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IT might surely be expected that if there were any inherent idea of utility in a Grand Jury it would be found in that body itself; and yet we find—and it is not the first occasion of the kind—the Grand Jury at Portage La Prairie placing itself on record for the second time as being in favor of its own abolition.

IN the cases of the appeals of the Confederation Life and the North American Life Associations, McDougall, Co.J., recently had to determine whether that portion of the annual receipts of a life insurance company which is carried to the credit of their reserve fund was liable to assessment as income. It was held in *Nicolson* v. *Nicolson*, 9 W.R. 679, that a fund set apart as a reserve is, as between the parties entitled, capital and not income. The learned judge, distinguishing the cases of *Last* v. *The London Assurance Co.*, L.R. 10 App. Cas. 438, and *New York Life* v. *Styles*, L.R. 14 App. Cas. 381, held that inasmuch as the reserve fund represents a sum sufficient to reinsure all the existing policies of the company, and that they are required to retain this fund as an immediate available asset for that purpose, and that if the fund be found to be impaired or insufficient in amount for that purpose the license of the company will be withdrawn, that that portion of the annual receipts which is paid into the reserve fund is an appropriation which the law compels them to make, and the annual accretions made thereto are as necessary and imperative charges upon the annual receipts as the expenses of management. The question of the liability to taxation of the sums paid or credited to the participating policy-holders out of the annual gross receipts the learned judge did not find it necessary to decide upon, as not being distinctly raised by the appeal.

TWO cases have been recently before the courts in which the limits of County Court jurisdiction are discussed, and in both of them we find a consensus of opinion that the County Courts have now absolutely no jurisdiction in equity. The first of these cases is *Re McGugan* v. *McGugan*, 21 O.R. 289, which was an action by a ratepayer of a municipality against the trustees of a school section, complaining that they had paid moneys in breach of trust. Rose, J., held the action maintainable, but the Divisional Court of the Q.B.D. unanimously reversed him. On this point it may suffice to quote the language of Armour, C.J., who delivered the judgment of the court: "The County Court never had any equity jurisdiction until equity jurisdiction was conferred upon it by the Act

16 Vict., c. 19 (C.S.U.C., c. 15, ss. 33, *et seq.*), but the provisions of the law conferring equity jurisdiction upon it were repealed by 32 Vict., c. 6, s. 4, leaving the County Court with common law jurisdiction only."

The Judicature Act (R.S.O., c. 44) did not alter the jurisdiction of the County Court, but only made applicable to matters cognizable by the County Court the several rules of law thereby enacted and declared.

It was argued that the action was a "personal action," but the learned Chief Justice declares that that expression can only apply to actions of a common law character. He further points out that where a County Court has no jurisdiction over the subject-matter of the action, there is no power to transfer it from the County Court to the High Court under the County Courts Act (R.S.O., c. 47), s. 38. The other case to which we referred is *Whidden* v. *Jackson*, 18 A.R. 439 (see *ante* Vol. xxvii., p. 410), where the Court of Appeal holds that when the claim of a creditor is disputed under The Act Respecting Assignments and Preferences (R.S.O., c. 124), the action to establish the claim as against the assignee cannot be brought in a County Court, no matter what the amount of it may be, for the same reason, viz., that the action is one for equitable relief and the County Courts have no equity jurisdiction. This is a defect in the law which ought to be remedied as speedily as possible.

IT appears to us to have been too rashly assumed by MacMahon, J., in *Regina ex rel. McGuire* v. *Birkett*, 21 O.R. 162, that the decision of the Master in Chambers in a controverted municipal election proceeding is final. The learned judge's reasoning seems to be as follows: The Master in Chambers has the same jurisdiction as a judge by virtue of Rule 30, and 51 Vict., c. 2, s. 4, (O.), to entertain such applications: but by R.S.O., c. 184, s. 207, the decision of a judge is final, therefore the decision of the Master in Chambers is final. But we think the premises do not necessarily support the conclusion. It may be conceded that the courts have rightly decided that the Legislature of Ontario had power to delegate jurisdiction in these matters to the Master in Chambers, but it must be remembered that the same rules which confer that power on him also provide that "any person affected by any order or decision of the Master in Chambers . . . may appeal therefrom to a judge of the High Court in Chambers": Rule 846. This rule is very general in its terms, and is not confined to orders made in actions. Orders made in controverted municipal election proceedings are therefore apparently within its scope. But the point is not altogether without authority; at least two cases are to be found in which a similar question has been raised in England, and the expression of opinion has been in favor of the right of appeal. In *Bryant* v. *Reading*, 17 Q.B.D 128, the point was whether an order of a master made in an interpleader matter was subject to appeal. By Ord. lvii. r. 11, the order of a judge is made final: and it was contended that because the order of a judge was final, and the master was entitled to exercise the jurisdiction of a judge in such matters, therefore his order was final. But Lord Esher, M.R., said: "I think this argument may well be contested on

the ground that the order which deals with the decision of a court or judge, and makes that decision final and conclusive, does not apply to the decision of a master. Ord. liv, r. 12, gives the master the authority and jurisdiction of a judge in such cases; but that does make his decision that of a court or a judge, while R. 21 of the same *order* is explicit, that any person affected by any order or decision of a master may appeal therefrom to a Judge in Chambers." But although the point was not open for decision in that case, both Lindley and Lopes, L.JJ., expressed themselves as concurring in the view that an appeal would lie to a Judge in Chambers from the master in such a case. In the later case of *Clench* v. *Dooley*, 56 L.T.N.S. 122, a Divisional Court (Huddleston, B., and Manisty and Grantham, JJ.) expressly decided the point in favor of the right of appeal, in accordance with the view expressed by the Court of Appeal in *Bryant* v. *Reading*. The fact that the master's order does not necessarily stand on the same footing as a judge's as regards the right of appeal may also be seen by the case of *Christie* v. *Conway*, 9 P.R. 529, where the order of the Master in Chambers as to the costs of an interpleader issue, which were in his discretion, was held to be appealable. The case of *Reg. ex rel. McGuire* v. *Birkett*, it is true, was affirmed by the Divisional Court, but, so far as the report shows, simply upon the question whether the Provincial Legislature had power to delegate such duties to the Master in Chambers; the finality or non-finality of his order does not appear to have been discussed. We therefore venture to doubt the correctness of the decision of MacMahon, J., that the order of the Master in Chambers in such cases is not subject to appeal.

LAND TRANSFER AND TENURE.

We have more than once advocated the adoption of some system which would render the transfer of land more in accordance with the spirit of this century. If the laws of the land are to be regarded by lawyers as mere machinery whose sole object and purpose is to aggrandize the legal profession at the expense of the rest of the community, it would be an unwise and injudicious thing, from a monetary point of view, to advocate the supplanting of a system which has been so fruitful of lawsuits by any system designed to give greater security to titles.

We do not believe that any lawyer whose opinion is worth considering looks upon the law in that light. The aim of all right-minded members of the profession should be, and we believe it is, to make the laws of our country as perfect as they can be made by human intelligence. The perfection of a law must be taken to depend on its being adequate to guard and preserve the rights of the community and to give certainty and security in the holding of property. A law which serves as a sort of snare to entrap the unwary, and which constantly exposes innocent persons to heavy pecuniary loss, can hardly be said to be perfect.

The manifold imperfections of the system of land transfer which has come from the motherland have been so often pointed out that it is really surprising that a practical, common-sense people like the inhabitants of Ontario should be

content to put up with it so long, and, even when a very palpable remedy is pointed out, should delay and dillydally about adopting it.

If we needed a moral, we have not to go far to seek one. In the current number of the reports, the case of *Marsh* v. *Webb*, 21 O.R. 281, may be selected as an instance of the possibilities of that system. In that case it appears that the defendants' predecessors in title had purchased the land in question in May, 1873, under a power of sale contained in a mortgage made to a well-known loan company. After possession had been held under the title thus acquired for sixteen years, the defendants find themselves involved in an action to recover possession of the land brought by the heirs-at-law of a prior owner, who died in 1864. The explanation, of course, is very simple. The plaintiffs' ancestor was a married woman; her husband had assumed to mortgage the land to the loan company in fee, and he had not died until 1889; consequently the rights of his deceased wife's heirs were kept alive for twenty-five years after her death. The Divisional Court have decided in favor of the plaintiffs, but we learn from a footnote to the report that the case is to be carried to the Court of Appeal.

The disadvantage at which the defendants are placed in such a contest is manifest. If the transactions connected with the title had been of recent occurrence, evidence might have been forthcoming which would have shown that the defendants' title was perfectly good in law. But when, after the lapse of forty-two years, transactions have to be explained and unravelled, is it any wonder that the evidence which might have substantiated their claim to the land is irretrievably lost?

The title under which the plaintiffs claimed was a deed made in 1849 to their deceased ancestress. It appeared from the evidence that she and her husband had been previously living on the property, which belonged to a person named Greenshields, that her husband purchased it from Greenshields, and that the deed was made, by his appointment, to his wife. If the deed had been made under such circumstances to a stranger, there would have been clearly a resulting trust in favor of the husband, but because the grantee was his wife there is a presumption that the deed was intended as an advancement: but this presumption is not a conclusive presumption, but one that may be rebutted even by parol testimony, as appears by the case of *Owen* v. *Kennedy*, 20 Gr. 163; but after the lapse of upwards of forty years from the time the transaction took place, it is hardly to be wondered at that no evidence was forthcoming to explain the true nature of the transaction, the principal actors, viz., husband and wife, being both dead. Had the defendants been able to rebut the presumption of advancement, they would have been entitled to succeed, for the mere fact that the bare legal estate was in the plaintiffs would not have entitled them to recover: see *Thorne* v. *Williams*, 13 O.R. 577.

A system of law which seems expressly framed to jeopardize the rights of a community and to render titles insecure is out of date. It is for the Legislature to take such action as shall make the transfer of land simple and easy, and make the tenure of land definite and secure. If the Torrens system be the best, let that system be adopted.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for December comprise (1891) 2 Q.B., pp. 581-718; (1891) P., pp. 349-410; (1891) 3 Ch., pp. 241-572; and (1891) A.C., pp. 497-628.

PRACTICE—PARTICULARS—LIBEL—JUSTIFICATION.

In *Devereux* v. *Clarke* (1891), 2 Q.B. 582, an application was made for particulars of a defence of justification, the action being for libel. The alleged libel was contained in the review of a book written by the plaintiff, in which the defendant had stated that the plaintiff was, by his own confession, a most barefaced liar. Denman and Collins, JJ., reversed the decision of Lawrance, J., and held that the plaintiff was entitled to the particulars of the passages in his book on which the defendant relied, specifying the pages at which they concurred, and the first and last words of the passages.

PRACTICE—SPECIALLY INDORSED WRIT—APPLICATION FOR JUDGMENT UNDER ORD. XIV., R. 1 (ONT. RULE 739)—AMENDMENT OF INDORSEMENT AFTER MOTION COMMENCED.

