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SUITORS in person appear to be somewhat of a nuisance in the English courts of law. They are said to be persistent appellants, and develop litigiousness to an extent that would fill with envy the Quirk, Gammon & Snaps of the present day. Perhaps it is because law is cheaper here that we are not much troubled with this class; or, perhaps, because a young and healthy country, with a fine climate, does not breed cranks so freely as the frost-bound, snow-clad hills of our motherland. By the way, there is a great deal of excuse for those who have to put up with the the severe climate that prevails in England, as they hear with envy of the bright skies and balmy breezes that Canadians enjoy.

THE great question of the hour is prohibition or otherwise. The grand jury in Baltimore, Md., U.S., makes a good suggestion. We all know how those who frequent saloons at unauthorized hours for the purchase of liquor cease to have any regard for the sanctity of an oath, and consider it a matter of honour to perjure themselves for the protection of the gentleman behind the bar. This grand jury, realizing the difficulty of the position, suggests that a law should be passed "to require all houses selling liquor to have a window so located as to command a full view of the bar and of the room in which the bar is situated, the window to be free from curtains and obstructions of all kinds during the hours which the law now says it is unlawful to sell liquor." An exchange suggests that it would be well also to require the bar and the room to be lighted Sunday nights, for men who will commit perjury to get a drink would not mind taking it in the dark on faith, if they could not get it in any other way.

In a variety of ways courts of law have been bringing contempt of court into contempt The public are beginning to think it is only a useless relic of a bygone age, and so we are in danger, possibly, of the pendulum swinging too far in the other direction. The judges will, however, have no one to blame but themselves Some of the English legal periodicals have been taking Lord Coleridge to task for sentencing a boy to forty-eight hours' imprisonment for having cheered in court. The lad apparently acted on the impulse of the moment, without any thought of showing disrespect to the court. It is reported that the Chief Justice afterwards discharged the delinquent, and subsequently presented him with a sovereign as a douceur. This, we should doubt: but, if so, there must be some bewilderment in his mind what he was punished for, and leave a lurking impression that it might be well to perform an encore.

There are all sorts of ways of publishing a libel. One which we believe is entirely novel is coming before a court in Nebraska. An enraged father-in-law made up his mind that his daughter was done to death by her husband. Having buried her with great pomp and ceremony he erected over her remains an imposing tombstone, on which he inscribed a legend to the effect that the deceased had been murdered by her husband. The latter denied the truth of the statement, and desires damages for the insult. It is an evidence of the advancement of civilization in the West that this dispute is to be settled in the courts, and not with revolvers or bowie knives; but, in the opinion of the journal from which we take this note, "It is a step that should never be taken, or, if taken, never be countenanced by the courts. The tombstone is a licensed liar. It has practised without protest or hindrance since the day when men first learned how to make a lithograph. Its slanders have harmed nobody on earth, nor have its eulogies promoted any one in heaven."

The London Chamber of Arbitration does not appear, so far, to have been a great success. Great things were expected from it by its promoters. Elaborate preparations had been made for the large number of cases which were expected to come before it,

but up to the middle of the year only about a dozen cases had been tried. The *Standard* called attention to the subject, inquiring from those in authority why it had such small success. The chairman of the Joint Committee of the Chamber of Arbitration and the City Corporation came to the defence of his tribunal, and said he was not discouraged; that he did not expect that it would be without the evil report and light esteem which a forum of this novel character might be expected to meet. Whilst this is true, we are inclined to agree with our English namesake that one principal cause of the failure is to be found in the apathy of the commercial community itself. That journal is still of the opinion that a judge informed by expert evidence, and aided by scientific assessors, is a better and more impartial tribunal for the disposal even of technical cases than any body of arbitrators could be. However this may be, it cannot be denied that the founders of this Chamber have done good service in stimulating a spirit of reform among the members of the legal profession, and in bringing about a discussion upon some of the defects of the old tribunals of the country.

Most of our readers will no doubt, have noticed that the Judicial Committee of the Privy Council has reversed the judgment of the Supreme Court in *Duggan* v. *The London & Canadian Loan and Agency Co.*, *ante* vol. 28, p. 343. The judgment of the Privy Council may be found in the November number of the Law Reports' appeal cases, p. 506. We have on more than one occasion referred to this case, and think it may be satisfactory to the moneyed classes of the community to find that the ultimate decision has been in favour of the defendants. It is somewhat remarkable that in the report of the case before the Privy Council no authorities are referred to. The arguments of counsel are not reported, and in their lordships' judgment, delivered by Lord Watson, not a single decision is mentioned. In the judgment of the Privy Council, the case turned on the simple question, Whether or not the fact that the bank manager from whom the defendant acquired the shares in question held them "in trust" was sufficient to put the defendants upon inquiry as to the prior title to the shares? Their lordships came, we are glad to say, to what appears to us to be the very common-

sense conclusion, that the words "in trust," under the circumstances, merely imported that the bank manager had them in trust for the bank of which he was manager, and that there was nothing in those words to necessitate any further inquiry on the part of the defendant dealing with him as a servant of the bank. The case is certainly a striking illustration of the glorious uncertainty of the law. Street, J., who tried the case, decided in favour of the plaintiff. He was reversed by the Court of Appeal, which again was reversed by the Supreme Court, which finally has been reversed by the Privy Council. The plaintiff and defendants have respectively twice succeeded; but the old adage is here verified, "He laughs best who laughs last." It may also be observed that the numerical preponderance of judges was largely in favour of the defendants. For while Street, J., and three of the judges of the Supreme Court were in favour of the plaintiff, three judges of the Court of Appeal and two of the Supreme Court were in favour of the defendants, besides eight in the Privy Council. If numbers add anything to the weight of a decision, the judgment of the Privy Council ought to be good law.

IMPERIAL AMENDMENTS TO THE BRITISH NORTH AMERICA ACT.

The Imperial Parliament, apparently without any notice to the Canadian Government or Parliament, and under the guise of amendments recommended by the Commission for the Revision of the Statute Law, has seen fit to repeal certain sections of the British North America Act of 1867. The Canadian Constitution has not, in this instance, been given the dignity of a special repealing Act, but the elimination or repeal of the condemned sections of our Constitutional act appears in a long schedule of several hundred Acts, appended to the "Statute Law Revision Act, 1893," which schedule occupies seventy-six printed pages of the English Statutes. The repealing Act is 56 Vict., c 14 (Imp.), and the entry in the repealing Schedule appears as follows:

"30 and 31 Vict., c. 3. The British North America Act, 1867, in part, namely:

"From 'Be it therefore' to 'same as follows.'

"Section two.

"Section four to 'provisions' where it last occurs.

"Section twenty-five.

"Sections forty-two and forty-three.

"Section fifty-one from 'of the census' to 'seventy-one and' and the word 'subsequent.'

"Section eighty-one.

"Section eighty-eight from 'and the House' to the end of the section.

"Sections eighty-nine and one hundred and twenty-seven.

"Section one hundred and forty-five.

"Repealed as to all Her Majesty's Dominions."

