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IT is of great importance that the rule of contributory negligence, founded as it is on reason and common sense, should not be hampered by artificial interpretations, and it is for this reason that we note with satisfaction the recent decision, in Ohio, of *Penn. Co.* v. *Langdorff* (26 Week. Law Bull. 29), following and affirming in broad terms other similar but more restricted decisions in other States of the Union. In the case in question a little girl wandered on to a railroad crossing in view of an approaching train. The child's nurse, who was conversing with the defendant near by, called to the child, and while it was returning in answer to the call it tripped and fell upon the track. The defendant, seeing the train rapidly approaching and the danger of the child, sprang to its rescue and, seizing it, rushed forward, but he was not clear of the track before the train struck him, producing injuries for which he claimed compensation. The Court held "the act of the defendant in error was not only lawful, but it was highly commendable; nor was he in any legal sense responsible for the emergency that called for such prompt decision and rapid execution," and adopted the language of their Court of Appeals in a similar case (*Eckert* v. *Railroad Co.*, 43 N.Y. 502), that "the law has so high a regard for human life that it will not impute negligence to an effort to preserve it, unless made under circumstances constituting rashness in the judgment of prudent persons"; and it concludes by saying that under such circumstances "it would be unreasonable to require a deliberate judgment from one in a position to afford relief. To require one so situated to stop and weigh the danger to himself of an attempt to rescue another, and compare it with that overhanging the person to be rescued, would be in effect to deny the right of rescue altogether if the danger was imminent." The ruling seems to us to be in accord with the principles of both justice and common sense.

THE VALUES OF HUMAN LIMBS, CHIEFLY WELSH.

Much of the time of courts and juries nowadays is taken up in considering and deciding the pecuniary compensation to be given for injuries to, and losses of, various parts and members of the human form divine owned by men, women, or children; and great is the diversity of decisions. One gets as much for a little finger as another does for a whole leg; a third persuades a sympathetic jury that his great toe is of greater worth than number four's nose. Notwithstanding *interest reipublicæ ut sit finis litium* there is no finality, no golden rule, fixed and immovable; so that a poor practitioner, when consulted, can never say with any

certainty what damages a lady will get for a broken limb, or a man for the loss of his hair. One man in New York got $12,000 from a jury for a broken leg, and kept the amount; while another, in the same state, was awarded only $6,000, and yet the court would not let him keep it, thinking it too much. In Iowa the judges thought $2,500 quite enough for such a limb, although the jurors had said $4,000. Another New Yorker, who had used his leg for forty-one years, got $13,500 for it, and the judges let him retain $7,000. In Ontario when men were scarcer than at present, a jury gave £6178 for a leg; but the judges of the Court of Common Pleas said, "No, about £500 is enough." A Massachusetts lady only got $5,000 for a similar limb, and yet it is generally supposed that ladies' legs are of finer material than the ordinary male stilt: *Rockwell* v. *3rd Avenue Railway*, 64 Barb. (N.Y.) 430; *Clapp* v. *Hudson Ry.*, 19 Barb. 461; *Lombard* v. *Ch., etc., Railway*, 47 Iowa 494; *Copping* v. *N.Y.C., etc.*, 48 Hun. 292; *Batchelor* v. *B. & B. Railway*, 5 C.P. 127; *Feetal* v. *Middlesex Railway*, 109 Mass. 290.

It was much better arranged in the old days, when Howel the Good lorded it over the principality of Wales, or a part thereof. He first promulgated his laws in 914, and they prevailed until the independence of Wales came to an end nearly at the close of the thirteenth century. We have them now chiefly in three versions—the Venedotian, the Dimetian, and the Gwentian codes. Under these codes almost every part of the human body was valued, and, when an injury was done, no time had to be spent in assessing damages; the wrong proved, definite compensation had to be given. The nose and each hand, each foot, each eye, each lip, was worth six kine and six score of silver; "the worth of the ear, if it be cut off, two kine and two score of silver separately; if injured so as to cause deafness, six kine and six score of silver" (Ven. C. Bk. iii. 8 ch. xxii.). Howel tells us that the full worth of a cow in his day was three score pence, and Prof. Rogers says that in 1290 the average price of cows was seven and six pence; money then was worth at least twelve times what it is now.

"The tongue itself is equal to the worth of all the other members, because it defends them." So say all the codes. "The worth of one of the small toes is a cow and a score of silver; but that of one of the great toes, two kine and two score of silver." The Venedotian code says: "The worth of a finger is a cow and one score of silver; that of the thumb twice as much; while that of the thumb-nail is thirty pence; that of the upper joint of the finger, twenty-six pence and a half-penny and a third of a half-penny; that of the middle joint, thirty-three pennies and two-thirds of a penny; that of the lowest joint four pence." The Gwentian code, however, makes no distinction between the thumb-nail and any other nail, and puts up the middle joint of the finger to two score and ten pence, a half-penny and two parts of a half-penny; and the nearest joint to four score of silver. The Venedotian code is high in its estimation of teeth. (Perhaps the editor had arrived at that period when, as the preacher hath it, "the grinders cease because they are few.") It says, "the worth of each of the teeth is a cow and one score of silver; the worth of each of the fang teeth, two kine and two score of silver, because they are the guards of the teeth." "The full worth of all the members of the human body, when taken together, is four score

and eight pounds. The proverb says, "Comparisons are odious," still they are often interesting and useful; let us make some by giving extracts from "the laws of Alfred"; in these we read, "If a man strike off another's nose, let him make 'bot' (*i.e.*, pay a fine) with lx shillings. If a man strike out another's tooth in the front of his head, let him make 'bot' for it with viii shillings; if it be the canine tooth, let iv shillings be paid as 'bot.' A man's grinder is worth xv shillings. If a man strike out another's eye, or his hand or his foot off, there goeth like 'bot' to all: vi pennies, and vi shillings, and lx shillings, and the third part of a penny. If the thumb be struck off, for that shall be xxx shillings as 'bot.' If the great toe be struck off, let xx be paid him as 'bot'; if it be the second toe, xv; if the middlemost toe, ix; if the fourth toe, vi shillings; if the little toe, let v shillings be paid him. If a man's tongue be done out of his head by another man's deeds, that shall be like as eye 'bot.'" (Alf. 64, 46, 49, 71, 56, 64, 52.)

Years before Alfred and about the first decade of the seventh century Aethelbirht, King of Kent, set forth his laws, or dooms, and among them we find, "If the nose be pierced, let 'bot' be made with ix shillings; if it be one 'ala' let 'bot' be made with iii shillings; if both be pierced, let 'bot' be made with vi shillings; if the nose be otherwise mutilated, for each let 'bot' be made with vi shillings. For each of the four front teeth, vi shillings; for the tooth that stands next to them, iv shillings; for that which stands next to that, iii shillings; and then afterwards for each a shilling. If a thumb be struck off, xx shillings. If a thumb-nail be off, let 'bot' be made with iii shillings. If the shooting (*i.e.*, fore) finger be struck off, let 'bot' be made with viii shillings; if the middle finger be struck off, iv shillings; if the gold (*i.e.*, ring) finger, vi shillings; if the little finger, xi shillings; for every nail, a shilling. If a great toe be cut off, let ten shillings be paid; for each of the other toes, let one-half be paid, like as it is stated for the fudgers." (The Laws of King Aethelbirht, 45, 46, 47, 48, 51, 54, 70, 71.) The Frisian laws are equally as particular as to all the possible injuries which can affect the nose (Asega-Buch, p. iii. 2, 5.) The Welsh laws seem to exceed all others in particularity of details for personal injuries.

The value of thumbs in England is, at the present time, a matter of doubt. Jackson was awarded £50 by a jury, while Richardson and Maddox were only allowed £20 each for injuries to the same member; but in all three cases the judges had objections, and overruled the verdicts: *Jackson* v. *Metropolitan Ry.*, 3 App. Cas. 193; *Richardson* v. *Metropolitan Ry.*, 37 L.J., C.P. 300; *Maddox* v. *London, C. & D. Ry.*, 38 L.T. 450. Out in Kansas, the jurors, with true western liberality, said that Peavey ought to have $6,500 for the loss of a thumb and fore-finger, but the court would not agree to it: *Kansas Pac. Ry.* v. *Peavey*, 34 Kan. 472.

But to return to our Welsh rare-bits, "Twenty-four pence" (we are told) "is the worth of the blood of every kind of persons; thirty pence was the worth of the blood of Christ; and it is unworthy to see the blood of God and the blood of man appraised of equal worth; and therefore the blood of man is of less worth" (Dim. Code, Bk. ii, ch. 17).

"The worth of a conspicuous scar upon a person's face is six score pence;

if it be upon his hand, three score pence is to be paid; thirty pence is to be paid if it be upon the foot. If a person be struck upon his head so that the brain be seen, or if he be stabbed in the body, so that the bowels come out, or if the thigh bone, or the arm bone, of a person be broken, for each three pounds are to be paid him; for he is in danger of his life by every one of them" (Dim. Code).

The following had to be paid to a wounded person for whom it was necessary to have medical aid, besides his saraad (*i.e.*, fine for the insult or injury): "Four pence for a pan to prepare medicaments for him; four pence for tallow; a penny for his light nightly; a penny for the food of the mediciner daily; and a penny for the food of the wounded daily" (Dim. Code). For a broken bone of the cranium, four pence had to be paid, "unless," as the Vendotian Code saith, "there be a dispute as to its diminutiveness; and if there be a dispute as to its size, let the mediciner take a brass basin, and let him place his elbow on the ground, and his hand over the basin; if its sound be heard (as it falls), let four legal pence be paid; and if it is not heard, nothing is due." Head bones have gone up since those days. Hanson had the external table of his skull cracked by an iron poker, held by a brakesman, and the railway company had to pay him $4,000 (62 Maine 84).

By the way, the position, duties, and remuneration of the physician or mediciner were clearly defined in those days; he had his land free, his linen clothing from the queen, and his woollen clothing from the king. He had to administer medicine gratuitously to all within the palace, and to the chief of the king's household; for these services he got nothing except the bloody clothes, unless it was for one of the three dangerous wounds. He was entitled to take an indemnification from the kindred of the wounded person, in case he might die from the remedy used; if he did not take it, he had to answer for the deed. His daily food was worth one penny half-penny; and his fee for an application of red ointment was twelve pence; for applying herbs to a swelling, four pence; and for letting blood, the same (Ven. Cod., Bk. I., ch. 8).

