

**STRIKING OUT.**

See COMPANY, 1—PLEADING.

**SUMMARY JUDGMENT.**

See JUDGMENT.

**THEFT.**

See CRIMINAL LAW, 1.

**TRESPASS TO LANDS.**

**1. Trespass—Cancellation of Agreement for Sale of Land—Plaintiff not in Possession—Amendment of Pleadings.]**

—An action for trespass cannot be maintained unless the plaintiff has been in actual possession of the land.—An application to amend the pleadings by adding a claim for recovery of possession of the land was refused on the ground that to do so would give the plaintiff an entirely new action. *Leadley v. Gaetz.* (Court en banc, 1904), p. 98.

**TRESPASS TO THE PERSON**

**1. Trespass to the Person—Fire-arms—Evidence—Pleading—Amendment—Malice—Negligence—Damages.**

—In an action for damages resulting from the defendant shooting the plaintiff with a pistol.—*Held*, (1) Trespass to the person to be actionable must be either intentional or the result of negligence on the part of the defendant.—(2) Amendments to pleadings should be allowed unless the party applying shewed want of good faith or an injury would result to his opponent that could not be compensated for by costs or otherwise.—(3) It was immaterial in disclosing negligence whether or not the defendant knew that the pistol would go off. (4) That in estimating the damages to be allowed, the probable consequences of the injury should be looked to. *McLeod v. Meek.* (Wetmore, J., 1898), p. 431.

**TRIAL.**

See CRIMINAL LAW, 4—EVIDENCE, 2.

**TRUSTS AND TRUSTEES.**

**1. Receiver and Manager.—Liabil-**

*ity for Deficit Arising During Management—Default—Reasonable Care.]* *Held*, that the law requires of a receiver and manager the same degree of diligence that a man of ordinary prudence would exercise in the management of his own affairs.—*Held*, per SIFTON, C.J., and HARVEY, J., WETMORE and PRENDERGAST, J.J., *dissentiente*, that as it appeared upon the facts that the receiver and manager had exercised such supervision over the business as was possible for one in his position, he should not be held responsible for the deficit which had occurred under his management. The Court being equally divided, judgment of NEWLANDS, J., affirmed. *Plisson v. Diemert.* (Court en banc, 1905), p. 160.

**2. Resulting Trust—Intention of Purchaser at Time of Conveyance—Pleading]**—*Held*, that when it appears

that the actual purchaser by whom the purchase price is paid directs that the conveyance be made to a third party, intending that a beneficial interest in the land should pass to the person to whom it was conveyed, no trust results to the real purchaser by presumption of law, although no value is given by the third party.—*Semble*, per WETMORE, J., that while a question of law may be raised without being pleaded, yet the facts upon which such question of law is raised must be pleaded, and therefore it is not open to a defendant who has not pleaded fraud to set up that the plaintiff is precluded from obtaining the relief asked for by reason of fraud, evidence of which is brought out at the hearing.—*Semble*, that undue delay in the bringing of an action to have a resulting trust declared is strong evidence of an intention to convey a beneficial interest. *King v. Thompson.* (Court en banc, 1905), p. 204.

See EXECUTORS AND ADMINISTRATORS, 1

**VENDOR AND PURCHASER**

**1. Half-breed Scrip Certificate—Acquisition of Rights in—Purchase]**

—The payment of money to a half-breed entitled to land scrip, and the delivery of the scrip certificate by the half-breed to the person paying conveys to the latter no right in the certificates the transaction being no more than an