THE

Canada Law Journal.

VOL. XXXI. DECEMBER 16, 1895. No. 19

WE have from time to time published reports and notes of cases decided in the various Provinces of the Dominion besides Ontario, as well as all cases decided in the latter Province, which subsequently appear in the regular reports, and many other cases which can be found in no other place. Arrangements have now been made with competent and reliable correspondents in all the Provinces to obtain early notes (and also occasionally reports) of all cases of importance, which will be given to our readers with promptness and regularity. These arrangements include the reporting of all important practice cases in every Province. It goes without saying that all this will entail large additional expense, but this has never been spared when occasion called for it in the interest of our subscribers. It will be noticed that a change has been made in the sequence of the matter under the heading of Reports and Notes of Canadian Cases, whereby the decisions of each Province are grouped together, an arrangement which it is thought will be more convenient for reference.

THE futility of Acts of Parliament seems to be well shown by the case of *Kelly* v. *Barton*, 26 O.R., 608. On the 11th of April, 1895, the Legislature passed the Law Courts Act, 1895, by the ninth section whereof it is declared that the decision of a Divisional Court or the Court of Appeal on a question of law or prac-

tice shall, unless overruled or otherwise impugned by a higher court, be binding on the Court of Appeal and all Divisional Courts thereof, *as well as on all other courts and judges, and shall not be departed from* without the concurrence of the judges who gave the decision, unless and until so overruled or impugned. Somewhat more than a month after the Act came into force the judgment in the above action was delivered in which the Chancery Divisional Court adopted the view of Lopes, J., in *Agnew* v. *Dobson*, 47 L.J. M.C. 67, N.S. (which can by no stretch of imagination be considered the decision of "a higher court" than our Court of Appeal), and simply ignored the contrary decision of the Court of Appeal in *Sinden* v. *Brown*, 17 A. R., 173. In that case the Court of Appeal expressly held that a magistrate acting without authority, but with the *bona fide* belief that he was acting in the execution of his duty, was entitled to notice of action; and in *Kelly* v. *Barton* the Divisional Court held that a police officer acting without authority was not entitled to notice of action, no matter whether he *bona fide* believed he was acting in the discharge of his duty as a police officer or not. All of which goes to show that it is easy enough to pass Acts of Parliament, but not so easy to get them observed.

SINCE the above was written the case of *Kelly* v. *Barton* has been heard in appeal, and the appeal has been dismissed. Whether the Court of Appeal adopted the view of the Divisional Court on the question of notice of action we are not prepared to say. It is possible the appeal may have been dismissed on the ground that, even if notice of action were necessary, the notice given was sufficient. If so, then they must be taken to have overruled *Howell* v. *Armour*, 7 O.R. 363 (following *Taylor* v. *Nesfield*, 3 E. & B. 724). Altogether the law respecting notice of action can hardly be said to have been made any clearer by this case. As the matter at present stands, the Court of Appeal has now apparently given two conflicting decisions on the same point, either of which it may follow when the point next arises. This may be satisfactory to the court, but hardly so to the suitor.

With regard to the merits of the question, we think a great deal is to be said in favour of the view adopted by the Court of

Appeal in *Sinden* v. *Brown*. Everybody, of course, is assumed to know the law, but, as a matter of painful experience, a great many persons are constantly acting in entire ignorance of the law, and, amongst others, public officers; and it is a fair question whether the Legislature did not intend to protect them even when they so acted, provided they *bona fide* believe they are acting in discharge of their public duty; and where there is any question as to their *bona fides*, whether that is not a matter that should be submitted to a jury. This, at all events, seems to us (we say it with all due deference) a more reasonable view than that adopted in *Kelly* v. *Barton*.

THE recent decision of His Honour Judge Morson, in the Division Court case of *George* v. *City of Toronto*, has caused some surprise to bicyclists, both legal and lay, in many quarters. The plaintiff sued for damages sustained by a fall from his bicycle, caused by a hole in an asphalt pavement on a street in this city. The learned judge non-suited the plaintiff, being of the opinion that the hole which caused the damage "did not render the roadway unfit for ordinary vehicular traffic," and, further, that "the bicycle does not stand on any higher plane, so far as the highways are concerned, than an ordinary vehicle." The remark of the judge (as reported) expressing his regret that bicyclists have as much rights as the law allows them was, of course, quite beside the question before him for adjudication. Others may, or may not, have the same thought on the subject.

If by his decision the learned judge means that a bicycle is not an ordinary vehicle, it is to be regretted that he was unable to take judicial notice of a fact patent to all, and his remark contrasts strangely with a statement attributed to him during the case, that bicyclists were "as thick as bees." But if his words indicate that he considers a bicycle to be, and to stand on the same plane, as an ordinary vehicle, he is probably correct.

The law is that every public road is to be kept in repair by the Corporation. With the improvements in the lightness and speed of the methods of transport there must, we submit, be the necessary concomitant of better roads. That which would be a sufficient roadway for a Red River cart would not be considered fit for the use of an ordinary light wagon or buggy, such as are now in

common use. Roads must necessarily be improved to meet the demands of modern traffic and modern vehicles. Now that the bicycle has come to stay and is a recognized means of transit, its use being controlled by municipal by-laws in many places, it is not unreasonable that roads should be made so reasonably safe as to meet its requirements. That this is well settled law is sufficiently clear from the case of *O'Connor* v. *Otonabee*, 35 Q.B., p. 88, where the words of the judgment are, "The road that will do because it must do, and is the only road that can be given in a new country, will not answer in an older and better settled place; and the road that will do there may not be sufficient in a wealthier and more travelled section; and a road that will do in one part of a city may not do in the main or principal streets of the same city. . . The only rule that can be given is that the public are entitled to have, and the body having jurisdiction are required to provide, such a road which, under all the circumstances, the public may reasonably demand, etc."

There is another feature of the case which should not be overlooked. When a person sees before him, and is using for lawful purposes, a stretch of asphalt pavement, surely he may assume that all parts of that pavement are in proper repair, and that each part is in a condition equally good with that in which asphalt pavements are elsewhere generally found.

In a case in the United States it was said that "a highway established for the general benefit of passage and traffic must admit of new methods of use whenever it is found that the general benefit requires them; and if the law should preclude the adaptation of the use to the new methods, it would defeat, in greater or less degree, the purpose for which highways are established."

The decision in this case is of great importance to all wheelmen, and this being the first time, we believe, that the point has come up, it is to be regretted that the fiat of the Attorney-General has not been obtained in order to make it a test case, the amount involved being insufficient to allow an appeal in the usual way.

"*WITHOUT PREJUDICE.*"

Those who are familiar with Dickens will remember that he makes Mr. Guppy preface his proposal of marriage to Miss Esther Summerson with the declaration that "what follows is without prejudice." This passage loses none of its humour from the fact that Mr. Guppy's notions of the law on this point were somewhat astray.

If any love-sick swain were induced to adopt this idea of Mr. Guppy, he would probably find that his precautions for securing his retreat were unavailing, and that the mystic words "without prejudice" would altogether fail to preclude from the consideration of a jury his amatory effusions, whether written or verbal.

Some people like Mr. Guppy, however, seem to assume that every communication expressed to be made "without prejudice" is necessarily protected, but this is very far from being the case, and when the reason on which the rule is based is considered, this will be quite apparent.

In Buller's, N.P., 236 *b* (7th ed., 1817), it is said, "An offer to pay money by way of compromise is not evidence of a debt. The reasons often assigned for it by Lord Mansfield were that it must be permitted to men 'to buy their peace,' without prejudice to them, if the offer did not succeed: and such offers are made to stop litigation without regard to the question whether anything or what is due. If the terms 'buy their peace' are attended to, they will resolve all doubts on this head of evidence. But, for an example, I will add one case. If A. sue B. for £100, and B. offer to pay him £20, it shall not be received in evidence; for this neither admits nor ascertains any debt, and is no more than saying he would give £20 to get rid of the action. But if an account consists of ten articles, and B. admits that a particular one is due, it is good evidence for so much."

In one of the oldest cases on the subject, *Gregory* v. *Howard*, 3 Esp. 113 (1800), Lord Kenyon, C.J., is said to have declared at *nisi prius*: "Evidence of concessions made for the purpose of settling matters in dispute I shall never admit."

But in *Nicholson* v. *Smith*, 3 Stark N.P.C. 128, (1822) we find that Abbott, C.J., admitted in evidence proof of the fact that after the action was brought the defendant called upon the plaintiff and said he was sorry that the thing had happened, and offered £200 in settlement, which was not accepted.

In *Wallace* v. *Small*, 1 M. & M. 446, and *Watts* v. *Lawson*, *ib.*, 447 *n* (1830), offers of compromise made, but not expressed to be without prejudice, were held to be admissible. But these cases seem somewhat opposed to the rule laid down by Lord Mansfield and Lord Kenyon, C.J., above referred to, and to the later cases. The next case in which the point is discussed appears to be *Cory* v. *Bretton*, 4 C. & P. 462 (1830), where a letter of a defendant was offered in evidence, in order to take the case out of the Statute of Limitations, but it appearing that the letter in question contained the words, "which is not to be used in prejudice of my rights now or in any future arrangement that may be instituted," Tindal, C.J., who was trying the case, refused to receive it; and to the same effect is *Re River Steamer Co.*, L.R. 6 Ch. 827; but the principle on which the evidence was excluded in *Cory* v. *Bretton* is not expressly stated in the report. But about eleven years later another decision appears in the reports which does enunciate very clearly the principle on which such letters or admissions are to be excluded, and that is the case of *Paddock* v. *Forrester*, 3 Sc. N.R. 734 (1841), in which the Court of Common Pleas *in banc* held that a correspondence entered into without prejudice for a compromise of the matter in question in the action was inadmissible, on the ground that it was against public policy, and the reason Tindal, C.J., assigned for it being so was because "it is of great consequence that parties should be unfettered by correspondence entered into upon the express understanding that it is to be without prejudice." And he declared "that where used in the letter containing the offer, the words 'without prejudice' must cover the whole correspondence"; and not only the letter bearing the words "without prejudice," but also the answer thereto which was not so guarded was held to be inadmissible in evidence; and see to the same effect *Ex parte Harris*, 10 L.R. Chy. 264.

In 1846 it was held that verbal offers of compromise of a claim made by a defendant's solicitor were in like manner protected, and could not be given in evidence against his client: *Jardine* v. *Sheridan*, 2 C. & Kir. 24 (1846); and see *Ritchey* v. *Howard*, 6 C.P 437 (1857), where an account rendered by the defendant to the plaintiff, showing a balance in the plaintiff's favour, accompanied by a letter proposing an arrangement and stating that the letter and account were without prejudice, was held to be inadmissible as evidence.

The principle of the exclusion of such admissions, whether verbal or documentary, therefore seems to rest on the fact that there is some matter in controversy, or some claim by one person against the other for the settlement or adjustment of which the communication is made, and that in furtherance of the maxim, *Interest reipublicæ ut sit finis litium*, it is for the public good that communications having that end in view should not be allowed to prejudice either party in the event of their proving abortive. And it would seem from the case of *Jardine* v. *Sheridan*, *supra*, that it is not even absolutely necessary that such communications should be expressly guarded, where they manifestly appear to have been made simply by way of compromise. At all events, it was held in *Peacock* v. *Harper*, 26 W.R. 109 (1877), that where a letter opening negotiations for a compromise, but not stated to be without prejudice, was followed by another a day or two after, guarding against prejudice, the whole correspondence was thereby protected.

In *Healey* v. *Thatcher*, 8 C. & P. 388 (1838), at a trial before Gurney, B., that learned judge refused to receive in evidence a letter written "without prejudice" even in favour of the party who had written it. He said, "If you write without prejudice so as not to bind yourself, you cannot use the letter against the other party"; but it may be doubted whether this statement of the law is not a little too wide; at all events, in some more recent cases a somewhat different view seems to have been taken.

Correspondence of this kind is not only inadmissible as evidence at the trial of the action, but it has also been held to be privileged from production for the purpose of discovery: *Whiffin* v. *Hartwright*, 11 Beav. 111 (1848).

In *Hoghton* v. *Hoghton*, 15 Beav. 321, and *Jones* v. *Foxall*, *ib.* 388 (1852), Sir John Romilly, M.R., discusses the question. In the first of these cases, he said: "Such communications made with a view to an amicable arrangement ought to be held very sacred, for if parties were to be afterwards prejudiced by their efforts to compromise it would be impossible to attempt any amicable arrangement of differences." Here, again, we see the reason of the rule is stated very much in the same way as it was by Tindal, C.J in *Paddock* v. *Forrester*, *supra*.

This protection which the law throws round communications made with the view to compromising or adjusting matters in

controversy cannot at the mere will of parties be extended to other communications which do not come within that category. It would be a very unreasonable thing to suppose that every individual is at liberty to say what particular act or admission he may choose to do or make shall be receivable in evidence against him. The law gives no such privilege, and the mere use of the words "without prejudice" will not protect communications from being given in evidence, unless such communications are within the class above indicated. For instance, a person cannot write a libellous or blackmailing letter and prevent its being used in evidence against him by putting in the words "without prejudice": see *Re Daintrey, infra.*

The general rule on which the court acts was recognized and followed by Proudfoot, J. in the *County of York* v. *Toronto Gravel Road Company*, 3 O.R. 584. Where such evidence was improperly received at the trial, a new trial was granted: *Pirie* v. *Wyld*, 11 O.R. 422; but in an earlier case where the court came to the conclusion that the verdict could be supported on the other evidence adduced, a new trial was refused: *Burns* v. *Kerr*, 13 U.C.Q.B. 468; and where no objection is made at the trial to its reception, the objection to its admissibility cannot be relied on as a ground for a new trial: see *Hartney* v. *North British Insurance Company*, 13 O.R. 581.

But though such communications are inadmissible when the negotiation proves abortive for the purpose of proving any admission contained therein, yet where it is successful and a compromise is agreed to the communications are admissible, both for the purpose of showing the terms of the compromise and for enforcing it: *Vardon* v. *Vardon*, 6 O.R. 719 (1883). In that case the correspondence for a settlement had commenced "without prejudice," but in subsequent letters the qualifying words were dropped; and Wilson, C.J., held it to be entirely immaterial. "For if the negotiations have failed, the terms of the negotiation fail too; while if a contract has been perfected, the qualifying words are no longer operative." And inasmuch as he held that a contract had been made, he also held that the correspondence was admissible to establish the terms of it, and for the purpose of specifically enforcing it; and this decision was affirmed by a Divisional Court (Boyd, C., and Proudfoot, J.).

Such communications are also admissible for the purpose of showing that an attempt has been made to compromise a suit,

where, for instance, it is necessary to do so in order to account for the lapse of time: see *per* Romilly, M.R., *Jones* v. *Foxall*, 15 Beav., at p. 396; and see *per* Lindley, L.J., in *Walker* v. *Wilsher*, 23 Q.B.D., at p. 38.

It was at one time thought that they might also be looked at for the purpose of determining the question of costs: *Williams* v. *Thomas*, 2 Dr. & Sm. 29, 37 (1862), followed by Spragge, C., in *Boyd* v. *Simpson*, 26 Gr. 278 (1879), and see *Woodward* v. *Eastern Counties Railway*, 1 Jur. N.S. 899 (1855); but the English Court of Appeal (Lord Esher, M.R., and Lindley and Bowen, L.JJ.) subsequently determined that such communications, whether verbal or written, could not be regarded for the purpose of determining the question of costs: *Walker* v *Wilsher*, 23 Q.B.D. 335, (1889). Lindley, L.J., says: "What is the meaning of the words 'without prejudice'? I think they mean without prejudice to the position of the writer of the letter if the terms he proposes are not accepted. If the terms proposed in the letter are accepted a complete contract is established, and the letter, although written without prejudice, operates to alter the old state of things and to establish a new one"; and Bowen, L.J., says in the same case: "In my opinion it would be a bad thing, and lead to serious consequences, if the courts allowed the action of litigants, or letters written to them without prejudice, to be given in evidence against them or to be used as material for depriving them of costs. It is most important that the door should not be shut against compromises, as would certainly be the case if letters written without prejudice and suggesting methods of compromise were liable to be read where a question of costs arose."

