THE

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As was generally anticipated, Lord Russell has been appointed Lord Chief Justice of England, in the room of the late Lord Coleridge.

THE pledge given by the Dominion Government, some time ago, to place on the free list the law books imported for "law libraries in any duly organized law association or society for the use of the members," has been redeemed. This will be of great benefit to the law associations, and will save a considerable sum to the Law Society. Those interested are much indebted, in this matter, to Mr. W. F. Burton, treasurer of the Hamilton Law Association, who originated the idea, and by whose persistent efforts it has been brought to a successful issue, and who has taken so great an interest, not only in the law association of his own city, but has given valuable aid in establishing similar associations in other places.

THE Dominion Government has passed a resolution that the judges of the Supreme Court of Canada who have reached the age of seventy years, and who have served for fifteen years, shall have the option of retiring on full salary, instead of upon two-thirds thereof, as at present. The resolution was strongly opposed on the grounds that it applied to the judges of the Supreme Court only; that it was contrary to sound principle that those who had ceased to give their services to the State should continue to receive the same emoluments as when they were rendering such services; that it established a precedent which was nowhere else adopted, and involved a principle that

could not be limited to the Supreme Court, but must be made applicable to all the judges in the various Provinces, and would result in a very large and unnecessary expenditure of public money. One answer to this was that it was desirable to encourage the best men of the Bar to accept positions upon the Supreme Court Bench, and this was thought the most economical way of doing this. Whilst it is difficult, on principle, to uphold this departure from a well-established practice, it is recognized that our judges are, as a rule, inadequately paid, and any step which would be in the direction of an increase is a good one. The judges of the Supreme Court of Judicature of Ontario may naturally feel a little aggrieved that the same principle is not applied to them, and the County Court judges feel that their salaries are none too high. It may possibly be wisdom on the part of the judges in this Province to take no exception to this increase, in the hopes that in the course of time the wave may reach them, or that a Premier may be found who is strong enough to pay judges properly. The question is a difficult one, principally owing to the position of the judiciary in Quebec. Both political parties agree that a change should be made, but both appear afraid to tackle it.

THE ELLIS CONTEMPT CASE.

In the debate which recently took place in the House of Commons upon a motion by Mr. Davies with reference to the punishment for contempt by the Supreme Court of New Brunswick of Mr. Ellis, editor and publisher of the St. John *Globe*, several matters were discussed which, while interesting to all concerned in the working of our constitution, are of such special interest to the legal profession as to justify a reference to them in the columns of this journal.

The facts, briefly stated, are as follows: At the general election in 1887 two candidates, Mr. Baird and Mr. King, were nominated for Queen's County, New Brunswick. The nomination papers and deposits of both candidates were accepted by Mr. Dunn, the returning officer, as in due form, and the election proceeded as usual. On the day of declaration it was found that Mr. King had the majority of votes, but objection was taken on

behalf of Mr. Baird to the validity of the deposit by Mr. King at the time of nomination. After hearing the objection argued, and taking advice of counsel, the returning officer decided that Mr. King's nomination had been irregular in that the deposit on his behalf had not been made by his authorized agent. He declared, therefore, that Mr. King's election was void, and returned Mr. Baird as the candidate duly elected. On this point it may be said that it was subsequently held that whether there was any doubt or not as to the validity of the deposit the returning officer, having accepted and treated the nomination as valid, was entirely in the wrong in rejecting it after the election had been held, and the votes recorded. The political aspect of the case is one with which we are not concerned, but the fact that the candidate thus rejected was opposed to the party with whom the returning officer was in sympathy naturally threw doubt upon the *bonâ fides* of his action, and accounts for the acrimony which characterized the subsequent proceedings. It may also be referred to as showing the advantage of having returning officers appointed *ex officio*, and not on the nomination of one of the parties directly concerned in the issue.

The return having been made as above stated, the rejected candidate applied to the county judge for a recount. The application was granted, and time and place appointed for the hearing. What the result of this application would have been can only be conjectured. Whether the returning officer would have adhered to his ruling, and still treated Mr. King's election as a nullity if the county judge had certified that he had a majority of votes, or whether he would have accepted the decision of the judge, we cannot tell; for, in the meantime, another authority intervened, and gave a new aspect to this already remarkable case. The application for a recount having been granted, Mr. Baird, by his attorney, applied to Mr. Justice Tuck for a writ to prohibit the county judge from proceeding any further, and a rule *nisi* was granted to show cause why the writ should not issue, and staying proceedings as to the recount in the meantime. But it is needless to pursue the legal proceedings as regards the writ, for at this juncture Mr. Ellis steps in with the newspaper articles which led to the proceedings complained of in the motion of Mr. Davis. Writing in the heat of the political excitement of the moment, and under the impression, as sub-

sequently appeared, that the writ of prohibition had actually issued, that, therefore, no recount could be held, or any proceedings taken to seat Mr. King, Mr. Ellis used in the first article the following words:

"People who know something about the course of political events were not surprised when they read in the papers this morning that Mr. Justice Tuck had issued a writ of prohibition to Judge Steadman of the County Court, prohibiting him from proceeding to recount the ballots in the Queen's election. A trick by which the voice of the majority in Queen's is silenced is condemned all over the country in unmistakable terms as a flagrant outrage upon popular rights, and as a grossly immoral transaction. The appeal to Judge Steadman for a judicial reconsideration was made to a man of fair and honest judgment, who, if he had political leanings at all, would have them toward the Conservative party, but to whom the people generally would trust to do what was fair. He might, therefore, be safely allowed to examine into the whole matter, and to do justice. *But it is not justice that is wanted, and, therefore, Judge Tuck intervenes.* This whole business, as it stands before the country to-day, is a scandal and an outrage of the most abominable character. It is an outrage upon the electorate, and a disgrace to institutions alleged to be free. It is the worst blow public liberty and public morality have yet received, and no effort should be left untried by the friends of free institutions to prevent the foul deed which Baird and his allies are seeking to perpetrate on the country."

In a second article he wrote as follows:

"A judge assumes, if he does not usurp, the power to prevent a full investigation of the matter in time to remedy the evil, and the boast is made that two years must elapse before the man chosen by the majority can take his seat. Can justice and right and principle be trampled down with impunity? There has just been an appeal to the people, out of which the administration has come weak and panting. Can it regain strength in the country through fraud of returning officers? *Can partisan judges give it vitality, degrading the ermine in its interest?* We have every confidence that free institutions, if left to themselves, will purify themselves; but the assumption of power by officials and *the prostitution of judicial authority for the purposes of party* are sufficient to weaken the foundation of the strongest faith in freedom."

Upon the publication of these articles, Mr. Baird, as a suitor whose case might be prejudiced by the attacks made upon the court and upon himself, took proceedings before the Supreme Court of New Brunswick to compel Mr. Ellis to answer for his contempt. After due hearing and deliberation, the Supreme Court of New Brunswick unanimously adjudged him to be guilty, and finally, after a variety of proceedings, including appeals to the Supreme Court of Canada, which that body declined to entertain, sentenced him to a fine of $200, one month's imprisonment, and to pay the costs of the suit, six years having elapsed between the commission of the offence and its final adjudication.

The record thus brings us to the doctrine of constructive contempt on which the debate in the House of Commons, in its legal aspect, chiefly turned. In its constitutional aspect the main point of the contention was as to the extent to which it was expedient, in the public interest, for Parliament to take cognizance of the conduct of the judges, their right and power to do so not being called in question. A point of lesser importance, but still of moment, was as to whether the functions of returning officers are judicial or merely administrative, and whether a county judge in making a recount acts in his judicial capacity or as an officer of the House of Commons.

With regard to the first question, while the right of a judge to deal with acts committed outside of the court, such as the publication of articles libellous in their character, or likely to bring contempt upon the judges, or interfere with the course of justice, was not absolutely denied, it was contended by those who argued in support of the resolution that such a proceeding, being arbitrary in its character, allowing of no appeal, and constituting the court accusers, jurors, and judges in their own cause, was contrary to the spirit of the constitution, unjust in its application, opposed to modern ideas of free discussion, subversive of the liberty of the press, and only to be resorted to if such other preferable modes of procedure as a civil action for libel, or criminal information, when both parties would stand upon the same footing, and be judged by their peers, could not be availed of.

In support of this contention, Mr. Davies quoted a remark by Lord Chief Justice Campbell in his lives of the chief justices in reference to the case of *Rex* v. *Almon*, and also a judgment by Sir George Jessel, which, as it was frequently quoted and sums up the whole case, we give in full as read by Mr. Davies:

"It seems to me that the jurisdiction of committing for contempt, being practically arbitrary and unlimited, should be most jealously and carefully watched, and exercised, if I may say so, with the greatest reluctance and the greatest anxiety on the part of the judges to see whether there is no other mode which is not open to the objection of arbitrariness, and which can be brought to bear upon the subject. I say that a judge should be most careful to see that the cause cannot be fairly prosecuted to a hearing unless this extreme mode of dealing with persons brought before him in accusations of contempt of court should be adopted. I have myself had many occasions to consider the jurisdiction, and I have always thought that, necessary though it be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights—that is, if no other pertinent remedy can be found. Probably that would be discovered after consultation to be the true measure of the exercise of the jurisdiction."

The opinions of Lord Mellish and Lord Fitzgerald to the same effect were also quoted. The action of Lord Selborne, in introducing in the House of Lords a bill to control and limit the power of judges in dealing with constructive contempt, was also referred to. As to the articles quoted, which were adjudged to be libellous, it was contended that while the language used was open to censure, still it was not such as to justify such condemnation and penalty as was awarded, being little more than such comment upon the course pursued with regard to the election as was justified by the circumstances. Some discussion also took place upon the judgment of the court of New Brunswick in asserting its right to interfere with the action of the county judge with reference to the recount—a view which was different from that of the Ontario court in the case of the North Wellington election. In the former case, the court decided that the county judge acted in a judicial capacity, and could therefore be controlled by the court above; and in the other it was held that as the judge was in such case acting as an officer deputed by Parliament, he was not within the jurisdiction of the court.

