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THE eternal fitness of things does not seem to strike all people alike. A correspondent has sent to us an advertisement which declares that the "Parade hats" of a well-known and excellent association, admirably administered by its Supreme Secretary, are to be had from that gentleman. If he had omitted the letters Q.C. after his name, a reader would not have been struck by any great inappropriateness. It is well that these cabalistic letters, although, unhappily, they are now understood to indicate merely that the recipient has some political influence, should not be used to assist in the retailing of "hats that are hats," brilliant though their plumage may be.

WE must, however, turn to our brethren across the border for genuine cheek in the way of advertising. A certain individual in New York State, after setting forth that he buys and sells real estates, purchases mortgages, effects loans, settles estates in Surrogate Courts, collects old debts in all States of the Union and Canada, gives special attention to claims against insurance companies, and all mutual and benefit organizations, and that he investigates all cases and gives advice free, concludes with the following encouraging words (grammatical connection not clear), "prosecuted when sure of success." Clients will be further encouraged by knowing that this enterprising party hails from No. 10 Joy Building.

THE confession made by Clara Ford to the effect that she shot Frank Westwood, taking it as detailed by the detective, is explicit enough, but there is something as to the mode in which

it was (shall we say) obtained repugnant to one's ideas of British fair play. Of course, no unnecessary obsta. e should be placed in the way of the detection of crime; but it would seem to be more in accord with the instincts of our administration of criminal law that the accused should be advised before making any statement to consult some friend or professional man, instead of being merely warned, as in this case, during the long examination to which she was subjected, that anything she should say might be given in evidence against her. The crime was so terribly bloodthirsty that one would like to believe that the woman, if indeed she be the criminal, was out of her mind at the time. It is a very sad business altogether, and none the less because the victim is unable now to give evidence as to the alleged act which is assigned as a motive for the crime.

A COURT of the kind which is at present sitting in Toronto under the provisions of section 477 of the Municipal Act is, happily, somewhat of a novelty in this country; but we forbear at present from discussing some points in connection with it which are of interest from a professional point of view. Whilst one cannot but deplore the corruption which has been exposed, it must be conceded that it is better to apply the knife at once and so prevent the evil spreading. Whether the exposure will lead to any proceedings of a criminal nature remains to be seen. One thing is manifest, and that is that our municipal system as applied to cities is a lamentable failure. The enquiry has so far been conducted with marked ability by those who have charge of it; but it is not very pleasant to note, on the other hand, that a member of the profession who was examined as a witness does not appear in an enviable light. We trust there may be some explanation given of what at present appears to be a very questionable transaction on his part; and it would seem to be a case which the Discipline Committee of the Law Society should make a subject of enquiry, though probably it would not be proper for them to act until Judge McDougall has made his report.

THE ACT RESPECTING ASSIGNMENTS AND PREFERENCES.

There is one direction in which R.S.O., c. 124, requires amendment. But whilst the evil is obvious, and especially so in connection with business in country places, the remedy is not so clear.

A small trader becomes insolvent. He generally has one or two large creditors, seldom more than one, and a number of small ones. The large creditor forces an assignment. This, as is usual in such cases, is made to some clerk or attaché, either of the firm of large creditors or of their solicitors. The estate is wound up. The small creditors get nothing, or probably a fraction of the preferred claims, and no dividend is ever declared. If one of their number, more audacious or more persistent than his fellows, at length wearies the assignee into giving a statement of the affairs of the estate, he finds that the expenses of the assignee, his commission, inspectors' fees, and solicitors' fees, have eaten up all, or nearly all, the assets. The inspectors fix the remuneration of the assignee. The inspectors consist, usually, of some members of the firm of large creditors, and their solicitors. These gentlemen also fix their own remuneration. The assignee is an employee on salary, and his remuneration out of the estate is fixed by, and goes into the pocket of, his employer.

In this way the large creditor practically gets a dividend on his claim in preference even to the wage-earner. It would be a profitless quest to follow up the assignee. He is financially a figurehead. Those who profit by his conduct are out of legal reach.

Take a case in point. A small trader in a western town became insolvent. His debts, some $3,000, consist of rent, $205; wages, $390; and an account with an eastern wholesale house. An assignment is made to a traveller of the wholesale house, resident in an Ontario city. The wholesale people are the only creditors entitled to rate, and the inspector is their nominee. On settling up the estate the figures are: Assets, $795. Liabilities other than preferred wage claims: Rent, $205; assignee's fees, $100; assignee's travelling expenses, $55; assignee's advertising in Toronto, $45; inspectors' fees, $20; Toronto solicit-

ors, $25; local solicitors' fees, advertising, stock-taking, collecting, etc., $50; total, $500. This leaves $295 to pay the $390 of preferred wage claims, but it will be observed that it has cost just $295 more to realize the assets with which to pay them. These are the figures in an actual case, and it is not an exceptional one.

The wage-earners have neither money nor courage to embark amongst the rocks and breakers of litigation. The work of liquidation could easily have been done for less than one-third of the money spent on it. How can this state of affairs be remedied?

It is suggested that in order to meet this difficulty the statute should be amended so as to make it compulsory to assign to a resident of the county in which the insolvent carried on business. In that way the evils attendant on having a man of straw in the employ of the largest creditor would, in the majority of instances, be avoided. The cases in which small insolvents have only one large outside creditor are very numerous. The person who is on the ground, and having local knowledge, can wind up an estate more speedily and cheaply by far than a distant stranger can. Provision should also be made for compelling the assignee either to give security or to establish to the satisfaction of the County Judge that he has sufficient property within the county to secure the creditors from loss by the squandering of the insolvent's assets. An assignee who has no property is not amenable to civil process, and the criminal law does not recoup the losses of those who set it in motion. The accounts of the assignee should be passed before the County Judge. The judge should have power to disallow all unreasonable charges and excessive expenditure, and to see that outlay bears a reasonable ratio to results.

If these changes were made, we would have fewer assignees charging a dollar for paying over a dollar to the creditors. There seems to be no question but that some remedy should be provided to protect the debtor and the small creditor from the rapacity of the figurehead assignee, and his owner, the controlling creditor.

It might be well, also, to provide for a full and searching examination of the assignor and others upon oath. In very many instances the whole of the assets do not come to the assignee's hands. At present the only way in which the assignor can be examined, or discovery made, is by having one of the

creditors sue him, obtain judgment, issue execution, obtain from the sheriff a return of no goods, and then under the machinery of the courts examine him as a judgment debtor.

This is needlessly circuitous and expensive, and the insolvent who has fraudulently concealed or disposed of property can, by defending the action, increase the expense and delay indefinitely. A small estate cannot afford the outlay. If the insolvent and his transferees could be examined, as a matter of course, upon præcipe, at the instance of the assignee, or the meeting of creditors, the real position of the estate and the disposition of the assets could be come at much more fully and expeditiously. The dishonest debtor, in disposing of his assets previous to his failure, is deterred only by the fear of detection and punishment. The present procedure makes the fear an almost groundless one. There is often strong ground for more than suspecting crookedness, but the assets available would not justify the expense of ferreting it out. Besides, if the assignee had no power to do so, it would have to be done by the individual creditor at his own risk.

We may not have hit upon the best remedies for the evils which undoubtedly exist, but we have at least called attention to the subject, and shall be glad to hear from some of our correspondents in the country, who are more competent, we conceive, to discuss this question than those practising in the large centres of trade.

CURRENT ENGLISH CASES.

COMPANY—DEBENTURE—FLOATING SECURITY—COVENANT FOR PAYMENT ON DAY NAMED—WINDING UP—ACCELERATION OF PAYMENTS.

In *Wallace Universal Automatic Machines Co.*, (1894) 2 Ch. 547; 7 R. Aug. 76, there was a difference of opinion between the Court of Appeal (Lindley and Kay, L.JJ.) and Kekewich, J., as to the effect of a winding-up order on the rights of debenture-holders whose debentures were not payable until a future day, but which were a floating charge upon the property of the company. Kekewich, J., thought that, on the winding up, the security could be enforced only for what might be in arrear, but the Court of Appeal held that the supervening of the winding up had the effect of accelerating the right to call for payment of all moneys secured by the debentures, and, therefore, that the plain-

tiffs were entitled to judgment for both principal and interest, although the day for payment of the principal, according to the terms of the covenant, had not arrived.

RENT CHARGE—ARREARS OF RENT CHARGE—SALE TO ENFORCE PAYMENT OF RENT CHARGE—JURISDICTION.

Hombro v. *Hombro*, (1894) 2 Ch. 564; 8 R. Aug. 197, was an action by the plaintiff, who was entitled to a rent charge by way of jointure payable out of the rents and profits of certain land, but not expressly charged on the land itself, to enforce payment of arrears of the rent charge by a sale of the land, and the question was raised whether, under these circumstances, the court had any jurisdiction to order a sale of the corpus. North, J., after a review of the authorities, came to the conclusion that the court had jurisdiction to order a sale, but that it was discretionary; but, under the circumstances of the case, he did not see fit to make an order.

SETTLEMENT—ILLEGITIMATE CHILD EN VENTRE SA MERE.

In re Shaw, Robinson v. *Shaw*, (1894) 2 Ch. 573; 8 R. Aug. 208, two persons related within the prohibited degrees went through the form of marriage: subsequently, and within two months before the birth of a child, a settlement was executed between the parties, providing for the issue of the marriage. It was contended that the child, who was *en ventre sa mere* at the time of the settlement, was entitled to take under the settlement, although subsequent issue of the pretended marriage were incapable of doing so, owing to their illegitimacy, on the ground that the child had been begotten, though not actually born, at the date of the settlement; but North, J., though conceding that a valid legal provision might have been made for such child by a properly worded settlement, was nevertheless of opinion that the settlement in question could not be so construed, as it contained no words indicating any reference to the child in question, otherwise than as one of a class. This case furnishes an illustration of the legal perils to which persons subject their issue who contract incestuous unions, for, as appears by the report of the case in 71 L.T.N.S. 80, the court declared that the settled property formed part of the personal estate of the mother, and thus the whole of the children were disinherited. In passing, we may observe that, though it is stated in the Law Reports that the

object of the motion was to determine who was entitled to the fund, the reporter contents himself with showing that the court decided that the eldest child was not entitled, but fails to state explicitly who the court found was entitled to it, which appears to be a little slipshod.

LUNACY—ORDER IN LUNACY—WILL OF LUNATIC—ADEMPTION OF LEGACY.

In re Wood, Anderson v. *London City Mission*, (1894) 2 Ch. 577 a testatrix, who, after the making of her will, became lunatic, by her will bequeathed certain sums of consols, "standing in my name and belonging to me at the time of my decease." After her lunacy the court made an order directing these consols to be transferred into the name of the Paymaster-General. This was held by North, J., not to work an ademption of the legacy. By the same order certain other moneys of the lunatic were directed to be invested in the like consols in the name of the Paymaster-General, and this was held not to operate to increase the legacy. Part of the consols were afterwards sold to raise costs, and the court now directed, so as to preserve the rights of the legatees, that the sale should be taken to have been made in reduction of the amount invested, and not of the amount transferred.

PATENT—DAMAGES—THREATS.

Skinner v. *Shew*, (1894) 2 Ch. 581; 8 R. Sept. 113, was an action under s. 32 of the English Patent Act (46 & 47 Vict., c. 57) to restrain the defendants from threatening the plaintiff with legal proceedings or liability in respect of an alleged infringement of a patent owned by the defendants. The injunction was granted, and an inquiry directed as to damages which the plaintiff had sustained by reason of the threats made by the defendants, and this was a motion by way of appeal from the report on the question of damages. The plaintiff, in support of his claim, had produced a letter from the agents of a company with whom the plaintiff had been in negotiation for the sale of the exclusive right to use of the plaintiff's invention for three years, terminating the negotiations on the ground of the alleged threats. It was contended that this latter was inadmissible as evidence, that the negotiations had, in fact, been discontinued; but North, J., held that it was evidence, though not necessarily conclusive, of that fact. The damages were fixed on the basis of the minimum

profit which would have been made had the proposed contract been carried out, and North, J., held that that was the proper measure of damages.

RECEIVER AND MANAGER OF TESTATOR'S BUSINESS—DEBTS INCURRED IN CARRYING ON BUSINESS—INDEMNITY—CREDITORS—TRADE MACHINERY—CONVEYANCE OF LAND, MENTIONING FIXTURES—BILL OF SALE.

