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HON. CHRISTOPHER SALMON PATTERSON, one of the judges of the Supreme Court of Canada, died on July 24th last. We give some particulars of his life and career in another place. We also regret to record the sudden death of Mr. Davis, the junior judge of the County of Middlesex. An obituary notice of this much esteemed judge will appear next issue.

THE following States of the American Union have abolished days of grace upon all classes of commercial instruments payable within their respective borders, viz., California, Idaho, Utah Vermont, Oregon, Washington. We can well suppose that their example will ere long be followed in all places where English law prevails.

SOME time ago, we drew attention to the peculiar working of the Mechanics' Lien Act (R.S.O., c. 126), s. 5 (see *ante* vol. 26, p. 578), and ventured the opinion that, according to the true construction of that section, the words "prior mortgage" therein should have a somewhat restricted meaning, and should be confined to mortgages prior in point of time, and could not include mortgages which are subsequent in point of time to the lien, but which acquire priority over it under the Registry Act. We now find that the correctness of the opinion we then expressed is confirmed by the decision of Boyd, C., in *Cook* v. *Belshaw*, 23 O.R. 545. There the lien attached on 13th Sept., 1892. The mortgage was taken and registered without notice of the lien on 22nd October; the lien was not registered until 23rd November. The Master in Ordinary came to the conclusion that the mortgage

was a "prior mortgage" within the meaning of s. 5, by reason of its prior registration, and that therefore the lienholder was entitled to priority in respect of the increased selling value occasioned by his work; but the Chancellor decided that the priority referred to in s. 5 is, as we suggested, a priority in point of time, and not priority acquired merely by means of prior registration, and he therefore reversed the Master's ruling.

MARRIED WOMEN—DEVOLUTION OF ESTATES.

It is somewhat strange that the courts have not long before this been [illegible]ed upon to solve the legislative riddle which arises upon the apparently conflicting provisions of R.S.O., c. 108, s. 5, and R.S.O., c. 132, s. 23, but we are not aware that thus far any judicial construction has been sought in reference to those sections; though we can hardly think it possible that cases cannot have occurred to which their provisions must not of necessity have applied.

By the first of these sections, which formed part of the Devolution of Estates Act of 1881, it is provided that the real and personal property of a married woman, in respect of which she has died intestate, shall be distributed as follows: One-third to her husband, if she leave issue, and one-half if she leave none; and, subject thereto, shall go and devolve as if her husband had predeceased her. The effect of this provision is to give the husband one-third of his wife's undisposed of real and personal estate, if she also leave children; but if she does not leave children, then he is to get one-half, and the residue will devolve upon the wife's next of kin.

By R.S.O., c. 132, s. 23, however, it is provided that the separate personal property of a married woman dying intestate shall be distributed in the same proportions between her husband and her children as the personal property of a husband dying intestate is to be distributed between his wife and children; and if there be no child or children living at the death of the wife so dying intestate, then such property shall pass and be distributed as if this Act had not been passed.

This section is a survival from the Consolidated Statutes of Upper Canada. It will be observed that it is confined to

personal property, and to that class of personal property which belonged to the deceased married woman as her separate property, and as to such property it makes a distinctly repugnant disposition to that provided for by R.S.O., c. 108, s. 5, inasmuch as it, in effect, provides that when she leaves a child or children, the husband is to take one-third (to this extent agreeing with R.S.O., c. 108, s. 5); but when she leaves no child or children, then her separate personal property is to devolve "as if this Act had not been passed," or, in other words, the whole of it is to devolve on the husband; whereas, under c. 108, he is in that event only to take one-half, and the residue is to go to the next of kin.

The question seems to be further complicated by the provisions of R.S.O., c. 108, s. 4, s-s. 1, which provides that all undisposed of real estate which devolves on the personal representative is now to be distributed as personal property undisposed of "is hereafter to be distributed."

One mode of reconciling these apparently conflicting provisions would be to confine R.S.O., c. 132, s. 23, to personal property coming under the description of "separate property," and holding that the provision of R.S.O., c. 108, s. 5, applies to all other property as to which a married woman died intestate. We doubt very much, however, whether this construction would really carry out the intention of the Legislature, for there appears to be no reason to suppose that it was ever intended that any different disposition should be made of the two classes of property. The discrepancy is probably due to an oversight on the part of the revisers of the statute, who failed to notice the discordant provisions of these two sections, and therefore failed to harmonize them.

REASONABLE AND PROBABLE CAUSE.

Considerable difference of opinion has arisen between the Queen's Bench and Common Pleas Divisions as to the functions of the judges in dealing with the question of reasonable and probable cause in malicious prosecution cases.

In one of these, *Hamilton v. Cousineau*, the judgment of the Queen's Bench was appealed to the Court of Appeal, when the judgment of the Queen's Bench Division was reversed, Burton, J.A., dissenting: 19 App. 203. This case was to have been

taken to the Supreme Court, but was settled. About the same time, a case of *Archibald* v. *Maclaren*, which had been tried three times, was taken to the Court of Appeal, where, in consequence of an equal division of the judges, the decision of Armour, C.J., directing a non-suit, was upheld, and that view was sustained in the Supreme Court; but, as the case has never been reported in either court, it is thought desirable, in consequence of such difference of opinion and the general importance of the question to refer to it at length.

In the early history of this journal was adopted the practice of reporting important cases not appearing in the authorized reports, and we propose doing so in the future, when the matter seems of sufficient general interest to warrant it.

This action was against an inspector of police, and the facts are briefly stated in the judgment of Mr. Justice Burton:—

"In discussing the action, Chief Justice Armour said: 'The question is, was there reasonable and probable cause for laying the information? Have you shown upon your part the absence of reasonable and probable cause? Here is Archibald, whose duty it was to receive complaints from citizens against persons breaking the law; he has no object to serve except the public peace; he is informed by this woman that she was in this house for the purpose of prostitution, and that this business was carried on there. I think he would have been justified in acting on that; however, he makes inquiry and hears there have been rows in this house. There is no evidence he did not act honestly. What was he to do? He inquired from those in charge of that particular vicinity, and was informed that there had been rows there. There is no doubt Toronto is full of houses of ill-fame. Many young men take rooms in town and use them for that purpose. The defendant gets this information and acts upon it. It is not necessary that he should be able to prove the case. I think it would be monstrous if this man were subjected to damages in this case for what he did. These people may have been wronged—I don't know—but that does not give them a cause of action.

MR. MURDOCH—The jury should be allowed to pass upon it.

HIS LORDSHIP—My duty is to determine upon the evidence whether absence of reasonable and probable cause is shown, and I must determine upon this evidence it is not shown.'"

This decision was reversed in the Common Pleas Division, and a new trial—the third—ordered.

In the Court of Appeal the Chief Justice, after commenting upon the fact that the case had been so frequently heard, placed his judgment upon the ground that on the information laid by a *particeps criminis*, and the peculiar circumstances in evidence, the

defendant might perhaps be reasonably held bound to make further inquiry before taking the strong step of procuring plaintiff's arrest, and he felt compelled to hold that the appeal should be dismissed.

Mr. Justice Osler pointed out that no change had been made by the Judicature Act in the disposal of the question of reasonable and probable cause, that it is always a question for the judge, though the disputed facts, if any, upon which that question depends are to be determined by the jury.

The learned judge then points out that

"Under the present law, the judge cannot compel them to give a special verdict, or to answer questions on which he will direct judgment *on the whole case;* but there is nothing in any of these provisions which takes out of the hands of the judge in actions for false imprisonment or malicious prosecution any power which he had theretofore possessed in dealing with the question of reasonable and probable cause as a preliminary question to be determined by him before the jury could entertain those other questions upon which the right of the plaintiff to recover depends, and the determination of which, by a general verdict one way or the other, rests with the jury, when it has been determined that there was a want of reasonable and probable cause. The question in this case is whether the plaintiff gave any evidence on which the learned Chief Justice who presided could rule that there was a want of reasonable and probable cause for the course taken by the defendant, or whether there was evidence in regard to any disputed facts necessary to be determined before the Chief Justice could so rule, proper to be submitted to the jury for the purpose of determining such facts?"

His Lordship thus proceeds:

"The questions of the defendant's honest belief in the truth of the charge, and whether it was reasonable that he should make further enquiry into or obtain corroboration of the charge before acting, are questions which it is undoubtedly proper in some cases, though perhaps not necessarily in every case, to submit to the jury in order to enable the trial judge to rule upon the question of reasonable and probable cause. Under the circumstances of this case, as shown in the evidence and set forth in the judgment below, I think such questions would have been proper, and that there was some evidence upon which the jury might have answered them adversely to the defendant. For the reasons given in the judgment appealed from, I think the order setting aside the judgment at the trial and granting a new trial was right, and that this appeal should be dismissed."

Mr. Justice Burton and Mr. Justice Maclennan differed from this view. The former said:

"I have stated my views generally very fully in the case of *Hamilton* v. *Cousineau* as to the proof necessary to sustain an action in cases of this kind. The facts briefly stated are that a statement was made to the defendant by a

woman of loose character, of the name of Dale; that she had been boarding at the plaintiff's house from the 2nd September to early in October; and that the house was a house of ill-fame. This statement was made on the 11th October. The defendant did not at once act upon it. He says that before doing so he made inquiries of the inspector of the division in which the house complained of was situated, and he received from him a report that on one or two occasions the police had to be called in to quiet disturbances, and in the interval he had been asked by the Mayor to lay a complaint before the Chief of Police in reference to part of No. 3 Division; and when he did so he was asked by the Chief why, if he had received information about this particular house, he had not acted, and he had replied, 'I will make further enquiries of the inspector of the division, and if that information is corroborated I will do so.' Upon receipt of the inspector's report he laid the information; but after the arrest and before the examination he received another report, which, if received earlier, would probably have caused him to refrain from doing so.

"These appear to be the undisputed facts, and upon that I think it was the duty of the judge to hold that the absence of reasonable and probable cause for the prosecution, which was incumbent on the plaintiff to prove, was not established, and that the action therefore failed. I think, with great respect, that the learned judges of the Divisional Court have not attached sufficient importance to the fact that the onus of showing that the defendant did not honestly believe the charge when he laid the information, and did not take the care which a reasonably prudent man should have taken, was upon the plaintiff. In the absence of evidence to establish those facts, the presumption is that he did honestly believe it and had taken due care. How is that presumption removed by any evidence we find here?

"I fully endorse C. J. Armour's quotation, 'That juries are to judge, and not to guess.' I wish it was more generally acted upon. If the questions had been left to the jury to decide these points, or the further question that the defendant was a party to any attempt on the part of Alice Dale to put the law in motion with a view to obtaining possession of her trunks, I should have unhesitatingly held that a verdict against the defendant should not be allowed to stand; as being wholly without evidence, I think it quite likely that the plaintiffs have suffered a wrong, but it is *damnum absque injuria.*

"It is not necessary in this view to notice the point taken as to the operation of s. 84, and I only refer to it because it was urged by counsel that the effect of it was to transfer not only the decision of the issue as to what does or does not constitute reasonable and probable cause to the judge but also to make him judge of the facts on which his decision is based. That, to my mind, is clearly not so; the facts are still for the jury. The judge may, of course, take their opinion upon the facts relied upon as constituting the absence or presence of reasonable and probable cause for his own guidance before deciding to leave the case to a jury at all. If the result of their findings is that he finds reasonable and probable cause to have existed, he will withdraw the case from the jury altogether. If, on the contrary, the absence of such reasonable cause is made out to his satisfaction, he leaves the case to the jury; but the practice which has grown up of submitting specific questions to the jury upon which the

judge is to enter a verdict is not warranted under our statute, and a verdict so entered is, in my judgment, a void proceeding. The jury in such a case must find the verdict. I think we must allow this appeal."