By those members who opposed the resolution it was pointed out that, while no reasonable man could deny the libellous character of the publication, it was the suitor, Mr. Baird, and not the judges themselves, who set the court in motion. That, so far as

any animus on the part of the judges was concerned, the defendant had been made aware that his articles had been written under a misconception of the action of Mr. Justice Tuck; that at any time he might have purged himself of contempt by retracting the statements he had made under that misconception; and, though not mentioned as having any bearing upon the legal aspect of the case, it was well known that he was at one time prepared to make such retraction, but, being ill-advised, had, on the contrary, fought the matter from court to court till six years had elapsed before it was finally concluded. And it was further stated, as well known to the Bar, that it was neither Mr. Justice Tuck, whose character had been chiefly assailed, nor Mr. Justice Palmer, who was charged by Mr. Davies with having been actuated by personal motives against Mr. Ellis, but the Chief Justice, Sir J. Allan, a man who was held in the highest estimation by all parties, who was the most severe in the condemnation of Mr. Ellis; that Mr. Justice Tuck took no part in the proceedings, and that Mr. Justice Palmer, by whatever motives actuated, was in favour of the lightest punishment being inflicted. It must also be remembered that on the Bench which concurred in the judgment there were, besides Mr. Justice Tuck and Mr. Justice Palmer, the Chief Justice, Mr. Justice King, now of the Supreme Court of Canada, and Mr. Justice Fraser. We think it proper to give this portion of the debate in refutation of the idea which might otherwise be entertained that the proceedings against Mr. Ellis were the result of a vindictive feeling on the part of the two members of the court whom he had personally assailed.

Upon the general question, it was contended that, practically, there was no other way in which a court could vindicate itself from attacks upon its members such as were made in the present instance than by the course then pursued. That for a judge to enter the court as plaintiff in a civil suit for libel, or as prosecutor in a criminal one, was clearly impossible. That proceedings for punishment for constructive contempt were not founded upon statute law, but were coeval with the existence of the courts, and had always and everywhere been found necessary to maintain their dignity and authority. Besides English precedents, the general practice of courts of law in the United States was referred to in support of this view; and, while admitting the high

authority of Sir G. Jessel and others who might seem to hold a contrary opinion, it was pointed out that the bill proposed by Lord Selborne did not propose to abolish such proceedings, but only to fix a limit to the penalties which might be imposed, and that the authorities quoted only went so far as to say that the power of committing for contempt should only be exercised with the utmost care, and where other proceedings could not be resorted to.

Much was said on this side of the question as to the impropriety of the tendency of Parliament to constitute itself a court of review upon the action and conduct of the judges, Mr. Weldon, who expressed this view very strongly, going so far as to say that the conduct of a judge should not be assailed in Parliament unless it was intended to follow up the attack by a motion for impeachment. In support of this view Mr. Weldon was not without authority, as the following extract from his speech will show:

"Mr. Gladstone, speaking of a case somewhat similar to this, said:

"'What do you intend to be the relation between the legislature in time to come and the judges of the land? At present you are strictly refrained from interference except in one most solemn and formal manner. You are not to inflict on them a minor punishment. . . . .

"'Are you prepared to say that you will venture upon breaking down that fence which, by your own wisdom, prevents you from intermeddling with the character of the judges by means of votes which, if I dare say so, dare not aim at their removal, but which, at the same time, have a tendency to lower their character and to impair their credit and authority?'

"'I have here the statement of Mr. Thesiger, afterwards an ornament to the Bench of Great Britain, taken from the English *Hansard*, Vol. 66, page 1,090, in which he says:

"'But was there no danger of the dependence of judges on a public assembly? Was there anything more calculated to shock the independence of a judge than the feeling of being constantly liable to the censure of the House of Commons on the application of any discontented suitor?'

"I have the statement of Sir James Graham, English *Hansard*, page 1,129, in which he says:

"'It is due to the cause of justice to defend the judges of the land unless we shall be satisfied that their conduct has been corrupt, and their motives dishonest.'

"In the same debate, Lord John Russell spoke. It was the case of a Liberal statesman resisting an attack on Sir James Scarlett, an old Tory member of the House, who was complained of as having used offensive expressions to a grand jury, and shown great lack of judgment, and, in that trying case, Lord John Russell said:

"'The independence of the judges is so sacred that nothing but the most imperious necessity should induce the House to adopt the course.'"

The argument of the Minister of Justice was that while Parliament had, at various times, exercised the power of criticizing the *conduct* of judges, as in several cases which had been referred to, there was no instance on record, either in the British Parliament or in any Colonial Parliament, in which the attempt had been made to review the *judgment* of a court. In so far, therefore, as the resolutions in question condemned the court of New Brunswick for putting in force what was admitted to be the law, and in giving sentence in accordance with it, they were without precedent, and their adoption would be a most unsound and undignified departure from constitutional usage, and tend to degrade the judiciary of the country.

Mr. Mills, who argued the case in a manner which contrasted favourably with the vituperative tone of some other speakers, contended broadly for the right of Parliament to criticize and reverse the conduct of the judges, quoting the opinion on this subject of Sir Robert Peel, who, when the conduct of Lord Abinger was brought before the House of Commons, said, speaking of the judges, that Parliament has the "right of exercising a superintending control over the manner in which they discharge their duties, and to institute inquiries relative thereto." On this subject it will be observed that he was answered by the Minister of Justice, who pointed out the distinction between a criticism of the *manner* in which judges exercised their powers and the *judgment* which they might give upon any matter referred to them. This distinction may be noticed not only in the case of Lord Abinger, but in others which Mr. Mills quoted in support of his argument.

Mr. Mills also contended that, while Parliament had relegated to the courts the power of trying cases of contested elections, they had parted with no more of their own power of controlling all matters in which their privileges were concerned than was defined by the express words of the statute; that therefore the county judge, in making a recount, was a Parliamentary, and not a judicial, officer, and a court of law had no power of interference; and that therefore the action of Mr. Justice Tuck, in granting a writ prohibiting him from further proceeding, was a violation of the privileges of Parliament.

Upon the first point taken by Mr. Mills the opinion of Lord Palmerston, cited by Mr. Davin, may be given as one of the highest Parliamentary authorities:

"He would not attempt to lay down on the present occasion the functions of the House of Commons, but it was at all times desirable that they should not press these functions to their extreme confines in cases on which doubt might arise, whether they were not transgressing the limits assigned to them by the constitution. Now, an interference in the administration of justice was certainly not one of the purposes for which the House of Commons was constituted. He thought nothing could be more injurious to the administration of justice than that the House of Commons should take upon itself the duties of a court of review of the proceedings of the ordinary courts of law, because it must be plain to the commonest understanding that they were totally incompetent to the discharge of such functions. Even supposing they were fitted for them in other respects, they had no means of obtaining evidence, and taking those measures and precautions by which alone the very ablest men could avoid error. Cases of abuse in the administration of the law might arise, it was true—cases of such gross perversion of the law, either by intention, corruption, or by incapacity, as to make it necessary for the House of Commons to exercise the power vested in it of addressing the Crown for the removal of the judge; but in the present case his honourable and learned friend could not single out any individual judge with regard to whom his observations principally applied as having acted in his sole and single capacity in pronouncing the judgment of which he complained."

Mr. McCarthy, in concluding the debate, pointed out that no

attempt had been made to impugn the integrity of Mr. Justice Tuck in granting the rule *nisi* for the writ of prohibition, with reference to which Mr. Ellis had written the article complained of. His language, therefore (as quoted above), was an attack upon the judge in his judicial capacity, for which he was properly made accountable. The court had simply exercised a power which it not only could not refuse to exercise, but the exercise of which was necessary for the maintenance of its own dignity and to preserve the repect and confidence of the community. He held strongly that there was no other method by which judges could defend themselves from attacks of this kind; but, at any rate, while the law was as it now undoubtedly existed, to pass a resolution condemning the judges for giving a judgment in accordance with it would be entirely stepping aside from the functions of Parliament.

The resolutions which formed the subject of this debate were three in number. That part of the debate relating to the first resolution, which bore upon the conduct of the returning officers, we have not alluded to, as not within our province. The second was in the following words, which closely follow the judgment of Sir G. Jessel quoted above:

"That in the further opinion of this House, the jurisdiction claimed by the judges of Superior Courts of Record of punishing by fine and commitment to prison for constructive contempt, being practically arbitrary and unlimited, and exercised by judges who are, at the same time, judges of the law, of the fact, of the intention, and of the sentence, and whose decisions are given without the aid of a jury, and without being subject to review, is opposed to the genius and spirit of constitutional liberty, and ought never to be exercised where any other pertinent remedy can be found, or recourse had to any other method of obtaining justice."

The third, and last, resolution condemns the penalties imposed upon Mr. Ellis as being arbitrary, excessive, and inimical to the public interest, etc.

It will be obvious from a careful perusal of the second and most important of the resolutions that much of the debate, even of that portion of it of which we have endeavoured to give the substance, was irrelevant to the terms of the resolution, which purports simply to be a condemnation of the jurisdiction claimed

by the judges in regard to the doctrine of constructive contempt. Taken, however, in connection with the second resolution, and as interpreted by the speech of the mover, the motion, as a whole, was not unreasonably treated as a condemnation of the judges who exercised the jurisdiction rather than of the jurisdiction itself.

This view of the case would justify the arguments of Sir John Thompson and others, that it is not within the sphere of Parliamentary supervision to deal with the *judgment* given by the courts in matters properly within their jurisdiction. This proposition, which seems to be clearly established, leaves undecided the very important question as to how far, and under what conditions, Parliament is justified in dealing with the conduct of judges and their mode of discharging their duties. On this point it would seem that no clear and defined rule can be laid down.

