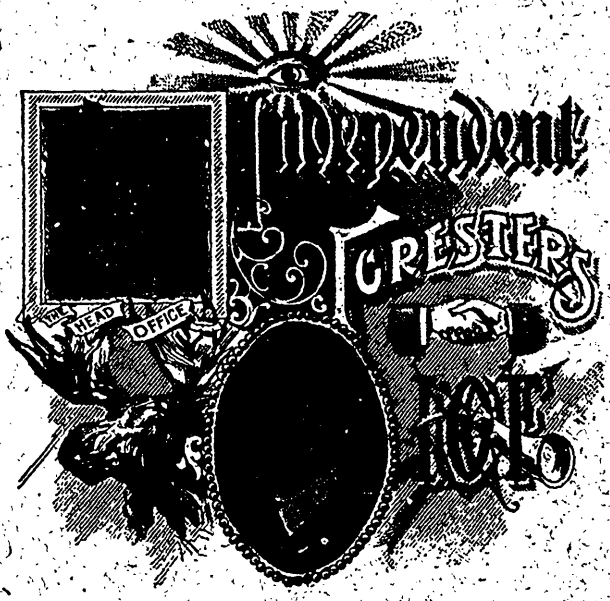
Vol. III. NOVEMBER. No. 9

The BARRISTER

CONTENTS.

THE BARRISTER,
59 Victoria Street, Toronto, Canada.

ASSESSMENT SYSTEM.



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18	$0.60	$7.20	31	$0.73	$ 8.76	44	$1.20	$14.40
19	.61	7.32	32	.74	8.88	45	1.30	15.60
20	.62	7.44	33	.75	9.00	46	1.40	16.80
21	.63	7.56	34	.76	9.12	47	1.60	19.20
22	.64	7.68	35	.78	9.36	48	1.90	22.80
23	.65	7.80	36	.80	9.60	49	2.20	26.40
24	.66	7.92	37	.82	9.84	50	2.50	30.00
25	.67	8.04	38	.84	10.08	51	2.60	31.20
26	.68	8.16	39	.86	10.32	52	2.70	32.40
27	.69	8.28	40	.90	10.80	53	2.85	34.20
28	.70	8.40	41	.95	11.40	54	3.00	36.00
29	.71	8.52	42	1.00	12.00			
30	.72	8.64	43	1.10	13.20			

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The Supreme Court surplus funds are invested in (1) Dominion Stock, $100,000; (2) Government Stock deposited in Great Britain, £20,000; (3) Debentures deposited in United States, $50,000; (4) Deposited with New Brunswick Government, $20,000; (5) Municipal and other Debentures, $93,170.64; (6) Real Estate and First Mortgages on Improved Property, $1,429,930.62; (7) large current deposit accounts with the Molsons Bank of Canada and the National Bank in London, England.

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The Barrister.

VOL. III. TORONTO, NOVEMBER, 1897. No. 9.

EDITORIAL.

The honor of knighthood has just been conferred upon Chief Justice Taylor, of Manitoba. The distinguished gentleman was created a judge of the Court of Queen's Bench of the Prairie Province in January, 1883, and succeeded Chief Justice Wallbridge in October, 1887. Prior to his elevation to the Bench he was Master in Chancery at Toronto.

CANADIAN BAR ASSOCIATION.

At the recent meeting of the Canadian Bar Association the following officers were elected:

Honorary President—Sir Oliver Mowat.

President—J. E. Robidoux.

Vice-Presidents—Nova Scotia, C. S. Harrington; New Brunswick, G. F. Gregory; Prince Edward Island, F. Peters; Quebec, F. Langelier; Ontario, O. A. Howland; Manitoba, John Sewart; British Columbia, Auley Morrison; North-West Territory, T. H. Ainault.

Secretary — Alexander Falconer, Montreal.

Treasurer—C. D. Carter.

Hon. Sir Oliver Mowat, Minister of Justice; Solicitor-General, Hon. Mr. Fitzpatrick and Right Hon. Sir Wilfrid Laurier, Premier of Canada, were elected Honorary Members of the Council.

The following is a list of the members to compose the regular Council for the coming year:

Ontario—A. E. Irving, J. R. Gowan, F. H. Cleryster, M. Watson, D. McCarthy.

Quebec—Hon. D. MacMaster, F. L. Beique, N. Martel, M. A. Languedoc, J. C. Noel.

Manitoba—Hugh J. Macdonald.

Nova Scotia—Sir C. H. Tupper, Mr. Wade, Senator Power.

Prince Edward Island—D. McKinnon, J. T. Mellish.

New Brunswick—Mr. Pugsley, Mr. Mullin.

British Columbia—Mr. Dodwell.

The next meeting will be held at Ottawa in May next.

LAWMAKING.

ADDRESS DELIVERED BEFORE THE AMERICAN BAR ASSOCIATION, AUGUST, 1897, BY HON. JOHN W. GRIGGS, GOVERNOR OF NEW JERSEY.

There is no one thing in all the various departments of government or business that is carried on with less scientific or orderly method than the making of laws.

This is not due to the fact that legislation is an obsolete necessity—rarely called for after the centuries of

growth and pruning and perfecting through which English law has passed. No age of English or American history has ever seen such activity and profusion in legal enactment as now prevail. With the Imperial Parliament at Westminster and the Federal Congress at Washington in almost continual session, there are nearly thirty Parliaments in the British Colonial system, and Legisiatures of forty-five American States holding annual or biennial sessions, all engaged in supplementing and amending the old laws and in devising and passing new ones. Besides these are countless cities, towns and boroughs, each with a legislative board exercising the power of lawmaking upon many important matters of municipal life and government. The steps of the citizens desiring to walk uprightly are beset with labyrinths of statutory enactments that are intricate and confusing, and often so conflicting that he must stumble, turn which way he may. Volume after volume of annual statutes is issued year by year in every State of the Union, so that it is a heavy task for the lawyer to keep familiar with the growing mass of statutory law of his own state, and no lawyer who values his reputation would think of giving an opinion upon the law in a sister state, unless it might be upon the construction of some one particular statute.

