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WE have received advance sheets of a digest of the Game and Fishing Laws of Ontario, about to be published in pamphlet form of a size convenient for carrying. The numerous changes in the laws recently made both by the Dominion and Ontario Legislatures make this little work very timely, and a glance at a few of the references shows that the digest has been carefully and thoroughly compiled, a matter of no little difficulty when there is taken into consideration the number of amended statutes, not to speak of Orders in Council, suspended and re-enacted. The Ontario House has the admitted right to legislate concerning game, but with regard to the fisheries the case is different. Originally, the Provincial Legislature claimed jurisdiction over non-navigable and inland waters only, and the Dominion Parliament similarly over the greater lakes and navigable streams; but now the latter claims all rights throughout the Dominion, and the Ontario Government, in self-defence, claims all rights throughout the Province. We believe this question of jurisdiction will be settled by a test case shortly to be tried in the New Brunswick courts.

THE vacancy in the Supreme Court Bench caused by the death of Chief Justice Ritchie has not yet been filled. There seems to be a general consensus of opinion that Sir John Thompson would be a great acquisition to the court. It is said, however, that reasons of a political character prevent his retiring from public life at present. The name of Mr. Justice Strong is mentioned as the one likely to fill the vacant place. The court has not in the past commanded the confidence of the public to the extent that the court of final resort for the Dominion should. There are reasons for this quite apart from the *personnel* of the court, and it is very difficult to suggest a remedy. One defect there is, however, which could and ought to be remedied. It is most desirable that such a court should (as has before been pointed out) give its judgment *as a court*, without referring to dissenting opinions, if any such there be—in the same same way as is done by the Judicial Committee of the Privy Council. If this should necessitate a consultation among the members of the court before the delivery of each judgment (which, as is generally supposed, is not the case at present), no harm would result.

WE fancy the conundrum propounded by Osler, J.A., in *Moore* v. *Jackson*, 19 A.R. 396, will set not a few members of the profession thinking. He asks: If a married woman disposes of her real estate which is not "separate estate" without her husband's concurrence, how, in the absence of some absolute ex-

tinguishment of his right by statute, can her conveyance deprive a husband of his curtesy? and he refers to *Hope* v. *Hope* (1892), 2 Ch. 336.

In this same case of *Moore* v. *Jackson*, the Court of Appeal holds that the property of married women who have married prior to the 2nd March, 1872, which is not expressly settled, is not "separate property" by virtue of the statute; *ergo*, the husbands of all that class of married women are entitled to curtesy in their real estate, and cannot be deprived of it by the sole conveyance of their wives. This ought to be a fruitful source of litigation in the future. We believe many practitioners have been assuming, because since 1884 the husband's concurrence in his wife's deeds is unnecessary, that therefore his estate is in all cases barred by her sole deed. The decision of the Court of Appeal, however, in *Moore* v. *Jackson*, rather leads to the conclusion that it is only in the case of women married after 2nd March, 1872, that the wife's sole conveyance is effectual to bar the curtesy of her husband.

A WRITER in the *Annals of the American Academy* discusses the need for, and a scheme of, preventive legislation in relation to crime. He states that under the social condition and the laws as they are the *convicts* for crime number about one in a little over seven hundred of population, and the *criminals* one in about four hundred; whilst forty years ago there was about one criminal in 3500 of population. This is a startling statement, and, if correct, does not give much encouragement to those who are under the impression, or delusion, that human nature is improving and the world getting better. He naturally does not think, in view of this fact, that education is a potent factor in the repression of crime, nor does he think that penalties are preventive. His panacea is a system of unlimited commitment of offenders, as opposed to the present system of punishment, which aggravates rather than reduces the evil; the criminal to forfeit his liberty, and restoration to be conditional upon reformation. He considers the most prolific sources from which criminals come are to be found in class legislation, creating inequality in social and political conditions, and in unrestricted marriage among those who are wholly unfit to enter into that relation, or to perform the duties to offspring or society which that relation entails upon them. That there is great force in this latter statement must be at once admitted, and the writer is not the first to advance it. How to prevent improper marriages is, however, the question involved. He thinks it is within the range of practical enforcible legislation. In theory this position is unassailable, and he thinks it would be possible by means of examining boards, special police, and a thorough license system to put the theory into a practice. He meets the objection to the suggestions that enough prisons could not be built to hold the offenders, and that if there could there would be more people on the inside than on the outside, by saying that the reform, being based on truth, would progress, and the gradual comprehension of the benefit would eventually make it a fact accomplished. We confess we cannot share this hope, and would rather venture to predict that the present dispensation will cease before the much-desired reform is made. He does not con-

sider the question of results which might flow from throwing obstacles in the way of marriage, and other difficulties which would arise by the attempt to put his theories into practice; but the article is well written, and worthy of careful perusal.

In view of the application of electricity to street cars, whereby their speed has been so greatly increased and the safety of the unwary pedestrian thereby jeopardized, the decision of the Pennsylvania courts in *Carson* v. *Federal, etc., Ry. Co.* (Sup. Ct.) and *Marland* v. *R.R.*, 123 Pa. 487, will be of interest. In the former case it was held contributory negligence in the plaintiff, where he was driving along a street at right angles with the tracks, to cross them in front of a moving electric car without looking for the approach of a possible car, although the plaintiff testified that he listened for the sound of a gong and heard none. In the latter case, the court said, *inter alia*: "The street railway has become a business necessity in all great cities. Greater and better facilities and a higher rate of speed are being constantly demanded. The movement of cars by cable or electricity along crowded streets is attended with danger, and renders a higher measure of care necessary, both on the part of the street railways and those using the streets in the ordinary manner. It is the duty of the railway companies to be watchful and attentive, and to use all reasonable precautions to give notice of their approach to crossings and places of danger. Their failure to exercise the care which the rate of speed and the condition of the street demand is negligence. On the other hand, new appliances rendered necessary by the advance of business and population in a given city impose new duties on the public. The street railway has a right to the use of its track, subject to the right of crossing by the public at street intersections; and one approaching such a place of crossing must take notice of it and exercise a reasonable measure of care to avoid contact with a moving car. It may not be necessary to stop on approaching such a crossing, for the rate of speed of the most rapid of these surface cars is ordinarily from six to nine miles per hour; but it is necessary to look before driving upon the track. If, by looking, the plaintiff could have seen and so avoided an approaching train, and this appears from his own evidence, he may be properly nonsuited." A number of accidents caused by electric cars have already occurred in Toronto, but not more, we think, than would have been the case consequent upon the introduction of any system of rapid transit, and the great majority of these accidents have been due to recklessness rather than ignorance of the danger. This is evidenced by the fact that in almost every instance in which an accident occurred the injured person was fully cognizant of the dangerous character of the electric car.

SIR WILLIAM JOHNSTON RITCHIE.

By the death, on the 25th ult., of the late Chief Justice of the Supreme Court of Canada, a gap is made which will not easily be filled.

Sir William Johnston Ritchie was born at Annapolis, Nova Scotia, in 1813.

He was a son of the late Mr. Justice Ritchie, and a brother of Mr. Justice J. N. Ritchie, now on the bench of the Supreme Court of that Province. He was called to the Bar in the year 1838, made a Queen's Counsel in 1854, and the following year was appointed to the Supreme Court of New Brunswick, becoming Chief Justice eleven years later. He represented the city of St. John in the New Brunswick Legislature from 1846 to 1851, and was a member of the Executive Council from 1854 until his elevation to the bench. In 1875 he was translated to the Supreme Court, and four years later succeeded the late Sir William Buell Richards as Chief Justice. In 1881 he was knighted, and he has usually acted as Administrator during the temporary absence of the Governor-General.

Sir William Ritchie possessed in an eminent degree a judicial mind and capacity, as evidenced by his ability to grasp with quickness and precision the vital points of the case before him. He followed the arguments addressed to the court with scrupulous care and attention, and, while presiding over his court with courtesy and urbanity, did not suffer counsel to waste time in dealing with matters not pertinent to the issues to be decided. His considered judgments, although often lengthy and perhaps somewhat overburdened with extracted matter, were invariably confined to discussion of questions material to the ultimate conclusion —a merit not always found in judicial utterances. The late Chief was extremely jealous of what he considered the dignity of the court, and where counsel failed to appear promptly when a case was called for argument he was especially severe; sometimes, it has been said, not fully appreciating the fact that a court is intended for the purpose of trying cases and not of merely disposing of them. In addition to his general knowledge, the Chief Justice was especially familiar with the law of commerce and shipping, a familiarity acquired during the twenty years of his judicial life in New Brunswick; his professional laurels, too, being won in the commercial capital of that Province, where his reputation was always high in these branches of the law. A temper naturally quick and ardent he kept well under control, and his relations with all who came in contact with him were most happy.

QUEEN'S COUNSEL AND PRECEDENCE.

As our readers are aware, the subject of Queen's Counsel and precedence at the Bar is to be laid before the Court of Appeal for Ontario under the provisions of 53 Vict., cap. 13 (Ont.), an Order in Council having been passed to that effect.

This Order in Council is based on a memorandum of the Attorney-General, which states that "The Committee of Council have had under consideration a memorandum of the Honorable the Attorney-General, dated April 13, 1892, wherein he states that with reference to the matter of Queen's Counsel and of precedence in Provincial courts controversies have been raised involving very wide questions as to Local and Federal jurisdiction, dependent on the true interpretation of the British North America Act, 1867, as to certain powers of

the Legislature and of the Lieutenant-Governor of the Province, as to the validity and the effect of certain Provincial legislation and certain Provincial executive action thereunder, and as to the status and precedence in the Provincial courts of members of the Provincial Bar; that unsuccessful efforts have been made to arrange with the Government of Canada or otherwise for the submission to a judicial tribunal of the important questions so raised; that in the ordinary course of the courts there seems no adequate means for procuring an authoritative and conclusive decision on these questions; that confusion, uncertainty, and inconvenience has been produced by the existing state of matters, and it is in the public interest that the questions involved should be settled by judicial decision."

The case signed by the Attorney-General and referred to in the Order in Council contains the correspondence which has taken place between the Dominion and Ontario Governments and the Home authorities on the subject. This correspondence commenced in 1872 by a report made by the Minister of Justice of Canada to the Governor-General, giving his views on the matter and asking the opinion of the law officers of the Crown on the questions submitted. These questions were as follows: (1) Has the Governor-General (since 1st of July, 1867, when the union came into effect) power as Her Majesty's representative, to appoint Queen's Counsel? (2) Has the Lieutenant-Governor, appointed since that date, the power of appointment? (3) Can the Legislature of a Province confer by statute upon its Lieutenant-Governor the power of appointing Queen's Counsel? (4) If these questions are answered in the affirmative, how is the question of precedence or pre-audience to be settled?

The answer was given by the Colonial Secretary as follows:

"I am advised that the Governor-General has now power, as Her Majesty's representative, to appoint Queen's Counsel; but that a Lieutenant-Governor, appointed since the union came into effect, has no such power of appointment. I am further advised that the Legislature of a Province can confer by statute on its Lieutenant-Governor the power of appointing Queen's Counsel; and, with respect to precedence or pre-audience in the courts of the Province, the Legislature of the Province has power to decide as between Queen's Counsel appointed by the Governor-General and the Lieutenant-Governor, as above explained."

Subsequently, the Legislature of Ontario passed an Act respecting the appointment of Queen's Counsel and an Act to regulate the precedence at the Bar. These enactments are now consolidated in the Revised Statutes as c. 139.

