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ACCIDENT INSURANCE — See Insur., Accident.

ACTION.

LIMITATION OF — WHEN ACTION COMMENCED.”

An action is deemed commenced at the date of the summons which is served on the defendant, and, although a demurrer is sustained, to the petition, and leave given to amend, the action remains “commenced,” and the averment as to the discovery of the fraud within four years before the action was brought may be supplied in a subsequent amendment to the petition. — *Zieverink v. Kemper*, Ohio, 34 N. E. Rep. 250.

AGENCY — See Principal and Agent.

APPEAL.

TO PRIVY COUNCIL.

LEAVE TO APPEAL IN CRIMINAL CASE REFUSED — INDIAN PENAL CODE, S. 511.

Although in very special and exceptional circumstances leave to appeal in criminal cases may be granted, misdirection by a judge, either in leaving a case to a jury where there is no evidence or founded on an incorrect construction of the penal code, even if established, is insufficient for that purpose, especially where no miscarriage of justice has resulted. *Ex parte Macrea*. [1893] Appeal Cases, 346.

ASSAULT — See Damages 1.

ASSESSMENT AND TAXES.

TELEGRAPH POLES ASSESSED AS REAL PROPERTY — R. S. O., 187, c. 180, s. 6 — R. S. O., 1887, c. 193, s. 7.

An appeal by the company, from the judgment of a Court of Revision affirming an assessment for \$500 real property.

Senkler Co. J. The appellants are assessed for \$500 real property. The particular property thus assessed is stated by the assessor to be the plant of the company, meaning poles, wires, and instruments. It is contended by the appellants that under the judgment of the Court of Appeal in *Toronto Street Ry Co. v. Fleming*, 37 U. C. R. 116, this property is not liable to assessment.

In answer to this it is pointed out that the words “all land and personal property” in sec. 6 of R. S. O. 1877, c. 180 have been changed in s. 7 of R. S. O. 1887, c. 193 to “all property, and it is urged that this change was made to meet the suggestion of Mr. Justice Patterson on p. 127 of the report just cited, as to there being a general law that all property should be assessed.

Having carefully read and considered the judgment in that case, I am of opinion, although not by any means free from doubt, that this change in the wording of the action does not warrant the assessing of this property as real estate. Many of the reasons in the judgment seem still applicable, especially those pointing out the want of any proceeding to enforce payment of the taxes by sale.

I therefore grant the appeal and