Mr. Justice Maclennan said:

"It was for the plaintiffs to adduce evidence that the defendant acted with malice and without reasonable and probable cause. The question of reasonable and probable cause is for the judge; and unless there is some disputed fact on which that question depends, he is to decide it without reference to the jury. On the other hand, if there is any disputed question it must be referred to the jury; the judge cannot determine it himself, but must take the opinion of the jury upon it. Now, I do not see that there was any such disputed fact here. The information was given by Alice Dale in writing, and was put in by the plaintiffs themselves; and there was no dispute about that. It is referred to by Mr. Justice Rose as a doubtful question of fact whether the defendant received the inspector's report as to the rows between the plaintiffs before or after he laid the information; but I do not see how that was material if the defendant believed Alice Dale's story. If he believed that, and if he heard besides that there had been rows in the house, whether between the husband and wife, through mere disagreement or otherwise, the further information might have strengthened his belief; but I do not see how his belief in Alice Dale's charge would necessarily be weakened by hearing that there had been rows, and that they had no connection with the alleged character of the house.

"The case before the learned judge, then, was that the defendant had received Alice Dale's complaint and had acted upon it; and the question now is, was there anything and, if so, what to leave to the jury? The defendant, in his depositions (q. 17), says, 'After receiving the information from Alice Dale, which I wrote down and had her to sign, I laid it away and took no further action'; and again (q. 52) he says that he told the Chief of Police, 'I will make further inquiry of the inspector of the division, and if that information is corroborated I will do so,' that is, bring the plaintiffs up. I think these answers of the defendant might have raised a doubt whether the defendant quite believed Alice Dale's story, and that the plaintiff's counsel might with some show of reason have urged upon the learned Chief Justice to take the opinion of the jury on that question. But the learned counsel did not do so. He does not suggest any doubt of the defendant's belief, nor ask to submit that question to the jury. What he contends is not that he did not believe, but that he ought not to have done so, and ought to have obtained corroboration; and he also contended that there was evidence of an improper motive on the part of the defendant, and that the proceedings were really taken on behalf of Alice Dale for the purpose of enabling her to recover her trunks.

"I think the defendant's belief in Alice Dale's story was really undisputed at the trial, and that being so it was not a matter to be left to the jury, and it warranted the learned Chief Justice ruling as he did. And I think he was not bound to rule that the defendant should have sought and waited for corroboration. I think, moreover, that there was no evidence whatever which it would

be proper to submit to a jury of any improper motive on the part of the defendant. I think, with great respect, that the appeal should be allowed, and that the judgment at the trial should be restored."

The Supreme Court adopted the view of Burton and Maclennan, JJ.A., and restored the judgment of Armour, C.J.

CURRENT ENGLISH DECISIONS.

BANKER—LOAN TO BROKER—DEPOSIT OF CUSTOMERS' SECURITIES BY BROKER—AUTHORITY OF BROKER TO PLEDGE CUSTOMER'S SECURITIES—BONA FIDE HOLDER FOR VALUE—NOTICE.

Bentinck v. *London Joint Stock Bank*, (1893) 2 Ch. 120, is a case which has some features of resemblance to *Duggan* v. *The London and Canadian L. & A. Co.* The action was brought to redeem certain stock, shares, and bonds on payment of what was due from the plaintiffs to their brokers; the brokers having transferred them to the defendants as security for advances made by them to the defendants. The plaintiffs had employed the brokers to make speculative purchases and sales of stock, shares, and bonds. The brokers furnished the money, and the plaintiffs authorized them to hold the stock, shares, and bonds as security for their advances, and also to pledge them. The brokers had a bank account with the defendants with whom they deposited stock, shares, and bonds belonging to various clients *en bloc* as security for the defendants' advances, and the defendants allowed the brokers to withdraw the deposited securities on substituting others of equal value. The brokers became bankrupt. At the time of their bankruptcy the defendants held various stocks, shares, and bonds which had been purchased by the brokers for the plaintiffs. These had been all duly transferred to a trustee for the defendants. There was evidence that the majority of transactions on the stock exchange, where the purchaser of securities does not pay for them at once, is carried on upon a system known as "contango," or "continuation," under which the person who provides the purchase money becomes the owner of the purchased stock or shares, he entering into a contemporaneous contract with the purchaser to sell to him at a future day an equal amount of similar stock or shares at the original price, increased by a charge called the "contango." Under these circumstances, having regard to the evidence relating to the "contango" system, North, J., held that there was nothing to lead

the defendants to suppose that the stocks and shares which were transferred to the trustees for the defendants were not the brokers' own property, and that defendants were therefore *bonâ fide* holders for value without notice, and their legal title could not be impeached. He was also of opinion that as to the shares of which the transfers had been executed by the plaintiffs themselves, they were estopped from denying the brokers' authority to pledge them to the defendants for their full value; and as to the bonds which passed by delivery and were treated as negotiable securities on the stock exchange, the case was governed by *London Joint Stock Bank* v. *Simmons*, (1892) A.C. 201 (*ante* vol. 28, p. 459). The action therefore failed.

EASEMENT—LIGHT—PRESCRIPTION—LEASE—PRESCRIPTION ACT, 1832 (2 & 3 W. 4, c. 71), s. 3.

In *Robson* v. *Edwards*, (1893) 2 Ch. 146, an application was made for an interlocutory injunction to restrain the defendant from building so as to obstruct the access of light to the windows of the plaintiff's houses. The plaintiff and his predecessor in title had been in possession as lessees for twenty years under a lease, and as such lessees had enjoyed access of light to the windows in question over adjoining property of the landlord leased to other parties. The original lease under which the plaintiff held had expired, and a renewal of the lease had been granted. The lease of the premises over which the access of light was enjoyed had been surrendered and a lease granted another person, of whom the defendant was assignee. It was held by North, J., that under the Prescription Act, (1832) 2 & 3 W. 4, c. 71, s. 3, the plaintiff had acquired an indefeasible right to the access of light which could not be interfered with by the new tenant of the adjoining property. In Ontario, an easement of this kind can no longer be acquired by prescription (see R.S.O., c. 111, s. 36), but this case would be applicable in the case of other easements, and establishes that an easement acquired under a lease is not lost by the expiry of the lease where a renewal lease is granted, but inures to the lessee under the renewal lease.

GAMING—LOTTERY—"MISSING WORD" COMPETITION—ILLEGAL CONTRACT—RIGHT OF COMPETITORS TO RETURN OF THEIR CONTRIBUTIONS—LOTTERY ACT (42 GEO. III., c. 119), s. 1.

Barclay v. *Pearson*, (1893) 2 Ch. 154, is the case in which Stirling, J., decided that the "missing word" competition carried

on by a newspaper was a lottery within the meaning of the Lottery Act (42 Geo. III., c. 119), s. 1, and was illegal. The action was brought by the plaintiff, who was one of the competitors, on behalf of himself and all other prize-winners, claiming an administration of the trust moneys in the hands of the defendant Pearson for the purposes of the competition, and a distribution of the fund among the parties thereto. The competition had been advertised on the following conditions: The defendant Pearson published a paragraph in his newspaper omitting the last word. In the same paper he printed a coupon with a direction that persons wishing to enter the competition must cut out the coupon and fill in the word missing from the paragraph, with the name and address, and send it with 1s. to the office of the paper. It was further stated that the missing word was in the hands of a chartered accountant in a sealed envelope; that his statement with regard to it would appear, with the result of the competition, in a subsequent issue of the paper; and that the whole of the money received in entrance fees would be divided equally among those competitors who filled in the missing word correctly. Holding, as he did, that the competition was a lottery, and therefore illegal, it followed that the plaintiffs, as parties to the illegal transaction, were not entitled to the assistance of the court in administering the fund so as to carry out the illegal purpose. The fund, which had, pending the action, been brought into court, was therefore ordered to be paid out to the defendant Pearson on his undertaking to pay the costs of the action as between solicitor and client.

PRACTICE—CAUSE OF ACTION—RECOVERY OF LAND—JOINDER OF CLAIM FOR INJUNCTION WITH ACTION FOR RECOVERY OF LAND—ORDERS XVIII., R. 2; XXXVI., R. 58—(ONT. RULES 341, 680).

In *Read* v. *Wotton*, (1893) 2 Ch. 171, the writ was indorsed (1) to recover possession of a house; (2) for arrears of rent, and mesne profits; (3) for an injunction to restrain the defendants from doing upon the house any act which might be or become a nuisance to the plaintiff contrary to the provisions of a lease granted by the plaintiff to the defendant; and (4) damages. Before delivery of the statement of claim, the defendants moved to set aside the writ on the ground that the plaintiff had not obtained leave to join the cause of action for injunction with the cause of action for

recovery of the land. Stirling, J., refused the motion, holding that though the plaintiff by his statement of claim when delivered should claim a perpetual injunction that might possibly be inconsistent with the provisions of Order xviii., r. 2 (Ont. Rule 341), yet that an interlocutory injunction, being merely a substitute for damages between the issue of the writ and the trial, was not inconsistent with that Rule; and inasmuch as it did not appear by the writ that more than an interlocutory injunction was claimed, the claim as indorsed on the writ did not offend against the Rule.

COMPANY—WINDING UP—SHARES, CALLS ON—DEBENTURES—EQUITABLE ASSIGNMENT OF—SET OFF—NOTICE.

Christie v. *Taunton*, (1893) 2 Ch. 175, was an application in a debenture-holders' action against a company in liquidation to determine whether or not the company were entitled to set off as against the equitable assignees of certain debentures of the company, a sum due by the assignor in respect of calls on shares held by him, one of which calls was made prior to the assignment of the debentures in question, and the other after the assignment, and after the winding-up proceedings had been commenced. The debentures in question were owned by one Taunton, who was also a shareholder of the defendant company. He deposited the debentures with the plaintiffs, who were bankers, to secure a debt in March, 1890. On 3rd November, 1890, a call was made on the shares. On 6th November, 1890, the plaintiffs gave notice to the company of the assignment to them of the debentures, which notice was entered upon the company's register of debentures. The company subsequently went into voluntary liquidation, when further calls were made. The liquidator now claimed the right to set off against the plaintiffs' claim as assignees of the debentures the amount due by their assignor in respect of the calls; and Stirling, J., held that as to the call made on the 3rd November, 1890, before the company had notice of the assignment of the plaintiffs, the company had the right of set off, but as to the calls subsequently made they had not, on the ground that up to the time the winding up commenced there was only a liability for the latter calls, and not a debt, in which respect he held the case differed from *Ex parte Mackenzie*, 7 Eq. 240, where the assignment did not take place until after the commencement of the winding up, when the liability had, by

virtue of the provisions of the Winding-up Act, ripened into a debt.