A despatch from the Lieutenant-Governor of Ontario to the Secretary of State in January, 1886, gives in full and at great length the views of the Ontario Government on this much-vexed question, referring therein to the case of *Lenoir* v. *Ritchie* in 3 S.C.R. 575. A short reply from the Secretary of State then follows, wherein the Dominion Government advises His Excellency the Governor-General that "so long as the judgment in *Lenoir* v. *Ritchie* is not reversed, it is the duty of Governments and individuals in Canada to respect and conform to that judgment. No inconvenience has been occasioned by the judgment, nor has anything occurred since it was rendered, so far as His Excellency's advisers

are aware, which renders it necessary or desirable for His Excellency, after the lapse of seven years, to facilitate a review of such judgment by a reference of the question involved to the Lords of the Judicial Committee of Her Majesty's Privy Council; and, finally, the question being settled so far as the Supreme Court of Canada can settle it, His Excellency is advised that it is not necessary to discuss anew the grounds on which the decision of the court rests."

The names of the various appointees by the different Governments appear in the case stated.

The following are the questions which the Court of Appeal is now requested to answer:

"(1) Whether since the 29th of March, 1873, it has been, and is, lawful for the Lieutenant-Governor of Ontario by Letters Patent, in the name of Her Majesty, under the Great Seal of Ontario,

(*a*) To appoint from among the members of the Bar of Ontario such persons as he deems right to be, during pleasure, Her Majesty's Counsel for Ontario?

(*b*) To grant to any member or members of the Bar of Ontario a patent or patents of precedence in the courts of Ontario?

(2) Whether appointments of Queen's Counsel and grants of precedence such as are in the case stated to have been made by the Lieutenant-Governor of Ontario since the said date are and would be valid and effectual to confer on the holders thereof the office and precedence thereby purported to be granted?

(3) Whether members of the Bar of Ontario from time to time appointed, or to be appointed, as aforesaid, by the Lieutenant-Governor of Ontario by Letters Patent, in Her Majesty's name, under the Great Seal of Ontario, to be Her Majesty's counsel for Ontario, and members of the Bar of Ontario, to whom from time to time patents of precedence in the courts of Ontario have been or may be granted by the Lieutenant-Governor of Ontario, as aforesaid, in conformity with the limitations of the recited statute of Ontario, have or shall become entitled to such precedence in the courts of Ontario as have been or may be assigned to them by such Letters Patent after the several persons or classes referred to in the 3rd, 5th, and 7th sections of the said Revised Statute of Ontario?

(4) Whether the position as to precedence in the courts of Ontario of the remaining members of the Bar of Ontario not comprised within the classes referred to in the said 3rd, 5th, and 7th sections, and not holding patents issued by the Lieutenant-Governor of Ontario, conferring on them the office of Queen's Counsel for Ontario, or granting to them precedence in the courts of Ontario, is as between them and those holding such patents as aforesaid subsequent to those holding such patents, and as between themselves in the order of their call to the Bar of Ontario?

(5) In case the answer to any of the said questions be in the whole or in part negative, or in case an affirmative answer shall appear to the court not to be a complete exposition of the matters involved, then what is the true state and condition of the matters involved in such questions?"

We had not supposed that there was such a burning need for the settlement

of any question of precedence in the premises; but, however that may be, it is possible that the opinions to be expressed by the judges may be useful in matters other than those more strictly brought before them on this reference.

We notice that the opinion of Mr. Madden, a well-known Australian jurist, has been taken on a somewhat similar question in South Australia. His view is that the right to appoint Queen's Counsel can only be exercised by Her Majesty, or by some agent specifically delegated to exercise it, and unless this power has been specifically conferred on Governors they have no power to bestow the title. His view is apparently based on the supposition that the appointment of Queen's Counsel comes under the head of the royal prerogative of bestowing titles of honour. There is much force, however, in the argument that it is not merely a title of honour, but an office. The judgment of the courts on this subject will be received with much interest by the profession.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for August comprise (1892) 2 Q.B., pp. 149-336; (1892) P., 237-261, and (1892) 2 Ch., pp. 277-373.

PRACTICE—COSTS—PROCEEDINGS ON CROWN SIDE—ORD. LXV., R.I—(ONT. RULE 1170).

In *London County Council* v. *West Ham* (1892), 2 Q.B. 173, the Court of Appeal (Lord Esher, M.R. and Fry and Lopes, L.JJ.) have held that the proceedings on the Crown side of the Queen's Bench are unaltered by the Judicature Act, and that Ord. lxv., r. 1 (Ont. Rule 1170), does not apply to such proceedings, and therefore there is no power to give costs to a successful appellant in a case stated by Quarter Sessions. In his judgment Lord Esher says: "I accept the doctrine that at common law no court of common law had jurisdiction to give costs at all, and that the whole power in those courts to give costs is given them by statute, and in such a case as this there was no statute which had given them jurisdiction to deal with such costs as are now in question." The Ord. lxv., r. 1, he holds altered the practice in cases where the court already had power to award costs, but did not enlarge the jurisdiction of the court to give costs in cases in which it had previously no such jurisdiction. See Criminal Code, s. 900, s-s. 7.

PRACTICE—DISCOVERY—INFANT.

In *Curtis* v. *Mundy* (1892), 2 Q.B. 178, a Divisional Court (Cave and Wright, JJ.) decide that an infant plaintiff cannot be compelled to make discovery of documents. We may note that this decision is opposed to the recent decision of Meredith, J., in *Arnold* v. *Playter*, 14 P.R. 399.

QUO WARRANTO—ACCEPTANCE OF INCOMPATIBLE OFFICE—NON-CORPORATE OFFICE.

The Queen v. *Tidy* (1892), 2 Q.B. 179, was a motion for a *quo warranto* against the defendant to show by what authority he claimed to exercise the office of vestry clerk. The defendant was a churchwarden, and while holding that office

was elected vestry clerk of the parish. The two offices were incompatible. He published a letter accepting the office on condition that he should not be required to act as vestry clerk until his term of office as churchwarden had expired. He never acted as vestry clerk. A Divisional Court (Wright and Cave, JJ.) dismissed the application on the ground that the mere acceptance of a non-corporate office was insufficient to make proceedings by *quo warranto* applicable, and that in such a case there must be something more than an acceptance of the incompatible office, though the court guards itself against the view that an actual user of the office is necessary. In the present case the conditional acceptance, inasmuch as the condition was contrary to law, was held not to be an acceptance at all.

PRACTICE—CRIMINAL LAW—COSTS—RECOGNIZANCE—ACQUITTAL ON SOME, AND CONVICTION ON OTHER COUNTS.

In *The Queen* v. *Bayard* (1892), 2 Q.B. 181, an indictment containing several counts was removed into the High Court by *certiorari*, the prosecutors entering into a recognizance conditioned to pay to the defendant, in case she should be acquitted upon the indictment, her costs incurred subsequent to the removal. The defendant was convicted on some of the counts and acquitted on others; she then claimed to tax costs against the prosecutor on the counts on which she had been acquitted, but a Divisional Court (Mathew and Wright, JJ.) held that she had not been "acquitted on the indictment" within the meaning of the recognizance, and was therefore not entitled to any costs against the prosecutors.

ADULTERATION—SAMPLE OF MILK PROCURED FOR ANALYSIS—PORTION OF SAMPLE ONLY SUBMITTED TO ANALYST—42 & 43 VICT., C. 30, S. 3.—(R.S.C., C. 107., SS. 7, 9).

Rolfe v. *Thomson* (1892), 2 Q.B. 196, was a case stated by magistrates. The prosecution was for selling adulterated milk. The English Act, 42 & 43 Vict., c. 30, s. 3, provides that an inspector may procure "at the place of delivery any sample of any milk in the course of delivery" to a purchaser or consignee, and if he suspect it to be adulterated "shall submit the same to be analyzed." The inspector in the present case had taken a sample, part of which he had submitted for analysis and the rest he had retained. The question was whether he was bound to submit the whole sample for analysis in order to convict the seller; and the court (Grantham and Charles, JJ.) were of opinion that he was not.

TROVER AND DETINUE—JOINT OWNERS OF CHATTEL—RIGHT TO POSSESSION BY ONE CO-OWNER—CONVERSION BY CO-OWNER OF CHATTEL.

Nyberg v. *Handelaar* (1892), 2 Q.B. 202, was an action of trover and detinue by the owner of a half share in a gold enamel box. The plaintiff was originally sole owner of the box; he sold a half share in it to one Frankenheim, and it was agreed between them that the plaintiff should retain possession of the box until it should be sold. Subsequently the plaintiff entrusted the box to Frankenheim for the purpose of taking it to an auctioneer for sale, but instead of doing this he pledged it to the defendant for his private debt. The action was tried before Smith, J., who held that the plaintiff could not recover, and that the special

agreement as to possession did not divest Frankenheim's right of property, which he had passed to the defendant; but on appeal Fry and Lopes, L.JJ., reversed his decision, and gave judgment for the plaintiff on the ground that the special agreement between him and Frankenheim had the effect of vesting in him a special property in the box, which gave him a right to the possession both as against Frankenheim and any one claiming under him. See *Gunn* v. *Burgess*, 5 O.R. 685.

ADMINISTRATION BOND, BREACH OF CONDITION OF—LEGACY TO MINOR, FAILURE TO PAY.

Dobbs v. *Brani* (1892), 2 Q.B. 207, was an action upon a bond given by an administratrix with the will annexed, among other things conditioned well and truly to administer the estate, "that is to say, pay the debts of the deceased which he did owe at his decease, and then the legacies contained in the said will." The administratrix got in the estate and paid the debts and legacies, with the exception of £50 due to a minor. To meet this legacy she handed over £50 to her brother-in-law, who did not pay the money over and could not be found. The residue of the estate was distributed, and nothing remained to meet the legacy to the minor. The action was brought by a guardian of the legatee to whom the bond had been assigned under an order of the court. Pollock, B., was of opinion that there had been no breach of the condition, and dismissed the action; but the Court of Appeal (Lord Esher, M.R., Fry and Lopes, L.JJ.) reversed his decision, holding that the moment the administratrix had parted with the estate, so that she could not fulfil her obligations to administer it, there was a breach of the bond, and they refused to accede to the contention of the defendants that there could be no breach of the bond until the legacy was actually payable.

FRAUDULENT PREFERENCE—VOID BILL OF SALE—BILL OF SALE GIVEN BONA FIDE TO CORRECT MISTAKE IN PRIOR BILL OF SALE.

In re Tweedale (1892), 2 Q.B. 216, although a bankruptcy case, may be shortly referred to here, as bearing in some degree on our law relating to fraudulent preferences. A debtor shortly before his bankruptcy executed a bill of sale by which he assigned his furniture to his wife to secure advances *bonâ fide* made by her. Subsequently discovering that the bill of sale was void, in consequence of its including after-acquired property, immediately before his bankruptcy he executed another bill of sale assigning the same chattels to his wife with the intention of correcting the error in the previous bill of sale, and there was evidence that the debtor believed himself under an obligation to give the fresh security; and it was held by Williams and Collins, JJ., that this did not amount to a fraudulent preference of the wife to the other creditors within the meaning of the Bankruptcy Act.

FRIENDLY SOCIETY—DISPUTE BETWEEN MEMBER AND SOCIETY—DISPUTE AS TO WHETHER A PERSON A MEMBER.