In re Brooke, Brooke v. *Brooke*, (1894) 2 Ch. 600; 8 R. Sept. 103, was a contract between a creditor of a testator and a person who, after his decease, for a time carried on the testator's business as executor, and consequently had been appointed, in an administration action, receiver and manager, to carry on his business, the creditor claiming priority over the latter in right to indemnity against debts incurred in carrying on the business. The will did not expressly authorize the carrying on of the business; but Kekewich, J., was of opinion, on the authority of *Dows* v. *Gorton*, (1891) A.C. 190, that that fact made no difference, and that, as the creditor of the testator did not actively intervene to prevent the business from being carried on, it must be presumed to have been carried on with his assent, and the person carrying it on was, therefore, entitled to indemnity against debts so incurred. Another point in the case turned upon the construction of a conveyance of certain lands by way of mortgage. On the lands were certain trade fixtures, consisting of machinery, etc., affixed to the freehold, which were specifically mentioned in the mortgage, but the mortgage had not been registered as a bill of sale. The question was whether the mortgagee, under the circumstances, was entitled to the fixtures. Kekewich, J., on the authority of *In re Yates*, 38 Ch.D. 128, held that he was, being of opinion that the specification of fixtures, which would have passed under a conveyance of the land itself without any reference to the fixtures, did not differ the case from *Re Yates*, where the fixtures were not specified; but distinguished it from *Small* v. *National Provincial Bank*, (1894) 1 Ch. 686 (*ante* p. 498), where the fixtures were specified and the mortgage was expressed to cover not only fixtures, but also "movable" plant and machinery there or thereafter placed on the premises. Part of the fixtures in question had been sold, and it was alleged that out of the proceeds more fixtures had been placed on the mortgaged premises, and it was held that, although the mortgagees were entitled to the proceeds of the sale, yet that they were not also entitled to the fixtures which had been substituted.

JOINT TORT FEASORS—CONTRIBUTION—JOINT AND SEVERAL JUDGMENT AGAINST TORT FEASORS—PAYMENT OF THE WHOLE DAMAGES BY ONE OF SEVERAL TORT FEASORS.

Palmer v. *Wick & Pulteneytown Steamship Company*, (1894) A.C. 318; 6 R. Aug. 391, although an appeal from a Scotch court, is deserving of careful attention, for the comments to be found therein on the case of *Merryweather* v. *Nixan*, 8 T.R. 186. The facts of the case were that a stevedore and shipowners were sued for negligence resulting in the death of a workman; both were found to have been guilty of separate acts of negligence, and a verdict for £500 was rendered against them jointly, for which judgment was subsequently entered. The stevedore paid the whole amount of the damages, and took an assignment of the judgment, and then claimed contribution for one-half of the amount against the shipowners. The latter resisted the claim on the ground that being joint wrongdoers there was no right to contribution, relying on *Merryweather* v. *Nixan*. The House of Lords (Lords Herschell, L.C., Watson, Halsbury, and Shand) affirmed the decision of the Scotch court, that the shipowners were liable to make contribution. Both Lords Herschell and Halsbury express the opinion that, so far as English law is concerned, it is too late to question the applicability of *Merryweather* v. *Nixan* to all cases in England coming within the principle therein enunciated, but all of their lordships were agreed that it would not be proper to extend that principle to the jurisprudence of Scotland. Lord Herschell declares that, in his view, it is not founded on any principle of justice or equity, or even of public policy, which would justify its extension to other countries; and he also intimates that the principle it lays down, at any rate, is confined to cases where the person seeking redress must be presumed to have known that he was doing an unlawful act. Lord Halsbury, however, appears to doubt whether the rule is so limited, and is clear that the transmutation of the cause of action into a judgment would not, in England, prevent the operation of the rule laid down in that case. On the whole, the doctrine that there is no right of contribution between joint tort feasors may be said to have received a shock.

COPYRIGHT—RAILWAY TIME TABLES—CIRCULAR TOURS—PIRACY—COPYRIGHT ACT (5 & 6 VICT., C. 45), S. 19.

Leslie v. *Young*, (1894) A.C. 335; 6 R. Aug. 1, was also an appeal from a Scotch court. The action was brought to restrain

an alleged infringement of copyright. The appellant published a monthly railway time table compiled from the tables published by the railways. His book comprised about 40 pp., of which four were devoted to tables of circular tours. He complained that the respondent, instead of going to common and public sources for materials, had substantially copied his book, and thus took advantage of his skill and labour in condensing into a small space a huge mass of information, and had also copied his circular tour information. The House of Lords (Lords Herschell, L.C., and Watson, Ashbourne, and Shand) reversed the Scotch court, which had refused the injunction as to the circular tours, but affirmed it in its refusal of an injunction as to the time tables, as the books were not, by any means, identical, and no substantial appropriation of the appellant's work was shown.

RULES HAVING FORCE OF STATUTE—EFFECT OF.

Institute of Patent Agents v. *Lockwood*, (1894) A.C. 347; 6 R. Aug. 9, may be briefly referred to for the discussion it contains as to the effect of Rules made under a statutory power, and which, by the statute, are declared after publication as prescribed to have the force of a statute. The House of Lords (Lords Herschell, L.C., and Watson, Morris, and Russell), Lord Morris dissenting, reversed the Scotch court, holding that after such Rules have been made and published as prescribed their validity could not, as long as they remained in force, be questioned in a court of law. In this case the Rules in question imposed the payment of fees for certain proceedings, and it was contended that the Rule was void, because this was the assumption of a right to impose a tax which had not been delegated; but this was considered not to be taxation, but within the powers conferred by the statute on the Rule-making body. Where, under such circumstances, a Rule differs in effect from the express provisions of the statute authorizing it to be made, it would seem that the statute must govern.

RAILWAY COMPANY—NEGLIGENCE—ROBBERY OF PASSENGER BY FELLOW-PASSENGERS—REFUSAL TO DETAIN TRAIN—OVERCROWDING OF CARRIAGE—DAMAGES, REMOTENESS OF.

Cobb v. *Great Western Ry. Co.*, (1894) A.C. 419; 6 R. July 291, when before the Court of Appeal, was referred to *ante* vol. 29, pp. 239, 286. The case practically went off on a demurrer to the

statement of claim, which the Court of Appeal held did not disclose a cause of action. This decision the House of Lords (Lords Selborne, Watson, Macnaghten, Morris, and Shand) have affirmed. The case was this: The plaintiff was a passenger on the defendants' railway; he travelled in a carriage intended to hold only ten persons, into which sixteen other persons were subsequently admitted; they hustled and robbed the plaintiff, on the journey, of £89 1s., and, on his arrival at the next station, he requested the station master to detain the train, in order that he might give the men in the carriage into custody, which the station master refused to do. The plaintiff claimed, as damages, the amount of money of which he was thus robbed. Their lordships agreed with the Court of Appeal that the suffering of the carriage to be overcrowded was not the necessary cause of the robbery of the plaintiff, and that there was no duty on the part of the company to the plaintiff to detain the train. Lord Selborne expresses the opinion that, if any such duty existed, it was a duty, not to the plaintiff, but to public justice, for failure in which, by one of their servants, the defendants were not liable to an action for damages. He doubts the correctness of the decision in *Pounder* v. *N.E. Ry. Co.*, (1892) 1 Q.B. 385 (see *ante* vol. 28, p. 236), where it was held that a railway company was not liable in damages for injuries sustained by a passenger at the hands of fellow-passengers, which, by the exercise of reasonable care, the defendants might have prevented. Lords Watson, Macnaghten, and Shand refrained from expressing any opinion on that decision, and Lord Morris was of opinion that it was correct. It is not impossible that, if such a question should ever arise in Canada, it might meet with a different solution at the hands of the Privy Council, having regard to the different methods prevailing here in the operation of railways, and the consequent superior facilities which a railway company's servants possess in protecting passengers from assault or robbery while in transit. The American cases, as we formerly pointed out, are more favourable to the passenger than English law, as now settled, appears to be.

JUDGMENT AGAINST EXECUTOR WHO HAS APPLIED FOR, BUT NOT TAKEN OUT PROBATE—EXECUTION.

Mohamidu v. *Pitchey*, (1894) A.C. 437; 6 R. Oct. 21, although an appeal from a Cingalese court, is, nevertheless, instructive and

useful. The short point in controversy was whether a sale under an execution issued upon a judgment recovered against an executor who had applied for probate and obtained an order for the issue thereof on his taking the usual office, but who had never actually taken the oath nor obtained the issue of the probate, was valid and effectual, as against a sale subsequently made by an administrator who had duly obtained letters of administration to the same estate, which were unrevoked. The Cingalese court had held that the judgment against the executor, notwithstanding that he had not actually obtained probate, bound the estate, and, consequently, that the sale under that judgment prevailed as against the subsequent sale by the administrator; but the Judicial Committee of the Privy Council (Lords Hobhouse, Ashbourne, Macnaghten, and Sir R. Crouch) reversed this decision, holding that the judgment against the executor who had not actually obtained probate did not bind the estate of the testator, and that a sale of any part of the testator's estate thereunder was, consequently, void. The law, as laid down in this case, would, no doubt, be followed in similar cases in Ontario.

The Law Reports for October comprise (1894) 2 Q.B., pp. 713-774, and (1894) 3 Ch., pp. 1-99.

PHARMACY ACTS—SALE OF POISONS—MEDICINE CONTAINING A SCHEDULED POISON—"PATENT MEDICINE," MEANING OF—PHARMACY ACT, 1868 (31 & 32 VICT., C. 121), SS. 1, 2, 15, 15, 17 (R.S.O., C. 151, SS. 24, 26, 28, 29; 57 VICT., C. 45).

Pharmaceutical Society v. *Armson*, (1894) 2 Q.B. 720; 9 R. Sept. 241, is an important decision under the English Pharmacy Act, 1868 (see R.S.O., c. 151), which serves to mark an important distinction between the English and Ontario Act. The defendant, a grocer, was sued for a penalty under the Act for having sold an ounce of fluid which, on analysis, was proved to consist, among other ingredients, of one-tenth of a grain of morphine. It was proved that, if the whole bottleful were taken at once by an adult, it would not be ordinarily fatal or injurious to life, but that it might prove injurious, and even fatal, if taken by a child. The compound in question was a proprietary medicine. Two points were made: First, that the amount of poison was infinitesimal, and that the case was, therefore, within the *Pharmaceutical Society* v. *Delve*, (1894) 1 Q.B. 71 (as noted *ante* p. 121); but this the Court of Appeal (Lord Esher, M.R., and Lopes and Smith, L.JJ.)

held to be untenable, as the finding that the medicine might be injurious to infants prevented that doctrine applying. Secondly, that the medicine, being a proprietary medicine, was a patent medicine within the meaning of the exception in the Act; but, as to this, the Court of Appeal held that a "patent medicine" means a medicine protected by letters patent, and does not include mere proprietary medicines; but on this branch of the case it is necessary to note that the Ontario Act, as amended by 56 Vict., c. 28, and 57 Vict., c. 45, up to 1st July, 1895, expressly excepts the making and vending of both patent and proprietary medicines from its operation. The judgment of the Divisional Court (Charles and Bruce, JJ.) in favour of the plaintiff was affirmed.

BILL OF EXCHANGE—DAYS OF GRACE—ACCRUAL OF CAUSE OF ACTION—BILLS OF EXCHANGE ACT, 1882 (45 & 46 VICT., C. 61), SS. 14, 47 (53 VICT., C. 33, SS. 14, 47 (D.)).

Kennedy v. *Thomas*, (1894) 2 Q.B. 759; 9 R. Sept. 218, was an action on a bill of exchange which had been duly protested for non-payment. The action was commenced on the last day of grace after protest, and it was held by the Court of Appeal (Lindley, Lopes, and Davey, L.JJ.), reversing the judgment of Cave, J., that the action was premature, and that the cause of action was not complete until after the expiration of the last day of grace, following *Wells* v. *Giles*, 2 Gale 209, which, strange to say, does not appear to be cited in Byles on Bills.

CRIMINAL LAW—FALSE PRETENCES—INDICTMENT—EVIDENCE—COMPARISON OF HANDWRITING—28 & 29 VICT., C. 18, S. 8—(CRIMINAL CODE, SS. 358, 698).

In *The Queen* v. *Silverlock*, (1894) 2 Q.B. 766, the sufficiency of an indictment for obtaining a cheque by false pretences was in question. The indictment alleged that the defendant, by causing to be published in a newspaper a fraudulent advertisement (setting it out), did falsely pretend to the subjects of Her Majesty that (setting out the false pretence), by means of which last-mentioned false pretence he obtained from H. a cheque; and it was held by the Court for Crown Cases (Lord Russell, C.J., and Mathew, Day, Williams, and Kennedy, JJ.) that it was sufficient, notwithstanding it did not allege that the false pretence was made to any particular person. One other point in the case was whether a comparison of handwriting for the purpose of evidence

against the prisoner (see Cr. Code, s. 698) may be made by any one who is not an expert in handwriting, and the court was agreed that it was not necessary to call an expert for that purpose. We see, by the way, that, in the Criminal Code, the Queen's Printer, instead of adhering to the Queen's English, has adopted President Cleveland's American, and spells pretence "pretense." For our part, we prefer Her Majesty's English to His Excellency's American. Moreover, Her Majesty's printer is not consistent, for, while he spells pretence with an "s," he still adheres to Her Majesty's English in spelling "offence." This case is also reported in 10 R. Nov. 432.

TREES OVERHANGING NEIGHBOUR'S GROUND—NUISANCE—RIGHT TO ABATE NUISANCE—NOTICE—COSTS.

