintiffs in the interpleader issue only, omitting any dividend to two subsequent execution creditors.

Held (1), That looking to the object of the Creditors' Relief Act, to make an equitable distribution of the debtor's assets amongst all the execution creditors, a subsequent creditor who had lodged his execution in time should rank on the fund—first deducting the sum of $400 and the solicitor and client costs of the contesting creditors—this sum being the real claim of the Bargainee, and the actual amount saved to the creditors by the litigation. The sheriff's scheme directed to be remodelled upon this view.

Held (2), That in attachment proceedings, under the Absconding Debtors' Act, the sheriff should make his statutory entry under Sec. 4, Creditors' Relief Act, forthwith after any final order for distribution (which order in this case was made at the close of the interpleader proceedings), and not at the expiration of six months from the date of the issue of the first writ of attachment. The sheriff had made his entry at this latter date.

Held (3), That a subsequent creditor who had proved his claim within thirty days from such date, and more than thirty days from the date of the order for distribution, could not be allowed to rank on the fund—the sheriff's wrong entry could not be urged to support such claim. *Semble:* If a creditor fears that he cannot prove his claim within the proper time, he should apply to the Court under Sec. 27 of the Absconding Debtors' Act for an order to extend the time for distribution.

On February 27th, 1890, a writ of attachment issued against the debtor, David Nicol, at the suit of one Monkman, and was duly placed in the hands of the Sheriff of York, who seized the goods of the debtor thereunder.

On March 18th one Rennie obtained a judgment against Nicol, and placed his execution in the sheriff's hands. Prior to this one W. H. Muckle claimed a part of the goods (seized under the attachment) by virtue of a bill of sale made to him by the debtor; and an interpleader order was made by the Master on March 21st, which directed the claimant's right to the goods covered by the bill of sale to be tried. Other parties, amongst them Abell, had served notice of claims to certain goods seized by the sheriff, these goods being manufactured articles, the property of these latter claimants under alleged hire receipts. The attaching and execution creditors declined to contest the title of these latter articles, and the interpleader order as to these claims directed the goods to be delivered up to the claimants. The sheriff, by the said order, was directed to sell the goods covered by the claim of Muckle under his bill of sale, and to hold the proceeds of the sale to abide the further order of the Court. The goods sold realized $1,734.

On April 11th, one John Nicol obtained a judgment and placed an execution in the sheriff's hands for the amount thereof. The attaching creditor, Monkman, obtained his judgment on April 13th, and on May 2nd placed his writ of execution in the sheriff's hands. The interpleader issue, delivered on April 1st, contained the names of Monkman (the attaching creditor), Rennie & Co., execution creditors, and John Nicol, who at that time had not obtained his judgment, but who joined in the proceedings.

On May 5th the interpleader issue was tried, and judgment pronounced in favor of the plaintiffs (at that date the only execution creditors), and on the same day the execution debtor made

an assignment for the benefit of creditors, and delivered the same to the sheriff.

On June 16th a final order in the interpleader proceedings was made, directing the sheriff to distribute the monies in his hands amongst the parties entitled. On July 11th, John Abell, who contested the sheriff's proposed scheme of distribution, obtained a judgment, and on July 14th placed his execution in the sheriff's hands. On July 28th the sheriff made the usual entry in his books under the Creditors' Relief Act.

On August 6th one John VanNostrand obtained a judgment, and placed his execution in the sheriff's hands. On August 28th the sheriff served his scheme of distribution, by which he divided the amount realized from the proceeds of the goods sold under the interpleader order, amongst the plaintiffs only; in those proceedings ignoring the claims of John Abell and John VanNostrand, two creditors who had executions in hands at the date of his preparing his scheme of distribution, and which writs came into his hands within a month after he had made the entry in his book under Sec. 4 of the Creditors' Relief Act. These latter two creditors claimed to be entitled to rank rateably on these monies or on a part of them.

R. J. Maclennan for plaintiff.

R. Boultbee for attaching creditor.

Mercer for Rennie.

Duncan for John Nicol.

F. Eddis for VanNostrand.

No one appeared for defendant.

McDOUGALL, Co.J.—It appears that Muckle, the claimant, admitted in his affidavit making his claim, that he only held the bill of sale (upon the goods the subject of interpleader) as security for the payment of $380.09, and stated in this affidavit that upon the payment to him of that amount and his costs of taking possession of these goods, he would abandon all claims to the goods. His claim as to this or any amount was held to be invalid upon the trial of the interpleader issue. Abell and VanNostrand, in their claim to reform the sheriff's scheme of distribution, contend to be ranked only upon the balance of the monies realized by the interpleader proceedings, after deducting this $380.09 and any unpaid costs incurred by the plaintiffs in contesting Muckle's claim. They say this was the whole sum obtained as the fruits of the interpleader proceedings. They say Muckle claimed no more, and had he succeeded in his issue that is the only sum with his costs that he could have lawfully demanded from the sheriff out of the proceeds of the sale of the goods covered by his bill of sale. On the other hand, it is strongly urged that Muckle was supporting his bill of sale, and that had he succeeded in maintaining its validity, he was entitled to the whole proceeds of the sale of the goods covered by it. The interpleader order itself expressly directed that "the question to be tried should be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the attaching and execution creditors," and from this it is contended that the whole value of the goods seized were secured to the estate by the plaintiffs in the interpleader proceedings contesting successfully Muckle's claim, and that only those creditors who joined in those proceedings should share in the division of the monies arising therefrom.

Strictly speaking, the title to the whole of the goods covered by the bill of sale were in question, and had the value been only about $400 there would be no dispute now; but having realized $1,734 at the sheriff's sale the question now arises, was this amount saved to the estate by the interpleader proceedings? Muckle only claimed to have a claim for $380 and some charges for possession, and had the creditors consented to his being paid this amount, Muckle expressly waived all claim to any balance.

Looking at the intention of the Act to effect an equitable division of the debtor's assets amongst all his creditors, and yet by s-s. 3 of s. 4 to protect fully any creditors who run risk in undertaking legal proceedings to contest unjust claims, I think I am justified in holding that any surplus after deducting the true amount of Muckles claim, $380, his costs of possession, say $20 more (though nothing appears on the papers before me to fix the sum), and any costs (including solicitor and client costs) incurred by the plaintiffs in contesting Muckle's claim beyond costs realized from Muckle himself, should be distributed between the other creditors who placed executions or filed claims under the Creditors' Relief Act before the 19th of July. I fix this date because I think under 51 Vict., c. 11, s. 1 (Ont.), the sheriff should have made his entry forthwith after the final order of distribution, made by the Master, on the 18th of June. S. 22 of the Creditors' Relief Act, when it says

that the estate shall be realized under the provisions of the Absconding Debtors' Act, would cover, in my opinion, the sale of the goods and chattels under s. 20 of that Act, which sale was made in this case by order of the Court. The distribution must then take place under the provisions of the Creditors' Relief Act, as directed by s. 22 of that Act. 51 Vict., c. 11, s. 1, removes any doubts as to when the statutory entry should be made where there are interpleader proceedings.