NUISANCE—ELECTRICITY—TELEPHONE COMPANY—TRAMWAY COMPANY—STATUTORY POWERS.

National Telephone Company v. *Baker*, (1893) 2 Ch. 186, is a decision of Kekewich, J., in which he holds that where an act is done by virtue of statutory powers which amounts to a nuisance to or injures the property of another, such other person has no right of action for the damage thus occasioned. In this case the plaintiffs complained that the electric current discharged into the earth by the defendant company in the course of running their tramway caused electrical disturbances in telephone wires of the plaintiffs; but inasmuch as the defendants were acting under statutory powers, and using the best known system of electrical traction, it was held that they were not liable for the injury thus occasioned.

The Law Reports for July comprise (1893) 2 Q.B., pp. 1-120; (1893) P., pp. 181-208; and (1893) 2 Ch., pp. 269-380.

CRIMINAL LAW—EVIDENCE—CONFESSION OF PRISONER, WHEN ADMISSIBLE.

The Queen v. *Thompson*, (1893) 2 Q.B. 12, was a Crown case reserved by a court of Quarter Sessions. The question on which the opinion of the court was asked was whether an alleged confession of guilt by the prisoner could be given in evidence against him. The prisoner was tried for embezzling the money of a company. It was proved that, on being taxed with the crime by the chairman of the company, he said: "Yes, I took the money," and afterwards made out a list of the sums which he had embezzled, and, with the assistance of his brother, paid back to the company a part of the money. It appeared from the evidence of the chairman that at the time of the confession no threat was used or promise made as regards the prosecution of the prisoner, but that the chairman, before the confession was made, had said to the prisoner's brother that it would be the right thing for the prisoner "to make a clean breast of it," and the court drew the inference that the prisoner, when he made the confession, knew that the chairman had said this to his brother. Under these circumstances, the court (Lord Coleridge, C.J., and Hawkins,

Day, Wills, and Cave, JJ.) held that the confession had not been satisfactorily proved to have been made voluntarily, and therefore that evidence of the confession ought not to be received. Cave, J., who delivered the judgment of the court, thus states the principle governing such cases: "Is it proved affirmatively that the confession was free and voluntary—that is, was it preceded by any inducement to make a statement held out by a person in authority? If so, and the inducement has not clearly been removed before the statement was made, evidence of the statement is inadmissible."

LANDLORD AND TENANT—DISTRESS—RENT PAYABLE IN ADVANCE IF REQUIRED—REASONABLE NOTICE.

London & Westminster Discount Co. v. *London & N.W. Ry. Co.*, (1893) 2 Q.B. 49, was an action to recover money paid by the plaintiffs to the defendants under protest under the following circumstances: The defendants were lessors of one Tew, by the terms of whose lease the rent was payable in advance if required. Tew gave the plaintiffs a chattel mortgage covering chattels on the demised premises. This mortgage being in default, the plaintiffs took possession of the chattels and instructed their bailiff to sell them. On the morning of the sale the defendants demanded from Tew the then current quarter's rent, and threatened immediate distress if not paid, and the plaintiffs, in order to prevent an interruption of the sale under their mortgage, paid the rent demanded under protest. The court (Grantham and Williams, JJ.) were of opinion that the defendants were acting within their rights, and were not bound to demand the rent in advance on the previous quarter's day, nor were they precluded from demanding it at any time during the currency of the quarter; nor were they obliged to give a reasonable time for the payment of the rent before distraining. The action, therefore, failed.

Notes and Selections.

ILLNESS OF JURYMAN.—The illness of a juryman which caused the adjournment of the Hansard case again brings forcibly before the public the question of an alteration in our jury system. Some eighteen months ago we gave an outline of the procedure obtaining in the French criminal courts, and we then pointed out that the court has power to order thirteen jurymen to be sworn in wherever it is considered that a case will last over the day. The reason is plain. If none of the jury are taken ill, the twelve give their decision, and the thirteenth man takes no part: but the thirteenth man, having heard all the evidence, is always ready to take his part in case one of his brethren should be unable to attend through illness. There is an understanding everywhere but in the law; our law would lose its chief characteristic if it were not happy-go-lucky.—*Law Times* (Eng.)

PUNISHMENTS IN THE DAYS OF WILLIAM PENN.—The assembly that convened at Chester, December 4, 1682, enacted a code of laws that made the people of the new colony live up to the mark, and, while many of the severe penalties of the Duke of York's code were softened, yet the unfortunates deemed them harsh enough. The man or woman who used profane language was punished by fine or imprisonment, and more than one person had reason for regret for expressing their feelings in public with too much emphasis. The severest punishment was meted out for licentious conduct A public whipping and one year's imprisonment was the penalty on the graver degree of this crime, while a second offence was punishable by imprisonment for life. This law was amended in 1705, the first offence being punished by the infliction of twenty-one lashes and imprisonment for one year, or a fine of £50; a second conviction subjected the culprit to seven years' imprisonment and the letter "A" was branded on his forehead. In felonious assault the aggrieved party received half of the estate of the aggressor, and the convict was publicly whipped and had to go to jail for a year. For the second offence he was imprisoned for life. The man that had more than one wife, instead of being an object of commiseration, was liable to

be sent to jail for life, while the man who broke into a house and stole was sent to jail for four months. He had to work like a beaver, however, and unless he restored fourfold to the party the court sent him up for seven years to give him time for reflection. Murder was punished with death, and the forfeiture of half the estate of the felon. Theft was punished with public whipping and various terms of imprisonment, while restitution had to be made from three to fourfold. The minor regulations prohibited all persons from taking part in stage plays, revels, masques, and kindred worldly pursuits, so that any troupe that had chanced to drop into Pennsylvania with the ta-ra-ra-boom-de-ay would have been sent higher than Gilderoy's kite. Drinking of health was punishable by a fine of five shillings or five days' imprisonment, and horse racing, shooting matches, and sports of like character were interdicted. If the offenders happened to be slaves, they were whipped and imprisoned, instead of fined.—Chester, Pa., *News.*

Reviews and Notices of Books.

The Judicial Practice of the Colony of the Cape of Good Hope, and of South Africa generally. With suitable and copious practical forms subjoined to and illustrating the practice of the general subjects treated of. By C. H. Van Zyl, Attorney-at-Law, Law Lecturer at the South African College, Capetown, etc. J. C. Jute & Co., Capetown and Johannesburg 1893.

This volume, coming to us from a far-distant quarter of the globe, combines both the theory and practice as adopted and followed in the South African colonies. As no book of practice has been published there since last century, this volume should be a necessity. It would appear to be carefully and laboriously compiled, and with a copious and yet succinct index.

The Roman Dutch law, as it was in Holland in 1806, was transplanted to the colony of the Cape of Good Hope, where it is still in force, subject to modifications produced by local customs and legislative or judicial alterations. In addition to the entire procedure in an action, the theory and origin of the proceedings are traced out and yet the whole is contained in a volume of less than seven hundred pages. While the practice part of the work may not be of use to us in this portion of the British Empire, still the historical references and the authorities collected cannot but be, not only of interest, but of use.

Correspondence.

ASSESSMENT OF PERSONAL PROPERTY.

To the Editor of THE CANADA LAW JOURNAL :

By sec. 14, sub-sec. 1, of the Assessment Act, it is the duty of the assessor to assess all taxable persons resident in the municipality who have taxable property therein. Sub-section 2 also makes it the duty of the assessor to assess non-resident owners who have given the requisite notice. Property includes both real and personal property.

Personal estate and personal property are so defined as to include income.

Section 26 enacts that in estimating the value of mineral lands, such lands and the buildings thereon shall be valued and estimated at the value of other lands in the neighbourhood for agricultural purposes, but the income derived from any mine or mineral work shall be subject to taxation in the same manner as other incomes under the Act.

The problem for solution is this : A., who is engaged in mining within the meaning of section 26, in municipality B., resides in municipality C. His mineral lands are clearly taxable, under section 26, at the agricultural value in municipality B. A. has no office or place where he transacts business, except at his residence.

The practical question that arises is : Where is his income from the mining lands taxable, in B. or in C ? The income is derived from the property in B. But this alone would not justify its being taxed in B. ; for then every mortgagee would be assessed on income in as many municipalities as he had mortgages from which he received interest. What principle could be applied, too, in deducting that portion of the income exempt from taxation ? Would the mortgagee be exempt up to $400 in every municipality in which he had an income-producing mortgage ? If so, then he might have twenty mortgages, in as many municipalities, bring him in an income of $8,000, on which he paid no taxes. We might, too, have the anomaly of a wealthy man who, his income being all derived from investments in other

municipalities, has no vote on income in the municipality in which he resides. And, indeed, the same anomalies may arise in the case of mining income if the contention of those who hold to the right to assess the income where it originates is correct. Interest on mortgages is income derived from real estate, within the meaning of the Assessment Act. For among the exemptions is "rental or other income derived from real estate, except interest on mortgages."

The writer is of opinion that it is clearly the intention of the Act that all taxable income, no matter in what municipality it may originate, should be taxed where the person assessed resides. Section 14 gives no authority to the assessor to assess any person not a resident, except in the case of non-resident lands. Section 36 has been taken to mean that income may be assessed at the place where the mining property is situate from which the income is derived. But is it not clear that "personal property . . . wheresoever situate," and "personal property connected with the business carried on thereat," refer only to tangible property of a movable kind, and not to income. This would appear to be the view taken by Boyd, C., in the *City of Kingston* v. *The Canada Life Assurance Co.*, whose language there clearly excludes income from the operation of that section.

LEX.

[We shall be glad to hear from some of our readers on this subject.—ED. C.L.J.]

To the Editor of THE CANADA LAW JOURNAL:

SIR,—How is it you have not published lately the proceedings of the Law Society? They are of much interest to many of your readers.

STUDENT.

[The question has been asked by others; but the answer is very simple: Because we have not received them. We are assured there will be no delays in the future.—ED. C.L.J.]

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

RÉSUMÉ OF PROCEEDINGS—MICHAELMAS TERM, 1892.

During this Term the following gentlemen were called to the Bar: Messrs. James Edgar Jeffery (with honours and silver medal), Frank Christopher Cooke, James Grayson Smith, Robert Linton Johnson, George Allan Kingston, Albert Edward Scanlon, Thomas Barnewall Martin, Frank Wallace McConnell, D'Arcy Richard Charles Martin, George Tait Copeland, John Harold Senkler, Walter Joseph Boland, Edmund Harley, Ford Jones, Michael Patrick McDonagh, William Inglis Dick, John Robertson Blake, Andrew Bain, John Albert Oliver, Stewart Fields Houston, George Edwin Powell, Henry William Charles Shore, Jasper Noble Fish, Fergus James Traver,s Duncan Edward Stuart, John Bond Head Ferguson, Edward Scott Griffin, Thomas Clarkson Thomson, Thomas Hiram Lloyd, Caleb Sidney Coatsworth, Samuel Clarke Biggs, McLeod Stewart, and Malcolm Ogilvie Macgregor (the last three being special cases).

