Canada Law Journal.

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Amongst those who were honored by Her Majesty on the occasion of the Jubilee so well and widely celebrated, we notice the following members of the profession: Hon. J. H. Hagarty, Chief Justice Taylor and Chief Justice Tait, who received the honor of Knighthood. Hon. Wilfrid Laurier, Q.C., was made a member of Her Majesty's Privy Council, and, with Sir Oliver Mowat, received the Grand Cross of the Order of St. Michael and St. George. Hon. George A. Kirkpatrick, Q.C., Lieut.-Governor of Ontario, and Hon. L. H. Davies received the order of K.C.M.G.

The annual convention of the Canadian Bar Association is to be held on August 31st, either at Toronto or Halifax, of which due notice will be given to the profession throughout Canada. It is hoped that there will be a large attendance and that all who can will keep the date open from other engagements. Excellent arrangements will be made for greatly reduced fares. Amongst the a tractions offered it is expected that the Rt. Hon. Sir Henry Strong, Chief Justice of Canada, will read a paper, and that addresses will be given by Sir Charles Hibbert Tupper, Q.C., M.P., Dr. Weldon, Q.C., and it is hoped also by Ontario's veteran judge, Sir John Hawkins Hagarty.

The list of business for the July sittings of the Judicial Committee of the Privy Council has just come to hand. There are six Indian and eleven colonial cases on the list. Of the latter, one comes from New South Wales, one from Victoria, one from Ceylon, and the remaining eight are Canadian cases, as follows: De Hertel v. Goddard, Delap v. Charlebois, London & Lancashire v. Fleming, Montreal v.

Standard Light and Power Company, the Queen's Counsel case, and the Dominion, Ontario and Quebec and Nova Scotia appeals as to fisheries. As to the constitutional cases, Mr. Christopher Robinson and Mr. McTavish are expected to represent Canada in the Fisheries and Queen's Counsel cases respectively; Mr. Blake and Mr. Æmilius Irving will argue in both appeals on behalf of Ontario; while Mr. Attorney-General Longley is to appear for Quebec and Nova Scotia in the Fisheries appeal. Without venturing on prophecy our English correspondent says that there seems to be the impression there that the judgments of the Supreme Court as to the Fisheries, and of the Ontario Court of Appeal in the Queen's Counsel case will not be very materially disturbed, except possibly as to the title to the beds of public harbours. It is interesting to note the changed complexion of the judicial committee. Besides the not inconsiderable array of Canadian counsel, two colonial judges, Sir Henry Strong from Canada and Chief Justice Way of South Australia, are sitting on the Board for the first time, and amony the agents and solicitors, a Canadian, Mr. S. V. Blake, has a prominent place.

CAUSERIE.

Have vacation!
—HUDIBRAS.

What revels are at hand?
—MIDSUMMER NIGHT'S DREAM.

Strenua nos exercet inertia.
—HORACE.

THE LONG VACATION.—The dog-star rages once more, and the Courts are left to the undisturbed possession of their Long Vacation tenants—the moth and the spider. Many members of the legal profession laid aside their gowns and briefs at a much earlier date than usual this summer, in order to take in the Jubilee festivities in London; and they will doubtless return from their travels rich at least in experiences concerning that unique historical event, with which to regale their less fortunate brethren. To those whom remorseless

Fate compels to remain in town to be grilled by the heat, and stung beyond the bounds of endurance by the thousand and one ills that the midsummer denizen of the city is heir to, we extend our heart-felt sympathy. Few of us have reached such a stage of altruistic development that we can rejoice in the fact that while our own ears are maddened by the shrieks of the street-railway curve, or the bravuras of the factory siren, our best friends are listening to the thunder of the surge upon some cool Atlantic beach, or being lulled to delightful siestas by the music of the birds and the other harmonies of the fields. But woes of any kind are only aggravated by meditating upon them. It is a fatal mistake, for instance, to read and ponder Schopenhauer's diatribe against "Noise" when one is suffering from an attack of the nerves. *Le bon temps viendra!* And in the meantime we perspiring ones are not altogether in desperate case, for is there not a very opportune cut in the price of bicycles?

* * *

A JUBILEE KNIGHT.—The Jubilee honours were generally bestowed in a highly acceptable way, and particularly so in regard to Canada. That conferred upon the Minister of Marine and Fisheries is the third knighthood that has fallen to the lot of members of the Bar in the Maritime Provinces during the past ten years, the two other recipients being the late Right Honourable Sir John S. D. Thompson and Sir Charles Hibbert Tupper. Sir Louis Henry Davies, K.C.M.G., has thoroughly won his spurs. He was born in Charlottetown, P.E.I., in 1845, and was called to the Bar of that Province in 1866. He at once took a place in the front rank of his profession, and at the remarkably early age of 24 was made Solicitor-General of his native Province. A few years later he became its Premier and Attorney-General.—From time immemorial the Bar has been robbed of some of its most promising men by the fascinations of politics; but Sir Louis, like his English namesake of the Elizabethan era, Sir John Davies, is one of that fortunate class who find it possible to be good lawyers and prominent statesmen at

one and the same time. Up to last year, when he accepted the portfolio of Marine and Fisheries in the Laurier Ministry, he had been in constant practice before the public tribunals —the most notable matters in which he was engaged as counsel probably being the P. E. Island Tenantry Commission, (presided over by the Right Honorable Sir Hugh Childers,) in which he represented the tenantry, and the International Fishery Commission at Halifax in 1877, in which he was one of the counsel for the Dominion Government. Sir Louis is only now in the prime of life, and may reasonably look forward to many more years of public usefulness and distinction.

* * *

BOOK-LEARNING NO DISQUALIFICATION FOR THE BENCH.—Now that the rumour of the appointment of the Honourable David Mills to the Bench of the Supreme Court of Canada is being revived, we again hear the objection urged against him that he is an "academic" lawyer, a mere book-worm—one who, to put it shortly in our own words, has studied law as a science instead of being taught by daily practice in the Courts to regard it as a fortuitous concourse of "cases." Of course this objection quite ignores Mr. Mills' thirty years training in the mother of all the Courts—the High Court of Parliament; but we do not intend these brief remarks as an apology for Mr. Mills—it being our object merely to point out that experience, so far from demonstrating that extensive practice in the Courts is a *sine qua non* in the cultivation of the judicial quality, establishes not only that our greatest judges have owed more of their success to their scholastic bent than to their training in the Courts, but that time and again the most skilful practitioners make the poorest judges. So early in the history of the law as the time of Plato the training of the mere Advocate was not regarded as either liberalizing or elevating in its effect upon the mind. (See the *Theætetus*, III. 375). Forensic practice under the Roman system was not viewed as any more conducive to the nurture of the judicial quality, if we are to credit all that the Latin satirists have to tell us about it. The history of the English Bench from the

time of Lord Chancellor Sir Thomas More onward shows that all the distinguished Judges who have helped to fashion the fabric of our jurisprudence, acquired their knowledge of law within the four walls of their libraries rather than in the contentious and narrowing sphere of the forum. We think this is eminently true of Lord Bacon. We are aware that owing chiefly to the envious detraction of the man who did more than any one else to bring the Common Law into disrepute with the great jurists of Europe, Sir Edward Coke, Bacon's legal acquirements were, until lately, not regarded as profound. But the recent revival of legal learning in England has dissipated this in common with other fictions sedulously propagated by Coke, and has also vindicated the justice of Bacon's claim in submitting his proposition to the King to codify the laws of England: "I do assure Your Majesty, and am in good hope, that when Sir Edward Coke's reports and my rules and decisions shall come to posterity, there will be, whatsoever is now thought, no question who was the greater lawyer." Then take the case of the Judge to whom English and Canadian lawyers of to-day owe more than to any other man who ever sat on the Bench: Sir William Blackstone. He had never but a modicum of success at the Bar, and shortly before the time of his acceptance of the Vinerian Professorship he contemplated retiring from practice altogether. But this is what Foss says of him as a Judge: "Whoever reads the reports of the period during which he sat upon the Bench must acknowledge that he was equally distinguished as a Judge as he had been as a Commentator. Some of the judgments that he pronounced are remarkable for the learning they display, and for the clearness with which he supports his arguments; and in the few cases in which he differs from his colleagues, his opinion was, in general, found to be right." Space will not permit us to mention more than one instance in our own generation of a lawyer of small practice making an excellent Judge, and that one is the case of Lord Blackburn. His abilities were so little known at the time of his appointment to the Bench by Lord Chancellor Camp-