From the authorities cited, it is evident that no rule ever has been laid down. Parliament being omnipotent, and there being no law to restrain the action of its members, or their mode of expressing their opinion, we apprehend that in this, as in many other things, the common sense of Parliament, its sense of responsibility for the good government of the country, its regard for its own dignity and for the usages by which that dignity is maintained, its respect for well-established constitutional principles, will at all times prevent it, in the words of Lord Palmerston, from "pressing its functions to their extreme confines in cases in which doubt might arise," and, in the words of Lord John Russell, cause it to regard "the independence of the judges as so sacred that nothing but the most imperious necessity should induce the House to adopt the course" of doing anything that might affect it.

It is not too much to say that by the same principles the press should be guided. While free to criticize where criticism may be justified, that criticism must be just, must be intended to promote some public good, must be exercised with a due sense of responsibility, and only on such grounds and in such terms as not to render itself amenable to the judgment of Mr. Justice Buller, in a case cited by Mr. Davin, where he said:

"Nothing can be of greater importance to the welfare of the public than to put a stop to the animadversions and censures which are so frequently made in courts of justice in this country.

They can be of no service, and may be attended with the most mischievous consequences. Cases may happen in which the judge and the jury may be mistaken. When they are, the law has afforded a remedy, and the party injured is entitled to pursue every method which the law allows to correct the mistake. But when a person has recourse, either by a writing like the present, by a publication in print, or by any other means, to calumniate the proceedings of a court of justice, the obvious tendency of it is to make weaker the administration of justice, and, in consequence, to sap the very foundation of the constitution itself."

With regard to the doctrine of constructive contempt, and the jurisdiction of the courts in respect to it, we have first to remark that the judgment of Sir G. Jessel, upon which so much reliance was placed by Mr. Davies, must be taken in connection with the circumstances under which it was given, circumstances differing entirely from those existing in the present case. The case was the Vincent case, which arose out of a dispute between two solicitors, in which neither the dignity of the court nor the reputation of the judges were concerned. It had, therefore, but little bearing upon the present issue, and should not have been quoted without some reference to the facts to which it related. In that case the complainant could properly have resorted to other means of redress, and was not compelled to proceed in the way in which he did proceed. It was to such litigants that the judge referred, and not, as is assumed, to cases like the present, in which the judges themselves have been assailed. This judgment, therefore, does not impair the validity of the argument, which we think conclusive, that the power of dealing with cases of constructive contempt has always been held to be essential to the maintenance of the authority and dignity of the courts, and cannot safely be parted with. With some exceptions, it has been exercised with "the greatest reluctance, and with the greatest care on the part of the judges," and "only when necessary in the public interest." In fact, as is well known to the profession, there have been instances in which the judges have shown themselves more inclined to submit to insults than to resent them, and, so far from being to ready to assert their powers, have not seemed desirous to bring to justice those by whom they have been unjustly and wantonly assailed.

On the other hand, the courts, which are, and must be, in such cases alike prosecutors and judges, must be as careful in the exercise of this power as the press or any individual must be not to provoke it. Judges may safely rely upon the support of public opinion in the proper discharge of their important functions, and their best defence against attack will be the rectitude of their conduct, the justice of their decisions, and the dignity with which their duties are discharged. It may, however, be sometimes necessary, not only to maintain the dignity of the Bench, but to retain the confidence of the public in its ability to protect public interests and to uphold private rights, that it should strike at those who, for party or personal ends, seek to weaken its authority or interfere with the course of justice, and when it does so strike it should do so with firmness and resolution, going just far enough to meet the public need, and avoiding any extreme which might savour of personal revenge or the satisfaction of personal injuries.

In this New Brunswick case the facts have been but partially understood, if not wilfully misstated. In the foregoing remarks we have endeavoured to put them properly before the public in justice to the court, and in justice to those who, in the debate, took grounds which we think substantially correct, but opposed to what seems to be the popular view of the question.

Correspondence.

To the Editor of THE CANADA LAW JOURNAL:

DEAR SIR,—In the number of your contemporary, the *Canadian Law Times*, for June, 1894, I read, to my surprise, in an article entitled "The Judicial Committee of the Privy Council," the following words: "In passing, we might remark that *L'Union St. Jacques* v. *Belisle* was not decided as Mr. Lefroy says, in THE CANADA LAW JOURNAL of May 1st, on the ground that the provincial legislature could deal with insolvency." The matter, no doubt, is of no importance to any one but myself; but as I neither said nor implied, in the article referred to, any such thing, but devoted some trouble to contending that any such view was contrary "both to the express words of the British North America Act, and to the teaching of the reported decisions upon it," I should be glad if you would permit me to contradict, in your columns, the statement in the *Canadian Law Times*.

Yours truly, A. H. F. LEFROY.

DIARY FOR JULY.

1. Sunday .....*6th Sunday after Trinity.* Dominion Day. Long vacation begins.
2. Monday.....Heir and Devisee sits. Surrogate Court sits, except in York.
3. Tuesday .....Quebec founded 1604.
5. Thursday.....Battle of Chipt. ..., 1814.
6. Friday .....Duke of York married, 1893.
7. Saturday. ...Col. Simcoe, Lieut.-Gov. of Ontario, 1792.
8. Sunday .. ...*7th Sunday after Trinity.*
9. Monday.....Importation of slaves into Canada prohibited, 1793.
10. Tuesday .....Christopher Columbus born, 1447.
11. Wednesday. .Battle of Black Rock, 1812.
12. Thursday.....Battle of the Boyne, 1690.
13. Friday.....Sir John B. Robinson, 7th C.J. of Q.B., 1829.
14. Sunday ..... *8th Sunday after Trinity.* Manitoba entered Confederation, 1870.
19. Thursday... .Quebec capitulates to the British, 1629.
20. Friday.....British Columbia entered Confederation, 1871.
22. Sunday .....*9th Sunday after Trinity.* W.H.Draper, 9th C.J. of Q.B., 1863; W.B.Richards, 3rd C.J. of C.P., 1863.
23. Monday.....Union of Upper and Lower Canada, 1840.
24. Tuesday.... .Battle of Lundy's Lane, 1814.
25. Wednesday...St. James. Canada discovered by Cartier, 1534.
29. Sunday .....*10th Sunday after Trinity.* Wm. Osgoode, 1st C.J. of Q.B., 1792. First Atlantic cable laid, 1866.

Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.] [March 29.

MCGEACHIE *v.* NORTH AMERICAN LIFE ASSURANCE COMPANY.

Life insurance—Condition in policy—Note given for premium—Non-payment—Demand of payment after maturity—Waiver.

A policy of life insurance contained a condition that if any premium or note, etc., given for a premium was not paid when due, the policy should be void. M., who was insured by this policy, gave a note for the premium, and when it matured he paid a part and renewed for the balance. The last note was twice renewed and was overdue and unpaid when M. died. After the last renewal matured the manager of the company wrote, demanding payment. In an action by M.'s widow to recover the sum insured with interest,

Held, affirming the decision of the Court of Appeal for Ontario (20 Ont. App. R. 187), which reversed the judgment of the Divisional Court (22 O.R. 151), that the policy was void under the said condition, and that the demand of payment after the last renewal was not a waiver of the breach of the condition so as to keep it in force.

Appeal dismissed with costs.

Aylesworth, Q.C., for the appellant.

Kerr, Q.C., for the respondents.

Ex. Court Adm.] [March 13.

S.S. "SANTANDERINO" *v.* VANVERT.

Admiralty—Collision—Defective steering gear—Prompt action—Questions of fact—Appeal on.

The S.S. *Santanderino* was entering the Sydney harbour, where the barque *Juno* was lying at anchor about two hundred yards to the right of the centre of the channel. She was making eight or nine knots with a slight list to port, and the *Juno* was on her starboard bow. As she came near the *Juno* her head fell off to port, and in porting the helm she came too much to starboard, and in putting the helm to starboard to put her straight on her course it was found that the wheel would not work. She was then from 200 to 250 yards from the *Juno*, and on her port quarter. The third officer, who was at the wheel, told the master that it would not work, and the master sent the second and third officers below to see what the matter was and inform the engineer, at the same time telegraphing to stop the engine. He then ordered the port anchor to be let go, the engine to be reversed, and then to be reversed at full speed, but before that could be done the steamer struck the *Juno* on the port side.

In an action for damages caused by this collision, it appeared that the defect in the steering gear was caused by the breaking of a small pin called the taper pin, which caused a longer pin to drop out and prevent an eccentric rod, by which the motion was imparted, from working. The judge in admiralty found that the steering gear was constructed under a proper patent, and was in good order when the steamer left Liverpool for Sydney, but that the collision was due to want of prompt action on the part of the officers of the steamer when it broke down.

Held, affirming the decision of the judge in admiralty (3 Ex. C.R. 378) SEDGEWICK and KING, JJ., dissenting, that though it was doubtful that the evidence was sufficient to support this conclusion, it was not so clearly erroneous that an appellate court would reverse it, the decision depending only on a question of fact.

Appeal dismissed with costs.

Newcombe & McInnes for the appellants.

Borden, Q.C., for the respondents.

Nova Scotia.] [March. 13.

MACK *v.* MACK.

Trustee—Administrator of estate—Release to, by widow and next of kin—Misrepresentation—Rescission of deed of release—Laches.

M., administrator of his brother's estate, obtained from the widow and next of kin of the testator a release of all their respective interests in the real and personal property of the deceased, representing to them that if the property was sold at auction it would be sacrificed, and the most could be made of it by his having full control. The testator died in 1871, and from that time until his own death in 1888 M. held the property as his own, and did nothing with it as executor, either by passing accounts in the Probate Court or attempting to

wind up the estate. During that period he wrote a number of letters to the testator's widow, in most of which he stated that he was acting for her benefit in regard to the property, and would see that she lost nothing by his having it, and in 1881 he paid her $1,000. Prior to this payment it would appear from his letters that the widow had repented handing over the estate, and kept urging him to give her a statement of his dealings with the property, and early in 1881 he wrote that it would take two years more to enable him to know how the business stood, but no such statement was given, and after his death the widow brought an action against his executors, asking for an account of the estate and M.'s dealings therewith and payment of her share, and to have the said release set aside. The defendants set up the release as an answer to the claim, and also pleaded that the plaintiff was precluded by laches from maintaining the action.