The Gwentian code was more particular about eyelids than the others, which appear to be silent concerning them. It reads, "The worth of a person's eyelid, should hair be thereon, is one legal penny in value for every hair; if a part of it be cut away, the worth of a conspicuous scar is paid" (*i.e.*, six score pence).

Hair was valued excessively, we humbly submit, by the Dimetians. The Venedotian code simply said: "The worth of hair plucked from the roots: a penny for every finger used in plucking it out, and two pence for the thumb, and two pence for the hair." The Dimetian Code, however, said, "A legal penny for every hair pulled by the root from the head, and twenty-four pence for the front hair." Even the hair of a horse was regarded: "Whoever shall borrow a horse and chafe its back so as to cause an ugly loss of its hair is to pay four legal pence to the owner" (Dim. Code, Bk. ii, ch. 28, sec. 28). The mane of a horse was the same worth as his bridle—that is, four legal pence (Ven., Bk. iii, ch. iv., 18). Whoever cut off the tail hair of a horse had to put the animal in a place where it should not be seen, and had to give another horse in lieu of it to the owner, and had to keep the injured nag until its tail had grown as well as ever, it re-

maining idle meanwhile (Ven., Bk. iii, ch. iv, s. 17). Verily, this was akin to tarrying at Jericho until one's beard is grown. The robbing a man of his beard was, among the Saxons, punishable by a fine of twenty shillings; to shave one like a priest was punishable by a fine of thirty shillings, and to bind him as well as shave him increased the fine to forty shillings (Alfred 35). *Per contra*, in the days of the virgin Queen Elizabeth every beard above a fortnight's growth was subject to a tax of three shillings and four pence, under a law passed in the first year of Her Majesty's reign.

Strangely enough, we are told that "the law says that the limbs of all persons are of equal worth; if a limb of the King be broken, then it is of the same worth as the limb of a villain; yet nevertheless the worth of a saraad to the King or to a breyer (freeman) is more than the saraad of a villain, if a limb belonging to him be cut" (Dim. Code). (The chapters concerning the members of the human body are as follows: Venedotian Code, Bk. III, ch. 23; Dimetian Code, Bk. II, ch. 67; and Gwentian Code, Bk. II, chs. 6 and 7.)

A most important part of the knowledge required of a judge in those days was the worth of wild and tame animals; and Howel and his wise men denounced their malediction and that of all the Cymry upon the judge who should undertake the judicial function (and even upon the lord who might confer it upon him) without knowing these things. We are given, in full detail, the value of horses, kine and swine, sheep and goats, cats and dogs, geese and hawks, fowl and bees, whether male or female, little and big, young, old, or middle-aged: *e.g.*, a hen was a penny, a cock two pennies, a chicken a farthing until it could roost, then a half-penny until it should lay or crow, and after that full price. A foal was worth four pence for the first fourteen days of its life; then to the end of its first year twenty-four pence, forty pence during its second year, and sixty pence during its third year. (Ven., Bk. iii, chs. 4 and 13.) Trees, too, and furniture, are valued in detail.

Some of the critical readers of THE CANADA LAW JOURNAL (and they are legion) may object to my rendering of some of these laws of Howel Dha. We may admit that there may be weaknesses in our version—though we know them not—but who can make anything better than "The worth of a finger, a cow, and one score of silver" out of the Venedotian, "Guerth bys clan buch ac vgeyn aryant," or the Dimetian, "Goerth bysdyn buch ac vgeint aryant atal," or even the Gwentian "Gwerth bys dyn buoch ac ugeint aryant."

R.V.R.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for July comprise (1891) 2 Q.B., pp. 1-212: (1891) P., pp. 257-294; (1891) 2 Ch., pp. 185-415; and (1891) A. C., pp. 81-296.

INNKEEPER, LIABILITY OF, FOR LOSS OF GUEST'S PROPERTY—ONUS OF PROOF—EVIDENCE—26 & 27 VICT., C. 41, S. 1—(R.S.O., C. 154, S. 3).

Medawar v. *Grand Hotel Co.* (1891), 2 Q.B. 11, was an action against a hotel company for the loss of goods. The plaintiff arrived at the hotel early in the

morning, and found it full, but he was informed that he could have the temporary use of a room, which was to be occupied by a lady and gentleman later in the day. His luggage was accordingly placed in this room, and for the purpose of washing and dressing he took out from his dressing-bag a stand containing brushes and other articles of the toilet, which he placed on the dressing-table. After completing his toilet, he went downstairs to the coffee-room, leaving the stand on the dressing-table and the door of the room unlocked; and after having breakfast, left the hotel, and did not return till midnight. On the arrival of the lady and gentleman, who had engaged the room which the plaintiff had used, the plaintiff's luggage, including the stand, were, by direction of the head porter, placed in the corridor, where they remained until the plaintiff's return. On his arrival, he was provided with another room, into which his luggage was brought from the corridor. The next morning the plaintiff discovered that some trinkets, which he had left in the drawer of the stand, had been stolen. There was no evidence to show whether they had been stolen while the stand was in the corridor or in either of the bedrooms. A. L. Smith, J., under these circumstances, held that the plaintiff could not recover, and dismissed the action on the ground that the plaintiff had failed to prove that the loss had occurred while the things were in the corridor; but, on appeal, the majority of the Court (Lord Esher, M.R., and Bowen, L.J.) were of opinion that the plaintiff was received as a guest at the hotel, and that the relation of innkeeper and guest continued until a reasonable time after the plaintiff's goods had been placed in the corridor, and that, if the trinkets were stolen while the goods were in the bedroom, there was contributory negligence on the part of the plaintiff; but that if they were stolen while they were in the corridor, the loss was due solely to the defendants. But, inasmuch as it was not proved whether the trinkets were stolen in the bedroom or the corridor, the defendants were liable up to the amount of £30 (under R.S.O., c. 154, s. 3, the amount is $40), because they could not discharge the onus which lay on them of showing that the plaintiff's negligence had contributed to the loss; and that for the like reason the plaintiff could not recover more than the £30, because he could not prove that the loss had occurred "through the wilful act, default, or neglect of the innkeeper, or any servant in his employ." But Fry, L.J., was of opinion the relation of innkeeper and guest did not exist when the loss occurred, and for that reason that the plaintiff should fail.

LANDLORD AND TENANT—LEASE—COVENANT TO DELIVER UP PREMISES IN REPAIR, BREACH OF—MEASURE OF DAMAGES.

In *Joyner* v. *Weeks* (1891), 2 Q.B. 31, the question discussed is the measure of damages to which a covenantee is entitled for breach of a covenant in a lease to deliver up the premises in repair. In this case the lessor had made a lease to another lessee from the expiration of the defendant's term, and under this new lease the defendant was to put, and did put, the premises in repair; and it was contended on behalf of the defendant that the plaintiff was therefore not damnified by the defendant's breach of his covenant, and was only entitled to nominal damages; and a referee, to whom the cause was referred, so held. But a Divi-

sional Court (Wills and Wright, JJ.) held this to be wrong, but were of opinion that the proper measure of damages was the diminution in value of the property, and they therefore directed a new trial. On appeal, Lord Esher, M.R., and Fry, L.JJ., although adopting the law of the Divisional Court on the main point, disagreed with them as to the measure of damages, and set aside the order for a new trial and gave judgment for the plaintiff for the amount which had been proved to be the cost of making the repairs. The measure of damages in such cases Lord Esher declares to be the cost of making the repairs, and this rule, he inclines to think, is not merely a discretionary rule, but a rule of law.

PRACTICE—JUDGMENT CREDITOR—RECEIVERSHIP ORDER, EFFECT OF—EQUITABLE EXECUTION—PRIORITY.

Levasseur v. *Mason* (1891), 2 Q.B. 73, was an issue to determine the right to the proceeds of certain goods. The defendants in the issue were execution creditors of a French company, which had certain property in England in the hands of an English firm, who had a lien on it. The execution creditors obtained an order appointing a receiver of the company's interest in these goods. After this order was made the company was adjudicated bankrupt in France, and the plaintiffs in the issue were appointed liquidators. They then put in a claim to the goods, which, by an order of the Court, were subsequently directed to be sold, and the proceeds, after paying the lien, were paid into Court by the receiver. The Court of Appeal (Lord Coleridge, C.J., Lord Esher, M.R., and Fry, L.J.), affirming Day, J., held that, assuming that the liquidators at the date of the liquidation became by the law of France entitled to the goods, yet the case must be determined by English law, and under that law the receivership order had the effect of entitling the execution creditors to the goods, or the proceeds of them, as from the date upon which it was made, subject only to the discharge of the lien, which was a legal impediment to their execution, and therefore that the execution creditors were entitled to the proceeds.

PRACTICE—SERVICE OF WRIT—ACTION AGAINST FOREIGN FIRM—ISSUE OF WRIT AGAINST DEFENDANTS IN FIRM NAME—SERVICE ON PARTNER RESIDENT WITHIN JURISDICTION—RULES 53, 64-70—(ONT. RULES 232, 265, 271-2).

In *Heinemann* v. *Hale* (1891), 2 Q.B. 83, the Court of Appeal put the finishing stroke to their decisions on the practice as to suing partners of a firm residing and carrying on business out of the jurisdiction by holding squarely that the rules do not admit of such a firm being sued by the firm name, nor permit of the members being served by service on one of their number, who may happen to be within the jurisdiction, and that a writ so issued is irregular, even as against a partner served within the jurisdiction. In England new rules have been promulgated on the subject of suing partners, which may be found in the current volume of the *Law Times Journal* at page 200.

PRACTICE—SERVICE OF NOTICE OF WRIT ON FOREIGN FIRM—RULES 69, 70 (ONT. RULES 265, 266, 232, 272).