Lemmon v. *Webb*, (1894) 3 Ch. 1; 7 R. July 111, turns upon a question of common law which one would have supposed had been long since settled; perhaps it is an argument in favour of the English people's neighbourly conduct that it has not sooner been considered in a court of law. The point was a very simple one. The plaintiff and defendant were owners of adjoining lands. On the plaintiff's lands were several large old trees, some of whose boughs overhung the defendant's land. The defendant, without notice to the plaintiff, or going on his premises, cut off a large number of branches to the boundary line. It was argued for the plaintiff that the defendant was not entitled to cut the overhanging branches at all, because they had been growing over his land for over twenty years; and at any rate he could not lawfully do so without first giving the plaintiff notice to abate the nuisance. Kekewich, J., was of opinion that no right could be acquired in adjoining property by the overhanging trees; but he considered the trees were a nuisance, and that the defendant was entitled to abate it by cutting the branches, but that he could not do so without first giving notice to the plaintiff. The Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) were of opinion that no notice was necessary, and that the defendant had acted within his rights in cutting them as he did, but they considered that in doing so he had acted in an unneighbourly manner, and, though they dismissed the action, they refused to give the defendant any costs. It may be well to note that the case does not proceed on the principle that the defendant had acquired

any property in the overhanging branches, but simply on the ground that they were technically a nuisance, and as such he had a right to remove them.

COVENANT NOT TO CARRY ON SIMILAR BUSINESS—INJUNCTION.

Drew v. *Guy*, (1894) 3 Ch. 25, is not very well reported, inasmuch as it does not appear whether the decision is given on a motion for an interim injunction, or on the trial of the action. The action was brought to enforce by injunction a covenant not to carry on a business similar to that carried on by another lessee of the plaintiff's named Rowen. The covenant was contained in a lease made by the plaintiff to the Aerated Bread Co., of whom the defendant was the assignee. Rowen, another lessee of the plaintiff, was a hotel-keeper, and carried on a restaurant on licensed premises connected with his hotel, and the covenant of the company was to the effect that they would not carry on the business of a restaurant similar to Rowen's. Prior to the assignment the company had carried on a restaurant on the demised premises at which they sold tea, coffee, pastry, and cold meat, but not any hot meat except beef pies, which was not objected to. After their assignment to the defendant he continued to carry on a similar business, but, in addition, sold hot meats and other things not sold by the company. The defendant, however, had not a license, and his business was on a smaller scale, and his premises of an inferior class to those of Rowen, and his prices were much lower. Kekewich, J., held that the businesses were not similar, as alcoholic drinks were not sold by the defendant; but the Court of Appeal (Lindley and Lopes, L.JJ.) thought that the addition of hot meats to the defendant's bill of fare was a violation of the covenant, and that the test of similarity was not whether they sold alcoholic drinks, or were similar in appearance, but whether the defendant's restaurant was so like Rowen's as seriously to compete with it.

CONTINGENT INTEREST—GIFT TO A CLASS—INCOME OF FUND AFTER FIRST SHARE VESTED.

In re Holford, Holford v. *Holford*, (1894) 3 Ch. 30; 7 R. July 64, the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) have determined a point touching which Chitty and North, JJ., have given conflicting decisions. The question was, shortly, this: Where a fund is given to a class contingent on the members of the class attaining a given age, to whom does the income of the

fund belong, in the absence of any direct gift of it, or direction to accumulate it, after the first share has vested? In other words, does it belong to the taker of the first share, or must it be retained by the trustees for those contingently entitled to the rest of the corpus? Chitty, J., was in favour of the latter view; North, J., on the other hand, decided in favour of the first taker. The Court of Appeal have agreed with Chitty, J., and overruled the decision of North, J., *Re Jeffery*, (1891) 1 Ch. 671 (*ante* Vol. 27, p. 332), and *Re Adams*, (1893) 1 Ch. 329, and it was held that the income of the remaining shares was applicable under the Conveyancing Act, 1881, s. 43, to the maintenance of the other members of the class contingently entitled who were infants.

WATERWORKS—DIVERSION OF UNDERGROUND SPRINGS—INJUNCTION—MALA FIDES —COSTS.

Bradford v. *Pickles*, (1894) 3 Ch. 53; 8 R. Aug. 183, was an action by a municipal body to restrain the defendant from constructing an underground drill or tunnel which would have the effect of diverting the water from certain springs from which the water supply of the municipality was obtained. The defendant was proposing to construct the tunnel in question ostensibly for the purpose of draining a bed of stone on his own land, but really, as the judge found, for the purpose of compelling the plaintiffs to buy him out. By statute it was provided that "it shall not be lawful for any person other than the (*plaintiffs*) to divert, alter, or appropriate in any other manner *than by law they may legally be entitled* any of the waters supplying or flowing from certain streams or springs called *Many Wells* (*being the springs in question*) . . . or to sink any well or pit, or do any act, matter, or thing whereby the waters of the springs might be drawn off or diminished in quantity." The Act contained no provision for compensating landowners. North, J., decided that what the defendant proposed to do was forbidden by the Act, which, in his opinion, was not very clearly expressed, but which he declined to construe to mean that the acts in question were forbidden except so far as it might be lawful to do them, which, he considered, would be making nonsense of it. In his opinion, it was intended to preserve to the plaintiffs such rights over the waters in question "as an upper riparian proprietor has against a lower riparian proprietor in an open stream; permitting a diversion or alteration, or even an appropriation to a limited extent, but not a diversion

or appropriation by way of abstraction of the whole." But query, Does he not mean the converse; are not the rights intended to be reserved to the plaintiffs those of the lower riparian proprietor?) On this ground, therefore, he held the plaintiffs entitled to succeed; but he held that they had no cause of action, on the ground that the defendant was acting in bad faith, and with the object of compelling the plaintiffs to buy him off, and he therefore only awarded the plaintiffs one-half the costs of the action.

Correspondence.

To the Editor of THE CANADA LAW JOURNAL:

DEAR SIR,—Permit me, through the columns of your valuable journal, to ask if—in view of the heavy annual fees exacted from the profession by the Law Society, the Law Reports being hardly an adequate return therefor—it would not only be just that the profession be also supplied with the annual statutes, Provincial and Dominion?

The Ontario Government are every year giving to Justices of the Peace the statutes gratis. I have reason to believe that a large number of these men—on whom the statutes are thus thrown away—never exercise their functions. The statutes are by them laid by, to be taken down occasionally to be read with an untrained intelligence; sometimes to be misconstrued to some innocent yeoman who is seeking cheap advice instead of applying to one of the profession for it.

It seems to the writer manifestly unjust to compel the profession, under the circumstances, to buy their statutes, while the same are furnished gratis to those who make but comparatively little use of them. It would be better for all parties concerned that this matter be remedied as early as possible. Surely it calls for early redress. I am, yours faithfully,

A CLOSE OBSERVER.

[There is much to be said in favour of the suggestion made by our correspondent. Not only would this be reasonable from the point of view of the above letter, but a profession which is used by the Government for the obnoxious duty of collecting fees for the public benefit might well receive this small and inexpensive return.—ED. C.L.J.]

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

HILARY TERM, 1894.

Monday, February 5th, 1894.

Present, between ten and eleven a.m., the Treasurer, and Messrs. Meredith, Riddell, and Moss, and in addition, after eleven a.m., Mr. McCarthy and Mr. Watson.

Ordered, that the following gentlemen do receive their certificates of fitness: Messrs. D. Plewes, G. H. D. Lee, G. A. Harcourt, J. W. Winnet, R. Barrie and John Reeve.

The Secretary read the petition of Mr. J. H. Scott, which was read, and referred to the Finance Committee for consideration and report.

The letter of Mr. John Secord, Q.C., dated January 13th, 1894, was read, and the Secretary was directed to answer that Convocation had no power to act, the parties issuing the circular therein referred to not being members of the Society, and therefore not amenable to the Society.

The following gentlemen were called to the Bar:

Mr. B. St. George Lefroy, G. H. D. Lee, G. A. Harcourt, C. P. Blair.

Tuesday, February 6th, 1894.

Present, between ten and eleven a.m., the Treasurer, and Messrs. Watson, Moss, Strathy, and Robinson, and in addition, after eleven a.m., Messrs. Martin, Britton, Riddell, Osler, Magee, Meredith, McCarthy, Barwick, Guthrie, Kerr, and Aylesworth.

Mr. D. Plewes (who was yesterday ordered for call) and Mr. W. L. Phelps were called to the Bar.

Mr. Barwick presented the Report of the Library Committee, which was taken into consideration and adopted, and is as follows:

Your committee submits herewith the Librarian's Report for the year 1893, and, in view of the information therein contained of interest to the profession, recommends that the said Report be printed and distributed with the next number of the current Reports.

February 5th, 1894.

(The Report of the Librarian was printed and issued to the profession in a number of the current Reports.)

Mr. Watson, from the Finance Committee, reported on the subject of the negotiations for the supply of the Supreme Court Reports as follows.

The Finance Committee begs leave to report specially with regard to the supply of the Supreme Court Reports to the members of the profession who availed themselves of the benefit of the order of Convocation under which every member of the profession who paid $1.50 to the Society, with his annual fees, became entitled to the Supreme Court Reports for the ensuing year. In answer to the issue 890 have already paid the amount required.

Your committee used its best efforts to obtain as favourable terms as possible with the Department of Justice at Ottawa for the supply of the Reports, and after considerable correspondence, which is submitted herewith, concluded an arrangement for the supply of 900 copies of each volume of the Supreme Court Reports for the period of three years, commencing with the current volume No. 22, at the price of $2 per volume. This charge, however, is to include distribution and delivery by the publisher through the Department of Public Printing and Stationery to the members of the profession who have subscribed. The present average issue of the Reports is about one volume and a half each year. The estimated extra disbursements over and above receipts by the Society for the supply of the Reports to the profession under the order of Convocation, will therefore, be about fifteen hundred dollars annually.

Mr. Watson, from the same committee, presented the financial statement of the Society for the year 1893, and the Report of the committee in connection with this subject, as follows :

The Finance Committee of the Law Society begs herewith to present the financial statement for the year ending 31st December, 1893. The marked decrease in the revenue is owing in part to the fact that last year the issue and sale of the Ontario Digest realized a large sum for the Society, while this year the sales have been comparatively few, and but a small sum has been derived therefrom.

The chief falling off of the revenue is, however, due to a circumstance of much importance to the Society, namely, that a much smaller number of students have applied for admission to the Society during the year, and to the further fact that the number presenting themselves for call to the Bar and for certificate of fitness is very appreciably less, and the income of the Society has, accordingly, been materially lessened.

The present indications are that still greater falling off in this respect may be expected in the near future, and the question of future income may well, therefore, be considered in view of future probable expenditure actually necessary for the maintenance of the Society.

In connection with such expenditure, attention is drawn to the fact that the maintenance of the Law School has necessarily involved an expenditure to the Society for the year of $13,645.09, as against a revenue therefrom of $5,825.

Your committee begs further to report, for the information of Convocation, that a thorough system of bookkeeping has now been introduced and established, whereby the receipts and disbursements for any period of the year may be readily ascertained and checked, and also be compared with the similar period of the previous year, each class of revenue and disbursements being classified in the books exactly in the manner as shown by the yearly statement presented herewith.

The Secretary and Sub-Treasurer has devoted himself and his energies most assiduously to the methods proposed and now adopted, and very satisfactory results in this respect are anticipated for the Society.

Your committee also presents a statement of the Society's insurance and other matters affecting its financial interests. 6th Feb., 1894.

(*The financial statement has been already printed and issued to the profession in a number of the current Reports.*)

The Report was ordered to be taken into consideration on Friday, 9th inst.

Convocation entered on the consideration of paragraph 4 of the Report of the Special Committee on Fusion and Amalgamation of the Courts presented to Convocation on 28th [illegible], 1893, being that part which related to the question of trial with jury.

Mr. McCarthy moved :

That it shall be determined by a judge of the High Court in Chambers before the trial without appeal on which list the cause shall be placed.

Adopted on division.

Mr. McCarthy then moved :

That in actions entered for trial at sittings for trial with jury and at sittings for trial on the jury list with and without jury, the trial judge shall not have the power to dispense with the jury without the consent of the parties.

Adopted on division.

Mr. Guthrie moved :

That, except as aforesaid, Convocation is of opinion that no change should be made in the present law with regard to the mode of trial; that is to say, what classes of cases should be tried with and without a jury respectively.

Adopted on division :

Mr. Riddell moved :

That the present system of notice for jury should be changed, and that the practice should be changed so that a jury notice should be served with any pleading. Carried.

Mr. Martin moved :

That at every assize at which more than five cases are entered there shall be a peremptory list which shall not have more than five cases thereon.

Lost on division :

It was ordered that paragraph 4 of the Report of the Special Committee on Fusion, etc., and the foregoing resolutions, be referred to a special committee composed of Messrs. McCarthy, Watson and Aylesworth, with a request to report to Convocation on Friday, the 9th inst., and that suggestions should be added of the most convenient method of settling the order of the business at the sittings, including the peremptory list.

Mr. Martin gave notice that he would on Friday, 16th inst., move that the fees of stenographers and cost of copies of evidence be reduced.

Friday, February 9th, 1894.