Wherever legislative bodies assemble, are found exceeding activity and willingness to exercise the fascinating power of lawmaking. The process of turning a mental conception into a law is so simple and so easy in the ordinary State Legislature that laws are losing the sanction of solemnity and moral authority that they once possessed. Besides the spirit of obedience as a patriotic duty, there was in former days a feeling of reverence and awe towards the body of the law as being the embodiment of the wisdom of government inspired by a very high regard for the welfare of society, and promulgated only upon most careful and mature consideration. The English race have been taught through centuries to regard human and divine law as closely related in their qualities of solemnity and authority. To them the inspiration and the type have been the law that was given on Mount Sinai, with the fire that burned upon it, and the thunders and lightnings, and the thick cloud upon the Mount, and the voice of the trumpet exceeding loud, and the people standing afar off, awe-struck. "Render unto Cæsar the things that are Cæsar's" is the Divine approval under which the Christian world has come to regard the law of the land as possessed of a Divine sanction. Law, as thus conceived, is not a thing to be changed with every whim and caprice of popular opinion. If it be, as the subject is taught to regard it, the expression of a wise and beneficent lawgiver, whether peophet, or king, or sovereign people, then it is the product of superior knowledge and wisdom, the best that the heart of man can conceive or his experience suggest. The law-giver who changes his mind with frequency, or is constantly engrafting new limitations upon his code, or trying experiments in government, cannot expect to retain the reverence and respect of his subjects for his wisdom or ability.

Who has not a feeling of admiration for those laws of the Medes and Persians, which even the partiality of their king could not change to save a favorite of the court? It stirs our Anglo-Saxon blood with a thrill of pride to read of the sturdy steadfastness of our ancestors at the Parliament of Merton. When urged by the ecclesiastics to adopt the rule of the civil law upon a certain matter, all the earls and barons answered with one voice: "*Nolumus leges Angliae mutare!*" We will not change the laws of England!

There is nothing so ancient and well approved in our legal system that

some one cannot be found to venture an improvement. The most novel and complicated problems are constantly arising from the advancement and development of business and science, of trade and social relations.

Nevertheless, it is true that we have no class of skilled legislators—men trained to construct laws as men are trained in all the arts and professions of the world. Every other department of business, of trade, of art, of commerce, has its skilled and experienced men, its engineers, its electricians, its statisticians, its architects, its designers. If a new railroad is to be built, the best route is carefully chosen, surveys are made, levels are taken, the cost is estimated, the probable traffic computed, all by men trained in such work. If an electric light plant is to be installed the services of an electrical engineer are called in, and the work is planned and constructed under his scientific and practical guidance. If water works are projected for a town, the hydraulic engineer first studies the water shed that is to furnish the supply, measures the flow of the streams, computes the probable consumption of water both for present uses and for long periods of future growth. He plans with scientific precision the reservoirs, the aqueducts, the system of individual distribution, and every step is taken by his advice and direction. So also if a system of sewerage is to be constructed, the same appropriate direction and advice are employed. If a public library is established, it is chosen, housed, shelved and distributed according to the principles of library practice established and approved by the wisest experts in that department. Men of business enterprise have come universally to recognize that every scheme of construction and development should be undertaken only under the guidance and advice of those whose business it is to furnish expert and professional assistance. In the construction of laws only is this skilled assistance considered unnecessary. We would not dare to build a house, or lay out a landscape, or do any of the ordinary works of construction in social or business life without the assistance of the expert and the specialist.

Interpretation of law is a science; law-making is not. For centuries there has been a lawyer class, whose special study and preparation have been directed to the understanding of the law as it is found, so that they might guide men by their counsel, or speak for them in court, or unravel for them the intricacies of legal systems incomprehensible to the untrained mind of the layman.

Judges construe the law, give it its proper application, say when this or that is within the law or without the law. To prepare one for such judicial service, especial study is deemed essential—*lucubrationes viginti annorum*. There are canons of interpretation by which, in a manner as nearly as may be of the nature of scientific processes, special tests are applied in order to ascertain the intention of the law-maker, the scope of the enactment, its limits and limitations. Judicial decisions are preserved as matters of value to furnish analogies of reasoning for other cases that come afterwards. The right to act as legal counsel, to represent parties in their legal demands in courts of law, is confined to members of the legal profession, admitted by special license, after due examination as to their learning and capacity, to what we call "the practice of the law."

But when it comes to the very act of making law, all the requirements of special study, experience, training, and legal insight, are absent. There is no skilled class of legislators, nor is there any school of legislation at which may be learned the theory and practice of constructing a statute.

Generally speaking, statutes are the products of unascertainable authors—children of nobody—unable

to boast of definite parentage. No one certifies to their completeness or accuracy. They are not prepared upon careful plans, submitted and supervised by expert architects of law-building. It is all chance and haphazard; the event must determine whether they are good or bad, whether they express the actual intent of the author or some intent entirely foreign to his will.

The actual practice of our ordinary State Legislatures is generally something on this wise: The members meet at the time appointed for the convening of the session. The attention of the members is engrossed with matters of a political nature. There is a political majority and a political minority. The choice of officers engages the largest interest of the members who are in the political majority. The appointment of standing committees comes next. There is no feature in the process of legislation that should be more potent and useful in the shaping of proposed laws and making them conform to the true standard of accuracy, correct expression and completeness, than the standing committee. The chief interest that it has for the legislator, unfortunately, arises from the influence and power that it can exercise in a political way upon the various subjects that come before it. In most instances there are matters that have been made the objects of campaign discussion and party platform, which obtain the paramount attention of the Legislature and attract the most prominent notice and discussion in the newspapers and among the people. Upon these subjects legislation is undertaken and carried through under the guidance of political leaders, often men of large experience and signal ability. Proposed laws of this kind are subject to careful examination so as to avoid failure from technical defects and to see that no interests are affected except such as are within the scope of the party plans and purposes. Often the help of able lawyers skilled in the work of drafting and constructing laws is called in by the political managers. Laws passed under this kind of influence are generally what may be called governmental in their character and relate to matters connected with the administration of State affairs or to public policies of unusual importance.