Willis v. *Wells* (1892), 2 Q.B. 225, was an action brought by the plaintiff, who claimed to be a member of a friendly society, to restrain the defendants (the society and its officers) from excluding him from membership. On a motion

for an injunction, it was contended by the defendants that the action was not maintainable because, by the Friendly Societies Act, it is provided that "every dispute between a member, or person claiming through a member, . . . and the society or an officer thereof, shall be decided in manner directed by the rules of the society," and the rules of the society in question required such disputes to be decided by a justice of the peace. But Grantham and Charles, JJ., were of opinion that that provision merely applied to disputes between persons admitted to be members and the society, and did not extend to cases like the present, where the status of the plaintiff as a member was the question in dispute, and they therefore granted the injunction.

EXECUTORY AGREEMENT FOR A LEASE—ACTION FOR RENT—SPECIFIC PERFORMANCE—EQUITY JURISDICTION

Foster v. *Reeves* (1892), 2 Q.B. 255, in view of the recent decision of the Court of Appeal that our County Courts have now no equity jurisdiction, appears to be of some importance. The defendant had entered into possession of premises under an executory agreement for a lease for three years. After he had been in possession a little over six months he gave a six months' notice to quit, as if in under a yearly tenancy, and left the premises. The action was brought for a quarter's rent which subsequently accrued. The value of the premises exceeded £500, so that the judge of the County Court in which the action was brought had no jurisdiction to decree specific performance of the agreement for a lease; but being of opinion that it was a case in which specific performance would be decreed by a court of equity, and that he was therefore bound to treat the defendant as tenant under the terms of the agreement, he gave judgment in favour of the plaintiff; but on appeal to a Divisional Court his judgment was reversed, and the Court of Appeal (Lord Esher, M.R., Fry and Lopes, L.JJ.) affirmed the Divisional Court on the ground that the equitable doctrine that a person who enters under an executory agreement for a lease must be decreed to be in as tenant according to the terms of the agreement can only be applied where the court in which the action is brought has jurisdiction to decree specific performance; that, in short, where the court has no equitable jurisdiction in the premises, the case must be dealt with as it would have been in a common law court before the Judicature Act.

SOLICITOR—UNQUALIFIED PERSON ACTING AS SOLICITOR—SUMMARY JURISDICTION OF COURT OVER UNQUALIFIED PERSON ACTING AS SOLICITOR—MONEY AND DOCUMENTS IN POSSESSION OF UNQUALIFIED PERSON ACTING AS SOLICITOR—ATTACHMENT.

In re Hulm & Lewis (1892), 2 Q.B. 261, Mathew and Collins, JJ., following *Wilton* v. *Chambers*, 7 A. & E. 524, held that where an unqualified person assumes to act as a solicitor, and as such obtains possession of money and documents of his client's, he is subject to the summary jurisdiction of the court as if he were in fact a solicitor, and is liable to be ordered to deliver up the money and documents to the client, and in case of disobedience of the order is subject to attachment for contempt. The decision of Pollock, B., refusing the attachment on the ground of want of jurisdiction, was therefore reversed.

CRIMINAL LAW—LARCENY—MONEY PAID OR DEPOSITED UNDER CONTRACT INDUCED BY FRAUD—POSSESSION OBTAINED BY FRAUD—LARCENY BY A TRICK.

The Queen v. *Russett* (1892), 2 Q.B. 312, is a case stated by justices at Quarter Sessions for the opinion of the court. The prisoner agreed at a fair to sell a horse to the prosecutor for £23, of which £8 was paid by the prosecutor at once, and the remainder upon the delivery of the horse. After the prisoner had got the £8, for which he gave a receipt which stated that the balance was to be paid on the delivery of the horse, he caused the horse to be removed from the fair under circumstances from which the jury inferred that he had no intention of delivering it to the prosecutor, and he never, in fact, did deliver it. Under these circumstances, the court (Lord Coleridge, C.J., Pollock, B., and Hawkins, Smith, and Wills, JJ.) were agreed that the prisoner might properly be convicted of larceny by a trick of the £8. Lord Coleridge refers with approval to the following statement of Kelly, L.C.B., in *Reg.* v. *McKale*, L.R. 1. C.C. 125, as to the distinction between fraud and larceny, viz.: "The distinction between fraud and larceny is well established. In order to reduce the taking under such circumstances as in the present case from larceny to fraud, the transaction must be complete. If the transaction is not complete, if the owner has not parted with the property in the thing, and the accused has taken it with a fraudulent intent, that amounts to larceny." In the present case, the prosecutor, as the court found, could only have intended to part with the possession of the £8 as a deposit, but the property in it was not to be changed until the horse was delivered.

PRACTICE—DISCOVERY IN LIBEL ACTION IN MITIGATION OF DAMAGES—ORD. XXXVI., R. 37 (ONT. RULE 573).

In *Scaife* v. *Kemp* (1892), 2 Q.B. 319, the defendant, pursuant to Ord. xxxvi., r. 37 (Ont. Rule 573), had given particulars of the matters on which he intended to rely in mitigation of damages in the action, which was one for libel, and he claimed the right to examine the plaintiff for discovery in reference to such particulars. Denman, J., held that the defendant was entitled to the discovery, and Mathews and Smith, JJ., upheld his decision.

PRACTICE—DISCOVERY—ACTION FOR PENALTIES.

Saunders v. *Wiel* (1892), 2 Q.B. 321, was an action brought to recover £50 under s. 58 of the Patents, Designs, and Tradesmark Act, 1883, which provides that "any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding £50 to the registered proprietor of the design, who may recover such sum as a simple contract debt by action," and the question was whether the defendant was liable to make discovery. The plaintiff contended that he was relying on *Adams* v. *Batley*, 18 Q.B.D. 625, (*ante* vol. 23, p. 229), but the Court of Appeal (Lord Esher, M.R., Bowen and Smith, L.JJ.), affirming the judgment of Day and Charles, JJ., (1892), 2 Q.B. 18, noted *ante* p. 430, held that the action was one for a penalty, and the defendant was therefore not liable to make discovery.

PRACTICE—DISCOVERY—ACTION BY AGENT—PRINCIPAL RESIDENT ABROAD—STAYING ACTION TILL DISCOVERY MADE.

Willis v. *Baddeley* (1892), 2 Q.B. 324, is another case on the practice relating to discovery. The action was brought by an agent in his own name, his principal being resident abroad. The Court of Appeal (Lord Esher, M.R., and Bowen and Smith, L.JJ.) held that the defendant was entitled to the same discovery as if the action had been brought by the principal in his own name, and that he was entitled to have the action stayed until such discovery was made. Lord Esher says: "Where it is made known to the court that there is a foreign principal residing abroad who is the real plaintiff in the action and is only suing through his agent here, and that the agent was dealt with by the other side as agent and not as principal, then, in order to prevent palpable injustice, the court, by reason of its inherent jurisdiction, will insist that the real plaintiff shall do all that he ought to do for the purposes of justice as if his name were on the record." This language is somewhat guarded, and would seem confined to cases where the plaintiff has been dealt with as agent. The Ontario Rules relating to discovery seem much wider, and extend to all cases where an action is brought or defended for the benefit of another. See Ont. Rules 488 and 510. Here, as in England, there may be some difficulty in making an order directly against the beneficiary; but here, as there, the result would be obtained by making the order against the party to the record and staying his proceedings, or striking out his defence unless he procured the beneficiary to comply with it.

DOMICIL.

Goulder v. *Goulder* (1892), P. 240, is a divorce action in which a question of domicil is raised which is of general interest. Both husband and wife were born in France, of parents who were born in England, but resident in France. The marriage took place in England in 1877, but the husband and wife subsequently resided in France. On coming of age the husband made a declaration that he intended to retain his English domicil, and it appeared that both he and his father intended to return to England as soon as they had made enough money to maintain them. In 1885 the husband deserted his wife, and went to New Zealand and the Australian colonies, where he led an unsettled life. It was held by Lopes, L.J., that both parties had an English domicil at the commencement of the proceedings, and the court had therefore jurisdiction.

WILL—REVOCATION—REVIVAL OF REVOKED WILL BY REFERENCE.

In *Paton* v. *Ormerod* (1892), P. 247, a testatrix made, in 1877, a will settling part of a fund to which she was entitled on one of her daughters. By a will made in 1881, which revoked all former wills, she made the following recital: "Whereas I have also settled one undivided moiety of the residue of the said third part of £100,000, to which I am entitled under the will of my said brother, in favour of my said daughter, E. J. Paton." In fact, there was no other settlement of the fund in question in favour of this daughter except by the will of 1877, and the question was whether this part of the will of 1877 was incorporated in

the will of 1881 by reference thereto in this recital. This question Jeune, J., decided in the negative, and he held that there was no such ambiguity as to make declarations by the testatrix of her intentions admissible.

PROBATE—WILL—CODICIL—UNATTESTED INTERLINEATIONS—INCORPORATION BY REFERENCE.

In the goods of Heath (1892), P. 253, is a somewhat similar case to the last. In this case a testator made various alterations and interlineations in his will, some of which were attested and others not. Among the latter was an interlineation giving a legacy of "£1,000 to each of my executors." In the body of the will he gave £10,000 to one of his executors, and in a codicil the testator recited that he had given a legacy of £11,000 to this particular person. Under this state of facts, the court held that the codicil incorporated the unattested interlineation because it showed that it had been made prior to the execution of the codicil.

INFANT—MARRIAGE SETTLEMENT—AGREEMENT TO SETTLE AFTER-ACQUIRED PROPERTY—REPUDIATION BY INFANT OF DEED MADE WHILE A MINOR—REASONABLE TIME.

In *Carter* v. *Silber* (1892), 2 Ch. 278, we are glad to find that the Court of Appeal has reversed the decision of Romer, J. (1891), 3 Ch. 553 (noted *ante* p. 106), in which he held that a man could, after the lapse of five years after attaining his majority, repudiate a marriage settlement made by him while an infant. The Court of Appeal (Lindley, Bowen, and Kay, L.JJ.) came to the conclusion that the settlement, being for the benefit of the infant, was not void, but voidable, and that if he wished to repudiate it he must do so within a reasonable time after attaining his majority, and that five years was an unreasonable time, and therefore his repudiation was too late. It may be observed that the Court of Appeal, in this case, seems to consider that the question whether an infant's deed is void or voidable turns on whether or not it is for the benefit of the infant, and that it is only when it is for his benefit that it is voidable; but it may be noted that our own courts seem to have arrived at the conclusion that the question of benefit or no benefit has nothing to do with the matter, and that even where an infant's deed is not for his benefit it is still only voidable; at least that we take to be the result of *Foley* v. *Canada Permanent*, 4 O.R. 38, where the decision of Boyd, C., was affirmed by the Divisional Court, and see other cases collected, R. & H. Dig. 1723.

MARRIED WOMEN'S PROPERTY ACT, 1882 (45 & 46 VICT., C. 75), SS. 1, 5 (R.S.O., C. 132, SS. 3, 7)—MARRIED WOMAN—WILL MADE DURING COVERTURE PRIOR TO ACT—SEPARATE PROPERTY ACQUIRED AFTER THE ACT.

In re Bowen, James v. *James* (1892), 2 Ch. 291, a question arose as to the effect of a will made by a married woman during coverture prior to the Married Women's Property Act, 1882, as regarded separate property acquired by her after the Act came into force, the will being so framed as to dispose of after-acquired property; and Chitty, J., held that the after-acquired separate property passed under the will.