In *Omnium Securities Co.* v. *Richardson*, 7 O.R. 182 (1885), the action was for specific performance of a contract for the purchase of land. The defendant's offer to purchase, which had been accepted, was contained in a letter which was expressed to be "without prejudice." It was there held that as the offer had been accepted the privilege was removed; but it is submitted with all deference that the privilege never, as a matter of fact, existed in that case. This was a good deal like our friend Mr. Guppy's case; there was no dispute, no matter in controversy, and there was no question of public policy, or any other ground on which the offer in question could have been excluded as

evidence, even if the offer had not been accepted. Even where there is a matter in dispute a letter written "without prejudice" may, in some cases, be receivable in evidence. Of this *Clark* v. *The Grand Trunk Railway*, 29 U.C.Q.B. 136, and *Re Daintrey*, *infra*, furnish good illustrations. In Clark's case the plaintiff sued for damages for personal injuries sustained on the defendants' railway. Pending the action, the defendants' solicitor wrote to the plaintiff without prejudice, "further than I will state in this letter," proposing that the plaintiff should put himself under the care of three doctors named, for six months, at the defendants' expense, and if these gentlemen, or any two of them, would say that they believed he was hurt the defendants would waive every other defence, and settle with him on such terms as should be agreed on, or as the three doctors should name. This offer, it was stated, was intended to be used by defendants, if refused; to show the defendants' sincerity and the plaintiff's unwillingness to submit to a fair test. The offer was at first declined, but a few days after, and after a jury had been sworn on the case, an agreement was entered into of substantially the same character, but by it the plaintiff was to be placed for six months under four doctors, at the defendants' expense, and they agreed that if, at the expiration of the time, the doctors or a majority of them agreed that the plaintiff was injured, the defendants would pay the damages to be assessed as provided for. The plaintiff submitted himself to the care of the four doctors, but they failed to agree, and the case was again brought on for trial, when the plaintiff put in evidence the letter above referred to, and the jury were told by the judge that if they were in doubt as to the plaintiff having contributed to his own injury, they might consider the letter as evidence against the defendants on that point. They found for the plaintiff, saying that they did not think him guilty of any neglect. The majority of the court (Richards, C.J., and Morrison, J.) thought there had been misdirection on this point, and granted a new trial (Wilson, J., dissenting). All the members of the court were agreed that the letter was admissible, but they differed as to the extent to which it could be relied on as evidence. Richards, C.J., and Morrison, J., held that it was receivable on the ground that as the defendants' solicitor stated that he intended to use the letter to show the plaintiff's want of good faith, that, therefore, the

plaintiff was entitled also to use the letter and the subsequent agreement to repel any such imputation; but they thought that the judge at the trial erred in treating the letter as any evidence on the point of contributory negligence. Wilson, J., said, "This letter of defendants, if simply written 'without prejudice,' could not have been used either for or against them if the plaintiff did not act on it, as he did not. But it was not entitled to the protection claimed for it by the defendants, because they declare they mean to use it against the plaintiff, and the moment they said this it lost its privileged character, and could be used against the defendants themselves, for there is no such rule of privilege for the writer and none for the other side; it must be mutual or it means nothing. If the plaintiff had acted on the letter and conformed to it, he could then have used it against the defendants, though written without prejudice, for the letter could have meant in such a case, 'If you do not accept this proposition, then no prejudice; if you do, then the occasion for privilege has ended, and the letter may be usable for the stipulations in it that may be in your favour, in consequence of your having accepted the proposition';" and he was of opinion that as the plaintiff had substantially complied with the defendants' offer, the letter under the circumstances was admissible as evidence for all purposes, including the point of contributory negligence.

In re Daintrey, (1893) 2 Q.B. 116, shows very clearly the true ground on which the law allows the privilege in question and its limitations; in that case a petition in bankruptcy was presented which alleged as an act of bankruptcy that the debtor had given notice to a creditor that he had suspended payment or was about to do so. It was proposed to prove this act of bankruptcy by the letter in question, which had been addressed by the debtor to the petitioning creditor, in which the debtor offered a composition on the debt due from him to the petitioning creditor, and also stated that he was unable to pay his debts and would suspend payment unless the composition was accepted. The registrar in bankruptcy held that as the letter was written "without prejudice" it was inadmissible; but, on appeal, Williams and Bruce, JJ., unanimously reversed his decision. Williams, J., who delivered the judgment of the court, said, "In our opinion the rule which excludes documents marked 'without

prejudice' has no application unless some person is in dispute or negotiation with another, and terms are offered for the settlement of the dispute or negotiation, and it seems to us that the judge must necessarily be entitled to look at the document to determine whether the conditions under which alone the rule applies exist." . . . "Moreover, we think the rule has no application to a document which in its nature may prejudice the person to whom it is addressed. It may be that the words 'without prejudice' are intended to mean without prejudice to the writer if the offer is rejected; but, in our opinion, the writer is not entitled to make this reservation in respect of a document which from its character may prejudice the person to whom it is addressed if he should reject the offer," and for this reason, although there was a dispute as to the debt, and the letter in question contained an offer to compromise, yet inasmuch as the letter itself was also notice of an act of bankruptcy, it was held to be admissible to establish that fact, because that is a matter which cannot be thus protected, and so far as it related to that, the document was one which from its character might prejudicially affect the recipient whether or not he accepted the terms offered thereby.

GEORGE S. HOLMESTED.

LOCAL JUDGES AND THE JUDICATURE ACT.

The appointment of County Judges to be "Local Judges of the High Court" was considered by the profession generally, that is, outside of Toronto, to be a move in the right direction.

The first legislation on this head was by 44 Vict., chapter 5. Section 76 of that Act declared that "the Judges of the several County Courts shall be Judges of the High Court for the purposes of their jurisdiction in actions in the High Court, and, in the exercise of such jurisdiction, may be styled 'Local Judges of the High Court,' and shall, in all causes and actions in the High Court, have, subject to Rules of court, power and authority to do and perform all such acts, and transact all such business in respect to matters and causes in and before the High Court, as they are, by statute or Rules of court in that behalf, from time to time empowered to do and perform." Throughout subsequent legislation the same wording is preserved, and is now to be found

in the Act of last session (58 Vict., chapter 12), with this exception, that the words, "except in the County of York" begin the section. The reason of this is obvious.

After the passing of the first Act, it became necessary for a "local judge" to be careful as to how he styled himself, that is, whether a summons or order was granted by him in the High Court as local judge of such court, or as County Judge. Previous to this County Judges had power to act in certain matters outside their own special jurisdiction as judges of the County Court, and their powers in this respect were not limited or interfered with by the passing of the Judicature Act.

In consequence of objections taken, in several instances, on appeal, some County Judges adopted the practice of adding, after their signatures in High Court cases, the letters "Co.J. and L.J.H.C.," so that the practitioner, having "paid his penny," (in such case a 50c. law stamp) could "take his choice."

In the consolidation of the statutes in 1887, the original section of 44 Vict. was preserved in chapter 44, section 157. By an amendment in 1889 (52 Vict., chapter 11, section 1), a new subsection (2) is added to the original section, by which the power of granting interlocutory injunctions was conferred upon the local judges.

Section 185 (2) of "The Judicature Act 1895," (not yet in force, however,) purports to re-enact this clause; but though the wording is the same, the alteration in punctuation effects a peculiar change. While the original section reads, ". . . such injunction to remain in force for a period not exceeding eight days as such local judge may direct, unless continued by the High Court. Such injunction shall be by order," etc., the present Act reads, "such injunction to remain in force for a period not exceeding eight days as such local judge may direct; unless continued by the High Court, such injunction shall be by order," etc. The effect of this is to disconnect the words "unless continued by the High Court," from those preceding them, and annex them to those following—a change which though not very material, nor very intelligible, was, we presume, made through inadvertence.

The next legislation was in 1893, by 56 Vict., chapter 11, where third and fourth sub-sections are added, by which jurisdiction is conferred u on the local udge to continue, vary, dis-

solve, or otherwise deal with an injunction granted by him; but the consent of all parties interested was a preliminary to this, and the right of appeal is given from any order thus made.

Both these sub-sections also are transferred to the Act of the present year (section 185), but, as regards this Act, a noticeable alteration has been made. By the original Act, the appeal was to "the High Court," by the later, to "a Divisional Court of the High Court"; while the concluding words in the original section "as in cases of appeals from orders and decisions of local judges to a judge of the High Court in Chambers," are now made to read " . . . from orders and decisions of local judges in Chambers." This section will not, however, become operative till the Act is proclaimed, with the exception of line four of sub-section (*a*).

The year following (1894) further legislation took place. By 57 Vict., chapter 20, section 11, a fifth sub-section was added, by which it was enacted that "every local judge shall, in actions brought, and proceedings taken in his county, possess the like powers as a judge of the High Court sitting in court, with regard to hearing, determining, and disposing of the following proceedings and matters," etc.—sub-sections (*a*) to (*d*) stating what these are.

Theretofore, reference had all along to be made as well to the Rules of court, which were a sort of parallel legislation, and by which the jurisdiction of the local judge was determined to a great extent by that of the Master in Chambers, occasioning constant appeals when it was thought that the former had exceeded his jurisdiction. To these Rules we shall presently refer.

These five sub-sections are also transferred bodily to the Act of the present year, with this addition, that in sub-section (*a*) of sub-section 5, after the words "where all parties agree that the same shall be heard," etc., is added, "or where the solicitors for all parties reside in such county."

We have now to consider the Act passed at the last session of the Legislature (58 Vict., chapter 12), one "to consolidate the Acts governing the Supreme Court of Judicature of Ontario," and styled "The Judicature Act, 1895."

This Act was assented to on April 16th, 1895, on which day it would, without more, have come into effect.

Section 1, however, enacts that it "shall go into effect on such day, not before the first day of September, 1895, as the Lieutenant-Governor in Council may, by order in Council, appoint." No such proclamation has, up to this time, been issued.

We have above referred to the additional clause in this Act giving jurisdiction to the local judge, where "the solicitors for all parties reside in (his) county." As they are new, and as the Act itself has not yet been brought into force, it might be said that this clause is, therefore, not in force, and consequently inoperative.

If we turn, however, to chapter 13, following "The Law Courts Act," we find by section 24 the same words (directed to be grafted on section 11 of 57 Vict., chapter 20, This latter Act is to become repealed when the proclamation issues, bringing into force chapter 12 of "The Judicature Act, 1895." The clause in question in chapter 13 will then, of course, be repealed, but it will at once come into force in chapter 12, by virtue of the proclamation.

About chapter 13 there is this curious thing to be remarked, that while section 1 restrains the operation of certain sections till the proclamation is made, and directs that the remaining sections shall go into effect immediately upon the passing of the Act, yet section 1 itself is one of the former. From this it may be argued that section 1, not coming into force till the proclamation is made, has no present force, and therefore does not prevent the operation of the sections named, so that the whole Act came into force when it was assented to. The answer to this will then be—if the whole Act is in force, section 1 becomes operative, and so restrains the sections mentioned until the proclamation is made. Thus we have, it will be seen, an interesting legal syllogism, the necessity for which could have been obviated by including section 1 with those other sections declared to go into effect immediately.

Although chapter 12 does not come into effect before a proclamation issues, yet it will be found that some of its sections, viz., 79, 87 (2), 89, 96, 115, 124, 128, 129 a., 130, and 185 a. (in part) are now operative, as they correspond respectively to sections 9, 19, 18, 22, 21, 28, 25, 29, 20, and 24, of "The Law Courts Act, 1895"—these sections being among those declared to be in force immediately after the passing of that Act.

Other sections of chapter 12 are identical with certain sections in chapter 13, but as they have not come into force as regards either Act, there is no occasion at present to refer to them.

A few words now as to the Rules of court, (which have had always the same force as the statutes), to which the jurisdiction of local judges was originally declared to be subject, and still is so. The original Rule 41 declared the jurisdiction of County Judges to be the same (with a few exceptions) as that of the Master in Chambers. Nothing is said in the Rule about the County Judges as local judges, though the Rule itself is preceded by the caption "Local Judges."

Though not exactly germane to the "Judicature Act," it may be as well, while treating of this Rule, to follow out its bearing on local judges as County Judges. One of the exceptions referred to above is that of quo warranto proceedings, in which County Judges had, previously, always jurisdiction. A new Rule, 41, was, by Rule 1289 (in force September 1st, 1894), substituted for the old one. This, while extending the jurisdiction to interpleader matters, still retained the exception as to quo warranto. It also retained the previous definition of jurisdiction with reference to that of the Master in Chambers, oblivious, apparently, of the fact that on the 5th of May previous, by 57 Vict., chapter 20, section 2, every local judge was declared to have, in actions brought and proceedings taken in his county, "the like powers as a judge of the High Court sitting in court," except as to certain matters thereafter set out.

By Rule 1380 (passed September 29th, 1894), the exception as to quo warranto was done away with, but still no reference to 57 Vict., chapter 20. All these rules were, however, rescinded by a new Rule, 1386, passed December 29th, 1894, which preserved to the local judge the existing jurisdiction. Reference is here made for the first time to 57 Vict., chapter 20; and to the exception as to "dispensing with the payment of money into court" are added the words, "in any action or matter."

From all this it would appear that a local judge has all the powers of a judge of the High Court sitting in court, as to the proceedings and matters set out in section 11 of 57 Vict., chapter 20; as to anything else he has the same powers as the Master in Chambers at Toronto, subject however to rule 1386; while his

old jurisdiction as to quo warranto under the Municipal Act is revived.

It will have been observed that the Act 54 Vict., chapter 11, as to medical examinations in actions for bodily injury, has been incorporated in the Judicature Act, 1895 (section 129). Provision is made there for the granting of an order for such an examination by "a judge of the court wherein the action is pending," but it may be a matter of doubt whether this order can be granted by the local judge where the action is brought—the words quoted above being substituted for the words generally used, "a judge of the High Court," or "the court or a judge."

JOHN A. ARDAGH.

CAUSERIE.

"If I chance to talk a little while, forgive me!"

—*Henry VIII., Act I., Scene 4.*

Having had occasion, a day or two ago, to examine with some care the second edition of Mr. Beven's "Principles of the Law of Negligence," I found myself wondering if the *fin de siècle* degeneracy in Art and Letters, against which Dr. Max Nordau has recently preferred so vehement and prolix an indictment, had not penetrated even the sober and conservative domain of legal literature. The profession in all English-speaking countries has been accustomed to a standard of style on the part of leading text-writers at once so exact and judicial in its tone that a departure from the beaten track immediately invites criticism. Take Sir William Blackstone, the father of the modern law-book, for instance; where is there any writer on English law possessing a greater store of erudition? And yet he is never to be found airing his scholarship at the expense of the purpose in hand. With him, to expound the system of laws he had made the subject of profound research was the prime object: to dazzle his readers by his extraordinary learning and splendid literary gifts was no part of his purpose. Much the same may be said of Kent, Story, Greenleaf, Addison, Parsons, Benjamin, Anson, and Pollock, as well as other eminent text-writers, both English and American. To them unswerving relevancy to the subject in hand, and clear exposition of the legal doctrine involved in it,

mean everything; whilst padding and pedantic discursiveness are things to be abhorred.

Having premised so much as to the recognized canons of method in the making of law-books, let me briefly mention some of the instances in which I conceive Mr. Beven to be guilty of heretical practices in relation thereto.

In the first place, he materially and frequently lessens the utility of his book by paying too much attention to principles of law which are sometimes not at all cognate to his subject, and at other times but remotely connected with it. In chapter I. of volume I., which is ostensibly devoted to a definition of negligence in law, he employs a couple of pages in considering, in the abstract, the power of a judge to nonsuit in an action, a matter in respect of which one would naturally seek enlightenment in a work on procedure. In chapter II. of volume II. he strays again from his chosen path to inform his readers, at great length, what constitutes a common carrier, a subject obviously belonging to a treatise on contract. In the same volume he repeats his offence more seriously by devoting no small portion of the eighty odd pages of chapter IV. to a consideration of the doctrine of estoppel apart from its bearing on negligence. Many more instances of errantry of this sort might be given would space permit, but I must now pass on to demonstrate another feature of discursiveness in the book even more unpardonable than the one I have already indicated. Indeed, the work is plethoric with examples of the sort of divagation I am about to mention, but I must content myself with noticing one or two of the more notable instances of it. In chapter II. (volume I., p. 28) our author launches out into a most pedantic dissertation, which fairly bristles with irrelevant matter, in discussing the rule of *diligentia diligentissimi* as applicable to the due performance of a contract. One of the footnotes to the above-mentioned page is so pre-eminently characteristic of the author's style that I cannot forbear quoting it *in extenso* :—"This" (the inexpediency of the rule in question) "may be illustrated by a passage from Lady Holland's 'Life of the Rev. Sydney Smith': 'It requires long apprenticeship to speak well in the House of Commons. It is the most formidable ordeal in the world. Few men have succeeded who entered it late in life; Jeffrey is perhaps the best exception. Bobus used to say that there was more sense and good

taste in the whole House than in any one individual of which it was composed.' (Vol. I., p. 347.) So, too, the taste in Literature or Art of a class may be more correct than that of any writer or performer, *e.g.*, the taste in architecture, at the present day formed on the models of bygone times. What incongruity, then, in fixing a standard of conduct in certain emergencies higher than the habitual practice of the individual? For a development of the same idea see chapter VII., 'On the Moral Perfection of Jesus in Phases of Faith,' by F. W. Newman, at once a scholar, a man of powerful and original mind, *and* (the italics are our author's) a logician" (!) Again, on page 1369, chapter III. (Volume II.), the professional reader must curb his impatience to add matter to his brief, and listen whilst the erudite and versatile Mr. Beven descants on the personal history and artistic merits of the Italian painter, Luca Giordano; and, peradventure, lest any learned counsel interested in the law of negligence might be so much of a Philistine as not to know what constitutes a sculptor, he is regaled with Ruskin's views on that subject, supplemented by a reference to "Rusk. Lect. on Archit.," add. to sect. 11, p. 108, of ed. 1891! Verily, in the language of the immortal Mr. Squeers, "here's richness!" What an encyclopædic store of information is thus thrust upon the busy lawyer in his hours of toil! Hereafter he is not to take his law of negligence *neat;* willy-nilly, he must imbibe it in a vapid solution of pedantic balderdash. But, to be serious, have I not shown that the work in question abounds in defects hopelessly fatal to its usefulness as a book of reference to the solicitor? Moreover, a treatise embracing some 1,800 pages, whereof at least one-third is absolutely worthless matter from a professional point of view, and the whole grievously unmethodical, cannot, I venture to say, rank as an authority with counsel and courts in these busy times.