The following gentlemen received certificates of fitness: Messrs. J.E. Jeffrey, F. C. Cooke, J. Grayson Smith, R. L. Johnson, F. C. Snider, G. A. Kingston, A. E. Scanlon, T. B. Martin, D'Arcy R. C. Martin, M. J. O'Connor, R. J. Gibson, G. T. Copeland, J. H. Senkler, W. J. Boland, E. Harley, J. R. Blake, A. Bain, J. A. Oliver, Ford Jones, M. P. McDonagh, S. F. Houston, J. N. Fish, H. W. C. Shore, R. S. Robertson, A. Malone, W. A. Boys, H. F. Gault, W. I. Dick, F. W. McConnell, S. C. Biggs, F. C Jones, Donald Grant, C. S. Coatsworth.

The following gentlemen passed the second intermediate examination under the Law Society's curriculum: Messrs. A. Nugent, F. H. Hall, W. B. Bentley.

During this term the following gentlemen were entered on the books of the Society as Students-at-Law, the date of their admission to be reckoned as of Trinity Term, 1892, pursuant to order of Convocation made 9th December, 1892. Graduate: Allan Henry Royce. Matriculants: Messrs. Frederick Charles Knowles, John Thomas Connolly Thompson, Thomas Church, Harvey Nelson German, John Robertson Brown, Stanley Bertrand Ha[illegible], William Lyon McLaws, Charles Black Patterson.

Monday, November 21st, 1892.

Present: Messrs. Moss, Irving, Douglas, Riddell, and Shepley, between 10 and 11 a.m.; and after 11 a.m., in addition, Messrs. Ritchie, Osler, Meredith, Barwick, Martin, McCarthy, Kerr, and Hoskin.

In the absence of the Treasurer, Mr. Irving was appointed chairman.

The minutes of the last meeting of Convocation, Friday, 23rd September, 1892, were read, approved, and signed by the chairman.

The Report of the Legal Education Committee on the result of the final examinations held before this term under the Law Society curriculum and of the Pass and Honour examinations in the third year of the Law School was received and read. Ordered for immediate consideration and adopted.

Ordered that the following gentlemen who are reported to have duly passed the Law School examination, to have attended the requisite number of lectures, and to have presented regular papers be called to the Bar forthwith, viz.: J. E. Jeffery (with honours and a silver medal), F. C. Cooke, J. Grayson Smith, R. L. Johnson, G. A. Kingston, A. E. Scanlon, T. B. Malone, F. W. McConnell, D. R. C. Martin, G. T. Copeland, J. H. Senkler, W. J. Boland, E. Harley, Ford Jones, W. I. Dick, J. R. Blake, Andrew Bain, J. A. Oliver, M. P. McDonagh.

Ordered that the following gentlemen, whom the committee for the reasons set forth in the Report recommend for call, be called to the Bar forthwith, viz.: S. F. Houston, G. E. Powell, H. W. C. Shore, J. N. Fish, and T. H. Lloyd.

Ordered that the following gentlemen who are reported to have duly passed the Law School examination, to have attended the requisite number of lectures, to have presented regular papers, and to have served the requisite time do receive their certificates of fitness as solicitors forthwith, viz.: J. E. Jeffery, F. C. Cooke, J. Grayson Smith, R. L. Johnson, F. C. Snider, G. A. Kingston, A. E. Scanlon, T. R. Martin, D. R. C. Martin, M. J. O'Connor, R. J. Gibson, G. T. Copeland, J. H. Senkler, W. J. Boland, E. Harley, J. R. Blake, Andrew Bain, J. A. Oliver, Ford Jones, M. P. McDonagh.

Ordered that the following other gentlemen, whom the committee for the reasons set out in the Report recommend for certificates of fitness, do receive their certificates of fitness forthwith, viz.: S. F. Houston, J. N. Fish, H. W. C. Shore. Ordered also that the cases of Messrs. C. S. Coatsworth, W. I. Dick, and D. Grant, candidates for certificates of fitness, be reserved until completion of their service and production of further proofs.

Ordered that the following gentlemen who are reported to have passed their examination for call under the curriculum of the Law Society and to have presented regular papers be called to the Bar forthwith, viz.: F. J. Travers, D. E. Stuart, H. F. Gault, and J. B. Ferguson.

Ordered that the following gentlemen who are reported to have passed their examinations under the curriculum of the Law Society for certificates of fitness as solicitors, to have presented regular papers, and to have served the requisite time, do receive their certificates of fitness forthwith, viz.: R. S. Robertson, A. L. Malone, W. A. Boys.

Ordered that the cases of the following gentlemen be reserved for further report: J. E. Bird, S. C. Biggs, D. E. Stuart, and H. F. Gault. Ordered also that the Examiners subject Mr. Gault to a special oral examination and report the result to the Legal Education Committee. Mr. Gault had been called away from the regular examination by illness in his family.

The Report of the Legal Education Committee on the second intermediate examination under the Law Society curriculum was received and ordered for consideration to-morrow.

Mr. Moss, from the Legal Education Committee, reported as follows: (1) In the case of W. I. Dick, who asks to have his service allowed, the committee recommend that it be allowed. Ordered for immediate consideration, adopted, and ordered accordingly.

(2) In the case of James B. McLeod, who asks to be allowed to take his finals under the Law Society curriculum instead of the third year Law School examination. The committee consider that, substantially, the petitioner was exempt from the Law School rules, and recommend that he be permitted to take the examination as prayed. Ordered, in accordance with the recommendation contained in the Report, that Mr. McLeod be allowed to take his final examination under the Law Society curriculum.

(3) In the case of Mr. C. S. Coatsworth, who asks to be called during this term, the committee recommend that his notice remain posted until the last day of meeting this term, and that he be called on that day if no objection be made known to the Society in the meantime. Ordered accordingly.

(4) In the case of Mr. Alexander Stuart, ordered, in accordance with the Report, that the petition cannot be granted.

The following gentlemen were then called to the Bar: Messrs. T. E. Jeffery (with honours and a silver medal), F. C. Cook, J. Grayson Smith, R. L. Johnson, G. A. Kingston, A. E. Scanlon, T. B. Martin, F. W. McConnell, D. R. C. Martin, G. T. Copeland, J. H. Senkler, W. J. Boland, E. Harley, Ford Jones, M. P. McDonagh, W. I. Dick, J. R. Blake, Andrew Bain, J. A. Oliver, S. F. Houston, G. E. Powell, H. W. C. Shore, J. N. Fish, F. J. Travers, D. E. Stuart, J. B. Ferguson, E. S. Griffin, T. C. Thomson.

Mr. Osler, from the Reporting Committee, reported recommending the increase of the edition of each volume of the Reports from eighteen hundred and fifty to two thousand copies. Ordered for immediate consideration, adopted, and ordered accordingly.

Mr. Osler further reported that, in view of the proposal to establish a current index at Osgoode Hall and in the County Libraries, the committee recommend the re-printing of the digests of Volumes 20 Ontario Reports and 18 Appeal Reports, at the cost of $64.50. Ordered for immediate consideration and adopted.

It was further ordered that the Reporting Committee be requested to report to Convocation upon a plan for the economical and convenient arrangement of head notes with reference to issuing the next and future digests.

Mr. Osler further reported the sales of the Ontario Digest to date as being 842 copies, distributed per the free list 119, total 961 copies disposed of, leaving 539 copies in the hands of Messrs. Rowsell & Hutchison for sale.

Mr. McCarthy gave notice that he would to-morrow move a resolution with reference to furnishing Her Majesty's Privy Council with a copy of the Ontario Reports and Ontario Appeal Reports.

The following petitions were read: (1) From Mr. McLeod Stewart, praying to be called to the Bar under the Rules relating to solicitors of ten years' standing. (2) From Mr. Malcolm Ogilvie Macgregor, praying to be called to the Bar under the Rules relating to solicitors of ten years' standing. (3) From Mr. Samuel Clarke Biggs, Q.C. (appointed by Dominion

Government), a member of the Bar of Manitoba and a practising solicitor of that Province, praying to be called to the Bar of this Province. The above petitions were received and referred to a special committee composed of Messrs. Moss, Ritchie, and Shepley for examination of the papers of the applicants, and examination of the applicants as to their qualifications pursuant to Rule 209.

The Secretary then reported that the Hon. C. F. Fraser had not attended the meetings of Convocation for three consecutive terms. The Report was referred to the Committee on Journals and Printing for action in pursuance of Rules 19 and 20.

The letter, dated 7th November, from Mr. H. R. Hardy, making application for the annual grant of one hundred dollars fo the Ontarior Legal Chart, was read. Ordered that the grant be made on the same terms as last year. The letter also asked Convocation to consider the advisability of bringing out an official list as published in 1890 and 1891. Convocation declined to make any order in respect of this list.

The chairman, in the absence of the Treasurer, then pursuant to Rule 122 laid before Convocation the following papers relating to Mr. Nathaniel Mills, a member of the Society. (1) Certificate of the Registrar of the Chancery Division, High Court of Justice. (2) Order of the Chancery Division ordering the name of said Nathaniel Mills, now residing in the town of Ridgetown, in the County of Kent, to be struck off all existing rolls of solicitors of the Supreme Court, and that the name of the said Nathaniel Mills be not entered in any further list of solicitors of the Supreme Court that may be hereafter made up. Convocation ordered that the Secretary do enter the above certificate and order at length upon the Journals, and transmit the notices specified in Rule 123.

By consent, the consideration of the Attorney-General's motion respecting the admission of women to the study and practice of law was adjourned until Friday, the second day of December, 1892.

Convocation then adjourned.

Tuesday, November 22nd, 1892.

Present: At 10 a.m., Messrs. Guthrie, Strathy, Ritchie, Irving, Moss, Shepley, Aylesworth, Hoskin, and Douglas; and, in addition, after 11 a.m., Messrs. Martin, Bruce, Mackelcan, Macdougall, Idington, and Robinson. In the absence of the Treasurer, Mr. Irving was appointed chairman. The minutes of the last meeting of Convocation of 21st November instant were read, approved, and signed by the chairman.

Upon reference to the minute of yesterday on the subject of the Attorney-General's notice of motion respecting the admission of women, it was ordered that the subject of the notice should be considered on Friday, 9th December, or Tuesday, 27th December, or the second day of Hilary Term next, as the Attorney-General may fix, and that a special notice for the day so fixed be sent to the members of Convocation.

Mr. Bruce, from the Discipline Committee, presented the Report of that committee as to the complaint of Messrs. Freeman Harding and Ashman Bridgman against Messrs. Scane, Houston, Stone & Scane. The Report was read, received, and ordered for consideration on Friday, 2nd December next, and it was further ordered that a copy of the Report be sent to Messrs. Scane, Houston, Stone & Scane, and that they be informed that Convocation will take action on their case on that day, at which time they

will be at liberty to attend Convocation. It was also ordered that a copy of the Report be sent to Mr. Charles Macdonald of counsel for the complainants. It was also ordered that notices be issued for a call of the Bench for that day.

Mr. Ritchie, on behalf of the Special Committee appointed yesterday to examine into the papers and qualifications of Messrs. McLeod Stewart, Samuel Clarke Biggs, and Malcolm Ogilvie Macgregor, applicants for call to the Bar under the Rules in special cases, reported that they had examined the papers and proofs submitted by the applicants and had subjected them to an examination as to their qualifications, and found that they had complied with the Rules of the Society and passed a satisfactory examination, and were entitled to be called to the Bar under the said Rules. The reports were received and read, ordered for immediate consideration, and adopted.