WILL—ANNUITY IN LIEU OF DOWER—INSUFFICIENCY OF PERSONALTY TO PAY LEGACIES IN FULL—PRIORITY OF WIDOW IN RESPECT OF HER ANNUITY IN LIEU OF DOWER.

In re Greenwood, Greenwood v. *Greenwood* (1892), 2 Ch. 295, Chitty, J., dissents from a dictum of Malins, V.C., in *Roper* v. *Roper*, 3 Ch.D. 714, 719. The point in controversy was, shortly, this, viz.: Whether a widow to whom an annuity has been bequeathed by her deceased husband in lieu of dower is entitled to priority in respect of such legacy over other legatees where the personalty proves insufficient to pay all the legacies in full and the husband has left no estate out of which she would be dowable. Malins, V.C., was in favour of giving her priority; but Chitty, J., determines that in such a case she must abate with the rest of the legatees, and that it is only where the husband leaves an estate out of which the widow would be dowable, if she so elected, that she is entitled to priority for a legacy given in satisfaction of dower.

LAND OUT OF JURISDICTION—MORTGAGE—RECEIVER.

Mercantile Investment Co. v. *River Plate Co.* (1892), 2 Ch. 303, was an application for an interim receiver of the rents and profits of certain lands in Mexico which had become vested in an English company, and of which lands the plaintiffs were mortgagees by virtue of certain debentures issued by the defendants' predecessors in title. North, J., although holding that the English company were accountable in an English court to the debenture-holders for the proceeds of such lands come to their hands, nevertheless was of opinion that the appointment of a receiver would, under the circumstances appearing in the case, be useless, and he therefore refused the motion.

LEASE—FORFEITURE—BREACH OF COVENANT—NOTICE—44 & 45 VICT., C. 41, S. 14, S-S. 1 (R.S.O., C. 143, S. 11, S-S. 1).

Lock v. *Pearce* (1892), 2 Ch. 328, is a decision of North, J., under the Conveyancing and Law of Property Act, 1881, c. 41, s. 14, s-s. 1, from which R.S.O., c. 143, s. 11, s-s. 1, is taken. That section provides that a right of entry or forfeiture under any provision in a lease shall not be enforcible unless the lessor serves on the lessee a notice specifying the breach complained of, and, if it is capable of remedy, requiring him to remedy it, "and in any case requiring the lessee to make compensation in money for the breach," and the lessee fails within a reasonable time to remedy the breach, if remediable, and to make reasonable compensation. In the present case the defendant, a lessor, had served a notice on the plaintiffs, as lessees, requiring them to remedy a breach of covenant, but the notice omitted to require them to make any money compensation. The notice not having been complied with, the defendant proceeded to recover possession for breach of the covenant. The plaintiffs then brought the present action to restrain the defendants from obtaining possession, contending that the notice was bad for not having claimed any money compensation; but although there were the cases of *Jacques* v. *Harrison*, 12 Q.B.D. 136, 165, and *Greenfield* v. *Harrison*, 2 *Times* L.R. 876, in favour of that view, yet North, J., relying on what is said in *Skinners Co.* v. *Knight* (1891), 2 Q.B.D. 542, held that the omission of a claim for money compensation in the notice did not invalidate it.

Legal Scrap Book.

STEALING ELECTRICITY.

In the St. Louis (Mo.) criminal court, a short time ago, a hardware dealer was charged with stealing electricity by tapping an electric light wire, and thus securing free illumination. The judge who tried the case held that the offence was not larceny, and the Grand Jury refused to call it fraud, and the accused was therefore discharged. The *Central Law Journal* considers the view of the court manifestly wrong, since *gas* has already been held to be the subject of larceny. There certainly does not seem any possible distinction between a theft of gas and a theft of electricity.

MARRIAGE BY WIRE.

Strange things are done out West, and if report can be believed a marriage ceremony was recently performed by the chaplain of a United States military post—Fort Apache—who was 275 miles distant from Fort Bowie, where the contracting couple were. The telegraph operator at the latter place arranged the affair and perhaps gave the bride away, while the witnesses were two other operators distant respectively 225 and 300 miles. All the necessary questions were asked and answered over the wire. The question of where the marriage took place might be difficult of answer, since, by the decision in *Beamish v. Beamish*, 9 H.L.C. 274, the marriage is completed "after affiance and troth plighted"; this took place at Fort Bowie. Blunt's "Church Law" (2nd ed. rev., p. 154), however, considers that the declaration of the priest completes the ceremony; this was made at Fort Apache.

ONTARIO'S OLDEST BARRISTER.

There died in the month of August last, at the ripe age of ninety years, and at his old home, the seat of the first Parliament of Upper Canada, the anniversary of which we have just been commemorating, William B. Winterbottom, who was born on the 26th of September, 1802. Educated in his native town of Niagara, he witnessed during this period the review of the troops by General Sir Isaac Brock immediately prior to their departure for Queenston, whence many besides their gallant commander never returned. He was also a spectator of the burning of his birthplace, and an observer of the ill effects resulting from it. A law student in the office, and subsequently a partner of the late Alexander Stewart, Mr. Winterbottom was admitted as an attorney in 1827, and was called to the Bar in Trinity Term, 1830. In 1845 he was appointed Clerk of the First Division Court of the County of Lincoln, which position he held for over thirty years, retiring to his well-earned rest the oldest barrister in the Province.

MARRIAGE WITH DECEASED WIFE'S SISTER.

The time has again come round for the English journals, legal and lay, to lead out their pet hobby horse, referred to in "Iolanthe" as "that annual blister, marriage with a deceased wife's sister." The *Law Journal* thinks that the

modern commandment, "Parents, obey your children in all things," is carried beyond its legitimate extension in the argument that, since all of Great Britain's colonies have legalized this marriage, therefore the mother country should follow suit, and, for the purpose of refuting it, says: "We see no reason why our law should be the same as the colonial law in the matter of marriage. The colonies are free and self-governing communities, and make their laws in accordance with their own moral and social sentiments. If we think it right we shall change our law; but we shall not do so simply to save colonials from legal inconveniences which may attach to them in this country in consequence of the divergence of their law from ours." The writer speaks with the amount of self-sufficiency common to an Englishman who believes that whatever he does is right because he does it. A correspondent of the *Times*, who has grasped the key-note of the whole situation, says that although a colonist may revolt at the inconsistency and mockery of a marriage legal in one place being no marriage at all in another, nevertheless, being "only a colonist," he must not presume to thrust his legislative fancies upon the mother country and compel her to alter her law to suit his depraved tastes. We cannot expect Great Britain to put herself out on our account, nor do we. It is not, however, strictly correct to say that all the colonies have legalized such a marriage; in Canada, for example, such a marriage is simply *not illegal*, there being no ecclesiastical court with jurisdiction to set it aside.

A.H.O'B.

Notes and Selections.

STREET RAILWAY—NEGLIGENCE IN LAYING TRACK.—It is negligence for a street railway to allow one of its rails to project above the surface of the cross walk so that a person passing stumbles against it and is injured. In such a case it is not necessary that proof of a complaint of the condition of the track had been made to the company. *Schild* v. *Central Park Co.*, N.Y. Court of Appeals.

CARRIER—PAYMENT BEFORE GOODS DELIVERED.—In the Bury (Eng.) County Court lately (*Stone* v. *Lancashire, etc., R.W. Co.*), the defendants refused to deliver some live pigs consigned to the plaintiff, or to allow him to see them, until he paid the charges for carriage. This the plaintiff refused to do, and the animals not being delivered until the following day he lost his market. It was held that the defendants had not exceeded their rights in demanding payment before delivery.

MERCANTILE AGENCY—FALSE INFORMATION.—Where defendants were proprietors of a mercantile agency and agreed to furnish plaintiff information concerning the standing and credit of persons, the defendants not to be responsible for negligence of their agents in procuring information, and not guaranteeing its

correctness, it was held, in a case in which an agent of defendants intentionally gave false information as to the standing of a merchant, with the design of benefiting himself and misleading plaintiff, that defendants were liable for the loss thereby sustained by plaintiff, the agent's action being within the scope of his authority. *City Nat. Bank* v. *Dun.—New York L.J.*, Sept. 20.

TELEPHONE CONVERSATION—EVIDENCE.—In *Oskamp* v. *Gadsden*, decided by the Supreme Court of Nebraska, June 11, 1892, the defendant called at the public telephone station at Schuyler, and asked the operator to request the plaintiffs to step to the telephone in their place of business in Omaha, as he desired to converse with them. H., one of the plaintiffs, answered the call, but owing to the conditions of the atmosphere the parties were unable to communicate directly with each other. The telephone operator at Fremont, an intermediate station, proposed to and did transmit defendant's message to plaintiffs, offering to sell them a quantity of hay, and he also repeated to them their answer, accepting the proposition. In an action for a breach of contract, it was held that the conversation was admissible in evidence, and that it was competent for the defendant to state the contents of plaintiffs' answer to his message, as repeated by the operator at Fremont at the time it came over the wire, The court said, *inter alia*: "The question thus presented is a new one to this court, and there are but few decided cases which aid us in our investigation. But upon principle it seems to us that the testimony is competent, and its admission violated no rule of evidence. It was admissible on the ground of agency. The operator at Fremont was the agent of defendant in communicating defendant's message to Haines, and she was also the latter's agent in transmitting or reporting his answer thereto to defendant. The books on evidence, as well as the adjudicated cases, lay down the rule that the statements of an agent within the line of his authority are admissible in evidence against his principal. Likewise, it has been held that where a conversation is carried on between persons of different nationalities through an interpreter, the statement made by the latter at the time the conversation occurred as to what was then said by the parties is competent evidence, and may be proven by calling persons who were present and heard it. This is too well settled to require the citation of authorities. There are certainly stronger reasons for holding the statement made by the operator and testified to by defendant admissible than in the case of an interpreter. Both Haines and defendant heard and understood the operator at Fremont, and knew what she was saying, or at least could have done so. Each knew whether his message was being correctly repeated to the other by the operator. Not so where persons converse through an interpreter. If the testimony objected to was incompetent and hearsay, then the testimony of Haines, relating to the same conversation, should, for the same reason, have been excluded. He did not hear what defendant said, but testified to what the operator reported as having been said. The operator at Fremont was not the agent of the defendant alone, but she was plaintiffs' agent in repeating their

answer to defendant's message. That conversations held through the medium of telephone are admissible as evidence in proper cases cannot be doubted. Such have been the holdings of the courts in cases where the question has been before them. In a criminal case—*People* v. *Ward*, 3 N.Y. Crim. 483—it was held that where a witness testifies that he conversed with a particular person over the telephone, and recognized his voice, it was competent for him to state the communication which he made. In *Wolfe* v. *Railway Co.*, 97 Mo. 473, it was ruled that if the voice is not identified or recognized, but the conversation is held through a telephone kept in a business house or office, it is admissible, the effect or weight of such evidence, when admitted, to be determined by the jury. See *Printing Co.* v. *Stahl*, 23 Mo. App. 451. A case quite analogous to the one at bar is *Sullivan* v. *Kuykendall*, 82 Ky. 483. In that case the parties did not have conversation directly with each other over the telephone, but conversation was conducted by an operator in charge of a public telephone station at one end of the line. It was held that the conversation was admissible in evidence, and that it was competent for the person receiving the message to state what the operator at the time reported as being said by the sender. The court in the opinion say: 'When one is using the telephone, if he knows that he is talking to the operator, he also knows that he is making him an agent to repeat what he is saying to another party; and in such a case certainly the statements of the operator are competent, being the declarations of the agent, and made during the progress of the transaction. If he is ignorant whether he is talking to the person with whom he wishes to communicate or with the operator, or even any third party, yet he does it with the expectation and intention on his part that, in case he is not talking with the one for whom the information is intended, it will be communicated to that person; and he thereby makes the person receiving it his agent to communicate what he may have said. This should certainly be the rule as to an operator, because the person using a telephone knows that there is one at each station, whose business it is to so act; and we think that the necessities of a growing business require this rule, and that it is sanctioned by the known rules of evidence.' Our conclusion is that the court did not err in admitting the testimony of the defendant."