* * * * * *

I was glad to see pleasant things said about the appointment of Mr. Girouard to the Supreme Court of Canada in a recent issue of the JOURNAL. Besides being one of the most eminent lawyers in the Province of Quebec, he had considerable *prestige* as a writer in the domain of *belles-lettres*, as well as in the narrower one of the law. He is a decided acquisition to the court.

Apropos of the literary propensity in judges, how little of it has been manifested in Canada! Nova Scotia has, indeed, produced one littérateur of the Bench who enjoyed a considerable reputation in England and America—Judge Haliburton, better known as "Sam Slick"—but he has had no compeers in all the brilliant galaxy of men who have worn the ermine in the Provincial and Federal courts. One would think that such leisure as the occupancy of the Bench affords (and I believe it to be true that *all* our judges are not *perennially* busy!) would naturally invite men of literary tastes and acquirements to honour themselves and delight their country with the product of their pens. No doubt in some minds the necessarily narrowing influences of forensic life work to the undoing of the literary faculty, but that such a result is inevitable is refuted by the splendid array of writers produced by the Bench in England and the United States. The impression is, however, undeniably extant that the average man of the law is very much of a Philistine. Philip Gilbert Hamerton, the artist and essayist, tells the following anecdote in support of his view that the intellectual habitat of the lawyer is a howling wilderness of sterility. He says: "I remember asking a very clever lawyer who lived in London whether he had ever visited an exhibition of pictures, and he answered me by the counter-inquiry, whether I had read Chitty on Contracts, Collier on Partnership, Taylor on Evidence, Cruise's Digest, or Smith's Mercantile Law. This seemed to me at the time a good instance of the way a professional habit may narrow one's views of things, for these law books were written for lawyers alone, whilst the picture exhibitions were intended for the public generally. My friend's answer would have been more to the point if I had inquired whether he had read Linton on Colours, and Burnet on Chiaroscuro."

In my humble opinion, the layman had the better of the lawyer here; and the incident cautions us that man cannot hope to live by one sort of intellectual bread alone.

* * * * * *

I was discussing this very question with an American literary man the other day, and he told me the following story as illustrative, in some measure, of his theory that the practice of the law has so fatal a tendency to develop the sordid traits in a man's character that, unless he is endowed with a singularly

elevated soul, his nobler faculties, among them being those which would incline him to the pursuit of Literature and Art, mus languish and die of sheer inanition. I give the story principally because I think it is a good one, leaving my readers to judge of its appositeness to the purpose for which it was related :—

An attorney in Boston, of Jewish origin and faith, had occasion to retain a certain eminent counsel (who, in the words of the Anglican prayer book, "professed and called himself a Christian") in a case of no great moment. They won the case, because they couldn't help it—the law being clearly with them. At its conclusion the eminent counsel said to his *confrère :* "Well, we've beaten 'em, sure enough, and we'll get a fairish bill of costs out of 'em. But what will we charge our client ?" "Oh," said the son of Abraham, with the bland smile and reassuring hand-rubbing characteristic of his race, "it would pe leetle enough to say $700—$350 apiece." "What," cried the E.C., "$700 for four mortal hours of our valuable time, and yet you are proud to call yourself a Jew ? You are recreant to the first instincts of the race !" So the E.C. left him, but called at his office later in the day and handed him the client's cheque for $700, being one-half of their joint fee as exploited by the astute E.C. "Now," said the latter, triumphantly, "what do you think of that ?" "Mine frient," said the Jew, admiringly, "*almost thou persuadest me to be a Christian !*"

CHARLES MORSE.

CURRENT ENGLISH CASES.

COMPANY—INVESTMENT—INCOME APPLIED TO MAKE GOOD DEPRECIATION OF INVESTMENT—RESTITUTION OF INCOME—EARNINGS OF COMPANY DURING LIQUIDATION—CAPITAL AND INCOME.

In *Bishop* v. *Smyrna and Cassaba Railway*, (1895) 2 Ch. 596 ; some interesting questions on company law are discussed. Prior to the company going into liquidation some investment made by it on capital account having fallen in value, the amount of the depreciation was in the half-yearly accounts debited to revenue. After the company went into liquidation it was found that this investment had risen in value, and the liquidator credited to revenue the amount which had been previously debited for depreciation, and the question was whether this sum

should be treated as capital or income. Kekewich, J., held that 't was income, being a restitution to profits of what had been previously taken from profits. It seems to have been conceded also that the earnings of the company during liquidation must be treated as capital and not as income, but the learned judge passed no opinion on that point, although it appears to be stated in the headnote as though it were a point adjudicated.

The Law Reports for November comprise (1895) 2 Q.B., pp. 497-538; (1895) P., pp. 301-340; (1895) 2 Ch., pp. 601-773; and (1895) A.C., pp. 541-665.

INNKEEPER—LIEN—COMMERCIAL TRAVELLER—GOODS OF THIRD PERSON BROUGHT TO INN BY GUEST.

In *Robins* v. *Gray*, (1895) 2 Q.B. 501; 14 R. Nov. 181, the Court of Appeal (Lord Esher, M.R., and Kay and Smith, L.JJ.) have affirmed the judgment of Wills, J. (1895) 2 Q.B. 78 (noted *ante*, p. 473). Lord Esher lays it down that the duties, liabilities, and rights of innkeepers with respect to goods brought to inns by guests are founded, not upon bailment, or pledge, or contract, but upon the custom of the realm with regard to innkeepers. By the law of the land an innkeeper is bound to receive a traveller and his luggage, and he cannot discriminate and say he will receive the traveller but not his luggage; though the learned judge admits that if the latter were in the shape of a tiger or a package of dynamite he might properly object. He is not bound to inquire as to the property of the goods. In this case it may be remembered that the goods on which the lien was claimed were known by the innkeeper to be the property of the employers of a commercial traveller, to whom they had been sent while a guest at the inn, and were received by the innkeeper as part of the baggage of the 'raveller. The judgment in favour of the lien was affirmed.

SALE OF GOODS BY HIRER—POSSESSION WITH OPTION TO BUY—HIRE AND PURCHASE AGREEMENT.

In *Payne* v. *Wilson*, (1895) 2 Q.B. 537, the plaintiff appealed from the decision of Pollock, B., and Grantham, J. (noted *ante*, p. 296), and the defendant submitted that after the decision of the House of Lords in *Helby* v. *Matthews*, (1895) A.C. 471 (noted *ante*, p. 566) it was impossible successfully to oppose the appeal.

The decision of the Divisional Court was therefore reversed. In our note of the original case we doubted whether it would be law in Ontario, and it now appears that it was not good law in England.

JUDICIAL SEPARATION—JURISDICTION TO DECREE SEPARATION—ENLARGEMENT OF JURISDICTION BY IMPLICATION.

Russell v. *Russell*, (1895) P. 315, though a matrimonial cause, we think may be usefully referred to here, although as a rule we do not think it necessary to refer to such cases. The case involves a very curious point arising on the construction of a statute. The suit was brought by Lady Russell against her husband for restitution of conjugal rights. The defendant resisted the action on the ground that the petitioner had wrongfully charged him with the commission of an unnatural crime, and had persisted in the charge after the defendant had been acquitted of the offence by a jury: and he claimed, by way of cross relief, a judicial separation on the ground of cruelty. The suit was tried by Pollock, B., who dismissed the wife's petition and gave the defendant the relief he asked. The case was carried to appeal before Lindley, Lopes, and Rigby, L.JJ. In the judgment of Lindley and Lopes, L.JJ., the authorities are reviewed and the conclusion is reached that up to the passing of 47 & 48 Vict., c. 68, the court had no discretion to refuse a decree for restitution except upon grounds that would justify the pronouncing of a decree for judicial separation; and that a decree for judicial separation could only be granted where adultery or legal cruelty was established, and that the wrongful accusation made by the wife in the present case did not amount to legal cruelty. Thus far the right of the wife to succeed was conceded; but by the Matrimonial Causes Act, 1857, the court was empowered to grant a decree for separation on a new ground, namely, that of desertion without reasonable cause; and by the 47 & 48 Vict., c. 68, above referred to, it is provided that if a spouse shall refuse to obey a decree for restitution of conjugal rights, he or she is to be deemed to be guilty of desertion without reasonable cause. So that if the court were in the present case to decree a restitution of conjugal rights, and the defendant disobeyed it, the wife might then sue for a judicial separation. Such a result the court considered could never be intended; and Lindley and Lopes, L.JJ., were of opinion that since 1884, by necessary

implication, the court acquired power to refuse a decree for restitution wherever the result of such decree would be to compel the court to treat one of the spouses as deserting the other without reasonable cause, contrary to the real truth of the case. The majority of the court, therefore, held that both the petition of the wife and the counter-claim of the husband must be dismissed. Rigby, L.J., dissented, and considered that the atrocious accusation of the wife constituted legal cruelty, and justified the granting of a judicial separation in favour of the husband.

VENDOR AND PURCHASER—CONDITIONS OF SALE PRECLUDING INQUIRY AS TO TITLE —TITLE BAD—SPECIFIC PERFORMANCE DEPOSIT.

In re Scott and Alvarez, (1895) 2 Ch. 603; 12 R. Oct. 76, the Court of Appeal (Lindley, Lopes, and Rigby, L.JJ.), have partially affirmed and partially reversed the decision of Kekewich, J., (1895) 1 Ch. 596; noted *ante*, p. 341. It will be found, on reference to that note, that the matter in controversy arose out of a contract for the sale of a parcel of land which was sold subject to a condition that the purchaser should not inquire into the title prior to a mortgage under which the vendor claimed. After it had been declared upon an application under the Vendors' and Purchasers' Act that the vendor had made a good title according to the contract, it was discovered and conclusively proved that his title rested on forged deeds, and that he had no title. Relying on the declaratory order obtained under the Vendors' and Purchasers 'Act, the vendor instituted a suit for specific performance, in which the purchaser set up and proved that the vendor had no title, and claimed a return of the deposit. Kekewich, J., dismissed the action, and ordered a return of the deposit to the defendant; but the Court of Appeal (Lindley, Lopes, and Rigby, L.JJ.), held that the condition of sale bound the purchaser, and that he could not recover the deposit, and they, therefore, reversed his decision on that point; but they upheld his refusal to decree specific performance (Lopes, L.J., however, doubting), as being under the circumstances a proper exercise of discretion, the case being one in which the parties should be left to their remedies at law.

COMPANY—DEBENTURES—POWER TO ISSUE DEBENTURES IN PAYMENT OF DEBTS OF FOUNDER OF COMPANY—ONE MAN COMPANY—FRAUDULENT PREFERENCE.

Seligman v. *Prince*, (1895) 2 Ch. 617; was an action to enforce the payment of debentures against a joint stock

company which had been ordered to be wound up, and the validity of the debentures was questioned by the defendant company on the ground of an alleged want of consideration, that they were improperly issued, and were a fraudulent preference. It appeared that the company had been formed for the purpose of taking over the business of a man named Prince. Prior to the formation of the company Prince was indebted to Seligman, for which indebtedness Seligman held a mortgage on the business premises, debts, and goodwill of Prince's business. By the articles of association the company was to indemnify Prince against the debts and liabilities shown on a balance sheet which included Seligman's and other claims, and the company had power to borrow or raise money on debentures. Prince and his brother were sole acting directors, and they issued debentures to Seligman and the other creditors named in the balance sheet, which were accepted by them in satisfaction of these debts. Shortly afterwards the company was ordered to be wound up. Under the circumstances the Court of Appeal (Lindley, Lopes, and Rigby, L.JJ.), held, reversing Williams, J., that although the debentures were not issued literally for the purpose of borrowing or raising money, yet their issue to pay debts for which the company was liable was within the powers of the directors, and that there was no conflict of interest between Prince and the company, and the debentures were issued for the benefit of the company and were valid. The Court of Appeal agreed with Williams, J., that the issue of the debentures was not a fraudulent preference.

PRACTICE—JURISDICTION—PERSON CARRYING ON BUSINESS WITHIN JURISDICTION IN NAME OF FIRM—SERVICE OF WRIT—ORD. XLVIII. A., RR., 3. 11. (ONT. RULE 318.)

MacIver v. *Burns*, (1895) 2 Ch. 630; 12 R. Oct. 691, was an action brought for an account of a partnership theretofore existing between the plaintiff and James, George, and John Burns. John Burns, one of the partners, was out of the jurisdiction, but he carried on a business within the jurisdiction under the name of G. & J. Burns, it being his sole business and there being no partner. The plaintiff served the writ on John Burns by serving a copy on the manager of the business of G. & J. Burns. John Burns applied to set aside the service and all subsequent pro-

ceedings. By the English Rule Ord. xlviii. A. r. 11, it is provided that any person carrying on business within the jurisdiction in a name or style other than his own may be sued in such name or style as if it were a firm name; and so far as the nature of the case will permit, all rules relating to proceedings against firms shall apply. There is no rule in exactly the same terms in force in Ontario, but Ont. Rule 318 provides that "Any person carrying on business in the name of a firm, apparently consisting of more than one person, may be sued in the name of such firm," which is somewhat similar to Eng. Rule Ord. ix. r. 7. The Vice-Chancellor of Lancaster upheld the service as valid, but the Court of Appeal set it aside, holding that Ord. xlviii. A. r. 11 did not apply, because the subject matter of the action had no relation whatever to the business carried on by the defendants within the jurisdiction. Lindley, L.J., says: "I do not say the rule expressly states, but it involves this: that you can only sue a man in his firm name in respect of matters which are connected with the business which he carries on under that name," and the same qualification, we apprehend, must be held to be involved in Ont. Rule 318.

Notes and Selections.

LEVEL CROSSINGS have led to much litigation, but it has mostly been litigation relating to people being knocked down by passing trains. The point in *Boyd* v. *Great Northern Railway* (1895, 2 Ir. Q.B. 555) was a novel one—undue detention at a level crossing. A local doctor in large practice arrives in his gig at a level crossing at 3.55 p.m., and is kept waiting for the gates to be opened until 4.15, not owing to any exigencies of traffic transit, but simple negligence on the part of the company—"stark insensibility," as Dr. Johnson would say. For this bad twenty minutes the court gave the doctor ten shillings damages against the company. Self-help in these emergencies will not do, for, as *Wyatt* v. *Great Western Railway Co.* (34 L.J.Q.B. 204) decided, the level crossing is a thoroughfare only when the gates are opened by the company's servants. If you open them yourself you are in the position of a trespasser—possibly liable to grievous penalties under by-laws.—*Law Quarterly Review.*

DIARY FOR DECEMBER.