Ordered that Messrs. Samuel Clarke Biggs, McLeod Stewart, and Malcolm Ogilvie Macgregor be called to the Bar, and they were then called to the Bar accordingly. Mr. T. H. Lloyd (who was yesterday ordered to be called) was then called to the Bar.

In pursuance of the order of Convocation of the 23rd day of September, 1892, Mr. Douglas moved the second reading of the Rule prescribing regulations for the retirement of the officers of the Society.

Mr. Martin moved that the Rule be read a second time this day six months.

Mr. Douglas moved the adjournment of the debate and consideration of the subject to Friday, December 9th, or such day as may be fixed for the consideration of the notice given by the Attorney-General in respect of rules for admission of women as solicitors. Ordered accordingly.

Mr. Strathy drew attention to the fact that the Report of the Special Committee on unlicensed conveyancers had not been distributed with the Reports in accordance with the order of Convocation of June 28th, 1892.

Mr. Shepley gave notice that he would at the next meeting of Convocation move the following amendment to Rule No. 49, viz., "That Rule No. 49 be amended by striking out the word 'fifteen' from the first line thereof and substituting the word 'eighteen' instead thereof."

Convocation then adjourned.

Friday, November 25th, 1892.

Present: Messrs. Shepley, Aylesworth, Osler, Douglas, Irving, and Watson.

In the absence of the Treasurer, Mr. Irving was appointed chairman. The minutes of the last meeting of Convocation of November 22nd were read, approved, and signed by the chairman.

With the consent of Convocation, Mr. Shepley moved, seconded by Mr. Osler, the first reading of the Rule to amend Rule No. 49, viz., "That Rule No. 49 be amended by striking out the word 'fifteen' from the first line thereof and substituting the word 'eighteen' instead thereof." Carried.

By consent, Mr. McCarthy's motion in relation to furnishing Her Majesty's Privy Council with the Ontario Reports and Ontario Appeal Reports was adjourned until Friday, the 2nd day of December.

The letter of Dr. Rosebrugh asking Convocation to appoint delegates to the third Prison Reform Conference, to be held on December 13th, was

read. Ordered that Messrs. N. W. Hoyles, Q.C., S. F. Lazier, Q.C., and Hamilton Cassels be appointed delegates, and that the Secretary do notify them accordingly, and also notify Dr. Rosebrugh of such appointment.

Convocation then adjourned.

Friday, December 2nd, 1892.

Present: Messrs. Moss, Lash, Meredith, Magee, Irving, Dr. Hoskin, Bruce, Watson, Aylesworth, Shepley, Riddell, Ritchie, Barwick, and Osler.

In the absence of the Treasurer, Mr. Irving was appointed chairman.

The minutes of the last meeting of Convocation on the 25th November, 1892, were read, approved, and signed by the chairman.

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

(1) In the case of Mr. H. F. Gault, whom the Examiners were ordered to subject to a special oral examination, that the Examiners had reported that they had subjected him to a special oral examination for certificate of fitness and that he had successfully passed same; and that he had completed his proofs of service. The committee recommend that his examination be allowed, and that he be granted his certificate of fitness. Ordered for immediate consideration, adopted, and ordered accordingly that he do receive his certificate of fitness.

(2) That in the cases of Messrs. W. I. Dick and F. W. McConnell, reserved for completion of service and production of further proofs, they have considered the Report of the Secretary upon the papers of these gentlemen and find that they have, since the beginning of this term, completed their service under articles and furnished satisfactory proof of the same; their papers are now correct and regular and they are entitled to receive certificates of fitness, and the committee recommend accordingly. Ordered for immediate consideration, adopted, and ordered that Messrs. W. I. Dick and F. W. McConnell do receive certificates of fitness accordingly.

(3) That in the case of Andrew Nugent, who asks to be allowed to attend the present session of the Law School and to take the final examinations in connection therewith at the close of the said session, the committee recommend that he be allowed to attend the Law School and take the examination as asked, but that he be not called or granted a certificate of fitness until Trinity Term, 1893. Ordered for immediate consideration, adopted, and ordered accordingly.

(4) In the case of the Hon. S. C. Biggs Q.C. (Dom.), that he was articled on 4th September, 1872, but was not admitted as a student-at-law into the Society until Hilary, 1873. The Rule requiring a preliminary examination by articled clerks was not in force when he articled. He is therefore entitled to be allowed his service under articles from 4th September, 1872, to Hilary Term, 1873. His papers and service in other respects are correct and regular, and he is entitled to receive his certificate of fitness as solicitor. Ordered for immediate consideration and adopted, and ordered that Mr. S. C. Biggs do receive his certificate of fitness as a solicitor.

Mr. Moss, from the Legal Education Committee, presented a Report in the matter of Mr. T. B. P. Stewart's will.

The Report was received and adopted, and it was ordered that the recommendations contained in the Report be adopted as follows: That the

Society take steps for procuring a special Act of the Legislature of the Province of Ontario enabling the Society to take the benefits under the will; and it was further ordered that the committee be authorized to take the necessary steps for procuring the suggested legislation in accordance with the terms of their recommendation.

Mr. Moss, on behalf of Mr. Kerr, from the Committee on Journals and Printing, presented the following Report: That they have inquired into the case of the Hon. C. F. Fraser, a Bencher of this Society, who appears by the Journals of Convocation to have been absent from the meetings of Convocation for three consecutive terms and that the Hon. C. F. Fraser has admitted the correctness of the record as to such absence, and has stated that such absence was due to illness and to heavy pressure of public duties as a member of the Government of Ontario.

The Report was received and read, and ordered that a call of the Bench be given for the first day of Hilary Term, 1893, to elect a Bencher in the room of the Hon. C. F. Fraser, whose seat has been declared to be vacant.

Mr. Shepley moved, seconded by Mr. Osler, the third reading of the Rule to amend Rule No. 49. Carried. Ordered that Rule No. 49 be amended in accordance with such amending Rule, that is to say: By striking out the word "fifteen" from the first line thereof and substituting the word "eighteen" instead thereof.

Mr. Watson, in pursuance of his notice given last term, moved, seconded by Mr. Barwick, that the term luncheons which have been heretofore provided for the members of Convocation at the expense of the Law Society be discontinued. Lost.

Mr. Hoskin moved the adoption of the following Report of the Discipline Committee upon the complaint of Messrs. Freeman Harding and Ashman Bridgman against Messrs. Scane, Houston, Stone & Scane:

Your committee made due enquiry into the matter of the complaint, and was attended by counsel for the complainants and by Mr. Scane, who appeared for himself and as counsel for the other members of his firm. After hearing the evidence adduced and the arguments of counsel aforesaid, and after considering the matter, your committee arrived at, and now begs to report, the following findings:

(1) One George Watson, who is not a solicitor, residing at Ridgetown, was employed by one John McKerricher to obtain letters probate from the Surrogate Court of the County of Kent of the will of one William McKerricher, deceased.

(2) Thereupon the said Watson prepared the petition for presentation to the Surrogate Court, and the affidavits in support of the petition upon a contract with John McKerricher by which he was to be paid for the preparation of such petition and affidavits.

(3) The said petition and affidavits were sent by Watson to Messrs. Scane, Houston, Stone & Scane, with instructions to present the petition and obtain the probate and forward the same to said Watson.

(4) Messrs. Scane, Houston, Stone & Scane presented the petition and filed the affidavits in the Surrogate Court, first endorsing thereon their firm name as solicitors for the petitioner, John McKerricher, and on the letters probate being issued and handed out to them forwarded them, as instructed, to said Watson.

(5) There never was any communication between McKerricher and Messrs. Scane, Houston, Stone & Scane (otherwise than as above set out, through Watson), nor was there any retainer by McKerricher of Messrs. Scane, Houston, Stone & Scane as his solicitors in the matter, nor were Messrs. Scane, Houston, Stone & Scane acting in the matter as solicitors for the said McKerricher.

(6) Messrs. Scane, Houston, Stone & Scane charged the said Watson for the services actually rendered by them and were paid the said charges by him, he adding them to his own fees and charging the whole to McKerricher.

(7) Messrs. Scane, Houston, Stone & Scane were aware that Watson was not a

solicitor, and supposed that he was to be remunerated for his services in preparing the petition and affidavits.

(8) The facts in connection with the Finley will and probate in the complaint referred to do not differ in any respect from those hereinbefore found with regard to the McKerricher will and probate, and your committee so finds and reports.

Your committee is of opinion that, upon the facts as above set forth, Messrs. Scane, Houston, Stone & Scane did so act as to enable Watson to practise as a solicitor, knowing him not to be duly qualified within the meaning of R.S.O., c. 147, s. 24, and were guilty of conduct unbecoming a solicitor. The solicitors state that they were unaware of the Heaslip case, in which Convocation determined that the preparation and presentation of papers to lead to a grant of probate constituted the commencement of a proceeding within the meaning of s. 26 of the same Act, and say that any impropriety which they may have been guilty of was inadvertent and unintentional.

Your committee recommend that Messrs. Scane, Houston, Stone & Scane be reprimanded by Convocation in respect of the acts complained of, and cautioned against any repetition or continuance thereof.

The complaint answers, evidence, and exhibits are submitted herewith. All of which is respectfully submitted.

The Secretary then reported that he, by registered letter through the post office, had given notice to Messrs. Scane, Houston, Stone & Scane, and had also forwarded to them a copy of the Report of the Discipline Committee in accordance with the order of Convocation of the 22nd November, 1892, to wit, "That a copy of the Report be sent to Messrs. Scane, Houston, Stone & Scane, and that they be informed that Convocation will take action on their case on this day (2nd December), at which time they will be at liberty to attend Convocation." He further reported that the said letter had not been acknowledged by Messrs. Scane & Co. No member of the said firm being in attendance at the meeting, the Secretary was instructed to make search for them, and he reported that he had made search around Osgoode Hall and that no member of said firm was to be found.

Mr. Watson moved in amendment that the findings and conclusions made in the Report be adopted, and that Convocation is of opinion that the acts complained of constitute a violation of the Statutes and Rules in force in this behalf, and reaffirms the necessity of maintaining the Statutes and Rules in question, and directs that the solicitors be notified of the infringement of the Statutes by them and that such infringement is and must always be the subject, at least, of disapproval and reprimand by this Society.

Mr. Meredith moved in amendment to Mr. Watson's amendment that there be added after the word "conclusions" the words "except the recommendation to reprimand." Lost.

Mr. Watson's amendment was declared carried.

The petition of certain students in attendance at the Law School that the smoking room be thrown open to them between 2.30 and 4.30 p.m. in the afternoons was read and not granted.

By consent, Mr. McCarthy's notice of motion in regard to furnishing certain Reports to the Library of the Judicial Committee of the Privy Council was ordered to stand until the next meeting of Convocation.

Mr. Moss, from the Legal Education Committee, presented a Report on the result of the second intermediate examination as follows:

The committee have considered the Report of the Examiners on the second intermediate examination under the *Law Society's* curriculum and the Secretary's Report on their papers, and they find that the following gentlemen have passed the examination and that they are in regular course, and they are entitled to be allowed their second intermediate examination, viz.: Messrs. A. Nugent and F. H. Hall.