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

EASTER TERM, 1892.

Monday, 16th May, 1892.

Convocation met.

Present, 10 to 11 a.m.—The Treasurer, and Messrs. Proudfoot, Irving, Moss, Hoskin, Shepley, Meredith, Riddell, Christie, Osler, Robinson, Lash, Aylesworth, Martin, Britton. In addition, after 11 a.m. until adjournment, Messrs Barwick, Teetzel, Kerr, and Ritchie.

The minutes of last meeting were read, approved, and signed by the Treasurer. The Report of the Examiners on the examination of candidates for Call to the Bar was received.

Ordered for immediate consideration and adopted.

The Report of the Legal Education Committee on the papers of the candidates and on the result of the examination was read.

Ordered, that the following gentlemen, who are reported to have passed their examination and whose papers have been reported to be regular, be called to the Bar forthwith, viz.:

Messrs. W. G. Owens, O. K. Fraser, W. S. Middlebro, U. A. Buchner, M. O. Sheets, J. H. Hegler, O. K. Watson, W. A. Boys, G. E. K. Cross, W. H. Cawthra, H. G. Tucker.

Ordered, that Mr. R. H. Holmes, who is reported to have passed his examination and to be entitled to be called under the Rules in special cases, be called to the Bar.

Ordered, that the case of Mr. John Coutts be reserved for further report.

The Report of the Examiners on the examination of candidates for Certificates of Fitness as solicitors was received and read.

Ordered for immediate consideration and adopted.

The Report of the Legal Education Committee on the service and papers of the candidates and on the result of the examination was read.

Ordered, that the following gentlemen, who have passed their examination and whose service and papers have been reported to be regular, do receive their Certificates of Fitness forthwith, viz.:

Messrs. W. G. Owens, W. S. Middlebro, J. G. Farmer, A. A. Adams, A. A. Roberts, O. K. Watson, O. K. Fraser, J. S. Denison.

Ordered, that the cases of the following gentlemen be reserved for further report, viz.:

Messrs. U. A. Buchner, M. O. Sheets, H. A. Lavell, J. H. Hegler.

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 as 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 on the books of the Society as students-at-law and articled clerks, viz.:

(1) Fred Adam Corrie Redden, B.A. Toronto, 1887; (2) Wm. Hepburn Curle, M.A. Queen's, 1890; (3) Wm. Folger Nickle, B.A. Queen's, 1892.

Ordered, that the following gentlemen, reported entitled as matriculants of universities, be entered on the books as students-at-law and articled clerks, viz.:

(1) Arthur Wm. Farewell, University of Toronto, 1888; (2) Albert Edward Knox, University of Toronto, 1888; (3) Wm. Benjamin Milliken, University of Toronto, 1890; (4) Thos. R. Atkinson, Queen's College, 1891; (5) Henry Campbell Becher, Trinity College, 1891; (6) Herbert Mathew Fullerton, Trinity Col-

lege, 1892; (7) Geo. Ira Gogo, Queen's College, 1891; (8) Wm. Arnott Hodgson, Trinity College, 1891; (9) John Francis McGrath, Ottawa College, 1891; (10) Chas. Henry Pettet, Trinity College, 1891; (11) Henry Kellam Beattie, Trinity College, 1892; (12) Wm. David Jewett, Trinity College, 1892; (13) James Edward Little, Trinity College, 1892; (14) Wm. James Moore, Queen's College, 1892; (15) Thos. J. W. O'Connor, Trinity College, 1892; (16) Fred. Agustus Henry, University of Toronto, 1888.

The following candidates for admission as students of the matriculant class presented certificates showing that they had passed the junior matriculation examination at the departmental examinations, held in lieu of the university matriculation examination, in July, 1891. While these do not bring the candidates strictly within the Rule, as at present framed, the committee are satisfied that the examination passed is the equivalent of the examination required by the Rules, and is such as would have been prescribed by the universities, and it is accepted in lieu of the matriculation examination. The committee therefore recommend that the candidates in question be admitted and entered on the books of the Society as students-at-law of the matriculant class, viz.:

(1) Edward Ernest Code, 1891; (2) Wm. Moffatt Cram, 1891; (3) James Edward Kerrigan, 1891; (4) Thomas Joseph McMahon, 1891; (5) Fred. Royden Morris, 1891; and it is ordered accordingly.

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

Messrs. Wm. Sora Middlebro, Urban A. Buchner, Merritt Oaklind Sheets, John Hind Hegler, Omar Watson, Wm. Alves Morgan Boys, Geo. Edmund Kynaston Cross, Richard Huron Holmes (special case).

Mr. Moss, from the Legal Education Committee, presented a Report as follows:

In the case of W. J. Withrow, recommending that the prayer of his petition be not granted.

Ordered for immediate consideration and adopted.

In the case of N. Simpson, recommending that the prayer of his petition be not granted.

Ordered for immediate consideration and adopted.

In the case of Daniel Davis, recommending that he be allowed to write on the First Intermediate Examination at the Supplemental Examinations in September.

Ordered for immediate consideration and adopted.

With reference to the regulations for examinations in the Law School during the present Term, the committee report the regulations by them made, as follows:

LAW SCHOOL EXAMINATIONS.

Term of 1891-92.

1. *Third-year pass:*

Monday, May 16th.		Questions put.	To be answered.
Forenoon:	Contracts	15	12
	Evidence	13	10
Afternoon:	Criminal Law	15	12
	Equity	13	10
Tuesday, May 17th.			
Forenoon:	Real Property	20	18
Afternoon:	Torts	15	12
	Practice	15	12

		Questions put.	To be answered.
Wednesday, May 18th.			
Forenoon :	Common Law	20	18
Afternoon :	Private International Law	12	8
	Canadian Constitutional Law	12	8
	Construction Statutes	12	8

Announcement of results, Wednesday, May 25th.

2. *Third-year honours :*

Thursday, May 26th.			
Forenoon :	Contracts	9	9
	Evidence	9	9
Afternoon :	Criminal Law	9	9
	Equity	9	9
Friday, May 27th.			
Forenoon :	Real Property	15	15
Afternoon :	Torts	9	9
	Practice	9	9
Saturday, May 28th.			
Forenoon :	Commercial Law	15	15
Afternoon :	Private International Law	7	7
	Canadian Constitutional Law	7	7
	Construction of Statutes	7	7

Announcement of results, Thursday, June 2nd.

3. *First-year pass :*

		No. of questions.
Thursday, May 12th.		
Forenoon :	Contracts	10
	Real Property	10
Afternoon :	Common Law	10
	Equity	10

Announcement of results, Wednesday, May 25th.

4. *First-year honours :*

Thursday, May 26th.		
Forenoon :	Contracts	8
	Real Property	8
Afternoon :	Common Law	8
	Equity	8

Announcement of results, Thursday, June 2nd.

5. *Second-year pass :*

		Questions put.	To be answered.
Thursday, June 2nd.			
Forenoon :	Criminal Law	13	10
	Real Property	16	13
Afternoon :	Contracts	13	10
	Torts	13	10
Friday, June 3rd.			
Forenoon :	Equity	13	10
	Practice	13	10
Afternoon :	Personal Property	10	7
	Evidence	10	7
	Canadian Constit'l History and Law	10	7

Announcements of results, Wednesday, June 8th.

6. *Second-year honours :*

Thursday, June 9th.			
Forenoon :	Criminal Law	8	8
	Real Property	8	8
Afternoon :	Contracts	8	8
	Torts	8	8
Friday, June 10th.			
Forenoon :	Equity	8	8
	Practice	8	8
Afternoon :	Personal Property	6	6
	Evidence	6	6
	Canadian Constitutional Law	6	6

Announcement of results, Tuesday, June 14th.

DIARY FOR OCTOBER.

1. Sat. .....Wm. D. Powell, 5th C.J. of Q.B., 1816. Meredith, Judge Chancery Division, 1890.
2. Sun.....*16th Sunday after Trinity.*
3. Mon.....London Assizes, Rose, J. County Court sittings for motions, except in York. Surrogate Court sittings.
4. Tues.....Criminal Assizes at Toronto, MacMahon, J. County Court non-jury sittings, except in York.
7. Fri.....Henry Alcock, 3rd C.J. of Q.B., 1802.
8. Sat.....Sir W. B. Richards, C.J., Supreme Court, 1875. R. A. Harrison, 11th C.J. of Q.B., 1875.
9. Sun.....*17th Sunday after Trinity.* De la Barre, Governor, 1682.
10. Mon.....County Court sittings for motions in York. Surrogate Court sittings.
11. Tues.....Guy Carleton, Governor, 1774.
12. Wed.....America discovered, 1492. Battle of Queenston Heights, 1812.
15. Sat.....English law introduced into Upper Canada, 1791.
16. Sun.....*18th Sunday after Trinity.*
17. Mon.....County Court non-jury sittings in York. Burgoyne's surrender, 1777.
18. Tues.....Civil Assizes at Toronto, MacMahon, J.
23. Sun.....*19th Sunday after Trinity.* Lord Lansdowne, Governor-General, 1883.
24. Mon.....Kingston Assizes, Armour, C.J. Last day for filing notices for call. Sir J. H. Craig, Governor-General, 1807.
25. Tues.....Supreme Court of Canada sits. Battle of Balaclava, 1854.
27. Thur....C. S. Patterson, Judge of Supreme Court, 1888. Jas. Maclennan, Judge Court of Appeal, 1888.
29. Sat.....Battle of Fort Erie.
30. Sun.....*20th Sunday after Trinity.*
31. Mon.....All Hallow's Eve

Reports.

SURROGATE COURT.

(Reported for THE CANADA LAW JOURNAL.)

RE McM—— TRUST.

Trustee—Liability of, for moneys embezzled by confidential clerk.

Where a trustee, a solicitor, allowed a confidential clerk and cashier of the firm of which he was a member to receive occasionally in his (the trustee's) absence moneys payable to the estate, and issue his (the trustee's) receipt for the same and the cashier, after receiving a payment, embezzled the same,

Held, the trustee not liable to make the loss good to the estate.

[TORONTO, Sept. 6, 1892.

This was a case stated by consent for the opinion of the County Judge of the County of York. The facts sufficiently appear in the judgment.

Z. A. Lash, Q.C., for the estate.

Wm. Macdonald for trustees.