1. Sunday .....*1st Sunday in Advent.*
3. Tuesday.....County Court Jury and non-jury Sittings in York.
5. Thursday..... .Chancery Divisional Court sits.
6. Friday.....Rebellion broke out in 1837. Convocation meets.
7. Saturday .....Michaelmas Term ends. Rebels defeated.
8. Sunday.. .....*2nd Sunday in Advent.* Sir William Campbell,6th C.J. of Q.B., 1825.
10. Tuesday.....Niagara destroyed by U.S. troops, 1813.
12. Thursday.....Sir John Thompson, P.C., died 1894.
13. Friday..... . S. H. Strong, C.J. of S.C., 1892.
15. Sunday.....*3rd Sunday in Advent.* J. B. Macaulay, 1st C.J. of C.P., 1849. Prince Albert died, 1861.
17. Tuesday.....First Lower Canadian Parliament, 1792.
18. Wednesday.....Slavery abolished in the United States, 1862.
19. Thursday.....Fort Niagara captured, 1813.
22. Sunday.....*4th Sunday in Advent.*
24. Tuesday.....Christmas vacation begins.
25. Wednesday.....Christmas Day.
27. Friday. ....St. John. J. G. Spragge, 3rd Chancellor, 1869. Upper Canada made a Province, 1791.
29. Sunday.....*1st Sunday after Christmas.* Sir Adam Wilson, C.J. of Q.B., died, 1891.
31. Tuesday.....Convocation half-yearly meeting. Montgomery repulsed at Quebec, 1775.

Reports and Notes of Cases.

CANADA.

SUPREME COURT.

Exchequer Court.] [June 26.

TORONTO RY. CO. *v.* THE QUEEN.

Customs duties—Exemption from duty—Steel rails, for use on railway tracks—Rails for street railway—Customs Tariff Act, 50 & 51 Vict., c. 39, item 173.

By item 173 of the Customs Tariff Act, 50 and 51 Vict., c. 39 (D), steel rails weighing not less than twenty-five pounds per lineal yard, for use on railway tracks, are exempt from duty.

Held, affirming the decision of the Exchequer Court (4 Ex. C.R., 262), STRONG, C.J., and KING, J., dissenting, that this exemption does not apply to rails for use on street railway tracks.

Appeal dismissed with costs.

Robinson, Q.C., and *Osler*, Q.C., for the appellants.

Newcombe, Q.C., Deputy Minister of Justice, and *Hodgins*, for the respondent.

Quebec.] [May 6.

MURPHY *v.* BURY.

Signification of transfer condition precedent to right of action—Partnership transaction in real estate—Act of resiliation, effect of.

The signification of a transfer or sale of a debt or right of action is a condition precedent absolutely required to vest the transferee or purchaser with the full right of action against the debtor, and the necessity of such signification is not removed by proof of knowledge by the debtor of the transfer or sale.

The want of such signification is put in issue by a *défense au fonds en fait.*

M. and B. entered into a speculation together in the purchase of a property known as the H. property. The title to the property was taken in the name of B. and the first instalment of the purchase money was acquired from one P. A. M., brother of M., to whom B. gave an obligation therefor. B. then transferred to M. a half interest in the property. As the remaining instalments of purchase money fell due, suits were taken by the vendor against B. As fast as these demands assumed the form of judgments, M. advanced the requisite amount and took a transfer of such judgments, as he did also of P.A.M.'s obligation against B., but without any signification in either case. Subsequently, by a formal act of resiliation, B. and M. annulled the transfer of the half interest in the property made by B. to M., and formally relieved M. of all further obligation as proprietor *par indivis* for further advances toward the balance due the vendor, and threw the burden of providing it entirely upon B.

Held, affirming the judgment of the Court of Queen's Bench for Lower Canada (appeal side), that the act of resiliation and the replacement of the title which it effected into the name of B., was a virtual abandonment on the part of M. of all previous investments made by him in the property or in the claims of others against that property, of which he may have taken transfers.

Appeal dismissed with costs.

Beique, Q.C., and *Monk*, Q.C., for the appellant.

Barnard, Q.C., for the respondent.

Quebec.] [May 6.

LABERGE *v.* EQUITABLE LIFE ASSURANCE SOCIETY.

Contract—Insurance company—Appointment of medical examiner—Breach of contract—Authority of agent.

The medical staff of the Equitable Life Assurance Society at Montreal consists of a medical referee, a chief medical examiner, and two or more alternate medical examiners. In 1888, L. was appointed an alternate examiner, in pursuance of a suggestion to the manager by local agents that it was advisable to have a French-Canadian on the staff. By his commission L. was entitled to the privilege of such examinations as should be assigned to him by or required during the absence, disability or unavailability of the chief examiner. After L. had served for four years it was found that his methods in holding examinations were not acceptable to applicants, and he was requested to resign, which he refused to do, and another French-Canadian was appointed as an additional

alternate examiner, and most of the applicants thereafter went to the latter. L. then brought an action against the company for damages from loss of the business, and injury to his professional reputation, claiming that on his appointment the general manager had promised him all the examinations of French-Canadian applicants for insurance. He also alleged that he had been induced to insure his own life with the company, on the understanding that the examination fees would be more than sufficient to pay the premiums, and he asked for repayment of amounts paid by him for such insurance.

Held, affirming the decision of the Court of Queen's Bench (Q.R. 3 Q.B. 512), which reversed the judgment of Superior Court (Q.R. 3 S.C. 334), that by the contract made with L. the company were only to send him such cases as they saw fit, and could dismiss him or appoint other examiners at their pleasure; that the manager had no authority to contract with L. for any employment other than that specified in his commission; and that he had no right of action for repayment of his premiums, it being no condition of his employment that he should insure his life, and there being no connection between the contract for insurance and that for employment.

Appeal dismissed with costs.

Greenshields, Q.C., for the appellant.

MacMaster, Q.C., for the respondent.

Quebec.] [June 24.

LIGGETT *v.* HAMILTON.

Partnership—Dissolution—Winding-up—Extra services of one partner—Contract to pay for.

L. and H. were partners in a business consisting of two branches, a dry goods branch under the care of H., and a branch for selling carpets, which L. managed. The partnership having been dissolved, each partner remained in charge of his own branch in order to wind it up, and in the final distribution L. charged against the firm a sum for commissions on collections and charges of management in his branch.

Held, affirming the decision of the Court of Queen's Bench, that there was no express agreement that L. was to be paid for extra services, and none could be inferred from the circumstances; that L., when he undertook to wind up the carpet branch, must be understood to have undertaken to do it gratuitously; and that he was not entitled to remuneration because the work proved more laborious than he anticipated.

Appeal dismissed with costs.

Davidson, Q.C., for the appellant.

Geoffrion, Q.C., for the respondent.

Quebec] [June 24.

O'DELL *v.* GREGORY.

Appeal—Jurisdiction—Future rights—R.S.C., c. 135, s. 29 (b)—56 Vict., c. 29 (D.).

By R.S.C., c. 135, s. 29(*b*), as amended by 56 Vict., c. 29 (D.), an appeal will lie to the Supreme Court of Canada from judgments of the courts of highest

resort in the Province of Quebec in cases where the amount in controversy is less than $2,000, if the matter relates to any title to lands or tenements, annual rents, and other matters or things where the rights in future might be bound.

Held, that the words "other matters or things" mean rights of property analogous to title to lands, etc., which are specifically mentioned, and not personal rights; that "title" means a vested right or title already acquired though the enjoyment may be postponed; and that the right of a married woman to an annuity provided by her marriage contract in case she should become a widow is not a right in future which would authorize an appeal in an action by her husband against her for *separation de corps*, in which, if judgment went against her, the right to the annuity would be forfeited.

Appeal quashed with costs.

Fitzpatrick, Q.C., for the motion.

McCarthy, Q.C., and *Lemieux*, Q.C., *contra*.

Quebec.] [June 26.

BELANGER *v.* BELANGER.

Contract—Proprietor of newspaper— Engagement of editor— Dismissal Breach of contract.

A.B. and C.B., who had published a newspaper as partners or joint owners, entered into a new agreement by which A.B. assumed payment of all the debts of the business and became from that time sole proprietor of the paper, binding himself to continue its publication and, in case he wished to sell out, to give C.B. the preference. The agreement also provided that:

3. Le dit Louis Charles Bélanger devient, à partir ce jour, directeur et rédacteur du dit journal, son nom devant paraitre comme directeur en tête du dit journal, et, pour ses services et son influence comme tel, le dit Louis Arthur Bélanger lui alloue quatre cents piastres par année, tant par impressions, annonces, etc., qu'en argent jusqu'au montant de cette somme, et le dit Louis Arthur Bélanger ne pourra mettre fin à cet engagement sans le consentement du dit Louis Charles Bélanger

The paper was published for some time under this agreement as a supporter of the Liberal party, when C.B., without instructions from or permission of A.B., wrote editorials violently opposing the candidate of that party at an election, and was dismissed from his position on the paper. He then brought an action against A.B. to have it declared that he was "redacteur et directeur" of the newspaper, and claiming damages.

Held, reversing the decision of the Court of Queen's Bench, that C.B. was rightly dismissed; that by the agreement he became the employé of A.B., the owner of the paper; and that he had no right to change the political color of the paper without the owner's consent.

Appeal allowed with costs.

White, Q.C., for the appellant.

Brown, Q.C., for the respondent.

Quebec.] [June 26.

ARCHIBALD *v.* DELISLE.
BAKER *v.* DELISLE.
MOAT *v.* DELISLE.

Costs, appeal for, when it lies—Action in warranty—Proceedings taken by warrantee before judgment in principal demand—Joint speculation—Partnership or ownership par indivis.

Though an appeal will not lie in respect of costs only, yet where there has been a mistake upon some matter of law, or of principle, which the party appealing has an actual interest in having reviewed, and which governs or affects the costs, the party prejudiced is entitled to have the benefit of correction by appeal.

It is only as regards the principal action that the action in warranty is an incidental demand. Between the warrantee and the warrantor it is a principal action, and may be brought after judgment on the principal action, and the defendant in warranty has no interest to object to the manner in which he is called in, where no question of jurisdiction arises and he suffers no prejudice thereby.

But if a warrantee elect to take proceedings against his warrantor before he has himself been condemned, he does so at his own risk, and if an unfounded action has been taken against the warrantee, and the warrantee does not get the costs of the action in warranty included in the judgment of dismissal of the action against the principal plaintiff, he must bear the consequences.

W. and D. entered into a joint speculation in the purchase of real estate; each looked after his individual interests in the operations; no power of attorney or authority was given to enable one to act for the other, and they did not consider that any such authority existed by virtue of the relations between them; all conveyances required to carry out sales were executed by each for his undivided interest. Upon the death of W. and D., the business was continued by their representatives on the same footing, and the representatives of W. subsequently sold their interest to T.W., who purchased on behalf of and to protect some of the legatees of W., without any change being made in the manner of conducting the business. A bookkeeper was employed to keep the books required for the various interests, with instructions to pay the moneys received at the office of the co-proprietors into a bank, whence they were drawn upon cheques bearing the joint signatures of the parties interested, and the profits were divided equally between the representatives of the parties interested; some in cash, but generally by cheques drawn in a similar way. M.N.D., who looked after the business for the representatives of D., paid diligent attention to the interests confided to him, and received their share of such profits, but J.C.B., who acted in the W. interest, so negligently looked after the business as to enable the bookkeeper to embezzle moneys which represented part of the share of the profits coming to the representatives of W. In an action brought by the representatives of W. to make the representatives of D. bear a share of such losses,

Held, affirming the judgment of the Superior Court and of the Superior Court sitting in review, that the facts did not establish a partnership between

the parties, but a mere ownership *par indivis*, and that the representatives of D. were not liable to make good any part of the loss, having by proper vigilance and prudence obtained only the share which belonged to them.

Even if a partnership existed there would be none in the moneys paid over to the parties after a division made.

Geoffrion, Q.C., and *Abbott*, Q.C., for the appellants.

Beique, Q.C., and *Lafleur* for the respondents.

North-West Territories.] [June 26.

DONOHOE - HULL.

Husband and wife—Purchase of land by wife—Resale—Garnishment of purchase money on—Debt of husband—Practice—Statute of Elizabeth—Hindering or delaying creditors.

D., having entered into an agreement to purchase land, had the conveyance made to his wife, who paid the purchase money, and obtained a certificate of ownership from the Registrar of Deeds, D. having transferred to her all his interest by deed. She sold the land to M. and executed a transfer acknowledging payment of the purchase money, which transfer in some way came into the possession of M.'s solicitors, who had it registered and a new certificate of title issued in favour of M., though the purchase money was not, in fact, paid. M.'s solicitors were also solicitors of certain judgment creditors of D., and, judgment having been obtained on their debts, the purchase money of said transfer was garnisheed in the hands of M. and an issue was directed as between the judgment creditors and the wife of D. to determine the title to the money under the garnishee order, and the money was, by consent, paid into court. The judgment creditors claimed the money on the ground that the transfer of the land to D.'s wife was voluntary, and void under the Statute of Elizabeth, and that she, therefore, held the land and was entitled to the purchase money on the resale, as trustee for D.

Held, reversing the decision of the Supreme Court of the North-West Territories, that the garnishee proceedings were not properly taken; that the purchase money was to have been paid by M. on delivery of the deed of transfer, and the vendor never undertook to treat him as a debtor: that if there was a debt it was not one which D., the judgment debtor, as against whom the garnishee proceedings were taken, could maintain action on in his own right and for his own exclusive benefit; and that D's wife was not precluded, by having assented to the issue and to the money being paid into court, from claiming that it could not be attached in these proceedings.

Held, also, that under the evidence given in the case, the original transfer to the wife of D. was *bona fide*; that she paid for the land with her own money and bought it for her own use; and that if it was not *bona fide* the Supreme Court of the Territories, though exercising the functions and possessing the powers formerly exercised and possessed by courts of equity, could not, in these statuory proceedings, grant the relief that could have been obtained in a suit in equity.

Appeal allowed with costs.

Armour, Q.C., for the appellant.

Gibbons, Q.C., for the respondents.

New Brunswick.] [Oct. 31.

MERRITT *v.* HEPENSTAL.

Negligence—Master and servant—Contributory negligence—Admission of evidence.

M., a grocer, sent out a man in his employ with a horse and wagon to deliver parcels. After delivering all but one, the man went to his supper, after which, without returning to the place where he had been before starting for home, he proceeded to deliver the remaining parcel, some two or three blocks distant therefrom, and on his way a child was struck by the wheel of his wagon and seriously injured. In an action by the father of the child against M., evidence was admitted, subject to objection, of the nurse who attended the child, to the effect that, in her opinion, a urinary trouble, from which the child suffered, was the result of the accident. The medical attendant testified that such trouble might have been caused by the accident, but that it was a very common thing with children. The judge who tried the case, without a jury, gave judgment for the plaintiff with $250 general damages, and $50 damages for the urinary trouble. A verdict for defendant or a new trial was moved for on the grounds of contributory negligence; that when the accident occurred the driver had not returned to his master's employment; that the evidence of the nurse was improperly admitted; and that there was no evidence to justify the $50 assessed as special damages. The judgment of the trial judge having been sustained by the Full Court,

Held, affirming the decision of the Supreme Court of New Brunswick, that the servant of M., having one parcel to deliver after his supper, resumed his master's employment as soon as he started for the purpose, and with the intention of delivering it, and consequently was on his business when the accident happened; that the evidence showed negligence on the part of the servant in not looking out for persons on the street, and there was no evidence of contributory negligence; that the evidence of the nurse, not being given as expert evidence, was admissible; but if not, the case having been tried without a jury, the court on appeal could deal with the whole evidence just as the trial judge could, and there was sufficient to warrant the verdict for the plaintiff if the testimony of the nurse was rejected; and that the whole of the damages assessed were fully warranted.

Appeal dismissed with costs.

C. A. Stockton for the appellant.

Armstrong, Q.C., for the respondent.

EXCHEQUER COURT.

BURBIDGE, J.] [May 22.

ROSS *v.* THE QUEEN.

Intercolonial Railway contract—31 Vict. c. 13—37 Vict. c. 15—42 Vict. c. 7—Chief Engineer's final certificate—Condition precedent.

By s. 18 of 31 Vict., c. 13 (The Intercolonial Railway Act, 1867), it was enacted that no money should be paid to any contractor until the Chief En-

gineer should have certified that the work for or on account of which the same should be claimed had been duly executed, nor until such a certificate should have been approved by the Commissioners appointed under such Act. By 37 Vict., c. 15, the duties and powers of the Commissioners were transferred to the Minister of Public Works, and their office abolished. By 42 Vict., c. 7, the Department of Railways and Canals was created, and the Minister thereof became, in respect of railways and canals, the successor in office of the Minister of Public Works, with all the powers and duties incident thereto.