Present, the Treasurer, and Messrs. Osler, Mackelcan, Moss, Barwick, Magee, Idington, Britton, Shepley, Hoskin, Ritchie, Meredith, Riddell, McCarthy, and Watson.

Mr. Moss, from the Legal Education Committee, reported as follows:

In the case of Mr. Charles F. E. Evans Lewis, who was entered on the books of the Society as C. F. E. Evans, that he is entitled to be called to the Bar and receive his certificate of fitness.

The Report was adopted, and it was noted that Mr. Evans Lewis had been entered as a student by the name of Evans, and the Secretary was directed to note the change of name in the record of students.

Mr. Watson, from the Special Committee appointed on Tuesday, the 6th inst., to whom had been referred the resolution of the judges and the resolutions with respect thereto, presented a Report as follows:

The committee to whom was referred the resolution proposed by the judges with reference to actions that should be tried by a jury, and the resolutions of Convocation in respect thereto, begs to report that in the opinion of the committee the views of Convocation should be embodied in a memorandum to be communicated to the judges, and submit for the approval of Convocation the accompanying document containing a summary of the views entertained by this body on the question.

MEMORANDUM RESPECTING THE PROPOSED CHANGES AS TO ACTIONS TO BE TRIED BY A JURY.

Convocation has had under consideration the order which the judges of the High Court propose to enact with reference to actions that should, in view of the changes that have been made as to the sittings of the courts, be tried by a jury, and having given the matter the best consideration in its power Convocation is apprehensive that the limitation of actions which it is proposed should be tried with a jury would not be found acceptable either to the profession or the public, and Convocation has been unable to discover the Rule or principle on which the proposed discrimination in the trial of actions has been based.

It appears to the members of Convocation that some actions which, in their opinion, ought unquestionably to be found in the jury list, such as actions in which a criminal charge is made against one of the parties to the litigation, are not embraced in the list contained in the proposed Rule; and Convocation has been unable to appreciate the reason why actions of collision—of that description of actions of negligence—should alone be tried by a jury, nor why actions against physicians should be included amongst the jury cases, while actions against solicitors and other professional men are left for trial without a jury. At the same time, it is only fair to say that while unable to approve of the amendments suggested Convocation has found it difficult, if not impossible, to formulate any scheme which would not be open to the same class of objections as those that occur to Convocation as furnishing reasons why the proposed change should not be made. It has therefore been deemed better for the present, at all events, to adhere to the existing law and practice respecting the method of trial, save as to the practice as to the time when the determination of the question how an action should be tried, that is, with or without a jury, should be disposed of.

In view of the alteration which has already been adopted in the sittings of the courts, it is thought by Convocation that it is of the utmost importance, in order that the new system should have a fair chance of success, that the question as to whether a case

is one to be tried at a sitting with a jury, or by a jury in a sitting in which both jury and non-jury cases are to be disposed of, should be decided before the case is entered upon the list, instead of, as is now the prevailing practice, after the case has been entered and the parties have come down prepared for trial.

Bearing this principle in mind, Convocation desires to call the attention of the judg to the fact that at present there are three divisions of actions so far as the question now under consideration is concerned.

(1) The actions enumerated in section 76 of the Judicature Act, which can only be tried by a jury, unless both parties consent to a jury being dispensed with.

(2) The actions referred to in section 77 of the Judicature Act which are to be tried without a jury, unless otherwise ordered, and which, speaking generally, are all tried without a jury.

(3) The remaining actions which may be tried with a jury, if so desired by any party, subject, however, to the order of the court or a judge.

In the opinion of Convocation the *prima facie* right of the parties litigant to have these actions lastly referred to tried by a jury should remain as it now is, but such right should be claimed by the parties desiring it by serving a notice to the effect that he requires the action to be tried by a jury, which may be served with any pleading, and that the action should be so tried unless otherwise ordered. And with reference to jury actions in the third class, as well as to non-jury actions, those in the second class, the suggestion of Convocation is that any party to the litigation desiring that an action of which such notice has been given in class three, or in which the party desires that the action should be tried by a jury in class two, should be at liberty to move that the action be tried with or without a jury, as the case may be, within days after the cause is at issue. That such motion is to be made before a Judge in Chambers, whose decision thereon is to be final and without appeal. If no such motion is made, then the action is to be tried, if under class three, as a jury case, and if under class two as a non-jury case. But in the opinion of Convocation it is at this stage of the proceedings that the question should be investigated and conclusively determined, and that the power now vested in the trial judge should be withdrawn, unless with the consent of all the parties to the action.

Convocation would further suggest that the discretional power now exercised by the judge at the trial should be expressly given to a Judge in Chambers by the passage of an order or rule to the effect that the Judge in Chambers, on application of any of the parties, may in his discretion order that the action or issues shall be tried or the damages assessed without a jury. This would in effect supersede the last part of section 8 of the Judicature Act, which, it has been held, vests this power in the trial judge.

The Report was received and read, and ordered to be taken into consideration forthwith, and it was ordered that the consideration thereof be deferred to until Friday next, and that the Treasurer inform the President of the High Court of Justice that Convocation has still under consideration the Rule proposed to be promulgated for the purpose of fixing the mode of trial and having the question of right to trial determined.

The consideration of the Report of the Finance Committee presented on 6th February was resumed, and the Report was adopted.

The letter dated February 3rd, 1894, of the County of York Law Association was read, and it was ordered that so much of the same as relates to changes in the Rules of Practice be referred to a committee consisting of Messrs. Osler, Martin, Moss, Macdougall, Hoskin, Lash, Watson, Barwick, Ritchie, Strathy, Aylesworth, Shepley, and Riddell. As to the residue of the letter, to wit, in relation to judicial salaries and the distribution of the Provincial Statutes, that it be referred to a committee composed of Dr. Hoskin and Mr. Osler.

Mr. Shepley moved: That a memorial be presented to the Dominion Government requesting that the duty imposed upon law books imported into this country for the exclusive use of law libraries be abolished.

Carried, and ordered that Mr. Shepley draft such memorial and place it in the hands of Messrs. Osler, Moss, and the mover for presentation.

Mr. Watson, from the Finance Committee, presented a Report as follows :

The Finance Committee begs leave to report for consideration the fact that since the early part of the year 1892 the Dominion Government has supplied the County Library Associations with the Supreme Court Reports without charge, and that under an order of Convocation the Law Society also supplies the same Reports to those associations ; a double supply of these Reports is therefore being made, and your committee respectfully submits that the order of Convocation be rescinded, as it is understood that the double supply is not necessary.

The Report was taken into consideration and adopted.

Mr. Watson, from the same committee, presented the following Report :

That the Rule of the Society providing for the audit of the Society's books of account does not specify any limit to the period for which the appointment is made. The present auditor was appointed by Convocation in Hilary Term, 1880, and has continued in office without further order or appointment since that date. The committee recommend that a Rule be passed to supplement the present Rule directing that an auditor be appointed yearly, and that the appointment be made on the first day of Easter Term in each year. On behalf of the committee.

February 6th, 1894.

The Report was taken into consideration and adopted.

Mr. Barwick moved that the draft of the proposed insolvency bill be referred to a committee consisting of Messrs. Bruce, Lash, Shepley, and Barwick for consideration, with the view of making suggestions thereon to the Minister of Justice. Carried.

Friday, February 16th, 1894.

Present, the Treasurer, and Messrs. Hoskin, Martin, Bruce, Magee, Macdougall, Riddell, Douglas, O'Gara, Watson, Osler, Shepley, Bell, Guthrie, and Barwick.

The minutes of the last meeting were read, confirmed, and signed by the Treasurer.

The Discipline Committee to whom the complaint of Mr. Bartram against Mr. Ivey was referred by Convocation to ascertain whether a *prima facie* case has been shown reported :

Your committee beg to recommend that Mr. Ivey should not be called to the Bar until he has given to the Society the requisite bond, nor until he has given the required notice and satisfied the Legal Education Committee that his papers are correct ; and, furthermore, that the Treasurer should be requested, on behalf of Convocation, now to express to Mr. Ivey the disapproval of the Benchers of his great irregularity.

The Report was received and consideration deferred.

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

In the case of Mr. Robert Bradford, who passed the third year examination in the Law School, Easter, 1893, he committee recommend that his service be allowed, and that he be called to the Bar and receive his certificate of fitness.

Ordered for immediate consideration, adopted, and ordered accordingly.

Mr. Martin, from the same committee, also reported in the case of Mr. James Clayton Haight :

The committee recommend that he be called to-day with honours, and do receive a gold medal, and that upon the expiration of his term of service under articles he do receive his certificate of fitness upon production to the Secretary of satisfactory proofs of such completion.

Ordered for immediate consideration, adopted, and ordered accordingly.

Mr. Watson, from the Finance Committee, presented their Report on the petition of Mr. J. H. Scott, asking for relief from payment of certain fines.

Ordered for immediate consideration and adopted.

Mr. Watson, from the same committee, reported:

That the Rule of the Society numbered 232, whereby candidates at the Law School Third year examinations whose period of service does not expire during the term in which the said examinations are held are enabled to present themselves for examination on payment of part only of the fee for call and admission as solicitor will, after the present session of the School, have ceased to serve the main purpose for which it was designed. The committee recommend that said Rule be repealed, such repeal to take effect after the supplemental examinations have been held next September.

Ordered for immediate consideration and adopted.

Mr. Watson moved for leave to introduce a Rule founded on the Report. Carried.

The draft repealing Rule was read a first and second time, and by unanimous consent was read a third time and passed, and is as follows:

Rule 232 is hereby repealed, such repeal to take effect after the supplemental examinations in September, 1894, shall have been held, and thereafter every candidate at the third year examinations in the Law School shall before presenting himself at the examinations pay to the sub-Treasurer the sum of $160.

Mr. Watson, from the same committee, presented their estimates of receipts and expenditure for the present year, 1894.

Mr. Watson moved the adoption of the Report presented on the 9th instant by the committee to whom was referred the proposition of the judges as to trial by jury, the consideration of which had been postponed until this day.

Moved by Mr. Osler, seconded by Mr. Bell, that the Report of the committee be not now adopted, but the further consideration thereof shall stand until the first Tuesday in Trinity Term, and that Convocation express the wish that the Supreme Court of Judicature for Ontario should defer action upon the further changes contemplated in the Rules as to the method of trial at assizes and sittings until after the changes recently made have been in operation for the ensuing circuit, and Convocation desires to have a conference with the judges after circuit is over and before the date for further consideration of the Report. Carried.

Mr. Osler gave notice that at the next meeting of Convocation he would move for the appointment of a committee to confer with an architect with the view of procuring plans and estimates to improve and decorate the entrance hall.

It was resolved that the Supreme Court of Judicature be requested to pass a Rule to the effect that the notice for a jury should not be served later than with the last pleading. The Secretary was directed to forward the resolution to the President.

Mr. J. C. Haight was then introduced and called to the Bar with honours, and presented with a gold medal. Mr. Robert Bradford was also called to the Bar.

Mr. Martin moved, seconded by Mr. Macdougall:

That the question of fees on examinations to examiners and stenographers and of fees paid for shorthand notes of evidence at trials be referred to a Special Committee composed of Messrs. Watson, Shepley, Douglas, Martin, Magee, and Hoskin, with a view to seeing if the costs of such examinations and of copies of evidence cannot be reduced.

DIARY FOR DECEMBER.

1. Saturday.....Princess of Wales born, 1844.
2. Sunday.....*1st Sunday in Advent.*
4. Tuesday.....Gen. Sessions and County Court sittings for trial in York.
6. Thursday.....Rebellion broke out, 1837.
7. Friday.....Convocation meets. Rebels defeated at Toronto, 1837.
8. Saturday.....Michaelmas Term ends. Last day for payment of fees, Law Society. Sir Wm. Campbell, 6th C. J. of Q.B., [1825.
9. Sunday.....*2nd Sunday in Advent.*
10. Monday.....Niagara destroyed by U. S. troops, 1813.
13. Thursday.....S. H. Strong, C.J. of S.C., 1892.
15. Saturday.....J. B. Macaulay, 1st C.J. of C.P., 1849. Prince Albert
16. Sunday.....*3rd Sunday in Advent.* [died, 1861.
17. Monday.....First Lower Canadian Parliament, 1792.
18. Tuesday.....Slavery abolished in the United States, 1862.
19. Wednesday....Fort Niagara captured, 1813.
21. Friday.....St. Thomas. Shortest day.
23. Sunday.....*4th Sunday in Advent.*
24. Monday.....Christmas Vacation begins.
25. Tuesday.....*Christmas Day.*
26. Wednesday...Convocation meets. Upper Canada made a Province, 1791.
27. Thursday.....St. John. J. G. Spragge, 3rd Chancellor, 1869.
28. Friday.....Law Society admitted women as students-at-law, 1892.
29. Saturday.....Sir Adam Wilson, C.J. of Q.B.D., died, 1891.
30. Sunday.....*1st Sunday after Christmas.*
31. Monday.....Montgomery repulsed at Quebec, 1775.

Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Exchequer Court.] [May 1.

BULMER *v.* THE QUEEN.