bell, that the latter was bitterly assailed on account of it. Apropos of the view we are now maintaining, we quote what the *Economist* had to say of Mr. Blackburn's appointment in 1859: "It is true that if you can find a man who, to profound legal knowledge and that sort of capacity which can take a clear view of intricate legal questions, adds the sort of experience which can only be obtained by the habit of leading at the Bar, he will make a better Judge than one who has always practised in a stuff gown—at any rate a better nisi prius Judge. But the combination is most rare, and if we must choose between the two, we should all of us like to have our causes decided by a lawyer rather than an advocate, however eloquent." In conclusion we desire to say that the "viginiti annorum lucubrationes," which old Sir John Fortescue prescribed in the fifteenth century as the best means for acquiring the judicial quality, are as necessary to-day as then; and that scholarship, scientific knowledge, "book-larnin'," or whatever the professional Philistines may please to term it, is not now and never will be a disqualification for the Bench.

CHARLES MORSE.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

PROBATE—DELAY IN PROVING WILL—WILFUL DEFAULT—ACCEPTANCE OF OFFICE—EXECUTOR ACTING, AND AFTERWARDS RENOUNCING PROBATE, LIABILITY OF—LOSS OF INTEREST.

In re Stevens, Cooke v. *Stevens*, (1897) 1 Ch. 422, was an administration action; the defendants Stevens and Emmerson were both named as executors, but Stevens alone had obtained probate, and Emmerson had after the commencement of the action renounced probate and disclaimed the trusts of the will. Probate was not obtained by Stevens for seven years after the death of the testator. There was due to the estate £676 on a policy of life insurance, which the insurers refused to pay until probate was obtained, when they paid the amount with

interest at 1 per cent. per annum; in the meantime the executors had had to pay interest at the rate of 5 per cent. per annum on a debt owing by the estate. The executors had joined in a letter to the insurers some years before the will was proved, asking them to pay part of the insurance money to satisfy this debt, which they declined to do. The plaintiff claimed that both defendants were liable to account as executors, Stevens because he had obtained, and Emmerson because he had acted and could not renounce, and that they were both liable for the loss of interest which had arisen from the delay in taking out probate. North, J., while holding that both were liable to account as executors, was of opinion that they were not liable to make good the loss of interest. The joining in the letter to the insurers asking them for payment of the insurance moneys was, considered to be such an acting as executor, on the part of Emmerson, as to preclude him from thereafter renouncing.

COMPANY—ARTICLES OF ASSOCIATION—CONSTRUCTION—ANNUAL GENERAL MEETING—DIVIDEND—INJUNCTION.

Nicholson v. *Rhodesia Trading Co.*, (1897) 1 Ch. 434, was an action to restrain the defendant company from declaring a dividend. The plaintiff was entitled in pursuance of a compromise of certain claims against the company, to the issue of 2,000 paid-up shares which had not been issued. The directors had called an extraordinary general meeting of the shareholders for the purpose of obtaining the necessary sanction to the declaration of a dividend, and the plaintiff claimed that by thus declaring a dividend before the shares to which he was entitled were issued he would be wrongfully deprived of the dividend thereon. He also claimed that by the articles of association of the company the necessary sanction to the declaration of a dividend could only be given at an ordinary general meeting, and that it was not competent for the directors to call an extraordinary meeting for the purpose. North, J., while holding that the non-issue of the plaintiffs' shares was no ground for restraining the declaration of a dividend, was nevertheless of the opinion that under the articles, the extraordinary meeting was not competent to sanction its declaration, and he therefore granted an injunction on the latter ground.

ESTOPPEL—SETTLEMENT BY GRANTOR HAVING NO TITLE—ENTRY OF TENANT FOR LIFE UNDER SETTLEMENT AND ACQUISITION OF POSSESSORY TITLE—REMAINDERMAN—STATUTE OF LIMITATIONS.

Dalton v. *Fitzgerald*, (1897) 1 Ch. 441, is an interesting case on the law of estoppel. The facts were somewhat peculiar. Under a settlement made in 1842 by the trustees named in the will of one John Dalton, certain lands to which the trustees had no title were purported to be settled upon one James Fitzgerald for life, and after his death on Gerald Fitzgerald for life, with remainder to his first and other sons successively in tail male, with remainder to the plaintiff for life, with divers remainders over. James Fitzgerald entered into possession under the settlement in 1861 and remained in possession until his death in 1867, whereupon Gerald Fitzgerald entered and remained in possession until his death in 1894 without issue, and thereupon the plaintiff became entitled according to the limitations of the deed of 1842. Gerald Fitzgerald, however, in his lifetime had procured himself to be registered as proprietor of the lands comprised in the settlement as to which the settlors had no title, and by his will devised them to the defendants who entered into possession as such devisees. The question of estoppel was the only one argued and was decided by Stirling, J., in favor of the plaintiff, the learned judge holding that Gerald Fitzgerald having entered under the settlement of 1842, and acquired a good possessory title as against the true owner, was estopped from setting up that title as against the persons entitled in remainder under the settlement under which he originally acquired possession. The case has some resemblance to *Re Dunham*, 29 Gr. 258; there, however, the devise for life was made to a person already in possession, and it was held that the devisee for life could not repudiate the devise and set up a possessory title as against those entitled under the will in remainder: and see *Re Defoe*, 2 O.R. 623.

LUNATIC—MONEY OF LUNATIC IN COURT—PAYMENT OUT TO FOREIGN COURT OF WHICH LUNATIC A WARD.

In re De Linden, (1897) 1 Ch. 453, an application was made by a lunatic who had been declared lunatic and made a ward of the Royal Bavarian Court, by her next friend, for payment out of Court to the Bavarian Court of moneys to which the lunatic was entitled, and Stirling, J., granted the order, the lunatic being the daughter of a German and the wife of a German, and her domicile and her present residence being also in Germany.

ACCIDENT POLICY—CONTRACT—RENEWAL OF POLICY—CREDITORS' DEED—INSOLVENCY.

Stokell v. *Heywood*, (1897) 1 Ch. 459, decides, we believe, a new point upon the legal effect of the ordinary accident policy. The policy in question contained what would appear to be a usual stipulation in such policies, viz., that it was renewable yearly so long as the insured paid the premium in advance, and the insurance company consented to receive it, and requiring the insured at each renewal to give notice of any change in the state of his health since the payment of the last premium, with power to the company in such case to determine the policy. After the policy had been issued, and while it was in force, the assured made an assignment for the benefit of his creditors, of all and singular the goods, chattels and moneys, credits, estate and effects whatsoever and wheresoever, of, or to which the debtor was possessed or otherwise entitled for his own benefit or in any manner howsoever. The assignment contained no assignment of, or agreement to assign, any after acquired property. The assignment was dated 4th July, 1893. On 2nd September, 1893, the debtor paid a premium for the renewal of the policy for twelve months to Aug. 30th, 1894, and on 1st Sept., 1894, he paid a premium for renewal for a further twelve months to 30th August, 1895. On 26th June, 1895, he was killed by lightning. The assignee for creditors claimed the policy moneys as against the executors of the deceased. Kekewich, J., held that upon a proper construction of the policy each renewal constituted a new contract, and that the moneys receivable under the policy were therefore not covered by the assignment.