McDOUGALL, Co. J.: I am asked to express my opinion as to the liability of a trustee to make good to the estate a loss of $143 occurring under the following circumstances: The trustee in question is the active trustee in the management of the estate; all dividends, interest, and income are collected by him for the estate; he himself is a solicitor and a member of a firm of solicitors, but the business of the estate is transacted by the trustee alone, and not by his firm. All notices forwarded to the debtors of the estate were sent in the name of the trustees, and the address of the active trustee was given as at the office of his firm. A bookkeeper was employed by the firm of solicitors, who kept their office ledger and also the books of the estate. This bookkeeper had the confidence of the firm and of the trustee as a reliable and trustworthy person; he had been in their service several years; he frequently received moneys on account of the firm, entered the amounts in their books, and deposited the same to the credit of the bank account of the firm. The trustee, an active practising solicitor, had the utmost confidence in the bookkeeper, and persons indebted to the estate had been in the habit of making payments to this bookkeeper in the ordinary course of business when unable to see the trustee personally; these amounts were, for a long period of time, duly entered in the estate books, and duly deposited by the bookkeeper to the credit of the bank account of the trusts estate, which was kept as a separate account and entirely distinct from that of the firm. In the end several payments of interest due the estate, amounting to $143, were paid in this way to the bookkeeper, who appropriated them to his own use and absconded. The question is raised by the other trustees and the *cestui que trust*, Is the active trustee liable to make this amount good to the estate?

The general doctrine, as laid down in the cases, is that a trustee is only bound to conduct the business of the estate in the ordinary and usual way in which similar business is conducted by mankind in transactions of their own. As said in *Re Speight* v. *Gaunt*, 22 Chy.D. 740 (affirmed 9 App. 1), "It never could be reasonable to make a trustee adopt further and better precautions than an ordinary prudent man of business would adopt, or to conduct the business in any other way." If it were otherwise, no one would be a trustee at all.

In *Ex parte Belchier*, 1 Amb. 218, Lord Hardwicke says: "Where trustees act by other hands, either from necessity or conformably to the common usage of mankind, they are not answerable for losses."

In *Speight* v. *Gaunt*, above cited, Jessel, M.R., in commenting on the above passage, says: "Now, what is meant by either from necessity or conformably to the common usage of mankind? It means where in the ordinary course of business transaction an agent is employed." He instances the case of the appointment of a rent collector to collect rent, though the trustee might collect them in person; but he does not do so because it is the common usage of mankind to employ an agent to do so; he also instances the employment of stock-brokers to buy or sell stock. Then, as to the moral necessity from the usage of mankind, he quotes approvingly Lord Hardwicke's definition of this expression as being the case of a trustee acting as prudently for the trust as for himself, and according to the usage of business. Lord Hardwicke gives as instances the case of a trustee appointing the payment of rents to a banker in good credit who subsequently fails and the money is lost—there would be no liability on the part of the trustee; so also the appointment of stewards and agents. And he points out that none of these instances may properly fall under the head of cases of necessity, but there is no liability because the trustees acted as other persons acted in the usual method of business.

Jessel further cites the case of *Bacon* v. *Bacon*, 5 Ves. 331, and the judgment of Lord Loughborough, who held an executor was not liable for the loss of money transmitted to an attorney, who was a co-executor, to pay debts, and who had misappropriated the money; and Lord Loughborough laid down the rule that if the business was transacted in the ordinary manner, unless there was some circumstance of suspicion, the allowance of the payment was fair. Suppose he had paid the money to his own clerk, and the clerk had run away, he puts as being within the same principle of protection. Jessel sums up the effect of *Bacon* v. *Bacon* as being that where you must necessarily employ an agent, or where you might reasonably in the ordinary course of business employ an agent, and you use due diligence in the selection of your agent, you are not liable for the consequences.

In *Weatt* v. *Andrews*, 42 Chy. Div., at 678, Kekewich, J., says: "A trustee is bound to exercise discretion in his choice of agents, but so long as he selects persons properly qualified he cannot be made responsible for their intelligence or their honesty; he does not in any sense guarantee the performance of their duties."

It is further laid down in *Re Brier*, 26 Chy. Div. 238, that if a trustee employs an agent under circumstances which justify the employment and a loss arises from the insolvency of the agent, the onus is on the person seeking to make the trustee liable for the loss to show that it was attributable to the default of the trustee. Now, in the case which I am asked to consider it will not be contended that the trustee was bound to sit at his desk to be ready at all times to receive payments due the estate, but that it is the ordinary course of business in almost every walk of life to have some clerk or bookkeeper or other agent to receive payments on occasions when the exigencies of a person's own business prevent him from being present and personally dealing with the debtor.

The next question that arises is, Was the trustee prudent, and did he act with reasonable caution and care in permitting the bookkeeper of his business firm to receive payments in his, the trustee's, absence on account of the trust? Would an ordinarily prudent man have selected the individual selected in this case? Here was the confidential bookkeeper of a prominent firm of solicitors, a man whom they as a firm entrusted with the responsibility of receiving sums of money on account of the firm, allowing him to receipt for the same, enter the amounts in their books, and deposit the same to their account in their bank. He had so acted for a considerable length of time; there was no suspicion of his integrity; the solicitors' business was a large one, and as ordinarily prudent men they as a firm exercised this discretion and trusted their bookkeeper. Was it unreasonable that one of the same firm should, in his capacity as a trustee, extend his confidence to the same bookkeeper and allow him occasionally, or frequently, if you will, to receive moneys for him, the trustee, in connection with the trust estate?

I can find nothing in the facts submitted to warrant me in saying that the employment of the bookkeeper in question under the circumstances was negligent or unreasonable, nor that the same thing would not have been done by any ordinarily prudent man in the conduct of his own business; nor that it was not a course

warranted as being in conformity with the common usage of mankind.

I am therefore of opinion that the trustee is not responsible for the loss which has arisen.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.] [June 28.

TOWNSHIP OF SOMBRA *v.* TOWN OF CHATHAM.

Municipal corporation—Drainage work—Non-completion—Mandamus—R.S.O., 1887, c. 184, s. 583—R.S.O., 1887, c. 44.

The corporation of the town of C., by by-law, undertook the execution of a scheme of drainage on a road between the town of C. and the township of S., pursuant to a report of an engineer appointed to examine the land proposed to be drained. A surveyor was appointed to execute the work by letting it out under contract, which he did, but the contractors were unable to carry it out, and abandoned it. The work was then let in parcels to different contractors. An action was brought against the town of C. by the township of S., and one M., a landowner whose land was alleged to have been injured by flowing, caused by the wrongful and negligent manner in which the drainage work was done. The plaintiffs claimed that the work was never fully executed, and each asked for a mandamus to compel the defendants to complete it according to the plans and specifications adopted by the by-law. M. also claimed damages for the injury to his land.

The trial resulted in a judgment for plaintiffs for all the relief claimed, the decree directing that the work be completed according to the plans and specifications, with proper and sufficient outlets at both ends of the drain to carry off all the water entering the same from time to time, the same to be done at the cost of the defendants. To M. was awarded $150 damages. The Court of Appeal (18 A.R. 252) reversed this judgment so far as the township of S. was concerned, and dismissed the action of the township. The judgment in favour of M. was affirmed. The plaintiffs appealed, and defendants gave notice of cross-appeal against the judgment in favour of M.

Held, reversing the judgment of the Court of Appeal, TASCHEREAU, J., dissenting, and PATTERSON, J., with hesitation, that the township of S. was entitled to retain the mandamus or mandatory injunction granted by the original decree, and that it was entitled to such relief, irrespective of s. 583 of the Municipal Act (R.S.O., 1887, c. 184), under the Ont. Jud. Act (R.S.O., 1887, c. 44), the decree to be varied by striking out the direction that the work should be done at cost of defendants, which is only warranted where the original assessment was sufficient to cover the cost, and the fact that the contractors were unable to do the work could only be explained on the assumption that the amount was insufficient; the decree to be further varied by striking out the provision as to outlets, and to direct a mandatory injunction to issue requiring defendants to complete the drain to the width and depth and in the manner provided by the said plans and specifications, or providing some substitution therefor under the statute, reserving leave to plaintiffs to apply for further relief as occasion may require if the work is not proceeded with as directed.

Under s. 583 of the Municipal Act, a mandamus only issues where one of two municipalities bound to repair refuses to do so after notice. In such case mandamus is a remedy in addition to an action by the owner of property injured by such refusal. Damage from neglect after notice is conclusive evidence of negligence. The section has no reference to a case in which the drainage work has never been fully completed.

The township of S. could not claim pecuniary compensation for negligence causing injury to private land, or even causing a general nuisance. Its right to such compensation is confined to cost of repairing and restoring roads washed away by floods caused by such negligence.

Appeal allowed with costs and cross-appeal dismissed.

Meredith, Q.C., for appellants.

Pegley, Q.C., for respondents.

PENMAN MFG. CO. *v.* BROADHEAD.

Contract—Manufacture of patented articles—Substitution of new agreement for—Evidence.

B. was the patentee of a machine called the Windsor loom, for making skirtings, etc., and

in 1884 she entered into an agreement with the defendant company to supply them with the looms, on which they were to manufacture the goods and pay a royalty of one cent a square yard thereon, the minimum sum for such royalty to be $50 a month. The patent of B. was to expire in 1891. Prior to this agreement, in 1883, B. had granted to P., the head of the defendant company, a license to manufacture blankets under another patent, for a like royalty. These agreements were carried out until 1887. In the meantime B. had patented another device for making blankets, and considerable correspondence had taken place between her and the company with regard to the manufacture of the latter patented article, and the company, who had been unable to sell the skirtings, offered to take both patents for a year, paying therefor $1,000 royalty, which B. accepted. At the end of the year B. claimed that the original agreement was still in force and was to continue until the patent expired, and she brought an action for royalties due her under the same.

Held, reversing the judgment of the Court of Appeal, TASCHEREAU, J., dissenting, that the correspondence and other evidence showed that the agreement made in 1887 was in substitution for and superseded the original agreements, and B. had no right to claim any royalty under the latter.

Appeal allowed with costs.

Crerar, Q.C., for appellants.

Masten and Moffatt for respondent.

New Brunswick.] [June 28.

NORTH BRITISH & MERCANTILE INSURANCE COMPANY *v.* MCLELLAN.

Fire insurance—Insurable interest—Property in goods—Construction of contract—Statement in application—Warranty or representation—Breach of condition—Evidence.

By contract in writing, M. agreed to cut and store a certain quantity and description of ice, the said ice houses and all implements to be the property of P., who, after the completion of the contract, was to convey same to M.; the ice was to be delivered by M. on board vessels to be sent by P. during certain months; P. was to be liable to accept and pay for only good merchantable ice delivered and stored as agreed. The property on which the buildings for storing said ice were situate was leased to P. by the owner, the lease containing a covenant by the owner to grant a renewal to M. A bill of sale was made by M. to a third party of the buildings on said land. M. effected insurance on the whole stock of ice stored, and in his application, to the question, "Does the property to be insured belong exclusively to applicant, or is it held in trust or on commission, or as mortgage?" he answered, "Yes, to applicant." The application contained a declaration that the same was a just, full, and true exposition of all the facts and circumstances in regard to the condition of the property so far as known to the applicant and so far as material to the risk, and it was to form the basis of the liability of the company.

The property insured was destroyed by fire, and payment of the insurance was refused on the ground that the property belonged to P. and not to M. In an action on the policy, the defendants endeavoured to prove that other insurance on the same property had been effected by P., and set up a condition in the policy that in such case the company should only be liable to pay its rateable proportion of the loss. This condition was not pleaded, and the policies to P. were not produced, nor the terms of his insurance proved. Evidence was given, subject to objection as to its admissibility, that P. had effected insurance to cover advances made to M. on the ice, and had been paid his loss. The plaintiff obtained a verdict for the full amount of his policy, which was affirmed by the Supreme Court of New Brunswick *en banc*.