The suppliants claimed certain extras under two contracts, made in pursuance of the statute first mentioned, for the construction of portions of the railway, but had never obtained any certificate as required by the statute and contracts from the Chief Engineer at the time of the execution of the work. After the resignation of F., the original Chief Engineer, S., was appointed to such office for the purpose of investigating "the unsettled claims which had arisen in connection with the undertaking, upon which no judicial decision had been given, and to report on each case to the Department of Railways and Canals." S. investigated the suppliants' claim, among others, and made a report thereon, recommending the payment of a certain sum to the suppliants. This report was not approved by the Minister of Railways and Canals, as representing the Commissioners, nor was it ever acted upon by the Government.

Held, following the case of *McGreevy* v. *The Queen* (18 S.C.R. 371), that the report of S. was not such a certificate as was contemplated by the statute and the contracts made thereunder.

A. Ferguson, Q.C., and *G. C. Stuart*, Q.C., for the suppliants.

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

NOTE—Affirmed on Appeal, December 9, 1895.

BURBIDGE, J.] [June 3.

THE QUEEN *v.* BECHER.

Dominion lands—R.S.C., c. 54, s. 57—Homestead entry receipt issued through error and improvidence—Cancellation.

On the 2nd day of October, 1890, the Department of the Interior deemed it advisable, in the public interest, to withdraw the northeast quarter of section 20, in the fifty-second township in the twenty-fourth range, west of the fourth principal meridian of the North-West Territories, from ordinary sale and settlement, and it was duly withdrawn on that date. The Deputy-Minister of the Department communicated the fact of such withdrawal to the Secretary of the Dominion Lands Board at Winnipeg, by letter dated the 9th October, 1890, with instructions to that officer to advise the Agent of Dominion Lands at Edmonton, within whose district the lands were situated, of such withdrawal. The secretary at Winnipeg notified the Edmonton agent, by letter, of such withdrawal, his letter reaching Edmonton on the 20th of October, 1890.

It was the duty of the agent at Edmonton to properly enter the fact of such withdrawal in the books of his office; but, being ill at the time, he failed to do so. His health continuing to decline, an acting agent was appointed in his stead, and on or about the 15th day of December, 1890, B., the defendant, applied for a homestead entry under the provisions of the Dominion Lands

Act. The acting agent having searched the books of the office at Edmonton and found no entry or instructions recorded against the said lands, and being ignorant of the fact of such withdrawal, issued to B. a homestead entry receipt in respect of such lands.

Shortly after the issue of such receipt, the said acting agent at Edmonton learned of the fact of such withdrawal, and, on the 23rd day of January, 1891, notified B. that his entry receipt had been granted through error, and must be cancelled. B. declined to deliver up the said homestead entry receipt, and went on to make improvements on the said lands, claiming that his entry was a valid one, and that he should have his title to the lands in question perfected by the Crown issuing to him letters patent therefor.

Held, that, as the facts disclosed that the homestead entry receipt had been issued to B. in mistake and through error and improvidence, the Crown was not bound to issue to him a patent to the lands in question; that the Crown was entitled to the possession of the lands; and that the Crown was also entitled to have the homestead entry receipt delivered up to be cancelled, as, outstanding, it might constitute a cloud upon the title.

Aikins, Q.C., and *Culver* for the plaintiff.

Howell, Q.C., and *Perdue* for the defendant.

ONTARIO.

COURT OF APPEAL.

Chy. Div.] [Nov. 28

KELLY *v.* BARTON.

KELLY *v.* ARCHIBALD.

Arrest—Notice of action—Malice—R.S.O., c. 73.

These were appeals by the defendants Barton and Archibald from the judgments of the Chancery Division, reported 26 O.R., 608, and were argued together before HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A. on the 27th and 28th of November, 1895.

W. R. Riddell for the appellants.

McCarthy, Q.C., and *Biggar*, Q.C., for the respondents.

At the conclusion of the argument the appeals were dismissed with costs.

HIGH COURT OF JUSTICE.

Queen's Bench Division

MEREDITH, J.] [Sept. 19.

BURWELL *v.* LONDON FREE PRESS PRINTING CO.

Libel—Newspaper—Notice of action—Sufficiency.

In an action brought against a newspaper company for alleged libellous articles published in the company's newspaper, the notice complaining of the publications given in pursuance of R.S.O., c. 59, s. 5, s-s 2, was addressed to the

editor of the paper, and was served on the city editor at the company's office, and a similar notice was served on the chairman of Board of Directors at the said office.

Held, that this was a notice merely to the editor, and not to the defendants, and therefore was not sufficient under the statute.

R. U. McPherson for the plaintiff.

Shepley, Q.C., for the defendant.

STREET, J.] [Nov. 19.

In re BABCOCK *v.* AYERS.

Division Court—Jurisdiction—Prohibition—Splitting causes of action.

Where a promissory note for $400 purported to be payable "in three annual instalments," and the first instalment had fallen due but not the second.

Held, on motion for prohibition, that the instalments must be construed to mean equal instalments and that the amount therefore was ascertained by the signature of the defendant, and the holder of the note might sue for the first instalment in the Division Court.

A. M. Macdonell for the motion.

Raney, contra.

CATHERWOOD *v.* TAYLOR.

Practice—Solicitor—Non-payment of fees to Law Society—Setting aside process issued by solicitor—R.S.O., c. 147.

Upon an application to set aside a writ and all subsequent proceedings on the ground that the plaintiff's solicitor was in default to the Law Society in respect of his annual fees

Held, that default by a solicitor in payment of dues to the Law Society is not a ground upon which proceedings carried on by the solicitor should be set aside.

[WHITBY, November 8th, 1895, DARTNELL, Local Master.

This was an application to set aside a writ and all subsequent proceedings in an action on the ground, amongst others, that the solicitor of the plaintiff was in default to the Law Society of Upper Canada in respect of his annual fees.

The application was heard before the Local Master at Whitby, on November 8th, 1895.

G. S. McDonald for the motion.

Jas. Lennon, contra.

DARTNELL, Local Master: I can find no authority, and none has been cited to me, to warrant the granting of this application. A solicitor, until he is struck off the roll, or suspended from practice under the provisions of the Solicitors' Act, R.S.O., c. 147, is a "practising solicitor," and entitled to all the privileges of such. It would be manifestly inconvenient as well as prejudicial to suitors to permit the non-payment of these fees, whether inadvertent or otherwise, to stay the wheels of justice. It is a matter between solicitor and the Law Society, and, until they move, not a concern of others, and not a ground to affect the legal status of a plaintiff or defendant. The motion should, so far as it is founded upon this objection, be dismissed.

Common Pleas Division.

Div'l Court.] [July 13.

COBBAN *v.* CANADIAN PACIFIC RAILWAY COMPANY.

Railways—Damage to goods—Negligence, evidence of—Conjecture—51 Vict., c. 29, ss. 226, 227, 246, (D.)—Reduced rate—Release of company from negligence.

When the findings of the jury as to the grounds of negligence in an action against a railway company for damages to goods was based on mere conjecture, the verdict for the plaintiff was set aside, but as it could not be said that there was no evidence of negligence on other grounds, a new trial was directed.

Per MACMAHON, J., dissenting. A presumption of negligence arose from the non-delivery of the goods, and the plaintiffs were not bound to show any particular acts of negligence.

The plaintiff's agent shipped a quantity of plate glass by defendants' railway, signing an agreement that in consideration of the defendants receiving the goods at a reduced rate of 23 cents per 100 pounds, they should not be responsible for any damage arising in the course of the transit, including negligence. The defendants had two rates, namely, the 23 cents—a third-class rate—and a double first-class rate of sixty cents, which they contended were in accordance with the Canadian Joint Freight Classification adopted by them and approved by the Governor in Council, under sec. 226 of 51 Vict., c. 29, (D.), "The Railway Act," the said classification stating that the third-class rate applied where the goods were "shipped at owner's risk,—shipper signing special plate glass release form." The plaintiff's agent was aware of the two rates, and signed the agreement assenting to the lower rate, under the belief that the defendants could not, under section 246, take advantage of the provision absolving them from liability where the damage was occasioned by negligence. No by-laws approving of the company's tariff under which these rates were charged had been approved of by the Governor in Council, although a by-law fixing a first-class rate of 66 cents, and a third-class rate of 50 cents, had *inter alia* been so approved.

Held, per MEREDITH, C.J., that notwithstanding the payment of the lower rate, and the agreement signed by their agent, the defendants could not, under section 246, relieve themselves from liability when negligence was proved.

Per ROSE, J. The third-class rate was the only rate "lawfully payable," and that the provision in the freight classification as to release was *ultra vires* as contrary to the provisions of section 246.

Per MACMAHON, J. No by-law fixing the rate at 60 cents having been approved of by the Governor in Council, there was no freight "lawfully payable," without which there could be no alternative rate, and the release which would otherwise have been valid was inoperative.

D. E. Thomson and *J. B. Holden* for the plaintiff.

Wallace Nesbitt and *Angus MacMurchy* for the defendants.

FERGUSON, J.] [Sept. 7

FISHER *v.* WEBSTER.

Road—Conveyance of—Effect of—Grant of right of way merely.

Where a deed, after granting certain land describing it by metes and bounds, continued, "also a road forty feet wide" adding to the description thereof "and not included in the above quantity of land."

Held, that by the conveyance of the road the fee in the freehold therein did not pass to the grantee, but merely an easement of the right of way over the land.

Osler, Q.C., and *Gwynne* for the plaintiff.

G. Lynch Staunton and *Waddell* for the defendant.

MACMAHON, J.] [Oct. 16.

HOPKINS *v.* OWEN SOUND AND TROTTER.

Municipal Corporation—Approach to highway erected by private person—Accident—Liability.

Where T., with the knowledge of, and without any objection by, a Municipal Corporation, erected across a ditch lying between the sidewalk and the crown of the highway an approach constructed of stringers, placed across the ditch, covered with planks, to enable his horses and wagons, etc., to reach his property, and which, without any contract or arrangement with the corporation was from time to time kept in repair by T, but subsequently being allowed to fall into disrepair, the plaintiff, while attempting to cross over to the other side of the road, on walking over the approach, her foot slipped through a hole in it, and she was injured.

Held, that the defendant T. was liable for the damage thus sustained.

H. G. Tucker, for the plaintiff.

Masson, Q.C., for defendant Trotter.

Smith for the defendants the corporation of the town of Owen Sound.

STREET, J.] [Nov. 15.

KING *v.* YORSTON.

Will—Construction—Election—General words—"My estate"—Insurance policies—Apportionment—Variation—R.S.O., c. 136, s. 6 (1)—Deficiency of assets—Legacies—Abatement—Costs.

Testatrix, by her will, left all her property to her executors, upon trust, *inter alia*, (5) to set apart $4,500 and pay the income to the plaintiff, one of her sons; (6) to realize on all the residue of the estate, and, after providing for maintenance of unsold portions, to pay $1,400 to a second son and $2,000 to a third, and, when all the residue should be realized, to divide it equally between these two; (7) after the death of the plaintiff, to divide the $4,500 among his children, adding: "It is my will that my son Robert (the plaintiff) is to get no benefit from my estate except as provided in this will, the provision herein made being in lieu of any share in the insurance on my life." Two

policies of insurance on her life formed part of the estate of the testatrix, and she had besides effected an insurance for $2,000 on her life payable to the three sons, which was in force at the time of her death. None but general words were used in the will in describing the property which was to pass.

Held, that the plaintiff was not put to an election between the benefits given to him by the will and his share of the $2,000 policy, there being no attempted disposition in the will of the $2,000 policy, general words being insufficient to raise a case of election, and the words above quoted being applicable to the policies forming part of her estate.

Nor could it be held that the testatrix, by the words above quoted, had varied the apportionment of the $2,000 policy, under the powers conferred by R.S.O., c. 136, s. 6 (1), and amendments, so as to exclude the plaintiff or put him to his election.

Held, further, that in the event of the assets not being sufficient to admit of the setting apart of the $4,500, and the payment of the two legacies of $1,400 and $2,000, the $4,500 was first to be provided for without abatement, and the other two legacies were to come out of the residue and abate in the event of a deficiency.

No order was made as to the plaintiff's costs, and those of the defendants were ordered to be paid out of the estate, *i.e.*, the residue.

Snow for the plaintiff.

W. H. P. Clement for the defendant W. J. King.

J. M. Clark for the defendant Alexander King.

G. C. Campbell for the defendants the executors.

Practice.

Court of Appeal] [Oct. 29.

EMPIRE OIL CO. *v.* VALLERAND.

Writ of summons—Service out of jurisdiction—Rule 271 (c) Breach of contract—Place of performance—Correspondence.

In an action for damages for non-delivery of goods, it appeared that the contract of sale was made by correspondence between the plaintiffs at London, Ontario, and the defendant at Quebec, and the goods were to be shipped by the defendant from Quebec to London.

In answer to a suggestion made in a letter of the defendant relating to the prior contract, the plaintiffs wrote that they could "take 500 more barrels," to which the defendant replied that he "would ship" them, but some time afterwards wrote again refusing to do so.

Held, that the contract was made in Quebec, and, in the absence of any express agreement to the contrary, was to be performed there by delivery of the goods to carriers to be carried to London; and the cause of action was, therefore, not one in respect of which service of the writ of summons out of the jurisdiction could properly be allowed under rule 271 (c), (1309).

Judgment of the County Court of Middlesex reversed.

Talbot Macbeth for the appellant.

Gibbons, Q.C., for the respondents

STREET, J.] [Nov. 18.

MORRIS *v* CONFEDERATION LIFE ASSOCIATION.

Parties—Name used without authority—Solicitor—Judgment—Relief—Laches—Repayment of moneys.

A person who finds himself a party plaintiff to proceedings which he has never authorized is entitled to be relieved from liability in connection with them, whether the solicitor in fault be solvent or not; and the fact that an order dismissing the action has been issued before the applicant becomes aware that his name has been used makes no difference in the rule.

Nurse v *Durnford*, 13 Ch. D. 764, followed.

Delay in moving to set aside the proceedings from August 1st to September 25th;

Held, not a bar to relief, where no detriment had resulted to the defendants thereby.

The sheriff having seized the plaintiff's goods under execution upon an order dismissing the action with costs, the plaintiff paid the costs to the sheriff, who undertook to hold the amount for ten days, "to be returned if writ set aside, and if not within that time, to be applied in payment of execution." After the lapse of more than ten days, during which the plaintiff took no step, the sheriff paid over the money to the defendants. The plaintiff having afterwards established his right to be relieved from liability;

Held, that he was entitled to be repaid by the defendants.

G. L. Lennox for the plaintiff T. R. Morris.

Snow for the defendants the Confederation Life Association.

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

PAYNE *v.* COUGHELL.

Indemnity—Third party procedure—Breach of contract—Rule 328.

Rule 328 (1313) applies only to claims to indemnity as such, either at law or in equity, and does not apply to a right to damages arising from breach of contract, the latter being a right given by law in consequence of the breach of the contract between the parties, while the former is given by the contract itself.

Birmingham and District Land Co. v *London and North-Western R.W. Co.*, 34 Ch. D. 261, followed.

Page v *Midland Railway Co.*, (1894) 1 Ch. 11, distinguished.

And where an action was brought against lessees of a road for a declaration that they had no right to exact tolls, etc., and the defendants claimed to be indemnified by their lessors upon the ground that the latter had warranted their title to the road by the lease;

Held, not a case in which leave should be given to issue a third party notice.

C. W. Kerr for the defendants.

W. H. Blake for the proposed third parties.

WINCHESTER, MASTER.] [Dec. 4.

HAMILTON *v.* COLUMBIA FIRE PROOFING CO.

Foreign company—Service on—Superintendent of work—Rule 265.

Motion by defendants to set aside the writ of summons and service thereof, on the superintendent of works being carried on in Toronto by the defendant company under a contract, on the ground that the defendants are a private partnership consisting of two persons, both of whom are citizens of the United States of America, and reside permanently out of the jurisdiction of this court.

Held, that the writ, being one for service within the jurisdiction, was improperly issued, that service on the superintendent of the company was insufficient service, and the writ and service were set aside, with costs.

Russel v. *Cambefort*, 23 Q.B.D. 526, decided under an English Rule similar to Consolidated Rule 265, followed.

H. Cassels for the defendants.

W. J. Elliott for the plaintiff.

WINCHESTER, MASTER.] [Dec. 5.

MCCABE *v.* MARSHALL.

Justice of the peace—Arrest of offender—Protection—53 Vict., c. 23.

The defendant, a justice of the peace, personally arrested and detained the plaintiff on suspicion of having committed a felony (murder). The plaintiff, after preliminary examination before another justice, was discharged, and subsequently brought an action against the defendant to recover damages for his arrest.

Upon a motion for security for costs under 53 Vict., c. 23 (O.), it was contended that the defendant, in making the arrest, acted as a peace officer and not as a justice of the peace, and was not, therefore, entitled to security under the statute.