While these things are being transacted by the assembled legislators and engrossing the attention of the public, numerous miscellaneous bills are being introduced from day to day by the members and referred to the appropriate committees. Some idea of the variety of measures to be considered may be obtained from the list of committees usually provided for under the rules of an American Legislature. At the head of the list usually stands the Committee on Judiciary; next comes the Ways and Means Committee, which is charged with the supervision of the bills for raising revenue; then the Committee on Appropriations, which looks after the expenditure of the revenue; then a Committee on Cities; one on railroads and canals; one on corporations; one on agriculture; one on fisheries; one on commerce and navigation; and committees respectively on insurance, on banking, on labor, on manufactures, on pensions, and finally one on miscellaneous matters. This list gives no adequate idea, however, of the great variety of subjects concerning which somebody has a proposition of statutory change at every legislative session.

The number of distinct legislative propositions submitted in the form of bills at each session of our legislatures is enormous, and is becoming larger every year.

These propositions to alter the law of the land cover almost every conceivable object of government, every department of public and private life; they extend to all kinds of business, to trade, commerce, municipal government, sanitary and police regulations, to the domain of morals as well as to

the fields of speculation and political philosophy. Many of them were intended to correct errors in the legislation of the preceding year. Naturally the more careless acts one legislature passes the more blunders there will be for the next one to repair.

There is usually no general scheme of uniform and consistent statutory revision in these masses. They are heterogeneous, often absurdly contradictory, as where one member offered a bill requiring all electric wires to be laid underground within three months after the passage of the bill, and his colleague immediately offered another requiring all electric wires to be elevated at least fifty feet above the surface of the street.

The genesis of these bills, as well as their true purpose, is often covered with obscurity. Some, indeed most, are the products of those especially interested as individuals in securing additional legal powers or privileges for private or business purposes. Many originate from municipalities—not from the general consideration and mature purpose of the people of any city, but out of the opinions and particular ideas of single municipal officers; and are drawn up by the counsel of the city under the direction of its chief officer or governing body. Many are prepared and urged by members of the legal profession to meet real or supposed difficulties that they have met in cases in their practice. More than one important change in the law of divorce has originated in the desire of some lawyer to bring his client within its favorable conditions.

Other bills are the product of men with peculiar ideas, to whom nothing that is beyond their capacity for improvement, to whom no experience of ages, can teach anything, who have no respect for stability nor reverence for antiquity. They are the quack doctors of government with cure-alls for every inconvenience of life, no matter what its nature or origin.

Many of these bills, drawn with only one purpose in view by men lacking correctness of legal expression and unlearned as to the whole body of enactments relating to the subject, are unintentionally dangerous and disturbing unless carefully revised and pruned before their passage. They are cast upon the committees in confusing numbers. To revise them all is impossible. If manifestly absurd, they are generally suffered to die without the courtesy of a report or are reported adversely and killed. Some arouse influential hostility from affected interests and succumb to opposition. But under the pressure of the introducer, with his personal pride in the ward of his legislative guardianship. or because no positive evidence of harm appears, or under the processes of log rolling, by which the maxim "one good turn deserves another" is brought to bear upon the function of law-making, many measures that are useless and some that are positively vicious receive the assent of the majority and go to the Executive for approval. The practice is to hold these measures back to the closing days of the session, when the attention of the more careful and prudent is relaxed or occupied; then the flood gates are opened and new laws pour out in a torrent that is terrifying to the careful conservatism of the bar and the courts.

This excessive legislative activity is a feature of our own times. It has developed enormously within a few recent years. A comparison of the annual volumes of statutes of any particular state for the last twenty years will prove this.

Something of this increase is attributable to the great business development of the times, to the contributions of scientific discovery to the machinery of life.

The common law afforded no principle which by judicial extension could be made to regulate justly the business of telegraphy. City charters contained no provisions under which

electric or cable roads could be operated through the streets. To our ancestors came not even a dream that one day the human voice could be heard across thousands of miles of distance.

They had laws to punish witchcraft but none to cover the larceny of telegraph messages by wire tappers, or the theft of light by illicit connection with an electric circuit. As invention and discovery have added new processes and devices to the tool shop of civilization, novel adjustments of the laws have been required to regulate the business of the world to the improved conditions.

The masses of trivial legislation, of statutes uncalled for by any public inconvenience or necessity, go on increasing, confusing the citizen, embarrassing the lawyer, and perplexing the courts of justice with contradictions, inconsistencies, dilemmas, and floods of verbal turgidity.

Laws enacted one year are repealed the next, to give place to some new conception. The spirit of conservatism dies out in the fierce unrest of this busy age. Or these multitudinous strivings for change, for the mere sake of change in our laws, it may be said: "Age cannot wither them, nor custom stale their infinite variety."

The history of the English law reveals change and growth, but growth by slow and deliberate processes; not the quick growth that produces the soft wood of the moist and heated tropics, but the slow accretions by which we obtain the hardy fibre of the oak or the supple strength of the yew, a growth through years of storm and stress, roots deep sunk and sinking ever deeper into the soil, reaching out wider and wider, taking hold of rocks for greater firmness, tops rising ever higher above the undergrowth, with gnarls and knots indeed, but trunks that are sound at heart, and branches broad and green, and sheltering even in storm.

The contemplation of the history of the system of English law which we inherit is to the lawyer a cause of enthusiasm and a lesson in conservatism. To trace the growth of this system from the earliest beginnings, from the proto-plasmic cells, so to speak, of village and tribal customs among the primeval fens and forests of Saxony, or the bogs and crags of Jutland, on through centuries of progressive evolution upon English soil and under English skies until we see its mature development in that system of unenacted law which we call the common law, is an employment well calculated to arouse the admiration and enthusiasm of the lawyer and statesman as well as of the mere student of history. Modern scholars like Sir Henry Maine, Professor Austin, Doctor Stubbs and Professor Maitland, have done for the history of law what Darwin and his successors have done in the domain of biology.