Held, affirming the decision of the Supreme Court of Nova Scotia, GWYNNE, J., dissenting, that the release should be set aside; that the widow in signing it was ignorant of the state of her husband's business and was dominated by the stronger will of M.; and that M. after the release had admitted his liability to her as trustee and promised to account to her for the property without regard to his legal title, and paid money to her on account of such liability.

Held, further, that the plaintiff was not precluded by delay in pressing her claim from taking these proceedings; that the delay was due to M. himself, who by his promises to render a statement of the affairs of the estate had induced her to refrain from taking proceedings; and that M. by his correspondence had elected to divest himself of his legal title and must be treated as a mere trustee for the widow, and there is no Statute of Limitations to bar a *cestui que trust* from proceedings against his trustee for breach of an express trust, nor is there in Nova Scotia any prescription in favour of an administrator or executor against a beneficiary bringing suit for his share of an estate except in the case of a legatee.

Appeal dismissed with costs.

Borden, Q.C., for the appellant.

Newcombe and *McInnes* for the respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

[May 30.

DONOGH *v.* GILLESPIE.

Principal and agent—Banks and banking—Bills of exchange and promissory notes—Payment—Set-off—Debtor and creditor.

Bankers are subject to the principles of law governing ordinary agents, and therefore bankers to whom as agents a bill of exchange is forwarded for collection can receive payment in money only, and cannot bind the principals by

setting off the amount of the bill of exchange against a balance due by them to the acceptor.

Judgment of the County Court of York affirmed.

Aylesworth, Q.C., and *J. Cowan* for the appellants.

Shepley, Q.C., for the respondents.

[June 7.

THE DOMINION BANK *v.* WIGGINS.

Bills of exchange and promissory notes—Lien note—Negotiable instrument—Reservation of title.

An instrument in the form of a promissory note, given for part of the price of an article, with the added condition "that the title and right to the possession of the property for which this note is given shall remain in the vendors until this note is paid," is not a promissory note or negotiable instrument, and the holder thereof takes it subject to any defence available to the maker against the vendors.

Judgment of the First Division Court of Peel reversed.

A. E. H. Creswicke for the appellant.

W. S. Morphy for the respondents.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

FERGUSON, J.] [June 1.

CAMERON *v.* ADAMS.

Will—Devise—Right to "a home"—Interest in land—Equitable execution—Receiver.

A testator devised land to one in trust, first, to permit his nephew and his wife and children to use it for a home, and, second, to convey it to such child of the nephew as the latter should nominate in his will. The nephew and his family were living upon the land at the time of the making of the will and at the death of the testator, when there were two dwelling houses thereon. Afterwards the trustees and the nephew's father-in-law, at their expense, improved and altered the property so that the number of houses was increased to seven. The nephew lived with his family in one, and received the rents of the others.

In an action by judgment creditors of the nephew and his wife, seeking the appointment of a receiver to receive the rents in satisfaction of the judgment,

Held, that the judgment debtors took no estate in the land under the will, and nothing more than the right to call upon the trustee to permit them to use the land for "a home," which expression, however, meant more than simply a house to live in; that they were entitled to the advantage of the increased value of the land, and that their right to the use of the land for a home could

not be reached through a receiver so as to make it available for the satisfaction of the plaintiffs' claim.

Allen v. *Furness*, 20 A.R. 34, distinguished.

D. B. Maclennan, Q.C., and *C. H. Cline* for the plaintiffs.

Leitch, Q.C., and *R. A. Pringle* for the adult defendants.

Dingwall for the infant defendants.

Div'l Court.] [June 21.

CRAM *v.* RYAN.

Negligence—Fire—Liability for acts of another—Control—Navigable waters—Access to shore and navigation rights—Public rights—Private rights.

Held, affirming the decision of STREET, J., 24 O.R. 500, that the defendants were liable for the negligence of the owner of the tug hired by them in so placing it as to communicate fire to the plaintiff's scow, as in doing so he was obeying the orders of the defendants' foreman, and was under his direct and personal control.

Bartonshill Coal Co. v. *Reid*, 3 Macq. Sc. App. Cas. 266, followed.

Held, however, reversing the decision of STREET, J., that the plaintiff, in moving his scow where he did, was not a trespasser, at all events, as against the defendants, who were mere licensees "to take sand from in front of" the land granted by the Crown.

The grant to the shore of the river, reserving free access to the shore for all vessels, boats, and persons, carried the land to the water's edge, and not to the middle of the stream.

The effect of the removal of the shore line back from its natural line was to make the water so let in as much *publici juris* as any other part of the water of the river, and such removal did not take away the right of free access to the shore so removed.

Watson, Q.C., and *Masten* for the plaintiff.

McCarthy, Q.C., for the defendant

Div'l Court.] [June 21.

FINDLEY *v.* FIRE INS. CO. OF NORTH AMERICA.

Fire insurance—Policy—Statutory conditions—Other conditions—Variations—55 Vict., c. 39, s. 33—Representations in application—R.S.O., c. 167, s. 114, condition 1—Moral risk—Apprehension of incendiarism.

Where a fire insurance policy does not contain the statutory conditions, but other conditions not printed as variations, it must be read as containing the statutory conditions and no others.

Citizens Ins. Co. v. *Parsons*, 7 App. Cas. 96, followed.

And the law in this respect has not been altered by 55 Vict., c. 39, s. 33.

Where the policy is based upon an application containing statements or representations relating to matters as to which the insurers have required information, the first of the statutory conditions in s. 114 of R.S.O., c. 167, must be taken to refer to such statements and representations, whether the risk they relate to is physical or moral.

Reddick v. *Saugeen Mutual Fire Ins. Co.*, 15 A.R. 363, followed.

And where in the application the insured was asked whether any incendiary danger to the property was threatened or apprehended, and untruly answered "no";

Held, that the policy was avoided.

Masten for the plaintiff.

Ryckman for the defendants.

Full Court.] [May 31.

REGINA *v.* UNGER.

Criminal law—Criminal Code, s. 308—Fraud—Receiving money on terms.

Crown case reserved. Indictment and conviction of the defendant under s. 308 of the Criminal Code for receiving from one Snelgrove $338.46, the property of one Scott, on terms requiring the defendant to account for it or pay it over to Scott, and, instead thereof, fraudulently converting it to his own use.

W. R. Riddell, for the defendant, contended that as no terms were imposed by Snelgrove, there was no offence under the Code.

J. R. Cartwright, Q.C., for the Crown, was not called upon.

The court held that the section does not mean terms imposed by the person paying the money, but terms on which the defendant, when he receives it, holds it.

Conviction affirmed.

Full Court.] [May 31.

REGINA *v.* HOLLAND.

Criminal law—Tampering with witness—Liquor License Act, R.S.O., c. 194, s. 84—Ultra vires—Conviction under s. 154 of Criminal Code—Effect of s. 138.

Crown case reserved. Indictment and conviction of the defendant under s. 154 of the Criminal Code for attempting by corrupt means to dissuade a man from giving evidence upon certain prosecutions of the defendant, and another for offences against the Liquor License Act, R.S.O., c. 194. The question reserved was whether s. 84 of the Liquor License Act was now *ultra vires* of the Ontario Legislature, and, if not, whether the defendant could properly be convicted under s. 154 of the Code.

Murphy, Q.C., for the defendant, contended that s. 154 was not now *ultra vires*, s. 138 of the Code having given it efficiency, and that the defendant should have been indicted under it, and not under s. 154 of the Code.

J. R. Cartwright, Q.C., for the Crown, contended that *Regina* v. *Lawrence*, 43 U.C.R. 164, was still law; that s. 138 of the Code was passed merely to cover any case not otherwise provided for in the Code.

The court held, following *Regina* v. *Lawrence*, that s. 84 was *ultra vires*, and that the conviction should be affirmed.

Full Court.] [June 21.

REGINA v. ALWARD.

Justice of the peace—Indian Act—Sale of intoxicating liquors—Information—Several offences—Objection taken at hearing—Summary conviction.

Where an information laid against the defendant under the Indian Act charged that he sold intoxicating liquor to two persons on July 5th, and to two persons on July 8th, and the justices, notwithstanding that the defendant's counsel objected to the information on this ground, proceeded and heard evidence in respect of all the offences so charged, then amended the information by substituting August 8th for July 8th, proceeded and heard evidence in respect of the substituted charge and dismissed it, and convicted the defendant for selling to two persons on July 5th, the conviction was quashed.

Regina v. *Hazen*, 20 A.R. 633, distinguished.

Per STREET, J.: It was the duty of the justices, when the objection was taken, to have amended the information by striking out one or other of the charges, and to have heard the evidence applicable to the remaining charge only.

Aylesworth, Q.C., for the defendant.

T. W. Howard for the complainant.

MACMAHON, J.] [May 10.

KENNEDY *v.* THE PROTESTANT ORPHANS' HOME.

Will—Executors and administrators—Succession duty—55 Vict., c. 6 (O).

Where a testator devised and bequeathed all his real and personal estate to his executors and trustees for the purpose of paying a number of pecuniary legacies, some to personal legatees, and others to charitable associations, and provided that the residue of his estate should be divided *pro rata* among the legatees:

Held, that it was the duty of the executors to deduct the succession duty, payable in respect to the pecuniary legacies, before paying the balance over to the legatees respectively, and they had no right to pay such succession duty out of the residue left after paying the legacies in full.

Armour, Q.C., for the plaintiffs.

Cartwright, Q.C., for the Attorney-General of Ontario.

Huson Murray, Q.C., *W. Mortimer Clark*, Q.C., *A. Hoskin*, Q.C., *J. Reeve*, Q.C., and *Vickers* for other parties interested.