Mr. W. B. Bentley obtained the required number of marks to entitle him to be allowed the examination, but it appears that he only passed his first intermediate examination in Hilary Term, 1892, and therefore took the second prematurely. He presented a special petition showing that he had been prevented by illness from taking the first intermediate examination in due course. There has been a lapse of nine months since he passed the former, and the committee recommend that the second intermediate examination now passed be allowed.

Ordered for immediate consideration and adopted, and ordered that the examination of the gentlemen named in the Report be alloweds.

Leave of absence was granted to the Secretary between the 13th and 23rd December, and the Finance Committee was ordered to make provision for the discharge of his duties in his absence.

Mr. Osler, from the Reporting Committee, presented the Report of the editor of the Reports, which was received.

Convocation then adjourned.

Friday, December 9th, 1892.

Present: Messrs. Shepley, Martin, Moss, Bruce, Blake, Teetzel, Hoskin, Britton, Mackelcan, Irving, McCarthy, Kerr, Barwick, Strathy, Meredith, Lash, Douglas, Bell, Hardy, Osler, Watson, Aylesworth, Robinson, and Sir Oliver Mowat, K.C.M.G., the Attorney-General of Ontario.

In the absence of the Treasurer, Mr. Irving was appointed chairman.

The minutes of the last meeting of Convocation were read, approved, and signed by the chairman.

Mr. Moss, from the Legal Education Committee, presented the Report of that committee on the cases of certain candidates for call and certificates of fitness who had since the beginning of the term completed their papers and complied with certain other requirements, as follows: In the case of Mr. F. C. Jones, the committee recommend that he receive his certificate of fitness. In the case of Mr. Donald Grant, the committee recommend that he receive his certificate of fitness. Ordered in the case of each of the above-named gentlemen that he do receive his certificate of fitness. In the case of Mr. C. S. Coatsworth, reserved for further proofs of completion of service, that he has now completed the same, and the committee recommend that he receive his certificate of fitness. Ordered for immediate consideration, adopted, and ordered accordingly that his certificate of fitness do issue.

Mr. Moss, from the same committee, further reported that it had been ordered by Convocation on the 21st day of November, 1892, that Mr. C. S. Coatsworth's notice for call should remain posted until to-day, and that he be called to-day if no objection were made known to Convocation in the meantime; and that in pursuance of such order his notice had remained posted in the proper places prescribed by the Rules of the Society in that behalf, and that the Secretary had reported that no notice of objection to his call had been received up to the present time. It was therefore ordered that Mr. C. S. Coatsworth be called to the Bar.

Mr. Moss, from the Legal Education Committee, presented the Report of that committee on certain candidates for admission to the Society as students-at-law as of Trinity Term, 1892, as follows:

(1) The Legal Education Committee have considered the petition of the following gentlemen praying for the reasons set forth therein to be admitted to the Society as students-at-law as of Trinity Term last, viz.: A. H. Royce, F. C. Knowles, J. R. Brown, H. N. German, Thomas Church, J. T. C. Thompson, S. B. Harris, W. E. McLaws, C. B. Patterson.

The cases of these applicants are capable of division into three classes:

(1) Candidates who gave notice for last term, but owing to delay in announcements of results in Supplemental Examinations were unable to produce the necessary evidence of their having passed the required examination before the last meeting of Convocation last term, and whose notices were ordered by Convocation to stand good for Michaelmas term, viz.: A. H. Royce, F. C. Knowles. These gentlemen have now produced the required proof, and their papers are regular in other respects, and the committee recommend that Mr. Allan Henry Royce, B.A., University of Toronto, be admitted as a student-at-law of the graduate class as of Trinity Term, 1892, and that Mr. Frederick Charles Knowles, matriculant, University of Toronto, 1892, be admitted as a student-at-law of the matriculant class as of Trinity Term, 1892.

(2) Candidates who were in the same position as the foregoing class with regard to delay in announcements of results of examinations, but failed to give notice for last term, and gave four weeks' notice preceding the first day of Michaelmas Term, viz.: J. T. C. Thompson, Thomas Church, H. N. German. They excuse themselves on the ground of ignorance of the Rule of the Society limiting admission during Easter and Trinity Terms, and belief that notice might be given after their examinations had been passed. Their papers are regular in other respects. The committee recommend that the prayers of their petitions be granted, and that Messrs. John Thomas Connolly Thompson, Ottawa College, 1892; Thomas Church, University of Toronto, 1892; Harvey Nelson German, University of Toronto, be admitted as students-at-law of the matriculant class as of Trinity Term.

(3) Candidates who failed to give notice for Trinity Term, and did not give four weeks' notice preceding the first day of Michaelmas Term, viz.: J. R. Brown, S. B. Harris, W. L. McLaws, C. B. Patterson. They excuse themselves on the ground of ignorance of the Rule requiring notice to be given and belief that admission would be granted at any time upon presentation of the proof of their having passed the required examinations. Their papers are regular in other respects. The committee recommend that the prayers of their petitions be granted, and that Messrs. John Robert Brown, University of Toronto, 1892; Stanley Bertrand Harris, Victoria College, 1892; William Lyon McLaws, Trinity College, 1892; Charles Black Patterson, University of Toronto, be admitted as students-at-law of the matriculant class as of Trinity Term, upon condition that their notices do remain posted in the several places required by the Rules until the first day of next term, and that no objection to their admission be received in the meantime.

Ordered for immediate consideration and adopted. Ordered, that Mr. A H. Royce be entered on the books of the Society as a student-at-law of the graduate class as of Trinity Term, 1892. Ordered, that Messrs. F. C. Knowles, J. T. C. Thompson, Thos. Church, and H. N. German be entered on the books of the Society as students-at-law of the matriculant class as of Trinity Term, 1892. Ordered, that Messrs. J. R. Brown, S. B. Harris, W. L. McLaws, and C. B. Patterson be entered on the books of the Society as students-at-law of the matriculant class as of Trinity Term, 1892, upon condition that their notices do remain posted in the several places required by the Rules until the first day of term, and that no objection to their admission be received in the meantime.

Mr. Martin, from the County Libraries Aid Committee, presented the Report of the Inspector of County Libraries' for the year 1892 upon the condition of the various County Library Associations. Ordered that copies of so much of the Inspector's Report as affects each library and the "general remarks" in the Report be forwarded to each Association. It was further ordered that the usual fee of one hundred and fifty dollars be paid to Mr. Winchester as his allowance for inspecting the County Libraries for 1892.

Mr. Winchester's letter of December 5th to Mr. Martin, chairman of the County Libraries' Aid Committee, tendering his resignation of the position of Inspector of County Libraries, was read and referred to that

committee to report to Convocation, with power to act in the premises meanwhile as they may think fit.

Mr. Martin read the application of the County of Ontario Law Association. The application was referred to the County Libraries' Aid Committee for consideration and report. The letter dated December 2nd from the Osgoode Legal and Literary Society to the Secretary in regard to the holding of their annual "At Home" was read. Ordered, that for an "At Home" to be held in January, 1893, the Osgoode Legal and Literary Society be allowed the use of all the rooms, including the Library, at the Society's disposal in Osgoode Hall, under arrangements to be submitted and conditional upon the insurance not being affected thereby, and to be subject to a special committee to be named by Convocation. Ordered, that Messrs. Hoskin, Mackelcan, Lash, Barwick, and Shepley be the special committee under the above order.

Another letter dated December 2nd, 1892, from the said Society, in regard to furnishing a reading room at the Hall for the use of the students and supplying the same with magazines, newspapers, etc., was read. Ordered that the request be not granted, but that it be referred to the Finance and Legal Education Committees to report whether an arrangement can be made for setting apart some room as a general reading room for students.

Mr. Barwick gave notice that at the next meeting of Convocation he would move that it be ordered as follows: That to commemorate the memory of Mr. T. B. Phillips Stewart and his desire to aid students in pursuing their studies, the rooms in the Law School wing used for the purposes of a students' library be designated "The Phillips Stewart Library for Students," and Convocation directs that a tablet shall be placed in the reading room of such library, upon which shall be engraved an inscription to be approved by the Legal Education Committee.

Mr. Barwick gives notice that on December 27th he will move to introduce a Rule amending Rules 29 and 33 by inserting therein the word "Friday" for the word "Saturday" where it occurs in such Rules.

Mr. C. S. Coatsworth was called to the Bar.

The Attorney-General of Ontario, Sir Oliver Mowat, K.C.M.G., moved, seconded by Hon. S. H. Blake, that Convocation do proceed to frame Rules for the admission of women as solicitors, in pursuance of the Act of the Legislature of Ontario of 55 Vict., cap. 32.

Moved by Mr. Strathy, seconded by Mr. Watson, that it being expedient and proper that all matters relating to the service, study, education, and fitness necessary for the practise of the legal profession in all its branches, including conveyancing and work of a cognate character, should be entrusted to the Law Society of this Province, it is therefore resolved that the consideration of the motion of the Honourable the Attorney-General, relating to the passing of Rules by the Society enabling women to become members of the Society and to practise the said profession, be postponed until the Legislature of this Province shall by statute place in the hands of this Society the matter first above named, and so that the Rules to be passed or the amendments to be made in the existing Rules of this Society may provide for and include all persons desirous of carrying on the practice of law in this Province for gain or reward. Lost.

The vote was taken on the Attorney-General's motion, and stood as follows:

Yeas—Sir Oliver Mowat, and Messrs. Lash, Barwick, Moss, Douglas, Hoskin, Bell, Aylesworth, S. H. Blake, Osler, Hardy, and Britton—12.

Nays—Messrs. Martin, McCarthy, Meredith, Watson, Shepley, Teetzel, Strathy, Bruce, Kerr, Robinson, and Mackelcan—11.

Mr. Riddell entered after the question had been put and carried, and claimed the right to vote, having been in the building and in court, and having entered the Convocation room while the vote was being taken and before being concluded. The chairman ruled against Mr. Riddell's right to vote.

Mr. Riddell then asked leave to record his vote.

Mr. Kerr moved, seconded by Mr. Martin, that Mr. Riddell be allowed to vote. Ruled out of order.

It was then ordered by unanimous consent that Mr. Riddell be at liberty to state how he would have voted, and record the same. Mr. Riddell stated that he would have voted "Nay."

Moved by Mr. Osler, seconded by Mr. Moss, that it be referred to the Legal Education Committee to frame Rules respecting the admission of women to practice, and to report on the same at the next meeting of Convocation.

Mr. Martin moved in amendment that the motion stand adjourned until the 27th day of December instant for further consideration.

The vote was taken on Mr. Martin's amendment, which was lost on the following division:

Yeas—Messrs. Martin, Watson, Teetzel, McCarthy, Shepley, and Riddell—6.

Nay—Messrs. Moss, Bruce, Blake, Hoskin, Britton, Mackelcan, Kerr, Barwick, Strathy, Meredith, Lash, Douglas, Bell, Hardy, Osler, Aylesworth, Robinson, and Sir Oliver Mowat—18.

The vote was then taken on Mr. Osler's motion, and stood as follows:

Yeas—Sir. Oliver Mowat, Messrs. Moss, Lash, Barwick, Douglas, Hoskin, Bell, Aylesworth, S. H. Blake, Osler, Hardy, and Britton—12.