Gurney v. *Small* (1891), 2 Q.B. 584, was an application for judgment under Ord. xiv., r. 1 (Ont. Rule 739). The writ was indorsed for a liquidated demand, and also with a further claim for use and occupation of the plaintiff's premises by the defendant, which was an unliquidated demand. The defendant appeared, and the plaintiff took out a summons for leave to sign judgment, and pending the summons he amended his writ by striking out of the indorsement the unliquidated demand. Wills and Charles, JJ., held that the plaintiff was not entitled to judgment on the ground that there was no jurisdiction to make the order when the writ, at the time the summons for judgment was issued, comprised any claim which was not the subject of a special indorsement. This adds one more to the list of English cases referred to by Meredith, J., in *Mackenzie* v. *Ross* 14 P R. 299, which are in conflict with *Mackenzie* v. *Ross* and the cases on which that decision was based. The result of the English cases appears to be that a writ can only be "specially indorsed" where all the claims indorsed are properly the subject of "a special indorsement"; whereas the Ontario cases, though founded on rules similarly worded to the English rules, decide that a writ may be "specially indorsed" notwithstanding other claims are added which are not properly the subject of "a special indorsement"; and that the addition of claims which are not properly the subject of a "special indorsement" does not prevent the plaintiff proceeding as upon a specially indorsed writ as regards those claims which are properly the subject of "a special indorsement." Since the above was written, we find another case reported, *Elliot* v. *Roberts*, 92 L.T. Jour. 78, in the same line as *Gurney* v. *Small*.

PRACTICE—APPEAL—"CRIMINAL MATTER"—MANDAMUS TO MAGISTRATE

In *The Queen* v. *Tyler* (1891), 2 Q.B. 588, the short point determined is that when an application is made for a mandamus to a magistrate to compel him to issue a summons for the recovery of penalties under a statute, the application is "a criminal matter" and not appealable. In the present case the rule *nisi* for a

mandamus had been discharged, and it was held that there was no appeal from the order of discharge.

REPRESENTATION—ESTOPPEL—SHARE CERTIFICATE—MEASURE OF DAMAGES.

Tomkinson v. *Balkis Consolidated Co.* (1891), 2 Q.B. 614, is a case which illustrates the distinction between an action for misrepresentation and an action founded on a representation the truth of which the defendants are estopped from denying. The distinction between the two classes of cases was dwelt upon recently in the case of *Low* v. *Bouverie* (1891), 3 Ch. 82, noted *ante* vol. 27, p. 577. In the present case, the defendants had given a certificate that the plaintiff was holder of certain shares. On the faith of that certificate the plaintiff sold the shares, and the defendants then refused to register the transfer to the purchasers. The plaintiff received the purchase money and applied it in payment of debts for which he held the shares as security; and he had then to purchase other shares in order to fulfil his contract of sale. The Court of Appeal (Lord Esher, M.R., Lopes and Kay, L.JJ.) affirmed the judgment of Pollock, B., in favor of the plaintiff, and held that the measure of damages was properly fixed at the price paid for the new shares, and that the plaintiff was not bound to give credit for the purchase money he had received. The ground upon which the decision proceeds is that the defendants were estopped from disputing the truth of their own certificate. We may add that the ground on which the defendants sought to repudiate their certificate was that the person from whom the plaintiff got the shares had, after the granting of the certificate to the plaintiff, sold the shares to another person, who had been registered by the defendants as the owner of the shares.

SHIP—BILL OF LADING—DEMURRAGE—DELAY IN UNLOADING CAUSED BY A STRIKE.

Hick v. *Rodocanachi* (1891), 2 Q.B. 626, is a case which arose out of the strike of the London dock laborers in 1889. The action was by a shipowner against charterers and consignees of goods to recover demurrage and damages for the detention of a ship. The charterers and consignees by the charter party were bound to apply for and unload the goods within twenty-four hours after the arrival of the ship at the port of London. The defendants duly applied for the goods within the specified time, and commenced to unload them; but the strike took place, and the unloading was delayed in consequence; both parties did all they could under the circumstances to expedite the unloading of the goods. There being no express stipulation in the charter party as to the time within which the cargo was to be discharged, the Court of Appeal (Lord Esher, M.R., and Lindley and Fry, L.JJ.) held that the defendants were entitled to a reasonable time, and that in the absence of any special provision on the subject, what would be reasonable time would depend on the circumstances existing at the time of the unloading, and that as the strike could not be attributed to any default of the defendants they were not responsible for the delay. The case is interesting as showing the conflict of authority on the question of how "a reasonable time" is to be determined, whether by reference to the ordinary course o

business, or whether by reference to the actual existing state of the circumstances at the particular time. It will be seen that the Court of Appeal have adopted the latter view as the preferable one.

BILL OF LADING—WRONGFUL DELIVERY—TROVER.

Bristol and West of England Bank v. *Midland Ry. Co.* (1891), 2 Q.B. 653, was an action of trover brought by the transferees of a bill of lading under the following circumstances: The goods in question had been consigned from Toronto, and the bill of lading provided that the goods were to be delivered to the order of the consignor or his assigns. The consignor drew bills of exchange on the consignee against the consignment, and sold the bills of exchange with the bill of lading attached, which he indorsed in blank to the Toronto Bank, who sent them to their agents, a London bank, with a hypothecation note empowering the London bank to sell the goods if the bills were not accepted, or not paid at maturity. The goods arrived in England, and were delivered to the defendants to be delivered to the order of the ship-owners. The consignee paid the freight and other charges and accepted the bills of exchange; but before the bills became due, he induced the defendants wrongfully to deliver the goods to him without producing any delivery order. When the bills became due the consignee requested the plaintiffs to pay the bills, which they did, and received the bills of exchange and bills of lading from the London bank, and ultimately obtained delivery orders from the ship-owners in exchange for the bill of lading. When they presented the delivery orders, they found that the goods had been already delivered up to the consignee. The Court of Appeal (Lindley, Fry, and Lopes, L.JJ.) were of opinion that the plaintiffs were pledgees of the goods, and as such had a special property therein sufficient to entitle them to maintain the action irrespective of the Bills of Lading Act, and that it was immaterial that the wrongful delivery had taken place before the plaintiffs acquired their title to the goods. The sanction of the Court of Appeal is therefore given to the judgment of Wightman, J., in *Goodman v. Boycott*, 2 B. & S. 1, where he differed from his eminent colleague, Blackburn, J.

LANDLORD AND TENANT—COVENANT FOR QUIET ENJOYMENT.

Harrison v. *Muncaster* (1891), 2 Q.B. 680, was an action by tenant against landlord for damages for breach of a covenant for quiet enjoyment in a lease. It appeared that the defendant had leased to a company a mine for the purpose of being worked as an iron mine, and had subsequently leased to the plaintiffs an adjoining mine for the same purpose. The latter lease contained a covenant for quiet enjoyment "without any interruption or eviction by the lessor, his heirs or assigns, or any other person or persons claiming or to claim by from or under him." The company in the ordinary and proper course of working their mine struck what was called a "feeder," the result of which was to release a large quantity of underground water, the existence of which had never been suspected, and the nature of which was wholly uncertain. This water flooded the company's mine, and percolated through a natural fissure into the plaintiff's mine, and did considerable damage. The Court of Appeal (Lord Esher, M.R., Bowen

and Kay, L.JJ.) sustained the decision of Day, J., that these facts did not constitute any breach of the covenant inasmuch as the interruption to the working of the plaintiff's mine was not caused by any direct act of the defendant, nor by any act the consequences of which were foreseen, or ought to have been foreseen, by the defendant at the time the covenant was entered into.

NULLITY OF MARRIAGE—COERCION—INTIMIDATION—CONSENT.

Cooper v. *Crane* (1891), P. 369, although a matrimonial cause, is one deserving of notice. The action was brought to have a marriage declared null and void. The parties were cousins, the petitioner at the time of the ceremony being twenty-four and the respondent twenty-one years of age. The respondent had made the petitioner an offer of marriage, which she had refused; afterwards, on a Sunday in July, 1888, under a pretence of going to an afternoon service at St. Paul's Cathedral, he took her to St. Bride's Church, Fleet Street, and outside of the church he said to her suddenly, "You must come into the church and marry me, or I will blow my brains out, and you will be responsible." According to her own statement, she was so alarmed that she went in, not knowing what she was doing, and went through a ceremony of marriage, and signed the register. The petitioner had previously obtained a license on a false declaration as to his own age and the petitioner's residence, and had made arrangements for the performance of the marriage ceremony on that day. The clergyman who performed the ceremony testified that there was no appearance of reluctance on the part of the petitioner, that she made the responses audibly, and signed the register with a firm hand. After the ceremony the petitioner was taken home by the respondent to her lodgings, and he never saw her again, and the marriage was never consummated. The petitioner, however, continued to correspond with the respondent as her cousin, and not on the footing of husband and wife. The petitioner never told her mother or friends of the marriage, because she said she did not regard it as binding. The respondent, who did not appear in the suit, admitted he had only married the petitioner for her money, and that he did not care for her; and there was evidence that the petitioner was of a weak and impressionable nature, with little power of resisting a stronger will. Collins, J., held that the facts were insufficient to rebut the presumption of consent, and that the marriage was therefore valid, and the suit was therefore dismissed.

WILL—GIFT OVER ON A COMPOUND EVENT—REMOTENESS.

In re Bence, Smith v. *Bence* (1891), 3 Ch. 242, the Court of Appeal (Lindley, Fry, and Bowen, L.JJ.) affirmed a decision of Kekewich, J., on the construction of a will: the point being whether where there is a gift over, in the event of a person dying without leaving issue who should live to attain vested interest, the gift could take effect on the person dying without ever having had a child. It was argued that the gift over was severable into two branches—having no child at all, and having no child who attains a given age; but the Court of Appeal held that the condition on which the gift over was to take effect could not thus be split. In this case the gift over, in the event of the tenant for life not leaving

issue who should not attain a vested interest, was void for remoteness, and the court held that that objection to the validity of the gift could not be removed by the fact that one of the events on which the gift depended might fall within the limits of the rule against perpetuities.

WILL—LEGACY—CHARITY—CONDITION TO KEEP TESTATOR'S TOMB IN REPAIR—GIFT OVER TO ANOTHER CHARITY.

In re Tyler, Tyler v. *Tyler* (1891), 3 Ch. 252, a testator bequeathed a legacy to the London Missionary Society, subject to a condition that the legatees should keep his tomb in repair, and failing their complying with that condition the legacy was to go to the Blue Coat School, a public school in the city of London. The question was raised whether this was a condition binding on the legatees, and the Court of Appeal (Lindley, Fry, and Lopes, L.JJ.) agreed with Grantham, J., in holding that it was, and that the rule against perpetuities has no application to the transfer in a certain event of property from one charity to another.

COMPANY—WINDING UP—DEBENTURE-HOLDERS—EXECUTION—SHERIFF—PRIORITY.