Chancery Division.

Div'l Court.] [June 1.

JOHNSTON *v.* THE CITY OF TORONTO.

Municipal corporations—Construction of sewer—Subsequent erection of houses with permission to drain into same—Negligence.

These were two actions which were consolidated, and were brought by the owners of adjoining houses on the north side of King street west to recover

damages alleged to have been occasioned by the negligence or improper conduct of the defendants in respect to the sewer in that street and the drainage of the said houses.

It appeared that the sewer had been properly constructed and maintained by the defendants, according to a plan of drainage adopted by them, and the houses in question were erected after the construction of the sewer, the owner having first sought and obtained leave to drain and discharge his sewage from the houses into it. He, however, made the cellars of the houses too deep to be drained by the sewer, though otherwise the houses were situated in the proper and appropriate location for draining them thereby.

Held, affirming the decision of STREET, J., at the trial, that the plaintiff's action must be dismissed with costs.

Per FERGUSON, J.: It seemed that the only complaint the plaintiff could make was that the plan and levels adopted by the defendants, in this system of drainage, were erroneous and wrong, but the authorities showed that an action on this ground would not lie. The duties of municipal authorities in adopting a general plan of drainage, and determining when and where the sewers shall be built, at what size and at what level, are of a quasi-judicial nature, and are not subject to revision by a judge or jury in a private action for not sufficiently draining a particular lot of land.

Per MEREDITH, J.: There was no authority for saying that the defendants were bound to furnish an efficient system of drainage for all those who drain with their leave into common sewers. Neither the owner of the houses nor the tenants were ever required by the defendants to drain or discharge sewage into the sewer in question. If either had been, the case might present a very different question; nor has anything ever been paid for the use of the sewer.

McCullough for the plaintiffs.

H. L. Drayton, contra.

Div'l Court.] [June 1.

QUEEN'S COLLEGE *v.* CLAXTON.

Mortgage—Payment off—Demand of assignment to nominee of mortgagor—Subsequent incumbrancers—R.S.O., c. 102, s. 2.

The owner of land executed a mortgage upon it, a third party joining in the personal covenant for payment. The owner afterwards conveyed away the whole of his equity of redemption to different purchasers of various portions of the lands, some of whom afterwards mortgaged such equity. The first mortgagee having commenced foreclosure proceedings, one Smith, through her solicitor, who was also solicitor for the mortgagor, paid to the first mortgagee the amount due on his mortgage, and demanded an assignment of the same to her instead of a discharge, also forwarding a written direction to that effect, signed by every subsequent owner or incumbrancer of the land, with one exception; but the first mortgagee refused to execute such assignment, upon the ground that there were subsequent incumbrancers whose rights intervened, and also on the ground that the mortgage had presumably been paid off with funds of the mortgagor, as the money had come from the mortgagor's solicitor, and that, therefore, the mortgagee held the estate in the lands for the next incumbrancers, having had notice of them.

Held, affirming the decision of ARMOUR, C.J., that the first mortgagee was bound to execute the assignment as asked.

Per BOYD, C.: Even had the money come from the mortgagor, he was liable on the covenant to pay, and was being sued by the mortgagee. He had conveyed all the lands to others, who, as between him and the mortgagee, were primarily liable to pay the mortgage and relieve him. Thus he became merely a surety for all claiming through and under him, and was entitled on payment to have the mortgage kept alive for his protection, and to enable him to recover from those who were liable to indemnify him.

Per ROBERTSON, J.: The mortgagor being sued upon his covenant to pay was a "mortgagor entitled to redeem," within the meaning of R.S.O., c. 123, s. 2.

Teevin v. *Smith*, 20 Ch.D. 724, distinguished.

Langton, Q.C., for the plaintiffs.

C. J. Holman for the defendants.

Div'l Court.] [June 1.

SMITH *v.* BEAL.

Assignment for benefit of creditors—Costs of litigation in respect to disputed claims—Right of assignee to charge same against estate—R.S.O., c. 124.

An assignee for the benefit of creditors, acting under the instructions of the duly appointed inspectors, served notice of contest, under the statute, of the plaintiff's claim upon the latter. The plaintiff then brought an action against the assignee to establish his claim, which was dismissed with costs; but, on appeal to the Divisional Court, this action was reversed, with costs to be paid by the defendant. At a meeting of creditors, thereupon called, it was resolved in writing to take the opinion of counsel upon the advisability of appealing to the Court of Appeal, and that the inspectors should act on such opinion. The opinion having been obtained, it was resolved, at a meeting of the inspectors, that the assignee should proceed to the Court of Appeal, which he did, but this appeal also was dismissed with costs, to be paid by the appellant. The assignee charged against the estate the total sum he had to pay in respect to the costs of these proceedings.

Held, affirming the decision of ROBERTSON, J., that he was entitled so to do.

Per BOYD, C.: *Semble*, that the right of the assignee to be recouped the costs of the appeal to the Court of Appeal might not improperly be limited to the share of the estate applicable to those creditors who were contesting the claim.

Per MEREDITH, J.: The cases seem to throw considerable doubt upon the assignee's right to be recouped the costs of going to the Court of Appeal, and to show that he should have been satisfied with the adverse judgments of the Divisional Court, and should, perhaps, have taken indemnity from those who desired to carry the case further. But in all these cases the judgment was, in the first instance, adverse to the trustee, whereas here the judgment in the first instance was in his favour. It may seem hard that a creditor whose claim on the estate has been unsuccessfully contested should have his dividend

largely reduced by such contestation, that the costs should not be, at least, first chargeable against the dividends of the opposing creditors, but it has to be borne in mind that his claim is not reduced ; that still remains, except in so far as reduced by the dividend, recoverable just as it always was from the debtor.

Aylesworth, Q.C., and *Hardy* for the plaintiff.

Snow for the defendant, the assignee.

Div'l Court.] [June 1.

O'HARA *v.* DOUGHERTY.

Evidence—Action for malicious prosecution—Proof of acquittal—Production of original records by clerk—Certified copy.

In an action for malicious prosecution, the plaintiff sought to prove his acquittal, before the County Judge's Criminal Court of the County of Haldimand, of a charge of misdemeanour, in respect to which charge this action was brought, by means of the production of the original record signed by the County Judge, and produced and verified by the clerk of the peace and Crown Attorney of Haldimand, in whose custody it was, or else by being allowed to put in a copy thereof, certified by the said County Crown Attorney.

Held, reversing the decision of MACMAHON, J., at the trial, that the evidence should have been admitted in either of the above two forms, and judgment dismissing the action set aside, and a new trial ordered.

Per ROBERTSON, J. : In cases of misdemeanour, the defendant is entitled to a copy of the record as of right.

Carscallan for the plaintiff.

Howard for the defendant.

Div'l Court.] [June 1.

WILSON *v.* TENNANT.

Malicious prosecution—Charge of theft—Reasonable and probable cause for charge as to some articles only—Misdirection.

In an action for malicious prosecution of a charge of theft of several articles, the trial judge held that there was no reasonable and probable cause for charging the theft of some of the articles, and withdrew the case as to them from the jury, but held otherwise as to the charge of theft of the other articles, and directed the jury that the fact that there was reasonable and probable cause to charge the theft of some of the articles bore only upon the question of damages, and left the case to the jury, who found a verdict for the plaintiff.

Held, that there was no misdirection, and motion dismissed with costs.

Johnstone v. *Sutton*, 1 T.R. 547, considered and distinguished.

Clute, Q.C., for the defendant.

Parkes for the plaintiff.

Div'l Court.] [June 1.

THE QUEEN *v.* DOTY.

Criminal law—Conviction for seduction only, though evidence given would have supported rape, and bill for which had been ignored by the grand jury —R.S.C., c. 157, s 3.

The prisoner was charged, under R.S.C., c. 157, s. 3, clause "A," of the Act respecting offences against public morals and public convenience, with having unlawfully seduced a girl between fourteen and sixteen years of age, and the girl gave evidence sufficient, if believed, to support a conviction for rape. An indictment for rape had been presented to the grand jury at the same assize, and had been ignored. The trial judge (FALCONBRIDGE, J.) reserved a case as to whether a conviction under the above section of R.S.C., c. 157, could, under the circumstaaces, be supported.

Held, that it could, and that the conviction should be affirmed.

DuVernet for the prisoner.

Cartwright, Q.C., for the Crown.

Div'l Court.] [June 1.

MULCAHY *v.* COLLINS.

Husband and wife—Married woman—Separate estate—Chose in action—Contract of married woman.

Decision of STREET, J., reported 24 O.R. 441, affirmed. Though it might be impossible to ascertain until the winding up of the testator's estate whether the residuary gift to the married woman is of any value, yet, at the least, she had a chose in action, a right to have the estate of the testator duly administered, and the residue, after satisfying all proper demands against it, handed over to her; and, assuming this to be so, such chose in action was personal estate, and separate estate within the meaning of R.S.O., c. 132.

W. Cassels, Q.C., for Elizabeth Collins.

Macdonald for the plaintiff.

Div'l Court.] [June 1.

REDFERN ET AL. *v.* POLSON ET AL.

Company—Sale of all assets—Contract to transfer all shares—Winding-up order before completion—Specific performance.

The shareholders of a dry dock company, in November, 1888, sold and transferred their buildings and plant, and also contracted that they would, within a year, transfer their charter by assigning all their stock to the nominee of the purchaser. A portion of the purchase money only was paid. The purchaser did not, however, nominate a person to whom the shares should be transferred, and the same were not transferred before this action, and in November, 1890, an order for the winding up of the company was made. The liquidators of the company now brought this action to recover the balance of the purchase money and interest.

Held, affirming the decision of MACMAHON, J., that they were entitled to judgment for the same.

Per MEREDITH, J.: There could be no transfer in accordance with the terms of the agreement until the purchaser had named the person to whom the shares were to be transferred. But the winding-up order did not relieve the purchaser from the contract. Shares may be bought and sold after the making of a winding-up order, and a contract of that kind is binding upon a party, though he may be ignorant of the fact that the company is in liquidation.