The most important change which these amendments make is the striking out of the clause recognizing the enacting power of the Crown in making laws, and which appeared in the B.N.A. Act as follows:

"Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same as follows:"

Before the present enacting form was adopted, the early statutes appear to have been enacted or adopted upon the petitions presented to the Crown by the Commons, which were usually referred to certain tryers, being Lords of Parliament, and afterwards considered and granted or approved by the King. The form in the Statute of Merton recited that "It was treated for the Commonwealth of the Realm upon the articles underwritten: thus it was granted as well of the Archbishops, Bishops, Earls, and Barons, as of the King himself, and others."

In some of the early English statutes the form was sometimes as follows: "The King, to whom these presents shall come, greeting"; without repeating in the subsequent chapters or Acts any enacting power of the Crown. In a few old Acts the form was: "The King commandeth"; while in others neither King, Lords, nor Commons were mentioned as enacting the law. In some of the latter the phrase was: "It is therefore provided and ordained."

The validity of an Act or Statute of Parliament is not affected by the omission of the recital of the enacting power of the Crown, or the advice and consent of Parliament, although the insertion or recital of such in the Act or Statute would be the evi-

dence of the assent of the Crown, and of the advice and concurrence of the two Houses of Parliament.

In Gael on Law Composition (p. 136), it is stated: "Most instruments have some forms introductory of their principal provisions. In a deed, there is the testatum, or witnessing part. In a deed poll, the burden is ushered in with the token: 'Now know ye.' In an Act of Parliament is used the well-established form: 'Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in the present Parliament assembled.' This form (he adds) is singular, but sacred from the draftsman's alteration. It admits of varieties hereinafter mentioned," of which he gives examples in the forms used in Acts of Supply, and of Grace, and in Colonial Acts (p. 222). And in a footnote he adds: "'*Ad Divos adeunto caste*,' says Cicero in the character of a Roman lawgiver. In later ages of Rome, Acts of legislation were often modestly expressed by '*Videtur*.' As regards the British Legislature, it was an eggregious mistake—the phrase 'Be it enacted' is as to things commanded in the law, a form of supererogation, almost peculiar to British legislation. It signifies, let it be put in the form of an Act or proceeding of Parliament—that is, into a written law, that, etc.; and then follow the commands which, when prescribing conduct, are expressed by 'shall.'"

The enacting form in the United States is: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled." The enacting form adopted generally by the State Legislatures is more democratic: "The people of the State of . . . represented in Senate and Assembly, enact as follows."

The omission of any recital of the enacting power from the Imperial Statutes may mean an adoption or recognition of some of the earliest legislative forms in which the recital of the enacting power was omitted; or it may mean an adoption of a democratic form more in harmony with the political idea now so largely developed of the popular sovereignty of the people, and which Blackstone says exists in the English system; for he states that "in a democracy there can be no exercise of sovereignty except by suffrage, which is the declaration of the people's will." (1 Bl. Com. 170.)

The repeal of section two strikes out the following little bit of legislative surplusage: "The provisions of this Act referring to Her Majesty the Queen extend also to the heirs and successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland." This clause came from the Confederation resolutions, and was adopted "with cheers" by the representatives of the several Provinces. The sovereignty of the Queen over Canada is assured by section nine, and by her royal style being acknowledged in our legislative Acts, as well as by the loyalty of the people, rather than by a rhetorical flourish in an Act of Parliament.

The other sections repealed are those which were of a temporary character, and which therefore may be regarded as spent or *effete*.

The repealed part of section four related to the time of the commencement of the subsequent provisions of the Confederation Act.

Section twenty-five provided for the summons of the first members of the Senate.

Sections forty-two and forty-three provided for the first election to the House of Commons, and to fill vacancies occurring between that election and the first meeting of Parliament.

The repealed part of section fifty-one provided for the readjustment of the representation of the people in the House of Commons after the census of 1871.

Section eighty-one provided that the first sessions of the Legislatures of Ontario and Quebec should be called within six months after the union.

The repealed part of section eighty-eight provided that the then existing Assembly of New Brunswick should continue for its usual legislative term, unless sooner dissolved.

Section eighty-nine provided for the first elections to the Legislatures of Ontario, Quebec, and Nova Scotia.

Section one hundred and twenty-seven provided for the contingency of any Legislative Councillors of the Provinces becoming Senators of the Dominion.

Section one hundred and forty-five confirmed the declaration of the conference of provincial delegates that it was the duty of the Parliament and Government of Canada to provide for the construction of the Intercolonial Railway.

With the exception of the novelty of striking out the recital of the enacting power, and the applicability of the Act to the Crown's sovereignty, the amendments simply eliminate the clauses of the British North America Act, 1867, which have accomplished their object, and which are, therefore, now *effete*.

T. H.

CURRENT ENGLISH CASES.

The Law Reports for September comprise (1893) 2 Q.B., pp. 225-285; (1893) P., pp. 233-255; and (1893) 2 Ch., pp. 529-667.

INFANT, CUSTODY OF—PARENT AND CHILD—GUARDIANSHIP, RIGHT OF MOTHER TO —HABEAS CORPUS, JURISDICTION OF COURT UPON.

The Queen v. *Gyngall*, (1893) 2 Q.B. 232, is another of those cases, of which there have of late been several, in which a Roman Catholic mother, backed up by vehement Roman Catholics, has sought by means of *habeas corpus* proceedings to remove her child from the custody of Protestants. The child in question was about fifteen years of age, and had from her infancy had a somewhat chequered career. She ultimately, with the consent of her mother, on two separate occasions, was taken charge of by a Protestant institution carried on by the defendants, and although the child had been educated as a Roman Catholic she had lately, without, as the court found, any attempt at proselytizing on the part of the defendants, adopted Protestant views, and desired to remain with the defendants. Under these circumstances, although no misconduct could be attributed to the mother, the Court of Appeal (Lord Esher, M.R., and Kay and Smith, L.JJ.) considered that in the exercise of the Chancery jurisdiction over infants as *parens patriæ* it would not be for the welfare of the infant to remove her from the defendants' custody, and that the mother had no absolute right to her custody. The fact that the girl was nearly of the age of sixteen, at which time she would be legally entitled to choose for herself whether she would live with the defendants, led Smith, L.J., to conclude that it would only make "a useless and vexatious break in her life" if the mother's wishes were acceded to.

BUILDING SOCIETY—WINDING UP—ADVANCED MEMBER—MORTGAGE TO SECURE ADVANCED SHARES—PAYMENT OF MORTGAGE BY MEMBER.

In *The London Provident Building Society* v. *Morgan*, (1893) 2 Q.B. 266, a member of a building society, which was being wound up, had given a mortgage, repayable by instalments, as security for advanced shares, and which, by the rules of the society, the mortgagee was entitled to repay at any time before the periods named in the mortgage, less a discount in respect of all moneys paid in advance of the due dates. There were outside creditors of the society, and the question arose whether the mortgagee was in the position of a mere debtor to the society, or whether he was properly placed in the list of contributors as a member, and also whether, being a contributor, he was liable to be called on to pay up the amount of his mortgage immediately, and before the periods allowed by the mortgage for repayment had expired. A Divisional Court (Bruce and Kennedy, JJ.) decided both of these questions in the affirmative. In this case, as *In re Cordova Union Gold Co.*, (1891) 2 Ch. 580, it was held that the contract to repay the shares by instalments was determined by the winding-up order, and that, subject to the discount settled by the rules of the society in respect of instalments paid before the times named in the mortgage, the mortgagee might be ordered to pay up immediately the whole amount remaining due on his mortgage; a right, however, which can only be exercised in favour of outside creditors.