In re Opera (1891), 3 Ch. 260, is an appeal from the decision of Kekewich, J., (1891), 2 Ch. 154, noted *ante* vol. 27, p. 395. It may be remembered that the application was by the sheriff who was in possession of the goods of the company at the time a winding-up order was made, and which goods he had delivered up to the liquidator, praying to be recouped out of the proceeds realized by the liquidator from the sale of the goods the amount he (the sheriff) had been compelled to pay the execution creditors. Kekewich, J., made the order on the ground that the sheriff had made a mistake in delivering up the goods to the liquidator, and was thererefore entitled to be indemnified; but there was one feature of the case which he neglected to notice, and that was that the goods in question were at the time the executions were in the sheriff's hand subject to the claims of debenture-holders, the debentures being an express charge on the goods. On this ground the Court of Appeal (Lindley, Fry, and Lopes, L.JJ.) reversed the order of Kekewich, J., but without prejudice to the sheriff applying to be paid his claim out of any property of the company not subject to, or charged by, the debentures.

WARD OF COURT—MARRIAGE OF WARD AFTER ATTAINING 21—SETTLEMENT—CONTEMPT.

Bolton v. *Bolton* (1891), 3 Ch. 270, was an unsuccessful attempt to induce the court to stretch its jurisdiction over a ward and her property after she had ceased to be a ward of court. The ward in question was a young lady who was entitled to property. When she was about nineteen a Mr. Russell obtained the leave of the court to visit and pay his addresses to her, with a view to his subsequently making proposals to the court for marriage. In his affidavit in support of the application, he had submitted in all respects to abide by the order of the court. With a view to enabling the lady to assist her future husband in business, she was advised to defer the marriage until after she should be twenty-one, as otherwise the court would insist on a strict settlement being made of her property. She accordingly waited until she attained twenty-one, and then agreed to marry

Mr. Russell six days afterwards, and she executed a settlement of her property, whereby an absolute power of appointment was reserved to herself and her intended husband jointly in priority to the other trusts of the settlement. Before the marriage took place, the present proceedings were instituted by the father of the lady. North, J., made an order restraining the parties from marrying, and subsequently dismissed an application to discharge the order. The Court of Appeal, however, were clear that the paternal jurisdiction of the court over its wards and their property ceased on their attaining twenty-one; and the undertaking given by Mr. Russell was only intended to apply to any order made by the court while it had jurisdiction to make an order.

RAILWAY COMPANY—DEPOSITED PLANS—"DELINEATED," MEANING OF.

Protheroe v. *Tottenham Ry. Co.* (1891), 3 Ch. 278, was an action to restrain a company from proceeding on a notice to treat on the ground that the land claimed to be expropriated by them was not sufficiently delineated on the deposited plan and book of reference. The land in question was included in the plan, but was not enclosed an all sides by any line or other indication showing the part intended to be taken: and it was held by the Court of Appeal, overruling Kekewich, J., that the plan and book of reference were not sufficient, and that the plaintiff was therefore entitled to an injunction as prayed.

COPYRIGHT—PICTURE—INFRINGEMENT—LICENSE TO COPY—SUBSEQUENT ASSIGNMENT OF COPYRIGHT.

London Printing and Publishing Co. v. *Cox* (1891), 3 Ch. 291, was an action brought to restrain the infringement of a copyrighted picture. The artist by whom the picture was painted sold the picture and the copyright thereof to the plaintiffs, Keep & Co.: Keep & Co. then entered into a contract to print 50,000 chromo-lithograph copies of the picture for their co-plaintiffs, the London Printing and Publishing Alliance, and to sell them the picture. After this contract, the copyright was registered in the name of Keep & Co.. Subsequently the defendant, in ignorance of the sale of the picture to Keep & Co., published a copy of the picture in his newspaper. Vaughan Williams, J., gave judgment for the penalties claimed in favor of the plaintiffs, Keep & Co., and dismissed the action without costs as to their co-plaintiffs, the L.P. and P. Alliance. On appeal, the court (Lindley, Fry, and Lopes, L.JJ.) were divided in opinion. The majority of the court (Fry and Lopes, L.JJ.) thought neither of the plaintiffs had any right of action, because Keep & Co. were not the owners of the copyright at the time of the registration because of their contract to sell the picture to their co-plaintiffs: and the latter, they thought, were not entitled to sue because they were not registered as owners, and they therefore dismissed the action. Lindley, L.J., however, was of opinon that the contract between the plaintiffs did not amount to an assignment of the copyright, but only to an agreement to sell, and he therefore thought Keep & Co. were entitled to maintain the action. The Court of Appeal were agreed that a letter from the artist which the defendant claimed to be, and which Williams, J., found was, a license to copy had not that effect, but was a mere proposal to negotiate for the right to copy.

Notes on Exchanges and Legal Scrap Book.

THE following extract from the proceedings of the British House of Commons in 1641 may be of interest in connection with what has recently been said and written in reference to Sunday observance. We would especially commend it to the consideration of those of our judges who might be tempted to offend in this particular:

"Ordered, that Mr. Crewe and Mr. Littleton do repair to the Lord Keeper and desire him from this House to desire the judges in their several circuits so to dispose of their journeys that they may not travel on the Lord's Day, for the ill example that is given to the country thereby:" 2 *Comyn's Journal* 197.

LIABILITY OF EMPLOYEE FOR UNSKILFUL WORK.—In *Glennon* v. *Lebanon Manufacturing Company*, the Supreme Court of Pennsylvania holds that if an employee performs his work negligently or unskilfully, it is a breach of his contract; and when the employer is sued for wages claimed under the contract, he may defend by showing a failure on the part of the servant to perform his part properly, in consequence of which he has sustained damage. It is not a question of set-off or of tort; it is an equitable defence growing out of the contract itself, and going directly to the consideration. Such a defence is available against the whole claim—not merely so much of it as covers the days on which the negligence occurred.—*N. Y. Law Journal.*

JUDGES WANTED.—Wanted, a few good extra judges, who will be prepared to do all the work at present delayed or neglected by the existing members of the Bench. They will be expected to dispense with all vacations except a week at Christmas, five days at Easter, and a fortnight from the first to the fifteenth of October. They will devote their entire time to the service of the State, both day and night. Their day will be devoted to business in the High Court of Justice in the Strand, and when required they will go Circuit (by special express), sitting at the various assizes from 9 p.m. until 3 a.m., returning to London by trains timed to reach the metropolis sufficiently early to allow of the usual morning sitting. They will be further required to consider their leisure (if any) entirely at the disposal of those members of the Bar and solicitors who require it. If they do this punctually and diligently, without knocking up, they will be permitted to draw salaries computed at the rate of about one-third of the emoluments received by a third-rate Queen's Counsel; and if they grow lazy, or are incapacitated by illness, they will be rewarded by a number of personal attacks in the London newspapers. Applications to be sent to the Lord Chancellor (endorsed "Extra judges to suppress outside clamor") as early as possible. Every candidate for appointment will be expected to be as strong as a horse, and as insensible to feeling as the back of a rhinoceros.—*Punch.*

SMALL BOYS AND RAILWAY TURN-TABLES.—The highly-interesting decision of the Supreme Judicial Court of Massachusetts concerning small boys and gilded railroad turn-tables is perhaps deserving of another word. We cannot, we regret to say, agree with the learned judges in their opinion of the case. We incline rather toward the ingenious view of the clever attorney for the plaintiff. If an appeal is possible, we hope that one will be taken. It will be remembered that the small boy went to play on the railroad turn-table, and while there disporting himself was injured. The parents of the boy promptly sued the company which owned the turn-table. The defence made by the company was, of course, that the small boy had no right to be on the turn-table, and if he got hurt there it was not the company's fault. The company did not erect the turn-table for the accommodation of the neighboring small boys, and if the small boys flocked to it and were deceived thereby, and had their young limbs broken in the same, the company felt in no way responsible. At first sight this looks reasonable, but we believe that any fair-minded man who knows small boys will see its weakness when he examines the argument put forward by the attorney for the plaintiff. In the first place, he points out that the turn-table was not an ordinary inconspicuous affair which a small boy might pass by on the other side and perhaps not notice at all, but it was, as it were, a raised and glorified turn-table, with two long upright standards, which could be seen by every small boy in town. It was also constantly kept unlocked, and could be easily turned around, affording small-boy sport of the very highest order. Indeed it would not surprise him if the able judges themselves could find enjoyment in riding around on that turn-table. Any turn-table, even a flat and rusty one, was an attractive object to the small boy, so how much more alluring was this bright red turn-table with the high standards constantly beckoning to every small boy that passed. The turn-table was simply a temptation too strong for small-boy flesh and blood to resist. As well unhead a molasses barrel in July and expect no flies to gather around it. Here, continued counsel, stood the siren turn-table, waving its bewitching arms and ever singing this low, Lorelei-like song: "Come unto me, small boy; leave thy top and thy kite and thy bean-shooter with which thou pluggest out the eye of the first citizen, and come unto me and ride about upon me as thou wouldst ride upon a merry-go-round. Come, oh, small boy, come!" Naturally, added learned counsel, small boy went. He was there on the invitation, which no sane person could expect him to resist, of the company, as its guest, and it was the company's duty to protect him and see that he did not get his fingers caught in the mechanism. But this the company did not do, and counsel asked $5,000 damages. But the court ruled against the plaintiff and virtually said that a railroad company in Massachusetts has the right to erect as dangerous a small-boy trap as it pleases, bait it as seductively as it pleases, and catch as many small boys in it as it pleases. We believe that anybody who knows the nature of small boys will say that the court is wrong. It is, we suppose, a physical necessity that the Supreme Judicial Court should have sometime been small boys, but that able body must have entirely forgotten the fact, or have been very queer small boys.—*N. Y. Tribune.*

Proceedings of Law Societies.

COUNTY OF YORK LAW ASSOCIATION.

We would call special attention to the Annual Report of the Trustees of the York Law Association for 1891, which appears in another column. We do so with the more confidence knowing that *one-half* of the lawyers in this Province are practising in the County of York. Even if this were not so, we feel that many of the subjects touched upon in this report are of special interest to the profession at large. This, the pioneer, Association has, in the past, done much for and is entitled to the consideration of the profession generally, and as much may be expected of it in the future.

There is an impression among many that the York Law Association is merely another name for the library in the Court House. If indeed it *were* only this, its usefulness would be assured. There is now, opposite the Assize court room, a working library of 2,070 volumes—to which the profession from outside counties engaged in Toronto are cordially welcomed—equal to any in Canada, and one capable of more ready reference than that at Osgoode Hall. As funds come in, they are applied in the purchase of the reports and text-books of most general utility, carefully selected. The fact alone that the library is of ready access to most of the law offices in the city should conduce to a large membership.