The records of the old Germanic tribes, of their semi-barbarous successors in the conquest of Britain—of Angles and Saxons and Danes and Franks and Normans, and finally of the composite English race—records unearthed from the bone-caves of early literature, and from the dust-covered deposits of doom-books, statute rolls, court rolls, pipe rolls, patent rolls, assize rolls and original writs, have revealed to us the evolution of the common law from the earliest trivial forms in tribal or village custom through ever-advancing and expanding stages of progressive development, with the force of selection and adaptability always at work, until we see it the revered code of life and government for a great enlightened Christian nation, a code so compact with the principles of justice and liberty that it may well evoke the enthusiastic exclamation, "*Sto perpetua!*" with which its contemplation inspired the placid pen of Sir William Blackstone.

Not only have laws in the restricted sense as rules of conduct so grown

and developed by slow and gradual steps through centuries of national existence, but institutions of government and the machinery of justice have had similar courses of evolutionary development. The courts of chancery and exchequer can be traced back to their beginnings as developments of procedure without warrant of legislative enactment.

The common law is usually conceived to be the collection of rules and customs adopted in actual life among the people of the realm. It would be more correct to regard much of it as the result of judicial procedure and decision. The common law has developed without the pomp of legislative enactment, by the aid of what we know as "legislation by the courts."

There is room for improvement in the quality of the men selected as members of the state legislatures. Too much regard is paid to political qualifications and not enough to legislative ability. This is not the fault of the citizens; very often they get the best obtainable. There is a great failure on the part of men who are specially qualified by education and attainments to do their whole duty to the state by serving in the legislative bodies of the state and the city. I have observed that the people prefer to choose high-class public agents when they can get them. But the scholars and lawyers best qualified to guide and restrain legislation very rarely are willing to give their time to public service in the Legislature. On rare occasions they will come forth and serve the state with great zeal and benefit; but usually they confine their activity to criticising what less competent men have done. We need a larger contribution of the time and brains of our abler business men and lawyers, both in state legislatures and in the common councils of cities. Their expert knowledge and conservative habits will strike the enacting clause out of many a useless bill that otherwise would drift through on the tide that is more easy to float with than to stem. We need more legislators with moral and legal back-bone to stand up against all propositions that lack positive utility.

Public discussion, disclosing the harm that is resulting and must result from excessive and useless legislation, will be useful by awakening public sentiment and extending its influence to the membership of the legislatures.

In this work the Bar, always foremost in all that pertains to good government, can render most valuable service. They perhaps more than any other class are charged with responsibility in this matter; for it pertains directly to their own especial province. It was with the hope that I might secure the attention of the Bar of America to the reform of this evil—a reform which I have in my official capacity tried to effect in the legislation of my own state—that I have chosen this subject for your consideration.

In a large degree the faulty construction of our statutes is due to the legal profession; for there is no doubt that they are mostly framed by lawyers. But they are prepared in most instances by attorneys specially employed for particular objects, which being accomplished, little regard is paid to their relation to kindred laws or to their effect upon the general body of jurisprudence. The author of one bill proceeds to make a modification of the law which will effect his client's purpose, and takes no note of any others that may be striving for the amendment of the same law in other respects. So that there is no concert of purpose, no consultation, no consistency in style or in the use of legal expressions. There is needed a higher sense of responsibility among lawyers who engage in the drafting of bills at private solicitation; and there ought to be a more censorious attitude among legislators towards proposi-

tions for legislation that emanate from private sources.

I do not wish to enter the controversy which divides the partisans of codification and its opponents. It is a fairly debatable question whether it is better to have the body of the law comprised within a written code, or existing in the indefinite mass of the common law modified by miscellaneous and occasional statutory amendments. If our command of legal expression were sufficiently complete and precise, our knowledge exhaustive, and our knack of classification equal to that of the scientist, we might safely venture upon the reduction to written statutes of many subjects of general law. But, as has been shrewdly said by Sir Henry Maine, until we can produce a perfect statute, it is idle to expect a complete code. Half of the terror that would be inspired by the rude activity of the legislative propensity of the day is taken away by the reflection that there are few statutes of novel application which will stand the test of judicial criticism.

It is not to be expected that the high degree of knowledge, skill and care necessary to the revision or codification of any title of the general statutes, can be always obtained among the members of a legislature, busy as they generally are with matters of more or less political importance. Such work should be prepared with the thorough-going care and pains that pertain to the library and the study rather than amid the turmoil and excitement of a legislative session. It should be ready in advance of the assembling of the legislature, and carefully compared, revised and considered by several hands. Only a special commission can do this.

A censor of bills is not permissible under our system of legislation, but there can be a rule of public opinion, a sentiment of prudence that will enable every legislator to reject all measures not properly revised and corrected, all measures that have no positive public necessity to justify their adoption. It ought not to be enough that a proposed law does no harm; it should be required of it that it shall have the quality of positive benefit in order to justify its enactment.

There are some principles of legislative policy that are so plain and safe that they need only to be stated to be approved:

(1) Make sure that the old law is really deficient. Be careful to consider whether the inconvenience arising from the deficiency of the old law is of enough importance to deserve an Act of the Legislature to cure it.

(2) Be careful that the remedy be not worse than the disease.

(3) Avoid experiments in law-making, especially if recommended by men or parties who are void of knowledge or wanting in respect for established customs.

(4) Do not go on the idea that the world is out of joint, and you were born to set it right.

(5) Observe accuracy in the use of language, and avoid the use of ambiguous expressions.

The quantity of slipshod and unnecessary legislation has gone on increasing; the disease of excessive law-making has reached a degree of intensity sufficiently bad to justify an expectation of reaction. It is time that universal war should be made by the bench, the bar, and all orders of intelligence upon the notion that every misfortune, every inconvenience, can be cured by a law. The rules of business, the laws of trade, the operations of natural laws and processes, the qualities of human nature, the recurrence of the seasons, misfortune, sickness, death, the ten commandments—all these and many others are beyond the proper realm of legislative dabbling; yet many people seem to think that a simple act of the legislature can change them all.