The only section of the Absconding Debtors' Act which creates any difficulty in upholding this opinion is s. 26, which says that "if the property and effects of the absconding debtor are insufficient to satisfy the executions and other claims certified, none shall be allowed to share unless their proceedings under this Act or the Creditors' Relief Act, or the provisions of the Division Courts Act respecting absconding debtors, were commenced within six months from the date of the first writ of attachment."

In *Macfie* v. *Pearson*, 8 Ont., 746, Mr. Justice ROSE held that this provision as to six months was in effect repealed by 46 Vict., c. 6 (s. 4, I presume). This section is now in the consolidation s. 20 of the Absconding Debtors' Act. The revisors have chosen, however, to leave the six months section above quoted as being still in force (section 26 in the Consolidated Act), notwithstanding the expression of opinion in *Macfie* v. *Pearson*. That this decision must have attracted the attention of the Legislature is, I think, manifest by the passing of 49 Vict., c. 16, s. 36 (now section 22 of the Creditors' Relief Act). By that section it is expressly directed what shall be done where proceedings are commenced under the Absconding Debtors' Act either before or after the placing of an execution in the sheriff's hands. It is necessary therefore to reconcile the conflicting provisions of section 22 of the Creditors' Relief Act and sections 20 and 26 of the Absconding Debtors' Act, and s. 1 of c. 11, 51 Vict., a somewhat difficult task—but it would appear to me that where the sale of goods attached is made under the powers contained in section 20 of the Absconding Debtors' Act, and interpleader proceedings, as here, have been instituted and terminated by a final order directing distribution, any creditor desiring to come in to share in the distribution must commence his proceedings within thirty days from the date of the sheriff's entry, which should be made, as I have said above, forthwith after the order for distribution, and if such creditor cannot secure his judgment and execution or certificate within thirty days, he must apply to the Court for an order delaying the distribution under section 27 of the Absconding Debtors' Act.

This construction, in my opinion, enables the provisions of both acts to be justly carried out, and at the same time to allow an expeditious realization of the debtor's estate.

The effect of this view would exclude Van-Nostrand's claim to be ranked had the sheriff made his entry on the 18th or 19th of June. Does the sheriff's delay in making his entry until the 28th July affect the rights of the prior creditors? I do not think so. (See *Maxwell* v. *Scarfe*, 18 Ont., 529.) I therefore disallow Van-Nostrand's claim to be ranked upon the monies in the sheriff's hands.

The distribution scheme of the sheriff will therefore have to be remodelled, and John Abell included as an execution creditor to share in the $1,734, less the deductions I have spoken of, $400 and costs. If necessary the interpleader plaintiffs may file an affidavit to show the amount of these costs (if any).

As this point is a new one and properly stated by this motion for the opinion of the Court, I make no order as to costs.

COURT OF APPEAL.

From 1st Div. Ct., York.] [Oct. 18.
OSLER, J.A.]

WOOD *v.* JOSELIN.

Assignments and preferences—Garnishment of debt—Subsequent assignment of primary debtor—Priorities—R.S.O. (1887), c. 124, s. 9.

This is an appeal by the plaintiff from the judgment of the Junior Judge of the First Division Court, York, discharging the garnishee from the action *(post.* p. 563).

OSLER, J.A.—This action was brought by the plaintiff, as primary creditor, against Joselin, as primary debtor, and Sheppard, garnishee, under the appropriate clauses of the Division Courts Act, the primary creditor's claim not being a judgment. The summons was duly served upon the parties on the 30th and 31st January, 1890, and judgment was obtained against the primary debtor on the 14th February. The case was

adjourned as against the garnishee pending the trial of an action against him, by the primary debtor, in the High Court for the debt, part of which was attached in the present suit. Judgment was recovered therein against the garnishee in April, and on the 5th May the primary debtor made an assignment, under the Assignment and Preference Act to one Sumerfeldt, who thereupon gave notice to the plaintiff in this suit that he claimed the debt so attached by him. Thereupon the case came on at an adjourned hearing against the garnishee, and the judgment appealed from was given, discharging him from the suit on the ground that the assignment took precedence of the attachment, and the plaintiff was ordered to pay the garnishee's costs. The question is, whether an assignment under the Act does intercept or take precedence of such an attachment. It is clear that the service of the garnishee summons does not credit as between garnisher and garnishee any debt either at law or in equity, and does not operate to any extent as an assignment or transfer of the debt to the garnisher. *Chatterton* v. *Walmey*, 17 Chy.D., 259, C.A., *In re Combined Weighing and Advertising Machines Co.*, 43 Chy.D., 99. Nevertheless, unless sec. 9 of the Assignment and Preference Act applies, the effect of service of the order or summons (it will be understood that I am speaking of the summons under sections of the Division Courts Act), is to prevent the debtor from dealing with the debt to the prejudice of the garnisher, who has obtained a statutory right which he is entitled to follow out to its legitimate results. If, therefore, it is to be intercepted by the subsequent assignment, and the garnisher deprived of the right thus acquired, it must be because his case comes plainly within the provisions of the 9th section. But for that section it is manifest that the assignee could only take what the debtor could give him, and that he would take subject to any rights which creditors had acquired against the property. It may be conceded that an attaching order or summons is a species of execution—an execution against a debt. That is so held and it is so described *In re Stanhope Silk Collieries Co.*, 11 Chy.D., with reference to its effect. But in common parlance we do not speak of it as an execution, but as an attachment, and we see in the English Bankrupt Acts, containing provisions cognate to the 9th section of this Act, that the distinction is maintained, and the case of execution and attachment expressly provided for. *Ex parte Pillars*, 17 Chy. D.,653, *Butler* v. *Wearing*, 17 Q.B.D., 182. Giving all due weight to the fact, no doubt apparent on the face of the quasi insolvent legislation found in the Assignment Act and the Creditors' Relief Act, that the object of the legislature is to prevent one creditor from obtaining by preference or otherwise advantage over others, we must, nevertheless, see that the language of the 9th section fairly treated embraces this case. I think that the reference to the execution in the sheriff's hands and the special provisions as to the costs of the execution creditor, show that the executions therein referred to are executions ordinarily known as such—executions placed in the sheriff's hands, under which the assignor's goods or lands may be seized and sold. It appears to me that the case of an attachment of a debt was not present to the mind of the legislature ; that it has not been provided for, and, therefore, that the right of the attaching creditor has not been taken away. Grotesque and unjust as are provisions of the Act in some respects as regards the execution creditor, they would, if he were within them, be doubly so as regards an attaching creditor. The execution creditor by *fi. fa.* has a judgment for his debt, the costs of which he is entitled to recover from his debtor if he can. They are, and remain, a debt, and he can prove for them as such against the estate or the lands of the assignee, if he was not entitled to enforce payment in full under his execution. On the other hand, if the garnisher is cut out by the assignment and the attaching order or summons discharged, the costs which he has lawfully incurred are lost to him, and he may even, as in the case before me, be ordered to pay the costs of a proceeding, against which, until the execution of the assignment, the garnishee had no defence whatever. Nay, if the attaching order is an execution within the meaning of the section a final order to pay over may have been made or judgment recovered against the garnishee in a contested issue as to the debt and execution against him placed in the sheriff's hands, and yet as against the original debtor, the execution by way of attachment not having been completed by assignment of the debt, it would probably follow that all these proceedings would go for nothing. The creditor must lose his costs, and the assignee, since he cannot take the benefit of them, must bring his own action for