While in this connection, we cannot but express the pleasure we feel in recording the services of the librarian. How invaluable she must be to the Association we can understand from a personal experience of the working of the library, where the system of card-cataloguing has been undertaken and carried out by her, and where, as one instance, merely, of her assiduity, we find that the statutes are noted as amended to date, a gratuitous work on her part, to say nothing of the noting of the reports. We trust that the Association may be able to retain her in spite of greater inducements elsewhere, hitherto refused.

But the library is only one, although a valuable, incident. The profession in Toronto are indebted to the York Law Association for the inauguration of the movement which resulted in the revision of the Rules and tariff in 1887, the revision of the statutes relating to the Registry Offices in Toronto, and the appointment of a second Junior Judge in this county, which has relieved the pressure of business heretofore existing in the Division Court, and, incidentally, the County Court; also for a constant supervision over the interests of the profession wherever they come in question. The Association has taken the lead in urging that fusion of the courts contemplated by the Judicature Act, and which now exists to a great extent only in name, the majority of abuses of the old system being continued. With the aid of the Associations throughout the Province, a number of which have already passed resolutions to strengthen the hands of the original movers, it may be expected that in the near future such a result will be achieved.

The question of supplying the profession with the Supreme Court Reports as formerly, and recently urged in this journal, has been taken up, as well as many other matters of interest to the profession at large.

The annual meeting of this Association was held at Osgoode Hall on the 25th ult., and in the absence of the president, Mr. Charles Moss, Q.C., through illness, the vice-president, Mr. Nicol Kingsmill, Q.C., took the chair. The many questions dealt with by the Association during the year are referred to in the Annual Report.

It was resolved that efforts should be made to have the profession furnished with the Supreme Court Reports in the same manner as the reports of the High Court of Justice. The Auditors' Report for 1891, which showed a very satisfactory statement for the year, was adopted.

ANNUAL REPORT OF THE BOARD OF TRUSTEES FOR 1891.

To the Members of the County of York Law Association :

GENTLEMEN,—The Trustees, in presenting their Sixth Annual Report, congratulate the members upon the continued prosperity of the Association.

There are now 363 members of the Association. Ten new members subscribed for stock during the year. The fees of 12 members are in arrear.

Two hundred and thirty-one volumes have been added to the library during the year: of this number 125 volumes have been presented. There are now 2,070 volumes in the library. The librarian reports that the attendance in the reading rooms is steadily increasing, and most of the books are in constant use.

The county authorities have generously provided increased accommodation for the library, have repainted and papered the library rooms, and have completed and furnished the new room which was formerly used by the county judges.

A portrait of Mr. Christopher Robinson, Q.C., third president of the Association, has been presented by Dr. Hoskin, Q.C., and a portrait of Dr. Hoskin, Q.C., fourth president of the Association, has been presented by Mr. Charles Moss, Q.C., the retiring president.

The librarian has completed a most useful catalogue, which forms an index to the subjects dealt with in the books contained in the library and to the articles published in the various legal periodicals.

In accordance with the wish of the Association, representations were made to the Government urging the appointment of a second junior judge. A statute embodying the representations became law during the last session of the Legislature. The necessity for such an appointment having been represented by the Trustees to the Dominion Government, the appointment of Mr. F. M. Morson, a member of this Association, to the newly created office immediately followed. The appointment has given the greatest satisfaction, and has entirely relieved the pressure of work in the Division Court, which, prior to the appointment, had caused much inconvenience to litigants and had endangered the health of His Honor Judge Morgan.

The Trustees have done what they could during the year in urging on the movement having in view the fusion of the courts, as was provided for in the

Judicature Act, but it seems to be difficult to bring about this end, so desirable in the interests of litigants and practitioners. There are still separate sittings of the Chancery Division for the trial of actions and the weekly Divisional Court Sittings are still held, as if the Judicature Act had never been passed. There are still separate offices for the different divisions of the High Court, each requiring a separate staff of officials, and differences in practice exist in the different divisions, for which there is no warrant in the Judicature Act, and which ought not to be permitted to exist.

At the regular December meeting of the Board, the following resolution was passed: "It was resolved that in the opinion of the Board of Trustees of the County of York Law Association immediate steps should be taken to rearrange the sittings of the High Court for trials in the County of York, to abolish special sittings of the Chancery Division for trials, to have one circuit list for the High Court, to rearrange the weekly Divisional Court Sittings of the High Court so that all cases in the High Court may be heard at any sittings of the court, and in other ways to bring about that complete fusion of the courts which was contemplated by the Judicature Act." This resolution was sent to the other law associations, and the following is a copy or statement of the resolutions received from some of these associations:

"The Hamilton Law Association expresses itself as heartily in accord with the York Law Association in this matter. They consider that the fusion of the courts heretofore has been far too incomplete, and are strongly of the opinion that definite action should now be taken to carry out the unanimous wish of the profession as expressed when the consolidation of the rules and orders took place. They are of the opinion that it would be necessary to obtain legislation on this subject, and are desirous of seeing all the questions which are now under consideration by the profession determined. In their opinion, it is of the most vital importance that the special Chancery Sittings should be abolished; that there should be but one court, the judges of which would take circuits at fixed dates, and dispose of all business which could properly be brought to trial at an Assize or Chancery Sittings, the circuit sittings to be held as frequently in the larger cities as business required, and that the Divisional Court should sit weekly in Toronto, and that there should be a daily sittings for the purpose of hearing appeals in chambers, etc.; that the question of jury notices and the right of trial judges to strike out juries should be definitely determined, and action taken for the purpose of considering the unnecessary expense in printing appeal books on appeals to the Court of Appeal, and to have the Devolution of Estates Act amended so as to put real estate on the same footing as that on which personal estate now stands, and generally to improve the act."

It was resolved by the Leeds and Grenville Law Association that, in its opinion, it is desirable a more complete fusion of the courts should be obtained, and with that end in view that steps should be taken to rearrange the sittings of the several courts, so that all cases in the High Court of Justice may be heard at any sittings of the court, but this Association is of the opinion that no fewer sittings for the trial of actions should be held in the several circuits than are now held.

It was resolved by the Frontenac Law Association that the Bar of Kingston desires to express its concurrence in the suggestions made by the York Law Association as to the abolition of special circuit sittings for the Chancery Division, and the rearrangement of the sittings of the weekly courts in Toronto. Experience has shown that the special sittings referred to involve a great waste of the judge's time. It might be possible, if these sittings were abolished, to give the opportunity of hearing cases in the country three times a year instead of twice, one of the courts to be for the trial of cases without a jury. In Toronto the holding of separate courts for the Common Law and Chancery Divisions is a violation of the spirit of the Judicature Act, and causes much real inconvenience to the profession outside of Toronto.

The Bar of the County of Kent, where no law association has been formed, is of the opinion (1) that it should be definitely and finally decided before the sittings for trial whether an action should be tried with or without a jury; (2) that there should be two circuits, one for the trying of criminal cases and jury cases, and the other for the trial of non-jury cases; (3) that the dates of these sittings should be definitely fixed at proper periods for each year, and should not be close together; (4) that there should be complete fusion of the different divisions of the court; (5) that a judge in court at Osgoode Hall should hear a motion in any division; (6) that a Judge in Chambers should do the same; (7) that a judge should sit so that such motions could be heard on any day in the week; (8) that the different Divisional Courts should be practically abolished, and that one Divisional Court, composed of not less than three judges, should sit almost perpetually, or as many days in each week as would be necessary to hear the cases; (9) that the three judges in the Divisional Court should not include the judge who tried the case. They also consider that a judge should sit in certain central places outside of Toronto at least once a month, to hear such motions against by-laws, awards, reports, pleadings, etc., as could be heard by a judge in court at Osgoode Hall, where the parties consent thereto, and suggested London and Kingston as proper places to hold such courts.

The Middlesex Law Association entirely approves of the resolutions of the York Law Association.

The Benchers of the Law Society have also taken up the question of these changes, and it is to be hoped that before the next annual meeting the judges will comply with the request of the profession, which has been continually urged by this Association during the last five years.

The Trustees suggest that a copy of this report be forwarded to the judges in order that it may be made plain to them how earnest is the desire of the profession for these changes having in view a true fusion of the courts.

At the last session of the Legislature a bill was introduced providing that appeal books should not be printed. The Trustees took care that proper representations were made with regard to this bill, which was promoted, in the first instance, without the requisite knowledge. The bill was finally passed, providing that in County Court cases appeal books may be made by type-writing, four copies to be furnished, the appellant, if awarded his costs, to be entitled to $1 for every eight folios of one appeal book.

The result of this statute is not an advantage. Copies of evidence are furnished which in many cases are absolutely illegible, and the judges cannot give such evidence due consideration. The convenience of the judges would have been consulted and the same end gained if the bill had provided that in appeal cases the appellant, if awarded his costs, should be entitled only to $1 for every eight folios of the appeal cases. There is no doubt that the cost of printing County Court appeal cases required regulating, and such an enactment as that last referred to would have provided fairly for the cost. This suggestion was urged upon the Legislature, but was not concurred in for reasons which were not announced in any way and which are unknown to the Trustees.

It is not possible for the Trustees to make their report without recording their high appreciation of the services of the librarian, Miss Read. The library is now in the most efficient working condition. The reports and statutes are noted to date, the indexing affords the greatest assistance to practitioners, the books are kept in a good state of preservation, and, owing to her care, none have ever been lost. It is to be regretted that the limited income of the Association does not permit the Trustees to increase the librarian's salary to a sum which would be a proper remuneration for the services she performs.

The Trustees record the deaths, during the year, of the following members: The Right Hon. Sir John A. Macdonald, R. P. Echlin, and D. J. MacMurchy.

The particulars required by the by-laws accompany this report as follows:

(1) The names of members admitted during the year.

(2) The names of members at the date of this report.

(3) A list of books contained in the library.

(4) A list of books added to the library during the year.

(5) A detailed statement of the assets and liabilities of the Association at the date of this report, and of the receipts and disbursements during the year.

The Treasurer's accounts have been duly audited, and the report of the Auditors will be submitted to you for approval.

(Sgd.) CHARLES MOSS, *President.*
WALTER BARWICK, *Treasurer.*

December 31st, 1891.

The members chosen on the Committee on Legislation for 1892 are Messrs. John Hoskin, Q.C., Charles Moss, Q.C., J. H. Macdonald, Q.C., E. D. Armour, Q.C., A. H. Marsh, Q.C., Beverley Jones, Harry Symons, Walter Barwick, and W. H. Blake.

The following officers were elected for the year 1892: President, Mr. Nicol Kingsmill, Q.C.; Vice-president, Mr. N. G. Bigelow, Q.C.: Treasurer, Mr. Walter Barwick: Curator, Mr. E. D. Armour, Q.C.; Historian, Mr. D. B. Read, Q.C.: Secretary, Mr. A. H. O'Brien: Trustees, Messrs. J. J. Foy, Q.C., J. A. Worrell, Q.C., J. T. Small, Angus MacMurchy, and Hamilton Cassels: Auditors, Messrs. E. B. Brown and W. H. Blake.