Crown domain—Disputed territory—License to cut timber—Implied warranty of title—Breach of contract—Damages—Cross appeal—Supreme Court Rules 62 and 63.

The claimant applied to the government of Canada for licenses to cut timber on ten timber berths situated in the territory lately in dispute between that government and the government of Ontario. The application was granted on the condition that the applicant would pay certain ground rents and bonuses, and make surveys and build a mill. The claimant knew of the dispute, which was, at the time, open and public. He paid the rents and bonuses, made the surveys, and enlarged a mill he had previously built, which was accepted as equivalent to building a new one. The dispute was determined adversely to the government of Canada at the time six leases or licenses were current, and, consequently, the government could not renew them. The leases were granted under sections 49 and 50 of 46 Vict., c. 17, and the regulations made under the Act of 1879 provided that "the license may be renewed for another year, subject to such revision of the annual rental and royalty to be paid therefor as may be made by the Governor in Council."

On a claim for damages by the licensee,

Held, (1) Orders in Council issued pursuant to 46 Vict., c. 17, ss. 49 and 50, authorizing the Minister of the Interior to grant licenses to cut timber, did not constitute contracts between the Crown and proposed licensees, such Orders in Council being revocable by the Crown until acted upon by the granting of licenses under them.

(2) That the right of renewal of the licenses was optional with the Crown, and that the claimant was entitled to recover from the government only the moneys paid to them for ground rents and bonuses.

The licenses which were granted and were actually current in 1884 and 1885 confer upon the licensee "full right, power, and license to take and keep exclusive possession of the said lands, except as thereinafter mentioned, for and during the period of one year, from the 31st of December, 1883, to the 31st of December, 1884, and no longer."

Quære: Though this is in law a lease for one year of the lands comprised in the license, was the Crown bound by any implied covenant to be read into the license for good right and title to make the lease and for quiet enjoyment?

A cross appeal will be disregarded by the court when Rules 62 and 63 of the Supreme Court Rules have not been complied with.

Appeal dismissed without costs.

McCarthy, Q.C., and *Ferguson*, Q.C., for the appellant.

Robinson, Q.C., and *Hogg*, Q.C., for the respondent.

Ontario.] [May 31.

ELLICE *v.* HILES.

ELLICE *v.* CROOKS.

Municipal corporation—Drainage—Action for damage—Reference—Drainage Trials Act, 54 Vict., c. 51—Powers of referee—Negligence—Liability of municipality.

Upon reference of an action to a referee under The Drainage Trials Act of Ontario (54 Vict., c. 51), whether under s. 11, as an action for damages from construction or operation of drainage works, or s. 19, as a case in which, in the opinion of the court, the proper proceeding is under the Act, the referee has full power to deal with the case as he thinks fit, and to make, of his own motion, all necessary amendments to enable him to decide according to the very right and justice of the case, and may convert the claim for damages under said s. 11 into a claim for damages arising from construction of the work under a valid by-law, under s. 591 of the Municipal Act.

In a drainage scheme for a single township the work may be carried into a lower adjoining municipality for the purpose of finding an outlet without any petition from the owners of land in such adjoining township to be affected thereby, and such owners may be assessed for benefit. *Stephen* v. *McGillivray*, 18 A.R. 515, and *Nissouri* v. *Dorchester*, 14 O.R. 294, distinguished.

One whose lands in the adjoining municipality have been damaged cannot, after the by-law has been appealed against and confirmed and the lands

assessed for benefit, contend before the referee that he was not liable to such assessment, the matter having been concluded by the confirmation of the by-law.

A municipality constructing a drain cannot let water loose just inside or anywhere within an adjoining municipality without being liable for injury to lands in such adjoining municipality thereby.

Where a scheme for drainage work proves defective, and the work has not been skilfully and properly performed, a proper route not chosen, and it is not continued to a proper outlet, and is left unfinished for a long time in an adjoining municipality where it is carried to find an outlet, so that the water is turned loose and comes upon lands therein, the municipality constructing it are not liable to persons whose lands are damaged in consequence of such defects and improper construction as tort feasors, but are liable under s. 591 of the Municipal Act for damage done in construction of the work, or consequent thereon.

The referee has no jurisdiction to adjudicate as to the propriety of the route selected by the engineer and adopted by by-law, the only remedy, if any, being by appeal against the project proposed by the by-law.

A tenant of land may recover damage suffered during his occupation from construction of drainage work, his rights resting upon the same foundation as those of a freeholder.

Wilson, Q.C., and *Smith*, Q.C., for the appellants.

Christopher Robinson, Q.C., for the respondent.

Ontario.] [Oct. 9.

ALLISON *v.* MCDONALD.

Mortgage—Collateral security—Joint debtors—Discharge.

Two partners borrowed money, giving as security a mortgage on partnership property, and a joint and several promissory note. The partnership having been dissolved, the mortgagee gave the members of the firm who continued to carry on business, and who had assumed the liabilities, a discharge of the mortgage, on his undertaking to pay back the money borrowed, which he failed to do, but mortgaged the property again, and finally became insolvent and absconded. An action having been brought against the retiring partner on the note,

Held, affirming the decision of the Court of Appeal (20 A. R. 695), which reversed the judgment of the Divisional Court (23 O.R. 288), that the plaintiff could not compel the retiring partner to pay the mortgage debt without being prepared on payment to reconvey the lands mortgaged, which he had incapacitated himself from doing. His action, therefore, was rightly dismissed.

Held, also, that the relation between the partners was changed by the terms of dissolution into that of principal and surety, and the trial judge having found as a fact that the mortgagee had notice of such terms his discharge of the continuing partner, the principal, released the surety (the retiring partner).

Appeal dismissed with costs.

Aylesworth, Q.C., for the appellant.

John A. Robinson for the respondent.

Ontario.] [Oct. 9.

WALSH *v.* TREBILCOCK.

Criminal law—Betting on election—Stakeholder of bet between individuals—R.S.C., c. 159, s. 9—Accessory—R.S.C., c. 145—Recovery from stakeholder—Parties in pari delicto.

W. and another made a bet on the result of an election for the House of Commons, and each deposited the sum bet with T. By the result of the election, W. lost his bet, and the money was paid by T. to the winner. W. then brought an action against T. for the amount he had deposited with him, claiming that the transaction was illegal, and the contract to pay the money void.

Held, reversing the decision of the Court of Appeal (21 A. R. 55), TASCHEREAU, J., dissenting, that T., in becoming the depositary of the money, was guilty of a misdemeanour under R.S.C., c. 159, s. 9 (Criminal Code, s. 204); that W. was an accessory by R.S.C., c. 145; and that the parties being *in pari delicto*, and the illegal act having been performed, W. could not recover.

Appeal allowed with costs.

Meredith, Q.C., for the appellant.

Aylesworth, Q.C., and *McKillop* for the respondent.

Quebec.] [May 31.

GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND *v.* JOANNETTE.

Game laws—Arts. 1405-1409, Rev. Stats. P.Q.—Seizure of furs killed out of season—Justice of the peace—Jurisdiction—Prohibition—Writ of.

One F.X.J., gamekeeper, seized certain boxes of furs on board the schooner *Stadacona*, in the boundaries of the city of Quebec, after having taken out a search warrant issued by the judge of the Court of Sessions of the Peace. While the examination of the furs was going on at the police court, the appellants took out a writ of prohibition, and the writ was made absolute by the Superior Court, but subsequently quashed on appeal to the Court of Queen's Bench (Appeal side). The judge of the Sessions swore the experts before confiscation to report on the condition of the furs at the time they were seized by the gamekeeper.

Held, affirming the judgment of the court below, (1) that under Article 1405, read in connection with Article 1409, R.S.P.Q., the gamekeeper is authorized to seize furs on view on board a schooner even without a search warrant, and to have them brought before a justice of the peace for examination.

(2) That the judge of the Court of Special Sessions of the Peace, having jurisdiction to try the alleged offence of having furs killed out of season, a writ of prohibition is not an appropriate remedy for any irregularity in the procedure.

Appeal dismissed with costs.

C. Stuart, Q.C., for the appellants.

Languedoc, Q.C., for the respondent.

Quebec.] [Nov. 5.

LARIVIÈRE *v.* SCHOOL COMMISSIONERS OF CITY OF THREE RIVERS.

Bond in appeal—Schoolmistress—R.S.P.Q., s. 2073—Fees of office—Future rights—R.S.C., c. 135, s. 29 (b).

E. Larivière, a schoolmistress, by her action claimed $1,243 as fees due to her in virtue of s. 68, c. 15, C.S.L.C. (now s. 2073, R.S.P.Q.), which were collected by the school commissioners of the city of Three Rivers while she was employed by them. At the time of the action the plaintiff had ceased to be in their employ. The Court of Queen's Bench for Lower Canada (Appeal side), affirming the judgment of the Superior Court, dismissed the action.

On a motion to the Supreme Court of Canada to allow bond in appeal, the same having been refused by a judge of the court below, the registrar of the Supreme Court and a Judge in Chambers, on the ground that the case was not appealable,

Held, (1) That the matter in dispute did not relate to any office or fees of office within the meaning of s. 29 (*b*) of the Supreme and Exchequer Courts Act, c. 135.

(2) Even assuming it did, that, there being no right in future involved, the amount in dispute being less than $2,000, the case was not appealable.

(3) The words, "where the rights in future might be bound," in said s-s. (*b*) of s. 29, govern all the preceding words, "any fee of office," etc. *Chagnon* v. *Normand* (16 S.C.R. 661) and *Gilbert* v. *Gilman* (16 S.C.R. 189) referred to.

Motion refused with costs.

Ritchie for the motion.

McDougall, contra.

British Columbia.] [May 21.

THE SHIP "MINNIE" *v.* THE QUEEN.

Seal Fishery (North Pacific) Act, 1893 (56, 57 Vict. (U.K.), c. 23, ss. 1, 3, and 4—Judicial notice of Order in Council thereunder—Protocol of examination of offending ship by Russian war vessel—Sufficiency of—Presence within prohibited zone—Bona fides—Statutory presumption of liability—Evidence—Question of fact.

The Admiralty Court is bound to take judicial notice of an Order in Council from which the court derives its jurisdiction issued under the authority of the Act of the Imperial Parliament, 56 & 57 Vict., c. 23, the Seal Fishery (North Pacific) Act, 1893, without proof.

A Russian cruiser manned by a crew in the pay of the Russian Government, and in command of an officer of the Russian navy, is a "war vessel" within the meaning of the said Order in Council, and a protocol of examination of an offending British ship by such cruiser, signed by the officer in command, is admissible in evidence in proceedings taken in the Admiralty Court in an action for condemnation under the said Seal Fishery (North Pacific) Act, 1893, and is proof of its contents.

The ship in question in this case having been seized within the prohibited waters of the thirty-mile zone round the Komandorsky Islands, fully equipped

and manned for sealing, not only failed to fulfil the onus cast upon her of proving that she was not used or employed in killing or attempting to kill any seals within the seas specified in the Order in Council, but the evidence was sufficient to prove that she was guilty of an infraction of the statute and Order in Council.

Judgment of the court below affirmed.

Appeal dismissed with costs.

Belyea for the appellant.

Hogg, Q.C., for the respondent.

British Columbia.] [May 21.

MYLIUS *v.* JACKSON.

Pleadings—Sufficient traverse of allegation by plaintiff—Objection first taken on appeal.

The plaintiff, by his statement of claim, alleged a partnership between two defendants, one being married, whose name, on a rearrangement of the partnership, was substituted for that of her husband without her knowledge or authority.

Held, reversing the judgment of the court below, that denial by the married woman that "on the date alleged or at any other time she entered into partnership with the other defendant" was a sufficient traverse of plaintiff's allegation to put the party to proof of that fact.

Held, also, that an objection to the insufficiency of the traverse would not be entertained when taken for the first time on appeal, the issue having been tried on the assumption that the traverse was sufficient.

Appeal allowed with costs.

Belyea for the appellant.

Chrysler, Q.C., for the respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

From BOYD, C.] [Nov. 11.

IN RE THE ONTARIO EXPRESS AND TRANSPORTATION CO.

Company—Shares—Discount—Illegal increase of capital—Validating Act—Winding-up.

An Act of Parliament reciting that a company had been "duly organized," had ceased its operations, and had been "reorganized," and declaring that the charter is in force, and the company "as now organized" capable of doing business, does not give legislative sanction to an illegal increase of the capital stock so as to make holders of shares of the illegally-issued stock liable as contributories in winding-up proceedings.

Judgment of BOYD, C., 24 O.R. 216, reversed.

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

Hoyles, Q.C., for the respondent.

HORSFALL *v.* BOISSEAU.

From MACMAHON, J.] [Nov. 11.

Bills of sale and chattel mortgages—Description—After-acquired goods—R.S.O., c. 125, s. 27—55 Vict., c. 26, s. 1 (O.).

A description in a chattel mortgage of after-acquired goods as "all other ready-made clothing, tweeds, trimmings, gents' furnishings, furniture and fixtures, and personal property, which shall at any time during the currency of this mortgage be brought in or upon the said premises, or in or upon any other premises in which the said mortgagor may be carrying on business," is sufficient, and binds goods of the kinds mentioned in premises to which the mortgagor moves after making the mortgage.