Held, affirming the decision of the court below, that the whole property in the ice insured was in M.; that the clause in the agreement stating that the ice houses and implements were to be the property of P. meant that the buildings and implements only were to pass to P., as he was to convey the property vested in him by the agreement to M. on completion of the contract, and could not so convey the ice which M. was to deliver on board vessels, which he could not do unless it was his property.

Held, further, that the declaration in the application did not make M. pledge himself to the truth of the statements therein absolutely, but only so far as known to him and as material to the risk, and questions of materiality and knowledge were for the jury, who found them in favour of M.

Held, also, STRONG, J., dissenting, that the declaration was not a warranty of the truth of the statements, but a mere collateral representation.

Per STRONG, J.: It was a warranty, but as it is confined to matters within the knowledge of M. and material to the risk the result is practically the same.

Held, as to the further insurance, that the condition should have been pleaded, but if available without plea it was not proved; what evidence was given should not have been received.

Per STRONG, J.: It was not shown that P.'s insurance was on the ice insured by M., who was not bound to deliver any specific ice under the contract.

Per GWYNNE, J.: The damages should be reduced by the amount received by P.

Appeal dismissed with costs.

Weldon, Q.C., and *Jack* for appellants.

E. E. Barker for respondent.

EXCHEQUER COURT OF CANADA

TORONTO ADMIRALTY DISTRICT.

(Noted for THE CANADA LAW JOURNAL.)

MCDOUGALL, LOCAL J.] [Oct. 6.

REIDE *v.* "QUEEN OF THE ISLES." (No. 20.)

Action for master's wages and disbursements—Right of master to bind owner—Limit of—Lien of master for disbursements—Lien for liability assumed by master—52 & 53 Vict., c. 46, s. 1 (Imp.).

This was a motion to confirm a local registrar's report. The master of a ship claimed for wages and disbursements and for liabilities assumed for necessaries for vessel and for joint note for $250, made by owner and himself, with agreement to pay note out of earnings of ship, as follows: "In consideration of the sum of two hundred and fifty dollars paid over to Captain James Reide, master of the steamer *Queen of the Isles*, now lying at or near the Bay of Quinte, and for supplies for said steamer, we hereby assign, transfer, and set over to ——— all her earnings and receipts, less absolute disbursed working expenses, until the above sum be repaid to him with interest, as set forth in a certain joint note made by us bearing even date herewith. And this memorandum shall be held and become and hereby is declared to be a charge on said steamer's earnings and receipts, and the same is made in accordance with all such advances as are usually made to vessels for urgent supplies, and secured to the party making such advance by the master and owner thereof, the one or the other of them."

Mulvey, for plaintiff, cited *The Sarah*, 12 Probate Div., p. 158 (1887), reversed by House of Lords in 14 App. Cas., p. 209 (1889). The Act 52 & 53 Vict., c. 46, s. 1 (Imp.), was passed in 1889, after the decision of the House of Lords, to provide for liabilities assumed by a master for the ship, and making the vessel responsible, thus affirming by statute the judgment in the case of *The Sarah*.

Shirley Denison, for mortgagee intervening, contended that the mortgagee should not be prejudiced by an act of the owner and master without mortgagee's knowledge and consent.

Held, that the master has a maritime lien, to rank with lien for wages for disbursements actually and necessarily made, or liability incurred in connection with the ship, and that the limit of liability was restricted only to the value of the vessel and freight.

Held, also, that the master did not exceed his authority in borrowing money on note for the purposes of the ship, it being found that the sum so borrowed had been duly and properly expended for the ship.

Report of the registrar confirmed.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Chancery Division.

FERGUSON, J.] [July 6.

BALDWIN *v.* WANZER.

BALDWIN *v.* CANADIAN PACIFIC R.W. CO.

Landlord and tenant—Right of re-entry on condition broken—Severance of reversion—Imperial Conveyancing Act, 1881, s. 12.

Action for recovery of land upon an alleged right of re-entry after breach by the tenant of a covenant not to assign or sub-let without leave.

Held, that there having been a severance of the reversion, it followed as a consequence that the right of re-entry for condition broken was destroyed.

Dumpor's Case, Sm. L.C., 8th ed., pp. 49-50.

There is no enactment in force in this country corresponding with s. 12 of the Imperial Conveyancing and Law of Property Act, 1881, which provides that "Notwithstanding the severance by conveyance . . of the reversionary estate in any lands comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry and every other condition contained in the lease shall be apportioned, and shall remain annexed to the several parts of the reversionary estate as severed," etc. The law here on the subject is the same as it was in England immediately before the passing of this enactment.

Moss, Q.C., and *R. B. Henderson* for the plaintiffs.

Robinson, Q.C., *J. K. Kerr*, Q.C., *E. D. Armour*, Q.C., *W. Macdonald*, and *McKay* for the defendants.

Practice.

FALCONBRIDGE, J.] [Aug. 2.

DALEY *v.* BYRNE.

Pleading—Striking out—Summary application—Demurrer—Seduction—Defence.

A pleading will not be summarily struck out on the ground that it is demurrable.

Glass v. *Grant*, 12 P.R. 481, followed.

Where the statement of defence in an action for seduction alleged that the cause of action was in another than the plaintiff, but did not allege that that other sought to proceed by action,

Held, that, as there was no authority expressly holding this defence to be bad, it should not be struck out, but leave was given to reply and demur.

Watson, Q.C., for the plaintiff.

F. A. Anglin for the defendant.

ROSE, J.] [Sept. 10.

ERDMAN *v.* TOWN OF WALKERTON.

Parties—Municipal corporations—Relief over—Municipal Act, 55 Vict., c. 42, s. 531, s-s. 5—Defendant—Third party.

A third party is "a party to the action" within the meaning of s. 531, s-s. 5, of the Municipal Act, 55 Vict., c. 42; and where a defendant municipal corporation, under that enactment, seeks to have another corporation or person added as a party for the purpose of enforcing a remedy over, such person or corporation should be made a third party and not a defendant, unless the plaintiff seeks some relief against such added party; and it is improper to add such party both as a defendant and a third party.

W. H. Blake for the plaintiff.

Aylesworth, Q.C., for the defendants.

J. B. Holden for the third party.

MEREDITH, J.] [Sept. 21.
BOYD, C.] [Sept. 26.

SMITH *v.* HOUSTON.

Service of warrant—Dispensing with—Rules 3, 467.

Upon an application in chambers for an order dispensing with service of a warrant and all subsequent proceedings in the master's office upon certain absent defendants, other defendants in the same interest being represented,

Held, by MEREDITH, J., that Rule 467 did not apply to the case, and the order should not be made.

Leave being given to renew the application,

Held, by BOYD, C., that, in accordance with Rule 3, the practice should be regulated by analogy to Rule 467, and the order should be made.

D. Armour for the plaintiff.

F. W. Harcourt for the official guardian.

GALT, C.J.] [Oct. 11.

MCNAB *v.* MACDONNELL.

Writ of summons—Indorsement of character of parties—Rule 224—Irregularity—Waiver—Statement of claim—Want of conformity—Striking out—Amendment.

The writ of summons was indorsed only with a claim for damages for negligence and breach

of trust on the part of the defendants in the investment of money upon mortgage. There was no indorsement of the character of parties. The defendants appeared, and the plaintiff thereupon delivered a statement of claim in which it was set forth that the plaintiff was the administrator of one who was in her lifetime entitled to the moneys invested by the defendants. It was shown that one of the defendants was fully aware of all the facts of the case and of the capacity in which the plaintiff sued.

Upon a motion by the defendants to strike out the statement of claim as embarrassing in that it did not follow the writ,

Held, that the defendants by entering an appearance, instead of moving against the writ, had waived the irregularity of the plaintiff in not stating the character of the parties, as required by Rule 224.

Held, also, that as the statement of claim showed the character in which the plaintiff was suing, it was not necessary to amend the writ.

E. Taylour English for the plaintiff.

Langton, Q.C., for the defendants.

BOYD, C.]

DAVIDSON *v.* GURD.

Summary judgment—Rule 739—Writ of summons—Special indorsement—Rule 245—Action for indemnity against mortgages—Covenant, express or implied—Equitable obligation—Preliminary contract—Amendment.

The plaintiffs sued the defendant for moneys alleged to have been paid by them for interest upon certain mortgages and for the principal due under certain other mortgages. The writ of summons was specially indorsed, and contained a statement that the defendant was liable to pay the mortgages by virtue of a certain covenant made by him with one T. on a certain date, and assigned by T. to the plaintiffs. Upon a motion by the plaintiffs for summary judgment under Rule 739, it appeared that the deed alleged to contain the covenant made by the defendant with T. did not in fact contain any express covenant to pay the mortgages; but by it T. conveyed the lands in question to the defendant "subject to all mortgages registered against the lands," and the deed was not executed by the defendant. The plaintiffs, however, sought to support the indorsement by reference to the preliminary contract between the defendant and T., which contained an offer to assume and to covenant to pay off the mortgages.

Held, that, although the deed expressed an equitable obligation by the defendant to indemnify T., there was no covenant in any sense; and the plaintiffs could not invoke the benefit of the preliminary contract, for the indorsement must be complete in itself, containing everything which entitles the plaintiffs to recover; and the court will not encourage an amendment for the purpose of upholding a summary judgment.

Fruhauf v. *Grosvenor*, 8 Times L.R. 744, followed.

Held, also, that Rule 245, specifying the different kinds of actions in which writs may be specially indorsed, does not extend to the case of an action upon an implied covenant.

J. A. Paterson for the plaintiffs.

F. E. Hodgins for the defendant.

Flotsam and Jetsam.

AMONG the many curious customs still existent in England is that of the Crown supplying venison twice a year to London's lord mayor, sheriffs, recorder, chamberlain, town clerk, common sergeant, and remembrancer, each of whom receives his proper quota of deer. The early charters granted to the citizens secured to them their supply of game, and the present custom is the relic of the bygone age.

PERHAPS one of the most eloquent and distinguished lawyers of Maine at the close of the revolutionary war was William Symmes, of Portland. He was arguing a motion one day before Judge Thacher, and persisted, though constantly interrupted by the court.

Thacher grew impatient, and said: "Mr. Symmes, you need not persist in arguing the point, for I am not a court of errors, and cannot give a final judgment." "I know," answered Symmes, "that you can't give a final judgment; but as to your not being a court of errors, I will not say."—*Ex.*

IT is stated that at the doors of the registry offices in the Madras Presidency stand persons who for four annas will identify any witness

that may be brought to them, taking the witness before the registrar and making oath that the executant is known to them. Apropos of this, the *Indian Jurist* tells the following story: "A clergyman living in London received by post a form of proxy for his vote for the university candidate. This proxy had to be verified before a magistrate to whom the voter was personally known. A circular was also sent saying that a justice of the peace would attend at the committee rooms in town to verify proxies. The clergyman went there, and found a member of the committee, to whom he explained that there was a difficulty because he did not know the magistrate. Said the committeeman: 'That is all right. You give me your card. I give you my card. Now we know each other. Come along upstairs, and I shall introduce you to the magistrate.' They went upstairs. The justice of the peace shook hands with him, said he was glad to make his acquaintance, and then verified his proxy."

AT the recent dinner of the Detroit Bar a quotation was placed beside each plate. We copy a few of them:

Whoso loves law dies either mad or poor.—*Middleton.*

An over-speaking judge is no well-tuned cymbal.—*Lord Bacon.*

A witch will sail in a sieve, but a devil will not venture aboard a lawyer's conscience.—*Congreve.*

The indiscriminate defence of right and wrong contracts the understanding, while it hardens the heart.—*Junius.*

With books and papers placed for show,
Like nest-eggs, to make clients lay,
And for their false opinions pay.
Butler.