HAMILTON LAW ASSOCIATION.

TRUSTEES' ANNUAL REPORT.

The Trustees beg to present their Twelfth Annual Report, being for the year 1891:

The number of members at the date of the last Report was 71; three new members have been added, some members have removed, and the present membership remains 71. The annual fees to the amount of $322.50 have been paid.

The number of volumes in the library is 2346, exclusive of Sessional papers, Gazettes, etc. There are still some Reports which the Trustees would like to see purchased when the funds of the association will permit.

The following periodicals are received, viz.: *The Law Times* (English), *The Times Law Reports, The Solicitors' Journal,* THE CANADA LAW JOURNAL, *The Canadian Law Times, The Western Law Times, The Albany Law Journal, The Green Bag, The Law Quarterly Review.*

The Treasurer's Report is submitted herewith, giving a detailed statement of receipts and expenditures and of the assets and liabilities of the association, and the same is in the form required by the Law Society. All the liabilities of the Association have been paid except the balance of the advance due to the Law Society.

The Trustees are glad to note the action that is being taken both by the Law Society and the York Law Association towards the more complete fusion of the courts. This Association is entirely in accord with such a movement, which it has steadily advocated for many years, and the members feel strongly that legislation in that direction should be secured.

Attention is again called to the Devolution of Estates Act. The far-reaching operation of this Act is now being understood, and the amendments made at the last session are most unsatisfactory, apparently being aimed at special cases.

The expense attending the winding up of small estates under the supervision of the official guardian is very great, and power should be given to local judges and masters whereby the expense could be materially reduced.

The Trustees would suggest the appointment of a committee on legislation to take these questions into their consideration and act in concert with other Associations in obtaining the reforms required.

The abolition of the Grand Jury system was considered at the last session of the Dominion Parliament, and it is understood that the question will be more definitely considered this year. The Trustees are very strongly of opinion that for the reasons set out in the minutes of this Association dated 25th April, 1891, and sent to the Honorable the Minister of Justice, no action whatever should be taken, to in any way curtail the functions and privileges of the Grand Inquest.

(Sgd.) EDWARD MARTIN,
President.

January 5th, 1892.

LAW SOCIETY OF UPPER CANADA.

TRINITY TERM, 1891.

Monday, September 14th.

Present—Between 10 and 11 a.m.: The Treasurer, and Messrs. Hoskin, Moss, [illegible] Adam Wilson, S. H. Blake. In addition, present after 11 a.m.: Messr[illegible] Irving, Idington, Shepley, Barwick, Osler, Lash, and Watson.

Between 10 and 11 a.m., the minutes of last meeting of Convocation were read and approved, and signed by the Treasurer.

The Report of the examiners on the examination of candidates for call was received.

Ordered for immediate consideration, and adopted.

The Report of the Secretary on the papers of the candidates was read.

Ordered, that the following gentlemen, whose papers have been reported by the Secretary as regular, be called to the Bar:

W. Wright, N. W. Rowell, W. A. Cameron, W. L. Wickett, S. E. Lindsay, J. G. Harkness, A. A. Smith, H. Carpenter, W. E. Raney, G. S. Kerr, J. F. Hare, A. A. Adams, J. F. Keith, T. A. Beament, W. F. Hull, T. W. Scandrett, H. B. Travers.

Ordered, that the case of Mr. Hugh McMillan be reserved.

The Report of the examiners on examinations for candidates for call to the Bar with honors was received and read.

Ordered for immediate consideration, and adopted.

Ordered, that it be referred to a select committee, composed of the following gentlemen, for consideration and report, viz.: Messrs. Moss, S. H. Blake, and Hoskin.

The Report of the examiners on the examinations for certificates of fitness was received and read.

Ordered for immediate consideration, and adopted.

The Report of the Secretary on the papers of the candidates was read.

Ordered, that the following gentlemen, who have passed the examination and whose papers are reported regular, do receive their certificates, viz.:

Messrs. S. E. Lindsay, J. G. Harkness, W. A. Cameron, W. L. Wickett, C. Murphy.

Ordered, that the cases of Messrs. Hunter and Saunders be reserved, and that the cases of the following gentlemen be reserved for further report:

Messrs. W. Wright, G. S. Kerr, A. A. Smith, H. E. McKee, J. H. H. Hoffman, W. F. Smith, and T. A. Beament.

The Report of the examiners on the First Intermediate Examination was received.

Ordered for consideration to-morrow.

The Report of the examiners on the Second Intermediate Examination was received.

Ordered for consideration to-morrow.

The Report of the Committee on Legal Education on the admission of students-at-law and articled clerks was received and read.

Ordered for immediate consideration.

Ordered, that the following gentlemen, reported entitled as graduates, be entered as students and articled clerks, viz.:

Wm. Henry Buchan Spotton, B.A., Toronto, 1889; Daniel Davis, B.A., Laval, 1891; Francis Archer, Wm. Ireland, M.A., McGill, 1891; James Facey Warne, B.A., Queen's, 1891.

11 a.m.: Mr. Irving, from the Finance Committee, reported as follows:

To the Benchers of the Law Society in Convocation assembled:

(1) The Finance Committee beg leave to report that they have opened an account with the Bank of Hamilton on which the Society will be allowed interest at the rate of 4 per cent. on current daily balances, such interest to be credited twice, on 31st May and 30th November.

(2) The committee have instructed the Bank, subject to further order, to honor the cheques of the Society on the signatures of any of the following named Benchers: Messrs. Edward Blake, Æmilius Irving, John Hoskin, countersigned by the sub-Treasurer, Mr. J. H. Esten.

(3) The Committee report $8,056.14 at credit to the Society in the Bank of Hamilton. The balance at credit of the Society in the Bank of Toronto, to be drawn out as occasion may require, at the present time is $264, and when drawn the account will be closed.

(4) The Committee have to report that Mr. C. B. Grasett, the senior assistant to the Secretary, returned, on the 1st of September instant, to his duty, after an absence with leave, by reason of illness, of about ten months. The Committee are of opinion that the services of Mr. Grasett be dispensed with, and recommend that his salary to the end of 1891 be paid to him.

(5) The Committee are strongly of opinion that, in view of the necessity and importance or having the system and management of the work of the office of Secretary and sub-Treasurer revised and made thoroughly effective and efficient, the office of Librarian be separated from the office and duty of Secretary and sub-Treasurer, and the Committee beg to recommend accordingly.

(Signed) ÆMILIUS IRVING,
On behalf of the Committee.

Dated 21st September, 1891.

The Report was received and read.

Ordered for immediate consideration.

First, second, and third clauses adopted.

Fourth clause ordered to stand till to-morrow.

Fifth clause ordered to stand till to-morrow.

Mr. Shepley, from the Library Committee, presented their Report as follows:

REPORT OF THE LIBRARY COMMITTEE:

(1) Your Committee, during vacation, caused effect to be given to the resolution of Convocation of 8th June, 1888, and to the Report of Special Committee then appointed, which Report was adopted by Convocation during the succeeding Michaelmas Term, by the removal from the Library of the furniture, books, and papers pertaining to the general business of the Society.

(2) Your Committee caused the closets under the stairways leading to the gallery of Convocation Hall, and other unauthorized and improper receptacles for books and papers, to be thoroughly overhauled.

This has resulted in the discovery of many valuable volumes belonging to the Library, and large quantities of stationery and supplies hidden away under the accumulated rubbish of years. In some instances the volumes so found have been, since their supposed loss, replaced at considerable expense. A list of the volumes so found is reported herewith.

(3) Your Committee would call the attention of Convocation to the condition of a large number of the books in the Library. Many of the bindings are almost completely destroyed or worn out. A large outlay must now be made to bring the Library into anything like fair condition.

A specification and estimate, made at the request of your Committee, and accompanying this Report, places the probable expense at something like $1,500.

This expenditure would have been largely avoided by some system involving the continuous and proper attention to the condition of the books.

Your Committee suggest that the authority of Convocation be given to the inviting of tenders for the repairing of the books in the Library upon the specification herewith submitted.

In this connection your Committee would further suggest that the authority of Convocation be also given the Committee to place the contract for binding generally upon a better and less expensive system.

(4) Your Committee learn that it has not been the custom to close, at night, the iron doors at the east end of the Library, and that the electric fire alarm which, with the iron doors, was recently placed in position at a very considerable expense, has not been in working order for many months.

Your Committee also learn that the duplicate inventories of the books and furniture of the Society, directed by the order of Convocation of 23rd May, 1890, have not been written up since they were deposited under that direction, though large numbers of books have since been added to the Library, and that the only approximately complete catalogue in existence is kept in the Library and exposed to the same risks as the books themselves.

(5) Your Committee is of the opinion that the miscellaneous library now principally contained in the gallery shelves—much of which is of great value—ought to be further protected by the locking of the doors or gates leading into the galleries, and that the books contained in it should not be open to casual visitors, but should be handed out by the Librarian on special application only. This portion of the Library has been classified and arranged during the vacation.

(6) Your Committee is strongly of opinion that in view of the growth and present condition of the Library and the matters referred to in this Report, and the importance of having the system and management of the Library thoroughly revised and put upon the most modern and effective footing, the office of Secretary and sub-Treasurer should be separated from the office of Librarian, and your Committee beg to recommend accordingly.

(Signed) GEO. F. SHEPLEY,
Chairman.

The Report was read and received.

Ordered, that it be considered to-morrow.

Mr. Moss, from the Legal Education Committee, presented their Report as to call of attendants on Law School.

Ordered, that the following gentlemen, who have passed the Law School Examination and attended the requisite lectures, and whose papers are reported by the Secretary to be correct, and who are reported as entitled to be called to the Bar, be called accordingly, namely:

Messrs. Leys, Hunter, Kent, McKay, Johnston, Hector, Downes, Hough, Ritchie, O'Brien, and Lamport.

Ordered, that the question of honors and medals in relation to the Law School examinations for Call in June last be referred to a Select Committee composed of Messrs. Moss, Shepley, and Hoskin.

Mr. Moss, from the Legal Education Committee, reported recommending that the examination and attendance of Mr. Leask, who passed the examination and attended the requisite number of lectures, save one in equity, be allowed, and, his papers being regular and he being entitled to call, that he be called to the Bar.

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

Mr. Moss, from the same Committee, reported on the case of Mr. W. J. Macdonald, recommending that his attendance being allowed, and his examinations being satisfactory, his papers regular, and he being entitled to call, that he be called to the Bar.

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

Mr. Moss, from the same Committee, reported on the cases of gentlemen who have passed the examinations and attended the lectures, but have failed to give the required notice, recommending that the attendance and examination of these gentlemen, namely, Messrs. Burritt, K. H. Cameron, and Gillett, be allowed, and that their notices stand good for next Michaelmas Term, when they shall be entitled to be called to the Bar.

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

Mr. Moss, from the same Committee, reported on the case of Mr. N. D. Mills, who has passed the examination, but failed to attend the requisite number of lectures by three, and has failed to give the requisite notice, recommending that his examination and attendance be allowed, and that his notice stand good for next Michaelmas Term, when he shall be entitled to be called to the Bar.