the debt, the liability for which has already been tried between the garnisher and the garnishee. Upon the whole, and after a good deal of consideration, due to the careful judgment of the learned Judge of the Division Court, I have come to the conclusion that the appeal must be allowed. It was contended by Mr. Shepley that section 9 in question was *ultra vires* the legislature. I am glad to find a way of disposing of the case without entering upon that question. I do not notice anything in the Creditors' Relief Act, which affects the general question argued and decided. But that Act does not apply to a Division Court execution or executions where there is no execution from the High Court in the sheriff's hands against the debtor. The garnisher must have judgment in the court below for his debt with costs, and also the usual costs of this appeal.

arly Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

From 1st Div. Ct., York.]

OSLER, J.A.] [Oct. 18.

WOOD *v.* JOSELIN.

Assignments and preferences—Garnishment of debt—Subsequent assignment of primary debtor—Priorities—R.S.O. (1887), c. 124, s. 9.

An assignment for the benefit of creditors by a primary debtor, after a garnishing summons has been duly served upon him and the garnishee, and judgment has been obtained thereon, does not intercept or take precedence of the judgment, and the primary creditor may enforce payment by the garnishee.

Judgment of the First Divison Court of York reversed.

G. F. Shepley, Q.C., for the appellant.

J. F. Woodworth for the respondent.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

STREET, J.] [Sept. 6.

MARTHINSON *v.* PATTERSON.

Chattel mortgage—Defect—Taking possession—Rights as against subsequent mortgagee—Full amount of mortgage money not advanced, effect of—Foreign contract as to chattels in Ontario.

A defect in a chattel mortgage is not cured, as against a subsequent mortgagee, by taking possession of the chattels, where the subsequent mortgage was made before such possession, although at the time of the seizure there was no default under the subsequent mortgage and the mortgagor was by the terms of it entitled to retain possession until default.

Where the full amount mentioned in a chattel mortgage is not actually advanced at the date at which it is given, it should nevertheless, in the absence of fraudulent intent or bad faith, stand as against a subsequent mortgagee as a security for the amount actually advanced at the time when the subsequent mortgagee's rights accrued. The rights of parties resident in a foreign country, and there making a contract in regard to goods in Ontario, are governed by the law of Ontario.

River Stave Co. v. *Sill*, 12 O.R., 557, followed.

Shepley, Q.C., for the plaintiff.

Masson, Q.C., for the defendant.

BOYD, C.] [Oct. 18.

KENT *v.* KENT.

Husband and wife—Conveyance of land to wife directly—Devise of land by wife—Tenancy by the courtesy—Adverse possession—Statute of Limitations—Infants—R.S.O., c. 111, s. 43—Devise of land conveyed to married woman by strangers.

A conveyance of lands from a husband to his wife directly was made in 1870, was expressed to be in consideration of "respect and of one dollar," was in the usual statutory short form, and was duly registered. The marriage was in 1854.

Held, that the lands passed by the conveyance to the wife as her separate property.

The wife died in 1872, having made a will leaving her real estate to her two daughters, then aged respectively seventeen and twelve. The father remained in sole possession from the mother's death till his own death in 1890. This action was begun in 1890 by the younger daughter and the son of the elder to recover possession from the devisee of the husband.

Held, that the husband had no title by the courtesy, because he was excluded by the devise to the daughters of the lands conveyed by him

to his wife; he was therefore not rightfully in possession as against the daughters; and, as the younger daughter had by R.S.O., c. III, s. 43, only five years after coming of age to begin proceedings, the action was barred as to these lands.

Other lands were conveyed to the wife by strangers in 1867 and 1869, of which the husband also remained in possession after her death.

Held, that the devise of these lands by her did not affect the right of her husband as tenant by the courtesy, and his possession was in that character; and, therefore, as to these lands, the action was not barred.

Gibbons, Q.C., and *George McNab*, for plaintiffs.

W. R. Meredith, Q.C., and *E. R. Cameron*, for the defendant.

Chancery Division.

Full Court.] [Sept. 4.

STILLIWAY *v.* CITY OF TORONTO.

Municipal law—Action for negligence—Claim under R.S.O., 1887, c. 184, s. 531—Judgment against third party.

The plaintiff brought this action against the City of Toronto for damages for injuries sustained through a defective sidewalk. Before pleading the defendants applied under R.S.O., 1887, c. 184, s. 531, and obtained an order making O. a party defendant, and in their defence alleged that O. was responsible for the defect in the sidewalk.

O. also delivered a full defence to the action and took part by counsel at the trial.

A verdict was rendered for $400 damages, and the jury found that O. was responsible for the cause of the accident.

After verdict the plaintiff applied for leave to amend the statement of claim by claiming directly against O., which leave was granted, and judgment entered against O. for the damages with full costs of suit, and dismissing the action with costs as against the city.

Held, that the amendment was rightfully allowed, and the judgment should not be disturbed.

Miller, Q.C., for the plaintiffs.

Biggar, Q.C., for the City of Toronto.

J. K. Kerr, Q.C., for the defendant, O.

Full Court.] [Sept. 9.

THOROLD *v.* NEELON.

Company—Liability to contribute—Fully paid-up shares—Notice—Allowance of discount.

