SUPREME COURT DECISIONS

In the Supreme Court on March 26 the argument in Canada S.S. Lines v. Grain Growers Export Company was concluded. Judgment was reserved.

Treo Corset Company v. Dominion Corset Company was next heard. The appellant's action was for damages for infringement of its patent for the Treo corset. The Exchequer Court judge dismissed the action, holding the patent void for want of novelty.

The appellant claims for its patent that it is made on straight lines without gores or gussets; that it is made of elastic material and is unshaped to the wearer's body; that it furnishes support while permitting entire freedom of movement and retaining the natural shape.

Lafleur, K.C., and S. C. Wood appeared for the appellant; Cannon, K.C., for the respondent.

The case of Tyrrell v. Tyrrell was argued in the Supreme Court on March 28. The appellant (plaintiff) and the two respondents were brothers, and the respondents were executors of their father's will, and lived in Ontario, the plaintiff residing in Cincinnati, Ohio. The latter was informed of his father's death and that the property was left to the sons in equal shares. He also received a proposal for a division of the property, which was not carried out.

Later the respondent J. W. Tyrrell wrote plaintiff offering to buy his interest in the real estate for $1,000, which plaintiff agreed to do, executed a deed, and was paid the money. Later James Tyrrell sold his property for $13,800.

Some years later plaintiff visited the home town in Ontario and finding that the estate accounts had not been passed through the Surrogate Court, compelled the executors to pass them. Later he brought action to have his deed to James set aside as fraudulent and to recover his quarter share of the money in executors' hands.

The trial judge dismissed his action. The Appellate Division reversed him as to one item of $1,200, but held that the deed to James was valid and that a claim for another item of $175 was barred by the statute of limitations.

Judgment was reserved.

H. J. Scott, K.C., appeared for the appellant; Tilley, K.C., for the respondents.

The first case taken up in the Supreme Court on March 31 was Porter v. Hydro-Electric Power Commission. The Commission expropriated land of appellant and the parties could not agree as to the compensation. Under an Act of the Legislature, the Chief Justice of Ontario, on request of the Lieutenant Governor, appointed a sole arbitrator to determine it. The arbitrator awarded $3,400 as the amount appellant was entitled to. The appellant obtained leave and appealed to the Appellate Division of the Supreme Court of Ontario, which upheld the award. From their judgment this appeal was taken.

Judgment was reserved.

H. J. Scott, K.C., and Cleaver appeared for the appellants; C. C. Robinson for the respondent.

Canadian General Securities Company v. George was then taken up and proceeded with on April 1. The respondent entered into a contract to purchase lots from the Port Weller Securities Company, which assigned it to the appellants. The copy of the contract sent to the respondent was expressed to be made with the Port Weller Company "by its successor, the Canadian General Securities Company." The copy held by appellants did not contain the words quoted.

Respondent made several payments on the purchase price, but eventually made default and was sued for the balance. On the trial a defence was urged that was not pleaded, and he was allowed to amend and set up a collateral contract of warranty by an agent of appellants that the lots purchased could be resold at a profit. The court below gave effect to this defence and allowed a counter claim with a reference to ascertain the difference between the purchase price and the amount the respondent should have received on resale.

The appellants claimed that this collateral agreement was void under the statute of frauds, it not being in writing, and that it should have been incorporated in the contract for sale to be effective.

Judgment was reserved.

Lindsey, K.C., appeared for the appellants; G. F. Henderson, K.C., and McLarty for the respondent.

Ottawa Electric Railway Company v. Parent was next heard. The respondent in this case was working for Landreville, who carries on a cab, transfer, and moving van business. He was going with a van one day, sitting beside the driver, and in going along Bayswater street collided with a Somerset street car. Respondent was thrown off the van and badly injured.

On the trial of an action for damages the jury found that the company was negligent, as the motorman failed to apply the brakes soon enough, and that respondent was negligent in not warning the driver of the van that a car was approaching. On these findings the trial judge dismissed the action.

The Appellate Division set aside the judgment and ordered a new trial, and this appeal was taken from their judgment.

Tilley, K.C., appeared for the appellants; Auguste Lemieux, K.C., for the respondent.