PROBATE—UNEXECUTED PAPER SETTING FORTH TRUSTS—PROBATE OF WILL WITH DIRECTION TO ADMINISTER IN ACCORDANCE WITH TRUSTS OF UNEXECUTED DOCUMENT.

In the goods of Marchant, (1893) P. 254, a testatrix dictated a will by which she made various bequests, and appointed one Threlfall her executor. She then sent for two gentlemen to see her execute it, and one of them, having read it over, represented that to execute the document would lead to great expense, and recommended the testatrix to execute a shorter paper, which he would draw up for her, and would carry out all she wished. He accordingly drew up a will for her, whereby she bequeathed all her property to one Walter Marchant "for the purposes I require him to do absolutely," which was duly executed. Marchant having renounced probate as executor according to the tenor,

Threlfall, who was named as executor in the unexecuted paper, applied for probate. The president, though holding that the first paper could not be admitted to probate, granted probate of the second paper, and ordered the executor to administer the estate according to the trusts of the first paper. At least that is what the report says. But for that we should have thought it would be a case for administration with the will annexed.

STATUTE OF LIMITATIONS (3 & 4 W. 4, c. 27), s. 26 (R.S.O., c. 111, s. 31)—CONCEALED FRAUD—FRIVOLOUS ACTION—STRIKING OUT PLEADINGS.

Willis v. *Howe*, (1893) 2 Ch. 545, is another case in which the Court of Appeal (Lindley, Bowen, and Kay, L.JJ.) have affirmed the decision of Kekewich, J., putting a summary end to an action on the ground of its being frivolous and vexatious. The litigation arose out of a supposed claim to the Jennens estates, of which we have heard a good deal on and off for years past. The claim of the plaintiff was based on the allegation that William Jennens died intestate in 1798 entitled to the estate in question, and that the plaintiff's ancestor was the true heir of William Jennens, but that on his death the estate was taken possession of by the mother of G. Curzon, an infant, in his name, under a false pretence that he was the heir of Jennens; that G. Curzon died an infant in 1805, and his mother continued to hold possession in the name of R. Curzon, whom she falsely asserted to be a brother of G. Curzon, but who, it was alleged, was a supposititious child; that R. Curzon held the estate after he came of age, and that he and his successors in title, including the defendant, fraudulently concealed these facts from the true heir of William Jennens. The plaintiff claimed that he and his predecessors in title had been deprived of the estate by reason of the concealed fraud, which could not, with reasonable diligence, be discovered before 1879, when the facts became partially known, that the plaintiff was an infant at the time, and did not attain his majority until 1887, and he claimed to obtain possession of the estate. The defendant applied to strike out the statement of claim as frivolous and vexatious, and filed an affidavit showing that the story of R. Curzon being a supposititious child was publicly spoken of in newspapers and otherwise as early as 1853, and had been made the ground of previous unsuccessful actions by other claimants against the defendant and his predecessors in title. The Court of Appeal

affirmed the decision of Kekewich, J., striking out the claim, and dismissing the action as frivolous, holding that the allegations as to the entry of G. Curzon in 1798 did not disclose a case of "concealed fraud" within the meaning of 3 & 4 W. 4, c. 27, s. 26 (R.S.O., c. 111, s. 31), but simply a wrongful entry under a false claim; that consequently the statute began to run in 1798 against the plaintiff's predecessors in title, and that the operation of the statute was not suspended by the alleged fraud in 1805; and that the plaintiff or his predecessors might, with reasonable diligence, have discovered the concealed fraud, if any, more than twelve years before the commencement of the action. This ought to be a quietus to the claimants of the Jennens estates, but no doubt some other foolish persons will be induced to risk their hard cash in pursuit of the phantom.

COMPANY—STOCK—TRANSFER IN BLANK—LEGAL TITLE—BREACH OF TRUST—NOTICE—FRAUDULENT TRANSFER.

Powell v. *London & Provincial Bank*, (1893) 2 Ch. 555, was a contest between two innocent parties as to which of them was to suffer through the fraud of a trustee, and illustrates the well-known maxim of equity, that where the equities are equal the law must prevail. The trustee in question was the registered holder of shares in a joint stock company, which were part of the trust estate. He deposited with the defendants, as security for an advance to himself, the stock certificate and loan note, undertaking to make a proper assignment when required, and a transfer executed by himself, but with the name of the transferee left blank. The defendants, who had no notice of the trust, subsequently inserted their own names in the transfer as transferees, and executed it; but the deed was not delivered by the trustee, nor was the blank filled in in his presence or by his authority. The transfer was registered by the defendants. The trustee was not notified of the filling in of the blank, but he was of the registration of the transfer, and he never objected, and authorized the defendants to sell the stock on certain conditions. From 1889 the trustee prevented inquiry by paying the interest on the stock to the *cestuis que trust* until 1891, when he absconded. The plaintiffs, who were the new trustees appointed under the settlement, claimed a declaration that the stock was part of the trust estate notwithstanding the pretended transfer; and the Court of Appeal

(Lindley, Bowen, and Kay, L.JJ.) affirmed the decision of Wright, J., in favour of the plaintiffs, on the ground that the transfer was not the deed of the fraudulent trustee, and did not pass the legal title to the stock, because being executed in blank it was not re-executed or redelivered by him after the blank was filled in, and, further, that the defendants were not his agents to fill in the deed, because such an agent can only be appointed by deed; and that the registration, being based on a void deed, was null.

NUISANCE FROM SMELL—TRAMWAY COMPANY—STABLES—STATUTORY POWERS—INJUNCTION.

In *Rapier* v. *London Tramways Co.*, (1893) 2 Ch. 588, the plaintiff claimed an injunction to restrain the defendants from occasioning a nuisance by maintaining a stable near the plaintiff's dwelling, so as to create an offensive smell. The stable in question was used by the defendants for keeping about 200 horses for the purposes of their tramway, and they attempted to justify this action under their statutory powers. The Act, however, authorizing the construction and running of the tramway gave no compulsory powers for taking lands, and made no special mention of building stables. The Court of Appeal (Lindley, Bowen, Kay, L.JJ.) agreed with the decision of Kekewich, J., that, although horses were necessary for carrying on their business, the defendants were not justified in keeping them together in such large numbers as to be a nuisance to their neighbours, and that they could not justify their doing so under their statutory powers, which were silent as to this particular matter; and that it was no defence that they had taken all reasonable care to prevent the stable being a nuisance.

COMPANY—DIRECTORS—PRESENT FROM PROMOTER TO DIRECTOR.