Hoyles, Q.C., for the motion.
Marsh, Q.C., *contra.*

Div'l Court.] [June 8.

REID *v.* BARNES.

Master and servant—Workmen's Compensation Act—50 Vict., c. 26—"Servant in husbandry"—Knowledge of danger—Questions for jury—General verdict—Non-direction—New trial.

In an action under the Workmen's Compensation Act, and at common law for damages for injuries sustained by the plaintiff while engaged in digging a drai . upon the defendant's farm, it did not appear that the plaintiff engaged with the defendant to do any particular work, but that he was first put by the defendant at mason work and then at digging the drain.

Held, that it was a question for the jury whether the hiring of the plaintiff was as a servant in husbandry within the meaning of 56 Vict., c. 26, and whether the work he was engaged in was in the usual course of his employment as such, and also whether the danger was known to the defendant and unknown to the plaintiff or the converse.

The jury were asked certain questions, one being whether the hiring was as a servant in husbandry, but they were told that they might give a general verdict, and they gave one for the plaintiff, answering none of the questions. The trial judge in his charge gave them no instruction on this point, and no direction as to what the law was.

Held, that they were not competent to find a general verdict, and there should be a new trial.

Stuart Livingston for the plaintiff.
Carscallen, Q.C., for the defendant.

ROBERTSON, J.] [June 1.

MOLSONS BANK *v.* HEILEY.

Principal and surety—Security held by creditor—Release of same without consent of surety—Judgment against surety.

The plaintiffs sued the defendant as endorser of a promissory note made by Patterson Bros. It appeared that they held a number of notes of Patterson Bros., endorsed by various parties, and that they also held a mortgage from Patterson Bros. on certain lands to secure their general indebtedness. Before

this action the plaintiffs had released and discharged certain of the lands comprised in the mortgage without the consent of the defendant, but, in consideration of such discharge, had received the full value of the said lands, and had applied the proceeds in reduction of the general indebtedness of Patterson Bros.

Held, that the defendant as a surety was entitled to have credited in reduction of his liability upon the note a *pro rata* share of the amount realized by the plaintiffs on the mortgage, and also a *pro rata* share of the value of the security still in their hands, and there must be a reference to the Master to ascertain the same, and an order for payment by the defendant to the plaintiffs of the balance which should be found due from him after taking such account.

Crerar, Q.C., and *P. Crerar* for the plaintiffs.

Nesbitt, Q.C., for the defendant.

FERGUSON, J.] [June 6.

HARTE *v.* ONTARIO EXPRESS AND TRANSPORTATION COMPANY.

Winding-up Act—Master in Ordinary—Jurisdiction—Fraudulent transfer—R.S.C., c. 129—52 Vict., c. 32 (D.).

Appeal from the Master in Ordinary.

Held, that the Master in Ordinary is not a competent tribunal to decide questions of fraudulent transfer arising in the course of a reference in winding-up proceedings under the Dominion Winding-up Act and amending Acts.

H. D. Gamble for the appellants.

Hoyles, Q.C., *contra*.

Practice.

Q.B. Div'l Court.] [June 21.

HOLLENDER *v.* FFOULKES.

Writ of summons—Special indorsement—Interest—Unliquidated demand—Summary judgment for liquidated portion of demand—Rules 245, 705, 711, 739.

Where the writ of summons was indorsed to recover the amount of a foreign judgment, together with interest on the date thereof until judgment,

Held, that the claim for interest was for an unliquidated amount, and the two claims together did not constitute a good special indorsement within Rule 245.

Held, also, that the plaintiff was not entitled upon such indorsement to a summary judgment under Rule 739 for the amount of the foreign judgment only, with liberty to proceed for the interest; for Rule 739 cannot be made applicable where there is a claim for a liquidated demand joined to one for unliquidated damages.

Rules 245, 705, 711, and 739 considered. *Solmes* v. *Stafford*, 16 P.R. 78, followed. *Hay* v. *Johnston*, 12 P.R. 596, not followed.

McBrayne for the plaintiff.

W. H. Bartram for the defendants.

Q.B. Div'l Court.] [June 21.

IRVINE *v.* MACAULAY.

Revivor—Ejectment—Ontario Judicature Act, 1881, Rules 383, 384, 385.

An action of ejectment was begun in 1874, and in 1879 the parties, being at issue, agreed that no further proceedings should be taken until the result of another action should be known. Judgment in that action was given in 1891. In 1886 the original plaintiff conveyed the lands to M.

Held, that an order made in 1893 allowing the action to be continued in the name of M. as plaintiff was proper; for, as the original plaintiff did not convey away the lands till after the passing of the Ontario Judicature Act, 1881, Rules 383, 384, and 385 of that Act (Con. Rules 620, 621, and 622) were applicable to the action, and it did not become defective when the conveyance was made.

Lemesurier v. *Macaulay*, 20 A.R. 421, distinguished.

W. R. Meredith, Q.C., for the plaintiff.

A. H. Marsh, Q.C., for the defendants.

C.P. Div'l Court.] [June 23.

MCKEE *v.* HAMLIN.

HAMLIN *v* CONNELLY.

Costs—Taxation—Solicitor and client—Retaining fee.

By the judgment in an action the defendant was required to pay the plaintiff's costs of a former action, as between solicitor and client, to be taxed.

Held, that a retaining fee which the plaintiffs had agreed in writing to pay to their solicitors, over and above the costs of the action, could not be taxed against the defendant.

Re Geddes and Wilson, 2 Ch. Chamb. R. 447, and *Ford* v. *Mason*, 16 P.R. 25, approved and followed.

Re Fraser, 13 P.R. 409, distinguished.

Douglas Armour for the plaintiffs.

W. H. P. Clement for the defendant.

FERGUSON, J.] [June 5.

IN RE MILLER AND TOWNSHIP OF HALLAM.

Municipal corporations—Provisional judicial district—Application to quash by-law—Forum—R.S.O., c. 185, s. 57.

Summary application to quash a municipal by-law of the township of Hallam, in the District of Algoma.

R.S.O., c. 185, s. 57, provides that "if any dispute arises as to the validity of any by-law . . . of any municipality in the provisional judicial districts of Algoma or Thunder Bay, the same shall be referred to the judge of the district, whose decision thereon shall be final."

The motion was made before FERGUSON, J., holding the weekly court at Osgoode Hall.

W. H. P. Clement, for the applicant, contended that, under the wording of the section above quoted, it was proper to make the motion in the ordinary way, and if upon the motion, as was the case here, dispute arose as to the validity of the by-law, it should be referred by the court to the judge of the district.

W. M. Douglas for the township corporation.

FERGUSON, J., ruled that the motion should be made in the first instance to the judge of the district; and directed that the present application should stand adjourned until after application had been made to such judge.

MACMAHON, J.] [June 15.

IN RE BURTON AND VILLAGE OF ARTHUR.

Municipal corporations—By-law—Motion to quash—55 Vict., c. 42, s. 332—Recognizance—Bond—Allowance—Condition precedent.

A condition precedent to the entertaining of a motion to quash a municipal by-law is the entering into, allowance, and filing of a recognizance, in the manner provided by s. 322 of the Municipal Act, 55 Vict., c. 42; and a bond, even though allowed by a County Court judge, cannot be effectively substituted for a recognizance.

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

Aylesworth, Q.C., for the corporation.

ARMOUR, C.J.] [June 27.

IN RE GARSON AND TOWN OF NORTH BAY.

Arbitration and award—Motion to set aside award—Time—9 & 10 Will. III., c. 15; 52 Vict., c. 13, ss. 2, 4, 6—Reference back to arbitrator—Diligence.

A notice of motion to set aside an award made on 24th July, 1893, of which the applicants had notice on 7th August, 1893, was served on the 29th March, 1894.

Held, too late.

The motion if made under 9 & 10 Will. III., c. 15, should have been made before the last day of what was formerly Trinity Term; and, if the award was one to which s. 4 of 52 Vict., c. 13, did not apply, by s. 6, could not have been made after the expiration of three months from the making and publication.

The provision of s. 2 of that Act as to filing awards does not prevent the time limited by 9 & 10 Will. III., c. 15, and 52 Vict., c. 13. s. 6, from running.

Where the time has elapsed for moving to set aside an award, the matters referred may, in some cases, be remitted to the reconsideration of the arbitrator, but only where the applicant is reasonably prompt in coming to the court for relief.

Aylesworth, Q.C., for the motion.

Masten, contra.

MANITOBA.

Full Court.] [May, 1894.

BRAUN *v.* DAVIES.

Appeal from order of single judge—Leave to appeal after time elapsed—Mistake of attorney—Evidence to set aside garnishee order—Affidavit on information and belief not sufficient.

An order had been made in this case by the learned Chief Justice allowing an appeal from the referee, and setting aside a garnishing order obtained by the plaintiff (see *ante* p. 286).

This order was dated and served on the 30th of March, 1894. On 31st March the plaintiff's attorney obtained an order from a judge staying proceedings for fourteen days, and providing that if notice of appeal to the Full Court should be given within that period such stay of proceedings should continue until the hearing or other disposition of the proposed appeal.

The plaintiff's attorney supposed that this gave him until the 14th of April to enter his appeal to the Full Court, and on that day he set it down with the prothonotary for hearing.

On the appeal coming on before the Full Court for hearing, counsel for defendant applied to strike it out, on the ground that it was entered too late, the 13th of April being the last day allowed by the general orders of the court.

The court held this objection fatal, but in ordering the appeal to be struck out gave the plaintiff leave to make an independent application under Rule 66 for an extension of time to enter the appeal. Subsequently, plaintiff moved before the Full Court to extend the time for appealing on an affidavit of his attorney, setting forth the above facts, and that it was through his error and misconception of the effect of the order staying proceedings, and not through any fault or delay or misconduct on the part of the plaintiff, that he had allowed the time to elapse before entering the appeal.