Dobson v. *Festi* (1891), 2 Q.B. 92, is another case in the same line as the last. In this case the defendants were a foreign firm sued in their firm name, and notice

of the writ had been served on one of the partners abroad; and the plaintiff on this service claimed to be entitled, on default of appearance, to sign judgment against the firm. This was refused by Cave and Grantham, JJ., and their decision was affirmed by the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.), because the rules allowing service of partners by serving one of their number do not apply to foreign firms.

NUISANCE—SMELTING WORKS—RIGHT OF LOCAL BOARD TO ACT AS RELATORS IN RESPECT OF PUBLIC NUISANCE.

Attorney-General v. *Logan* (1891), 2 Q.B. 100, was an action by the Attorney-General upon the relation of a municipal corporation to abate a nuisance, and also by the relator for damages to the relator's park, in which questions of law were raised on the pleadings,—First, whether the municipal body could properly be relators; secondly, whether they were entitled to sue for damages occasioned by the alleged nuisance. As to the first point, the Court (Wills and V. Williams, JJ.) were of opinion that the case was one in which the Attorney-General was entitled to file an *ex officio* information, and that there was no difference between an information filed *ex officio* and a proceeding by relation, except as to costs, which, in the latter case, the relator assumes responsibility for. Furthermore, in the present case the local board, as the owners of a park, the trees and shrubs of which were injured by the alleged nuisance, were entitled to recover damages therefor. And although under the Public Health Act it was provided that nothing in that Act "should be construed to extend to . . . the smelting of ores and minerals, etc., so as to obstruct or interfere with any of such processes" —although the local board might not be able to take summary proceedings to abate nuisances arising from smelting ores and minerals, they nevertheless were not deprived of their common law remedy, as owners of property, to bring an action to recover damages for nuisance so occasioned.

STATUTE—CONSTRUCTION—PENALTY.

In *Barlow* v. *Terrett* (1891), 2 Q.B. 107, under a statute relating to the removal of nuisances, and which provided for the seizure and destruction of unsound meat exposed or deposited for sale, and imposed a penalty upon "the person to whom such meat belongs or did belong at the time of sale or exposure for sale, or in whose possession or on whose premises the same is found," the appellant was convicted as being the owner of unsound meat which had been deposited for sale, but which had not in fact been sold or exposed for sale. The Court (Day and Lawrance, JJ.) quashed the conviction, holding that there must be a sale or exposure for sale in order to warrant the infliction of the penalty; and that the loss of the meat was the only consequence where there had been neither an actual sale nor exposure for sale.

STATUTE—CONSTRUCTION—MEANING OF "LOPPING" TREES.

In *Unwin* v. *Hanson* (1891), 2 Q.B. 115, the sole question that had to be decided was the proper construction of a statute authorizing justices of the peace to direct trees growing near a highway to be "pruned or lopped." The trees

in question had been "lopped," and the question was whether that was within the statute; and it was held that it was not, that "lopping" means cutting off branches laterally.

CRIMINAL LAW—EXTRADITION—EMBEZZLEMENT OR MISAPPROPRIATION—FRAUD BY BAILEE OR AGENT—SUFFICIENCY OF WARRANTS.

In re Bellencontre (1891), 2 Q.B. 122, was an application by a prisoner, committed for extradition to France, to be discharged from arrest. Two points were raised: the first as to the sufficiency of the French and English warrants for his arrest; and, secondly, whether the offence charged was an offence for which he was extraditable. The French warrant was issued on a charge of embezzling or misappropriating money as a notary; and the English warrant under which he was arrested described him as accused of the crime of fraud by a bailee, and fraud as an agent. The French warrant specified nineteen separate charges, and the Court came to the conclusion that fifteen of them disclosed no crime, such as if committed in England would be punishable by English law. With regard to the other four charges, there was evidence that in each case money was entrusted to the prisoner as a notary, without any direction in writing, with a view to reinvestment as soon as he or his customer should have found a suitable investment, and that he had misappropriated such money. As to the first point, the Court (Cave and Wills, JJ.) were of opinion that the offences were sufficiently described in both the French and English warrants, and that the warrants were consistent with each other, and that as to the four charges above-mentioned there was evidence that the offences charged were offences within both the French and also, if committed in England, within English law (24 & 25 Vict., c. 96, s. 76), and, therefore, that the prisoner was properly committed for extradition. Wills, J., shortly sums up the effect of the Extradition Act (33 & 34 Vict., c. 52) as follows, viz.: It requires "that the person whose extradition is sought should have been accused in a foreign country of something which is a crime by English law, and that there should be a *prima facie* case made out that he is guilty of a crime under the foreign law and also of a crime under English law"—of course what he means is, that the crime charged must be one which is actually a crime under the foreign law, and would be a crime under English law if it had been committed in England. When these conditions are satisfied, then the extradition ought to be granted.

CRIMINAL LAW—CRIMINAL LAW AMENDMENT ACT, 1885 (48 & 49 VICT., C. 69), S. 4—CARNAL KNOWLEDGE OF GIRL UNDER 13 YEARS—(R.S.C., C. 162, S. 39).

In *The Queen* v. *Marsden* (1891), 2 Q.B. 149, a case was reserved for the opinion of the Court whether on an indictment for having carnal knowledge of a girl under thirteen years (under R.S.C., c. 162, s. 39—the age is ten years) it was necessary to prove emission. The Court (Lord Coleridge, C.J., Denman, Mathew, Cave, and Charles, JJ.) were unanimously of opinion that it was not.

APPOINTMENT OF PROXY—ATTESTATION BY PROXY HIMSELF, SUFFICIENCY OF.

In re Parrott (1891), 2 Q.B. 151, a question arose under the bankruptcy law, which, however, is of general interest, and deserves to be noticed here. A person

was appointed by the creditor of a bankrupt to act as his proxy at meetings of creditors; the proxy himself was the attesting witness to the execution of the appointment, and the question was whether this was sufficient under the Bankruptcy Rules, which require the appointment to be attested by a witness. Cave and Charles, JJ., held it was not, and that the proxy himself could not be a witness to the instrument of proxy. Though the case itself relates simply to a proxy in bankruptcy, yet in principle it applies to all other instruments required to be executed in the presence of a witness, except wills, as to which there is express statutory provision, when they are executed in the presence of a witness who is also named as a beneficiary therein.

LIBEL—PRIVILEGED COMMUNICATION—RAILWAY COMPANY—PUBLICATION TO COMPANY'S SERVANTS OF OFFENCES COMMITTED BY OTHER SERVANTS.

In *Hunt* v. *Great Northern Railway Co.* (1891), 2 Q.B. 189, the plaintiff had been a servant of the defendant company, and had been dismissed from their employ for an alleged gross neglect of duty. The company published his name in a printed monthly circular, addressed to their servants, stating in it that he had been dismissed and the ground of his dismissal. The plaintiff claimed that this was a libel; but the Court of Appeal (Lord Esher, M.R., Fry, and Lopes, L.JJ.) upheld the ruling of Stephen, J., that it was a privileged communication.

PRACTICE—COSTS—TRIAL WITH JURY—DISCRETION OF JUDGE—PLACE OF TRIAL—RULE 976—(ONT. RULE 1170).

Roberts v. *Jones*—*Willey* v. *Great Northern Railway* (1891), 2 Q.B. 194, is a double-barrelled case. In the first, the plaintiff, who lived in Cheshire, sued the defendant, who lived in Flintshire, for £640. The plaintiff not naming any place of trial, the action was tried before a jury in London, and the plaintiff recovered a verdict for £200. On the application of the defendant under Rule 976 (Ont. Rule 1170), it was ordered by Hawkins, J., that the plaintiff should be allowed, as against defendant, one-third of his costs, to be taxed as if the trial had been at Chester; and that the defendant should be allowed, as against the plaintiff, two-thirds of his costs, to be taxed treating the trial as being at London. In the second case, the plaintiff, who carried on business in Yorkshire, brought an action against the defendant company for injuries sustained in a collision, claiming £262 for injuries and £6388 for loss of trade. The plaintiff named Middlesex as the place of trial. The defendant made an unsuccessful attempt to change the venue to Leeds. The plaintiff recovered a verdict for £800. On the application of the defendant under the above Rule, it was also ordered by Hawkins, J., that the plaintiff should have his costs, so far as the action related to personal injuries, to be taxed as if the trial had been at Leeds; and that the defendants should have, as against the plaintiff, all their costs, so far as related to the claim for loss of trade, to be taxed treating the trial as taking place in Middlesex, and also the difference in the expenses of the defendants' medical witnesses arising from the action being tried in Middlesex instead of at Leeds. The case may be usefully referred to for what is said on the subject of what constitutes "good cause" for depriving a successful party of costs.

SIGNATURE OF SOLICITOR—SUBSCRIPTION BY CLERK FOR SOLICITOR.

In *France* v. *Dutton* (1891), 2 Q.B. 208, an attempt was made to extend the principle of *Reg.* v. *Cowper*, 24 Q.B.D. 60, 533 (see *ante* vol. 26, p. 295), in which it was held that a lithographed signature of a solicitor was an insufficient signature to particulars of a plaint in the County Court in order to entitle the solicitor to the costs of entering the plaint. In the present case, by County Court rules, certain sums may be allowed to a solicitor for preparing particulars of claim and copies thereof, "provided that such particulars and copies are signed by the solicitor." The particulars in question were signed by the solicitor's clerk, who had the management of the matter, and it was held the signature was sufficient. The distinction between the two cases is somewhat fine; in the case of a lithographed signature, it is usually printed before the document is filled up, and may not be a signature to a completed document. It is possible, however, that after the document is completed the clerk may affix the master's signature by a stamp, and we presume that would be within the present case just as much as if he had written the name.

PRACTICE—PRODUCTION OF DOCUMENTS—DOCUMENTS BELONGING TO SOLICITOR—PRIVILEGED COMMUNICATIONS.

In *O'Shea* v. *Wood* (1891), P. 286, an appeal was brought from the decision of Jeune, J. (1891), P. 237 (*ante* p. 300). The Court of Appeal (Lindley, Bowen, and Kay, L.JJ.) while agreeing with Jeune, J., that the documents belonging to the solicitor could not be ordered to be produced by the plaintiff, yet decided that an affidavit did not sufficiently protect the documents from production by merely stating them "to be privileged, as communications between the deponent and her solicitor," but that it is necessary to show that such letters are professional communications of a confidential character.