Nays—Messrs McCarthy, Martin, Watson, Meredith, Shepley, Teetzel, Riddell, Robinson, Kerr, Mackelcan, Strathy, and Bruce—12.

The chairman voted with the yeas, and the motion was declared carried.

By consent, Mr. McCarthy's notice of motion respecting the presentation of Reports to Her Majesty's Privy Council was postponed to December 27th.

By unanimous consent, consideration of the proposed Rule respecting the formation of a Retirement Fund was postponed until December 27th.

Convocation then adjourned.

Tuesday, December 27th, 1892.

Present: Sir Oliver Mowat, Attorney-General, and Messrs. Martin, Moss, Strathy, Riddell, Douglas, Hoskin, Osler, Irving, Magee, Barwick, Britton, Guthrie, Aylesworth, Lash, Shepley, Bruce, Robinson, Watson, and Hardy.

In the absence of the Treasurer, Mr. Irving was appointed chairman.

The minutes of the last meeting of Convocation on the 9th day of December, 1892, were read, confirmed, and signed by the chairman.

Mr. Moss, from the Legal Education Committee, presented the Report of that committee in the matter of the devises and bequests to the Law

Society contained in the will of the late T. B. P. Stewart, being the draft of a bill to be laid before the Legislature of Ontario at its next session, and entitled "An Act to confirm the will of the late T. B. P. Stewart, and to enable the Law Society of Upper Canada to accept the devises and bequests thereunder."

Mr. Moss, from the Legal Education Committee, presented a Report formulating Rules for the admission of women as solicitors in pursuance of 55 Vict., chap. 32 (Ont.).

Moved by Sir Oliver Mowat, seconded by Dr. Hoskin, that the Report be adopted.

Moved in amendment by Mr. Martin, seconded by Mr. Strathy, that the further consideration of the Report be deferred to this day six months.

Yeas—Messrs. Martin, Strathy, Riddell, Bruce, and Shepley—5.

Nays—Sir O. Mowat, Dr. Hoskin, and Messrs. Aylesworth, Douglas, Barwick, Lash, Magee, Britton, Osler, Moss, and Guthrie—11.

The amendment was declared lost.

The vote was then taken on the original motion, which was carried.

Mr. Moss introduced a Rule to give effect to the Report as follows:

RULES FOR THE ADMISSION OF WOMEN TO PRACTISE AS SOLICITORS.

1. Any woman who is a graduate in the Faculty of Arts in any university in Her Majesty's dominions empowered to grant such degrees, and any woman being competent as a student of any university in this Province, within the requirements of Rule 135, shall, upon compliance with the following Rules, be entitled to admission to practise as a solicitor pursuant to the provisions of the statute 55 Victoria, chapter 32.

2. Every such woman shall

(*a*) Have been entered upon the books of the Society in the same manner and upon the same conditions as to giving notice, payment of fees, and otherwise, as are provided for admission of students-at-law and articled clerks of the graduate and matriculant class respectively;

(*b*) Have been bound by contract in writing to serve as a clerk to a practising solicitor for a period of three or five years from the date of her entry upon the books of the Society, according as she shall have been entered on the books as a graduate or matriculant;

(*c*) Have actually served under such contract for such period of three or five years, as the case may be;

(*d*) Have complied with the conditions of the statutes and the Rules of the Society with regard to execution and filing of such contract and any assignment thereof, and with every other requirement of the Society with regard to articled clerks, including attendance upon lectures in the Law School, passing of examinations, payment of fees, and every other matter or thing, compliance with which by an articled clerk is a prerequisite to admission to practise as a solicitor.

3. The fees payable by such woman upon receiving a certificate of fitness to practise shall be the same as that payable by other articled clerks.

4. Upon admission to practice, such woman shall become subject to all the provisions of the statutes and the Rules of the Society with regard to solicitors, and non-compliance with or failure to observe the same or any of them shall subject her to all the disabilities and penalties imposed upon other solicitors.

5. The Society may from time to time repeal, alter, vary, or amend the foregoing Rules or any of them.

6. These Rules shall take effect upon and after the last day of Hilary Term, 1893.

Moved by Mr. Guthrie, seconded by Mr. Moss, that the Rule be read a first time. The Rule was read a first time and second time, and by unanimous consent was read a third time and carried.

Dr. Hoskin, on behalf of Mr. McCarthy, seconded by Mr. Osler, moved as follows: That it having been brought to the notice of Convocation

that the Judicial Committee of the Privy Council have not in the Library in use by the members the Reports of the courts of this Province, be it resolved, that the Secretary be instructed to forward from this time out to the Registrar of that body the Reports as published from time to time; and that he be further instructed to forward the series of Reports published under the direction of the Society known as the "Ontario Reports," including the Appeal and Practice Reports and the Ontario Digest, the past volumes of the said Reports and Digest being suitably bound. Carried.

Mr. Osler, chairman of the Reporting Committee, read a letter, dated December 27, from Mr. J. E. Jones, barrister, of Toronto, on the subject of the preparation by him of a work on cases judicially noticed in Ontario during the last twenty-five years, to be compiled on the lines of the Index of English cases prepared by Messrs. Talbot and Fort. Ordered, that without committing Convocation to granting aid to similar undertakings, the subject of the letter be referred to the Reporting and Finance Committees for consideration and report to Convocation.

The letter of Mr. Ashman Bridgman of December 17 to the Secretary (which had been duly acknowledged on the 19th inst.) on the subject of the Report of the Discipline Committee in the matter of Messrs. Scane, Houston, Stone & Scane and one George Watson, an unlicensed conveyancer, was read, and on motion it was ordered by Convocation that the matters set out in the letter be referred to the Discipline Committee in pursuance of the Report to Convocation of the 19th September, 1890, and adopted on that day. It was further ordered that the Discipline Committee have power to incur the necessary expenses in connection with the investigation of the charges against said Watson.

Mr. Barwick moved, pursuant to notice given at the last meeting of Convocation on the 9th inst., that Rules 29 and 33 be amended by inserting therein the word "Friday" for the word "Saturday" where it occurs in such Rules. The Rule was read a first and second time, and by unanimous consent was read a third time and carried.

Mr. Barwick moved, pursuant to notice given at the last meeting of the 9th inst., that to commemorate the memory of the late Mr. T. B. Phillips Stewart and his desire to aid students in pursuing their studies, the rooms in the Law School wing used for the purposes of a students' library be designated "The Phillips Stewart Library," and Convocation directs that a tablet shall be placed in the reading room of such library, upon which shall be engraved an inscription to be approved by the Legal Education Committee.

Mr. Shepley, chairman of the Library Committee, presented the Report of that committee, accompanied by the Report of the Librarian for the current year to date, which was read and taken into consideration:

Your committee is pleased to report a remarkable improvement in the condition and efficiency of the Library during the past year.

Your committee deems it only fair to say that this improvement is the result of the marked ability and efficiency of the Librarian.

Your committee submits herewith a Report presented at its last meeting by the Librarian, and would particularly call the attention of Convocation to the valuable information and suggestions contained therein.

Your committee would recommend that this Report be printed and distributed among the profession with the next number of the current Reports.

The Report was adopted, and it was ordered that the same be printed and distributed to every member of the profession with the number of the Reports next to be issued.

Mr. Watson presented an interim Report of the committee appointed in relation to the fusion and amalgamation of the divisions of the High Court of Justice, as follows:

Your committee begs leave to present a further interim Report.

1. Further inquiry has satisfied your committee that the unanimous opinion of members of the profession and of all others interested in the general administration of justice throughout the Province is in accord with the last report of your committee in regard to the pressing necessity of the complete fusion and amalgamation of the three divisions of the High Court of Justice, and that the present system of double circuits and separate Divisional Courts is burdensome and intolerable, and greatly weakens the many salutary reforms of the Judicature Act of the Province.

2. Your committee herewith presents an almost complete return from the Local Registrars of the sittings of the Court of Assize and of the Chancery Division throughout the Province for the years 1891 and 1892, from which it will appear that in very many instances there has been no work to be done at the sittings of one of the courts, and that the double circuits have quite outlived the requirements of the public.

3. In fifteen of the county towns, there is no provision for a sitting of the Chancery Court; such provision exists only for twenty-five places, including Toronto.

4. In ten places where such sittings were held during these years, there was at the sitting of the court no work to be done.

5. In twenty-four places during these years, the court sat one day; and in twenty-two places the court sat only two days.

6. Your committee begs further to report that, in pursuance of the directions given, a number of its members waited upon Sir John Thompson, Minister of Justice for the Dominion, during the last session of Parliament, in relation to the increase of salary to the judges. The apparent interest taken in the subject by the Minister, and his apparent appreciation of the necessity for action in the matter, justified your committee in the hope then entertained, but in which your committee has so far been disappointed, that the matter would be satisfactorily dealt with by Parliament.

7. Your committee beg also to report that, in pursuance of further directions, a number of its members waited upon Sir Oliver Mowat, the Attorney-General for this Province, in regard to the legislation necessary to give effect to the complete fusion of the divisions of the court, and your committee believes that the Attorney-General is quite in accord with the popular opinion on the subject, and that if approval and sanction be expressed by the judiciary he will promote such further legislation, if any, as may be required to complete the amalgamation of the courts.

8. Your committee has had regard to the instructions given to consider certain other subjects, and beg to report thereon as follows:

That the Rules relating to appeals to the Court of Appeal should be amended, and should provide that the time for giving notice of appeal and perfecting the appeal to the Court of Appeal should be limited to a much shorter time than is now provided for, and that in all cases every appeal should be perfected within one month at most from the time of the judgment of the court below.

9. Your committee does not think it desirable to modify the provisions of the Statutes and Rules as to giving security upon appeals, nor that any suggestion should be made at the present time with respect to any increased number of sittings by the judges of the Court of Appeal.

10. With regard to the suggestions that judges at Assize Court should hear and dispose of all motions which a judge sitting in court in Toronto might dispose of, your committee is of the opinion that the consideration of this question, and suggestions with respect to it, should be deferred until after the fusion and amalgamation of the divisions of the court has been completed and the double circuit has been abolished, and thereupon this matter, with many others requiring attention, may then be dealt with and disposed of.

Ordered, that a Special Committee be appointed, consisting of Messrs. Irving, Robinson, Martin, Osler, Meredith, Hoskin, Moss, Strathy, and Watson, to wait on the judges for the purpose of pressing upon them the views set forth in the above Report, and that Mr. Watson be convener of such committee, and that further consideration of the report be deferred to the second day of Hilary Term next.

By the unanimous consent, consideration of the proposed Rule respecting the formation of a Retirement Fund was postponed until the second day of Hilary Term next.

The Secretary was directed to communicate to the Committee of Journals and Printing the desirability of a new compilation of the Rules of the Law Society being made.

Convocation rose.

J. K. KERR,
Chairman Journal Committee.

DIARY FOR AUGUST.