Held, that as defendant had not been prejudiced, and the mistake was one made in good faith, under a misapprehension on the part of the attorney, leave should be given to set down the appeal within two days, on payment of the costs of the application.

The appeal was then set down to be heard, and on coming up for hearing the point was taken by plaintiff's counsel, relying on *Gilbert* v. *Endean*, 9 Ch.D. 259, that the garnishee order should not have been set aside on the strength of the affidavit which had been filed by defendant, an affidavit of the partner of defendant's attorney based merely on information and belief.

Held, that the application being not merely an interlocutory application, but one that affected and disposed of the rights of the parties, the evidence adduced was not sufficient to warrant the court in setting aside the garnishing order, being at best of no more weight than that on which it had been originally made.

Appeal allowed, and order appealed from set aside with costs.

Hough, Q.C., for the plaintiff.

Perdue for the defendant.

Full Court.] [June 9.

ALLAN *v.* M. & N.W.R.W. CO.

RE GRAY ET AL.

Petition by mortgagees to be allowed to take proceedings to realize their security on property in possession of a receiver—Parties to suit in equity—Receiver of mortgaged property—Manager of mortgaged railway—Sale of mortgaged railway property—Right to sale in equity where power of sale is given by mortgage.

This was an appeal to the Full Court by Messrs. Gray and Heron-Maxwell, mortgagees of the first 180 miles of the railway in trust for certain bondholders.

This portion of the road, together with all the revenues, tolls, income, rents, issues, and profits, had been conveyed to the petitioners by way of mortgages, as security for the bonds.

The plaintiffs in this suit, being judgment creditors of the defendant company, had obtained a decree for the appointment of a receiver, and H. Montague Allan, vice-president of the company, and one of the plaintiffs, had been appointed receiver, and was acting as such. The mortgagees then petitioned the court for leave to take proceedings to realize on their security by filing a bill for a receiver and sale. Before the filing of the petition, an order had been made making the petitioners parties to the cause in the Master's office, but this order was not served till after the filing of the petition.

On the dismissal of the petition by MR. JUSTICE BAIN, the petitioners appealed to the Full Court.

Held, (1) that it was proper for them to proceed by petition, and not by motion.

(2) That, as the petition had been filed before the service of the order making the petitioners parties to the cause, they were not bound by it, and could go on with their application.

(3) The petitioners could not get the relief they sought by any proceedings in the suit, and, as they had made a *prima facie* case for relief, the court should remove out of their way the difficulty of the officer of the court being in possession.

(4) Under circumstances similar to these set forth in the petition, mortgagees are entitled, as a right, to a receiver, and the petitioners were not bound to be satisfied with the receiver appointed at the instance of the plaintiffs, whose interests were different from, and possibly adverse to, theirs.

(5) That the petitioners were not entitled to the appointment of a manager of the railway, because there is no legislative authority for the transfer of the responsibility of management from the hands of the company.

(6) The petitioners are also entitled, as mortgagees, to take proceedings at once for the sale of the mortgaged property, notwithstanding the fact that the mortgage contained a power of sale which could not be exercised until after twelve months.

Appeal allowed with costs, and order made giving petitioners leave to file bill for receiver and sale.

Ewart, Q.C., and *C. P. Wilson* for the petitioners.

Tupper, Q.C., and *F. H. Phippen* for the plaintiffs.

Aikins, Q.C., *Culver*, Q.C., and *Hough*, Q.C., for the several defendants.

Full Court.] [June 9.

ALLAN *v.* M. & N.W.R.W. Co.

RE GRAY ET AL.

Parties to suit in equity—Prior incumbrancers should not be made parties—Variation of decree.

This was a petition by Messrs. Gray and Heron-Maxwell, the mortgagees of the first 180 miles of the railway of the defendants, holding in trust for certain bondholders, asking that the decree made in this case should be varied, and that the Master's order, adding them as parties in his office, should be set aside.

The plaintiffs in the suit being judgment creditors of the railway company, and claiming also as holders of bonds issued by the company in connection with another portion of the railway, had obtained a decree for the appointment of a receiver, etc., which decree, by the sixth clause, directed the Master to inquire as to incumbrances or charges against the company and its property, and to settle the rights and priorities of the several incumbrancers, and to add such of the parties as have such incumbrances.

Pursuant to this direction the Master, on the 25th July, 1893, issued an order making the petitioners and other persons parties in his office. The petitioners, holding the first lien and charge upon the first 180 miles of the railway, claimed that they should not be made parties to this suit, and filed their petition accordingly.

This petition was dismissed by Mr. Justice BAIN, and the petitioners then appealed to the Full Court.

Held, that the petitioners should not have been made parties to the suit, and that the decree should not have been taken out as it was, but should have confined the inquiry in the Master's office to the liens and charges of subsequent incumbrancers.

The decree was ordered to be varied and amended accordingly, and the order adding the petitioners as parties in the Master's office was set aside with costs to the petitioners. Appeal allowed with costs.

Ewart, Q.C., and *C. P. Wilson* for the petitioners.

Tupper, Q.C., and *F. H. Phippen* for the plaintiffs.

Aikins, Q.C., *Culver*, Q.C., *Gough*, Q.C., and *Bain* for the several defendants.

TAYLOR, C.J.] [June 8.

MILLER *v.* DAHL.

Accounts in the Master's office—Apportionment of losses between tenant for life and remaindermen—Occupation rent—Interest, how much to be allowed the tenant for life.

This was a decision of the court on appeal from the Master's report in an equity suit. A reference had been ordered to the Master to ascertain the amount to which the widow of the testator was entitled for income out of the trust estate, which had been devised to her for her life. Some of the investments had been unproductive, and had been realized at a loss, and the main

question for decision was, how much of the loss should be borne by the tenant for life, and how much should fall on the remaindermen. There were cross appeals from the report, and, in the judgment of the learned Chief Justice, the following points were decided :

(1) Where there has been a loss in realizing on the securities of the estate, the true principle of apportionment is, "that neither the tenant for life nor the remainderman is to gain an advantage over the other, neither is to suffer more damage in proportion to his estate and interest than the other suffers" : *per* James, V.C., in *Cox* v. *Cox*, L.R. 8 Eq. 343. In accordance with this rule, a calculation should be made of what principal invested at the date from which interest was to run, at six per cent. per annum, would amount with interest to the sum recovered, and interest on this principal ; or, in other words, the difference between this principal and the amount recovered should go to the tenant for life, and the rest to the remaindermen. The tenant cannot be compensated for the loss of income unless there is a fund out of which such compensation can be given : *Moore* v. *Johnson*, 33 W.R. 446.

(2) Although interest at more than six per cent. was actually received on one of the securities of the estate, yet other securities realized less than six per cent., and in allowing the tenant for life six per cent. on all the Master did no injustice to her. The executors, in realizing upon the mortgage, sold the land for $3,000, payable as follows : One thousand dollars cash, one thousand in two years, and one thousand in three years, without interest. The court, presuming that they had made the best terms they could get,

Held, that the executors could not be held responsible for depriving the tenant for life of income by this sale.

(3) The tenant for life may be entitled or allowed, by way of income, money which never actually came into the hands of the executors as profits or interest, when the securities of the estate are realized at a loss, under the principle laid down under the first of the above headings, and upon the authority of such cases as *Turner* v. *Newport*, 2 Ph. 14 ; *Brown* v. *Gallatly*, L.R. 2 Ch. 751 ; *Cox* v. *Cox*, L.R. 8 Eq. 343.

(4) It was proper that the Master should not charge the tenant for life with occupation rent, although she had lived upon lands of the estate for a number of years, because on the taking of the accounts before him no such charge was sought to be established by evidence, and it appeared that, during a large portion of the time of her residence on the land, her second husband was the rea[illegible]ant and tenant.

Both appeals dismissed with costs, to be set off one against the other, the party against whom there may be any excess of costs to pay such excess to the other party.

Monkman for the plaintiff.

Wade for the defendant.

BAIN, J.] [June 21.

CREDIT FONCIER *v.* SCHULTZ ET AL.

Mortgage suit—Sale after foreclosure—Variation of decree.

The plaintiffs had obtained a decree of foreclosure against the defendants, and the Master had made his report as to the amount due, and appointed the 16th of June, 1894, for payment.

The plaintiffs, then, instead of applying for a final order of foreclosure, petitioned the court to make an order for the sale of the mortgaged premises, and for payment by the mortgagor of the balance which should remain due after deducting the amount realized by the sale.

This application was based on the ground that the mortgaged premises are not now worth the amount due under the mortgage.

Held, that Order No. 419 of the Rules and Orders in Equity, which provides that "the court may direct a sale of the property instead of a foreclosure of the equity of redemption on such terms as the court thinks fit," does not authorize the court to make a decree for sale after foreclosure has been ordered without the consent of the parties.

Order No. 419 is substantially a repetition of the first part of the 48th section of the Imperial statute, 15 & 16 Vict., c. 86, and, under that section, according to the English authorities, no sale could be ordered after foreclosure decree except upon consent: Daniel's Chancery Practice, p. 1151; Coote on Mortgages, p. 1000; *Girdlestone* v. *Lavender*, 9 H.A. 53. The English practice was changed in this respect by section 25 of the Conveyancing and Law of Property Act, 1881: *Union Bank* v. *Ingram*, 20 Ch.D.; *Wooley* v. *Colman*, 21 Ch.D. 169.

The practice under the Ontario Chancery Order 428, which is the same as the Manitoba Order No. 419, appears to have been different, but this court is bound by the English authorities where they conflict with those of Ontario. Petition dismissed with costs.

Huggard for the plaintiffs.

Phippen for the defendants.

Law Students' Department.

LAW SCHOOL EXAMINATIONS.

[N.B.—Students will have observed that the examination papers which appeared *ante* p. 368 do not always comprise the entire number of questions on each paper as set by the examiner, but are extracts only therefrom of some of the more unusual or important questions. The papers following are given in full. —ED.]