The Supreme Court next morning, without calling on Mr. Lemieux, counsel for the respondent, dismissed with costs the appeal of Ottawa Electric Railway Company v. Parent.

Ottawa Electric Railway Company v. Racicot was next heard. The respondent, a woman 72 years old, was crossing St. Patrick street towards the south and had reached the farther rail when she slipped on the icy track and fell, with her left leg extending back over the rail. A car coming west ran over her leg, which had to be amputated. On the trial of an action for damages several witnesses testified that the car was about 150 feet away when plaintiff fell, and the jury so found, and also found the company negligent in that the motorman did not watch carefully and apply the emergency brakes at the proper time.

The plaintiff obtained a verdict of $3,000, which the Appellate Division maintained. The company appealed, claiming that the finding as to distance of the car from the place of the accident was unreasonable and that the damages were excessive.

The appeal was dismissed with costs, counsel for respondent not being called on.

Tilley, K.C., for appellants; Fripp, K.C., for respondent.

The next case taken up was The Town of Cobalt v. Timiskaming Telephone Company. This case raises the question of the right of a telephone company incorporated by letters patent to keep its poles on the street against the will of the municipality.

The municipality could give an exclusive right to the company for five years only. The town of Cobalt made an agreement allowing the company to erect and maintain poles on the streets for five years, the agreement fixing the rates for customers during the period of the franchise given to the company. After the five years expired the town council directed the company to take down its poles, and on refusal proceeded to itself take them down. The company brought action and obtained an injunction. The trial judge dismissed the action, but was reversed by the Appellate Division, which held that a non-exclusive right to use the streets could be given the company for any period and the contract between the parties indicating that it could extend beyond the five years.

Tilley, K.C., for the appellant; Scott, K.C., and Smiley for the respondents.

In the Supreme Court on April 3 the case of Magill v. Township of Moore and Moore Municipal Telephone Company was argued. The appellants are parents of James Magill, a young farmer who was killed by the alleged negligence of the respondents or one of them.

Deceased was driving a load of hay from a field on his brother's farm, and in passing under the telephone wires lost control of his horses and he was thrown off the load, receiving injuries from which he died not long after.

The appellants' case was that the lower wires had only been placed shortly before the accident; that they were too low to be safe and were not in conformity with the regulations of the Ontario Municipal and Railway Board; and that the deceased had to stoop to pass under and was in an awkward position for managing his horses at a place where there was a turn in the route towards the road.

Appellants had judgment at the trial which was reversed by the Appellate Division.

Judgment was reserved.

Tilley, K.C., and J. R. Logan for the appellants; Towers for the municipality and Weir for the telephone company.

The Supreme Court met March 25 to hear the appeals on the Ontario list for this season. Mr. Justice Brodeur could not sit in the first case and Mr. Justice Masten, of Toronto, was present as an *ad hoc* judge.

A motion was made in the case of In *re* Dominion Trust Co. McPherson v. Boyce, to have the liquidator appear by counsel and oppose the granting of the appeal. The motion was granted. Lafleur, K.C., for motion. G. F. Henderson, K.C., contra.

The case of The King v. British American Fish Corporation was then heard. In 1904 the Government of Canada, through the Marine Department, leased to the respondents for a period of twenty-one years fishery privileges in the Nelson river and other waters in the West, with a covenant that should the lessees conform to all the provisions of the lease and expend $100,000 in exploration and development of the territory it would be renewed for a further term of twenty-one years. In 1913 the Marine Department notified respondents that the lease was *ultra vires* of the Governor General in Council as no statute authorized the renewal. In 1915 respondents brought action for a declaration that the lease was valid and subsisting or what part is *ultra vires* and what valid.

The Exchequer Court held that the renewal clause of the lease was void but that it could be severed from the remainder which he upheld. The Crown appealed, claiming that severance results in making a new agreement as to the rest, or, in any event, the whole clause must be bad under the statutes governing the transactions.

Christopher C. Robinson appeared for the appellant.

Anglin, K.C., for the respondents. Judgment was reserved.