Held, that the defendant, in the apprehension of the plaintiff, acted as a justice of the peace (2 Hale, pp. 85, 87), and was entitled to the protection of the statute.

J. H. Moss for the defendant.

John Tytler for the plaintiff.

[On December 13th an appeal taken before the Hon. the Chancellor was dismissed.]

COUNTY COURTS.

COUNTY OF YORK.

MCDOUGALL, Co.J.] [Oct. 14.

BAIRD *v.* HUNTER.

County Courts—Judge sitting in Term—Chamber order—Reversing of, in Term—Interpleader action.

An interpleader order was made under Consolidated Rule 1141 (*a*), by a County Court judge in Chambers. Upon an application before the same judge sitting in Term to reconsider the order, it was

Held, that a County Court judge sitting in Term has no power to reconsider his own order made in Chambers, even though such order be made in an action, and may be an interlocutory order only, and not appealable to the Court of Appeal.

Consolidated Rule 847, O.J.A., s. 62, s-ss. 3, 5, and R.S.O., c. 47, s. 29, applied.

Ferguson v. *McMartin*, 11 A.R., 731 referred to.

Moss, Q.C., and *Heighington* for the appellant.

Travis for the respondent.

COURTS OF GENERAL SESSIONS.

COUNTY OF YORK.

REGINA *v.* CARTER ET AL.

Lord's Day Act—Golf—Game of ball—Noisy game—"General words."

The Lord's Day Act (R.S.O., c. 203, s. 3) enacts that "It is unlawful for any person on that day to play at skittles, ball, football, rackets, or any other noisy game."

The defendants were convicted by a magistrate for breaches of the above section by playing the game of golf on Sunday.

The evidence showed that golf was not a noisy game in itself; that the ball used was not touched by the hand, or thrown or knocked by a club or bat from one player to another, but that each player knocked his own ball only, and that one person might play the game by himself.

Upon an appeal from the conviction to the Quarter Sessions, it was

Held, (1) that the word "ball," as used in section 3, does not indicate a class of games, but means a specific game known at the date of the passing of the statute as the game of ball, and that the game of golf is, therefore, not included under such word.

(2) That golf is not a "noisy game" within the general words of the statute.

[Toronto, Oct. 28, 1895. MCDOUGALL, Co.J.

These were three appeals made from convictions made by John Richardson, J.P., against the three several defendants, Carter, Edgar, and Cronyn, for an alleged breach of the Lord's Day Act for playing a game of golf on Sunday, 26th May, 1895, at the golf grounds in the township of York. The defendants appealed upon the ground that golf is not one of the games intended to be or actually forbidden to be played on Sunday by s. 3 of the Lord's Day Act, R.S.O., c. 203. That section, so far as it affects this case, reads as follows: "(3) It is unlawful for any one on that day to play at skittles, ball, football, rackets, or any other noisy game."

Aylesworth, Q.C., for the appellants.

Dewart for the respondent.

MCDOUGALL, Co.J.: In the first place, the statute does not render unlawful the playing of all games. It specifies four named games, viz, skittles, ball, football, and rackets. It then specifies by general words a further prohibition, viz., the playing of any other noisy game. It is freely admitted that the game of golf is not equivalent to either skittles, football, or rackets. It is clearly proved in the evidence that it is not a noisy game, so as to come within the general words used in the statute. The County Attorney, in supporting the convictions, rests their validity upon the fact that golf is a game of ball, and, as such, is within the mischief aimed at by the statute. Now, if we

examine closely the words of the statute, we will observe that skittles, the first-named amusement prohibited, is a game in which balls are used. It is, perhaps, better known under its modern designation of ten-pins. It consists of knocking down with wooden balls a number of wooden pins set up on an alley at some distance from the players, and is from its nature a noisy game. Football is well known to be a spirited contest or struggle between two sets of players to drive a large ball, usually covered with leather, to one end or other of the field in which the game is played. It is a boisterous and noisy game between a large number of contestants. Rackets is a game played in a court with an implement called a racket, and consists in knocking a ball against a high wall and keeping the ball constantly in motion by striking the ball with the racket. It may be engaged in by a number of players, and is described as also being a noisy game, probably less noisy than either skittles or football, but, whether that be so or not, is expressly prohibited by name. The only other game by name prohibited is ball. Now, games of ball have probably been in existence from time immemorial, and, according to the common and ordinary acceptation, it means a game between two or more, in which a ball is thrown or tossed from one to the other, or knocked with a club or bat from one player to another, as in cricket or baseball. The ball is handled by the players, and is thrown from one to another in the course of the game. Golf is described as essentially different. The player, with his own golf club, of which club there are said to be a dozen different styles, knocks his own ball along the ground from hole to hole over an extensive field, the object of the game being to cause the ball to travel by striking it with his club over the area marked out as the field from end to end, passing or touching each hole, and to do so with as few strokes of the club as possible. No one interferes with the player or touches his ball or club in any way whatever, nor is the player allowed to touch or handle the ball, save with his club. The contest is commonly confined to two players, who, each with his own set of clubs and his own ball, endeavours to complete the circuit of the field with as few strokes as possible. The player who does this with the fewest strokes is styled, or considered, the better player, and in a contest between two players would win the event. One person can play the game by himself, because the whole aim or object of the game is to drive the ball over the defined area with as few strokes as possible. He requires no assistance, nor, if a number are playing, does one player aid or oppose the other, or interfere with his progress. The ball is not touched by the hand; indeed, the rules of the game, it is said, expressly forbid it. If the statute had intended to prohibit all games in which a ball or sphere was used, it could have been very simply expressed. It simply prohibits four named games, and, in addition, all noisy games. The position of the word "ball" in the clause would indicate that it referred to what at the date of the passing of the statute was evidently some game as well known and earmarked as skittles, football, or rackets. It could not, in my opinion, be interpreted to mean all games in which a ball was used, because, if it meant that, there would be no necessity to especially enumerate skittles, football, or rackets, in all of which balls are used. The word "ball," in my opinion, is not a generic term. It is not used to indicate a class of games, but from its collocation and association with well-known games which have descended to us must be interpreted to

mean, like them, a specific game known at the date of the passing of the statute as the game of ball. A statute such as this, being penal, must receive strict construction. As has been said by the learned Blackstone in his Commentaries, "The law of England does not allow of offences by construction: and no case shall be holden to be reached by penal law but such as are within the spirit and letter of such law": 1. Blackstone's Commentaries, I. 88. The first section of the Lord's Day Act has received judicial construction in several cases, and it has been held that, although the statute prohibits any merchant, tradesman, artisan, mechanic, workman, labourer, or other person whatsoever from exercising his ordinary calling on the Lord's Day, these words do not include a farmer: *Reg.* v. *Cleworth*, 4 B. & S., 972, or an attorney: *Peate* v. *Dickson*, 1 Cro. M. and W., 422, or a coach proprietor: *Sandman* v. *Breach*, 7 B. and C., 96), the words "or other persons whatsoever" being confined to persons pursuing callings like those specified in the preceding words. Being of the opinion that golf is not a game of ball similar in any sense to the games enumerated in or intended to be prohibited by the statute, and also that it is not a noisy game, the convictions in this case must be quashed, but, as this question has arisen for the first time, I direct them to be quashed without costs.

DIVISION COURTS.

COUNTY OF LEEDS AND GRENVILLE.

Fifth Division Court.

REYNOLDS, J.J.] [Nov

BEACOCK v. WHITE.

Bailee — Gratuitous loan — Negligence.

The plaintiff was owner of a dog which he loaned to the defendant, at the latter's request, for hunting purposes. Some time afterwards the plaintiff wrote to the defendant asking him to return the dog, to which, however, he paid no attention. Later on, the defendant, leaving his camp, entrusted the dog to a friend, to be taken care of until his return. The custodian chained the dog in an outhouse where he kept his own dog. One day he found the dog dead, having, as he supposed, twisted the chain round his neck. The plaintiff claimed the value of the dog.

Held, that the defendant was liable. The bailment for the bailee's sole benefit, the borrower was bound to exercise the highest degree of diligence in the care of it, and that the rights of the borrower were strictly confined to the use, actually or impliedly agreed to by the lender, and that the borrower, by exceeding these limits, made himself responsible, and that the fact of his having handed over the possession of the dog made no difference, nor was it material whether the death of the animal resulted from carelessness or accident.

Dawson, Q.C., for the plaintiff.

Marshall for defendant.

COUNTY OF MIDDLESEX.

Seventh Division Court.

MACKENZIE, CO.J.] [Oct. 26.

DUFFIELD *v.* GRAND TRUNK R.W. CO.

Railway Act, 51 Vict., c. 29, ss. 256, 271 (D.)—Accident at crossing—Cattle—"In charge."

The defendants were sued for negligently running down and killing two cows of the plaintiff at a railway crossing.

It appeared that a boy twelve years of age was driving twenty head of cattle, "strung out along the road," when the train ran down two cows nearest to and only a few feet from the boy who was driving the cattle.

Section 271 of the Railway Act requires that "no . . . cattle shall be permitted to be at large upon any highway within half a mile of the intersection of such highway with any railway at rail level unless such cattle are in charge of some person or persons to prevent their loitering or stopping on such highway at such intersection."

The evidence showed that the whistle of the train was not blown, nor the bell rung at a proper distance from the crossing, as required by s. 256 of the Railway Act.

Held, that the cows were sufficiently "in charge" within the meaning of the Railway Act, 51 Vict., c. 29, s. 271 (D.).

Semble, that if it had been the cattle farthest away from the boy which were killed the case would have been different, in that it might not have been possible to have headed them off and turned them if necessary.

Markham v. *G.W. Ry. Co.*, 25 Q.B., p. 275, and *Thompson* v. *G.T.R.*, 31 C.L.J. 519, referred to.

R. K. Cowan for the plaintiff.

E. Meredith, Q.C., for the defendant.

ASSESSMENT CASE.

BELL TELEPHONE CO., Appellants; *v.* VILLAGE OF WINCHESTER, Respondents.

Assessment of poles of Telephone Company.

Held, that the posts or poles of a Telephone Company with their permanent attachments are assessable as realty.

[Cornwall, September 16, 1895, CARMAN, J. J.

This was an appeal by the Bell Telephone Company from the finding of the Court of Revision of the village of Winchester, confirming the a sessment of appellant's company, which assessment was as follows:

The Bell Telephone Company of Canada, owner; Wm. Gardner, Winchester, local agent.

Value of personal property other than income..... $800 00
Total value of personal property and taxable income..... 800 00
Total value of real and personal property and taxable income. 800 00

In their notice of appeal, appellants claimed that they have in the village of Winchester neither real nor personal property, within the meaning of the Assessment Act and liable to taxation.

Revelar for the appellants.

Hilliard, for the respondents, cited *Consumers' Gas Company* v. *City of Toronto*, 30 C.L.J. 157; 26 O.R. 722.

CARMAN, J.J.: It seems to me the question is a very simple one. The Assessment Act, s. 7, says: "All property in this province shall be liable to taxation, subject to certain exemptions." The appellants are not and do not contend that they are among the enumerated exemptions. Again, the Assessment Act, s. 34, says "the personal property of an incorporated company, other than the companies mentioned in s-s. 2 of this section, shall be assessed against the company in the same manner as if the company were an unincorporated company or partnership." Appellants do not contend their company is covered by said s-s. 2.

If, then, the appellants are not included in the enumerated exemptions in the Assessment Act, why are they not subject to taxation? It is urged that the appellants have neither real nor personal within the meaning of the Assessment Act. The Assessment Act says "all property," and I cannot see that the term property, as used in the assessment, means either more or less or anything different from its common acceptation. Any thing or things subject to ownership is property—any thing that may be exclusively possessed and enjoyed. The appellants own their plant, and exclusively possess and enjoy it, and it is therefore property, and consequently liable to taxation.

It is contended that this property, or plant, cannot be taxed as personalty because the poles or posts are attached to the soil of the public roads, which are exempt under the Assessment Act.

In my opinion the Assessment Act itself provides specially for the case in hand. Section 7, s-ss. 1 and 2, covers the whole point at issue. Section 7: "All property . . . shall be liable to taxation." Section 7, s-s. 1, exemptions: "All property vested in or held by Her Majesty," etc., etc. Sub-section 2: "Where any property mentioned in the preceding clause is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable." Consolidated Municipal Act, s. 525, says: "Unless otherwise provided for, the soil and freehold of every highway or road altered, amended, or laid out according to law, shall be vested in Her Majesty, her heirs, and successors." Roads are property; they are vested in Her Majesty; the appellants occupy those roads, not in an official capacity, and as such occupants shall be assessed in respect thereof, but the roads themselves shall not be liable.

Now, if it could reasonably be contended (which I do not think it can) that said s-ss. 1 and 2 of s. 7 of the Assessment Act do not apply to roads, it is yet quite clear that the cases are exactly parallel, and that the same principle must

govern, applicable or not; s. 7 certainly establishes a rule or doctrine which must govern in all similar cases. Appellants' occupation of the road is not an easement. They have the right by law to place their poles, and the occupation by such posts or poles is a separate and absolute occupation of so much street space to the utter and absolute exclusion of all others, and is a very substantial interest in just so much land or street service. Therefore, to be very technical, the poles or posts with their permanent attachments would be property assessable as realty, while the balance of the plant and stores would be property assessable as personalty.

The assessment under the evidence, while being quite high enough, does not seem sufficiently excessive to warrant any change for this year.

There seem to have been so many opinions concerning this question of assessing appellants' company that they were justified in having the matter settled, and I will not allow costs.

Appeal dismissed without costs.

LIQUOR LICENSE CASE.

RAYNOR, Appellant, *v.* ARCHIBALD, Respondent.

Liquor License Act, sec. 76—Sale to minor—Liability of licensee for the act of third party.

A woman purchased a quart of ale from a licensed tavern-keeper, and paid for it, stating at the time that she would send for it later, which she did in the evening by her brother, a minor under eighteen years of age. He, knowing that he could not get it from the bar-tender, asked one Raynor, a stranger, the appellant, to procure his sister's liquor for him from the bar-tender. This he did, and handed it to the minor in the hall of the hotel, without the knowledge of the bar-tender. The proprietor being summoned for a breach of section 76 of the License Act, the charge was dismissed; whereupon an information was laid against Raynor, who was convicted under the same statute by the police magistrate.

Held, on appeal from this conviction, that section 76 of the License Act deals only with the licensee and those in his employment, and that Raynor, not being in the employment of the licensee, did not come within that section.

[TORONTO, Nov. 26, 1895, MCDOUGALL, Co. J.

This was an appeal from a conviction of the appellant by the police magistrate of the city of Toronto under section 76 of the Liquor License Act for the alleged offence of supplying a minor, under the age of 18 years, with liquor.

The facts as admitted were as follows: A Mrs. Pyke, a sister of Arthur Austin (a lad of about 14 years of age) called in the afternoon at one McCormack's hotel, a licensed house, and purchased a quart or two of ale and paid for the same. She asked for something to carry it home in, but was refused, and left, saying that she would send for the liquor later. Some hours afterwards she sent her brother, Arthur Austin, with a jug or can to get the liquor. The lad entered the hotel and met the appellant, John H. Raynor, an old man, in one of the sitting rooms of the hotel, and asked him to take the can into the bar and get his sister's beer, which he stated she had purchased earlier in the day. Raynor went into the bar (the lad remaining in the sitting room or hall) and asked for the woman's beer. The barkeeper filled the can and handed it to Raynor, who went out of the barroom and handed it to the lad who on

receiving it started out of the hotel to carry it home. A policeman, observing the lad come out of the hotel with a can in his hand, stopped him and examined its contents and interrogated the lad. Upon the facts being reported to Inspector Archibald, he laid an information against E. J. McCormack, the hotelkeeper, for a breach of section 76 of the Liquor License Act in supplying liquor to a minor apparently under the age of 18. Upon the hearing of the evidence in that case, including the testimony of John H. Raynor, the present appellant, the magistrate very properly dismissed the case against the hotelkeeper. Raynor was not an employee of the hotelkeeper, and the barkeeper had handed the liquor to him and did not see or know of the lad being on the premises or that the liquor was going to be handed to him.

Upon the dismissal of the case the Inspector laid an information against Raynor for supplying liquor to a minor under the same section of the statute, and upon hearing the evidence the magistrate convicted Raynor, fining him $10 and costs. He appealed from this conviction.

Haverson for the appellant

Caswell for the respondent.