COPYRIGHT—REGISTRATION IN NAME OF AGENT—COPYRIGHT ACT, 1842 (5 & 6 VICT., C. 45) S. 13—FINE ARTS—COPYRIGHT ACT, 1862 (25 & 26 VICT., C. 68), SS. 1, 4

In *Petty* v. *Taylor*, (1897), 1 Ch, 465, Kekewich, J., holds that the registration of a copyright under the Copyright Act, 1842, or the Fine Arts Copyright Act, 1862, in the name of a person who is a mere agent or nominee of the proprietor of the copyright, and not a trustee of the copyright for him, is bad, and an action by such agent or nominee, and the owner, to restrain an infringement of a copyright so registered cannot be maintained. He also held that the registration of a book containing illustrations, in the name of the author of the letter press, does not confer any protection in respect of such illustrations, the Art Copyright in which is vested in other persons; but that where the registration is made under the Fine Arts Copyright Act in the name of the person for, or on behalf of whom, a drawing is made for valuable consideration, it is not necessary that any agreement in writing between the person who makes such drawings, and the person for whom they are made, should be registered.

PRACTICE—UNAUTHORIZED USE OF PLAINTIFFS' NAME—COSTS—SOLICITORS ACTING WITHOUT AUTHORITY, LIABILITY OF FOR COSTS.

Geilinger v. *Gibbs*, (1897) 1 Ch. 479, was a case in which an infant had been joined as a co-plaintiff without his authority. On attaining his majority it had been ordered on his application that his name should be struck out as a plaintiff, and that the other plaintiff should pay the costs of the application, and any costs the applicant might be liable for to the defendants, and also the defendants' costs of the motion. The defendants now applied for an order compelling the solicitors who had improperly used the name of the infant as plaintiff to pay all costs occasioned to the defendants, and also the costs of the application, and it was so ordered by Kekewich, J. See *Fricker* v. *Van Grutten*, (1896), 2 Ch. 649, noted ante, vol. 32, p. 754.

SETTLEMENT—TRUST FOR PAYMENT OF DEBTS—CREDITORS, CESTUIS QUE TRUST—REVOCABLE TRUST—VOLUNTARY DEED—CHARGE OF DEBTS.

In *Priestley* v. *Ellis*, (1897) 1 Ch. 489, Kekewich, J., was called upon to decide whether the case was governed by the rule laid down in *Garrard* v. *Lord Lauderdale*, (1831) 2 R. & M. 451, or whether it came within the exception established by *Synnot* v. *Simpson*, (1854) 5 H.L.C. 121. In this case by a deed of family arrangement made in 1867, on the resettlement of an estate by father and son, the estate was limited to the use of the father for life, with remainder to trustees upon trust, with the consent of the father and son during their joint lives, or of the survivor during his life, to sell the same and apply the proceeds, and also the rents, until sale, in payment of the father's debts, in such manner and order as the trustees should determine, with the father's concurrence in his lifetime; and subject thereto to hold any unsold lands to the uses of an indenture of even date under which the father and son were successive tenants for life, with remainder to the infant son of the son in tail. The father's creditors were not parties to or named in the deed. After the father's death the trustees, with the son's consent, sold part of the lands and paid all of the debts of the father but one, of which they were not aware. In 1889 the trustees, with the son's concurrence, conveyed the residue of the lands to the uses of the second indenture of 1867. The son died in 1890, and the present action was brought by the creditor of the father whose debt had not been paid, claiming to be entitled to a charge on the land vested in the tenant in tail under the latter deed. According to *Garrard* v. *Lord Lauderdale*, where a debtor intending to provide for his creditors, and to that intent voluntarily vests property in another with directions to apply it in payment of his debts, he does not thereby create an irrevocable trust, at all events during his life, which his creditors are entitled to enforce. The trustee in such a case is, during his lifetime only, his agent for effecting his wishes, and is responsible only to him. But *Synnot* v. *Simpson* established that after the death of the settlor in such a case the trust does become absolute, and the creditor in whose favor it was made is then

entitled to enforce it. The trust in the present case, though expressed in a somewhat confused manner, was held to come within the case of *Synnot* v. *Simpson*, and judgment was therefore given in favor of the plaintiff.

PRACTICE—DEBENTURE HOLDER'S ACTION—JUDGMENT—REFERENCE AS TO PROPERTY CHARGED BY THE DEBENTURES — UNCALLED CAPITAL — MASTER, POWER OF.

Madeley v. *Ross*, (1895) 1 Ch. 505, was an action by one debenture holder on behalf of himself and all other debenture holders, to enforce payment of their debentures: a reference had been directed to ascertain the property charged by the debentures. Under this reference the referee had found that the property comprised in them consisted, amongst other things, of uncalled capital due from eight shareholders, including £2,690 due from plaintiff on 269 shares. The plaintiff objected that it was not within the competency of the referee to make this finding, on the ground that if it stood the plaintiff would be bound by it and would be in a worse position than other shareholders, as she would be the only one precluded from disputing her liability as a shareholder, which liability the plaintiff contended ought to be left open to be determined in other proceedings, as the Court could not in this action order a call to be made. Kekewich, J., held that it was competent for the referee to find as he had done, but on the merits of the case he considered that the plaintiff and other shareholders would be unduly prejudiced by the finding, and directed it to be struck out.

COMPANY—DEBENTURE HOLDER'S ACTION—FLOATING SECURITY—FORECLOSURE — ABSENT DEBENTURE HOLDER.

In re Continental Oxygen Co., Elias v. *Continental Oxygen Co.* (1897) 1 Ch. 511, was also a debenture holder's action brought by the plaintiff on behalf of himself and all other debenture holders. Notice of the judgment had been served on one of the debenture holders who was out of the jurisdiction, but she had not appeared and was not represented in the action. The property comprised in the debentures was unsaleable and the Court was asked to make an order for foreclosure as in

Sadler v. *Worley*, (1894) 2 Ch. 170. This Kekewich, J., was of opinion could not be granted in the absence of any of the debenture holders, because the debentures in this case did not vest any legal title in the property charged thereby in the debenture holders, and the order of foreclosure would have to provide for vesting the property in the debenture holders, which he held could not be done without the concurrence of all of the debenture holders; he therefore made an order for the sale of the property and intimated that if the plaintiff brought in a reasonable proposal, the result of which would be to vest the property in the plaintiff and those of the debenture holders acting with him, he would entertain it.

WILL—CHARITY—SPECIFIED OBJECTS NOT CHARITABLE—GIFT TO CHARITY VOID AS TO SOME OF OBJECTS SPECIFIED—GIFT OVER.

In re Hunter, *Hood* v. *Attorney-General*, (1897) 1 Ch. 518. A testator bequeathed certain property "legally applicable to charitable purposes" to trustees to apply the income or any portion of the capital in grants for or towards the purchase of advowsons or presentations, or in the creating or contributing to the erection or improvement or endowment of churches or schools, or in paying or contributing to the salaries or income of rectors, vicars or incumbents, masters or teachers, on certain specified conditions; and the question was raised whether this was a good charitable bequest. Romer, J., held that a bequest for the purchase of advowsons or presentations, is not a good charitable gift, and that the gift failing as to some of the specified objects, failed as to all. By his will the testator gave to his nieces all his residue "not legally applicable to charitable purposes," and they claimed to be entitled to the fund. but here the property being legally applicable, and the bequest failing merely because the object specified was not charitable it was held that the gift to the nieces did not take effect, and that there was an intestacy as to the fund in question.

Correspondence.

THE ROYAL SUPREMACY.

To the Editor of the Canada Law Journal.