Canada S.S. Lines v. Grain Growers Export Co. was next heard. This was an action by the respondents, grain owners, on behalf of underwriters to recover damages in consequence of a cargo of grain shipped by respondents to be carried on a barge of appellants from Port Colborne to Montreal. The barge left the loading dock on the morning of 2nd May, 1915. In about an hour it was found to be leaking badly and had to be brought back and the voyage abandoned. Considerable part of the grain was found to be damaged by water and for this damage the action was brought.

When the barge was examined a hole was found in her port side and the trial judge held that it was caused by striking the corner of a dock when coming out from where the cargo was taken on in which case it would be from faulty navigation as to which the owner is exonerated by the Water Carriage of Goods Act; or caused by coming in contact with obstacles and so without negligence and by a peril of navigation. He dismissed the plaintiff's action, but his judgment was reversed by the Appellate Division.

Tilley, K.C., and S. C. Wood appeared for the appellants.

J. H. Moss, K.C., and C. C. Robinson for the respondents.

MINERAL SPRINGS OF CANADA DESCRIBED

Bulletin issued by Mines Branch says Waters equal to Europe's Spas.

In a bulletin issued by the Mines Branch, Department of Mines, and prepared by R. T. Elworthy, B.Sc., on the chemical character of Canadian mineral springs, it is stated that "it is probable that Canadian waters will be found equal in every respect to any of the famous European waters.

"Not more than a dozen mineral spring resorts in Canada are open at the present time," says the bulletin. "Several have been temporarily closed on account of the falling off in business due to war conditions.

"Passing from east to west, Abenakis Springs, Quebec, on the St. Francois river, in Yamaska county, is one of the few health resorts in Quebec. The springs yield saline waters and somewhat resemble those of Kissingen or Nauheim spas in Germany. A sanatorium is also established at Potton Springs, in Brome county, Que. Potton sulphur spring is a calcic, alkaline (sulphuretted) water.

"Caledonia Springs is the site of a hotel and sanatorium, under the management of the Canadian Pacific Railway. The hotel is situated close to three of the springs—the Caledonia saline, sulphur, and gas springs.

"A sanatorium is established at Carlsbad Springs, near Ottawa. The springs range from alkaline to strongly saline, with intermediate mixtures of the two types of waters.

"St. Catharines, near Niagara Falls, is one of the oldest of Canadian mineral spring resorts. One spring is reported to have been in use since 1812. Several sanatoria enable visitors to utilize the waters with the greatest benefit. The springs yield strongly saline, bromic, and iodic waters, and resemble the famous waters of Kreuznach, Prussia.

"A sanatorium is also situated at Winnipeg: the Winnipeg Mineral Springs Sanatorium, under the direction of Dr. A. D. Carscallen.

"The most famous of all Canadian springs is undoubtedly the group of hot sulphur springs at Banff, Alta. A sanatorium has been established in Banff for many years, and a modern hydropathic establishment has lately been built, besides the provision made at Banff Springs hotel for many of the special European baths and massage.

"There are seven hot springs in the neighbourhood of Banff. They may be all classified as moderately mineralized, calcic, sulphated, saline (sulphuretted) waters. Save in the Basin Spring water, calcium sulphate forms about 60 per cent, magnesium sulphate 18 per cent, and calcium bicarbonate about 15 per cent of the total solid matter in solution. The waters somewhat resemble those of the famous Bath Hot Springs in England, and would, therefore, be of similar therapeutic value.

"Harrison Hot Springs, famed in the West for their curative properties, have not as yet been examined, nor the noted Halcyon Hot Springs on Arrow Lake, B.C. Hotels are situated at both these springs."

PLOUGHING FIGURES FOR WEST'S 1919 CROP

The western office of the commissioner for immigration and colonization announces the following as the latest figures of summer-fallow, new breaking and fall ploughing for the 1919 crop:—

	Summer-fallow.	New breaking.	Fall ploughing.
Man.	1,475,000	182,400	1,834,000
Sask.	4,060,801	614,980	1,164,444
Alta.	1,667,753		2,200,000

It is stated that three new demonstration farms, which it was recently announced would be established in Alberta, will be located near Youngstown, Calgary and Raymond.

Officials of the Provincial Labour Department believe seeding work will be started in ten days or two weeks from now, if the weather continues fine. Men, however, are still scarce.