Let us continue our labors for uni-

formity of law upon proper topics, for simplicity of procedure, for better legal education, for international arbitration; and at the same time let us strive to increase the spirit of careful conservatism which is the best preservative of good, to cry a continual alarm against trifling with the deep-laid foundations of our jurisprudence, and to preserve for our laws that sentiment of reverence and respect which hitherto has so distinguished the Anglo-Saxon race.

NOTES OF CASES, ONTARIO.

ROBERTSON, J.] [OCT. 15.

QUEEN'S COLLEGE v. LAFFERTY.

Practice—removing executors.

Motion by plaintiffs (by way of originating notice) for an order removing executors dismissed with costs because an action is necessary. Re Davis, 17 P. R., 187 followed.

H. M. Mowat for plaintiffs.

Masten for defendants.

* * *

DARTNELL, Co. J.] [AUG. 5.
ONTARIO.

GRAND TRUNK RAILWAY v. PORT PERRY.

Railway Assessment—Tanks and Platforms—Sub-tenant.

The assessment of the lands and other property of Railway Companies is governed by Section 29 of the Consolidated Assessment Act of 1892. The first legislation relating to the assessment of railway lands is contained in 16 Vic. Cap. 182, Sec. 21. The same clause is repeated in Section 30, Cap. 55 C. S. U. C. 1859. Section 29 of the present Act was passed in 32 Vic. Cap., 26., being Section 33 of that Act. It was simply a consolidation and re-arrangement of the law as it previously stood, and added a clause (sub-sec. 3) directing that the vacant lands held by the Company should be assessed as if held for farm or garden purposes. This Section has had judicial interpretation. The land occupied by the roadway has been held to mean land apart from, and independent of, the superstructure of the Railway. G. W. Ry. vs. Rouse, 15 U. C. Q. B. 168. Township of London vs. G. W. Ry., 17 U. C. Q. B. 262. Central Vermont Ry. vs. St. John, 14 S. C. R. 288; affirmed on appeal to the Privy Council, 14 App. Cas. 590.

A wharf used by a Railway is not assessable. Midland Railway vs. Village of Meaford, 4 C. L. T. page 501.

Lands used as railway will include not merely the line of railway, but also all land and works thereon, physically necessary for the use of the railway as a railway.

The platforms at a Railway Station, the roof covering the Railway, and the sidings are all lands used only as a Railway. London and North Western Railway Co. vs. Llandudno Improvement Commissioners, [1897] 1 Q. B. 287: 75 L. T. R. 659. South Wales Ry. Co. vs. Swansea Local Board, E. B. 189. North Eastern Ry. Co. v. Scarboro Local Board, 33 J. P. 244.

Under these authorities it would appear that the water tanks and platforms, &c., are not assessable apart from the land, and come within the same category as the rails, ties, fences, etc. [In the case under consideration the Assessor values the water tanks and platforms, and includes them in his assessment.]

The "average value of the land in the locality" has also been judicially passed upon, and has been held to mean that it is the assessed value of the lands immediately adjoining the railway that is to be taken into consideration.

C.P.R. vs. Ottawa, 18 C. L. J. 288.

C.P.R. vs. Harriston, 21 C. L. J. 333. Midland Ry. vs. North Gwillimbury, 19 C. L. J. 347. Midland Ry. vs. Uxbridge, 19 C. L. J. 330.

In the Village of Port Perry the Assessor's notice to the Company does not follow the form of assessment provided by Section 29. He gives the numbers of the lots and what he considers the acreage on these lots belonging to the Company, without discriminating between the vacant land, not used by the Company for Railway purposes, and the Station land and buildings; assessing the whole at $6,200; nor does he state, in his notice, if any part of the Company's lands has been assessed to tenants; the facts being that a portion of the land is occupied by one Vickery who is assessed for $200.00, and a further portion to one Delaporte who is assessed for $400.00, the assessor stating that he has included the land occupied by these parties in the assessment to the G.T.R. and assessed the tenants for the value of the buildings only. This is incorrect. He should have assessed both building and land to the tenants and deducted their assessment from that of the G.T.R.

The assessment will be varied accordingly.

E. Donald for appellants.

F. M. Yarnold for respondents.

MEREDITH, J.] [OCT. 19.

* * *

O'CONNOR v. GEMMILL.

Solicitor and Client—Services in Exchequer Court—Taxation.

Appeal from the ruling and certificate of the senior taxing officer at Toronto upon a reference to him of the matters in question in an action against a solicitor for an account, that a certain agreement as to remuneration for services made between plaintiff and defendant is not binding upon plaintiff and that defendant should bring in a bill of his costs. The services were in respect of a claim made in the Exchequer Court of Canada. Appeal dismissed with costs.

Arnoldi, Q.C., for defendant.

F. A. Anglin for plaintiff.

* * *

SUPREME COURT OF CANADA.] [OCT. 19.

THE QUEEN v. BRADLEY.

Civil Service Act—extra service.

Appeal from the judgment of the Exchequer Court. The respondent, who is chief reporter of the official reporting staff of the House of Commons, claimed $3,235.35 for services as reporter, editor, and secretary of the prohibition commission, under engagement by the late Sir Joseph Hickson, chairman of the commission. The Government contested that part of the claim which is in excess of the actual reporting authorized by order-in-Council, and also contended that no portion of the claim could be sustained by reason of the provisions of section 51 of the Civil Service Act, which forbids employes being paid extra salary or additional remuneration. Held that the provision of the Civil Service Act only prohibits extra payment being made for the specific services an employee is appointed to perform. Appeal dismissed with costs.

Newcombe, Q.C., for the Crown.

Hogg, Q.C., for respondent.

* * *

ARMOUR, C. J.]
FALCONBRIDGE, J.] [OCT. 23.
STREET, J.]