In re Westmoreland Green and Blue Slate Co., (1893) 2 Ch. 612, was an application to compel one of the directors and promoters of a company to pay for shares issued to him and a co-director as fully paid up, as part of the consideration for property sold to the company under the following circumstances: Two men named Poole and Burns were interested in certain quarries, and, being desirous of forming a company to work them, they employed Ashworth and Bland to assist them in getting up the

company. These four made an agreement to sell the quarries to the proposed company, partly for cash and partly in paid-up shares of the company, 120 of which were to be issued to Ashworth and 120 to Bland, neither of whom had any interest in the quarries. The company was formed, and the four above-named persons became directors, and issued the shares in pursuance of the agreement. The company having become insolvent, an application was made in the name of the liquidator to place Bland on the list of contributories for a sum equal to the nominal value of the shares issued to himself and Ashworth, and Kekewich, J., granted the application on the ground that Bland was guilty of misfeasance as a director in accepting the shares issued to himself, and in being a party to the issue of the shares to Ashworth; and the Court of Appeal (Lindley, Bowen, and Lopes, L.JJ.) concurred with him, and held that Bland was not protected by a provision in the articles of association that the agreement for sale should not be impeached on the ground of the directors or any of them being vendors or being promoters of the company, nor should they be accountable for benefits secured to them; because it was unknown to the company that Bland and Ashworth were not really vendors, and the insertion of their names in the agreement was a mere device to enable them to get fully paid-up shares for their services in promoting the company. As Lindley, L.J., observed, "It was a novel and ingenious attempt to evade the law as to secret profits," but it was not successful.

PRACTICE—INJUNCTION—UNDERTAKING AS TO DAMAGES.

In *Fenner* v. *Wilson*, (1893) 2 Ch. 656, an application was made by the defendant before trial for an injunction to restrain the defendant from continuing to publish, *pendente lite*, threats of legal proceedings in respect of the sale or purchase of certain patented articles in question. The injunction was granted, and the defendant moved to vary the minutes of the order by striking out the undertaking as to damages which had been inserted by the registrar. Kekewich, J., decided that the minutes must be varied because the injunction was not an interim injunction in the ordinary sense, but a final order which, though subject to appeal, was not open to review by himself.

Notes and Selections.

INSURANCE—FIRE—EXPLOSION.—Where an insurance policy provides that the insurer shall not be liable for loss caused by "explosion of any kind, unless fire ensues, and then for the loss or damage by fire only," no liability exists for damage done by an explosion produced by the ignition of a match in a room filled with illuminating gas. *Heuer* v. *Northwestern National Insurance Co.*, Illinois Supreme Court, January 19th, 1893.

SALE BY WIFE OF PROPERTY BELONGING TO HER HUSBAND.—In *Rice* v. *Yocum*, decided by the Supreme Court of Pennsylvania, in May, 1893, it was held that one who purchases property belonging to her husband from his wife is liable to the husband for conversion of such property; but if the wife of the plaintiff mislead the defendant by representing the property to be hers when such was not the case, the husband would be responsible for her deceit, and could not recover.

CONNECTING RAILROADS OPERATED AS ONE LINE.—In *Howe* v. *Gibson*, decided in the Court of Civil Appeal of Texas, in May, 1893 (22 S.W. Rep. 826), it was held that where two connecting railroads are operated as one continuous line, under one management, with the same employees, and are, so far as the public can observe, one line, and use coupon passenger tickets which compel a continuous passage from stations on one road to stations on the other, both are liable in damages to a passenger who purchases such a ticket and is wrongfully compelled to alight from the train at a point distant from the station to which he has paid his passage.

COPYRIGHT OF PHOTOGRAPH — INFRINGEMENT BY LITHOGRAPH.—In *Salk* v. *Donaldson*, decided in the United States Circuit Court, Southern District of New York, July, 1893, it was held that a photographer who poses and makes an artistic picture of a sitter becomes the author of an original work of art, the

product of his intellectual invention, and is entitled to copyright the photograph on complying with the provisions of the Act of Congress for the obtaining of copyrights. The use of a picture so copyrighted as the basis of a lithograph or cut constitutes an infringement, if the design of the photographer be so far copied as to appropriate his manifestation of his conception or a substantial part thereof.—*Albany Law Journal.*

GIFT OF BANK BOOK.—In a late Alabama case the difference between the gift of a depositor's book, showing a deposit in a National bank, and a gift of a savings bank book was properly pointed out by the court on the following principles: A savings bank book is the record of the customer's account, and its mere production authorizes the control of the deposit. Like the key to a locked box, a gift of it furnishes the key to the locked contents. Not so, however, with the passbook of a bank, holding a deposit subject to the depositor's cheque. Such banks are banks of issue, discount, and deposit. The deposit is subject to the cheque of the depositor, and the delivery of the passbook is not the best delivery available under the circumstances. The money cannot be withdrawn by the production of the passbook, but on the cheque of the depositor without the production of the book: *Jones* v. *Weakley*, Sup. Ct. Ala., Feb. 6, 1893. This decision is upheld by the trend of authority, and rests upon a sound distinction. For a valuable note on the gift of cheques, see *Re Taylor* (Penn.), 18 Lawyers' Reports, Annotated, 855.—*Albany Law Journal.*

ELECTRICITY AS A NUISANCE.—Fire, water, poisons, filth, explosives have all been brought within the principle of *Rylands* v. *Fletcher*, L.R. 3 H.L. 330, and now there must be added to the "wild-beast" list, electricity (*National Telephone Co.* v. *Baker*, '93, 2 Ch. 186); and rightly, for is not this mysterious current of all dangerous and destructive forces known to science the strongest, swiftest, subtlest? Among other eccentricities it has the property, it seems, when discharged into the ground by a tram company, of paralyzing a neighbouring telephone system,

and converting the messages into inarticulated murmurs, a fact which has already been discovered in America. This is certainly a grievance, for inaudibility is a distinct defect in a telephone; but it is no use having a grievance if the author of the nuisance is only doing, without negligence, as the tram company in this case was, what the Legislature has authorized him to do. In future, however, the Prospero of science, and the Legislature, too, will have to study more closely the vagaries of this Ariel.—*London Law Quarterly Review.*

AN ELECTIVE JUDICIARY.—Mr. David Dudley Field states his views in the *Albany Law Journal* on the question whether judges should be appointed or elected. He decides, as might naturally be supposed, in favour of the former. He concludes his argument on the subject in these words: "It is my conviction, and I wish that every other citizen had the same conviction, that a learned, efficient, and independent judiciary cannot be obtained through popular suffrage and short terms of office. Experience is our great teacher. We have two systems side by side, the Federal and the State; the former placing on the bench judges appointed by the executive, endowed with office during good behaviour, and with salaries that cannot be lessened; the latter lifting to the seats of justice judges, nominated and chosen for the most part by popular vote, holding for short terms, and too often provided with salaries meagre at best and changeable at the will of the Legislature. Which of the two systems do those who are forced into the courts most prefer? Into which do suitors most seek entrance, and how often do those who are sued desire to have their cases transferred thereto?" We do not feel that we have much to learn from our cousins to the south of us as to the administration of law.