A railway company agreed to transfer to N., a director, a certain number of fully paid-up shares as security for payment of a loan of $100,000, then made by N. to the company, and afterwards did transfer what purported to be fully paid-up shares to the number stipulated to him. An execution creditor, with writs of *fi. fa.* returned *nulla bona*, had brought this action against N., alleging the shares not to be fully paid-up, but that a sufficient sum remained due thereon to cover his judgment, and asking for an order against N. for payment accordingly. It appeared that seventy-five of the shares had formerly been part of a lot of 168 shares, held by D.B., who had paid in all $3,750 to the company, which represented the par value of seventy-five shares. The directors resolved to treat the $3,750 accordingly as payment in full of seventy-five of the 168 shares, and then got D.B. to transfer these seventy-five shares to N., in part compliance with their agreement with him. As to the balance of the shares transferred to N., it appeared that a discount had been allowed upon them, but N. had no knowledge of this fact.

Held, that the shares must be considered as fully paid up in the hands of N.

Collier for the plaintiffs.

W. Cassels, Q.C., for the defendant.

ROBERTSON, J.] [Sept. 12.

RE COLLINGWOOD DRY DOCK COMPANY—WEDDELL'S CASE.

Company — Winding-up proceedings — Statements as to shares in petition of incorporation —Liability to contribute.

In winding-up proceedings of the above company, it appeared that W. had in the petition for incorporation, declared that he had taken 250 shares of the capital stock of the company.

Held, that bearing in mind the provisions of the Ontario Joint Stock Companies Letters Patent Act, R.S.O., 1887, c. 157, s. 7, s-ss. 2, 3, 4; ss. 13, 30, 43, W. was liable to be held as a contributory to the amount of these shares.

The general scope of the Act shows that it was the intention of the legislature to compel persons who lend their names to establish a

company to be really substantially liable, and not to allow them to hold out their names as the promoters, and at the same time to incur no obligation.

W. H. P. Clement for W.

J. M. Clark for the liquidator.

FERGUSON, J.] [Sept. 4.

SECORD *v.* TRIMMER.

Act to Simplify the Procedure for Enforcing Mechanics' Liens—Scope of Act—Procedure.

Held, that notwithstanding the apparently unlimited provisions of section 1 of the Act of last session, entitled an Act to Simplify the Procedure for Enforcing Mechanics' Liens, a perusal of the whole Act leads fairly to the conclusion that the intention of the legislature in passing it was to simplify procedure in the High Court only for enforcing mechanics' liens, leaving the summary and simple procedure for that purpose before fully provided for in County Courts and Division Courts unaffected by the passing of the Act.

Cox for appellant.

Aylesworth, Q.C., contra.

BOYD, C.] [Oct. 10.

RE TOWNSHIPS OF HARWICH AND RALEIGH.

Water and watercourses—Arbitration and award—Municipal corporations—Arbitration under s. 590 of R.S.O., c. 184—Constitution of board of arbitrators—"Interested," in s. 389, meaning of.

A question arose under s. 590 of the Municipal Act, R.S.O., c. 184, between the townships of H. and R., whether H. caused waters to flow on R., to the detriment of R., which ought to be drained from R. at the expense of H. The township of T. also discharged waters over the other side of R., opposite H.

Held, that T. was not "interested" within the meaning of s. 389 of the Act; and therefore that a board of three arbitrators appointed, pursuant to that section, one by each of the three municipalities, was not properly constituted to determine the question; and their award was set aside.

M. Wilson, Q.C., for Harwich.

W. R. Meredith, Q.C., and *Wm. Douglas*, Q.C., for Raleigh.

BOYD, C.] [Sept 30.

ELLIOTT *v.* ELLIOTT.

Landlord and tenant—Covenant to expend manure upon the premises—Manure made after expiry of term—Mesne profits—Claim in former action—Estoppel.

A married woman, lessee, covenanted to use upon the demised premises all the straw and dung which should be made thereupon,

Held, that the lessor was entitled to recover for manure removed from the premises which was there at the expiry of the term, but not for manure made thereafter, while the lessee was overholding.

Hendall v. *Pollock*, 6 M. & W., 529, followed.

In a former action of ejectment brought by the plaintiff against the defendants, mesne profits were claimed, but no evidence was given in regard to them,

Held, that the plaintiff was not estopped from recovering in this action occupation rent for the premises since the expiry of the term.

J. B. Clarke, Q.C., and *J. B. Jackson*, for the plaintiff.

Middleton for defendants.

BOYD, C.] [Sept. 30.

WOOD *v.* STRINGER.

Mechanics' lien—Ascertainment of amount due to contractor—Parties—Registered owner not liable on contract—Work and labor—Acceptance of bad work—Congregation occupying church—Reduction of price for bad work—Measure of—Extras—Written order for.

In an action to enforce a mechanics' lien brought by material men against the contractor and the registered owner, the contest was as to whether anything was due to the contractor, and the registered owner was not liable on the contract.

Held, that the amount due to the contractor could not be ascertained without the persons liable on the contract being brought before the Court. The work in question was the building of a church. The last of the work done was the pews, and as they were being put in, objection was made by the architect to their material and workmanship.

Held, that the occupying of the church with the pews objected to in it was not an acceptance of the work.

Held, also, that a reduction of the contract price by an amount equal to the difference in value between the bad stuff and that which should have been used was not an adequate measure of the set-off to which the proprietors were entitled.

The contract provided that no extras were to be allowed unless expressly ordered and payments for the same expressly agreed for in writing by the proprietors or architects.

Held, that extras could not be allowed unless a writing was proved.

F. E. Hodgins for plaintiffs.

James Reeve, Q.C., for defendant, Colville.

BOYD, C.] [Nov. 7.

BICKERTON *v.* DAKIN.

Mechanics' lien—Partnership—Claim of lien registered in name of, after dissolution—R.S.O., c. 126, ss. 16, 19—"Claimant"—"Person entitled to the lien"—53 Vict., c. 37—Jurisdiction of High Court—Joining liens—Statement of claim under 53 Vict., c. 37, s. 2—Amendment.

A claim of lien under the Mechanics' Lien Act was registered, and proceedings to enforce it were taken in the name of a firm which had been dissolved, and one of the members of which had died prior to the registration. The materials for which the lien was claimed were, however, all furnished by the firm before the dissolution or death, and it was provided that the dissolution was not to affect this and other engagements.

S. 16 of R.S.O., c. 126, under which the lien was registered, speaks of the "claimant" of the lien, and s. 19 of the "person entitled to the lien." The Interpretation Act, R.S.O., c. 1, s. 8 (13), shews what the word "person" shall include, and does not mention a "firm" or "partnership."

Held, that the lien attached on the land and was validly continued; the difficulty as to the word "person" was overcome by the use of the alternative word "claimant," which extended to a partnership using the firm name in the registration of the lien.

Under the Act to Simplify the Procedure for Enforcing Mechanics' Liens, 53 Vict., c. 37, it is competent to join liens so as to give jurisdiction to the High Court, though each apart may be within the competence of an inferior court.