ADMINISTRATION—JOINT GRANT TO WIDOW AND TWO ELDER SONS—CONSENT OF MINOR.

In the goods of Dickinson (1891), P. 292, a joint grant of administration was made to a widow and her two eldest sons, all parties interested consenting, including a younger son, a minor, who was in his twenty-first year.

In the goods of Mann (1891), P. 293, a deceased person left a will limited to her property abroad, which was proved by the executors in the foreign court; but she died intestate as to her property in England. Under these circumstances, a grant of administration was made of the property in England to the sole next of kin.

WILL—CHARITABLE GIFT—LAPSE AFTER DEATH OF TESTATOR—CYPRÈS.

In re Slevin, *Slevin* v. *Hepburn* (1891), 2 Ch. 236, the Court of Appeal (Lindley, Bowen, and Kay, L.JJ.) overruled the decision of Stirling, J., noted *ante* p. 204, and held that the gift to the charity having failed by reason of the institution coming to an end after the death of the testator, the legacy did not fall into the residue, but went to the Crown for analogous charitable purposes.

PARTNERSHIP—PARTNER ENGAGING IN ANOTHER BUSINESS—USE OF NAME OF FIRM—PROFITS MADE BY PARTNER IN ANOTHER BUSINESS—INFORMATION GAINED AS PARTNER.

In *Aas* v. *Benham* (1891), 2 Ch. 244, the plaintiffs were members of the firm of H. Clarkson & Co., which carried on the business of shipbrokers, and of which firm the defendant was also a partner. The defendant, availing himself of the information he had acquired as such partner, had assisted in the formation of a joint stock company for building ships, and occasionally used the name and office paper of the firm in his correspondence on that subject. He received remuneration for his services in the formation of the company, and was made a director of the company at a salary. He also threatened to engage in the separate business of a shipowner under the style of "H. Clarkson & Co., Shipowning." The plaintiffs claimed to restrain him from using the name of the firm in a separate business, and also an account of his profits and salary in connection with the new company, and Kekewich, J., granted them this relief; but on appeal, Lindley, Bowen, and Kay, L.JJ., held that although the defendant was properly restrained from using the name of the firm in any separate business, yet that he was not accountable for profits and salary, because the business of the new company was beyond the scope of, and did not compete with the partnership business, and they held that the defendant's use of the firm name and paper in promoting the shipbuilding company was not sufficient to show that, as between the plaintiffs and defendant, shipbuilding was within the scope of the partnership business.

POWER TO EXECUTORS, EXERCISE OF—EXECUTOR RENOUNCING.

In *Crawford* v. *Forshaw* (1891), 2 Ch. 261, the decision of Kekewich, J., 43 Ch.D. 643 (noted *ante* vol. xxvi., p. 320), was reversed by the Court of Appeal (Lindley, Bowen, and Kay, L.JJ.). The question at issue, it may be remembered, was whether an executor who had renounced was nevertheless entitled to exercise a power of appointment given by the testator to "my executors herein named." Kekewich, J., held that the renouncing executor was entitled to join in exercising the power; but the Court of Appeal decided that the power was given to the executors in the character of executors, and that the two who had proved could exercise it alone.

LIBEL—INJUNCTION—JURISDICTION—DISCRETION—JUD. ACT, 1873, S. 25, S-S. 8—(R.S.O., C. 44, S. 58, S-S. 8).

Bonnard v. *Perryman* (1891), 2 Ch. 269, was an application for an interlocutory injunction to restrain the publication of a libel affecting the plaintiffs' trade and imputing to them dishonest and fraudulent conduct. The defendant filed an affidavit swearing that he would be able at the trial to justify the statements in the alleged libel. North, J., granted the injunction, but the majority of the Court of Appeal (Lord Coleridge, C.J., Lord Esher, M.R., Lindley, Bowen, and Lopes, L.JJ.) decided that although the Court had jurisdiction to grant an interlocutory injunction to restrain the publication of a libel, yet that it only ought to do so in the clearest cases, where any jury would say that the matter com-

plained of was libellous, and where if they did not so find the Court would set aside their verdict as unreasonable. In the present case the majority of the Court was not satisfied that the defendant at the trial would not be able to justify the publication complained of, and therefore were of opinion that the injunction should not have been granted. Kay, L.J., however, dissented, on the ground that he thought the defendant's affidavit defective in not showing the grounds for his belief in the facts deposed to, and that the balance of convenience was in favor of granting the injunction. It may be useful to note how this power to grant injunctions to restrain libels was acquired by the Court. By the C.L.P. Act, 1854 (see R.S.O., c. 52, s. 30), power was given to the former Common Law Courts to grant injunctions before or after judgment in any action for breach of contract or tort to restrain the defendant from the repetition of any breach of contract, or wrongful act complained of, and by the transfer of the jurisdiction of the Common Law Courts to the High Court (see Jud. Act, s. 20) this peculiar jurisdiction is now vested in the latter Court.

Notes on Exchanges and Legal Scrap Book.

THE *American Law Register*, the oldest law newspaper in the United States, has ceased to exist. It had for many years a high reputation and large circulation.

BILLS AND NOTES.—The New York Court of Appeal has decided (*Albany Law Journal*, July 18th) that a promissory note, payable a certain number of days after the death of the maker, is valid.

BENEFIT SOCIETIES.—The *Central Law Journal* of July 17th has an exhaustive article on the forfeiture of membership in benefit societies for non-payment of contributions and dues. It is too long for insertion, but should be noted for future use.

CERTIFIED CHECKS—LIABILITY OF DRAWER.—In *Metropolitan National Bank* v. *Jones*, 27 N. E.Rep. 533, the Supreme Court of Illinois holds that where the payee of a bank check has it certified by the bank, he thereby releases the drawer from liability thereon.

"SUN-STROKE is a disease, and does not come within the terms of a policy of insurance against bodily injuries sustained through external, violent, and accidental means, but expressly excepting 'any disease or bodily infirmity.'" *Dozier* v. *Fidelity and Casualty Co.* S.C., 46 Fed. Rep. 446.

A LADY BARRISTER.—Mlle. Bilcesco, the Roumanian lady barrister who lately took the degree of Doctor of Law at Paris, with a view to opening a profession to women in her own country, has just been admitted to practice in Bucharest. It was a stiff fight, but she succeeded in getting her special Bill passed by the Chambers, and September will see Portia a realized fact.—*Irish Law Times.*

VOID PROMISE TO PAY TENANT'S RENT.—An oral promise by a third person to pay the accruing rent to a landlord, in consideration of which the landlord forbears to evict tenant, and permits him to continue on the premises to the end of his term, without, however, releasing him from liability for the rent, is not the creation of a new and independent debt of the promisor, but is a mere promise to pay the debt of another and is void under the Statute of Frauds.—*Riegelman* v. *Focht, Sup. Court of Pennsylvania.*

THE *Banking Law Journal* of July 15th has an article on the duties and liabilities of a bank director. We in Ontario have had that subject thrust upon us lately in an unpleasant and unsavory manner. As to directors doing much to prevent rascality by cashiers, the task is almost hopeless. The Government, which compels a double liability as against shareholders, should provide some effective system of audit by experts of high standing, and directors should be sure of the honesty of their president and cashier, and not let shady characters keep accounts at their bank, and not undertake duties which they know nothing about.

VICIOUS ANIMALS.—In an action against the owner of a dog admitted to be ferocious, and kept chained in an alley which, though private, was easily accessible, the plaintiff, a policeman, entered in pursuit of a suspicious character, and, without noticing the dog, was bitten and seriously injured. *Held*, that the defendant was negligent in keeping such a dog in such a manner, and was liable for the damages sustained. "The gravamen of the action is the keeping of the animal with knowledge of its propensities."—*Melsheimer* v. *Sullivan* (27 *Pacific Reporter* 17).

PERJURY BY LITIGANTS.—In dealing with an appeal from Chambers on Wednesday, Mr. Justice Williams stated that the result of his experience at the bar and upon the bench was that English witnesses who are not parties to the proceedings usually speak the truth, but that the litigants themselves do not, but generally swear to whatever they think will suit their case. He added that, in his opinion, the best remedy for this growing practice on the part of suitors was the infliction of very severe punishment whenever perjury was detected.—*Law Journal.*

MASTERS OF LAW.—The University Law School has determined on a new departure—a course of law for graduates. Any Bachelor of Law or member of

the Bar may enter for one to four afternoon hours each week. When he shall have completed four subjects, he will become a Master of Laws. The new professors, Abbott, who is Dean of the Faculty, and Tiedeman, who fills the chair of real property, are among the most widely-known American law writers. The courses for the current year include historical jurisprudence, advanced constitutional law, municipal corporations, the police power, the trial of causes, and the principles and methods of legal reasoning.—*New York Times.*

SILENCE NO ADMISSION.—The *London Daily News*, in commenting on the breach of promise case, *Wiedman* v. *Walpole*, says:—"The principle laid down by Baron Pollock would, if it had not been unanimously and decisively repudiated by the Master of the Rolls and the Lords Justices, have done immense mischief and produced a general feeling of social insecurity. According to Baron Pollock, neglect to answer a letter implies an admission that its contents are true. It would be intolerable if such were the case, and it is difficult to understand how any judge in his senses could have so ruled. Happily the Court of Appeal has pronounced an emphatic opinion the other way, and has decided that Mr. Walpole's silence was in law—we may add, in common sense—no corroboration of his alleged promise to marry the plaintiff."