POST OFFICE DELAYS.—A curious postal case has arisen. Late in December, 1881, a man in Washington wrote a postal card to a London bookseller, asking the latter to send him a large consignment of rare books. For twelve years the Washingtonian received no answer. He assumed that the bookseller had

been unable to fill his order, and let the matter drop. But the other day, to his amazement and inconvenience, the books arrived. He immediately charged the dealer with neglect. The latter responded that he had acted as quickly as possible, that it took a few months to collect the books, and then, for the first time, the date on the postal card was examined. The dealer had received it in May. 1892—more than ten years after it was mailed. The American held that the Englishman was responsible for not having noticed the date, and the latter replied that, even if he had noticed it, he would have been justified in considering it a slip of the pen which made 1891 read 1881. Meanwhile the question arises, Where was the postal card during all those years? The bookseller and his customer are still wrangling, and the post office authorities are trying to solve the problem of the strange delay.—*Albany Law Journal.*

LAW OF FIXTURES.—The vexed question of what are fixtures and what does and what does not pertain to the realty came up in *McFadden* v. *Allen*, 134 N.Y. 489, where Follett, Ch.J., cited with approval the rule laid down in *Phœnix Mills* v. *Miller*, 4 State Rep. 787. "A mortgagee of real property is entitled to have his lien respected as to all that was realty when he accepted the security. Also as to all accessions to the realty, save perhaps when the accession is made under an agreement with the party that its purchase-price or expense shall be secured and is secured by a lien thereon." Such lien so agreed upon and perfected would, under the last quoted decision, be paramount to that of a prior mortgagee of the freehold. This view accords with that taken by the General Term in *Brand* v. *McMahon*, 38 State Rep. 576, where it was held that neither a prior nor subsequent mortgagee could claim personal property affixed to the freehold as subject to the lien of the mortgage where, by express agreement of the owner of the fee and the owner of the chattel, its character as personal property was not to be changed, but was to continue and be subject to the right of removal by the owner of the chattel on failure of performance of conditions. This case was decided mainly upon the authority of *Tifft* v. *Horton*, 53 N.Y. 77, holding the rule as formulated above, after citing the leading

authorities upon the subject and calling attention to *Potter* v. *Cromwell*, 40 N.Y. 287, to the point that if the intention of a vendor be to retain the character of personal property in chattels annexed, such intention will prevail, and also to *Voorhees* v. *McGinnis*, 48 N.Y. 278, to the point that chattels may be annexed to the real estate and still retain their character as personal property. *Tifft* v. *Horton* turns upon the question entirely of agreement between the parties that the title to the personal property, which was machinery in that case, should not pass, holding that such an agreement between the vendor and the purchaser is binding upon the mortgagee of the real estate. In *Tyson* v. *Post*, 108 N.Y. 217, it is further held that the owner of land can by agreement reimpress the character of personalty upon chattels which by annexation to the land have become fixtures, if they have not been so incorporated as to lose their identity, but this is upon the condition that the reconversion does not interfere with the rights of creditors or third persons, and it is with reference to such interference that the questions of title mainly arise. The decision in this case is based upon the ruling in *McRae* v. *Central National Bank*, 66 N.Y. 489, that machinery, shafting, etc., become as between vendor and vendee and mortgagor and mortgagee fixtures and a part of the realty, but recognizing the rule that under *Ford* v. *Cogg*, 20 N.Y. 344, and *Sisson* v. *Hibbard*, 75 id. 542, such chattels may retain their character as chattels by agreement, for the purpose of protecting the rights of vendors of personalty, or of creditors. It is conceded by all the cases that the rule as between landlord and tenant is more libel toward the tenant as to chattels placed upon the property for the purpose of carrying on business than as between mortgagor and mortgagee or vendor and vendee: *Ombony* v. *Jones*, 19 N.Y. 234. As between landlord and tenant, the rule seems to be that while the tenant has the right to remove certain articles during his term, if he does not do so and has a right to the chattels, he is a trespasser technically only if he enters upon the property after his term for the purpose of removing the fixtures: *Holmes* v. *Tremp*, 20 Johns. 28. In *Lawrence* v. *Kemp*, 1 Duer, 366, it is held that under such circumstances a tenant may remove chattels after his term expires without subjecting himself to any damage for such removal, even though he be liable for an action of trespass for an entry on the demised premises. The decision in 20 Johns., referred to above, is approved: *Ombony* v. *Jones*, 19 N.Y. 243.—*Albany Law Journal.*

Reviews and Notices of Books.

The Elements of Jurisprudence. By Thomas Erskine Holland, D.C.L., Chichele Professor of International Law and Diplomacy, and Professor of All Souls' College, Oxford, etc., etc. London: Henry Frowde, Amen Corner; and Stevens & Sons, 119 Chancery Lane; 1893.

This is the sixth edition of a standard work which needs no commendation from any reviewer. The preface states that it has undergone careful revision; and in compliance with the wish expressed in many quarters, especially by Oriental students, the author has translated the German and Greek definitions which occur in the earlier chapters, though well aware, as he states, that much of the meaning of the former must perish in the process. That may be the case so far as German scholars are concerned, but we must confess that we are exceedingly glad to notice the change in this respect.

It is not necessary for us to speak at length of a work which is now in its sixth edition, and is familiar to all students of the law. This, the last edition, is the best; and, being printed at the Clarendon Press, Oxford, it may be presumed to be in the best style known to publishers. No law library of any pretension can afford to be without this book, and no lawyer can consider himself well grounded in his studies without a careful perusal of its pages.

The Division Courts Act, and Amendments Thereto. Comprising R.S.O. (1887), c. 51; 51 Vict., c. 10; 52 Vict., c. 12; and 55 Vict., c. 11; together with The General Rules and Forms (1893), fully annotated, with additional forms of proceedings applicable to Division Courts. By James Bicknell, of Osgoode Hall, Barrister-at-Law, and Edwin E. Seager, joint author of "A Concise Treatise on the Law of Landlord and Tenant" and "The Liquor License Act of Ontario." Volume I. Toronto: The Goodwin Law Book and Publishing Company (Ltd.), 1893.

The editors give us, in this first volume, the statutes affecting Division Courts, reserving the new Rules and Forms for the second volume.

The literature on the subject of the small debt court of Ontario is gradually assuming a bulky form, the volume before us containing some five hundred and fifty pages; and though the second will doubtless be smaller, it will also make a book of considerable size.

The editors have taken the several works of the late Judge Sinclair as a foundation, but we are glad to see that they have remedied many of his defects, the notes being, as they state, in many instances entirely recast and rewritten. We confess we always thought that the late judge did not fully grasp the need of the judges and officers of the courts, and of practitioners therein. The innumerable points of practice, many of them of much difficulty, which had arisen, or were likely to arise, were not met and discussed, though a great deal of information was given on a variety of subjects which were only incidentally of interest to officers and practitioners in these courts—information which, so far as the profession are concerned, could have been better obtained elsewhere. Judging from the volume before us, we think the editors have realized something of what we are alluding to, and have, to some extent, met the difficulty. The second volume, containing the Rules, which necessarily demand more of the details of practice, will, we trust, give much valuable assistance in the line we have indicated.

The work of the editors has been very fully and apparently carefully done. They have evidently taken a wide range in collecting authorities of the various subjects coming up for discussion under the statutes noted.

It must necessarily, from the circumstances of the case (the new Rules not being yet published), be a defect in the work that the editors cannot give references under the appropriate sections of the Acts to the new Rules, and which Rules which will, in many cases, explain the statutory enactments and fill out the skeleton of procedure thereby given.

The editors have appended a note on the subject of claims by and against married women which, we have no doubt, will be found of service in assisting in the solution of many difficult questions daily occurring in relation to that subject. The Index seems to be very full and complete, containing, as it does, over forty pages, a very necessary factor in the usefulness of a book of this kind. The typography is very good, and the matter is given in a clear and intelligible manner, thereby enhancing its value.