The plaintiffs in proceeding under 53 Vict., c. 37, to enforce their lien filed with a Master as the "statement of claim" mentioned in s. 2, a copy of the claim of lien and affidavit registered, verified by an affidavit, and the Master thereupon issued his certificate.

Held, that if the "statement of claim" filed was not in proper form, inasmuch as it contained all the facts required for compliance with the Act, an amendment *nunc pro tunc* should be allowed.

Masten for the plaintiffs.

Aylesworth, Q.C., for the defendant Nesbitt.

Practice.

BOYD, C.] —— [Nov. 4.

IN RE ANCIENT ORDER OF FORESTERS AND CASTNER.

Security for costs—Interpleader.

Security for costs may be ordered in interpleader proceedings.

Swain v. *Stoddart*, 12 P.R., 490, approved and followed.

Belmont v. *Aynard*, 4 C.P.D., 221, 352, distinguished.

The party substantially and in fact moving the proceedings, whether plaintiff or defendant in the interpleader issue, should, if resident out of the jurisdiction, give security to the opposite party.

A. G. Chisholm for the claimant Castner.

Hellmuth for the claimant Keishner.

BOYD, C.] [Oct. 22.

PATERSON *v.* DUNN.

Pleading—Slander—Particulars.

In an action of slander, the statement of claim, after various specific allegations, charged that at divers times during the years 1888, 1889, and 1890, and to many people in and about the city of T., the defendant falsely and maliciously repeated the said slanders and words of like effect, and spoke of the plaintiff words conveying the meaning the said slanders and the said words conveyed,

Held, that this was embarrassing and should be stricken out unless the plaintiff elected to amend upon payment of costs.

F. W. Garvin for plaintiff.

Middleton for defendant.

BOYD, C.] [Oct. 28.

CRABBE *v.* HICKSON.

Discovery—Particulars—Action for wrongful dismissal—Defence of misconduct.

In an action for wrongful dismissal, where the defence is misconduct generally, it is proper to direct particulars showing the nature and character of the instances relied on by the employer; these particulars should set forth the dates, substantial particulars, and circumstances of all the instances and occasions wherein and whereon the plaintiff misconducted himself, on which the defendant means to rely; and leave should be given to supplement with further particulars if discovered before trial.

E. D. Armour, Q.C., for the plaintiff.

W. R. Smyth for the defendants.

BOYD, C.] [Oct. 22.

IN RE SOLICITORS.

Solicitor and client—Taxation of bill of costs by assignee for creditors of client—Cost of taxation—Assignee personally entitled—Set-off.

The parties who initiate and intervene upon the taxation of a solicitor's bill of costs become personally liable to pay the costs of taxation.

And where solicitors rendered to the assignee of an insolvent their bill for services to the insolvent, and the assignee taxed the bill and had it reduced by more than one-sixth,

Held, that he had a right personally to recover from the solicitors the costs of the taxation, and that there should be no set-off against the amount coming to the solicitors from the estate of the insolvent as a dividend upon their bill.

Where authorities acted upon were not cited, no costs were given.

Delamere, Q.C., for the solicitors.

Aylesworth, Q.C., for the assignee.

BOYD, C.] [Oct. 28.

HALL *v.* HOGG.

Costs—Mechanics' lien action—Parties—Attacking status of lien-holders—Costs of owner—Costs of lien-holders—Scale of costs.

In an action by lien-holders to enforce their lien under the Mechanics' Lien Act it is not necessary to make other holders of registered liens parties in the first instance in order to attack their status as lien-holders; but this can be done where they are added as defendants in the Master's office.

The amount due from the owner to the contractor should be paid into court by the latter less his costs, which should be taxed as to a stakeholder watching the case.

The costs of lien-holders establishing their liens should be paid as a first charge on the fund.

The costs of lien-holders subsequent to judgment of reference should be taxed upon the scale appropriate to the amount found due to each.

J. A. Macdonald for the plaintiffs.

A. Hoskin, Q.C., for the defendant Fewtrell.

C. W. Kerr, for the defendant Howland.

C. Henderson, for the defendant Radcliff.

BOYD, C.] [Oct. 22.

CLARKE *v.* CREIGHTON.

Costs—Execution for—Rule 863—"Immediately"—Set-off—Rule 1205—"Interlocutory"—Costs after judgment—Solicitor's lien—Divisions of Court—Entitling papers—Amendment.

The word "immediately" in Rule 863 means "instanter"; and a party to whom costs are awarded by an order may issue execution therefor on the day of the taxation.

Proceedings may be considered "interlocutory" within the meaning of Rule 1205 till satisfaction is obtained in respect of the moneys, costs, or subject-matter in controversy; and where judgment was given for payment by the plaintiff to the insolvent defendant of the costs of the action, and the defendant's solicitors were by an order declared to have a lien upon such judgment, and the plaintiff became entitled against the defendant to costs of garnishing proceedings, upon the judgment, begun before the solicitors lien was declared, a set-off was allowed.

This action was in the Queen's Bench Division; but the plaintiff, in applying in respect to the costs of writs of *fi. fa.* and a set-off of costs, entitled his proceedings in the Chancery Division and "in the matter of certain orders made in the action."

Held, that this was formally wrong; but an amendment was allowed on payment of costs.

S. R. Clarke, the plaintiff in person.

A. H. Marsh, Q.C., for the defendant.

MANITOBA.

COURT OF QUEEN'S BENCH.

Full Court.] [October 14.

WATEROUS v. JONES.

Statute of Frauds—Written guarantee.

The plaintiffs sued the defendant upon a written guarantee in these words :

High Bluff, Sept: 1st, 1887.

I, James P. Jones, Thresher, hereby agree to become responsible for the debt contracted by James Jones to the Waterous Engine Works Co'y, Ltd., of Winnipeg, the said debt being past due notes and accounts and interest due on the Champion Engine and Separator purchased by him the said James Jones and C. Neelands under the terms and conditions of their the said Waterous Engine Works contract and agreement, all of which terms and conditions I hereby agree to abide by.

JAMES P. JONES [Seal].

Witness—Geo. Erb.

Held, per KILLAM, J., that the plaintiffs could not sue upon the alleged agreement as a covenant, not being named therein as covenantees—there not being sufficient mention of the plaintiffs, or of the time where the agreement was to be performed and hence within the Statute of Frauds.

Verdict for defendants.

A. E. McPhillips, for plaintiffs.

Culver, Q.C., and *Cooper*, for defendants.

The plaintiff appealed.

Held, That from the wording of the instrument the meaning must be that the defendant became responsible to some one not named for James Jones' debt, but if the plaintiffs are named in the instrument, and without doing much violence to the rules of construction, it may be read to mean that the defendants became responsible to them, (*Williams* v. *Lake*, 29 L.J., Q.B. 1, distinguished.)