If objection is made to the one-man power of the judge, what shall we say of the one-man power of the twelfth juror?—*Alfred Russell.*

A lawyer art thou? draw not nigh!
Go carry to some fitter place
The keenness of that practised eye,
The hardness of that sallow face.
Wordsworth.

Who ever skulked behind the law's delay,
Unless some shrewd attorney showed the way,
By his superior skill got the ascendant,
And led astray the innocent defendant.
Butler.

ERRATUM.—At p. 467, on line 9 from foot, for 23 read 93.

Law Society of Upper Canada.

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THE LAW SCHOOL.

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ATTENDANCE AT THE LAW SCHOOL.

This School was established on its present basis by the Law Society of Upper Canada in 1889, under the provisions of rules passed by the Society in the exercise of its statutory powers. It is conducted under the immediate supervision of the Legal Education Committee of the Society, subject to the control of the Benchers of the Society in Convocation assembled.

Its purpose is to secure as far as possible the possession of a thorough legal education by all those who enter upon the practice of the legal profession in the Province. To this end, with certain exceptions in the cases of students who had begun their studies prior to its establishment, attendance at the School, in some cases during two, and in others during three terms or sessions, is made compulsory upon all who desire to be admitted to the practice of the Law.

The course in the school is a three years' course. The term or session commences on the fourth Monday in September, and ends on the first Monday in May, with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's day.

Admission to the Law Society is ordinarily a condition precedent to attendance at the Law School. Every Student-at-Law and Articled Clerk before being allowed to enter the School must present to the Principal a certificate of the Secretary of Law Society, showing that he has been duly admitted upon the books of the Society, and has paid the prescribed fee for the term.

Students, however, residing elsewhere, and desirous of attending the lectures of the School, but not of qualifying themselves to practise in Ontario, are allowed, upon payment of usual fee, to attend the lectures without admission to the Law Society.

The students and clerks who are exempt from attendance at the Law School are the following:

1. All students and clerks attending in a Barrister's chambers, or serving under articles elsewhere than in Toronto, and who were admitted prior to

Hilary Term, 1889, so long as they continue so to attend or serve elsewhere than in Toronto.

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

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

Provision is made by Rules 164 *(g)* and 164 *(h)* for *election* to take the School course, by students and clerks who are exempt therefrom, either in whole or in part.

Attendance at the School for one or more terms, as provided by Rules 155 to 166 inclusive, is compulsory on all students and clerks not exempt as above.

A student or clerk who is required to attend the School during one term only must attend during that term which ends in the last year of his period of attendance in a Barrister's chambers or service under articles, and may present himself for his final examination at the close of such term, although his period of attendance in chambers or service under articles may not have expired.

Those students and clerks, not being graduates, who are required to attend, or who choose to attend, the first year's lectures in the School, may do so at their own option either in the first, second, or third year of their attendance in chambers or service under articles, and may present themselves for the first-year examination at the close of the term in which they attend such lectures, and those who are not required to attend and do not attend the lectures of that year may present themselves for the first-year examination at the close of the school term in the first, second, or third year of their attendance in chambers or service under articles. See new Rule 156 *(a)*.

Under new Rules 156 *(b)* to 156 *(h)* inclusive, students and clerks, not being graduates, and having first duly passed the first-year examination, may attend the second year's lectures either in the second, third, or fourth year of their attendance in chambers or service under articles, and present themselves for the second-year examination at the close of the term in which they shall have attended the lectures. They will also be allowed, by a written election, to divide their attendance upon the second year's lectures between the second and third or between the third and fourth years, and their attendance upon the third year's lectures between the fourth and fifth years of their attendance in chambers or service under articles, making such a division as, in the opinion of the Principal, is reasonably near to an equal one between the two years, and paying only one fee for the full year's course of lectures. The attendance, however, upon one year's course of lectures cannot be commenced until after the examination of the preceding year has been duly passed, and a student or clerk cannot present himself for the examination of any year until he has completed his attendance on the lectures of that year.

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

On Fridays two moot courts are held for the students of the second and third years respectively. They are presided over by the Principal or a Lecturer, who states the case to be argued, and appoints two students on each side to argue it, of which notice is given one week before the day for argument. His decision is pronounced at the close of the argument or at the next moot court.

At each lecture and moot court the attendance of students is carefully noted, and a record thereof kept.

At the close of each term the Principal certifies to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student is to be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures on each subject delivered during the term and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, a special report is made upon the matter to the Legal Education Committee. The word "lectures" in this connection includes moot courts.

Two lectures (one hour) daily in each year of the course are delivered on Monday, Tuesday, Wednesday, and Thursday. On Friday there is one lecture in the first year, and in the second and third years the moot courts take the place of the ordinary lectures. Printed schedules showing the days and hours of all the lectures are distributed among the students at the commencement of the term.

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

The fee for attendance for each term of the course is $25, payable in advance to the Sub-Treasurer, who is also the Secretary of the Law Society.

The Rules which should be read for information in regard to attendance at the Law School are Rules 154 to 167 both inclusive.

EXAMINATIONS.

Every applicant for admission to the Law Society, if not a graduate, must have passed an examination according to the curriculum prescribed by the Society, under the designation of "The Matriculation Curriculum." This examination is not held by the Society. The applicant must have passed some duly authorized examination, and have been enrolled as a ma-

triculant of some University in Ontario, before he can be admitted to the Law Society.

The three law examinations which every student and clerk must pass after his admission, viz., first intermediate, second intermediate, and final examinations, must, except in the case to be presently mentioned of those students and clerks who are wholly or partly exempt from attendance at the School, be passed at the Law School Examinations under the Law School Curriculum hereinafter printed, the first intermediate examination being passed at the close of the first, the second intermediate examination at the close of the second, and the final examination at the close of the third year of the school course respectively.

Any student or clerk who under the Rules is exempt from attending the lectures of the School in the second or third year of the course is at liberty to pass his second intermediate or final examination or both, as the case may be, under the Law Society Curriculum instead of doing so at the Law School Examinations under the Law School Curriculum, provided he does so within the period during which it is deemed proper to continue the holding of such examinations under the said Law Society Curriculum. The first intermediate examination under that curriculum has been already discontinued, and that examination must now be passed under the Law School Curriculum at the Law School Examinations by all students and clerks, whether required to attend the lectures of the first year or not. It will be the same in regard to the second intermediate examination after May, 1893, after which time that examination under the Law Society Curriculum will be discontinued. Due notice will be hereafter published of the discontinuance of the final examinations under that curriculum.

The percentage of marks which must be obtained in order to pass an examination of the Law School is fifty-five per cent. of the aggregate number of marks obtainable, and twenty-nine per cent. of the marks obtainable upon each paper.

Examinations are also held in the week commencing with the first Monday in September for those who were not entitled to present themselves for the earlier examination, or who, having presented themselves, failed in whole or in part.

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

The time for holding the examinations at the close of the term of the Law School in any year may be varied from time to time by the Legal Education Committee, as occasion may require.

On the subject of examinations reference may be made to Rules 168 to 174 inclusive, and to the Act R.S.O. (1887), cap. 147, secs. 7 to 10 inclusive.

Honors, Scholarships, and Medals.

The Law School examinations at the close of term include examinations for Honors in all the three years of the School course. Scholarships are offered for competition in connection with the first and second intermediate examinations, and medals in connection with the final examination.

In connection with the intermediate examinations under the Law Society's Curriculum, no examination for Honors is held, nor Scholarship offered. An examination for Honors is held, and medals are offered in connection with the final examination for Call to the Bar, but not in connection with the final examination for admission as Solicitor.

In order to be entitled to present themselves for an examination for Honors, candidates must obtain at least three-fourths of the whole number of marks obtainable on the papers, and one-third of the marks obtainable on the paper on each subject, at the Pass examination. In order to be passed with Honors, candidates must obtain at least three-fourths of the aggregate marks obtainable on the papers in both the Pass and Honor examinations, and at least one-half of the aggregate marks obtainable on the papers in each subject on both examinations.

The scholarships offered at the Law School examinations are the following :

Of the candidates passed with Honors at each of the intermediate examinations the first shall be entitled to a scholarship of $100, the second to a scholarship of $60, and the next five to a scholarship of $40 each, and each scholar shall receive a diploma certifying to the fact.

The medals offered at the final examinations of the Law School and also at the final examination for Call to the Bar under the Law Society Curriculum are the following :

Of the persons called with Honors the first three shall be entitled to medals on the following conditions :

The First: If he has passed both intermediate examinations with Honors, to a gold medal, otherwise to a silver medal.

The Second: If he has passed both intermediate examinations with Honors, to a silver medal, otherwise to a bronze medal.

The Third: If he has passed both intermediate examinations with Honors, to a bronze medal.

The diploma of each medallist shall certify to his being such medallist.

The latest edition of the Curriculum contains all the Rules of the Law Society which are of importance to students, together with the necessary forms, as well as the Statutes respecting Barristers and Solicitors, the Matriculation Curriculum, and all other necessary information.

Students can obtain copies on application to the Secretary of the Law Society or the Principal of the Law School.

THE LAW SCHOOL CURRICULUM.

FIRST YEAR.

Contracts.
Smith on Contracts.
Anson on Contracts.
Real Property.
Williams on Real Property, Leith's edition.
Deane's Principles of Conveyancing.
Common Law.
Broom's Common Law.
Kerr's Student's Blackstone, Books 1 and 3.
Equity.
Snell's Principles of Equity.
Statute Law.
Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.

Criminal Law.
Kerr's Student's Blackstone, Book 4.
Harris's Principles of Criminal Law.
Real Property.
Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Personal Property.
Williams on Personal Property.
Contracts.
Leake on Contracts.
Torts.
Bigelow on Torts—English Edition.
Equity.
H. A. Smith's Principles of Equity.
Evidence.
Powell on Evidence.
Canadian Constitutional History and Law.
Bourinot's Manual of the Constitutional History of Canada.
O'Sullivan's Government in Canada.
Practice and Procedure.
Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.
Statute Law.
Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.

Contracts.
Leake on Contracts.
Real Property.
Clerke & Humphrey on Sales of Land.
Hawkins on Wills.
Armour on Titles.
Criminal Law.
Harris's Principles of Criminal Law.
Criminal Statutes of Canada.
Equity.
Underhill on Trusts.
Kelleher on Specific Performance.
De Colyar on Guarantees.
Torts.
Pollock on Torts.
Smith on Negligence, 2nd ed.
Evidence.
Best on Evidence.
Commercial Law.
Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.
Private International Law.
Westlake's Private International Law.
Construction and Operation of Statutes.
Hardcastle's construction and effect of Statutory Law.
Canadian Constitutional Law.
British North America Act and cases thereunder.
Practice and Procedure.
Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of Courts.
Statute Law.
Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

THE LAW SOCIETY CURRICULUM.

Examiners: FRANK J. JOSEPH, LL.B.; A. W. AYTOUN-FINLAY, B.A.; M. G. CAMERON.

Books and Subjects prescribed for Examinations of Students and Clerks wholly or partly exempt from attendance at the Law School.

SECOND INTERMEDIATE.*

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

FOR CERTIFICATE OF FITNESS.

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

FOR CALL.

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

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

*The Second Intermediate Examination under this Curriculum will be discontinued after May, 1893.