DIARY FOR NOVEMBER.

2. Thursday....O'Connor, J.Q.B., died, 1887.
4. Saturday....Last day for filing papers for certificate and call and payment of fees.
5. Sunday.....*23rd Sunday after Trinity.* Sir John Colborne, Lieut.-Gov. U.C., 1838. Gunpowder plot.
7. Tuesday.....Court of Appeal sits.
9. Wednesday..Prince of Wales born, 1841.
12. Sunday.....*24th Sunday after Trinity.* J. H. Hagarty, 4th C.J. of C.P., 1868. W. B. Richards, 10th C.J. of Q.B., 1868. Magna Charta signed, 1215.
13. Monday.....A. Wilson, 5th C.J. of C.P., 1878. J. H. Hagarty, 12th C.J. of Q.B., 1878.
14. Tuesday.....W. G. Falconbridge, J., Q.B.D., 1887. Examination for certificates of fitness.
15. Wednesday..M. C. Cameron, J., Q.B., 1878. Exam. for call.
19. Sunday.....*25th Sunday after Trinity.* J. D. Armour, 14th C.J. of 1887. T. Galt, C.J. of C.P.D
20. Monday.....Michaelmas Term begins. Q.B. and C.P.D. of H.C.J.
21. Tuesday.....Convocation meets. J. Elmsley, 2nd C.J. of Q.B., 1796.
24. Friday.....Convocation meets.
25. Saturday....Marquis of Lorne, Gov.-General, 1878.
26. Sunday.....*26th Sunday after Trinity.*
30. Thursday....T. Moss, C.J. of Ap., 1877. W. P. R. Street, J., Q.B.D., and H. McMahon, J., C.P.D., 1887.

Notes of Canadian Cases.

EXCHEQUER COURT OF CANADA.

BURBIDGE, J.] [June 26.

CARTER ET AL. *v.* HAMILTON.

Patent—"The Paragon Black-leaf Cheque Book"—Validity—Want of novelty—Infringement.

The plaintiffs obtained letters patent on the 15th February, 1882, (registered in the Patent Office at Ottawa as No. 14182) for "The Paragon Black-leaf Cheque Book, composed of double leaves, one-half of which is bound together, while the other half folds in as fly leaves, both being perforated across so that they can be readily torn out; the combination of the black-leaf bound into the book next to the cover, and provided with the tape bound across its ends, the said black-leaf having the transferring composition on one of its sides only." The objects of the invention, as stated in the specification, were to provide a check book in which the black leaf used for transferring writing from one page to another need not be handled, and would not have a tendency to curl up after a number of leaves had been torn out. The first of such objects was to be obtained by the use of the tape, which enabled "the black leaf to be folded back or raised without soiling the fingers," and the second by binding the black leaf in with the other leaves, but next to the cover, in which position there "would be less likelihood of the black leaf becoming crumpled up than if it were placed in the centre and the leaves removed from the stub on either side."

The defendants had a patent for and manufactured a counter check book in which a margin was left on the carbon leaf by which it could be turned over without soiling the fingers. With the exception of the tape for turning the leaf, it was established that the plaintiffs' patent had been anticipated; and it was also proved that prior to the issue of the plaintiffs' patent a patent had been granted in the United States for the process of manufacturing carbon for use in manifold writing with clean margins, so that the paper could be handled without soiling the fingers.

Held, that if the plaintiffs' patent were construed to include the use of clean margins on carbon paper, as applied to the counter check books, it failed for want of novelty; but that if the patent were limited, as it was thought it should be, to the means described therein for turning over such carbon leaves without soiling the fingers, that is, to the use of the tape, the defendants did not infringe the patent by using a clean margin for the like purpose.

W. Cassels, Q.C., and *Edgar* for the plaintiffs.

Johnston for the defendants.

BURBIDGE, J.] [Oct. 2.

HALL *v.* THE QUEEN.

Parol contract between Crown and subject—R.S.C., c. 37, s. 23—Effect of its provisions where contract executed—Quantum meruit.

The provisions of the 23rd section of R.S.C., c. 37, do not apply to the case of an executed contract; and where the Crown has received the benefit of work and labour done for it, or of goods or materials supplied to it, or of services rendered to it by the subject at the instance and request of its officer, acting within the scope of his duties, the law implies a promise on the part of the Crown to pay the fair value of the same.

A. P. Poussette, Q.C., for the plaintiff.

W. D. Hogg, Q.C., for the defendant.

BURBIDGE, J. [Nov. 6.

QUEBEC SKATING CLUB *v.* THE QUEEN.

Contract—Breach of—Promise to promote legislation by Minister of Crown—Promise expressed in—Order in Council—Effect of—Ordnance lands—Disposition of.

Held, (1) No Minister or officer of the Crown can bind it without the authority of law.

(2) An order of His Excellency the Governor-General in Council pledging the goverment to promote legislation does not constitute a contract for the breach of which the Crown would be liable in damages.

(3) The Minister of the Interior cannot lease or authorize the use of ordnance lands without the authority of the Governor in Council.

R.S.C., c. 22, s. 4; R.S.C., c. 55, ss. 4 and 5, discussed; and *Wood* v. *The Queen*, 7 S.C.R. 631; *St. John Water Commissioners* v. *The Queen*, 19 S.C.R. 125, and *Hall* v. *The Queen*, 3 Ex. C.R. 373, referred to.

G. C. Stuart, Q.C., for the suppliants.

W. D. Hogg, Q.C., for the respondent.

McDONALD, (C. J.) L.J.A.] [March 16.

NOVA SCOTIA ADMIRALTY DISTRICT.

THE SANTALDERINO.

Collision—Arts. 18 and 21 of the Navigation Act, R.S.C., c. 79, s. 2—Undue rate of speed for steamer in public roadstead—Negligence in taking precautions to avert collision—Responsibility for collision where such occurs.

The steamship S. was proceeding up the harbour of Sydney, C.B., at a rate of speed of about 8 or 9 miles an hour. When entering a channel of the harbour which was about a mile in width, her steam steering-gear became disabled and she collided with the J., a sailing vessel lying at anchor in the roadstead, damaging the latter seriously. It was shown that the master of the S. had not acted as promptly as he might have done in taking steps to avoid the collision when it appeared likely to happen.

Held, that even if the breaking of the steering-gear—the proximate cause of the collision—was an inevitable accident, the rate of speed at which the S. was being propelled while passing a vessel at anchor in a roadstead, such as this, was excessive; and in view of this and the further fact that the master of the S. was not prompt in taking measures to avert a collision when he became aware of the accident to his steering-gear the S. was in fault, and liable under Article 18 of s. 2 of R.S.C., c. 79.

Held, also, that the provisions of Article 21 of s. 2, R.S.C., c. 79, should be applied to roadsteads of this character; and that inasmuch as the S. did not keep to that side of the fairway or mid-channel which lay on her starboard side, she was also at fault under this article, and responsible for the collision which occurred.

W. B. A. Ritchie for the plaintiffs.

A. Drysdale for the defendants.

SIR MATTHEW B. BEGBIE, (C. J.) L.J.A.] [April 28.

BRITISH COLUMBIA ADMIRALTY DISTRICT.

THE SHIP "CUTCH."