EQUITY.

Examiner: J. H. Moss.

1. To what extent may the executor maintain an action for a tort to the person of his testator? Within what time after the death must the action be brought, and how are the damages estimated?

2. What method of ascertaining the value of real estate upon the security of which he proposes to lend trust money must a trustee adopt in order that all question as to the propriety of the investment may be avoided in the event of the security proving insufficient?

3. A. agrees in writing with B. that he will be answerable for any loss that B. may sustain by reason of C.'s misconduct in B.'s employ. B. having suffered loss through C.'s negligence brings an action and obtains judgment against C., but not being able to realize upon this judgment he brings an action against

A. upon his guaranty, and at the trial tenders as evidence of the amount of his loss his judgment against B. A. objects to the admission of this evidence. Can the objection be sustained?

4. A. executes a bond in favour of B. as a guaranty for the honesty of C., a servant in the employ of B. B. subsequently takes D. into partnership, and C. continues to perform for the firm the same services as he had previously performed for B. C. eventually embezzles money belonging to the partnership. Is A. liable upon his bond? Explain.

5. Distinguish between the rights possessed by the issue of a marriage to enforce a covenant to settle lands for the benefit of such issue (*a*) when the covenant is contained in an ante-nuptial settlement, (*b*) when the covenant is contained in a post-nuptial settlement, and give the reasons for such distinction.

6. A testator devises his farm to his executors upon trust to let the same lie idle for fifteen years, and subject thereto upon trust for A. in fee simple. What is the executors' duty in respect of the farm upon the testator's death?

COMMERCIAL LAW.

Examiner: M. H. Ludwig.

1. A. enters into a contract to sell B. a quantity of goods.

(*a*) How do you determine whether the property in the goods has passed?

(*b*) Why does it become material to determine this question in certain cases?

2. (*a*) Explain briefly what is meant by the reservation of *jus disponendi*.

(*b*) State the leading rules which you would apply to ascertain whether the vendor has reserved his *jus disponendi*.

3. A. gave B. a chattel mortgage on the 10th February on his stock for $500 for cash advanced that day. On the 12th of February A. gave C. a chattel mortgage on the same stock for a cash advance of $200 made that day. On the 14th of February the stock covered by the mortgages was seized under an execution on a judgment recovered by D. against A. C. registered his mortgage on the 14th of February; B. registered his on the 15th of February. Discuss the rights of A., B., C., and D.

4. A. endorsed a note in blank and handed it to B., who has no beneficial interest in it, for the purpose of commencing a suit on the note. B. sued, and the defendant showed the above state of facts. Who should succeed?

5. What are the rights of a purchaser who has been induced to purchase through the fraud of an agent of a vendor, the latter being innocent.

6. "By the Common Law an assignee for the benefit of creditors can take no higher right than the debtor could convey." Has this been changed by statute? Answer fully.

7. (*a*) What judicial interpretation of the Assignment and Preference Act (R.S.O., cap. 124) led to the passing of the Amendment in 1891 (54 Vict., cap. 20)?

(*b*) What briefly does the amendment enact, and how has it been construed?

8. (*a*) What must a simple contract creditor show to obtain a certificate under the Creditors' Relief Act?

(*b*) In what respects, if any, has an execution creditor an advantage over a certificate holder?

9. Contrast the effect at Common Law of a transfer by the holder of a ware house receipt and a bill of lading. How has the former been altered by legislation in Ontario?

10. How has the Bills of Lading Act (R.S.O., cap. 122) altered the Common Law as to the persons to sue and be sued in respect of matters arising out of the contract contained or evidenced in the bill of lading?

11. (*a*) Apart from the Assignment and Preference Act (R.S.O., cap. 124), can a creditor be compelled to value any securities held by him before he will be permitted to rank on the estate of the debtor?

(*b*) Under the said Act which of the following securities must a creditor value:

1. A mortgage on the debtor's farm?

2. A chattel mortgage made by a third person to the creditor?

3. A chattel mortgage made by a third person to the debtor and assigned by the debtor to the creditor?

4. Promissory notes made by C., D., and E., respectively, in favour of the debtor and endorsed over to the creditor? The notes made by C. and D. are not due, the note made by E. is overdue.

12. If a mercantile agent contract a debt on behalf of his principal, can he subsequently pledge the goods of his principal for the debt?

PRACTICE.

Second Year Pass—May, 1894.

Examiner: M. H. Ludwig.

1. When will the court grant relief against a forfeiture for breach of a covenant in a lease to insure against loss by fire?

2. What is meant by a (*a*) mandatory injunction, (*b*) interlocutory injunction? Give examples illustrating your answer. What must be clearly shown before the court will grant an injunction?

3. State the different classes of debts or demands for which a writ of summons may be specially endorsed.

4. What steps in an action may a plaintiff take where the defendant (*a*) has entered an appearance after the time limited for appearance, but did not serve notice of entry of appearance on the plaintiff's solicitor; (*b*) has delivered his defence after the time allowed for delivering same?

5. (*a*) In what cases may appeals be taken to the Court of Appeal without leave?

(*b*) When will no appeal lie from a judgment or order?

6. (*a*) When only will the court entertain a motion to set aside a proceeding for irregularity?

(*b*) How may an irregularity be waived?

7. A party to an action suing by a solicitor desires to change his solicitor.

(*a*) Upon what terms will he be permitted to do so?

(*b*) What steps must be taken to procure the change?

8. How far may a party to an action use in evidence,

(*a*) His own examination for discovery?

(*b*) The examination of the opposite party?

(*c*) The examination of an officer of a corporation?

9. (*a*) What steps must be taken to procure the evidence of a witness for use on a pending motion when such witness refuses to make an affidavit?

(*b*) If the witness is out of the jurisdiction, how can his evidence be procured?

10. Can a plaintiff ever recover judgment before the time allowed the defendant to enter an appearance to the writ has expired? If so, what steps must he take, and what must be shown to entitle him to judgment?

Second Year Honours.

1. (*a*) Show by examples proceedings which have been held irregular, and proceedings which are a nullity.

(*b*) Why does it become necessary to consider whether a proceeding is irregular or a nullity? Answer fully.

2. When has the court power to refer any question or issue of fact in an action, or all the issues in an action to a special referee? Answer fully.

3. Within what time and to what court must the following appeals be made:

(*a*) Appeal from an order of the Master in Chambers?

(*b*) Appeal from a judgment delivered at the trial?

(*c*) Appeal from a Master's report?

(*d*) Appeal from a judgment of the Divisional Court?

4. A. is a judgment creditor of B. B. is entitled to certain rents and other moneys from C. You are retained by A. to take such steps as may be necessary to procure an order that the moneys owing by C. to B. should be applied in satisfaction of A.'s claim against B.

How would you determine whether you should proceed by way of attachment, or by obtaining an order appointing a receiver? Answer fully.

5. What is the position of a third party who has been served by the defendant claiming indemnity or relief from such third party as to his right to production of document, and to examine the original parties to the action for discovery? Answer fully.

6. Where a writ is indorsed for detention of goods and pecuniary damages, and the defendant fails to appear, what steps must the plaintiff take to recover judgment for the possession of the goods and for damages?

7. Is a writ of summons "specially indorsed" if the plaintiff, in addition to a debt or liquidated demand, claims interest on the debt or demand? Answer fully.

8. In an action against an infant,

(*a*) When must the defendant be personally served?

(*b*) When should the writ be served on the official guardian?

Appointments to Office.

SHERIFFS.

County of Simcoe.

The Honourable Charles Drury, of the Township of Oro, in the County of Simcoe, to be Sheriff in and for the said County of Simcoe, in the room and stead of Orson J. Phelps, resigned.

County of Wentworth.

John Walter Murton, of the City of Hamilton, in the County of Wentworth, Esquire, to be Sheriff in and for the said County of Wentworth, in the room and stead of the Honourable Archibald McKellar, deceased.

POLICE MAGISTRATES.

District of Rainy River.

Charles Joseph Hollands, of the Village of Fort Frances, in the District of Rainy River, Esquire, to be a Police Magistrate in and for the following territory in the said District of Rainy River, for the period of twelve months, namely: The Town Plot of Alberton, the Township of McIrvine, and the territory extending easterly through Rainy Lake to the head of said Lake, and extending north and south; from the International Boundary on the south to a line run in 1892 by Provincial Land Surveyor Niven as a Base-line from Sturgeon Falls west to Rainy Lake on the north.

CLERKS OF THE PEACE AND CROWN ATTORNEYS.

County of Carleton

Napoleon Antoine Belcourt, of the City of Ottawa, in the County of Carleton, Esquire, to be Clerk of the Peace and County Crown Attorney in and for for the said County of Carleton, in the room and stead of Robert Lees, deceased.

COMMISSIONERS FOR TAKING AFFIDAVITS.

City of London (Eng.).

John Woodlands Watkin, of No. 11 Saint Thomas street, London, England, Gentleman, Solicitor, to be a Commissioner for taking affidavits within and for the City of London, and the Administrative County of London, and not elsewhere, for use in the Courts of Ontario.

REGISTRARS OF DEEDS.

County of Middlesex.

John Waters, of the Township of East Williams, in the County of Middlesex, Esquire, to be Registrar of Deeds in and for the North and East Divisions of the said County of Middlesex, in the room and stead of John Walker, Esquire, deceased.

County of York.

John Taylor Gilmour, of the Town of Toronto Junction, in the County of York, Esquire, M.D., to be Registrar of Deeds in and for the East and West Divisions of the said County of York, in the room and stead of John Ridout, Esquire, resigned.

INSPECTOR OF REGISTRY OFFICES.

County of York.

The Honourable Christopher Finlay Fraser, of the City of Toronto, in the County of York, to be Inspector of Registry Offices for the Province of Ontario, in the room and stead of E. F. B. Johnston, Esquire, resigned.