Held, That evidence of the surrounding circumstances will be looked at in the case of guarantees to enable the court to ascertain the meaning of an ambiguously worded instrument. *Newell* v. *Radford*, L.R. 3 C.P. 52 ; *Hefjreed* v. *Meadow*, L.R. 4 C.P. 595 ; *Vandeburg* v. *Spooner*, L.R. 1 Ex. 316.

Appeal allowed with costs.

Ewart, Q.C., and *McPhillips*, for appellants.

Culver, Q.C., and *Cooper*, for defendants.

Appointments to Office.

REGISTRARS OF DEEDS.

District of Parry Sound.

Thomas Kennedy, of the Town of Parry Sound, in the District of Parry Sound, Esquire, to be Registrar of Deeds in and for the said District of Parry Sound, in the room and stead of Arthur Starkey, Esquire, resigned.

District of Algoma.

Robert Adam Lyon, of the Village of Michael's Bay, in the District of Manitoulin, Esquire, to be Registrar of Deeds in and for the District of Algoma, in the room and stead of Charles James Bampton, Esquire, deceased.

LOCAL MASTER.

County of Perth.

John Elley Harding, of the City of Stratford, in the County of Perth, Esquire, one of Her Majesty's Counsel learned in the Law for the Province of Ontario, to be Local Master for the said County of Perth, in the room and stead of His Honor Judge Lizars, resigned.

DISTRICT ATTORNEY AND CLERK OF THE PEACE.

District of Muskoka and Parry Sound.

Thomas Johnson, of the Town of Gravenhurst, in the District of Muskoka, Esquire, Barrister-at-Law, to be District Attorney and Clerk of the Peace in and for the United Provisional Judicial District of Muskoka and Parry Sound, in the room and stead of Alexander Aird Adair, Esquire, resigned.

COMMISSIONERS FOR TAKING AFFIDAVITS FOR USE IN ONTARIO.

City of Montreal.

Ronzo Heathcote Clerk, of the City of Montreal, in the District of Montreal and Province of Quebec, Esquire, to be a Commissioner for taking affidavits within and for the said City of Montreal, and not elsewhere, for use in the Courts of Ontario.

County of London, (England.)

George Kirk, of No. 1a Paternoster Row, in the City of London, and County of London, in that part of the United Kingdom of Great Britain and Ireland called England, Gentleman, Solicitor, to be a Commissioner for taking affidavits within and for the said County of London, and not elsewhere, for use in the Courts of Ontario.

ASSOCIATE-CORONERS.

County of Frontenac.

David Edward Mundell, of the City of Kingston, in the County of Frontenac, Esquire, M.D., to be an Associate-Coroner within and for the said County of Frontenac, in the room and stead of Chamberlain Arthur Irwin, Esquire, M.D., deceased.

Daniel Phelan, of the City of Kingston, in the County of Frontenac, Esquire, M.D., to be an Associate-Coroner within and for the said County of Frontenac.

POLICE MAGISTRATES.

Town of Gananoque.

Philip Heaslip, of the Town of Gananoque, in the County of Leeds, Esquire, to be Police Magistrate in and for the said Town of Gananoque.

Town of Port Arthur.

William Currie Dobie, of the Town of Port Arthur, in the District of Thunder Bay, Esquire, to be Police Magistrate in and for the said Town of Port Arthur, in the room and stead of Alexander William Thompson, Esquire, resigned.

DIVISION COURT CLERKS.

County of Lennox and Addington.

Frederick William Armstrong, of the Village of Bath, in the County of Lennox and Addington, Gentleman, to be Clerk of the Second Division Court of the said County of Lennox and Addington, in the room and stead of Charles L. Rogers, deceased.

Counties of Prescott and Russell.

Joseph Belanger, of the Village of Plantagenet, in the County of Prescott, Gentleman, to be Clerk of the Fourth Division Court of the United Counties of Prescott and Russell, in the room and stead of T. A. VanBridger, resigned.

District of Thunder Bay.

Neil McDougall, of the Town of Port Arthur, in the District of Thunder Bay, Gentleman, to be Clerk of the First Division Court of the said District of Thunder Bay, in the room and stead of John Munro, resigned.

County of Prince Edward.

John Wesley Clarke, of the Village of Wellington, in the County of Prince Edward, Gentleman, to be Clerk of the Fifth Division Court of the said County of Prince Edward, in the room and stead of J. B. Garratt, resigned.

BAILIFFS.

District of Rainy River.

William Neil, of the Township of Alberton, in the District of Rainy River, to be Bailiff of the Second Division Court of the said District of Rainy River, in the room and stead of Wm. Lindsay, resigned.

District of Parry Sound.

Walter Sharpe, of the Township of Armour, in the District of Parry Sound, to be Bailiff of the Fourth Division Court of the said District of Parry Sound, in the room and stead of James Sharpe, resigned.

County of Prince Edward.

Charles Herrington, of the Village of Wellington, in the County of Prince Edward, to be Bailiff of the Fifth Division Court of the said County of Prince Edward, in the room and stead of Thomas Jackson, resigned.

Flotsam and Jetsam.

WHEN a lady, giving evidence in a Kansas court, refused to answer a question, on the plea that it was not fit to tell decent people, her questioner blandly said: "Well, then, step up and whisper it to the judge."—*Ex.*

MR. JUSTICE NORRIS, in the Calcutta High Court, recently delivered what is understood to be the shortest summing-up on record. It was as follows: "Gentlemen of the jury, the prisoner has nothing to say, and I have nothing to say. What have you to say?"—*Ex.*

"I WISH to ask this court," said a lawyer who had been called to the witness box to testify as an expert, "if I am compelled to come into this case, in which I have no personal interest, and give a legal opinion for nothing?" "Yes, yes, certainly," replied the mild-mannered judge, "give it for what it is worth."—*Ex.*

IN a case in which a man was being tried for murder, when the clerk repeated the formula, "Prisoner, look upon the jurors; jurors, look upon the prisoner," one of the "sworn twelve,"

who was a very stupid man, looked solemnly at the prisoner for a while, and then said, "I think he's guilty; he looks like a murderer."—*Ex.*

THE smallest suit on record was recently tried in Scotland for the stupendous sum of half a penny. The plaintiff was carried in the defendants' cars beyond his destination, and compelled to pay the halfpenny as fare to the station. He recovered judgment, and compelled the company to refund the money, with costs.—*Ex.*

COMMON as the expression to "dun" a debtor is, but few persons are, perhaps, aware of the origin of the word. It owes its birth to one Joe Dun, a famous bailiff in the town of Lincoln, England, so extremely active and so dexterous in his business that it became a proverb, when a man refused to pay, "Why do you not Dun him?"—that is, why do you not set Dun to arrest him? Hence it became a cant word, and is now as old as the days of Henry VII.—*The Green Bag.*