THE QUEEN v. VILLENEUVE.

Conviction—Liquor license law.

Motion by defendant to make absolute a rule nisi to quash summary conviction of defendant for that he, being duly licensed to sell intoxicating liquors, upon his shop premises in the town of Renfrew, did "permit" liquor sold to a purchaser to be drunk upon such premises contrary to the statute. Section 78 of the Liquor License Act, R.S.O., ch. 194 provides that "if any purchaser of any liquor from a person

who is not licensed to sell the same to be drunk on the premises, drinks, or causes or permits any other person to drink such liquor on the premises where the same is sold, the seller of such liquor shall, if it appears that such drinking was with his privity or consent, be subject," etc. Held, that the conviction was wholly bad upon its face in not describing the offence as described in the statute and it was impossible to amend it by the evidence, for there was no evidence whatever showing, either expressly or by any reasonable inference, that the drinking was with the privity or consent of defendant.

D. Armour for defendant.

Langton, Q.C., for prosecutor.

* * *

ROSE, J.] [OCT. 12.

RE LUCKHARDT.

Dower—equitable estate.

Motion for payment out of court to Michael Weichel of money in court, being the surplus proceeds of sale under a mortgage power. The motion was opposed by Amelia Luckhardt, who contended that the moneys should remain in court to answer dower. The question was whether the legal estate vested in the mortgagor so as to give the wife a right to dower. The husband made a contract for the purchase of the lands, and, as part of the purchase money was required to pay off an existing mortgage, so as to give vendor a first mortgage for the balance, he paid off the existing mortgage, and obtained a discharge. On the same day he obtained a conveyance and gave back a mortgage, in which his wife joined to bar dower. All three instruments were registered, the discharge first, the conveyance second, and the mortgage third. It was argued on behalf of the wife that the deed and mortgage remained in escrow until the registration of the discharge, which operated to convey the legal estate to the husband, and that the dower then attached. Held, that the deed and mortgage were executed and delivered without condition and not in escrow. It was only as grantee of the land that the purchaser obtained and registered the discharge, and he was not entitled to the legal estate save for the purpose of completing the transaction so as to vest it in the vendor as security for the unpaid purchase money. What the purchaser retained was the equity of redemption, which at that time was all the vendor had, and the mortgage he gave back was a mortgage of the equity, and the registration of the discharge subsequent to the delivery by the operation of the statute vested the legal estate in the vendor as mortgagee. The legal estate, therefore, was at no time in the husband, and the subsequent proceedings by which the property was sold prevented dower attaching under the statute, because the husband cannot die beneficially entitled. Nevitt v. McMurray, 14 A. R., 126, 139, Cameron on Dower p. 114, referred to. Order made for payment out of court to applicant.

J. C. Haight for the applicant.

W. Davidson for Amelia Luckhardt.

* * *

ARMOUR, C. J.
FALCONBRIDGE, J.
STREET, J.] [OCT. 11.

RE BARTRAM v. ROCKETT.

Mandamus—remedy by action.

Appeal from order of Boyd C., in the London weekly Court, in the nature of a writ of mandamus, commanding the appellant to pay to the applicant, the sum due to him by virtue of sec. 25 of the Ontario Voters' List Act, 1889, as clerk of the court for the revision of the voters' list of the village. The Chancellor held that it was the duty of the treasurer, under the statute, to pay the money, although the village corporation had a judgment for costs against the applicant. The

appellant contended that Mr. Bartram had a remedy by action, and was not entitled to a mandamus, citing re Whitaker and Mason, 18, O.R., 63. W. H. Bartram opposed appeal in person, and objected that no appeal lay. Appeal allowed with costs and order below set aside with costs, the court holding that Mr. Bartram had a remedy by action, and therefore mandamus did not lie, and this appeal did lie.

Held that the applicant had a remedy by action (Re Whitaker v. Mason, 18 O. R. 63) and therefore mandamus did not lie. Appeal allowed with costs and mandamus set aside.

W. E. Middleton for appellant.

The respondent in person, contra.

* * *

TRIAL COURT.] [OCT. 11.
ROSE, J.]

SMITH v. SMITH.

Contract for devise by will.

Action, by father against son, to recover possession of a farm, and for a declaration of ownership and for an account. In 1883 a parol agreement was made between plaintiffs an defendant, by which defendant was to remain on the farm, assisting to work and manage the farm, and in that sense assisting to support his father and mother during their lives, and in consideration thereof the plaintiff was to leave the farm to defendant by will. Held, not an agreement of which specific performance could be decreed. The father has elected to put an end to the agreement, and has required the son to give up possession of the farm, and has thus rendered it impossible for the son to perform his services in the future. The son is entitled, notwithstanding, to a charge upon the lands for his improvements, and for an allowance in respect of his services. Judgment directing a reference to ascertain the value of improvements and services, reserving further directions and costs.

G. W. Wells, Q.C., for plaintiff.

W. R. Riddell and W. E. Kelly for defendant.

* * *

MEREDITH, C.J.]
TRIAL COURT.] [OCT. 9.

DELISLE v. PARENT.

Tax Sale—Validity.

Action to set aside a sale of land for taxes. Held, that notwithstanding the provisions of section 188 of the Assessment Act, the lot in question not having been included in a list furnished by the Treasurer to the Clerk in the middle of January preceding the sale as required by statute, the sale was unlawful and invalid.

Donovan v. Hogan, 15 A. R. 432, followed.

H. T. W. Ellis for plaintiff.

Rodd for defendant.

* * *

FERGUSON, J.]
MEREDITH, J.]
BOYD, C.] [OCT. 7.

NEVILLS v. BALLARD.

Assault—Civil Action—Bar by Conviction.