REASONABLE TIME—BILL OF LADING.—The recent dock strike has given rise to yet another legal decision. We allude to the case of *Hick* v. *Rodocanachi & Sons*, recently decided by the Court of Appeal. The plaintiff, a shipowner, claimed damages from the bill of lading holders for the detention of his ship, caused by the inability of the defendants to take delivery of the cargo in consequence of the strike. The bill of lading contained no express limit of time within which the cargo was to be unloaded, and hence it was admittedly the duty of the consignees to take delivery in a reasonable time. The question for decision, therefore, was, what is reasonable time? In other words, is it to be estimated by the circumstances which ordinarily exist at the port; or is it to be estimated by the actual circumstances which exist at the time of the performance of the duty? The Court of Appeal have decided in favor of the latter view; and having found that the defendants did all they could under the circumstances which happened, they have given judgment in their favor. This seems in consonance with good sense and mercantile convenience. The very fact of a party contracting to do something not in a fixed time, but in a reasonable time, would seem to be based upon the idea that in the event of unforeseen circumstances, over which he had no control, temporarily preventing him from performing his part of the contract, he should not be liable for the delay. To adopt the other meaning would seem to amount to holding that in many instances "reasonable time" is "unreasonable time." The decisions on the point are difficult to reconcile, and the present decision was much needed.—*London Law Times.*

PRINCIPAL AND AGENT.—The United St[illegible]preme Court has given a decision in the case of *Schutz* v. *Jordan* which may be of interest in these days of competition and business push. The head-note is thus given in the *New York Law Journal*:

If a would-be seller of merchandise conspire with an agent having general authority to purchase goods, but under special restrictions as to purchasing from such seller, of which the seller is aware, and, in pursuance of said conspiracy, goods are purchased in defiance of the restrictions, in the name of the principals, without their knowledge, and placed among the regular stock in said agent's department, no cause of action exists against the principals on contract for goods sold and delivered, whatever liability may attach for money had and received on account of the proceeds of such of said goods as are actually sold.

In an action for goods sold and delivered under such alleged circumstances, the burden of proof is on plaintiffs throughout to establish a valid contract of sale and delivery of goods thereunder. It rests upon plaintiffs to prove affirmatively that the agent had no authority to make the particular purchases declared upon. Mere proof of the receipt of the goods at the principal's place of business will not make out a *prima facie* case compelling them to establish the fraudulent character of the agent's dealings as an affirmative defence.

If it be proved that a letter, properly directed, was duly mailed, ordinarily the presumption is that it was received in the course of mail by the person to whom it was addressed. Yet, where a custom was shown on the part of principals to have their mail matter sorted and delivered to heads of departments, under which rule letters alleged to have been sent to the principals and which would have charged them with notice would have been handed to the conspiring agent aforesaid: *Held*, that such presumption did not exist; the presumption being only that it was received by the agent.

GRAND JURIES.—"A Magistrate" writes to the *Times* as follows: A learned recorder, Q.C., in charging the grand jury of a county town (there were no prisoners for trial!), made the following remarks: "He thought it possible that one of these days it might be considered that the attendance of a grand jury at quarter sessions was unnecessary, and there was a sufficient protection that persons would not be improperly put upon their trial, as the cases were heard in the first instance by the magistrates." How devoutly it is to be wished that this blessed day may come soon, and that the common sense of this recorder may prevail! In former days, when the squire heard the case of the poacher upon his own preserves, and committed him, with no other assistance than his own legal lore, the institution of a grand jury was indeed a safeguard; but in these enlightened times of magistrates' clerks and well-regulated petty sessions it is nothing less than absurd, as regards quarter sessions at least, that the deliberate opinions of justices advised by a lawyer should be submitted *quasi* for approval and should be liable to be overruled by less cultured minds. It is very doubtful, too, even as regards assizes, if the institution of a grand jury can be of any real

utility, except to share with a judge the responsibility of saying that such and such a prisoner shall not be put upon his trial in a particular class of case of an unmentionable character for want of evidence. But the judge in such cases is surely able to bring about the same result by a timely hint to counsel. Is there, however, any such further necessity, or even propriety, in the institution of a grand jury that it is worth while to continue the trouble and expense and loss of time involved? This is no age for pedantic and cumbersome methods of obtaining justice. No one travels nowadays by a stage-coach, except as a curiosity. The blast of the trumpet down St. James's Street is interesting, no doubt; but for the dozen persons sitting upon the coach there are a dozen thousand travelling on the railway. The relationship of a grand jury to a modern court of justice is somewhat in the same ratio. Magistrates and commercial men, who are bound to attend there, know that they are doing no good whatever, except, perhaps, to swell the triumph of a judicial car on a Roman holiday. Pedantry will not fail, I am aware, to dish up some sort of argument for the continual usefulness of a grand jury; but common sense says loudly, "No!" even though judges here and there may join in the chorus of admiration for this old-fashioned palladium of the liberty of the subject, which represents now only the waste of time, the waste of labor, and the waste of money.—*Law Journal.*

"PETIT MAL."—One of the most frequent pleas urged in favor of prisoners being tried for murder or manslaughter is that of insanity. The varieties of insanity are numerous, and one was disclosed at the assizes lately which, perhaps, has not been much noticed outside medical circles—that is, the complaint of *petit mal*. This, it appears, is really a short attack of epileptic insanity, and a person might have only one or two attacks in his lifetime, and no traces of this might be left on his system; further, a person might be having his dinner and suffer under such an attack without being aware of it. As to the effect of this complaint of *petit mal* as regards criminal actions, a man might in a moment of seizure do anything without knowing what he was doing, and it was quite possible for him to seize another person by the throat and cut it without being aware of what he was doing. It was impossible in one medical examination to say whether a man suffered from *petit mal*. These views were expressed during the trial of a man for the murder of his sweetheart. The counsel for the defence further referred to the malady. The medical evidence with regard to *petit mal* was that a man could attack those who were nearest to him, those he loved best —in fact, that the attack might be made under any kind of excitement—and the person committing it might know nothing of what he had done. He put it to them that the prisoner suffered from this complaint, and that being so, what greater excitement could be given to a young man than a refusal on the part of her he loved? In fact, in his letter to his father and mother, he said: "I should not have been where I now am if it had not been for my nasty temper," and, further, when the girl said, "Save me," he answered, "I will save you. Keep still where your are while I fetch help." The explanation of the reason

why he told a lie as to an assault on them was also reasonable. He wrote: "I knew if I told the truth they would not let me look at her, and I wanted to see her face again." All this was fully indicative of the condition of mind similiar to that under which a patient would be who suffered from *petit mal*. One of the medical men had said that if this disease showed itself it would most likely become apparent when the patient reached the age of puberty, and that was exactly the time at which the hereditary taint of insanity showed itself in the prisoner. The learned judge, in his summing up, pointed out that a certain care was needed not to weaken the criminal law by acquitting persons of criminal acts merely because they were of weak mind. If that were done half the criminal population in the country would be committing crime with a probability of going unpunished. It was not sufficient to prove a man to be of weak mind. Of course, with regard to a man like the prisoner, in whom there was no doubt of the hereditary taint, the consideration of the Crown, if necessary, would be properly exercised. The usual death sentence was passed. This case is one which those who are interested in medical jurisprudence might well make a note of.—*Law Journal.*

SOLICITOR'S LIEN.—Two points of great importance to the profession were decided by the Court of Appeal in *In re Taylor, Stileman & Underwood*, 60 L.J. Rep. Chanc. 525—the first as to the extent of a solicitor's retaining lien; the second as to its discharge by reason of the solicitor taking a security for his costs. In respect of the first point the solicitors set up their lien not only for their actual costs, charges, and expenses, but also for payments made on behalf of the client, such as the taxing-officer would take into account under the common order for taxation, but which he would have no power to moderate. The Court held that the lien could not be sustained for these advances, and laid down as a fair working test of what can and what cannot be brought under the lien that the lien extends to all items properly included in the bill of costs, charges, and expenses which the taxing-master has a right to consider, and, if necessary, moderate, but not to advances, which do not come within that category. The only authority cited in argument on this point appears to have been *In re Galland*, 55 Law J. Rep. Chanc. 478; L.R. 31 Chanc. Div. 296, which decided that a solicitor has no retaining lien for costs which he recovers by statute and not by contract between himself and his client. The case proceeded on the basis that the retaining lien arises out of contract. A similar view was taken in *In re Sharpe*, 1 Dowl. 432, where a solicitor was held to have no lien on deeds for expenses incurred by him in consequence of applications made to him by various claimants for the deeds. These authorities, however, have little direct bearing on the question before the Court in *In re Taylor*, where there was no dispute as to the existence of the contractual relation. More to the purpose is the passage from Sir Thomas Plumer's judgment in *Woorall* v. *Johnson*, 2 J. & W. 214, 218, quoted by Lord Justice Kay to the effect that a solicitor's lien "does not extend to general debts, but only to what is due to him in the character of attorney." Other cases bearing on the subject are *Irving* v. *Viana*, 2 Y. & J. 70, and *Christian*

v. *Field*, 2 Har. 177, 183, which show that a second solicitor in an action who pays off the first on succeeding to his place has no particular lien for the amount so paid. On the other hand, it was held in *Lambert* v. *Buckmaster*, 2 B. & C. 616, that the general lien will cover the solicitor's costs of an action brought by him against the client to recover his bill of costs in respect of which the lien is claimed. This decision was approved in the House of Lords in *Gray* v. *Graham*, 1 Pat. Scotch App. 615, 618. Lastly, in *In re Hill*, L.R. 33 Chanc. Div. 216, the particular lien on a fund was held to extend to the costs incurred by the solicitor in proving his retainer (which was disputed by the client), even though incurred after the date of the order directing taxation. So far as we are aware, these decisions represent the reported cases on the subject, and appear to be all of them consistent with the decision of the Court of Appeal in *In re Taylor*.

The other point before the Court arose in this way. The solicitors, while still acting for the client, took from her and her husband a joint and several promissory note for payment of the amount of their bill on demand with interest at the rate of 5 per cent., and this the Court held to amount to a discharge of the lien. Inasmuch as the security was plainly inconsistent with the lien—since a bill of costs for non-contentious business will only carry £4 per cent. interest, and that only for one month after delivery of the bill—the case was indistinguishable from *Roberts* v. *Jefferys*, 8 Law J. Rep. (o.s.) Chanc. 137, which the Court of Appeal approved and followed; but at the same time the Court went a good deal further, and laid down that where a solicitor takes a security for his costs from a client, for whom he is still acting, the *prima facie* inference, in default of evidence to the contrary, is that he has waived his lien. This proposition we believe to have been laid down for the first time in these broad terms, though it was discussed and considered an open question in *Brownlow* v. *Keating*, 2 Ir. Eq. (1840) 243. The following passage from Lord Justice Kay's judgment will show the reason and the limit of the rule: "We are dealing here," he says, "with a case between a solicitor and his own client. A solicitor has a duty to perform towards his client, to represent to his client all the facts of the case in a clear and intelligible manner, and to inform him of his rights and liabilities; and where you find a solicitor dealing with his client, and taking from him such a security as was given in this case, not expressly reserving his right of lien, I quite concur in thinking that this is a case in which the inference ought to be against the continuance of the lien."—*Law Journal*.