DANIEL O'CONNELL was at one time defending a man accused of murder at Clonmell. The circumstantial evidence was so strong against the prisoner that the jury had already determined upon their verdict of guilty, when the man supposed to be murdered was brought into court alive and unhurt. The jury were desired to return their verdict at once, and they did so, which was one of "Guilty." "What does this mean?" asked the Court. "If the man has not been murdered, how can the prisoner be guilty?" "Plaze yer honor," said the foreman, "he's guilty; he stole my bay mare three years ago."—*Ex.*

A BARRISTER who had been "questioning" a witness for some time, at last got him down to personalities. "Did I understand you to say, sir, that the defendant made certain remarks about me?" "I said so, sir." "Ah! I thought so; well now, sir, I should like to ask if you could substantiate those remarks?" "No, sir; I don't think I could." "Ah! something libellous, I presume. Will you be kind enough to state to the court what he did say?" "Yes, sir; he said you were an honest and truthful man, and—" "That's enough; call the next witness." And the barrister went into the robing-room for a minute's relaxation without excitement.—*Pump Court.*

A BARRISTER, on one occasion, was given the following lawyer's letter to put into Latin verse, by one who was skeptical as to his reputed powers of treating successfully the most unpromising subjects:—

"Rev. Sir,—Your attendance is requested at a meeting of the Bridge Committee, to be held at 12 noon, on Saturday the 5th November, to consider Mr. Diffle's proposal as to the laying down of gas-pipes.

"We are, Rev. Sir,
"Your obedient servants,
"—— and ——"
"Solicitors."

Thereupon it was promptly rendered thus:—

Concilio bonus intersis de Ponte rogamus
Saturni sacro, vir reverende, die.
Nonæ, ne frustrere, dies erit ille Novembres,
Sextaque delectos convocat hora viros.
Carbonum luci suadet struxisse canales.
Diphilus; ambigitur prosit an obsit opus.
Hanc, tibi devincti, Fabri, natusque paterque,
Actores, socii, vir reverende, dabant.

—*Pump Court.*

FACETIÆ.—The first Viscount Guillamore, when Chief-Baron O'Grady, was remarkable for his dry humor and biting wit. The latter was so fine that its sarcasm was often unperceived by the object against whom the shaft was directed.

A legal friend, extremely studious, but in conversation notoriously dull, was once showing off to him his newly built house. The book-worm prided himself especially on a sanctum he had contrived for his own use, so secluded from the rest of the building that he could pore over his books in private, quite secure from disturbance.

"Capital!" exclaimed the Chief-Baron. "You surely could, my dear fellow, read and study here from morning till night, and no human being be *one bit the wiser.*"

In those days before competitive examinations were known, men with more interest than brains got good appointments, for the duties of which

they were wholly incompetent. Of such was the Hon. —— ——. He was telling the Chief-Baron of the summary way in which he disposed of matters in his court.

"I say to the fellows that are bothering me with foolish arguments, that there's no use in wasting my time and their breath; for that all their talk only just goes in at one ear and out at the other."

"No great wonder in that," said O'Grady, "seeing that there's so little between to stop it."
—*The Green Bag.*

THE appended copy of an original document, issued by a certain J.P. to the north of us, induces the belief that some Justices of the Peace have more education than others, and that the others have no more than the "law allows"; for example:—

SUMONS TO DEFENDANT.

CANADA
PROVANC OF ONTARIO
DISTRICT OF PARREY SOUND } to John vaughn of the township of Mcmurrich in the district of Parrey sound Farmer whereas infermation has this day been laid or compliant has this day been maid before the undersigned a Justice of the Peace in and for the said district Parrey sound for that you did on the fifth day of agust Instant with mallace and aforethote Kill a goose the property of Lucinda Margrit gill thease are therefore to comand you in her magestys Name to be and apeare on monday the Elevanth day of agust Instant at the houre of two oclock in the afternoon at the Residance of John Brown of Bourdeau before me or such Justice or Justices of the Peace for the said district as shall then be there to answer to the said infermation or Compleant and to be further dealt wtth acording to law
given under my hand and seal this 5th day of agust in the year of our Lord 1890 at Bourdeau In the district aforesaid —— —— J.P.

Law Society of Upper Canada.

THE LAW SCHOOL, 1890.

LEGAL EDUCATION COMMITTEE.

CHARLES MOSS, Q.C., *Chairman.*
C. ROBINSON, Q.C. Z. A. LASH, Q.C.
JOHN HOSKIN, Q.C. J. H. MORRIS, Q.C.
F. MACKELCAN, Q.C. J. H. FERGUSON, Q.C.
W. R. MEREDITH, Q.C. N. KINGSMILL, Q.C.

This notice is designed to afford necessary information to Students-at-Law and Articled Clerks, and those intending to become such, in regard to their course of study and examinations. They are, however, also recommended to read carefully in connection herewith the Rules of the Law Society which came into force June 25th, 1889, and September 21st, 1889, respectively, copies of which may be obtained from the Secretary of the Society, or from the Principal of the Law School.

Those Students-at-Law and Articled Clerks, who, under the Rules, are required to attend the Law School during all the three terms of the School Course, will pass all their examinations in the School, and are governed by the School Curriculum only. Those who are entirely exempt from attendance in the School will pass all their examinations under the existing Curriculum of The Law Society Examinations as heretofore. Those who are required to attend the School during one term or two terms only will pass the School Examination for such term or terms, and their other Examination or Examinations at the usual Law Society Examinations under the existing Curriculum.

Provision will be made for Law Society Examinations under the existing Curriculum as formerly for those students and clerks who are wholly or partially exempt from attendance in the Law School.

Each Curriculum is therefore published herein accompanied by those directions which appear to be most necessary for the guidance of the student.

CURRICULUM OF THE LAW SCHOOL, OSGOODE HALL, TORONTO.

Principal, W. A. REEVE, Q.C.

Lecturers: E. D. ARMOUR, Q.C.
A. H. MARSH, B.A. LL.B. Q.C.
R. E. KINGSFORD, M.A. LL.B.
P. H. DRAYTON.

The School is established by the Law Society of Upper Canada, under the provisions of rules passed by the Society with the assent of the Visitors.

Its purpose is to promote legal education by affording instruction in law and legal subjects to all Students entering the Law Society.

The course in the School is a three years' course. The term commences on the fourth Monday in September and closes on the first Monday in May; with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's Day.

Students before entering the School must have been admitted upon the books of the Law Society as Students-at-Law or Articled Clerks. The steps required to procure such admission are provided for by the rules of the Society, numbers 126 to 141 inclusive.