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

Mr. Moss, from the Legal Education Committee, reported in the case of Mr. Leask, applying to be admitted as solicitor, recommending that his certificate from Mr. Kean be dispensed with and his service allowed, and, the Secretary reporting that his papers are otherwise correct, he be admitted as a solicitor and and receive his certificate of fitness.

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

Mr. Moss, from same Committee, reported in the case of Mr. Gillett, recommending that his certificate from Mr. Weller be dispensed with and his service allowed, and, the Secretary reporting that his papers are otherwise correct, that he be admitted as a solicitor and receive his certificate of fitness.

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

Mr. Moss, from the same Committee, reported in the case of Mr. Mather, recommending that his service be allowed and that production of further proof of filing be dispensed with, and, the Secretary reporting that his papers are otherwise correct, that he be admitted as a solicitor and receive his certificate of fitness.

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

The letter of Mr. Kivas Tully, from the Department of Public Works, as to light, was read and referred to the Finance Committee for consideration and report.

Re Titus. The letter from Mr. Read was read.

The letter from Mr. Pope for Lady Macdonald, acknowledging the Law Society's resolution, was read.

In the matter of J. P. McMillan, a solicitor, the Treasurer, pursuant to Rule 122, laid before Convocation the following papers, viz.: Certificate of the Registrar, Chancery Division, and the orders referred to therein.

The letter of Mr. Slater, preferring a complaint against a barrister, was read.

Convocation being of opinion that no *prima facie* case is made for enquiry in the said letter, ordered that no action be taken thereon, and that the Secretary do so inform Mr. Slater.

The Select Committee to whom was referred the question of honors and scholarships in connection with the Law School Examination for Call, presented their report as follows:

The Special Committee on Honors and Medals in connection with the Law School Examination for Call to the Bar, held in June last, report as follows:

(1) Mr. N. Simpson is entitled to be called with honors during next Michaelmas Term and to receive then a gold medal.

(2) Mr. J. S. Denison is entitled to be called with honors during next Hilary Term and to receive then a bronze medal.

(3) Mr. J. J. Warren is entitled to be called with honors during next Hilary Term and to receive then a bronze medal.

(4) Mr. C. F. Maxwell is entitled to be called with honors during next Michaelmas Term.

(5) Mr. W. A. Lamport is entitled to be called with honors.

(6) Mr. Wm. Johnston is entitled to be called with honors.

Respectfully submitted,
(Signed) Charles Moss,
" Geo. F. Shepley.

September 14, 1891.

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

Ordered tha Messrs. Lamport and Johnston be called with honors.

The Special Committee appointed to report on honors and scholarships in connection with the examinations not under the Law School presented Report as follows:

The Special Committee appointed to consider and report upon honors and medals in connection with the examinations for Call held before this term beg to report as follows:

They find the following candidates, viz., Messrs. Wm. Wright and N. W. Rowell, are entitled to be called with honors, and that Mr. Wright is entitled to receive a gold medal and Mr. Rowell is entitled to receive a silver medal; all of which is respectfully submitted.

September 14, 1891. (Signed) Charles Moss.

The Report was ordered for immediate consideration, and adopted.

Ordered, that Messrs. Wright and Rowell be called with honors, and that Mr. Wright do receive a gold medal and Mr. Rowell a silver medal.

The petition of Rebecca Thompson complaining of a barrister and solicitor was read.

Ordered, that it be referred to the Discipline Committee to search for precedents and to enquire and report as to the course to be pursued by Convocation on complaints of this nature.

The letters of Mr. Apjohn and Messrs. Robinson, Thibaudeau & Langford, complaining of Mr. J. K. B.'s action, was read.

Ordered to stand till to-morrow.

Mr. Hoskin moved, seconded by Mr. Moss, as follows:

That the Benchers of the Law Society of Upper Canada in Convocation assembled deem it their duty to represent to the Government of the Dominion of Canada that, in their opinion, the salaries paid to the judges of the Court of Appeal and of the High Court of Justice of this Province are wholly inadequate, and that in the interest of the public and to secure the efficient administration of justice a substantial increase should be made without delay, and that such increase should be at least two thousand dollars per annum to each of said judges in addition to the allowance for circuit expenses.—*Carried.*

Moved by Mr. Hoskin, Q.C., and seconded by Mr. Moss, Q.C., that a copy of the resolution in respect of the judges' salaries be forthwith transmitted to the Minister of Justice.—*Carried.*

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

William Wright, N. W. Rowell, W. A. Lamport, W. M. Johnston.

A gold medal was presented to Mr. Wright and a silver medal was presented to Mr. Rowell.

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

W. L. Wickett, S. E. Lindsay, J. G. Harkness, A. A. Smith, H. Carpenter, W. E. Raney, G. S. Kerr, J. F. Keith, T. A. Beament, W. F. Hull, T. W. Scandrett, W. M. McKay, H. D. Leask, W. A. Leys, G. F. Downes, F. A. Hough, P. E. Ritchie, W. J. McDonald, Daniel O'Brien, F. T. D. Hector, N. Kent, and W. E. L. Hunter.

Mr. Watson give the following notice of motion:

That, at the first meeting of Convocation in Michaelmas Term next ensuing, I will move for the appointment of a special committee to consider the best means to adopt to obtain the promotion of the administration of justice in the following amongst other respects:

The complete amalgamation of the three divisions of the High Court of Justice.

The abolition of the double circuits and provision for one sittings of the High Court of Justice in each county town and city, at certain fixed periods, at least twice a year, and oftener when required. In Toronto such sittings to be held monthly.

Provision for monthly sittings of the Court of Appeal for Ontario.

The abolition of terms and provision for monthly sittings of the Divisional Court of the three divisions, composed of three judges, none of whom shall be the judge appealed from.

The abolition of separate sittings for the divisions, and provision for a daily sitting in court of one judge for all divisions.

Provision for a daily sitting in chambers of one judge for cases in all the divisions, with instructions to the Committee to wait upon the Attorney-General and the Government in respect to the necessary legislation therefor, and with further instructions to the committee to represent the great inadequacy which exists in the compensation at present made to the judges of the High Court of Justice and of the Court of Appeal for this Province, and, in the absence of reasonable provision from the Dominion Government, to endeavor to obtain from the Government of Ontario such supplemental yearly grant to each of the judges as will make their compensation fitting to the position and adequate to the services rendered in the administration of justice in the province.

The Secretary reported that in the case of the following candidates who have passed their examinations in the Law School and whose attendance has been reported as satisfactory, their papers are regular and they are entitled to their certificates of fitness, viz.:

Wm. Johnston, W. A. Lamport, W. M. McKay, W. A. Leys, G. F. Downes, F. A. Hough, P. E. Ritchie, W. E. Burritt, Daniel O'Brien, F. T. D. Hector, N. Kent, W. E. L. Hunter.

Ordered, that they do receive their certificates of fitness.

The cases of the following candidates for certificates of fitness are reserved, viz.: Messrs. Mortimer, McLean, Noble, Cameron, Mills, and W. J. McDonald.

Convocation adjourned.

DIARY FOR FEBRUARY.

1. Mon....Hilary Term begins. Q.B. and C.P. Divisions of H.C.J. sittings and County Court non-jury sittings in York begin. Sir Edward Coke born, 1552.
6. Sat.......W. H. Draper, 2nd C.J. of C.P., 1856.
7. Sun......*5th Sunday after Epiphany.*
9. Tues....Union of Upper and Lower Canada, 1841.
10. Wed.....Canada ceded to Great Britain, 1763.
11. Thur....T. Robertson appointed to Chancery Division, 1887.
13. Sat.......Hilary Term and High Court of Justice sittings end.
14. Sun......*Septuagesima Sunday.* Toronto University burned, 1890.
16. Tues....Supreme Court of Canada sits.
18. Thur....Chancery Division H.C.J. sits.
21. Sun......*Sexagesima Sunday.*
24. Wed.....St. Matthias.
27. Sat.......Sir John Colborne, Administrator, 1838.
28. Sun......*Quinquagesima Sunday.* Indian Mutiny began, 1857.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

[Nov. 10.

HICKERSON *v.* PARRINGTON.

Fraudulent preference—Action to set aside deed —Knowledge by grantee of insolvency.

The fact that the grantors in a deed were to the knowledge of the grantee insolvent at the time of making the deed is in itself insufficient to cause the deed to be set aside as a fraudulent preference under R.S.O., 1887, c. 124 (following *Molsons Bank* v. *Halter*, 18 S.C.R. 88); and where valuable consideration has been given, clear evidence of actual intent to defraud the creditors of the grantor is necessary to have the deed declared void under the statute of Elizabeth.

Judgment of Divisional Court of the Common Pleas Division, affirming the judgment of ARMOUR, C.J., reversed.

W. Nesbitt and *J. M. McGregor* for the appellants.

W. D. McPherson and *J. M. Clark* for the respondents.

CAMPBELL *v.* ROCHE.
MCKINNON *v.* ROCHE.

Preferring creditors—Money advanced to insolvent to pay creditors—Action to set aside security—Consideration bad in part.

These were two actions brought to set aside two chattel mortgages as void under R.S.O., 1887, c. 124. The cases were tried together. In the first case the mortgagee raised money and advanced it to the mortgagor, who was then in insolvent circumstances, receiving therefor the mortgage in question. The insolvent thereupon paid off certain of his creditors with the money thus raised.

Held, that the mortgage was valid.

It seems that it would be so whether the mortgagee knew of the insolvent's intention to apply the moneys to pay off certain creditors in preference to others or not.

In the second case, it was shown that the mortgage was unreal as to $500, part of the alleged consideration of $4,000.

Held, that it was therefore void as to the whole, following *Commercial Bank* v. *Wilson & Douglas*, 3 E. & A.R.

Judgment of BOYD, C., in the first case reversed and in the second case affirmed.

Moss, Q.C., and *Thomson*, Q.C., for the appellants.

McCarthy, Q.C., and *Laidlaw*, Q.C., for the respondents.

HIGH COURT OF JUSTICE.

Chancery Division.

Div'l Court.] [Dec. 23.

HUMPHREY *v.* ARCHIBALD ET AL.

Witnesses and evidence—Malicious prosecution—Police officer's privilege—Disclosure of information—Discretion of judge.

In an action for malicious prosecution against two police officers the defendants declined, on examination before the trial, to give the name of the person from whom the information was received on which the plaintiff was arrested and prosecuted, on the ground that it was contrary to public policy and would obstruct the detection of crime if the name of the party informing was given. On an appeal to the Divisional Court,

Held (reversing FERGUSON, J., and the Master in Chambers), that as the information sought was material to the fair trial of the issue the defendants must give the name, and they were ordered to appear at their own expense for further examination.

Per BOYD, C.: It is for the judge to decide whether the answering of any such question

would or would not in each case be injurious to the administration of justice.