Judgment of MACMAHON, J., affirmed.

Gibbons, Q.C., for the appellants.

Kappele for the respondents.

IN RE HARWICH AND RALEIGH.

Drainage ref.] [Nov. 11.

Municipal corporations—Drainage—55 Vict., c 42, s. 590 (O.).

Per HAGARTY, C.J.O., and BURTON, J.A.: Where a drain constructed or improved by one municipality affords an outlet, either immediately or by means of another drain or natural watercourse, for waters flowing from lands in another municipality, the municipality that has constructed or improved the outlet can, under s. 590 of the Consolidated Municipal Act of 1892, 55 Vict., c. 42 (O.), assess the lands in the adjoining municipality for a proper share of the cost of construction or improvement, and the drainage referee has jurisdiction to decide all questions relating to the assessment.

Per OSLER and MACLENNAN, JJ.A.: The section applies only to drains properly so called, and does not extend to or include original watercourses which have been artificially deepened or enlarged, and *In re Oxford and Howard*, 18 A.R. 496, still governs.

The court being divided in opinion, the judgment of the drainage referee upholding the right to assess was affirmed.

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

Atkinson, Q.C., for the respondents.

THOMPSON *v.* WARWICK.

From BOYD, C.] [Nov. 11.

Mortgages—Assignment—Consolidation.

The mortgagors of land sold it subject to the mortgage, and the purchaser gave to them a second mortgage to secure part of the purchase money. He then sold the land subject to both mortgages, which his sub-purchaser covenanted to pay off. Subsequently, the first mortgagors, under threat of action, paid the claim of the first mortgagees, and took an assignment of the first mortgage to one of their number.

Held, affirming the judgment of BOYD, C., that the sub-purchaser, on being called on by the first mortgagors and first purchaser for indemnity

against the first mortgage, was bound to pay it, and was not entitled to an assignment thereof unless he took, at the same time, an assignment of the second mortgage.

E. D. Armour, Q.C., and *G. H. Kilmer* for the appellant.

W. Mortimer Clark, Q.C., for the respondents.

LEWIS *v.* ALEXANDER.

From MEREDITH, J.] [Nov. 11.

Municipal corporations—Drains—Nuisance.

Where territory is added to a city, and the city thereupon recognizes the existence of drains or sewers in the added territory, and by health by-laws directs that these drains or sewers are to be used, the city is liable in damages to the owner of property upon whose lands sewage is, by means of these drains or sewers, discharged, and persons who have used the drains or sewers before the territory was added to the city, and have continued to use them after that time, are not so liable.

Judgment of MEREDITH, J., reversed, BURTON, J.A., dissenting.

Gibbons, Q.C., and *E. R. Cameron* for the appellants.

M. D. Fraser for the respondents.

BABCOCK *v.* FREEMAN.

From Chy. Div.] [Nov. 11.

Negligence—Damages—Evidence—Nonsuit.

Where a workman was killed by the explosion of a tank in which refuse was being boiled into soap, and there was no evidence as to the cause of the explosion, evidence of experts who had examined the tank, stating that the explosion was probably due to defects in the screws fastening the tank cover, was held sufficient to justify the submission of the case to the jury.

Judgment of the Chancery Division affirmed.

W. Nesbitt and *A. Monro Grier* for the appellants.

G. Lynch-Staunton for the respondent.

From ROBERTSON, J.] [Nov. 11.

IN RE WILSON AND THE COUNTY OF ELGIN.

High schools—Alteration of districts, 54 Vict., c. 57, s. 6 (O.)—57 Vict., c. 58, s. 1 (O.).

Under section 6 of the High Schools Act, 54 Vict., c. 57 (O.), as amended by 57 Vict., c. 58, s. 1 (O.), a county council has power to detach a township from a High school district without the consent of that township or of the other townships included in the High school district in question.

Judgment of ROBERTSON, J., affirmed, OSLER, J.A., dissenting.

N. Macdonald and *W. J. Tremeear* for the appellant.

J. M. Glenn for the respondents.

From C.P. Div.] [Nov. 11.

GRINSTED *v.* TORONTO RAILWAY CO.

Damages—Remoteness—Expulsion from street car—Taking cold.

Where there was some evidence that serious illness from which the plaintiff had suffered had resulted from exposure to cold upon illegal expulsion from a street car, an award of damages in respect of that illness was upheld.

Judgment of the Common Pleas Division, 24 O.R. 683, affirmed, HAGARTY, C.J.O., dissenting.

Laidlaw, Q.C., and *J. Bicknell* for the appellants.

W. J. McWhinney for the respondent.

From Q.B. Div.] [Nov. 11.

SCOTTEN *v.* BARTHEL.

Deed—Description—Evidence—False demonstration.

The deed to the plaintiff in an ejectment action purported to convey "part of lot forty-three," described as "commencing in the southerly limit of said lot forty-three at a distance of twenty feet from the water's edge of the Detroit River; thence northerly parallel to the water's edge 208 feet; thence westerly parallel to the said southerly limit 600 feet, more or less, to the channel bank of the Detroit River; thence southerly following the channel bank 208 feet; thence easterly 600 feet, more or less, to the place of beginning, together with the fishery privileges appurtenant to the premises hereby conveyed."

Held, that the patent of lot forty-three might be looked at to ascertain the point of commencement; that as that lot was described as running to the "water's edge" of a navigable river, the point of commencement must be taken to be twenty feet landwards; and that the plaintiff was entitled to claim the strip of twenty feet along the water's edge.

Judgment of the Queen's Bench Division reversed.

McCarthy, Q.C., *W. Nesbitt*, and *O. E. Fleming* for the appellant.

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

From BOYD, C.] [Nov. 11.

ROBERTS *v.* BANK OF TORONTO.

Lien—Artisan's lien—Brickmaker.

A brickmaker who makes bricks for another person in a brickyard belonging to that person, and has possession of the brickyard while engaged in making the bricks, is entitled to a lien upon the bricks as against an execution creditor or chattel mortgagee of the owner.

Judgment of BOYD, C., 25 O.R. 194, affirmed.

W. Nesbitt, *K. McKay*, and *E. Bristol* for the appellants.

Elgin Myers and *W. J. Clark* for the respondent.

From Q.B. Div.] [Nov. 11.

SANGSTER *v.* THE T. EATON CO.

Negligence—Evidence—Shop—Child of tender years.

The fact that a child of tender years, while in a shop with its mother who is buying clothing for it, is injured by an unfastened mirror falling upon it, the

cause of the fall not being known, is in itself sufficient evidence of negligence to justify the case being submitted to a jury.

Judgment of the Queen's Bench Division, 25 O.R. 78, affirmed.

Shepley, Q.C., for the appellants.

John McGregor for the respondents.

From C.P. Div.] [Nov. 11.

O'CONNOR *v.* HAMILTON BRIDGE CO.

Negligence—Dangerous machinery—Absence of guard—"Moving machinery"—"Defect in machinery"—Factories' Act—R.S.O., c. 208, s. 15—Workmen's Compensation for Injuries Act—R.S.O., c. 141, s. 3—52 Vict., c. 23, s. 3 (O.).

The absence of a guard to a projecting screw in a revolving spindle is a violation of the provisions of the Factories' Act, R.S.O., c. 208, s. 15, the spindle being a moving part of the machinery within the meaning of that Act, and it is also a "defect in the condition of the machinery" within the meaning of the Workmen's Compensation for Injuries Act, R.S.O., c. 141, s. 3, as amended by 52 Vict., c. 23, s. 3 (O.), and in either view damages may be recovered for an accident caused by its absence.

Judgment of the Common Pleas Division, 25 O.R. 12, affirmed.

BURTON, J.A., dissenting.

Bruce, Q.C., and *Walker*, Q.C., for the appellants.

G. Lynch-Staunton for the respondent.

From Q.B. Div.] [Nov. 11.

BALL *v.* TENNANT.

Assignments and preferences—Covenant of indemnity—R.S.O., c. 124.

The benefit of a covenant to indemnify the assignor against a mortgage does not pass to his assignee under an assignment for the general benefit of creditors.

Judgment of the Queen's Bench Division, 25 O.R. 50, reversed.

N. F. Davidson for the appellants.

R. U. McPherson for the respondent.

From Q.B. Div.] [Nov. 13.

IN RE HANNA *v.* COULSON.

Prohibition—Division Court—Garnishee—Defendant—After judgment summons—R.S.O., c. 51, s. 235.

This was an appeal by the primary creditors from the judgment of the Queen's Bench Division, reported 23 O.R. 493, and was argued before HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A., on the 17th of September, 1894.

Aylesworth, Q.C., for the appellants.

J. B. Clarke, Q.C., and *C. Swabey* for the respondent.

November 13th, 1894. The court dismissed the appeal with costs, agreeing with the views stated in the judgment below, and not giving any opinion as to the effect of the amendment made by 57 Vict., c. 23, s. 18 (O.).

HIGH COURT OF JUSTICE.

Queen's Bench Division.

ARMOUR, C.J.,
FALCONBRIDGE, J. } [Nov. 19

REGINA *v.* HEWIT.

Malicious prosecution—Record of acquittal—Mandamus to Attorney-General.

Motion by the defendant for an order of mandamus to the Attorney-General for Ontario commanding him to issue his fiat for the entry of a judgment of acquittal upon the indictment of the defendant for theft of saw logs, or directing the officer of the court having charge of the indictment to enter up judgment of acquittal and furnish the defendant with a copy; and appeal by the defendant from the refusal of BOYD, C., who tried the prisoner upon the indictment, to order the entry up of judgment of acquittal.

An action for the malicious prosecution of the defendant upon the indictment had been brought and had failed at the trial because of the absence of a record of the acquittal.

Regina v. *Ivy*, 24 C.P. 78, was not followed in *O'Hara* v. *Dougherty*, 25 O.R. 347.

Steers for the defendant.

J. R. Cartwright, Q.C., for the Attorney-General, and *A. H. Marsh*, Q.C., for the private prosecutor, not called on.

Per curiam: Motion and appeal dismissed with costs, following *Regina* v. *Ivy*, 24 C.P. 78.

ARMOUR, C.J.,
FALCONBRIDGE, J. } [Nov 19.

REGINA *v.* GIBBONS.

Summary conviction—Uncertainty—Offence not disclosed—Amendment—Criminal Code, s. 179—Exposing obscene book—Public morals—Quashing conviction—Costs.

Motion to make absolute a rule *nisi* to quash a summary conviction of the defendant by the police magistrate for the town of Peterborough, "for that he (the defendant) did at the town of Peterborough on the tenth day of February, 1894, without lawful excuse or justification, expose to public view an obscene book tending to corrupt public morals, contrary to the Criminal Code."

The evidence taken by the magistrate showed that the book in question was one describing certain diseases, and that it was distributed gratis among the citizens of Peterborough by the defendant, with the object of assisting the sale by him of certain medicines.

A. G. Murray, for the defendant, contended that the conviction was bad on its face because it did not disclose the offence which the defendant had committed, but simply followed the language of s. 179 of the Criminal Code, citing *Regina* v. *Spain*, 18 O.R. 385; *Regina* v. *Coulson*, 24 O.R. 246; and that it

should not be amended because an offence was not committed of the nature specified in the conviction, the book in question not being one tending to corrupt public morals, citing *Regina* v. *Bradlaugh*, 15 Cox C.C. 217.

W. H. Murray, for the informant, *contra*.

The court held that the conviction was bad on its face, and could not now be amended by setting out such parts of the book as might be deemed obscene or tending to corrupt public morals. It was extremely difficult to define what offences came within s. 179 of the Code, and probably different tribunals would come to different conclusions.

Rule absolute quashing the conviction without costs, and with the usual clause protecting the magistrate.

ARMOUR, C.J., FALCONBRIDGE, J. [Nov. 19.

REGINA *v.* PLOWMAN.

Constitutional law—Criminal Code, s. 275—Bigamy—Offence committed in foreign country—Intent—Ultra vires.

Conviction for bigamy quashed where the second marriage took place in a foreign country, and there was evidence that the defendant, who was a British subject, resident in Canada, left Canada with the intent to commit the offence.

Held, that the provisions of s. 275 of the Criminal Code, making such a marriage an offence, are *ultra vires* of the Parliament of Canada.

Macleod v. *Attorney-General for New South Wales*, (1891) A.C. 455, followed.

J. R. Cartwright, Q.C., for the Crown.

Du Vernet for the defendant.

Div'l Court.] [Nov. 29.

CHRISTIE *v.* CITY OF TORONTO.

Assessment and taxes—55 Vict., c. 48, s. 124 (O.)—Goods subject to distress—Occupancy.

The plaintiff appealed to the Divisional Court of the Common Pleas Division from the judgment of MACMAHON, J., the trial judge, reported 25 O.R. 425.

The appeal was by order transferred for hearing to the Divisional Court of the Queen's Bench Division, and was heard on the 29th November, 1894 before ARMOUR, C.J., and FALCONBRIDGE and STREET, JJ.

Kilmer for the plaintiff.