Maritime law—Collision—Responsibility for, where uninjured ship declines to assist helpless one—The Navigation Act, R.S.C., c. 79, ss. 2 & 10.

Under the provisions of section 10 of the Navigation Act (R.S.C.,c. 79), where a collision occurs, the ship neglecting to assist is to be deemed to blame for the collision in the absence of a reasonable excuse.

Two steamships, the C. and the J., were leaving port together in broad daylight, and a collision occurred between them. The J. received such injury as to be rendered helpless. The C. did not assist, or offer to assist, the disabled ship, but proceeded on her voyage. The excuse put forward by the master of the C. was that the J. did not whistle for assistance, although the evidence showed that he must have been aware of the serious character of the damage

sustained by her. He further attempted to justify his failure to assist by the fact that other ships were not far off; but it was shown that these ships were at anchor and idle.

Held, that the circumstances disclosed no reasonable excuse for failure to assist on the part of the C., and that the consequences of the collision were due to her default.

Held, also, that the C was in fault under Art. 16 of s. 2 of the Navigation Act for not keeping out of the way of the J., the latter being on the starboard side of the C. while they were crossing.

Pooly, Q.C., for the plaintiffs.

E. V. Rodwell and *P. Æ. Irving* for the defendants.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Chancery Division.

BOYD, C.] [Oct. 13.

RE SUN LITHOGRAPHING CO.

Winding-up Act—R.S.C., c. 129—Compromise — Dissentient — Minority — Liquidator's approval—Non-enforcement of.

There is no power given by the Winding-up Act, R.S.C., c. 129, to enforce a compromise upon dissentient minorities of creditors, or to compel a liquidator to consent to a compromise, and, even where a compromise is recommended by a liquidator, it may be frustrated by an opposing minority.

Arnoldi, Q.C., for creditors appealing.

J. R. Roaf for other creditors, not opposing.

Kilmer, contra.

BOYD, C.] [Oct. 11.

COATSWORTH ET AL. *v.* CARSON ET AL.

Will—Devise—Conversion—Blended fund—"My own right heirs."

A testator by his will directed "That my trustees shall . . sell all my estate, real and personal, and divide the same equally among my own right heirs who may prove . . their relationship," etc.

Held, that the conversion directed created a blended fund derived from the realty and personalty, and following *Smith* v. *Butcher*, 10 Ch.D. 113 (where the meaning of "lawful heir" was held to be a literal one, and not as descriptive of the next of kin), that the words here, "My own right heirs," signified

those who would take real estate as upon an intestacy, and that children of any deceased heirs-at-law were entitled to share *per stirpes.*

F. E. Hodgins for the trustees.

Dr. Hoskin, Q.C., for the infants.

W. Mortimer Clark, Q.C., for some nieces.

J. W. McCullough and *J. R. L. Starr* for children of nephews and nieces.

MEREDITH, J.] [Oct. 4.

IN RE HUNTER'S LICENSE.

Liquor License Act—Certificate of electors—Default in filing—R. S.O., c. 194, s. 11, s s. 14; ss. 31 & 91—53 Vict., c. 56, s. 1.

Motion for prohibition.

Held, that the contravention of the provisions of the Liquor License Act, R.S.O., c. 194, provided against in s. 91 of that Act must be an intentional, wilful, and knowing contravention, and did not include this case, where it appeared that the applicant for a license acted throughout in good faith, but omitted to file before April 1st, as required by s. 31 of R.S.O., c. 194, the certificate signed by a majority of the electors as required by s-s. 14 of s. 11, as amended by 53 Vict., c. 56, s. 1; and the Board of Commissioners, after a fair hearing of the application and all objections made against it, including the omission of the said certificate, which had not been filed until April 25th, in good faith and according to the best of their judgment, considered the applicant entitled to the license, and granted the proper certificate accordingly, and the license was thereupon in due course issued.

E. F. B. Johnston, Q.C., for the motion.

J. J. Maclaren, Q.C., *contra.*

MEREDITH, J.] [Oct. 26.

RE THE CANADIAN PACIFIC R.W. CO. AND THE NATIONAL CLUB.

Lessor and lessee—Power of executor of deceased owner to execute renewal of lease.

The executor of a deceased owner has power to make a binding renewal of a lease pursuant to the covenant to renew of the owner in his lifetime.

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

Bristol for the purchaser.

BOYD, C.] [Oct. 11.

BEAM *v.* BEAM ET AL.

Insurance—Moneys derivable from—Direction as to by will—Benefit of wife and children—Creditors' rights.

A testator by his will devised the proceeds of two life insurance policies to his executors, to be invested and the interest to be paid to his wife for life, or until his youngest child attained his majority for the maintenance and educa-

tion of his children, and in case the wife should marry a second time the interest to be applied for the maintenance and education of the children, and the principal to be divided among them when they attained their majority.

Held, that the testator had declared the insurance to be for the benefit of his wife and children within the meaning of R.S.O. c. 136; and therefore the proceeds were exempt from the claims of creditors.

Moscrip for the plaintiff.

Dr. Hoskin, Q.C., for the infants.

W. E. Middleton for the executors.

BOYD, C.] [Oct. 11.

RE MCMILLAN.

MCMILLAN *v.* MCMILLAN ET AL.

Devolution of estates—Mortgage by devisee within twelve months from death, no caution being registered—Validity of.

A testator died October 17th, 1891, having devised land to his son. On May 23rd, 1892, the devisee mortgaged the land for value. The executors named in the will renounced, and letters of administration with the will annexed were granted September 28th, 1892; and an order for administration having been granted December 18th, 1892, the mortgagees were made parties in the Master's office as subsequent incumbrancers on February 18th, 1893. No caution was registered under 54 Vict., c. 18 (O.), or 56 Vict., c. 20 (O.).

Held, that twelve months after the death of the testator, no probate having issued and no caution being registered, the land became vested by operation of law in the devisee or his assigns—that is, that on October 17th, 1892, the right of the personal representative ceased, whether the devisee had or had not conveyed or dealt with the land; that the mortgage was operative as between him and the mortgagee when it was made, and it became fully operative as to the land and as against the personal representatives of the testator when the year expired, in the absence of any warning that the land was needed for their purposes.

Hoyles, Q.C., for the motion

W. H. Blake, contra.

BOYD, C.] [Oct. 14.

RE THE TORONTO DROP FORGE CO., LIMITED.

Vendor and purchaser—Vendor's lien—Contract price for work in stock—Extra work outside of agreement—Alteration of specifications.

The owner of certain land agreed with a company to build a factory on it, according to certain plans and specifications, and when completed to convey to the company for its value in paid-up stock. During the building certain extra work was performed for the company, part of which was an alteration of a boiler house different from the plans and specifications, for which it was arranged that he was to be paid in cash.

Held, (on an appeal from the Master in Ordinary, reversing the Master) that the owner had no vendor's lien for the value of the extra work.

Hoyles, Q.C., for the appeal.

Riddell, contra.

BOYD, C.] [Nov. 8.

RE DENISON.

WALDIE *v.* DENISON ET AL.

Tenant for life—Liability to pay taxes on certain portion of property out of rents from other portions.

The person entitled to possession is the person to pay the taxes yearly chargeable on property, and the fund out of which taxes are ordinarily payable is the rents of the land.