The most efficient protection for the detective is not to isolate him by some circle of privilege, but to hold him harmless when he acts without malice and upon reasonable grounds of suspicion, but the same facility of redress should be given against him if he abuses his position as against the ordinary unofficial member of the community who engages in unscrupulous and unjustifiable prosecutions under the criminal law.

Per MEREDITH, J.: The matter does not rest in the mere discretion of the magistrate, judge, or court. The disclosure should not be compelled without the consent of the informer except where material to the issue when higher public interest require it, and it then should be enforced.

Per MEREDITH, J., *semble:* There is nothing to show that it was any part of the duty of the defendants *to lay any information*, so that, it may be, in so doing they stand on no more privileged ground than a private prosecutor.

J. G. Holmes for the appeal.

Herbert Mowat contra.

BOYD, C.]

RE BOOTH AND MCLEAN.

Vendor and purchaser—Land subject to mortgage for certain amount at a certain rate—Included in larger mortgage with release clause—Rate of interest reduced on punctual payment.

In an agreement for the exchange of land, it was stipulated that the land was "subject to a mortgage encumbrance for $750, bearing interest at 7 per cent. per annum."

It was ascertained that the property was one of four houses and lots mortgaged for $3,000, with an agreement to release each on payment of $750, and that the rate of interest was 10 per cent., payable half-yearly at 7 per cent. if paid punctually.

On an application under the Vendor and Purchaser Act, it was

Held, that it could not be said that the land was charged merely with a mortgage of $750 at 7 per cent. interest. It was charged with that amount at 10 per cent. interest, to be reduced to 7 per cent., and the representation made that the property was subject to an encumbrance of $750 at 7 per cent. did not convey an accurate statement of the real facts.

B. N. Davis for the vendor.

J. A. Ferguson for the purchaser.

BOYD, C.] [Dec. 26.

RE FRASER AND BELL.

Will—Devise—Estate tail—Remainder expectant thereon—Barring of estate tail—R.S.O., c. 103, s. 3.

In an application under the Vendor and Purchaser Act, in which a title was traced through a will in these words: "I will and bequeath to my son J.W., and to the heirs of his body, also I will and bequeath to my daughter W.W., and to the heirs of her body, and if either . . . should die without leaving heirs of their body (to the survivor) and to the heirs of their body . . . and should both die without leaving living issue, then I will and bequeath to . . . D.R.W. . . . and to F.W., etc.,"

Held, that there was an estate tail vested in J.W., and that there was nothing in the will to limit or conflict with the estate tail, and that there was an ultimate remainder expectant on the estate tail in D.R.W. and F.W. which might be barred under R.S.O., c. 103, s. 3.

Huson W. M. Murray, Q.C., for the vendor.

Hoyles, Q.C., for the purchaser.

Common Pleas Division.

Div'l Court.]

BANK OF OTTAWA *v.* GORMAN.

Division Court—Reservation of judgment without fixing day—Absence of prejudice—Prohibition.

The fact of a Division Court judge reserving judgment without fixing a day and time for the delivery thereof is no ground for prohibition, unless the party applying has been prejudiced thereby, and has not consented to the cause adopted, or has not subsequently waived the objection.

C. J. Holman for the motion.

Aylesworth, Q.C., *contra.*

REGINA *v.* GUNN.

Livery stable-keeper—Restricted to place mentioned in license.

Held, that under the by-laws relating to livery stables and cabs a person licensed as a livery stable-keeper, but not having a cab license, cannot, for the purpose of soliciting passengers stand with his cab at places, though owned by him, other than at the place mentioned in his license.

Bigelow, Q.C., for the applicant.
H. M. Mowat contra.

REGINA *v.* ELBORNE.

Liquor License Act—Sale by druggist—Omission to enter in book—Effect of.

S. 52 of The Liquor License Act, R.S.O., c. 194, provides that the prohibitory sections of the act were not to prevent the sale of liquor by a druggist for strictly medicinal purposes, in packages not more than six ounces, except under a medical certificate; but it should be the duty of such druggist to record in a book every sale, etc.; and in default thereof every such sale, etc., should be *prima facie* held to be in contravention of the act.

Where, therefore, a druggist made a sale of liquor not exceeding six ounces for strictly medicinal purposes, but made no entry thereof in a book, merely, as was his custom, recording such sale on a slip of paper,

Held, that this non-entry in a book did not constitute an absolute contravention of the act, but merely threw on the defendant the onus of rebutting the *prima facie* presumption of such contravention; and having done so, a conviction only on the ground of the omission to record such sale in a book was quashed, but under the circumstances without costs.

C. W. Meyer for the applicant.
Langton, Q.C., *contra.*

IN RE THE TOWNSHIPS OF ANDERTON AND COLCHESTER.

Drainage—Necessity for petition—Whether new work—Municipal Act, ss. 569, 585, 598.

On a petition therefor, a by-law was passed and the usual proceedings taken for the construction of a drain from a point in the township of C. to the townline between the township of A. and C., where it connected with an existing drain, whereupon certain landowners on the said townline petitioned the council of C., threatening that if their lands were damaged by the said drain they would hold the township of C. liable therefor, and prayed that they would order the surveyor to continue the drain to a sufficient outlet. Instructions were given to the surveyor, who made the necessary examination and reported in favor of a drain along the townline; and a by-law was introduced for the construction thereof, reciting that a majority of the landowners benefited had petitioned (referring to the petition last mentioned), and assessing the cost on the lands benefited, etc., and naming the proportion thereof to be borne by the lands in A. On receiving notice of the proposed by-law, the township of A. gave notice of appeal, and arbitrators were appointed. Subsequently the township of A. moved for a prohibition against the arbitrators further proceeding in the matter, on the ground of the absence of a proper petition for such drain.

Held, per STREET, J., that the drain in question came within either ss. 569 or 598 of the Municipal Act, R.S.O., c. 184, and not within s. 585, so that a petition was an indispensable preliminary to the passing of the by-law, whereas the alleged petition was clearly insufficient; that the mere fact of its not being quashed within the period limited by s. 572 would not prevent its being treated as invalid in other proceedings as here; and that prohibition would be granted, notwithstanding the by-law was good on its face, especially as there had been no laches.

On appeal to the Divisional Court, the court was equally divided, and the appeal failed.

Langton, Q.C., in support of appeal.
Aylesworth, Q.C., *contra.*

Practice.

MACMAHON, J.] [Jan. 7.

NESBITT *v.* ARMSTRONG.

Married woman—Summary judgment—Separate estate—Amendment—Writ of summons—Special indorsement.

In an action upon a covenant in an agreement, whereby the defendants covenanted to pay the plaintiff the moneys then owing to him and

other moneys thereafter to be advanced, the writ of summons was specially indorsed with particulars showing the amounts and dates of the various advances.

Held, a sufficient special indorsement.

Where it is shown that a married woman defendant has separate estate, judgment may be entered against her as to such separate estate, upon default or by order, under Rule 739.

And where the writ of summons did not show that one of the defendants was a married woman having separate estate, but the plaintiff's affidavit filed on a motion for summary judgment under Rule 739 did show it, the plaintiff was allowed to amend his writ and to enter a proprietary judgment against her.

Masten for the plaintiff.

Dewart for the defendant E. G. Armstrong.

MANITOBA.

COURT OF QUEEN'S BENCH.

NEWMAN *v.* LYONS.

DUBUC, J.] [Nov. 20.

Interpleader—Preferential judgment—Fraudulent conveyances—Right of subsequent creditors to set same aside.

Interpleader issue to determine priority of writs of *fi. fa.* of execution creditors.

The judgment debtor was sued by his wife three days after being sued by Newman, but did nothing in the matter. An appearance was entered for him by an attorney, through the instrumentality of his wife's attorney. The debtor gave no instructions for the appearance to be entered, and stated that it was entered without his knowledge, but that if it was done to secure his wife's claim he had no objection.

Held, that though there was no doubt that this was a contrivance to procure judgment to be signed in favor of his wife before the other creditors could obtain their judgments, yet as the proceedings appear to have been regular such judgment could not be declared void unless it were shown that there was no real debt due at the time.

The debtor, by a series of conveyances between himself and other members of his family, had disposed of certain of his properties in a manner which the learned judge found was a series of contrivances to put them out of the reach of his creditors. It appeared that about the time or shortly after the last loan of money was made by Mrs. Lyons (the defendant in this issue) from part of the proceeds of such properties which then stood in her name, all the debts due by William Lyons had been before or were then paid, and the judgments standing against him were satisfied. The plaintiff's debt was contracted subsequently.

Held, that even if the conveyances and transactions by which William Lyons transferred part of his property to his wife might have been considered void as against his creditors at the time, as savoring of fraudulent contrivances, now that the claims of such creditors had been paid and satisfied, they could not be deemed fraudulent as against subsequent creditors whose claims did not exist at the time, and such subsequent creditors could not attack such conveyances, which, as between Lyons and his wife, and against the rest of the world, were lawful.

W. J. Cooper for plaintiff.

Howell, Q.C., and *D. A. Macdonald* for defendant.

BAIN, J.] [Nov. 21.

THE PATTERSON & BRO. CO. (LTD.) *v.* DELORME.

Contract—Damages for breach—Non-acceptance of offer—Reasonable time for.

Appeal from County Court of Selkirk.

Damages for breach of contract. Claim indorsed on the writ was as follows:

"The plaintiffs sue the defendant for breach by the defendant of the agreement, a copy of which is annexed; said breach consisting in not accepting the binder and in not giving the plaintiffs' promissory notes therefor, as mentioned in said agreement, the plaintiffs having been always ready and willing to carry out the agreement on their part."

The important paragraphs of this agreement were as follows:

"WINNIPEG, October 10th, 1889.

"To The Patterson & Bro. Co. (Ltd.):

"Please supply me with one of your Patterson binders and ship the same to me about the first day of August, 1890, to C.P.R. station, for which I agree to pay you the sum of $190 on delivery

at Winnipeg, I paying expense of carriage from that place as follows: cash $......, and a note satisfactory to you and payable at your office in Winnipeg for $100, due on the first day of January, 1891; ditto, $90, due on the first day of January, 1892, with interest, etc.; and should you be unable for any reason to fill this order, I will not hold you responsible."

It then went on to provide that the title should remain in the company till the binder was paid for in full and that "this order is not binding on The Patterson & Bro. Co. (Ltd.) until received and ratified by them at Winnipeg."

The plaintiffs accepted the order in October, but the defendant was not notified that they had so accepted or ratified it, and the only communication that he received from the plaintiffs was a letter in the latter part of August, 1890, after his harvest was cut, stating that the binder was held ready for him; before he received his letter the defendant had bought another binder and did not take the plaintiffs' binder from them, or give the notes mentioned in the order. The damages claimed were the amount of the two notes mentioned in the order.

The county judge entered a verdict in favor of the defendant.