DEAR SIR,—Your last issue contains some statements under the above heading which I venture to suggest do not correctly state the law as regards either Great Britain or Canada. The Royal Supremacy as applied to the civil affairs as distinguished from the religious obligations of British subjects admits of no question when hedged in by the controlling power of Parliament and the safeguards of the Constitution. It may even be admitted that no civil jurisdiction can legally be exercised under the guise of an ecclesiastical tribunal under foreign control to adjudicate upon the rights of British subjects. For example, the devolution of estates and the granting of administration are matters which at one time in English history were controlled by the Church as of right, independently of the common law, and any attempted interference with such matters by any church or religious organization would be nugatory in any territory subject to British laws. But the right of the Roman Catholic church and of any other church organization to control their own affairs and to designate the religious duties of their members, with penalties of a spiritual nature, even to the extent of threatened excommunication or expulsion in default of compliance, is such as is consistent with the principles of religious liberty secured to all British subjects, and is not in any sense subject to any royal interference as a "constitutional attribute of the sovereign." So far as coercive ecclesiastical jurisdiction is concerned I wholly dispute the statement that such cannot "be exerted in any parts of Her Majesty's dominions save under the authority of her duly established courts." Expulsion from church privileges is surely to be included in the attribute "coercive." Whatever diplomatic negotiations may have taken place about the time of the cession of Quebec as regards the appointment of Roman Catholic bishops, it is certainly beyond the mark to say that the right of selection

was claimed as a constitutional attribute of the sovereign or as incident to the royal supremacy in matters ecclesiastical. Could it for a moment be contended that the royal supremacy is in any way concerned with foreign secret societies, benevolent and otherwise, having native Canadian members, and the penalties which such societies may enforce by virtue of their own organization?

Toronto, 15th July, 1897. "Z."

EXCHEQUER COURT.

A general order of the Exchequer Court of Canada just issued fixes special sittings for the trial of cases, etc., during the present year at the following places, provided that some case or matter is entered for trial or set down for hearing at the office of the Regsitrar of the Court, at Ottawa, at least ten days before the day appointed for such sitting. If no case or matter is so entered or set down for any such sitting, then the same will not be held. The sittings will commence at 11 a.m at the court house in each place.

Quebec—Tuesday, 14th September.
Halifax—Tuesday, 21st September.
St. John—Tuesday, 28th September.
Charlottetown—Thursday, 30th September.
Montreal—Tuesday, 12th October.
Ottawa—Tuesday, 19th October.
Toronto—Tuesday, 26th October.
Ottawa—Tuesday, 9th November.

A correspondent who has been taking note of what we said recently as to the permanency of the work done on a type-writer, gives his experience that where black carbon paper has been used the writing does not fade, but he has no faith in purple ink or purple carbon paper. His experience may be of some value to others.

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Nova Scotia.] [May 1.

TEMPLE *v.* ATTORNEY-GENERAL OF NOVA SCOTIA.

Mines and minerals—Lease of mining areas—Rental agreement—Payment of rent—Forfeiture—R.S.N.S. 5 ser., c. 7—52 Vict., c. 23 (N.S.).

By R.S.N.S. 5 ser., c. 7, the lessee of mining areas in Nova Scotia was obliged to perform a certain amount of work thereon each year on pain of forfeiture of his lease, which, however, could only be effected through certain formalities. By an amendment in 1889 (52 Vict., c. 23), the lessee is permitted to pay in advance an annual rental in lieu of work, and by sub-sec. (*c*) the owner of any leased area may, by duplicate agreement in writing with the Commissioner of Mines, avail himself of the provisions for such annual payment, and "such advance payments shall be construed to commence from the nearest recurring anniversary of the day of the lease." By s. 7 all leases are to contain the provisions of the Act respecting payment of rental and its refund in certain cases, and by s. 8 said s. 7 was to come into force in two months after the passing of the Act.

Before the Act of 1880 was passed a lease was issued to E., dated June 10th, 1889, for twenty-one years from May 21st, 1889. On June 1st, 1891, a rental agreement under the amending Act was executed, under which E. paid the rent for his mining areas for three years, the last payment being in May, 1893. On May 22nd, 1894, the Commissioner declared the lease forfeited for non-payment of rent for the following year, and issued a prospecting license to T., for the same areas. E. tendered the year's rent on June 29th, 1894, and an action was afterwards taken by the Attorney-General, on relation of E., to set aside said license as having been illegally and improvidently granted.

Held, affirming the judgment of the Supreme Court of Nova Scotia in such action, that the phrase, "nearest recurring anniversary of the date of the lease" in sub-sec. (*c*) of the special Act of 1889, is equivalent to "next or next ensuing anniversary," and the lease being dated on June 10th, no rent for 1894 was due on May 22nd, of that year, at which date the lease was declared forfeited, and E.'s tender on June 9th was in time. *Attorney-General* v. *Sheraton*, 28 N.S. Rep., 492, approved and followed.

Held, further, that though the amending Act provided for forfeiture without prior formalities of a lease in case of non-payment of rent, such provision did not apply to leases existing when the Act was passed in cases where the holders executed the agreement to pay rent thereunder in lieu of work. The forfeiture of E.'s lease was, therefore, void for want of the formalities prescribed by the original Act.

W. B. A. Ritchie, Q.C., and *Congdon*, for the appellants.

B. Russell, Q.C., for the respondent.

Quebec.] [May 12.

CITIZENS LIGHT & POWER CO. *v.* PARENT.

Appeal from Court of Review to Privy Council—Appealable amount—54 and 55 Vict. (D.), c. 25, s. 3, ss. 3 and 4—C.S.L.C., c. 77, s. 25—C.C.P. Arts 1115, 1178—R.S.Q. Art. 2311.

Notwithstanding the jurisdiction of the Judicial Committee of the Privy Council, where the right of appeal from decisions of the Courts of Lower Canada depends upon the amount in controversy exceeding five hundred pounds sterling, the measure of value for determining such right is the amount recovered in the action, yet in appeals to the Supreme Court of Canada from the Court of Review (which by 54 & 55 Vict., c. 25, s. 3, sub-sec. 3, must be appealable to the Judicial Committee of the Privy Council), the amount by which the right of appeal is to be determined is the amount demanded and not recovered if they are different, as provided by sub-section four of the third section of the said Act, and by R.S.Q. art. 2311.

Motion refused with costs.

R. C. Smith, for the appellant.

Charbonneau, for the respondent.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] [March 8.

GUEST *v.* DIACK.

Bills of Sale Act, R.S. (5th series), c. 92, s. 3—Held not to apply to hiring of goods where the agreement is at the end of period of hiring, to deliver other goods of equal value.

S. obtained a piano from M. under an agreement in writing that S. should pay rental therefor for the period of 30 months at the rate of $10 per month, and that on the completion of the payments agreed to be made S. should be entitled to receive from M. "one piano equal in value to the above named piano, with a receipted bill of sale thereof." The piano was seized by the sheriff under a writ of attachment against S. as an absent or absconding debtor, and M. having resumed possession of the piano under provisions in the agreement enabling him to do so in such case,

Held, per HENRY, J., RITCHIE, J., and GRAHAM, E.J., concurring, that the Bills of Sale Act, R.S. (5th series), c. 92, s. 3, was not applicable, there being nothing in the agreement entitling S., at the termination of the period of hiring, to the possession of the particular piano referred to in the agreement, M. being entitled to deliver in place therof another piano of equal value.

Held, per TOWNSHEND and MEAGHER, JJ., dissenting, that there was evidence to justify the trial Judge in coming to the conclusion that there was an agreement for the sale of the particular piano in question, to be carried out at the end of the period of hiring.

C. S. Harrington, Q.C., in support of appeal.

R. E. Harris, Q.C., and *E. H. Armstrong*, contra.

Full Court.] [March 8.

DIMOCK *v.* MILLER.

Landlord and tenant—Distress—Impounding of goods—Placing in custody of tenant's wife held sufficient.

A piano hired by the defendant M. to A. was seized by A.'s landlord for rent due him, and was placed in the custody of A.'s wife, with instructions not to allow it to be removed.

Held, that this was a sufficient compliance with the requirements of the law.