SECOND CONVICTION WHILE UNDER SENTENCE.—In *People* v. *Flynn*, Supreme Court of Utah, July 1, 1891, 26 Pac. Rep. 1114, it was held that where a convict escapes from the penitentiary and commits a grand larceny he may be convicted and sentenced therefor before he has served out his first sentence. The court said: "It was early held in England that persons convicted of felony, and thereby attainted, might plead the same in bar to a subsequent prosecution for any other felony, whether committed before or after the first conviction, for the reason that by his first attaint his possessions were forfeited, his blood corrupted, and he became dead in law; therefore any further conviction or

attaint would be fruitless. 4 Bl. Com. 336; 2 Hale P.C. 250; 1 Chit. Crim. Law, 464. This same doctrine was carried out in the case of *Crenshaw* v. *State*, 1 Mart. & Y. 122, wherein it is held that a conviction, judgment and execution upon one indictment for a felony not capital is a bar to all other indictments for felonies not capital committed previous to such conviction. This doctrine, however, has seldom been followed in the United States, and the above case, though not expressly overruled, seems to be the only adjudication in this country recognizing this doctrine. Bishop, in his Criminal Law, volume 1, section 898, says: 'It was a doctrine of the English law, at the time when this country was settled, that as a general rule, to which there were few exceptions, a person attainted for one felony could not be prosecuted criminally for another. But this doctrine, though recognized in one or two American cases, is not usually followed in this country. In England it was long ago abolished by an Act of Parliament.' In *Hawkins* v. *State*, 1 Port. (Ala.) 475, the court holds that neither a conviction nor pardon for any particular offence can, in that State, operate as a bar or discharge of any other distinct offence; and it is now generally conceded throughout the United States that the doctrine that a conviction for another distinct felony, committed either before or after the first conviction, or while the criminal is serving out his sentence thereon, does not prevail in this country, and is as repugnant to the established principle of modern criminal law as it is unsupported by reason. *Rex* v. *Vandercomb*, 1 Lead. Crim. Cas. 528; Archb. Crim. Pr. (Pom. Notes) 350; *State* v. *Commissioners*, 2 Murph. 371; *State* v. *McCarty*, 1 Bay, 334; 1 Bish. Crim. Law, ss. 731-884, 898, 953. Again, referring to Bishop's Criminal Law, the writer lays down the rule to be that 'when a prisoner, under an unexpired sentence of imprisonment, is convicted of a second offence, or when there are two or more convictions on which sentence remains to be pronounced, the judgment may direct that each succeeding period of imprisonment shall commence on the termination of the period next preceding.' 1 Bish. Crim. Law, ss. 731, 884. In the case of *People* v. *Majors*, 65 Cal. 138, it is held that a person may be tried and convicted for the crime of murder, notwithstanding he is at the time of the trial and sentence serving out a previous sentence of life imprisonment for another murder, committed at the same time, and imposed by another court. So in the case of *People* v. *Hong Ah Duck*, 61 Cal. 387, it was held that on a trial for murder it was competent for the prosecution to show that at the time of the homicide the defendant was a convict in the penitentiary, serving out a life sentence, and that the homicide was committed while so imprisoned, the object being to give the jury to understand that if they found the defendant guilty of murder in the first degree, with a recommendation to imprisonment for life, and by said verdict fixed the imprisonment for life, the punishment would be no more than the defendant was then undergoing under a former conviction, and that such a verdict would be no punishment whatever unless the jury made it punishable with death. In this Territory there is no statute exempting a convict from punishment for an offence committed by him while serving out his term of imprisonment. Our general penal laws include all persons within their scope. The criminal is protected by the law, and is made amenable to it, while in prison,

for any term of imprisonment. The statute of limitations requires prosecution for all felonies, other than for murder, to be commenced within four years after the commission of the offence, and, if not so commenced, the prosecution is barred. It is true, an indictment may be found before the expiration of the statutory limit, and the prisoner may be arrested and tried thereon after the expiration of his term of imprisonment; but it is not difficult to discover that this practice, if inaugurated, would not only greatly delay the execution of public justice, but in many instances would prevent a speedy trial that is guaranteed to all accused persons. It would impair the necessary discipline required in public prisons, and in a measure become a shield and protection to the criminals therein confined."—*Albany Law Journal.*

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

HILARY TERM, 1891.

The following is a *résumé* of the proceedings of Convocation during the above Term:—

The following gentlemen were called to the Bar, viz.:

February 2nd.—William John Hatton, Robert Ernest Gemmell, Walter Thompson Evans, Marshall Orla Johnston, Norman Blain Gash, Charles James Notter, Dighton Winans Baxter, William Loughton Morton, John Agnew, Edwin George Patrick Pickup, Roderick Balmacara Matheson, Henry Albert Simpson, Dudley Holmes, George Wellington Greene, William John Kidd, William Carnew, Henry Lumley Drayton, Frederick William Hill, James Fraser Macdonald, Stewart Charles Macdonald.

February 3rd.—Charles Currie Gregory (special case).

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

February 2nd.—A. F. Wilson, W. T. Evans, E. G. P. Pickup, S. C. Macdonald, W. York, W. L. B. Lister, J. F. Carmichael, A. C. Sutton.

February 3rd.—C. J. Notter, J. J. O'Meara, H. White, R. E. Gemmell, F. W. Hill.

February 7th.—W. L. E. Marsh, H. Macdonald, W. Carnew, R. B. Matheson, J. W. Evans, N. B. Gash.

February 13th.—J. Agnew, C. Elliott, W. S. McBrayne.

The following gentlemen passed the Second Intermediate Examination, viz.: W. B. Taylor, T. C. Cameron, R. S. Robertson, T. W. McGarry, J. E. Varley, W. L. Wickett, P. F. Carscallen, Jas. Kerr, W. J. Harvey, L. H. Lafferty, A. J. F. Sullivan, J. O. Dromgole, C. D. Schultz, J. E. Bird, and A. C. M. B. Jones.

The following gentlemen passed the First Intermediate Examination, viz.: C. S. Dunbar, A. S. Dickson, H. D. Petrie, J. S. McKay, W. L. Phelps, H. P. Innes, and D. B. Mulligan.

Monday, February 2nd.

Convocation met.

Present—The Treasurer and Messrs. Irving and Moss, and in addition, from 11 a.m. to adjournment, Messrs. Beaty, Ferguson, Foy, Mackelcan, Meredith, Murray, Purdom, and Robinson.

The minutes of last meeting were read and approved.

Convocation proceeded to the election of a Bencher in the place of the late Mr. J. H. Morris, Q.C.

Mr. C. H. Ritchie, Q.C., was elected.

Mr. Moss presented a Report from the Building Committee.

Ordered for immediate consideration.

Ordered, that the cut stone arch and surroundings reported by the architect as adding $1,000 to the cost be deducted, and that it be referred to the Building Committee to arrange as to the entrance, and to agree to the necessary modifications in the tenders, and to procure the contracts to be executed with the lowest tenderers.

Upon the Report of the Finance Committee, it was

Ordered, that Mr. Grasett, one of the assistants to the Secretary, be granted three months' leave of absence, owing to ill-health.

Ordered, that Mr. Martin be appointed to the Legal Education Committee, in place of the late Mr. Morris.

The Secretary laid on the table a list or register of members of the Bar entitled to vote at the election of Benchers.

Tuesday, February 3rd.

Convocation met.

Present—Before 11 a.m., the Treasurer, and Messrs. Bruce, Martin, Moss, Murray, Shepley; at and after 11 a.m., Messrs. Britton, Kerr, McMichael, and Robinson.

The minutes of last meeting were read and approved.

Ordered, that Messrs. J. E. Robertson and F. M. Morson be appointed scrutineers in connection with the election of Benchers.

Ordered, that Mr. Irving be appointed to act as and for the Treasurer in case of his absence in connection with the election of Benchers.

The petition of certain students as to the payment of fees was read and received.

Ordered, that it be referred to the Finance Committee to report a draft rule to meet the complaint.

Ordered, that Mr. Ritchie be appointed a member of the Committee on Law Reporting, in place of Mr. Martin, resigned.

Saturday, February 7th.

Convocation met.

Present—The Treasurer, and Messrs. Bell, Ferguson, Foy, Hoskin, Kingsmill, Mackelcan, Meredith, Moss, Murray, Osler, and Smith.

The minutes of last meeting were read and approved.

Mr Murray moved for leave to introduce a rule with regard to the payment of students' fees.

The rule was read a first time.

Ordered for a second reading at next meeting.

Mr. Murray, from the Finance Committee, presented a Report as to the yearly expenditure of the Society and its balance sheet for the past year.

Ordered, that the balance sheet be distributed and the report considered at the next meeting.

Mr. Mackelcan gave notice of motion for next meeting:

That the diploma given to each barrister upon his call to the Bar should have indorsed upon it the form of the oath to be taken by him before entering upon the practice of his profession, or that the terms of the oath, as containing an epitome of his duties as a barrister, should be prominently brought to his notice upon his call to the Bar, and that it should also appear in the printed Rules of the Society.

Friday, February 13th.

Convocation met.

Present—The Treasurer and Messrs. Britton, Christie, Foy, Hoskin, Irving, Kerr, Kingsmill, Lash, Mackelcan, Martin, Meredith, Moss, Murray Purdom, Ritchie, Robinson, and Shepley.

The minutes of last meeting were read and approved.