Motion by defendant to set aside verdict and judgment for plaintiff in an action for assault tried before Armour, C.J., a jury at Hamilton, and to dismiss action. Defendant contended that the action did not lie because an information for the same assault was laid against the defendant before the action was brought, and the defendant was thereon tried and convicted of the assault by a Police Magistrate, and paid the fine imposed, all of which appearing by the certificate of the magistrate pleaded in this action, and proved at the trial, the action was barred by the provisions of the Criminal Code, sections 864, 865, 866. The charge laid against defendant was one of aggravated assault, under section 262 of the Criminal Code, and the trial was really upon indictment under the Summary Trials Act, by

the consent of the accused, and not upon summary complaint, under the summary conviction procedure, and sections 864, 865 and 866 do not apply, but section 799, which does not bar a civil action. Flick v. Brisbin, 26 O. R. 423 distinguished. Appeal dismissed with costs.

W. R. Riddell for defendant.

Mulvey for plaintiff.

* * *

ARMOUR, C.J.
FALCONBRIDGE, J.
STREET, J.

[OCT. 7.

SMITH v. McARTHUR.

Chattel Mortgage—Preference—Pressure.

Appeal by Louise Warner, the claimant, under a chattel mortgage in an interpleader issue from the judgment of the Fifth Division Court in the County of Victoria, in favour of the plaintiffs, the execution creditors, upon the trial of the issue.

Held that if the chattel mortgage were made for a pre-existing debt, and when the mortgagor was in insolvent circumstances to the knowledge of the mortgagee, still the mortgage was not on that account invalid, if made under pressure. Beattie v. Wenger, 24 A.R., 72, and cases there cited. Appeal allowed with costs, and judgment directed for claimant in court below, with costs.

Watson, Q.C.; and A. C. McMaster, for claimant.

Hopkins (Lindsay) and J. Parkes for execution creditors.

* * *

ROSE, J.] [OCT. 6.

GOFF v. STROHM.

Legacy—Payable When 24—Vesting at 21.

Motion for payment out of court to Mary Ethel Goff of her share of moneys paid in by the executors of the will of Joseph Goff, deceased, she having attained the age of 21 years, and the moneys representing the amount of a legacy given to her by the will in the following words :—"I give, devise, and bequeath to Mary Ethel Goff, daughter of George Goff, two hundred dollars and interest, to be paid on her 24th birthday, said amount to be placed in the Bank of Commerce, Simcoe."

Held, following re Young's Settlement, 18 Beav., 199, and Curtis v. Lukin, 5 Beav., 147, that applicant was entitled to the money on her attaining the age of twenty-one, the legacy having vested, notwithstanding the provision as to payment on her 24th birthday. Order made for the payment out of court as asked.

H. M. Mowat for applicant.

* * *

BOYD, C.
FERGUSON, J.
MEREDITH, J.

[OCT. 6.

THE QUEEN v. HAMILTON.

Criminal Law—Attempt—Evidence of Principal Offence.

Application by defendents, under section 746 of the Criminal Code, for leave to appeal from a conviction upon an indictment for abortion, or an attempt to commit such offence. The defendants were found guilty of the lesser offence. The Attorney-General gave a fiat for the initiation of the appeal, and did not oppose this application. The defendants contended there was no evidence to support a conviction for an attempt, apart from the evidence showing the greater offence, and as the jury apparently did not believe the evidence given to support the charge of abortion, the defendants should be discharged, or there should be a new trial. The court held that, as there was evidence to show the commission of the offence, the jury might believe a portion of it and properly convict for the lesser offence. Motion refused.

Osler, Q.C , and W. D. McPherson for defendants.

BOYD, C.
FERGUSON, J.
MEREDITH, J.
[OCT. 4.

RE JONES v. JULIAN.

Division Court—Jury.

Appeal from order of Meredith, C.J., in Chambers, dismissing motion by defendant for prohibition to the 3rd Division Court in the County of Essex.

Held affixing decision appealed from that all the facts really in dispute had been submitted to the jury, and having been found in favor of plaintiff, the judge had the power to enter the verdict upon the answers to questions submitted without objection, distinguishing re Lewis v. Old, 17, O.R., 610, and that by section 304, of the Division Courts Act, the practice of the High Court was applicable.

Wm. Douglas for defendants.

D. Armour for plaintiff.

QUEBEC.

SUPREME COURT OF CANADA.
[7TH JUNE, '97.

DEMERS v. MONTREAL STEAM LAUNDRY CO.

Second Appeal—Questions of Fact.

Where a judgment upon questions of fact rendered in a court of first instance has been reversed upon a first appeal, a second court of appeal should not interfere to restore the original judgment, unless it clearly appears that the reversal was erroneous. Appeal dismissed with costs.

Geoffrion, Q.C., and Goyette for the appellant.

McGibbon, Q.C., for the respondent.

BRITISH COLUMBIA.

SUPREME COURT OF CANADA.
[OCT. 19.

UNION COLLIERY CO. v. ATTORNEY-GENERAL.

Appeal—Question referred by Government.

The case arises out of a reference made by the Lieutenant-Governor of British Columbia-in-Council for an opinion of the Supreme Court of British Columbia as to the constitutionality of the British Columbia statute of 53 Vict., chap. 33, respecting coal mining regulations by which Chinamen were forbidden to be employed below ground. The full court in British Columbia heard the parties interested, and came to the conclusion that the legislation was within the jurisdiction of the Legislature. Appeal quashed for want of jurisdiction on the ground that the opinion or decision of the court below is not a final judgment or conclusive decision susceptible of appeal under the Supreme Court Act.

C. Robinson, Q.C., for respondent.

Hogg, Q.C., for appellants.

PERSONAL.

E. G. P. Pickup, of Carleton Place, is dead.

T. D. Ruggles, of Bridgetown, N.S., is dead.

Hon. Chief Justice Davie, of New Westminster, B.C., has been visiting in Toronto.

Mr. Daniel Coyle, the representative of the *Canada Law Journal* Co., has returned from a business trip to Philadelphia.

Mr. T. L. Church, who was recently called to the bar, has commenced the practice of his profession with an office in the Janes Building, Toronto.

Sir Charles Hibbert Tupper, ex-Minister of Justice, and Hon. Fred. Peters, Premier of Prince Edward Island, have formed a partnership, and will shortly locate in Victoria, B.C., and practice law.