There was evidence that after the seizure and impounding, and while the piano was in the custody of A.'s wife, A.'s family continued the use of it as before.

Held, that this was not such a misuse of the property seized as to avoid the distress, and entitled N. to resume possession.

Held (per TOWNSHEND, J.). That the piano having been hired to A. for the very purpose of using it as he did, such user could not be set up by defendant against the validity of the distress.

W. B. A. Ritchie, Q.C., in support of appeal.

W. M. Christie and *E. J. Morse*, contra.

Full Court.] [March 8.

ZIRKLER *v.* ROBERTSON.

Negligence—Action against surgeon—Pleading should give notice of case relied on—Degree of skill, etc., required.

In an action brought against defendant, a surgeon, for negligence in dressing a wound in defendant's leg, whereby he partially lost the use of the leg and was rendered lame for the remainder of his life, the 5th paragraph of the statement of claim read, "The defendant negligently, improperly, ignorantly and unskillfully dressed and treated the plaintiff's said wounds and injuries." The 6th paragraph read as follows, "The defendant while dressing and treating the said wounds and injuries cut off a portion of one of the nerves, etc."

Held, that the two paragraphs must be read together as setting forth the facts upon which plaintiff intended to rely.

Held, that the 5th paragraph, standing alone, would have been bad for vagueness and uncertainty.

During the trial some evidence was given tending to show that defendant had been guilty of negligence in failing to take up and suture the ends of the severed nerve, and the trial Judge, with some hesitation, gave judgment against him on this ground.

Held, that defendant was not called upon to answer a case of which the pleadings gave him no notice, but that the interests of justice required a new trial.

Held, per TOWNSHEND, J., MCDONALD, C.J., concurring, GRAHAM, E.J., and HENRY, J., dissenting, that defendant must be judged by his surroundings at the time, and that the skill of a surgeon attending a patient in a private house in the country is not to be measured by the same standard as that of a surgeon who has the advantages of assistants, an operating room, and the aids of a modern hospital.

W. B. A. Ritchie, Q.C., and *D. K. Grant*, for plaintiff.

A. Drysdale, Q.C., and *H. McInnes*, for defendant.

Full Court.] [March 8.

THE QUEEN *v.* FOSTER.

Probate Act (5th series), c. 100, s. 4—Surrogate Judge—Jurisdiction in matters heard during absence of Judge not divested by his return—Judgment not appealable held properly brought up by certiorari.

The Probate Act, R.S. (5th series), c. 100, s. 4, as amended by the Acts of 1891, c. 17, provides for the appointment of a Surrogate Judge to act in the place and stead of the Judge of Probate during his illness or temporary absence.

Held, that the jurisdiction of the Surrogate Judge in all matters of which he becomes seised during the absence of the Judge continues undiminished until he shall be discharged thereof by the delivery of final judgment, and that as to all such matters as to which the Surrogate Judge shall become so seised during the absence of the Judge, the authority or jurisdiction of the latter shall not revive on his return.

The Judge of Probate having on his return read over the evidence taken in a matter heard before the Surrogate Judge during his absence, heard counsel, and joined with the Surrogate Judge in a judgment which was said to represent the opinions of both, independently arrived at,

Held, that the judgment so given was a nullity, and not being appealable, that it was properly brought before the Court by certiorari.

J. B. Kenny, and *W. H. Fulton*, in support of motion to quash.

R. E. Harris, Q.C., contra.

Full Court.] [March 8.

SNOW *v.* FRASER.

Jury—Inconsistent findings—Judgment set aside—New trial.

In an action by plaintiff to recover compensation for his rights in certain quarries, and mining improvements, and for his services in organizing a company to operate the quarries and mines, the jury found that there was no agreement on the part of defendant to give plaintiff the compensation claimed, but, in response to a question put to them, found that assuming plaintiff to be entitled to recover, he was entitled to damages in the sum of $1,000 for the non-carrying out of the agreement. On the latter finding judgment was entered for plaintiff for the amount claimed.

Held, that the jury having negatived plaintiff's right to recover at all, the judgment entered on the second finding was without foundation, and should be set aside.

But, there being some evidence that plaintiff was to be compensated for his services in organizing the company,

Held, that there should be a new trial.

A. McKay and *J. McG. Stewart*, in support of appeal.

W. B. Ross, Q.C., and *F. F. Mathers*, contra.

Full Court.] [March 9.

KNAUTH *v.* STERN.

Single Judge—Power to hear and determine points of law—R.S., c. 104, s. 18—Foreign firm—May sue in firm name—Allegation that cheque was "duly presented, etc."—R.S. 5th series, App. C., s. 5, No. 6.

By R.S. (5th series) c. 104, s. 18, "Every action and proceeding in the Supreme Court, and all business arising out of the same, shall, so far as is practicable and convenient, be heard, determined, and disposed of before a single Judge."

Held, that the power conferred by this section extends to the hearing and determination of points of law.

Held, also, that there is no objection to a foreign firm suing in this province in the firm name.

Held, also, that the allegation in plaintiffs' statement of claim "that the cheque was duly presented for payment," was in accordance with the form R.S. (5th series) App. C. s. 3, No. 6, and with forms generally applicable to commercial paper not requiring on its face presentment at a particular place.

A. Whitman, for plaintiff.

A. Drysdale, Q.C., for defendant.

RITCHIE, J.
In Chambers. [May 3.

HENNESEY *v.* MUNRO.

Partition of land—Service upon alien defendant residing in foreign country—R.S. (5th series), c. 122, s. 8—Service of writ not necessary—Tax sale—Advance of money by defendant to redeem property—To be considered on partition or division of proceeds.

Plaintiff and his two sisters were jointly interested in a lot of land. The sisters proceeded to the United States and assigned their interest to defendant, who was a citizen of the United States. Plaintiff commenced proceedings for a partition of the land, and served an attested copy of the petition and order on defendant.

Held, that the service was rightly made under R.S., c. 122, s. 8, providing that in the case of any person interested who is absent from the province an attested copy of the petition and order may be served upon such person.

Held, that the provision extends to the service of an alien in a foreign country where the land, of which partition is sought, is situated within this province.

Held, also, that the service of the writ is not necessary.

Held, also, that the advance of money by defendant to redeem the property on a sale for taxes had not the effect of destroying plaintiff's title, but was a matter to be taken into consideration on the partition of the land, or the division of the proceeds in case the land was ordered to be sold.

A. McNeil, for plaintiff.

D. Grant, for defendant.

RITCHIE, J., In Chambers. } [May 3.

MCLEOD *v.* NOVA SCOTIA MARINE INS. CO.

Interrogatories to officer of company—Order to compel answer refused where no issue raised on point to which questions are directed.

Application was made for an order to compel the secretary of the defendant company to answer interrogatories as to re-insurance affected by him upon the risk referred to in the policy sued on.

No issued having been raised on that point in the pleadings,

Held, dismissing the application, that the officer interrogated properly refused to answer.

W. B. A. Ritchie, Q.C., for plaintiff.

R. E. Harris, Q.C., for defendant.

RITCHIE, J., In Chambers. } [May 3.

ALEXANDER *v.* BAKER.

Security for costs—Ordered in the case of plaintiff absent from the province but owning property within the province where the property would not be readily available.

An application made on behalf of defendant for security for costs was opposed on the ground that plaintiff, although admittedly living out of the province, was owner of or was possessed of real estate within the province.

It appeared that the property in question was held by plaintiff in trust, and was mortgaged to a large amount, and that it would be difficult to make it available to pay defendant's costs in case he succeeded.

Held, that the ownership of property so situated was not sufficient to relieve plaintiff from the obligation to give security.

D. McNeil, for plaintiff.

J. M. Chisholm, for defendant.

RITCHIE, J., In Chambers. } [May 3.

WEATHERBE *v.* WHITNEY.