As between a tenant for life and a remainderman, the court will not allow the former to receive rents from part of the property, while he allows taxes to accumulate on another part, and an order was made for a receiver to pay the taxes assessed on portions of the property out of rents received from other portions.

W. H. Blake, the receiver, in person.

R. A. Grant for creditors of the tenant for life.

Dr. Hoskin, Q.C., for the infant remainderman.

Practice.

BOYD, C.] [Nov. 7.

BENNETT *v.* EMPIRE PRINTING AND PUBLISHING CO.

Security for costs—Order for—Appeal from—Dismissing action—Rule 1246—"Sufficient cause."

The fact that the plaintiff has lodged an appeal against an order for security for costs is "sufficient cause," within the meaning of Rule 1246, to exempt the plaintiff from having his action dismissed for failure to comply with the order, pending the appeal.

And if a motion to dismiss is made, the better practice is to enlarge it before the appellate tribunal, to be dealt with after the main question has been determined.

W. Stewart for the plaintiff.

H. Cassels for the defendants.

BOYD, C.] [Nov. 7.

IN RE CENTRAL BANK OF CANADA: WATSON'S CASE.

Judgment debtor—Re-examination of—Rule 926—Special ground.

The examination of a judgment debtor in aid of execution under Rule 926 may be made of the most searching character—a cross-examination of the

severest kind; and very strong special grounds must be shown to justify further examination of a debtor who has fully and fairly answered on two former examinations.

And where it did not appear that any change in the circumstances of the judgment debtor had taken place since her last examination, and the affidavit on which an application for a third examination was based did not show the grounds for the deponent's belief that she had property concealed, and did not negative the ability to obtain information as to details, the application was refused.

Charles Macdonald for the applicant.

Pattullo for the judgment debtor.

BOYD, C.] [Nov. 7.

ATWOOD *v.* ATWOOD.

Husband and wife—Interim alimony—Separation deed—Agreement not to sue for alimony.

The granting of interim alimony rests in the sound discretion of the court in view of all the circumstances.

A husband and wife had executed a deed, reciting unhappy differences, and agreeing to live apart. The consideration was $800—a down payment of $100 and an annual provision of a like amount for seven years. Stipulation by the wife not to sue for alimony, nor to seek restoration of conjugal rights. The deed was executed after advice given to the wife by a separate solicitor. After the expiration of seven years she brought an action for alimony, and in applying for interim alimony did not show fraud or duress.

Held, that the application must be refused.

Semble, that the wife's stipulation was not limited to the seven years, but extended to her future life, and a provision to arise *de anno in annum* was not essential to uphold the deed.

Semble, also, that a husband and wife may validly agree *inter se* to live apart, and the wife's engagement to sue for alimony nor to claim restoration of marital intercourse, if founded on valuable consideration, will be enforceable against her, and may be set up in bar of her action.

W. M. Douglas for the plaintiff.

W. H. Blake for the defendant.

Court of Appeal.] [Nov. 14.

CROTHE *v.* PEARCE.

Costs—Interpleader issue—Reservation.

The costs of an interpleader issue should not be reserved by the interpleader order to be disposed of in chambers, but should be left to be dealt with by the trial judge.

McCarthy, Q.C., and *J. A. MacIntosh* for the appellant.

E. F. B. Johnston, Q.C., for the respondent.

Appointments to Office.

COUNTY COURT JUDGES.

Counties of Westmoreland and Kent.

William Wilberforce Wells, of the Town of Moncton, in the Province of New Brunswick, Esquire, one of Her Majesty's Counsel learned in the Law, to be a Judge of the County Courts of the Counties of Westmoreland and Kent, in the Province of New Brunswick, *vice* His Honour Judge Landry, appointed to the Supreme Court of the said Province.

LOCAL JUDGES.

County of Middlesex.

Edward Elliott, Esquire, Junior Judge of the County Court of the County of Middlesex, in the Province of Ontario, to be a Local Judge of the High Court of Justice for Ontario.

CORONERS.

United Counties of Prescott and Russell.

Fizilam Marcellin Perras, of the Village of Embrun, in the County of Russell, one of the United Counties of Prescott and Russell, Esquire, M.D., to be an Associate Coroner in and for the said United Counties of Prescott and Russell.

DIVISION COURT CLERKS.

County of Norfolk.

Abram M. Tobin, of the Village of Waterford, in the County of Norfolk, Gentleman, to be Clerk of the Second Division Court of the said County of Norfolk, in the room and stead of Edward Matthews, resigned.

County of Welland.

Ernest Cruikshank, of the Village of Fort Erie, in the County of Welland, Gentleman, to be Clerk of the Third Division Court of the said County of Welland, in the room and stead of Thomas Newbigging, resigned.

DIVISION COURT BAILIFFS.

District of Parry Sound.

Duncan McRae, of the Village of French River, in the District of Parry Sound, to be a Bailiff of the First Division Court of the said District of Parry Sound, in the room and stead of James Coff, resigned.

BAILIFFS.

County of Oxford.

Matthew Virtue the Younger, of the Town of Woodstock, in the County of Oxford, to be a Bailiff of the First Division Court of the said County of Oxford.

ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

Precatory trusts. *Irish Law Times*, July 29.
The *bonâ fide* traveller. *Ib.*, Sept. 2.
Warranty of title by an auctioneer. *Ib.*
The English Court of Criminal Appeal. *Green Bag*, August.
Obsolete punishment. *Ib.*
Discrimination and classification by carriers of passengers. *Albany Law Journal*, Sept. 16.
Extradition—a paper read at the World's Congress of Jurisprudence and Law Reform at Chicago. *Ib.*
Proposed limitation of the amount one may take by descent or by will. *Ib.*, Sept. 23.
Restrictions upon trade—Epitome of the common law doctrine. *Ib.*
Contracts affecting the administration of public justice. *Justice of the Peace*, July 21.
Lessees holding over. *Ib.*, July 12.
Insuring against accidents. *Ib.*, July 29.
Corporal punishment of scholars. *Ib.*
Forcible entry. *Ib.*, Aug. 5.
Apprenticeship agreements. *Ib.*, Aug. 19.
Nuisances caused by crowds. *Ib.*, Sept. 9.
Breaking open outer doors. *Ib.*, Sept. 16.
Liabilities relating to fellow-servants. *Ib.*, Sept. 23.
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Injunctions against judgments of other courts, state and national. *Central Law Journal*, July 7.
Preferred stock in joint stock company. *Ib.*, Aug. 11.
Boycotting. *Ib.*, Sept. 1.
Instalment sales. *Ib.*, Sept. 8.
Some phases of the law of sub-contractors' liens. *Ib.*, Sept. 22.
Parol trusts and the Statute of Frauds. *Ib.*, Sept. 29.
Contempt of court. *Ib.*, Oct. 6, 13.

Flotsam and Jetsam.

A JUDGE ASLEEP ON THE BENCH.—A London correspondent says it is not uncommon for judges to sleep while presumably "hearing" a case. On one occasion during the present week a well-known judge went to sleep several times while hearing one case. On the first occasion everybody laughed broadly. However, one of the barristers banged the seat, and so succeeded in awakening his lordship. Later on the same thing happened. Violent coughing and the throwing about of law books had to be resorted to before the case could be gone on with.