Held, (1) The order must be regarded as only a notice or proposal from the defendant to purchase the binder, and that until the plaintiffs accepted his offer and in some way or other communicated their acceptance to him there was no contract or agreement between the parties; the plaintiffs accepted the order, but their acceptance was never formally communicated to the defendant.

(2) Though the defendant's order did not fix any time within which it was to be accepted or refused, yet the proposal must be taken to have been open for acceptance for a reasonable time, and an acceptance in August, 1890, of an offer to purchase made in October, 1889, was not an acceptance within a reasonable time. *Hebb's Case*, L.R. 4 Eq. 9, and cases cited in Benjamin on Sales, page 40.

(3) It was not necessary for the defendant, under the circumstances, to notify the plaintiffs that he withdrew his order; for the order having been given and not having been withdrawn by the defendant, it remained open for the plaintiffs' acceptance for a reasonable time, which time having expired the defendant was entitled to assume that the plaintiffs did not intend to accept the order. *Ramsgate Hotel Co.* v. *Goldsmid*, L.R. 1 Ex. 109.

Appeal dismissed with costs.

Cameron for the plaintiffs.

Pitblado for the defendants.

Practice.

KILLAM, J.] [Oct. 22.

YOUNG *v.* LENG ET AL.

Examination of foreigner, temporarily within jurisdiction—Identity of parties—Admission of service by attorney.

Appeal from an order of the Referee. It appeared from the material before the Referee that an order for the examination of the defendant had been made on the 13th day of August, 1891, and that on the same day a copy of such order, and the appointment made in pursuance thereof for four o'clock of the 15th August, 1891, had been served by a clerk of the plaintiff's attorney on a person whom he supposed to be the defendant Whitton, but whom, as appeared from his examination on his affidavit, he did not know personally, and had never seen before. It also appeared that the person served with the order and appointment had been shown the original order and appointment, and had been tendered $1.25 conduct money, which he refused to accept. The only evidence of service of the order and appointment on the defendant's attorney was an admission of service by a firm of attorneys on the back of the order—"service admitted on date." It was objected by the defendant's counsel that (*a*) the material before the court did not show the state of the cause, and that for anything that appeared judgment might have been signed against the other defendant, in which case the defendant whose defence was now sought to be struck out would be excused from attending for examination; (*b*) that there was no evidence of service of a copy of the order and appointment on the defendant's attorney the required 48 hours before the time at which the examination was to be held, as the effect of such admission of service was only to show that they were served before 7 o'clock of the 13th August; (*c*) that there was not sufficient evidence that the person served with the order and appointment was the defendant; and (*d*) that sufficient conduct

money had not been tendered the said defendant. The Referee overruled all the objections and made an order directing defendant Whitton to attend for examination at his own expense.

Held, the appeal should be sustained with costs. Order of Referee discharged.

Bradshaw for defendant Whitton.

Hough for plaintiff.

TAYLOR, C.J.]
DUBUC, J.] [Dec. 1.
KILLAM, J.]

SPARHAM *v.* CARLEY.

Notice of motion—Short notice "by leave of the court"—Amendment—Reinstatement of case on list of appeals—Inadvertence—Power of court to rescind rule.

An appeal had been entered on behalf of defendant from the judgment of Bain, J., allowing plaintiff's demurrer to defendant's eleventh plea.

On the appeal coming on for argument,

Bradshaw, for plaintiff, objected that there was no evidence before the court of a rule on demurrer having been taken out, and that consequently the appeal was improperly entered

The court gave effect to the objection and the appeal was dismissed with costs.

Elliott, for defendant, subsequently on the same day applied to the court for leave to make a motion on the following day to reinstate the cause, and, upon such leave being granted, served a notice of motion to reinstate the cause, the material part of which was as follows:

"Take notice that by leave of this honorable court *in banc*, this day given, the defendant will apply to said court on Tuesday, the 1st day of December instant, at the hour of eleven o'clock in the forenoon . . . to reinstate, etc."

On the motion coming on,

Bradshaw objected that (1), by rule of court 82, the practice in equity should prevail on this motion, and, by Rule 106 (Ont. R. 479), "there must be at least two clear days between the service of a notice of motion . . . and the day named in the notice for hearing, unless the court or a judge shall give special leave to the contrary," and it did not appear that leave to serve short notice had been given, citing *Hart* v. *Talk*, 6 Hare 611; *Harris* v. *Lewis*, 8 Jurist 1063; *Chambers* v. *Toynbee*, 12 W.R. 1100; *Dawson* v. *Beeson*, 22 Ch. Div. 504; and *McMicken* v. *Ontario Bank*, 1 W.L.T. 249; (2) the rule having been taken out, the defendant's motion should have been to rescind the rule; and (3) as the notice of motion did not give notice of reading any material none could be read, and there was nothing before the court on which it could act.

Elliott, in reply.

Held, (1) It sufficiently appeared from the notice of motion that leave to serve short notice had been given.

(2) The notice of motion should be amended so as to ask that the rule dismissing the appeal should be rescinded.

(3) The motion to be allowed to stand over till the following day, with liberty to the defendant to file such affidavits or other material as he might be advised in support of the motion.

No costs to either party.

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Flotsam and Jetsam.

A NEW ZEALAND chief had taken up his residence upon a piece of land, his right to which was contested. "I have an undeniable title to the property," he observed, "as I ate the preceding owner."—*Law Journal.*

A CORRESPONDENT sends us the following excerpt: "The widow was entitled to one cow, and a bed, bedstead and bedding for the same, 2 Barb. 79." This is certainly the greatest stretch of humanity to animals that has ever come to our notice.—*Albany Law Journal.*

A JUDGE, delivering a charge to the jury, said: "Gentlemen, you have heard the evidence. The indictment charges the prisoner with stealing a pig. This offence seems to be becoming a common one. The time has come when it must be put a stop to; otherwise, gentlemen, none of you will be safe."—*Ex.*

IN a trial where the counsel for the defence was attempting to get a murderer off on a plea of insanity, an old physician, who was a witness, was asked: "Where shall the line be drawn between mental and moral insanity?" "Well," deliberately answered the old doctor, "I think the line should usually be drawn around the neck."—*Ex.*

PROSE AND POETRY.—A distinguished lawyer (Mr. Prior, we think), in order to "draw" Vice-Chancellor Knight Bruce, pronounced the second syllable in "illius" short. He was of course at once pulled up. "Yes, but your Honor remembers "hic illius arma" and other cases in Virgil." "That's all very well, Mr. Prior, but those were in poetry and you are prosing."

A LETTER was recently received by the accountant of the Supreme Court of Ontario addressed as follows:

"Mr. Osgoode Hall,
Supreme Court of
Ontario,
Toronto."

The letter commenced:

"Mr. Hall, Sir."

THOSE of our readers interested in floriculture might wonder at a variety of rose having

such a legal name as "Quarter Sessions." One of our High Court judges visiting not long since at the Oxford (Eng.) flower show discovered the name to be derived from "Quatre Saisons," being so called from the rose blossoming four times in the year. A singular corruption of its Gallic appellation.

SCENE—A county court-room in the Province of Manitoba. The defendant, a farmer, had employed the plaintiff, a surveyor, to lay down the line between his farm and his neighbor's, and then refused to pay the fees, whereupon he was sued. When the plaintiff had proved his case, the judge asked the defendant, who conducted his own case, what his defence was, to which defendant replied: "I have a good defence, your Honor, for the reason that he refused to put the line where I wanted him to."

CIRCUMSTANTIAL EVIDENCE.—Mr. George Kebbel sends to the London *Times* the following story of circumstantial evidence, narrated to him by a client: He was, some years ago, a passenger to the Cape, and one day at dinner a fellow passenger produced a very old but valuable coin. It was handed round, and suddenly disappeared. Every effort to find it failing, it was suggested that all the passengers should turn out their pockets. They did so with the exception of my client, who declined, and for the remainder of the voyage was boycotted. Just as the vessel got into port, the coin was found in a remote corner of the saloon. My client had an exactly similar coin in his pocket, and dared not say so at the time of the loss, because he knew his story would have been simply laughed at.

AN amusing incident occurred at Wandsworth prison recently during an inquest held by Mr. A. Braxton-Hicks, the mid-Surrey coroner. One of the jurymen summoned to attend the inquiry asked to be exempted on the score of deafness. The coroner, by dint of speaking loudly, asked him if he could hear the evidence, and the juryman replied that he could not. Speaking *sotto voce* Mr. Hicks told the juryman (who was sitting at the other end of the room) that he would be excused. He at once left his seat, and, thanking the coroner, withdrew. The coroner, laughing, said that that reminded him of a man who had been summoned meeting his officer in the street. The officer asked him if he were going to attend the inquest, and the man, putting his hand behind his ear, said, "What did you say? I am deaf." The officer at last managed to make him hear, and on parting said softly, "Will you have a drink?" "Certainly," was the ready reply. The juryman was summoned on the next occasion.—*Irish Law Times.*

MR. JASPER.—Jedge, I wants to pucchase de ve'y stronges' kin' o' 'vorce papers dat you 'm got in the cote.

Judge.—Divorce papers, eh? Have you and your wife had trouble?

Mr. J.—No, sah! Dar 'd be a little prebious un'er de suckemstanzas, cos we haid't done been tuk inter de shackles er mattermony yit.

Judge.—What! Not married yet, and asking for divorce papers?

Mr. J.—Dat's de case, Jedge; but yo' see I'm gwinter take a partner nex' week, an' weze ten'in' to mobe ober in the lowlan's, whar cotes iz mighty sca'se, an' I wants deze papers whar I kin lay mer han's on 'em. I'm oner deze precautionous citerzens, Jedge, dat berlebes in de maxiums, "In timer peace, prepar' for war," an' I prefers ter hab deze dockermen's whar I kin forwif 'bolish de lady wid dim ef she done grow rantankerous. Ol' Parson Widemouf hain't been proach dat Foolish Vargin case ter me fo' nuffin, an' I wants to gyard merse'f ergin de same 'speunce.—*Green Bag.*

AT Rio Janeiro is a castle yclept San Antonio, which is now being demolished by order of the Brazilian Government. In the cellars of that edifice there have been dug up twelve iron-clamped chests and sixteen *sacs* containing 70,000,000 old Spanish dollars in gold, plus a leaden box filled with papers. One of these documents is a receipt given by a Father Anton Desarte, superior of the Jesuits' College at Rio, for 20,000,000 of gold dollars, to be paid by him as a tribute to King John of Portugal when he visited Brazil. In the eighteenth century the Marquis de Pomlal expelled the Jesuit order from Portugal, and it is conjectured that the Jesuits at Rio, hearing of this, hid the treasures just discovered. A list of the wealth was left in the leaden box, there being 70,000,000 dollars, 2,800 lb. of gold dust, and 20,000 lb. weight of gold ingots. To whom, it is asked, does this treasure now belong—to the Republic, the King of Portugal, the Jesuits, or the contractors who are demolishing the castle?—*Law Journal.*