Mining lease—Contract for sale of—Order for arrest of vendee—Affidavit for—Special circumstances to warrant the making of the order must be shown—Order of Court under seal not required to show jurisdiction on its face—Substantial defect in affidavit for order for arrest can be taken advantage of at any time.

Plaintiff obtained an order for defendant's arrest on an affidavit, the second paragraph of which stated that the defendant was justly and truly indebted to the plaintiff for the price of a certain coal mining property or areas, and the lease thereof, bargained and sold by him to the defendant, and by the defendant purchased from him for $50,000.

Held, that this was not the statement of an agreement for a sale, but of a

perfected and completed sale, and that plaintiff in order to recover under such a statement would have to prove that the title to the property had passed to defendant.

Held, also, that on the breach of an agreement for the sale of mining rights the vendor cannot recover the purchase money, but only damages sustained in consequence of the breach.

Held, also, that defendant could not be arrested in an action for goods bargained and sold without showing that the goods were delivered, or some special circumstances that would warrant the making of the order.

Here there was nothing to show either that the title had passed or any special circumstances in relation to the sale, and for all that appeared plaintiff might have the sole control of the property.

Held, that under these circumstances defendant could not be arrested for the price.

The third paragraph of the statement of claim alleged that defendant was justly and truly indebted to plaintiff in the sum of $50,000 for the price of a certain coal mining property or area, which the plaintiff agreed to sell to the defendant and the defendant agreed to purchase, etc.

Held, that this was not a statement on which defendant could be arrested for the price of the property.

Held, also, that an order for arrest under the seal of the Supreme Court does not require to show jurisdiction on its face.

Held, also, that a substantial defect in an affidavit for an order for arrest may be taken advantage of at any time.

R. L. Borden, Q.C., and *A. Drysdale*, Q.C., for plaintiff.

Ross, *Mellish*, and *Mathers*, for defendant.

Province of New Brunswick.

SUPREME COURT.

LANDRY, J.
In Chambers.

[April 8.

MCANN *v.* THE MUTUAL RESERVE FUND LIFE ASSOCIATION.

Pleading—Life policy—Denial of incorporation—Contradiction of policy—Striking out plea.

In an action upon a policy of life insurance issued by the defendants they pleaded they were not incorporated as alleged in the declaration. The policy sued upon stated the incorporation of the defendants. On an application by the plaintiff to strike out the plea as false, frivolous, vexatious and embarassing the plea was ordered to be struck out.

W. B. Chandler, for the plaintiff.

Earle, Q.C., for the defendants.

TUCK, C.J., In Chambers. [April 27.

BRAGDON *v.* BRAGDON.

Parish Civil Court—Affidavit—Stating cause of action—Marksman—Jurat

This was a review from the Civil Court of the town of Woodstock. An action having been brought in a Parish Court William Bragdon against one James Lowden, the latter was arrested, and James Bragdon became his bail. Judgment was obtained by the plaintiff in the action, and Lowden having left the province the present action on the bail bond was brought. The affidavit upon which the capias was obtained against Lowden did not state the cause of action, and was signed by a marksman, but the jurat did not state that the affidavit was read over to him and that he understood its contents. Judgment having been rendered against the bail,

Held, 1. That the Rule of the Supreme Court as to a marksman does not apply to affidavits in inferior Courts.

2. That the affidavit was insufficient in not stating a cause of action.

Judgment reversed, and nonsuit ordered.

A. A. Stockton, Q.C., for plaintiff.

Barnhill, for defendant.

BARKER, J., In Equity. [May 18.

IN RE MERRITT'S ESTATE.

Application by trustees for removal—Costs.

Where trustees applied to be removed on the ground that the managing trustee was advanced in years and intended to remove from the province, the costs of the application were ordered to be paid out of the estate.

J. Roy Campbell, for the applicants.

Full Court.] [June 3.

EX PARTE SARAH MCKINNON.

C.T.A. conviction—Magistrate having jurisdiction through good information and summons Court will not look into evidence.

An order nisi for a certiorari to remove a conviction under the C.T.A. was granted on the ground that the information and summons were for an offence committed between 28th Nov. and 15th Dec., while the conviction was for an offence between 28th Nov. and 1st Dec., and the evidence showed the offence was committed between 1st Dec. and 15th Dec.

Held, following *Ex parte Daley*, that the magistrate, having jurisdiction by virtue of a good information and summons, certiorari was taken away, and the Court could not look into the evidence. Order discharged.

M. G. Teed, in support of order.

Gregory, Q.C., contra.

Full Court.] [June 11.

EX PARTE ANDREWS.

Action for seaman's wages—Affidavit necessary to give jurisdiction.

A seaman brought suit before the County Court Judge at St. John under s. 52 of the Seamen's Act, to recover wages. A summons was issued without a sufficient affidavit being filed, but a good affidavit was supplied during the progress of the rial and after the first had been objected to.

Held, that the Judge had no jurisdiction to issue the summons or try the cause without a proper affidavit being first filed.

Rule absolute for certiorari to remove the judgment, MCLEOD, J., dissenting.

Palmer, Q.C., in support of rule.

H. A. McKeown, contra.

Full Court.] [June 11.

IN RE ANNING ESTATE.

Executors' liability to account for counsel fees in an equity suit involving the estate.

In the distribution of an estate the executors retained $1,000 to meet the expenses of a pending equity suit, and paid out counsel fees to the extent of $500. In the final disposition of the equity suit the executors were decreed out of the fund in Court all their costs and expenses, including all counsel fees, but they did not collect the counsel fees, and allowed the fund in Court to be distributed without making any claim thereto.

Held, that they were liable in the final distribution of the $1,000 in the Probate Court to account for the $500 counsel fees paid by them, as it was their own fault they had not collected this amount out of the fund in the Equity Court.

Appeal from Probate Court allowed.

Palmer, Q.C., in support of appeal.

Skinner, Q.C., contra.

Full Court.] [June 11.

PHILLIPS *v.* PHILLIPS.

Action for negligence—Brought in the name of one of several tenants in common.

This was an appeal from a judgment recovered by the plaintiff in an action in the County Court of Queen's County, for damage caused to his land by the spreading of a fire through defendant's negligence. Plaintiff was one of several tenants in common, but it appeared in evidence that the others were under agreement to convey their shares to him.

Held, that the action was properly brought in the plaintiff's name without the others joining.

H. A. McKeown, for plaintiff.

C. A. Stockton, for defendant.

Full Court.] [June 11.

EX PARTE MAYBERRY AND ROGERS.

Liquor License Act—Mandamus—Evidence as to there being a license in parish at the passing of the Act.

S. 19, sub-sec. 6, of the Liquor License Act of 1896 provides that no tavern license shall be granted in any ward or parish in which at the time of the passing of the Act there were no licensed taverns. The applicants applied for a license in a parish in which a license—the only one in the parish—had been granted under the Liquor License Act of 1887 to a dealer, who had died before the passing of the new Act and before expiry of his license. The latter's legal representatives did not obtain within one month after deceased's death the written consent of the Chief Inspector, countersigned by the warden, for the continuance of the business, as required by s. 42 of the Act of 1887, which section declares that in case of the death of a licensee before the expiration of his license, "the same shall ipso facto become forfeited and be absolutely null and void to all intents and purposes whatsoever unless his legal representatives obtain" consent, etc., as aforesaid. A number of the ratepayers of the parish petitioned against the granting of a license to the applicants, and, although none of the petitioners appeared before them at their meeting for the consideration of the application and the point as to there being no license in the parish at the time of the passing of the Act was not raised, and, notwithstanding the inspector recommended the granting of the license, the Board of Commissioners refused the application. An order nisi was thereupon obtained for a mandamus to compel the Board to grant a certificate for a license to the applicants on an affidavit which set forth inter alia the existence of a license in the parish at the time of the passing of the Act. On the return of the order counsel showing cause read an affidavit setting forth the death of the licensee and the transfer of his license to one Lovely. There was no allegation that deceased's representatives had not obtained consent for the continuance of the business as required by the above in part recited section.