Mr. Moss presented the Report of the Legal Education Committee on the reference to them as to the Royal Military College, as follows:

1. Your Committee have had under consideration the following resolution of Convocation, viz.:—

"That it be referred to the Legal Education Committee to consider and report on the first day of next term whether any, and if so, on what terms, graduates of the Military College should be admitted and called on more favorable conditions than ordinary students and clerks."

2. The Committee recommend that provision be made (*a*) for the admission to the Society as students-at-law of cadets of the Royal Military College who have received diplomas of graduation upon production of such diplomas and compliance with the other rules and regulations of the Society with regard to admission as students; (*b*) for entitling such students to be called to to the Bar and admitted to practise as solicitors at the expiration of three years from their admission, they having first conformed to the other rules and regulations of the Society respecting call to the Bar and admission to practice.

(Signed) CHARLES MOSS,
Chairman.

February 12th, 1891.

The Report was ordered for immediate consideration and was adopted.

Mr. Meredith moved for leave to introduce a rule based on the Report.—*Carried.*

Ordered, that the rule be read a first time.

Ordered, that the rule be read a second time on the second day of next Term.

Mr. Britton gave notice of motion to amend the said rule by providing that the matriculation examination of the Royal Military College shall be accepted for entrance to the Law Society.

Mr. Moss presented the Report of the Legal Education Committee on the reference to them as to legislation on call to the Bar, as follows:

1. The Committee have had under consideration the resolution of Convocation by which it was referred to them to prepare and submit to the Attorney-General for consideration legislation

in the sense of authorizing Convocation to call to the Bar any solicitor in good standing who has been practising the profession for ten years prior to the first day of July, 1889.

2. The Committee beg to call the attention of Convocation to the rules now in existence with regard to the call of solicitors to the Bar in special cases, viz., Rules 206 to 210 inclusive.

3. The Committee are of opinion that in regard to solicitors of the class mentioned in the resolution an amendment to the rules so as to enable Convocation to call such solicitors upon their passing such examination as may be prescribed at the time of their application will meet the object of the resolution.

(Signed) CHARLES MOSS,
Chairman.

February 12th, 1891.

The Report was ordered for immediate consideration, and was adopted.

Ordered, that leave be granted to introduce a rule based on the Report.

Mr. Lash moved that Rule 209 be amended accordingly.

The rule was read a first time.

Mr. Lash moved that the rule be now read a second and third time.—*Carried unanimously.*

The rule was read a second and third time and passed.

Rule 209 as amended :

A barrister, as mentioned in sub-sections 2 and 3 of Rule 206, shall pass such examination as may be prescribed at the time of his application, *and a solicitor of the Supreme Court of Judicature for Ontario, in good standing, who has been practising his profession in this Province for ten years prior to the first day of July*, 1889, *shall pass such examination as may be prescribed at the time of his application.*

Mr. Ferguson presented the Report of the Committee on the Roll of Benchers as follows :

The Committee to whom the Roll of Benchers prepared by Mr. Read, Q.C., was referred for revision and for the consideration of the question of remuneration to be paid to Mr. Read, beg leave to report that they have not been able to complete their revision of the list, and ask leave to retain the consideration of that portion of the reference till next term.

And as to the remuneration to be paid to Mr. Read for his services, they report that, in the opinion of the Committee, the value of the same to the Society is of about the sum of one hundred dollars, and recommend that that sum be paid to Mr. Read.

(Signed) F. MACKELCAN,
J. K. KERR,
J. H. FERGUSON,
GEO. F. SHEPLEY.

The Report was ordered for immediate consideration, adopted, and ordered accordingly.

The letter of Miss M. Wynn, resigning her situation as telegraph and telephone operator, was read.

Ordered, that her resignation, to take effect on 1st March, 1891, be accepted, and that her sister, Miss G. Wynn, be appointed operator on the same terms and conditions as Miss M. Wynn.

Ordered, that Mr. H. R. Hardy be paid $100 in full compensation for his loss on the Law List of last year and $150 for the Law List for this year, and that it be referred to the Reporting Committee to report next term as to proper arrangements for future years, and to make any necessary arrangements for this year, in case Mr. Hardy declines the remuneration directed by this resolution.

The Report of the Finance Committee and the Balance Sheet ordered to be taken into consideration this day were taken up.

The Report was adopted.

Ordered, that the Finance Committee do prepare and add to the Balance Sheet, for distribution, a detailed memorandum showing the abnormal expenditure for the year in addition to the permanent expenditure.

The rule as to the fees of students was read a second and third time and passed as follows:

RULE.—In all cases where students in the Law School are entitled to present themselves for their final examinations for call to the Bar or admission as solicitors before the expiration of three or five years, as the case may be, from the time of their admission into the Society, they may present themselves for such examinations upon paying the sum of $10 for each examination; and, having passed such examinations, they may thereafter on the expiration of such three or five years, as the case may be, be called to the Bar and enrolled as solicitors upon paying the sums of $90 and $50 respectively on or before the third Saturday preceding the terms in which they are so entitled to be so called or enrolled; and that in case of the failure of any student, the sums paid on the examinations be forfeited, and the application of this rule shall terminate as to such student.

Mr. Martin, pursuant to notice, moved for leave to introduce a rule limiting the annual grant to County Libraries on all accounts to $700.

Ordered, that the rule be read a first time.

Ordered, that the rule be read a second time on the second day of next Term.

Ordered, that the matter of the proposed rule be referred to the County Libraries Aid Committee to enquire into the same and to report their views thereon on the first day of next Term.

Ordered, that Mr. Berthon be commissioned to make copies of the portraits of Chief Justice Elmsley and Chief Justice Powell, now shown to Convocation, at the price of $150 each.

Ordered, that leave be granted to introduce a rule providing for sending out the voting papers for the election of Benchers.

The rule was read a first, second, and third time unanimously, and is in the words following:

RULE.—The form of voting paper for election of Benchers required by sec. 10 of chap. 145 of R.S.O., 1887, shall be sent by the Secretary by mail to each member of the Bar entitled to receive such voting paper between the first and tenth days of March preceding the day of election.

Convocation adjourned.

J. K. KERR,
Chairman Committee on Journals.

DIARY FOR SEPTEMBER.

2. Wed.....De Beauharnois, Governor, 1726.
6. Sun.....*15th Sunday after Trinity.*
8. Tues.....General Sessions and County Court Sittings for Trial in York.
12. Sat.....Frontenac, Governor of Canada, 1692.
13. Sun.....*16th Sunday after Trinity.* Quebec taken, and death of Wolfe, 1759.
14. Mon.....Trinity term commences. Jacques Cartier arrived at Quebec, 1535.
15. Tues.....Ct. of Appeal sits. Civil Assizes at Hamilton.
17. Thur.....First Parliament of Upper Canada met at Niagara, 1792.
18. Fri.....Quebec surrendered to the British, 1759.
20. Sun.....*17th Sunday after Trinity.*
21. Mon.....St. Matthias.
23. Wed.....Courcelles, Governor of Canada, 1665.
24. Thur.....Guy Carleton, Lieut.-Gen. and Commander-in-Chief, 1766.
26. Sat.....Trinity Term ends. Relief of Lucknow, 1857.
27. Sun.....*18th Sunday after Trinity.*
28. Mon.....Criminal Assizes at Toronto. W. H. Blake, 1st Chan. U.C., 1849.
29. Tues.....St. Michael and All Angels.
30. Sun.....Sir Isaac Brock, Administrator, 1811.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court] [June 19.

MINGEAUD *v.* PACKER.

Insurance—Life—Benefit society—Change of direction as to payment—Trust—Revocation—R.S.O., c. 172—R.S.O., c. 136—51 Vict., c. 22.

A person, whose life was insured in a benefit society, incorporated under R.S.O., 1877, c. 167, as amended by 41 Vict., c. 8, s. 18 (R.S.O., 1887, c. 172), on the 28th January, 1888, his first wife being then dead, caused to be issued to him a certificate making the insurance money payable to his children. After this, he married again, and on the 1st June, 1889, at his request, a change was made, and a new certificate issued, making the money payable to his second wife. He died on the 19th Nov., 1889.

Held, reversing the judgment of STREET, J., that the effect of 51 Vict., c. 22, was to make the certificate of the 28th January, 1888, subject to the provisions of R.S.O., c. 136, and that the rules of the society, in so far as they were inconsistent with such provisions, were modified and controlled by them; and such certificate became a trust for the children, under s. 5 of R.S.O., c. 136, and ceased, so long as the objects of the trust remained, to be under the control of the deceased, except only in accordance with ss. 5 and 6, which did not authorize him to revoke the certificate and replace it by the subsequent one.

N. F. Paterson, Q.C., for the plaintiff.

C. J. Holman and *D. B. Simpson* for the defendants.

IN RE MCGUGAN *v.* MCGUGAN.

County Court—Equity jurisdiction—32 Vict., c. 6, s. 4—Judicature Act—Qui tam action by ratepayer of school section to recover moneys improperly paid out by trustees—"Personal actions," R.S.O., c. 47, s. 19—Power to transfer to High Court—R.S.O., c. 47, s. 38—Prohibition—Solicitor and client—Bill of costs—Public School Board—Ratepayer applying for taxation—R.S.O., c. 147, s. 42—Rule 1229—R.S.O., c. 225, s. 39—Duty of auditors of school section.

Since 32 Vict., c. 6, s. 4, the County Courts have had common law jurisdiction only; the Judicature Act did not alter the jurisdiction of those Courts, but only made applicable to matters cognizable by them the several rules of law thereby enacted and declared.

An action by a ratepayer of a school section, on behalf of himself and all other ratepayers, against the trustees of the section, seeking to compel the defendants to pay to the treasurer of the section such amount as might be disallowed upon taxation of a bill of costs paid by the trustees to a solicitor, is one of purely equitable jurisdiction, and is not cognizable by a County Court, even though the amount in question is not more than $200.

The term "personal actions" used in R.S.O., c. 47, s. 19, means common law actions.

If a County Court has no jurisdiction over the plaintiff's cause of action, the proceedings in respect thereof in that Court are all *coram non judice*, and the judge of that Court has no power over them; s. 38 of R.S.O., c. 47 applies only where the action in which the equitable question is raised is within the jurisdiction of the County Court.