Mr. Sydney B. Woods, who was recently called to the bar, has entered as a partner the law firm of Du Vernet & Jones, and the firm name will hereafter be Du Vernet, Jones & Woods.

Mr. Joseph Martin, ex-Attorney-General of Manitoba, was sworn in recently as a solicitor and as a member of the bar of British Columbia. Sir Henry Crease, as a bencher, presented Mr. Martin in a few remarks. After the usual oaths had been taken by Mr. Martin, the presiding judge wished him success.

BOOK REVIEWS.

THE LAW OF CHATTEL MORTGAGES AND SALES, by John A. Barron, Q.C., and A. H. O'Brien, M.A., Barrister-at-Law, Assistant Law Clerk of the Canadian House of Commons, 3rd edition, 1897: *Canada Law Journal Co.*, Toronto.

Probably no part of the law has undergone greater development and amendment in the nine years which have elapsed since the former edition of this work than that which is its subject matter, and no more important law book for the mercantile community and mercantile lawyers has appeared in Canada during that time. Although calling this the third edition, the authors point out that it is not a reprint or amendment of the last, but an entirely new work made necessary by the modifications which have taken place in the law. The statutes of every Province and of the North-West Territories relating to the subject are given with appropiate annotations and for Ontario the text of the new consolidation going into force on 1st January next is given in advance of the official promulgation of the new Revised Statutes. An examination of the work is all that is required to convince one that it will at once become a necessary adjunct to every lawyer's office. A very complete set of forms is added in an appendix. The learned authors deserve the congratulation and support of the profession for the thorough and able manner in which their laborious task has been done. All the Canadian cases and the more important English and American decisions are cited, including several of the former not elsewhere reported. That the work is up-to-date appears by the inclusion of several very recent cases such as *Bacon* v. *Rice Lewis* and *Kerr* v. *Roberts*, which have appeared only in the last few weeks.

GAME AND FISHING LAWS OF ONTARIO by A. H. O'Brien, M.A., Barrister-at-Law, 3rd edition, 1897. Toronto: *Canada Law Journal Co.*

This small pamphlet sold at the nominal price of twenty-five cents is issued under the authority of the Ontario Fish and Game Commissioners and gives in a form alphabetically arranged for ready reference a digest of the statutes, both federal and provincial and of the Orders-in Council and regulations relating to animals, birds and fish in the Province of Ontario as in force on 8th October, 1897. No one interested in this branch of the law can afford to be without this pocket volume of 31 pages.

GENERAL DIGEST (American and English) quarterly advance sheets; No. 3 to April, 1897; Rochester, N.Y., Lawyers' Cooperative Publishing Co., $4 per annum. pp.690.

This very excellent digest contains the latest case law of the United States up to the date of quarterly volume whether or not officially reported, with references to the first publication of the decisions. The permanent yearly volume follows later and includes all of the matter appearing in the quarterlies with citation of all publications where the full report appears whether official or otherwise.

FISHER ON MORTGAGES, 5th edition, (1897), by Arthur Underhill, M.A., LL.D., of Lincoln's Inn, Barrister-at-Law, London: Butterworth & Co., Toronto: *Canada Law Journal Co.*, pp. 995.

The original text of the late Mr.

Fisher's work on mortgages, which has long been a standard authority on the subject, has been retained except where an alteration has since taken place in the law and the alterations and additions by the present editor are distinguished in the present edition which is brought up to date and includes many cases decided in 1897. The work has been completely rearranged and entirely new chapters added on mortgage debentures, mortgages of choses in action, and mortgages by tenants for life and limited owners. Altogether it is a most valuable and complete epitome of the law of mortgages and securities. More than 900 new cases are added and the index is a model of completeness.

MISCELLANY.

"Now, your honor," argued the attorney in the court of Justice Brown, of Santa Rosa, "I move dismissal of this case on the ground that the *corpus delicti* has not been established."

Judge Brown rubbed his chin in a perplexed way, fixed his gaze on the ceiling for a moment, and then, clearing his throat, said: "Of course it is an old principle of law that the probator must correspond with the alligator, and in this case I am of the belief that the *corpus* is all right, but I don't know about the *delicti*."

"Your honor, I want that to go into the record," demanded the opposing counsel. "I want the record to show that your honor said the *corpus* is all right, but you do not know about the *delicti*."

Judge Brown realized that he had blundered and sat staring at the attorney for a moment. Then, pulling himself together, he said: "All right, let that go into the record, but you fellows know danged well I was only joking when I said it, and that will go into the record, too."—*San Francisco Post.*

MIXED METAPHOR IN THE WEST.—It is related that a Montana legislator, when some corrections in spelling and grammar in his bill were called to his attention by the committee, said: "Why, you fellows have mucilated it!" It was the same statesman who said, in addressing a committee of which he was a member: "The muddy slough of politics was the bowlder upon which the law was split in twain, and fell in a thousand pieces from the pedro of justice. Let us, then, gear up our lions, that we can go forth with a clear head."—*Chicago Law Journal Weekly.*

JUDGE—"Prisoner at the bar, have you anything to say why sentence should not be pronounced against you."

Prisoner—"Only this. I think you ought to hang the man the prosecution has been talking about; but the man my lawyer has told you about you ought to acquit, and beg his pardon for arresting him."—*Albany Law Journal.*

A LUDICROUS STATE OF AFFAIRS exists in Darlington, Ind. Rev. A. N. Cave, a young minister of that place, was recently admitted to the Montgomery county bar, and soon after announced to his townsmen that he would tender his legal services free to all in need of them. This aroused the ire of the village lawyer, Sam S. Martin, who now declares that he will preach free of charge to any congregation desiring his services.

Here is a legal dilemma.—Judge—Who owns the mule?

Casey—I own wan half ov him an' Fogarty owns the ithur, yer haner.

Judge—Then what's the trouble?

Casey—Fogarty won't let his half work.

Judge—Court's adjourned. I must look up the law.—*Judge.*