Held, VANWART, J., dissenting, that in the absence of evidence negativing the required written consent to the continuance of the business, the Court must assume that the license was a valid one. The mandamus, however, was refused on the ground that the applicants were not entitled to a certificate for a license without a hearing on their application, the Court intimating that had the motion been for a re-hearing, they would have granted it.

Thos. Lawson, in support of the order.

G. F. Gregory, Q.C., contra.

Full Court.] [June 11.

QUEEN *v.* SEIVEWRIGHT.

Mortgages on real estate are personal property.

Held, that mortgages on real estate are personal property, and, having been assigned by the defendant, against whom a writ of extent was issued, before the issue of the said writ, were not affected thereby.

Gilbert, Q.C., and *Geo. Gilbert*, jr., for assignees of the mortgagees.

White, Q.C., Solicitor-General, for the Crown.

Full Court.] [June 11.

TAYLOR *v.* EMPLOYERS' LIABILITY INSURANCE CORPORATION.

Condition in accident policy requiring notice of accident not a condition precedent.

Held, on demurrer, that a condition in an accident insurance policy requiring notice to be given to the company within thirty days of the accident or death of the insured was an agreement and not a condition precedent, following *Stoneham* v. *Ocean Accident Insurance Co.*, 19 Q.B.D. 237.

Judgment for plaintiff on demurrer.

Pugsley, Q.C., and *A. Geo. Blair*, jr., for plaintiff.

Hugh H. McLean, for defendant.

Full Court.] [June 11.

EX PARTE GEORGE WALLACE.

The laying of an information—The commencement of a prosecution in a C. T. A. case.

In a C.T.A. case there was a conviction for a sale on Nov. 20th, 1896. The information was laid on Feb. 19th, 1897, but the summons was not issued until March 22nd, 1897, and more than three months after the alleged offence.

Held, that the laying of the information was the commencement of the prosecution within the meaning of s. 106 of the Act.

Rule nisi for certiorari discharged.

M. G. Teed, in support of rule.

J. W. McCready, contra.

Full Court.] [June 11.

THE QUEEN *v.* EARLE.

Succession Duties Act—The retroactive provision of the amending Act of 1896.

The Legislature in 1893 passed an amendment to the Succession Duties Act of 1892, providing that where property went to strangers in blood resident out of the province, double duty should be payable thereon. The testator died in 1892, after the passage of the original Succession Duties Act, and before the passage of the amending Act, but in 1896 the Legislature consolidated and amended the Succession Duties Act, s. 29 of the new Act providing that all the provisions thereof should "be applicable to the case of any and all persons who have died since the passing of the Succession Duties Act of 1892."

Held, that the retroactive section was valid, and that the estate of the defendant was liable to double duty.

White, Q.C., Solicitor-General, for the Crown.

Skinner, Q.C., and *A P. Barnhill* for the defendant.

COUNTY COURT—ST. JOHN.

[Feb. 8.

BRAYLEY *v.* MORRISON.

Practice—Parish Court—Entry of judgment—C.S.N.B., c. 60, s. 25.

The action was tried before a Parish Court Commissioner with jury, and verdict rendered for the defendant on the 20th of October, but judgment was not entered up, and no adjournment was made. On the 11th of December following the Commissioner entered judgment. By s. 25 of c. 60, Con. Stat., it is provided that an adjournment shall not extend beyond one month.

Held, that the judgment should be set aside, as it could not be entered except on a day to which the Court adjourned.

Coster, for the plaintiff.

Chapman, for the defendant.

Province of Manitoba.

QUEEN'S BENCH.

TAYLOR, C.J.] [May 28.

REGINA *v.* CROTHERS.

Liquor License Act. R.S.M., c. 90, s. 35—Cancellation of license—Appeal from commissioners — Criminal procedure — Quashing conviction — Jurisdiction of Single Judge—Full Court.

Held, following *Regina* v. *Beale*, 11 M.R. 447, that an application to quash a conviction even under a Provincial Statute, must be made to the Full Court and not to a single judge, as such an application is criminal procedure, and the provincial legislature has no jurisdiction to make laws altering the practice therein.

After the decision of the Full Court in *Crothers* v. *Monteith*, see ante p. 90, and vol. 32, p. 681, the defendant, contending that the commissioners had cancelled his license improperly, sold intoxicating liquor and was convicted, and then applied to have the conviction quashed, contending that the action of the commissioners could be reviewed on the application, and that they had acted on insufficient evidence.

Held, that the action of the license commissioners in cancelling a license under s. 35 of the Liquor License Act, R.S.M., c. 90, cannot be reviewed by this Court, as no appeal is provided for against any decision of the commissioners.

Wade, for applicant.

Maclean, for the Crown.

TAYLOR, C.J.] [June 5.

PATERSON *v.* BROWN.

Election petition—Disclaimer—Municipal Act, ss. 215 and 247-252.

Appeal from the Judge of the County Court of Portage la Prairie, declaring the election of the respondent as mayor of the town of Portage la Prairie void, on the ground of want of property qualification.

After the election and before the filing of the petition the respondent had delivered to the clerk of the municipality a disclaimer under the provisions of s. 249 of the Municipal Act.

Before the filing of the petition, the petitioner and respondent were again nominated as candidates for the vacant seat, but the new election, which resulted as before, did not take place until the service of the petition.

The petitioner did not claim the seat for himself.

Held, by analogy to the former proceedings in quo warranto, that after disclaimer a petition could not be proceeded with unless the seat was claimed for some other candidate. *Queen* v. *Murney*, 5 U.C.L.J., 87; *Queen* v. *Blizzard*, L.R. 2 Q.B. 55; Short on Informations, page 146; High on Extraordinary Legal Remedies, s. 633.

The words "complained of" in s. 247 are equivalent to "petitioned against."

Appeal allowed and petition dismissed with costs.

Anderson, for petitioner.

Cooper, Q.C., for respondent.

Full Court.] [June 5.

SAULTS *v.* EAKET.

Contract—Evidence—Parol evidence—Consideration.

Appeal from the decision of the Judge of the County Court of Boissevain, giving the plaintiff a verdict for the price of a binder sold to the defendant under a written order.

The order had the following endorsement, "Should anything happen to crop that no binder is required this order is null and void," and the evidence showed that either at the time of the negotiations or after the order had been signed a verbal agreement had been made between the defendant and the plaintiff's agent to the effect that if the binder did not work to the defendant's satisfaction he might return it.

Defendant had returned the binder saying he was not satisfied with it.

Held, following *Mason* v. *Scott*, 22 Gr. 592, that, if the condition sought to be proved was agreed to at the time of the signing of the order, parol evidence of it could not be received, as it would be a variation of, and contradictory to, the written contract; and if subsequent to the signing of the order, no consideration for the plaintiff entering into it had been proved; and that the plaintiff's verdict should be upheld.

Lindley v. *Lacey*, 17 C.B.N.S. 578; *Morgan* v. *Griffiths*, L.R. 6 Ex. 70; *Erskine* v. *Adeane*, L.R. 8 Ch. 766, distinguished on the ground that in each of these cases the verbal agreement sought to be proved was collateral and on a subject distinct from that to which the written contract related.

Appeal dismissed with costs.

Howell, Q.C., and *Metcalfe*, for plaintiff.

Munson, Q.C., for defendant.

KILLAM, J.] [June 21.

BUCKNAM *v.* STEWART.

Statute of Limitations, R.S.M., c. 89—Mortgage—Possession.

Issue under Real Property Act between mortgagee and purchaser of equity of redemption.

Held, that in case of a mortgage upon vacant land the Statute of Limitations does not begin to run against the mortgagee till actual possession is taken by some one, whether adverse or not. *Smith* v. *Lloyd*, 8 Ex. 562; *Agency Co.* v. *Short*, 13 A.C. 793; *Delaney* v. *C.P.R.*, 71 O.R. 11, followed.