1. Tuesday.....Slavery abolished in British Empire, 1834.
6. Sunday......*10th Sunday after Trinity.* Thos. Scott, 4th C.J. of Q.B., 1804.
7. Monday.....Duquesne, Governor of Canada, 1752.
12. Saturday....First American railroad completed, 1830.
13. Sunday......*11th Sunday after Trinity.* Sir Peregrine Maitland, Lieutenant-Governor, 1818.
14. Monday.....Last day for notice for call.
17. Thursday....General Hunter, Lieutenant-Governor, 1799.
19. Saturday....River St. Lawrence discovered, 1535.
16. Sunday......*12th Sunday after Trinity.*
25. Friday.......Francis Gore, Lieutenant-Governor, 1806.
26. Saturday....Last day for filing papers for certificate and call, and payment of fees.
27. Sunday......*13th Sunday after Trinity.*
31. Thursday....Long Vacation ends.

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [June 10.

WILLIAMS *v.* RICHARDS.

Waters and watercourses—Defined channel—Surface water—Right to drain into neighbouring lands.

That cannot be called a defined channel or watercourse which has no visible banks or margins within which the water can be confined; and an occupant or owner of land has no right to drain into his neighbour's land the surface water from his own land not flowing in a defined channel.

The rule of the civil law that the lower of two adjoining estates owes a servitude to the upper to receive all the natural drainage has not been adopted in this Province.

McGillivray v. *Millin*, 27 U.C.R. 62; *Crewson* v. *Grand Trunk R.W. Co.*, *Ib.*, 68; *Darby* v. *Crowland*, 38 *Ib.*, 338; and *Beer* v. *Stroud*, 19 O.R. 10, considered.

Douglas, Q.C., for the plaintiff.

M. Wilson, Q.C., for the defendants.

Chancery Division.

BOYD, C.] [May 20.

BRETHOUR *v.* BROOKE ET AL.

Mortgage—Mortgagee's right to take possession and lease—Notice—Selling and accounting for timber.

There is nothing in covenant 7, page 968, R.S.O., c 107, repugnant to covenant 14, page 971, and a mortgagee, when his mortgage is in default, may enter under the former without giving the notice provided for by the latter, and make any lease which will not interfere with the mortgagor's right to redeem by payment of the arrears and to resume possession. The action intended by the latter is not the mere taking possession for the purpose of keeping down the interest, but the entering on the land to lease or sell in such wise that the right of redemption shall be postponed or destroyed.

When the security is scanty, it is competent for the mortgagee to make the best provision he can for his own safety, even to the cutting down of trees, which power he can confer upon others under him, subject to an account to the owner of the equity of redemption at the proper time.

Millett v. *Davey*, 31 Beav. 476, cited.

Quære: Whether a mortgagor would be entitled to pay up the arrears and resume possession even if the lease was made without the notice provided for by covenant 14 in a case where the security was scanty, and the mortgagee has been compelled to protect himself by making the most provident lease possible?

Lynch, *Staunton*, and *Livingston* for the plaintiff.

Hoyles, Q.C., and *V. MacKenzie*, Q.C., for the mortgagee.

Oles for the tenants.

FERGUSON, J.] [June 20.

IN RE CITY MUTUAL INSURANCE COMPANY.

STEIFELMEYER'S CASE.

Mutual insurance company—Policy—Winding up—Cancellation—Assessmen—R.S.O., c. 167, s. 114, s-s. 19.

Appeal from Master in London.

A resolution for the voluntary liquidation of a mutual insurance company was adopted at a general meeting on a report of directors, which contained a recommendation that policies be sent in to the liquidator, and that members seek insurance elsewhere. One of the policy-holders sent in his policy accordingly, but no notice of actual cancellation was given to him, nor was anything further done in reference to cancellation. Afterwards an assessment was made upon the policy.

Held, that the policy had not been cancelled, and the assessment was good.

W. H. P. Clement for the appellants.

Hoyles, Q.C., *contra*.

Practice.

Court of Appeal.] [June 21.

LESLIE *v.* POULTON.

Summary judgment—Rule 744.

In order to obtain the very extraordinary relief provided for by Rule 744, the plaintiff must not only make out as strong a case as he would under Rule 739, but, in addition, establish some special ground for relief. In this case the endorsement showed the plaintiff's claim to be for an amount paid as surety for the defendant, and also a sum for costs paid and interest on costs ; and the plaintiff, on his application, showed that the defendant was a married woman, and that, owing to her financial affairs, the only way in which he could recover his claim was by recourse to a certain fund coming to the defendant under a mortgage held by her. The defendant set up a partnership between the plaintiff and herself, and claimed that, on accounts taken, the balance would be in her favour.

Held, without saying that any clear legal defence to the action had been shown, that enough appeared of the dealings and transactions between the parties to make it not unreasonable that the plaintiff should be left to his ordinary remedies for the recovery of his claim.

Quære: As to effect of the items in endorsement for costs and interest on costs, and as to the application of Rule 744 to actions between creditor and debtor?

Remarks on the origin and application of the rule.

W. R. Smyth for the defendant, appellant.

F. E. Titus for the plaintiff, respondent.

Obituary.

MR. JUSTICE PATTERSON.

The Hon. Christopher Salmon Patterson, one of the judges of the Supreme Court of Canada, died on the 24th of July last, in the 71st year of his age. Mr. Patterson was among the youngest of the large family of Mr. John Patterson, who at the time of his son's birth was a merchant in London. The family removed to Belfast, Ireland, where Mr. Patterson was in part educated at the Royal Belfast Academical Institution, of which his brother-in-law, the late Rev. Wm. Hamilton, D.D., was principal. Dr. Hamilton resigned that position to become a missionary of the Free Church of Scotland, and came to Upper Canada in 1844. He settled in Picton, and Mr. Patterson followed with the family. Here at the age of twenty-one he entered the law office of Mr. Philip Low, Q.C., and in time became his partner. Mr. Patterson soon secured a name for accurate knowledge of law, affability, and high personal character. In social circles he was the soul of wit, good humour, and kindness. In 1856 Mr. Patterson entered into partnership in Toronto with the late Sir Adam Wilson and Mr. James Beaty, Q.C. The Hon. Robert Baldwin had been

formerly in partnership with Mr. Wilson in the same office, and until his decease in 1858 retained an apartment in the office. Mr. Patterson soon became known as an able counsel, being principally retained on the Eastern Circuit, where he was best known. The late Mr. John Hector, Q.C., for a time aided in the Chancery part of the business, until in 1862 Mr. J. C. Hamilton entered the firm, which was then known as Patterson, Beaty & Hamilton, Mr. Adam Wilson having been called to the Bench.

The Court of Appeal for Ontario having been constituted on its present basis, Mr. Patterson was, on the advice of the Hon. Edward Blake, then Minister of Justice, appointed one of its judges on June 6th, 1874. He had before this received patents as Queen's Counsel from both Dominion and Provincial authorities. The value of his assiduous labours during the fourteen years of his service on the Ontario Appellate Bench is acknowledged by all. He was a man of general erudition and knowledge of character, a well-read and painstaking lawyer, and able judge. When Judge Henry died, Sir John Macdonald offered Judge Patterson a seat on the Supreme Court Bench of Canada, and urged his acceptance. It was with reluctance that Mr. Patterson agreed to remove to Ottawa. His relations with his fellow judges, the legal profession, and the citizens of Toronto had been very pleasing.

In the many judgments on constitutional points of the Court of Appeal for Ontario, as well as in several such cases before the Supreme Court during the four years of his sitting there, Judge Patterson gave learned and elaborate judgments, which will be remembered and cited in the constitutional history of Canada.

The case of the *Province of Manitoba* v. *The Canadian Pacific Railway Company*, decided in January, 1889, was one of interest and importance to the provinces, and its decision aided much in breaking the chain of monopoly by which the great company sought to bind Manitoba.

It came up before the Supreme Court on reference by the Dominion Government, and was among the first cases in which Judge Patterson had sat in that court, and it is well understood that it was through his opinion that the court was led to certify that the Provincial Government could make the road from Winnipeg to Portage la Prairie and cross the C.P.R. track under such directions as the Railway Committee of the Privy Council should dictate or provide. He was led to this decision, it is believed, by consideration of the Act of the Dominion Parliament passed in May, 1888, 51 Vict., c. 92, authorizing the construction of bridges over the Assiniboine for the purposes of the local railway, which Act had not been particularly relied on in argument by counsel, but did not escape the scrutiny of the late judge. It would be interesting to have published such of the opinions of the judges in that case as were in writing, and may still be forthcoming.

Judge Patterson never sought any political position. He was a commissioner for the amendment of judicial procedure, and of the Acts relating to insurance, and in many special cases advised the governments of both the Dominion and Province.

He took a warm interest in the Toronto General Hospital, and was for several years chairman of its board. Next to his profession, nothing so occupied his attention as the hospital, and its present efficiency is largely due to his

efforts. Nurses and patients all loved to see him enter the wards, where his cheerful countenance and kindly words were better than medicine. He was a Bencher of the Law Society from the time that office became elective until he left the Bar. He was among the founders of the Confederation Life Association, and the Building and Loan Association, and was the solicitor of those important institutions.

In 1853 Judge Patterson married Miss Dickson, of Glen-Conway, Ireland, an accomplished lady, who survives him, and by whom he had three sons and two daughters. Mr. A. D. Patterson, the eldest son, is well known as an artist. The second son, C. J. Patterson, is a physician. The daughters are Mrs. H. H. McPherson, of Halifax, and Mrs. George Hodgins, of Windsor, Ont. The judge's eldest sister was the wife of the eminent Irish lawyer, Gerald Fitzgibbon, Q.C., and Sergeant-at-Law, whose son of the same name was Solicitor-General for Ireland, and is now the able Lord Justice of the Court of Appeal at Dublin. His only surviving brother is Mr. James Patterson, who was for many years connected with the Department of Public Instruction in Ireland. A friend who knew the late judge well says of him: "The first time you saw him you felt that he was a man to be trusted. In addition to this, his genial manner, his appreciation of humour, and his extensive literary knowledge made him a charming companion. It was difficult to find a man who had read more widely or more thoroughly than he, in directions more or less remote from his profession. He had a marvellous memory, and an accurate literary taste. This enabled him to become familiar with the choicest productions of our best writers, especially in poetry." "It was, however, as a man, noble and strong, with a keen sense of duty, and a high conception of what life should be, that those who knew him love to think of him. He was a sterling character, and none could come in contact with him without being helped."

Judge Patterson was in religion a Presbyterian, and took a warm interest in the affairs of his church. At the first sitting of the Vacation Court after his decease, the Hon. Chancellor Boyd, addressing the Bar, spoke as follows:— "Since the last session of this court the death of Mr. Justice Patterson, of the Supreme Court of Canada, has brought to a close the work of a good judge and a good man. He needs no eulogium from the lips of his judicial brethren, for his life was lived openly, so that all could see and value his devotion to the claims of his country and of his fellow-men. And while he did not stint himself in lending a helping hand to many schemes of philanthropy and benevolence, he never allowed the broader claims of humanity to interfere with the special functions of his judicial office. His judgments will live after him, and will supply not a few landmarks for future practitioners and judges. Speaking for myself, I lament the loss of a much-loved friend; but, apart from personal consideration, I now bear testimony to the assiduous and conscientious discharge of public duty which characterized his life as a judge. He was the friend of the student as well as of the solicitor and counsel who practised before him. He spared no pains to discharge that debt which every lawyer owes to his profession, by seeking to conform the practice and principles of jurisprudence to the advancing and developing needs of a more complex civilization. But I need not dwell longer on his merits—I would sum up all in the words already used—he was a good judge and a good man."