W. C. Chisholm for the defendants.

W. R. Smyth for Farquhar, a third party, not called on.

The court dismissed the appeal with costs, agreeing with the judgment of the trial judge.

Chancery Division.

STREET, J.] [Nov. 14.

THE BRIDGEWATER CHEESE FACTORY CO. *v.* MURPHY.

Banks and banking—Promissory note—Improper signature by president for company—Discount—Repayment.

One S., president of the plaintiffs company, kept an account with the defendants, private bankers, headed in their books, "S., President of Bridgewater Cheese Factory," and upon which he drew cheques from time to time signed "S., President." This account being overdrawn, S. made a note for $1,600 in favour of defendants signed "S., President," and to which he attached the seal of the company. The defendants discounted this, placing the proceeds to the credit of the account. This covered the overdraft, and the balance was chequed out by S. to pay various creditors of the plaintiffs company. At this time S. was a defaulter to the company in an amount exceeding $1,600, and before this action he absconded. The note was made without the authority or knowledge of the directors of the company, by whom under their by-laws the affairs of the company were to be managed, but they knew that the bank account was kept by S. in his own name as president, and that he issued cheques upon it as aforesaid. The note not being paid at maturity was charged by the defendants to the said account, with the consent of S., though without any authority from the directors.

The present action was brought to recover from the defendants the amount of the note, on the ground that S. had no power to bind the company by such a note. The defendants did not allege any fraud, but said they had accounted to the plaintiffs for all moneys that had come to their hands.

It appeared that the defendants discounted the note in good faith, believing it was for the company's purposes, and authorized by the company, and so believed until long after they had charged it up to the plaintiffs account.

Held, that the plaintiffs were entitled to judgment. They knew that the account to which the note was charged was a trust account, the moneys to the credit of which belonged to the plaintiffs, and not to S., and the note, as a matter of law, was not the note of the plaintiffs, but the individual note of S. The defendants could not, without assenting to a breach of trust on the part of S., permit him to pay his private debt to them out of trust funds which they knew to be such.

Porter and *Cross* for the plaintiffs.

Masson and *Stuart* for the defendants.

Common Pleas Division.

MACMAHON, J.] [Oct. 3.

REGINA *v.* DEFRIES.

REGINA *v.* TAMBLYN.

Criminal law—Conspiracy—Where offence committed—Affidavit evidence—R.S.C., c. 70, ss. 4 and 5; Criminal Code, ss. 394 and 752.

A judge cannot upon the return of a *habeas corpus* when a warrant shows jurisdiction try, as it were, on affidavit evidence the question where the alleged

offence was committed, and so get behind the warrant to contravene the return.

Sections 4 and 5, R.S.O., c. 70, are not intended to apply to criminal cases when no examination has taken place.

Section 752 of the Criminal Code, 55-56 Vict., c. 29, only applies where the court or judge making the direction has power to enforce it, and a court or judge in Ontario has no power over a judge or justice in Quebec to compel him to "take any proceedings or hear such evidence," etc.

It is a crime under section 394 of the Code to conspire by any fraudulent means to defraud any person. So if there was a conspiracy to permit persons to travel free on a railroad that would be a conspiracy against the railway company.

McCarthy, Q.C., for the Crown.

E. F. B. Johnston, Q.C., and *Mortimer Clark*, Q.C., *contra.*

Practice.

MEREDITH, J.] [Nov. 1.

MOORE *v.* DEATH.

Indemnity—Third party notice—Rules 328, 1313—Counterclaim.

In an action , the assignee of a mortgage against the mortgagor and the purchasers from him of the equity of redemption, the latter alleged that they had been induced by the mortgagee to purchase the lands by his promise to discharge the mortgage and accept in its place an assignment of a mortgage from the same mortgagor on another property, which agreement he had failed to carry out, and had afterwards assigned the mortgage to the plaintiff, his wife.

Held, that the purchasers of the equity were not entitled to claim "indemnity" against the mortgagee, within the meaning of that word as used in Rule 328, as amended by Rule 1313; and a third party notice served upon him was set aside.

Semble, a proper case for a counterclaim against the plaintiff and the third party jointly to enforce the alleged agreement or for damages.

J. A. Paterson for the defendants.

W. H. Blake for the third party.

MEREDITH, C.J.] [Nov. 9.

IN RE DANIEL.

Evidence—R.S.O., c. 136, s. 12—Infants—Insurance moneys—Petition for appointment of trustee—Letters of guardianship—Certificate of foreign court.

Where certain infants living with their mother in the Province of Nova Scotia were entitled to insurance moneys payable in Ontario, and their mother petitioned to be appointed trustee under R.S.O., c. 136, s. 12, to receive such moneys, letters of guardianship issued to her by a Probate Court of the Pro-

vince of Nova Scotia, and a certificate of the judge of that court, showing that security had been given by her, upon her appointment as guardian, in respect of the insurance moneys in question, were received as evidence in support of the petition.

A. E. Hoskin for the petitioner.

Court of Appeal.] [Nov. 13.

SOLMES *v.* STAFFORD.

Summary judgment—Rule 739—Action of foreign judgment—Variation—Writ of summons—Special indorsement—Amendment—Interest—Unliquidated damages—Rules 245, 711—Motion for judgment—Rule 757, scope of.

Where the plaintiff indorsed his writ of summons with a claim for the amount of a foreign judgment and interest, and after the issue of such writ and while a motion for summary judgment under Rule 739 was pending, the foreign judgment was varied on appeal by reducing the amount;

Held, that, even if the claim for interest did not stand in the way, the indorsement could not be amended upon the motion for summary judgment so as to accord with the foreign judgment as varied, and the plaintiff's proper course was to abandon his motion and move for leave to amend the indorsement, or to discontinue the action altogether.

Gurney v. *Small*, (1891) 2 Q.B. 584, and *Paxton* v. *Baird*, (1893) 1 Q.B. 139, followed.

Interest upon the amount of a foreign judgment from the date of its entry is not payable by contract nor by statute, nor is it awarded by the judgment as a continuing obligation, but is recoverable only as unliquidated damages, and cannot be the subject of a special indorsement.

And while, for the purpose of obtaining judgment by default, the plaintiff may indorse his writ specially for a liquidated demand and also for a further claim under Rule 711, yet if he wishes to be in a position to move for summary judgment under Rule 739 he must bring himself strictly within Rule 245, as having indorsed his writ only with a claim which is the subject of a special indorsement under that Rule.

Judgment of the Common Pleas Division, 16 P.R. 78, affirmed on these three points.

Hollender v. *Fjoulkes*, 16 P.R. 175, and *Munro* v. *Pike*, 15 P.R. 164, approved.

Hay v. *Johnston*, 12 P.R. 596, overruled.

Huffman v. *Doner*, *ib.*, 492, and *Mackenzie* v. *Ross*, 14 P.R. 299, commented on.

Sheba Gold Mining Co. v. *Trubshawe*, (1892) 1 Q.B. 674, and *Wilks* v. *Wood*, *ib.*, 684, followed.

Where an order for summary judgment under Rule 739 is set aside on appeal, Rule 757 cannot be made available for the purpose of turning the appeal into a motion for judgment and granting a yet more summary judgment.

Judgment of the Common Pleas Division reversed on this point.

Alan Cassels for the appellant.

Aylesworth, Q.C., for the respondent.

Court of Appeal.] [Nov. 13.

HOGABOOM *v.* GILLIES.

Interpleader—Sheriff—Security for goods seized—Failure of—Barring claimant.

Upon appeal from the order and decision of the Queen's Bench Division, 16 P.R. 96, the court was equally divided, and the appeal was dismissed.

Per HAGARTY, C.J.O., and OSLER, J.A.: The order should be reversed.

Per BURTON and MACLENNAN, JJ.A.: The order should be affirmed.

W. R. Riddell for the appellant.

J. A. Macdonald for the respondent.

Court of Appeal.] [Nov. 13.

COUTTS *v.* DODDS.

Costs—Order as to, under Rule 1170—"Good cause"—Divisional Court—Amending Rule 1274, application of—Appeal—Agreement of parties.

Under Rule 1170, as it stood before the amendment made by Rule 1274, a Divisional Court had the power to make such order as to costs as might seem just, irrespective of "good cause."

Myers v. *Defries*, 4 Ex.D. 176; *Marsden* v. *Lancashire, etc. R.W. Co.*, 7 Q.B.D. 641, followed.

Island v. *Township of Amaranth*, 16 P.R. 3, approved.

Where similar motions are made to the same court in two actions, and the parties in the first agree that the decision in the second shall govern, there is nothing to preclude an appeal in the first action, even though there is no appeal in the second.

Per MACLENNAN, J.A.: Rule 1274 was inapplicable to this action, which was tried before it came into force.

W. M. Douglas for the appellant.

Aylesworth, Q.C., for the respondent.

MEREDITH, J.] [Nov. 13.

PURCELL *v.* BERGIN.

Costs—Failure to establish will—Costs of person named as executor.

Where the person named as an executor in a written instrument failed, in the final result of this action, to establish it as the last will of the testator, and the court of last resort refused to order that his costs incurred therein should be paid out of the estate;

Held, that the court of first instance could not make an order for payment out of moneys paid into that court by the administrators *pendente lite* of these costs as costs of the litigation, because they were refused by the only tribunal which had jurisdiction to award them, nor as costs and expenses properly incurred by the applicant in the performance of his duties as executor, because he never was an executor.

W. H. Blake for the applicant.

J. H. Moss, contra.

Q.B. Div'l Court.] [Nov. 19.

OFFORD *v.* BRESSE.

Writ of summons—Service out of jurisdiction—Rule 271 (e)—Breach of contract within jurisdiction—Letter.

The defendants, resident in the Province of Quebec, there wrote and posted to the plaintiff in Ontario a letter putting an end to the contract of hiring subsisting between the parties.

Held, in an action for wrongful dismissal, that the breach of the contract occurred in Quebec, the receipt of the letter by the plaintiff not being the breach, but only evidence of it; and service of the writ of summons on the defendants in Quebec could not be allowed under Rule 271 (*e*).

Cherry v. *Thompson*, L.R. 7 Q.B. 573, followed.

Tremeear for the plaintiff.

J. A. MacIntosh for the defendants.

Q.B. Div'l Court.] [Nov. 19.

HOLLENDER *v.* FFOULKES.

Security for costs—Time—Extension of—Rule 485.

Order of STREET, J., 16 P.R. 225, allowing bond for security for costs, varied by extending, pursuant to Rule 485, the time for giving security.

McBrayne for the plaintiff.

W. H. Bartram for the defendant.

STREET, J.] [Nov. 19.

GIBB *v.* TOWNSHIP OF CAMDEN.

Costs—Third party—Rules 329, 332.

Where in an action for negligence the defendants served a third party, under Rule 329, with notice of a claim for indemnity, but he did not appear thereto, and no order was made or applied for under Rule 332;

Held, that he was under no obligation to take any proceeding, and was not bound by the result of the action; and his subsequently appearing at the trial and asking to be made a defendant was gratuitous, and he was not entitled to costs against the defendants.

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

E. W. J. Owens for the third party.

MEREDITH, C.J.] [Nov. 23.

COFFEY *v.* SCANE.

Security for costs—Delivery out of bond—Appeal to Court of Appeal—Execution.

Held, that the defendant was not entitled to have delivered out to him for suit a bond for security for his costs of the action filed by the plaintiff, after judgment in the defendant's favour with costs in the High Court, while an appeal by the plaintiff to the Court of Appeal was pending, notwithstanding that there was no stay of execution for the costs awarded to the defendant.

Hately v. *Merchants' Despatch Co.*, 12 A.R. 640, applied and followed.

R. L. Dunn for the plaintiff.

L. G. McCarthy for the defendant.

Q.B. Div'l Court.] [Nov. 23.

SHAVER *v.* COTTON.

Pleading — Sci. fa.—Company—Promissory notes—Fraud—Ultra vires—Defences available in original action.

In an action by way of *sci. fa.* against a shareholder in an incorporated company, against which the plaintiff had recovered a fruitless judgment, the defendant alleged as defences that the judgment was recovered upon certain promissory notes which the plaintiff procured the company to make to him, without consideration, when insolvent to his knowledge; that the notes were made in fraud of the creditors and contributories, and were *ultra vires* of the company; and that the company had a good defence to the action on the notes, but allowed the plaintiff to take judgment by default.

Held, that these defences might have been raised in the original action, and were not available in this; and they were struck out.

F. E. Titus for the plaintiff.

Raney for the defendant.

Q.B. Div'l Court.] [Nov. 26.

BOECK *v.* BOECK.

Master's report—Confirmation—Alimony—Execution.

Where a reference is directed to the Master to ascertain and state the amount of alimony which the defendant should pay, execution may be issued for the amount found by his report before confirmation thereof.

Lewis v. *Talbot Street Gravel Road Co.*, 10 P.R. 15, approved and followed.

G. G. Mills for the plaintiff.

D. O. Cameron for the defendant.

WRIGHT *v.* BELL.

Solicitor's lien—Costs of litigation—Administration—Share of party—Costs of other parties—Priorities—Time.