Tupper, Q.C., and *Phippen*, for plaintiff.

Haggart, Q.C., and *Wilson*, for defendant.

Province of British Columbia.

SUPREME COURT.

DAVIE, C.J. In Chambers. [May 7.

BURTON *v.* GOFFIN.

Promissory note—Blank spaces in note—Bills of Exchange Act, 1890, s. 20.

This was a summons by the plaintiff for judgment under Order XIV. The defendant Goffin made a promissory note for $1,500, payable at six months to the order of ———, carrying interest until paid, at the rate of ——— per cent. per annum, and in this incomplete state the note was endorsed, first by the defendant W., and then by the defendant M., who likewise underneath their endorsement signed the following memorandum: "For value received we hereby waive protest, demand and notice of non-payment." In this condition the endorsers delivered the note to Goffin, who filled in (as W. and M. said, without their knowledge,) the name of W. as the payee, and "twelve" as the yearly rate of interest, and then discounted the note with plaintiff, who said he had no knowledge or suspicion that the note was not in the precise form as that in which it left the endorsers' hands.

It was contended by the endorsers that the filling in of these blanks was a material alteration vitiating the note.

Held, that the endorsement by W. would have been meaningless and useless, except upon the supposition that his or some other endorser's name was to be filled in as payee, and as to the rate of interest, if it was uncertain at what rate the note would be discounted, most likely the rate would be left blank.

Judgment for plaintiff for principal and interest according to the apparency of the note.

Robert Cassidy, for plaintiff.

L. P. Duff, for defendant.

North-West Territories.

NORTHERN ALBERTA JUDICIAL DISTRICT.

SUPREME COURT.

ROULEAU, J.] [April 30.

MCLAUGHLIN *v.* WIGMORE.

Illegal contract—Right of action.

Summons to strike out the statement of claim as embarrassing and not showing any reasonable cause of action. It was claimed that the defendants have made a seizure of certain cattle under a chattel mortgage made by the plaintiff and one McArthur, which chattel mortgage was given under the following circumstances: McArthur being committed for trial on a charge of theft before the Supreme Court, applied to the defendants to become his bail, and the said defendants so agreed to the plaintiff, and McArthur would execute the chattel mortgage to indemnify the defendants against their liability on the recognizance. The defendants entered into the recognizance and the plaintiff and McArthur the chattel mortgage.

The plaintiff charged that the said chattel mortgage was given for an unlawful purpose and contrary to public policy, and was therefore absolutely void. The defendants relied on the maxim "In pari delicto melior est conditio possidentis."

ROULEAU, J.: The general rule is that neither of the parties to an illegal contract can invoke the aid of the Court either to enforce the execution of the contract or to recover damages for the breach of it, if executory, or to disturb the condition of affairs when the contract is once executed. This rule is amply enforced in the following cases: *Ex parte Butt*, 4 Ch. Div. 150; *Taylor* v. *Chester*, 38 L.J. Q.B. 225; *Biggs* v. *Lawrence*, 1 Rev. Rep. 740; *Thompson* v. *Thompson*, 6 Rev. Rep. 151; *Edgar* v. *Carden*, 7 Rev. Rep. 433; *Re Bell*, 14 Rev. Rep. 571; *Simpson* v. *Bloss*, 17 Rev. Rep. 509; *Roberts* v. *Roberts*, 20 Rev. Rep. 477; *De Wiltz* v. *Hendricks*, 27 Rev. Rep. 660, and *Emes* v. *Barber*, 15 Grant 679. In this case there is no doubt that the contract was illegal because the chattel mortgage was given for an illegal object. It is illegal to become surety in any criminal proceeding in consideration of taking a chattel mortgage or other security, because it takes away from the law and the authority of the law what was intended to be given to it: *Hermann* v. *Jeuchner*, 54 L.J. Q.B.D. 340. The plaintiff in this case can only support his action by saying: "I can recover, because my cattle and horses are seized under a chattel mortgage which was illegal." This is exactly what the authorities already cited say that a party to an illegal contract cannot do. On the face of the statement of claim the plaintiff bases his action to recover back his horses and cattle on an illegal contract, and therefore his action must be dismissed with costs.

Nolan, for plaintiff.

Muir, Q.C., for defendant.

Book Reviews.

A Treatise on the Law of Evidence as administered in England and Ireland; with illustrations from Scotch, Indian, American and other legal systems, by His Honor the late Judge Pitt Taylor. Ninth edition; by G. Pitt-Lewis, Q.C., with notes as to American Law by Charles F. Chamberlayne. In two volumes. London; Sweet & Maxwell, Ltd., 3 Chancery Lane. Boston, Mass.; The Boston Book Company. Toronto; The Carswell Co. Ltd., 1897.

This is the most recent, up-to-date edition of this standard work, in part re-written and reduced in size, containing 1,234 pages of text, instead of 1,600, as in the last edition. It claims to be, and is, an edition specially useful on this side of the water. A number of American and some few Canadian decisions are referred to and are introduced in appropriate places under the heading of American notes. This edition eliminates much of the details of practice, dealing mainly with the substantive law of evidence. Much space has been saved, possibly at the sacrifice of style and rhetorical effect, by "remorselessly pruning all exuberance of expression." One has in the past read "Taylor on Evidence" with so much pleasure that this pruning process, though necessary, seems almost sorrowful.

A new system has been adopted in the citation of cases. The table of cases refers for the first time to every report of each case which can be ascertained to exist, whilst in the body of the work where the case is cited it simply refers to the year when the case was decided. The reader has, therefore, to refer from the page where the case is noted to the table of cases; much space is, however, saved, and on the whole this new arrangement seems a good one. It is very desirable to have the date of the decision given in the citation, as the value of a case largely depends upon whether or not it is of recent date.

The preface says that the table of cases is to be prefixed to each volume. This, however, has not been done. This is a serious defect which should be remedied without delay.

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NEW CURRICULUM.

FIRST YEAR.—*General Jurisprudence.*—Holland's Elements of Jurisprudence. *Contracts.*—Anson on Contracts. *Real Property.*—Williams on Real Property, Leith's edition. Dean's Principles of Conveyancing. *Common Law.*—Broom's Common Law. Kingsford's Ontario Blackstone, Vol. 1 (omitting the parts from pages 123 to 166 inclusive, 180 to 224 inclusive, and 391 to 445 inclusive). *Equity.*—Snell's Principles of Equity. Marsh's History of the Court of Chancery. *Statute Law.*—Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.—*Criminal Law.*—Harris's Principles of Criminal Law. *Real Property.*—Kerr's Student's Blackstone, Book 2. Leith & Smith's Blackstone. *Personal Property.*—Williams on Personal Property. *Contracts.*—Leake on Contracts. Kelleher on Specific Performance. *Torts.*—Bigelow on Torts, English edition. *Equity.*—H. A. Smith's Principles of Equity. *Evidence.*—Powell on Evidence. *Constitutional History and Law.*—Bourinot's Manual of the Constitutional History of Canada. Todd's Parliamentary Government in the British Colonies (2nd edition, 1894). The following portions, viz: chap. 2, pages 25 to 63 inclusive; chap. 3, pages 73 to 83 inclusive; chap. 4, pages 107 to 128 inclusive; chap. 5, pages 155 to 184 inclusive; chap. 6, pages 200 to 208 inclusive; chap. 7, pages 209 to 246 inclusive; chap. 8, pages 247 to 300 inclusive; chap. 9, pages 301 to 312 inclusive; chap. 18, pages 804 to 826 inclusive. *Practice and Procedure.*—Statutes, Rules and Orders relating to the jurisdiction, pleading, practice and procedure of the Courts. *Statute Law.*—Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

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NOTE.—In the examinations of the Second and Third Years, students are subject to be examined upon *the matter of the lectures* delivered on each of the subjects of those years respectively, as well as upon the text-books and other work prescribed.