The School term, if duly attended by a Student-at-Law or Articled Clerk is allowed as part of the term of attendance in a Barrister's chambers or service under articles.

The Law School examinations at the close of the School term, which include the work of the first and second years of the School course respectively, constitute the First and Second Intermediate Examinations respectively, which by the rules of the Law Society, each student and articled clerk is required to pass during his course; and the School examination which includes the work of the third year of the School course, constitutes the examination for Call to the Bar, and admission as a Solicitor.

Honors, Scholarships, and Medals are awarded in connection with these examinations. Three Scholarships, one of $100, one of $60, and one of $40, are offered for competition in connection with each of the first and second year's examinations, and one gold medal, one silver medal, and one bronze medal in connection with the third year's examination, as provided by rules 196 to 205, both inclusive.

The following Students-at-Law and Articled Clerks are exempt from attendance at the School.

1. All Students-at-Law and Articled Clerks attending in a Barrister's chambers or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889.

2. All graduates who on the 25th day of June, 1889, had entered upon the *second* year of their course as Students-at-Law or Articled Clerks.

3. All non-graduates who at that date had entered upon the *fourth* year of their course as Students-at-Law or Articled Clerks.

In regard to all other Students-at-Law and Articled Clerks, attendance at the School for one or more terms is compulsory as provided by the Rules numbers 155 to 166 inclusive.

Any Student-at-Law or Articled Clerk may attend any term in the School upon payment of the prescribed fees.

Students and clerks who are exempt, either in whole or in part, from attendance at The Law School, may elect to attend the School, and to pass the School examinations, in lieu of those under the existing Law Society Curriculum. Such election shall be in writing, and, after making it, the Student or Clerk will be bound to attend the lectures, and pass the School examination as if originally required by the rules to do so.

A Student or Clerk who is required to attend the School during one term only, will attend during that term which ends in the last year of his period of attendance in a Barrister's Chambers or Service under Articles, and will be entitled to present himself for his final examination at the close of such term in May, although his period of attendance in Chambers or Service under Articles may not have expired. In like manner those who are required to attend during two terms, or three terms, will attend during those terms which end in the last two, or the last three years respectively of their period of attendance, or Service, as the case may be.

Every Student-at-Law and Articled Clerk before being allowed to attend the School, must present to the Principal a certificate of the Secretary of the Law Society shewing that he has been duly admitted upon the books of the Society, and that he has paid the prescribed fee for the term.

The Course during each term embraces lectures, recitations, discussions, and other oral methods of instruction, and the holding of moot courts under the supervision of the Principal and Lecturers.

During his attendance in the School, the Student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance. As far as practicable, Students will be provided with room and the use of books for this purpose.

The subjects and text-books for lectures and examinations are those set forth in the following Curriculum:

FIRST YEAR.

Contracts.

Smith on Contracts.

Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

Common Law.

Broom's Common Law.

Kerr's Student's Blackstone, books 1 and 3.

Equity.

Snell's Principles of Equity.

Statute Law.

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.

Criminal Law.

Kerr's Student's Blackstone, Book 4.

Harris's Principles of Criminal Law.

Real Property.

Kerr's Student's Blackstone, Book 2.

Leith & Smith's Blackstone.

Deane's Principles of Conveyancing.

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.

Bigelow on Torts—English Edition.

Equity.

H. A. Smith's Principles of Equity.

Evidence.

Powell on Evidence.

Canadian Constitutional History and Law.

Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

Dart on Vendors and Purchasers.

Hawkins on Wills.

Armour on Titles.

Criminal Law.

Harris's Principles of Criminal Law.

Criminal Statutes of Canada.

Equity.

Lewin on Trusts.

Torts.

Pollock on Torts.

Smith on Negligence, 2nd edition

Evidence.

Best on Evidence.

Commercial Law.

Benjamin on Sales.

Smith's Mercantile Law.

Chalmers on Bills.

Private International Law.

Westlake's Private International Law.

Construction and Operation of Statutes.

Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law.

British North America Act and cases thereunder.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

During the School term of 1890-91, the hours of lectures will be 9 a.m., 3.30 p.m., and 4.30 p.m., each lecture occupying one hour, and two lectures being delivered at each of the above hours.

Friday of each week will be devoted exclusively to Moot Courts. Two of these Courts will be held every Friday at 3.30 p.m., one for the Second year Students, and the other for the Third year Students. The First year Students will be required to attend, and may be allowed to take part in one or other of these Moot Courts.

Printed programmes showing the dates and hours of all the lectures throughout the term, will be furnished to the Students at the commencement of the term.

GENERAL PROVISIONS.

The term lecture where used alone is intended to include discussions, recitations by, and oral examinations of, students from day to day, which exercises are designed to be prominent features of the mode of instruction.

The statutes prescribed will be included in and dealt with by the lectures on those subjects which they affect respectively.

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court, if not given at the close of the argument.

At each lecture and Moot Court the roll will be called and the attendance of students noted, of which a record will be faithfully kept.

At the close of each term the Principal will certify to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student will be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series during the term, and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal will make a special report upon the matter to the Legal Education Committee. For the purpose of this provision the word "lectures" shall be taken to include Moot Courts.

Examinations will be held immediately after the close of the term upon the subjects and text books embraced in the Curriculum for that term.

The percentage of marks which must be obtained in order to pass any of such examinations is 55 per cent. of the aggregate number of marks obtainable, and 29 per cent. of the marks obtainable on each paper.

Examinations will also take place in the week commencing with the first Monday in September for students who were not entitled to present themselves for the earlier examination, or who having presented themselves thereat, failed in whole or in part.

Students whose attendance at lectures has been allowed as sufficient, and who have failed at the May examinations, may present themselves at the September examinations at their own option, either in all the subjects, or in those subjects only in which they failed to obtain 55 per cent. of the marks obtainable in such subjects. Students desiring to present themselves at the September examinations must give notice in writing to the Secretary of the Law Society, at least two weeks prior to the time fixed for such examinations, of their intention to present themselves, stating whether they intend to present themselves in all the subjects, or in those only in which they failed to obtain 55 per cent. of the marks obtainable, mentioning the names of such subjects.

Students are required to complete the course and pass the examination in the first term in which they are required to attend before being permitted to enter upon the course of the next term.

Upon passing all the examinations required of him in the School, a Student-at-Law or Articled Clerk having observed the requirements of the Society's Rules in other respects, becomes entitled to be called to the Bar or admitted to practise as a Solicitor without any further examination.

The fee for attendance for each Term of the Course is the sum of $10, payable in advance to the Secretary.

Further information can be obtained either personally or by mail from the Principal, whose office is at Osgoode Hall, Toronto, Ontario.