McDOUGALL, Co. J.: The section of the statute relied on is in the following words: "Any licensed person who allows to be supplied in his licensed premises, by purchase or otherwise, any description whatever of liquor to any person apparently under the age of 18 years, of either sex, not being resident on the premises or a *bona fide* guest or lodger, shall, as well as the person who actually gives or supplies the liquor, be liable to pay a penalty of not less than ten dollars, and not exceeding twenty dollars, for every such offence."

It was admitted that Raynor was not in the employ of the hotel-keeper. He was, as to the licensee of the hotel and the minor, in the position of a stranger or third person. Does the act of a stranger supplying liquor to a minor, even if handed by him to them in or within the precincts of a licensed house, constitute an offence against the section of the statute as above set out? Does such stranger or third party come within the words "as well as the person who actually gives or supplies the liquor"?

The first thing to be considered is, What are the limits of the provincial jurisdiction in legislating on the liquor traffic? Have they the authority to make it an offence for an ordinary citizen to supply liquor to a minor? There is no question of sale here. The Legislature has authority beyond doubt to regulate the matter of selling. A sale by a person who is not the holder of a license can be made, and is properly made, an offence. Does any authority exist to equally prohibit a gift, except as regulating the conduct of an individual holding a license? Section 92 of the British North America Act enacts that the Local Legislature may exclusively make laws in relation to matters coming within the classes of subjects therein enumerated: amongst other subjects, in sub-section 9, shop, saloon, tavern, auctioneer, and other licenses. This is an authority for issuing licenses to sell, and for making regulations to govern the conduct of licensed persons - for inflicting penalties upon persons who venture to sell without first obtaining a license; but it certainly appears to me to fall far short of conferring authority to make it an offence for a person not a licensee or employee of such licensee to give another person liquor, whether such other person be an adult or a minor.

It is true that a licensed vendor is answerable for the act of his wife, servants, or employees; if he were not so the law would be constantly evaded, but it does not extend his liability for the acts of a stranger within his house; and, therefore, in this case the magistrate very properly held that McCormack, the hotelkeeper, was not responsible for the act of Raynor in giving the minor the liquor, though the giving actually took place upon the licensed premises. To make the act of Raynor an offence *per se*, on his (Raynor's) part, it appears to me, would be to assume a jurisdiction not conferred upon the Local Legislature by the Constitutional Act. It was admitted in argument that if Raynor had supplied, *i.e.*, given a minor liquor in his own house or on the street, he would not have committed an offence within the statute. How is his responsibility increased because he gave the liquor to a minor within the threshold of a licensed hotel?

It is said the words, "as well as the person who actually gives or supplies the same," cover the case. Surely not. Surely those words must be read to apply to those persons only who, along with the hotelkeeper, are subject to the provisions of the Liquor License Act, and within the class of persons concerning whom the Legislature may enact laws. These would be his wife, servant, manager, or employees, and they are made equally liable with the hotelkeeper for the supplying of liquor to a minor. If the wife, servant, or employee supplied the liquor to a minor, the hotelkeeper himself would be liable to the penalty of the section. The words "as well as" would appear to indicate that the licensee must first be liable, and then the person who actually supplied the liquor, if a person under the control of or in the employ of the hotelkeeper, is stated to be equally an offender. The person (other than the licensee) meant in the statute is some person for whose acts the licensee is in law considered to be responsible. McCormack, in this case, was not liable for the act of Raynor, and Raynor, not being in the employ of McCormack, is not a person within the prohibition of the statute.

To hold otherwise would be to sustain the proposition that the Local Legislature has power to make it an offence for any citizen to give liquor either to an adult or a minor. This would be legislating with reference to a matter entirely outside the subject of licensing or regulating the liquor traffic. The Dominion Parliament alone possesses the authority to make such acts, if considered objectionable, statutory offences.

For these reasons I am of opinion that the conviction must be quashed and the appeal allowed, and I see no proper reason for refusing the appellant his costs of the appeal. These costs I fix at $10.

NOVA SCOTIA.

SUPREME COURT.

EN BANC.] [March 12

COTTEREL *v.* DUNN.

Insolvency order—When "pleadable in bar."

Shortly after a sheriffs' levy upon the goods of a deceased debtor, the defendant, the executor of the deceased, obtained from the Probate Court a

decree declaring the estate insolvent. Section 57 of the Probate Act provides that "the executor or administrator may plead such order in bar of any legal proceedings," etc.

Defendant applied in chambers for a stay of proceedings on the execution, and the application was refused. Upon an appeal to this court it was

Held, by TOWNSHEND, MEAGHER, and HENRY JJ., GRAHAM, EQ.J., dissenting, that as the object and intent of the legislature was to relieve the estate of the deceased the words "plead in bar" must not be construed in their technical sense, that the insolvency order could be made effective after judgment and execution, and that a stay of proceedings must be granted, and the sheriff ordered to withdraw.

G. Macdonald for plaintiff.

H. Mellish for defendant.

MEAGHER, J.] [April 25.

ATWOOD ET AL. *v.* CANN.

Particulars—Negligence—Evidence.

The statement of claim alleged a contract for the towing of plaintiff's schooner and a stranding caused :

(*a*) By negligent, improper, and unskilful towing of said schooner by and with said tug.

(*b*) By negligent and improper management of the tug.

(*c*) By negligent and improper use of insufficient tow lines and other insufficient towing appliances.

(*d*) By undertaking to tow the said schooner over the said bank, reef, or ledge, or in the vicinity thereof, before the tide had risen sufficiently to float said schooner over said bank, reef, or ledge, or before the proper time of tide on said day.

(*e*) By general negligence, unskilfulness, and mismanagement in the towing of said schooner.

Upon a motion for particulars it was contended that the plaintiff's claim alleged a contract, and a breach of contract, and anything further would be evidence.

Held, that particulars should be given as to paragraphs (*a*), (*b*), and (*e*) but not (*c*) or (*d*), which were sufficiently specific.

MEAGHER, J.—"In *George* v. *Watts*, 30 L.T.N.S. 60, particulars in a somewhat similar case were refused mainly on the ground that the defendants knew all the facts themselves. The new system has, perhaps, introduced a more liberal rule, and for that reason I have yielded to the application to the extent indicated. (See 7 P.D. 117). I can quite see that it may be difficult for the plaintiff to give the particulars fully without stating the evidence, and this he ought not to be ordered to do."

J. A. Chisholm for the motion.

McInnes, *contra*.

GRAHAM, J., In Chambers. [Oct. 28.

HEREY ET AL. v. HARVEY.

Discovery—Commission to take evidence—Witness charged with fraud.

Upon an application for a commission to examine B., a witness residing in the United States, it was shown that B. was charged with fraud. It was contended that for this reason B. ought to be produced for cross-examination at the trial, and, also, that it was desirable that B. should be confronted with G., another witness, between whom and B. the matters involving the alleged fraud had been transacted.

Held, that the defendant should not be deprived of the testimony of B. merely because the latter stood charged with fraud, it having been shown that he could not be brought within the jurisdiction. Order for commission made upon terms. Defendant to pay $50 as expenses of G., in order that the latter might attend the examination of B.

Cahan for the plaintiff.

Borden, Q.C., for the defendant.

MEAGHER, J., in Chambers. [Oct. 30.

IN RE WADDELL.

Priority of legacies—Intention of testator—Abatement.

Originating summons to determine certain questions arising under a will.

A testator gave $10,000 to his executors to invest, and to pay the yearly interest thereon to his daughter, A.; similarly, $5,000 to pay the yearly interest thereon to his son, C., and he also directed his executors to pay $300 a year to his son W., during the latter's lifetime. Besides these there were numerous other legacies. The estate being insufficient to meet all the testamentary expenses, the question was whether the first bequests to the testator's children should suffer abatement along with the other legacies.

Held, that, as the testator must be assumed to have believed his estate sufficient to pay all his debts and testamentary bequests, and as the parties seeking to establish priority for their bequests must make out that such priority was intended by the testator, and as in this case they had failed to discharge such onus, all bequests and legacies must abate proportionately.

Brown v. *Brown*, 1 Keene 275, commented on and distinguished.

Sedgewick for executors.

Mackay and Covert for legatees.

GRAHAM, J., In Chambers. [Nov. 1.

JOHNSON v. GUNN.

Writ and service—Setting aside—Discontinuance.

Where the copy of the writ filed did not contain the name of the solicitor who issued it, the writ and service were set aside. After notice of motion the plaintiff attempted to discontinue the action, and served a notice of discontinuance upon the defendant in person.

Held, that the action could not properly be discontinued before appearance, there being no solicitor upon whom notice might be served as contemplated by the Rules.

D. McNeil for the motion.

J. M. Chisholm, contra.

GRAHAM, J. In Chambers. [Nov. 1.

SAUNDERS *v.* THOMAS.

Foreclosure—Outstanding judgment.

Upon a motion for order of foreclosure and sale, it was shown that the only prior encumbrance was a small judgment. The applicant desired a sale subject to the judgment.

GRAHAM, J.: "The proper mode of proceeding would be to join the judgment creditor along with the mortgagors, and claim to redeem from him. If the property is sold subject to the judgment, the sale may be injured. The practice ought to be that every time the court sells it should give a good title. The purchaser ought not to have to assume the burden of paying off the judgment."

As judgment in this case was small, the order was granted according to terms sought by applicant.

Beckwith for plaintiff.

GRAHAM, J., In Chambers. [Nov. 1.

ADAMS *v.* POWER.

Certiorari—Defective summons—Irregularity in entry of judgment.

A magistrate's summons did not show the place of issue otherwise than by "Pictou County S.S." in the margin. The statute requires the forms to be as in schedule annexed, and the schedule plainly provides for a statement of the place of issue of a summons.

Further, a minute of judgment in the case was signed by a justice other than the one who issued the writ, and bore on its face nothing to show that the justice who heard the case and gave judgment was lawfully acting for the justice issuing the writ in the case provided for by statute.

Held, that both defects were fatal, and that the judgment must be quashed.

Morality of proceeding by *certiorari* in such cases (when cause of action was a debt admitted) instead of by appeal commented on.

W. H. Fulton for application.

D. C. Fraser, contra.

GRAHAM, J., In Chambers. [Nov. 4.

BYRON *v.* TREMAINE.

Security for costs—Under what circumstances denied.

Plaintiff, residing in the United States, claimed for the balance of a trust fund remaining in the hands of defendant, a solicitor. Defendant, on his part, claimed to retain certain costs of a previous suit out of the said fund.

Held, that, as defendant's claim upon such fund for costs was bad in law, and as there was clear evidence that defendant so held a considerable balance on behalf of plaintiff sufficient to pay any costs that defendant might ultimately recover, security for costs could not be ordered at that stage, notwithstanding that plaintiff was out of the jurisdiction.

C. H. Smith for plaintiff.

TOWNSHEND, J., In Chambers. [Nov. 8.

BEER ET AL *v.* SEETON ET AL.

Capias—Leaving Province—Grounds of belief.

Upon an application to discharge bail given by defendant H. on arrest under capias, defendant swore that he never meant to leave the Province. Among grounds of belief to the contrary, plaintiffs showed (1) H.'s declared intention to go out of business, communicated both to plaintiffs and customers. (2) H.'s arrest in several recent suits which he settled without applying to discharge the orders for arrest. (3) Numerous suspicious commercial transactions. In reply, applicant showed that H's then intention to quit business was owing to temporary losses since repaired, and a consequent desire to pay off all his creditors; that he had since changed his mind and was going to continue business.

Held, that though the plaintiffs' grounds of belief were sufficient to negative malice, they were, nevertheless, not sufficient, and that the application must be granted, defendants' costs to be costs in the cause.

W. B. A. Ritchie, Q.C., for the motion.

H Mellish, *contra*.

NEW BRUNSWICK.

SUPREME COURT.

Full Court.] [Nov. 7.

EX PARTE EMMERSON.

Practice—Rule nisi for certiorari—Copy of proceedings not filed—Rule discharged.

The application in this cause was for a certiorari to bring up an order of County Court Judge appointing arbitrators under the Absconding Debtors Act. The copy of the proceedings upon which the rule *nisi* for certiorari had been obtained had never been filed.

Held, that the rule must be discharged.

Slipp, in support of rule.

Full Court.] [Nov. 7.

EX PARTE GARETTI.

Practice—Order of County Court Judge—Application for certiorari.

The application for a certiorari in this case to remove an order of a County Court Judge, made in a county court cause with a view to quashing the same

was refused on the ground that the applicant should have applied to the County Court Judge to rescind the order.

Slipp in support of appl tion.

Connell, contra.

TUCK, J., In Chambers. [Nov. 25.

BROWN *v.* MCLEAN.

Practice—Specially endorsed writ—Delay by order of court—Judgment nunc pro tunc.

The plaintiff sued defendant on a specially endorsed writ on September 10th, 1895. On October 28th, defendant served plaintiff with a summons containing stay of proceedings, to show cause why writ should not be set aside. Afterwards defendant gave notice of abandoning summons. Plaintiff applied to sign judgment on the ground that there was no *bona fide* defence, and claimed that judgment should be *nunc pro tunc*.

Held, that this could be done.

Trueman for plaintiff.

Welsh for defendant.

COUNTY COURTS.

COUNTY OF SAINT JOHN.

PECK *v.* KILLAM.

Attachment of debts—Deposit with Returning Officer—R.S.C., c. 8, s. 22.

Money belonging to A. deposited with a Returning Officer under the Dominion Elections Act, for B., a candidate, cannot be attached by a judgment creditor of B.

[Saint John, October 21st, 1895: FORBES, Co. J.

This was an application by one Charles S. Hickman, under s. 16 of the Garnishee Act of 1882. The Act provides that "any person entitled to or interested in any money or debt attached or bound in the hands of the garnishee by a proceeding under this Act may apply to the judge, who, after granting a summons, may make an order discharging such money or property from the claim of the judgment debtor."

The judgment creditor had obtained a judgment against the judgment debtor on the 17th of August last for $1310.00 and costs, and had been unable to realize upon the judgment.

The judgment debtor, K., was a candidate for election in the electoral district of the county of Westmoreland for the Dominion House of Commons, held under R.S.C., c. 8. By s. 22, "no nomination paper shall be valid unless a sum of two hundred dollars is deposited in the hands of the returning officer at the time the nominatiou paper is deposited with him."

It also appeared that on the 17th of August, C., the agent of K., filed with the returning officer K.'s nomination papers, and, at the same time, deposited $200 with the returning officer. On the 26th of August the judgment creditor

obtained a garnishee order attaching this money in the hands of the returning officer.

A. G. Blair, jr., for the petitioner, Hickman. As this money is in the hands of the returning officer as an officer or servant of the Crown, and is also subject to a contingency, it cannot be garnished.

Dunn, for the judgment creditor. These objections can only be raised by the judgment debtor, and it is not competent for the applicant in this summons to avail himself of these objections.

FORBES, Co. J. : There is no doubt in my mind that this money was lent by H. to K.'s agent, and was used by him as a deposit at the then election, to be returned to him as soon as the election was over ; and the evidence shows that they did all in their power to prevent the money coming into the hands of the judgment debtor. It appears by the affidavit of A. I. Chapman that on the very day H. lent the money he took from K. the following order : "Return to A. I. C., or order, the $200 *deposited for me* in the matter of the Dominion election contest for the county of Westmoreland, August 17th, 1895.

"AMASA E. KILLAM, Candidate.

"To the Returning Officer for the Returning
District of Westmoreland."

We find, then, as early as the 17th of August, six days before the garnishee order issued, that K. describes the money as deposited for him, not deposited *by him*, which is in entire concord with the claim set up by H.

I have, therefore, no difficulty in finding that the money deposited with the returning officer is the property of H. ; that it never was in the possession of K. ; and I order that such money, deposited as aforesaid, be discharged from the claim of the judgment creditor ; and that the same be paid over to H. by the returning officer.

In view of all the circumstances, I think the judgment creditor had a right to suppose the money was the property of the judgment debtor. I therefore make this order without costs to either party.

[On November 5th a rule *nisi* for a *certiorari* was obtained from the Supreme Court *en banc*.]

FORBES, Co. J.] [Nov. 1

LASKEY *v.* PALMER.

Practice—Non-suit—Motion for, after verdict.

In an action brought in the County Court of the County of St. John to recover $87 for breach of contract, the jury returned a verdict for the plaintiff for $70.

Col. Stat., c. 51, s. 8, which gives the County Court of St. John jurisdiction, enacts : "Provided always that the said (County) Court shall not have or exercise any jurisdiction in any cause in which the City court of St. John has jurisdiction."

The city court of St. John has jurisdiction "over all actions of debt, upon specialty or otherwise, where the sum demanded does not exceed $80."