Prohibition granted to restrain a county judge from transferring to the High Court an action brought in the County Court for an equitable cause of action.

A ratepayer of a school section is entitled under R.S.O., c. 147, s. 42, to a taxation of a bill of costs rendered by a solicitor to and paid by the school board of the section.

Re Barber, 14 M. & W. 720, distinguished.
Ex parte Bass, 17 L.J. Ch. 219; 2 Phil. 562.
Re Skinner, 13 P.R. 276, 447, followed.

Semble, even if s. 42 did not apply, a ratepayer would be entitled to a taxation under Rule 1229.

There is nothing in s. 39 of R.S.O., c. 225, providing that it shall be the duty of the auditors of every school section to examine into and decide upon the accuracy of the accounts of the section, and whether the trustees have duly accounted for and expended for school purposes the moneys received by them, to prevent an application by a ratepayer for taxation of such a bill.

J. A. Robinson for the plaintiff.
J. M. Glenn for the defendants.

MARSH *v.* WEBB.

Title to land—Adverse possession—32 Henry VIII., c. 9—Husband and wife—Estoppel—Subrogation.

In 1841 land was granted by King's College to G., who conveyed it in 1849 to a married woman, who, with her husband, was in possession at the time of the grant to G. The conveyance to the married woman was executed by her husband. The husband and wife lived together on the land till her death in 1864, and the husband till 1870. He died in January, 1889. In an action of ejectment, begun in October, 1889, by the heirs-at-law of the wife against persons claiming under the husband,

Held, reversing the judgment of ROSE, J., that the possession of the husband was not adverse at the time of the conveyance to C., and therefore that conveyance and the subsequent conveyance to the wife were operative, notwithstanding the statute 32 Henry VIII., c. 9, then in force.

Per ARMOUR, C.J., that the conveyance to the wife was made by the procurement of the husband, and he, having no other right or title to the land, was estopped from denying the validity of G.'s title.

Held, also, upon the evidence, that the plaintiffs were not estopped by the dealings of their ancestors with the land; and that the defendants were not entitled to be subrogated to the rights of a mortgagee in whose mortgage she had joined as a granting party.

J. R. Roaf for the plaintiffs.
F. L. Webb for the defendants.

STREET, J.] [August 14.

IN RE GARBUTT.

Extradition—Evidence—Alibi—Identity—Extradition judge—Junior judge of County Court—R.S.C., c. 142, s. 6, s-s. 2, directory—Forgery—Information—Variance from proof—Christian name of indorser—R.S.C., c. 174, ss. 57, 58, 70—Reading over foreign depositions to prisoner.

Where evidence is given by the prosecution before an extradition judge positively identifying the prisoner, the judge cannot receive evidence on behalf of the prisoner to show an alibi, for that would be in effect trying the guilt or innocence of the prisoner; if the evidence given by the prosecution is sufficient to justify the commital of the prisoner, he must be committed under s. 11 of the Extradition Act, R.S.C., c. 142.

Semble, that a prisoner is entitled to go into evidence to disprove his identity; but that means his identity with the person named in the warrant, not his identity with the person who actually committed the extradition crime.

The junior judge of a County Court is a judge of a County Court, and has the functions of an extradition judge.

Re Parker, 19 O.R. 612, followed.

R.S.C., c. 142, s. 6, s-s. 2, is directory only, and the neglect of a judge to forward to the Minister of Justice a report of the issue of a warrant, as required by the sub-section, is not a ground for the discharge of the prisoner.

The information upon which a warrant issued committing a person to await extradition for forgery stated the Christian name of the indorser of the forged instrument as Albert, whereas when the instrument was proved it appeared to be James.

Held, that the variance was immaterial under ss. 57 and 58 of R.S.C., c. 174, which are made applicable to extradition proceedings by s. 9 of R.S.C., c. 142.

It was objected by the prisoner that certain depositions taken abroad and put in by the prosecution were not read over to the prisoner, as required by s. 70 of R.S.C., c. 174.

Held, that the objection was not one which as a matter of law would entitle a prisoner to be discharged; and it should not be given effect to as a matter of discretion because it was entirely technical in its character.

W. G. Murdoch for the prisoner.
J. W. Curry for the prosecution.

STREET, J.] [August 20.

IN RE MCPHERSON *v.* MCPHEE.

Prohibition—Division Court—Judge reserving judgment without naming hour—R.S.O., c. 51, s. 144—Prejudice—Waiver.

The judge who tried a plaint in a Division Court reserved judgment and indorsed on the summons "judgment in a week." Upon the day indicated by the indorsement he gave judgment against the defendant; the judgment came to the knowledge of the defendant, who made an application within the proper time, upon the merits, for a new trial or to set aside the judgment, which application was refused.

Upon an application by the defendant for prohibition upon the ground that the judge did not fix any day or hour for giving judgment, as required by R.S.O., c. 51, s. 144,

Held, that there was no ground for a prohibition; for the defendant was not prejudiced by the omission, and the irregularity was waived by the application upon the merits without any reference to the objection.

In re Tipling v. *Cole*, *ante* 411; and *Re McGregor* v. *Norton*, 13 P.R. 223, distinguished.

Re Smart and O'Reilly, 7 P.R. 364, followed.

McCabe for the defendant.

Douglas Armour for the plaintiff.

Practice.

STREET, J.] [June 11.

UNGER *v.* BRENNAN.

Venue—Change of—Fair trial—Jury—Trial judge.

The plaintiff was a settler in the district of Muskoka, and the defendant a timber licensee. The question of fact between them was whether certain timber was the property of the plaintiff or of the defendant. The defendant applied to have venue changed from Muskoka, on the ground that the jury would be largely drawn from the settler class, and that he believed he would not have a fair trial.

Held, that this was not a ground for change of venue, and any possible injustice to the defendant would be prevented by the trial judge, who would have a discretion as to the mode of trial.

Marsh, Q.C., for the plaintiff.

Osler, Q.C., for the defendant.

STREET, J.] [July 20.

MASON *v.* VAN CAMP.

Particulars—Seduction.

Where the defendant in an action of seduction denies the seduction on oath, the plaintiff will be required to furnish particulars of the times and places at which it is charged that the alleged seduction took place.

Hollister v. *Annable*, 14 P.R. 11, approved.

Notwithstanding differences in the Rules, the principle upon which particulars are ordered is the same here as in England.

Shepley, Q.C., for the plaintiff.

D. Armour for the defendant.

MEREDITH, J.] [July 21.

MACKENZIE *v.* ROSS.

Judgment—Default of appearance—Money demand—Leave to proceed upon another claim.

Where the writ of summons was specially indorsed to recover a money demand, and was also endorsed with a claim to set aside a conveyance, the plaintiff was allowed, upon default of appearance, to sign judgment for the money demand, and to proceed in the ordinary way upon the other claim.

Huffman v. *Doner*, 12 P.R. 492; *Hay* v. *Johnston*, ib. 596, followed.

W. H. Blake for the plaintiff.

STREET, J.] [Aug. 8.

IN RE YOUNG.

Costs—R.S.O., c. 124, s. 6—Removal of assignee—County Court judge—Persona designata—Power to order costs—Rule 1170 (a).

Where a judge of a County Court, acting under R.S.O., c. 124, s. 6, orders the removal of an assignee, he exercises a statutory jurisdiction as *persona designata*, and has no power to order payment of costs.

The proceedings in such a case are not in any court; and Rule 1170 (*a*) does not apply to them.

Re Pacquette, 11 P.R. 463, followed.

History and construction of Rule 1170 (*a*).

Douglas Armour for the assignee.

A. W. Anglin for the creditors.

Flotsam and Jetsam.

A couple of lawyers engaged in a case were recently discussing the issue.

"At all events," said the younger and more enthusiastic, "we have justice on our side."

To which the older and warier replied, "Quite true; but what we want is the Chief-Justice on our side."—*Ex.*

HERE is an important head-note in a Scotch case: "The defender, seeing a cat running past in a public street, called to a dog beside him to 'seize it.' The dog accordingly gave chase to catch the cat, and in doing so knocked down and injured a child. *Held*, that the defender, in setting a dog to chase a cat through the street, acted negligently and without due care for passers-by, and was found liable in damages."—*Law Times.*

MR. JUSTICE PARK never lost an opportunity of pointing a "temperance" moral. On one occasion he had before him a witness named Elm, who confessed to being eighty-four years of age, and seemed wonderfully well-preserved. After his examination had been concluded, the judge looked over his spectacles at the patriarch and said, "Now, Mr. Elm, you're an old man. Perhaps you will favor me by telling me how you live? Do you ever indulge in strong drink?" "My Lord," replied the witness, solemnly, "I can assure your lordship that I ain't touched beer or sperrits this forty-three years." "There now, gentlemen of the jury," said the judge, triumphantly, "there's a lesson for you all!" The next witness was also called Elm, a brother of the preceding, who actually looked younger and more alert, though no less than five years older. To him Mr. Justice Park said, "Well, Mr. Elm, I suppose your habits are those of your brother. *You* never touch anything stronger than water." "Beg parding, my lord," replied the witness, scratching his head meditatively. "My wife, she *do* say that I ain't been to bed sober these fifty years!" Here a titter ran round the court, and the poor judge was just a little discomfited. However, he regained his composure, and with a twinkle in in his beaming eye said, "Well, all I can say is, gentlemen, that the Elm is a well-seasoned wood, wet or dry."

Law Society of Upper Canada.

THE LAW SCHOOL, 1891.

LEGAL EDUCATION COMMITTEE.

CHARLES MOSS, Q.C., *Chairman.*

W. BARWICK. E. MARTIN, Q.C.
JOHN HOSKIN, Q.C. W. R. MEREDITH, Q.C.
Z. A. LASH, Q.C. W. R. RIDDELL.
C. MACDOUGALL, Q.C. C. H. RITCHIE, Q.C.
F. MACKELCAN, Q.C. C. ROBINSON, Q.C.
J. V. TEETZEL, 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, copies of which may be obtained from Principal of the Law School, Osgoode Hall, Toronto.

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, M.A. 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. Admission is to be gained during Easter and Trinity terms only. 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 carefully 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.