Where, in an action for construction of a will and administration of the testator's estate, costs were ordered to be paid by one of the defendants to the other parties;

Held, that they were entitled to be paid these costs out of his share of the fund in court arising from the sales of the estate, in priority to the cost of his own solicitor, whose lien, if any, attached only upon the ultimate sum to which his client was entitled.

Per BURTON, J.A.: The claim of the other parties could be properly made at any time before payment out of the fund.

Order of ROSE, J., reversed.

A. H. F. Lefroy and *H. T. Beck* for the appellants.

McBrayne for the respondent.

MANITOBA.

COURT OF QUEEN'S BENCH.

KILLAM, J.] [Nov. 12.

MCEWAN *v.* HENDERSON.

Demurrer—Assignment of mortgage—Covenant that mortgage is a good and valid security—Warranty of title.

This was an action for damages for breach of a covenant in a deed of assignment of a mortgage of lands. The declaration alleged that by that deed the defendant covenanted with the plaintiff that the mortgage thereby assigned was a good and valid security, and the breach assigned was that the mortgage was not, at the time of the assignment, and has never since been, a good and valid security, and that the defendant never had a good and valid title or any title to the lands comprised in the mortgage.

Two pleas were put in to this declaration to which the plaintiff demurred.

On the argument of the demurrer the defendant's counsel contended that the declaration was bad, and disclosed no cause for action. Plaintiff's counse argued that the covenant should be construed as if it warranted that the mortgagor and the mortgagee had a good title to the mortgaged lands, and the declaration admitted that the mortgage had been duly executed by the mortgagor, and that it had been given to secure the payment of the moneys mentioned therein.

Held, that the covenant set out in the declaration could not be construed as a covenant that the mortgagor had a good title to the land, or that the mortgage was effective to charge the land with payment of the mortgage moneys.

Held, also, without considering whether the pleas were good or not, that the declaration disclosed no cause of action against the defendant, and that the demurrers should be overruled.

Bradshaw for the plaintiff.

Howell, Q.C., for the defendant.

Appointments to Office.

HIGH COURT JUDGES (ONTARIO).

William Ralph Meredith, of the City of Toronto, in the Province of Ontario, Esquire, one of Her Majesty's Counsel learned in the Law, to be a Judge of the Supreme Court of Judicature for Ontario, a Justice of the High Court of Justice for Ontario, a Member of and the President of the Common Pleas Division of the High Court of Justice for Ontario, with the title of Chief Justice of the Common Pleas.

Duncan Chisholm, Esquire, Junior Judge of the County Court of the County of Waterloo, in the Province of Ontario, to be a Local Judge of the High Court of Justice for Ontario.

SUPREME COURT JUDGES (NORTHWEST TERRITORIES).

David Lynch Scott, of the Town of Calgary, in the Northwest Territories, Esquire, and of Osgoode Hall, Barrister-at-Law, one of Her Majesty's Counsel learned in the Law, to be Judge of the Supreme Court of the Northwest Territories, *vice* His Honour James Farquharson McLeod, deceased.

SUPERIOR COURT JUDGES (QUEBEC).

The Honourable Sir Louis Eldemar Napoleon Causalt, Knight, one of the Puisne Judges of the Superior Court of the Province of Quebec, to be the Chief Justice of the Superior Court of the Province of Quebec, *vice* the Honourable Sir Francis Godschall Johnson, deceased.

DIVORCE COURT JUDGES (NEW BRUNSWICK).

The Honourable James Alfred Van Wart, one of the Judges of the Supreme Court of the Province of New Brunswick, to be the Judge of the Court of Divorce and Matrimonial Causes of the Province of New Brunswick, *vice* the Honourable Mr. Justice Fraser, appointed Lieutenant-Governor of the said Province.

COUNTY COURT JUDGES (ONTARIO).

Duncan Chisholm, of the Town of Port Hope, in the Province of Ontario, Esquire, one of Her Majesty's Counsel learned in the Law, to be Junior Judge of the County Court of the County of Waterloo.

COUNTY COURT JUDGES MANITOBA).

Corbet Locke, of the Village of Morden, in the Province of Manitoba, Esquire, one of Her Majesty's Counsel learned in the Law, to be Judge of the County Court for the Southern Division of the Eastern Judicial District of the Province of Manitoba.

CORONERS.

County of Essex.

Joseph Octave Reaume, of the City of Windsor, in the County of Essex, Esquire, M.D., to be an Associate Coroner, within and for the said County of Essex, in the room and stead of Onesime Langlois, Esquire, M.D., C.M., deceased.

County of Oxford.

Melville Franklin Lucas, of the Town of Ingersoll, in the County of Oxford, Esquire, M.D., to be an Associate Coroner, within and for the said County of Oxford, in the room and stead of William Ferguson Dickson, Esquire, M.D., removed from the County.

County of Huron.

John William Shaw, of the Town of Clinton, in the County of Huron, Esquire, M.D., to be an Associate Coroner, within and for the said County of Huron, in the room and stead of Addison Worthington, Esquire, M.D., deceased.

County of Grey.

George Willoughby Hurlburt, of the Town of Thornbury, in the County of Grey, Esquire, M.D., to be an Associate Coroner, within and for the said County of Grey, in the room and stead of Robert Hunt, Esquire, M.D., resigned.

COUNTY ATTORNEYS.

County of Grey.

Alexander Grant McKay, of the Town of Owen Sound, in the County of

Grey, Esquire, Barrister-at-Law, to be County Crown Attorney, in and for the said County of Grey, in the room and stead of William R. Armstrong, resigned.

POLICE MAGISTRATES.

County of Ontario.

Edward Clarke Campbell, of the Town of Uxbridge, in the County of Ontario, Esquire, to be the Police Magistrate in and for the said Town of Uxbridge, without salary.

DIVISION COURT CLERKS.

United Counties of Northumberland and Durham.

Roswell B. Maclam, of the Village of Brighton, in the County of Northumberland, Gentleman, to be Clerk of the Eighth Division Court of the United Counties of Northumberland and Durham, in the room and stead of M. P. Ketchum, resigned.

County of Kent.

James T. Smith, of the Town of Dresden, in the County of Kent, Gentleman, to be Clerk of the Third Division Court of the said County of Kent, in the room and stead of Simeon Wallace, deceased.

United Counties of Stormont, Dundas, and Glengarry.

John Ferdinand Millar, of the Village of Morrisburg, in the County of Dundas, Gentleman, to be Clerk of the Fifth Division Court of the United Counties of Stormont, Dundas, and Glengarry, in the room and stead of W. Garvey, deceased.

County of Grey.

Abram S. VanDusen, of the Village of Flesherton, in the County of Grey, Gentleman, to be Clerk of the Fifth Division Court of the said County of Grey, in the room and stead of J. W. Armstrong, resigned.

County of Lambton.

George Leys, of the Town of Sarnia, in the County of Lambton, Gentleman, to be Clerk of the First Division Court of the said County of Lambton, in the room and stead of H. M. Pousette.

DIVISION COURT BAILIFFS.

Counties of Stormont, Dundas, and Glengarry.

Henry Conroy, of the Village of Maxville, in the County of Glengarry, to be Bailiff of the Second Division Court of the United Counties of Stormont, Dundas, and Glengarry, in the room and stead of J. D. McDougall, resigned.

County of Norfolk.

James Mirom Brown, of the Township of Charlotteville, in the County of Norfolk, to be Bailiff of the Fifth Division Court of the said County of Norfolk, in the room and stead of Joseph W. Shearer, resigned.

Counties of Lennox and Addington.

Samuel James Sweetnam, of the Village of Vennachar, in the Counties of Lennox and Addington, to be Bailiff of the Seventh Division Court of the said Counties of Lennox and Addington, in the room and stead of Andrew Cowan, deceased.

Counties of Prescott and Russell.

Godefroy Fortier, of the Village of Clarence Creek, in the County of Russell, to be Bailiff of the Tenth Division Court of the United Counties of Prescott and Russell, in the room and stead of Francis Menard.

District of Manitoulin.

Hector Laughlin McLean, of the Village of Gore Bay, in the District of Manitoulin, to be Bailiff of the First Division Court of the said District of Manitoulin, in the room and stead of Neil McLean, resigned.

County of Grey.

John Wright, the Younger, of the Village of Flesherton, in the County of Grey, to be Bailiff of the Fifth Division Court of the said County of Grey, in the room and stead of Abram S. VanDusen, resigned.

District of Thunder Bay.

James McLaren, of the Town of Fort William, in the District of Algoma, to be Bailiff of the First and Second Division Courts of the District of Thunder Bay, in the room and stead of James Alexander.

District of Nipissing.

James E. Mulligan, of the Town of North Bay, in the District of Nipissing, to be Bailiff of the Third Division Court of the said District of Nipissing, in the room and stead of Charles Lamarche, resigned.

County of Essex.

Daniel Sinclair, of the Town of Essex, in the County of Essex, to be Bailiff of the Eighth Division Court of the said County of Essex, in the room and stead of Richard E. Millard, deceased.

County of Dufferin.

Stewart Tate, of the Village of Grand Valley, in the County of Dufferin, to be Bailiff of the Fifth Division Court of the said County of Dufferin, in the room and stead of Frederick Alwin, resigned.

COMMISSIONERS FOR TAKING AFFIDAVITS.

City of Montreal, (Que.).

Arthur Browning, of the City of Montreal, in the Province of Quebec, Esquire, to be a Commissioner for taking affidavits, within and for the said City of Montreal, and not elsewhere, for use in the Courts of Ontario.

City of Halifax (N.S.).

William Alexander Henry, of the City of Halifax, in the Province of Nova Scotia, Esquire, Barrister-at-Law, to be a Commissioner for taking affidavits, within and for the City of Halifax, and not elsewhere, for use in the Courts of Ontario.

City and County of London (England).

George Birchall, of 85 Gracechurch Street, in the City of London, England, Gentleman, Solicitor, to be a Commissioner for taking affidavits, within and for the said City of London, and in the County of London, and not elsewhere, for use in the Courts of Ontario.

Obituary.

SIR ALFRED STEPHEN.

An Australian exchange gives some particulars in reference to the life and death of Sir Alfred Stephen, at one time Chief Justice of New South Wales, a distinguished lawyer and statesman, who passed away in his ninety-third year. His great and many services and high character rendered him a very promi-

nent figure in that Province. He has had the gratification of seeing his son occupy a seat on the same Bench where he himself had so long presided.

In 1839 he was appointed to the Bench in New South Wales, at which time the number of solicitors in practice numbered only fifty. At present they are over six hundred. He was created K.C.M.G. in 1874, and in 1875 was appointed Lieutenant-Governor of his Province. He passed through many strange experiences in that country in the olden days, visiting Melbourne when that infant town had less than two hundred houses.

He took an active part in the legislation of his country, recently taking charge of the new Divorce Bill. After his resignation he was called to the dignity of the Privy Council, about the same time that our Sir John Macdonald received that distinction. He was probably the oldest member of the English Bar at the time of his death.

DR. MMICHAEL, Q.C.

By some oversight which we regret exceedingly, we failed to mention in an earlier publication the demise of the late Dr. McMichael, Q.C. Few men, if any, were better known in the profession than he was, and few were so universally respected. He was a son of the late Albert McMichael, of Cataraqui, and was born there in 1816. He received his early education at Kingston, and afterwards in Toronto at King's College (now the University of Toronto), where he won both gold and silver medals, evidencing the possession of great natural gifts, as well as devotion to his studies. He graduated as B.A. in 1848, as B.C.L. in 1849, and in 1860 had the degrees of M.A. and LL.D. conferred upon him. Before completing his university course, he entered on the study of law, and was articled to the late R. G. Dalton, Q.C. After completing his studies, he subsequently practised law by himself for a time, and then entered into partnership with Mr. VanNorman, the firm being known as VanNorman & McMichael. He wasafterwards a partner in the firm of McMichael & McCutcheon. He next became identified as a member of the firm of Cayley, Cameron, & McMichael, two of the principal members being the late Hon. William Cayley and the late Sir Matthew Crooks Cameron, and later the firm made several changes to Cameron, McMichael, Fitzgerald & Hoskin, afterwards Cameron, McMichael & Hoskin, until the year 1877, when on the elevation to the Bench of the late Sir Matthew Crooks Cameron the firm again changed to McMichael, Hoskin & Ogden, under which name it continued, with the doctor as the senior member, until 1889, when it was again changed to that of McMichael, Mills & McMichael, continuing under that name until a short time previous to his decease. Dr. McMichael's high legal attainments were early recognized, and during his long career at the Bar few, if any, could boast of greater success, or of having held a greater number of briefs, there being only two county towns in Ontario in which he had not appeared as counsel. He was offered, by the late Sir John Macdonald, the Chief Justiceship of Manitoba, but declined the proffered honour,and had previously declined a judgeship on the OntarioBench

The deceased gentleman was twice married. His first wife was Miss Amy Wedd, a sister of the wife of the late Sir Matthew Crooks Cameron, to whom he was married in 1854. She died on the 26th of August, 1875. He was afterwards married to Miss Mary Dalton, a sister of the late R. G. Dalton, Q.C.