After the jury returned their verdict, but before it was recorded, the defendant moved to enter a non-suit on the ground that the action should have been brought in the city court.

It was contended contra, that the motion was made too late.

Held, that it is too late to move for a non-suit after a verdict is returned, even though it be not entered.

Lawton v. *Chance*, 4 All. 411; and *Blankiron* v. *Great Central Gas Consumers Co.*, 2 F. & F. 437, referred to.

McDonald, Q.C., for the motion.

Alward, Q.C., *contra*.

MANITOBA.

SUPREME COURT.

TAYLOR, C. J.] [Nov. 7.

GILES *v.* MCEWAN.

Statute of Frauds—Hiring and service—Quantum meruit—Joint creditors.

The plaintiffs, husband and wife, made a verbal contract with the defendant to serve him for a year as farm laborer and housekeeper respectively for $400. The work was not to be commenced until the plaintiffs were sent for, and it was doubtful upon the evidence whether they had served for a full year or not.

The action was tried in the County Court where the learned judge held that the agreement of hiring was within the Statute of Frauds, and that the plaintiffs could not sue upon it, but he held that they were entitled to recover the value of their services in this action as upon a quantum meruit and that the contract of hiring to be implied from the services rendered under the circumstances should be considered as joint.

Defendant then appealed to a judge of the Queen's Bench.

Held, that the Statute of Frauds prevents an action being brought upon a verbal agreement not to be performed within a year, even although the agreement is wholly performed by the plaintiff.

McMillan v *Williams*, 9 M. R., 627, and *Britain* v *Rossiter*, 11 Q. B. D. 123 followed.

Held, also, that as the plaintiffs could not recover on the original verbal contract of hiring, they could not recover jointly in this action upon a quantum meruit, but should have sued separately for the value of the services rendered: *Crumbie* v *McEwan*, 9 M.R. 419.

Appeal allowed with costs and non-suit entered in the County Court.

West for the plaintiffs.

Bradshaw for the defendant.

BAIN, J.] [Nov. 18.

BERTRAND *v.* HEAMAN.

Garnishment—Evidence—Assignment for creditors.

In this case the evidence, if admissible, showed that one James Heaman, who had made an assignment to the plaintiff for the benefit of his creditors

retained a considerable sum of money which he should have handed over to the assignee, and purchased a carload of wheat from one Fenwick with some of this money. He then sold the wheat to S. P. Clark, and plaintiff claimed a balance of the purchase money, $88, remaining in Clark's hands. This money was also claimed by the defendant, R. E. Heaman, under a garnishing order obtained after judgment, and an interpleader issue between the plaintiff and R. E. Heaman was ordered to be tried.

At the trial of the issue Fenwick gave evidence that James Heaman had told him that the money used in the purchase of the wheat belonged to his creditors, but that they could not take it out of his pocket; and Fenwick proved other statements by James Heaman which tended to show the same thing.

Held, that this evidence was admissible as against the defendant, a judgment creditor of James Heaman, as there was a relation of privity between them; Taylor on Evidence, s. 787; *Coole* v. *Braham*, 3 Ex. 183: and that a verdict should be entered in favour of plaintiff with costs.

Howell, Q.C., for the plaintiff.

Bradshaw for the defendant.

NORTH-WEST TERRITORIES.

SUPREME COURT.

Northern Alberta Judicial District.

SCOTT, J. In Chambers. [Sept. 20

HUDSON'S BAY CO. *v.* ROWLAND.

Striking out appearance—Action against administrator—Plea of plene administravit—Staying action.

Plaintiffs sued the defendant, as administrator of one Chastellain, deceased for a debt of $600, incurred by deceased. Defendant appeared, and plaintiff applied, under s. 96 Judicature Ordinance, to strike out appearance and sign judgment. Defendant did not deny the debt, but showed that the assets of deceased consisted only of chattels amounting to $170 and a homestead of the value of $1,000, of which a recommendation for patent had been received, but the patent had not yet issued, and that there were other debts amounting to $550.

Held, that, apart from the lands, defendant not having sufficient assets to satisfy the plaintiffs' claim, was entitled to plead *plene administravit*, and, it being doubtful whether the lands before patent issued were assets in the administrator's hands, the application should be refused.

Held, also, that there was no power to stay proceedings in the plaintiffs' action till defendant could administer the estate, and even if there were, *quære* whether it should be done except on an independent application.

S. S. Taylor, Q.C., for the plaintiffs.

P. McCarthy Q.C. and *J. A. Bangs* for the defendant.

ROULEAU, J.] [Sept. 31.

IN RE IBBOTSON.

Land Titles Act, 1894—Registered transfer—Certificate uncancelled—Mortgages by transferor and transferee—Priorities.

On March 14th, 1892, Wm. G. Ibbotson, the registered owner and holder of a certificate of title of certain lands, transferred them to Mattie E. Ibbotson, who registered the transfer on August 12th, 1892, but no certificate of title was issued to her till June 1st, 1895. On September 6th, 1892, Mattie E. Ibbotson mortgaged the lands to the Canadian Mutual Loan and Investment Company, who registered their mortgage on the same day. On December 11th, 1893 while the certificate of title on the register still stood in the name of Wm. G. Ibbotson, with memorials of the transfer and the Canadian Mutual mortgage endorsed thereon, W. H. Kinnisten took a mortgage from Wm. G. Ibbotson, which he registered on Dec. 13th, 1893.

This was an application by the Canadian Mutual Loan and Investment Company to confirm a sale made by them under their mortgage, and for distribution of the moneys realized.

Held, that, as soon as the transfer to Mattie E. Ibbotson was registered, the land and all interest therein passed to her, and the fact that the Registrar neglected to perform his ministerial duty to cancel the old certificate and issue a new one to her did not invalidate the registration of the transfer or prejudice her position as owner, and she alone could mortgage the lands, and the money realized by the sale after deducting expenses of sale should be paid to the Canadian Mutual Loan and Investment Company.

E. Cave and *E. C. Smith* for the company.

P. McCarthy, Q.C., and *J. A. Bangs* for Kinnisten.

Southern Alberta Judicial District.

ROULEAU, J.
In Chambers) [Oct. 21

O'NEILL *v.* FARR.

Interpleader issue—Claimant wife of execution debtor—Who should be plaintiff.

This was an application for an interpleader by the sheriff with respect to certain sheep seized under plaintiff's execution, and claimed by the wife of the execution debtor as her separate property. The claimant lived with her husband, and the sheep were seized on the lands occupied by them.

Held, following the rule laid down by STREET, J., in *Doran* v. *Toronto Suspender Co.*, 14 P.R. 103, that the sheep seized being *prima facie* in the possession of the husband, and the onus, therefore, being on the claimant, the claimant should be plaintiff. *Duncan* v. *Tees*, 11 P.R. 66 and 296, distinguished. *Ripstein* v. *Canadian Loan and Investment Company*, 7 Man. L.R. 119, and *Ady* v. *Harris*, 9 Man. L.R. 127, approved.

C. C. McCaul, Q.C., for the sheriff and execution creditor.

P. McCarthy, Q.C., for the claimant.

WILKIE *v.* JELLETT,
MORRIS *v.* BENTLEY.

[Owing to want of space in this issue of THE JOURNAL, we are compelled to hold over these cases. Very full reports will appear in our next issue.—ED. C.L.J.]

BRITISH COLUMBIA.

From and after January 1st, 1896, will appear in this department notes of all important cases from this Province, from our own reporter.

PRINCE EDWARD ISLAND.

Notes of all important cases, from our own reporter, from this Province, will appear from time to time, beginning January 1st, 1896.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

TRINITY TERM, 1895.

Monday, September 9.

Present: The Treasurer, and Sir Thomas Galt, Messrs. Moss, Bayly, Shepley, Watson, Kerr, Douglas, Teetzel, Aylesworth, and Riddell

Ordered, that the following gentlemen be entered as students: *Graduate Class:* Robert Roy Griffin, Henry Grassett Kingstone, John Lawrence Paterson, Llewellyn Frederick Stephens; *Matriculation Class:* John Alexander Milne.

Ordered, that the following gentlemen be called to the Bar: Messrs. F. Ford, Joseph Fowler, C. J. Foy, G. Grant, J. W. Hannon, H.A. Lavell, William Mott, J. J. Mahaffy, R. R. MacKessock, R. J. Slattery, D. Whiteside.

Ordered, that the following gentlemen receive their certificates of fitness: F. Ford, J. Fowler, C. J. Foy, J. W. Hannon, J. J. Mahaffy, W. Mott, A. J. MacKinnon, R. J. Slattery, D. Whiteside.

Ordered, that W. B. Milliken be allowed his first and second year examination.

A letter was read from Mr. S. replying to a communication addressed to him by the secretary, requesting him to make what explanation he could with regard to his breach of the library regulations. Mr. Shepley gave notice that on Friday, the 13th inst., he would move that the papers and correspondence and the report of the Library Committee in the matter of Mr. S. be referred to the Discipline Committee with instructions to enquire into and report on the matter referred to in that report.

An order was read from the solicitor of the society enclosing one from Messrs. Mills & Mills, solicitors, drawing attention to a printed circular issued by Mr. Geo. F. Moore, 391 Queen street west, offering to do conveyancing and solicitor's business.

The solicitor was directed to write to Mr. Moore and point out that he was advertising that he would take proceedings which no one but a solicitor could legally take, and that unless the objectionable advertisement was discontinued the court would be applied to under the statute in that behalf.

Tuesday, September 10.

Present: The Treasurer and Messrs. Strathy, Moss, Bayly, Britton, Shepley, Watson, and Magee.

Ordered, that the following gentlemen be called to the Bar: J. F. Faulds (with honours), A. Casey, T. Coleridge, A. M. Panton, J. F. E. Patterson; and that these gentlemen (with the exception of Mr. Casey, Mr. R. R. MacKessock and Mr. John Galbraith) receive their certificates of fitness.

The following gentlemen were called to the Bar: J. F. Faulds (with honours), A. Casey, T. Coleridge, F. Ford, C. J. Foy, J. Fowler, W. B. Gilliland, G. Grant, J. W. Hannon, R. R. MacKessock, W. Mott, J. J. Mahaffy, J. F. E. Patterson, A. M. Panton, R. J. Slattery, D. Whiteside; and it was ordered that they be presented to the court.

Friday, September 13.

Present: The Treasurer, and Sir Thomas Galt, Messrs Britton, Aylesworth, Kerr, Shepley, and Hoskin.

Ordered, that the following gentlemen be called to the Bar: Samuel Price (with honours and a gold medal), Franklin David Davis; and that they receive their certificates of fitness.

The above named gentlemen were then called to the Bar, and it was ordered that they be presented to the court.

A letter was read from Mr. W. S. in explanation of his breach of the library regulations. It was ordered that Mr. S. be informed that Convocation is unable to pass over the breach by him of the library regulations reported by the Library Committee, and admitted by Mr. S., without marking its strong disapproval, and it was ordered that Mr. S. be suspended from the privileges of the library for a period of three months

Friday, September 20.

Present: The Treasurer, and Sir Thomas Galt, Messrs. McCarthy, O'Gara, Watson, Bell, Barwick, Moss, Shepley, and Lash.

Ordered, that the following gentlemen be called to the Bar: J. Galbraith, F. McMurray, D'A. L. McCarthy; and that the following receive their certificates of fitness: F. McMurray, D'A. L. McCarthy, M. H. Roach.

Ordered that the following gentlemen be entered as students of the Matriculant Class: Oliver Edwards Culbert, George Harold Davy, Albert Richard Hassard, Russell Elliott Manning, Robert Lachlan McKinnon, Edward Glynn Osler, Henry Jonathan Francis Sissons as graduates, and Austin Beatty, Oliver Steele Black, Frederick Cunningham Denison, Charles C. Grant, and John W. Mahon; and that the notices given by Messrs. G. H. Levy, R. J. Stewart, O. D. Garbutt, J. H. Hunter,

jr., and A. N. P. Morgan remain posted until next term, and that they be then admitted if no objection appear then to have been made.

It was ordered that the following gentlemen be allowed their second year examination: J. K. Arnott, E. C. Wragge; and that the following be allowed their first year examination: W. M. Charlton, L. J. Daley, S. H. Gray, F. H. Hurley, H. L. Harding, J. M. Hall, E. W. Jones, M. B. Jackson, Jr., J. B. Noble, J. A. Philion.

The following gentlemen were then called to the Bar and it was ordered that they be presented to the court: J. Galbraith, H. A. Lavell, F. McMurray, D'A. L. McCarthy.

A report was presented from the special committee appointed with regard to the closing of Osgoode street, setting forth that at an interview with the Deputy Adjutant General the committee was informed that the military authorities were now of opinion that the proposition of the Law Society for a limited use of the grounds about the drill hall by the students of the Law School for recreation purposes appears to be reasonable, and that the Deputy Adjutant General had received instructions to meet the committee for the purpose of discussing the terms upon which consent to the closing of the street might be given.

It was resolved that negotiations with the military authorities be continued by the committee with power to act, but that in any agreement come to the following terms be embodied:

(1) That access over the street, for all purposes connected with the Law Society and Osgoode Hall, be preserved.

(2) That the right be reserved to the Law Society to require the street to be opened at any time.

(3) That equitable provisions be made for the limited use by students of the Law School of the the grounds enclosed for recreation purposes, subject always to the requirements of the militia.

(4) That any agreement made be confirmed by the Legislature.

Carried.

The following report was presented from the Library Extension Building Committee:

The Library extension has been completed, and all accounts in connection therewith paid.

The original estimates for the work were $6,900. These, however, did not include the cost of providing electric light, which was afterwards found to amount to $210. nor did they provide for the extra cost of insurance during building operations, which amounted to $106.11. There would have been a considerable apparent saving in the cost of the work, all the contractors having been kept well within their contracts, but for the fact that the committee thought it desirable, since its last report, to make some additional provisions for the further enrichment and elaboration of the interior work. The result of this additional provision has, in the opinion of your committee, been to greatly improve the general appearance of the room, and to make it eminently suitable for the purposes for which it is intended.

A table, showing the amounts of estimates, contracts, and payments, and appropriations heretofore made, is submitted herewith, from which it appears, that owing to the matters hereinbefore referred to, the appropriation of $6,900 requires to be supplemented by $393.59 to meet the final cost. Your committee respectfully requests Convocation to make this further appropriation.

The additional Library accommodation provided by the extension will meet our probable requirements for ten years from the present time.

The committee is of opinion that Convocation is to be congratulated on the acquirement of this additional territory, and on the architectural results which have been obtained.

20th September, 1895. GEO. F. SHEPLEY, for the Committee.

Contractors.	Contract Price.	Modification.	Appropriation.	Paid.
J. C. Scott	$1485 00	- $ 82 88	$1485 00	$1402 12
C. C. Witchall	680 00	- 44 22	680 00	635 78
R. L. McIntyre	649 00	- 5 20	649 00	643 80
Douglas Bros	480 00	- 1 07	480 00	478 93
Bennett & Wright	268 00	- 36 87	268 00	231 13
M. O'Connor	512 87	- 22 60	512 87	490 27
J. C. Scott	2575 00	+ 178 75	2200 00	2753 75
Electric lighting	210 00	....	....	210 00
Architect's fees	....	....	313 74	341 70
			$6588 61	$7187 48
Insurance — (Carpenter's risk)				106 11
Total Expenditure				$7293 59
Original estimate				$6900 00

A report was presented from the Finance Committee requesting authorization of the payment of the above balance of $393.59. The Report was adopted, and payment was ordered.

Convocation then rose.

PERSONALIA.

THE latest addition to the gallery of portraits at Osgoode Hall is the painting by Mr. E. Wyly Grier of Chief Justice Meredith. The Law Society is to be congratulated on having obtained a most excellent likeness of the new Chief Justice of the Common Pleas in a characteristic pose.

A CORRESPONDENT who wrote about the Intestates Estate Act, and was referred to (*ante* p. 557) as "our friend from the country," jocularly replies "Ta ta!—from the country, forsooth! Our trolley car killed a man yesterday." He adds, "It was the absence of a man from the country (viz., W. R. Meredith, Q.C.) in the Local Legislature last session, which resulted in opening the door to so much adverse comment." Our breezy friend (we suppose we should not say from the country this time) has hit it again; for certainly it is admitted by all, political foes as well as friends, that perhaps the most useful member of the Ontario House, in intelligent criticism of measures submitted to that body for enactment, was the present learned Chief Justice of the Common Pleas. His usefulness and success in his present high position make us all sincerely trust that his criticisms may be confined to the judicial examination of Acts that others, perhaps less competent, may have allowed to become the law of the land.