

REFEREE—*Continued.*

ferce has power under Act 53 Vict., c. 4, s. 160, to issue of his own motion a warrant for the parties to proceed. *GALLAGHER v. CITY OF MONCTON* 360

— *Report* — *Order of Reference not Attached to Report*—Act 53 Vict., c. 4, s. 170—*Entitling Evidence*—*Illegible Abbreviations in Evidence*—*Evidence in Lead-pencil Writing* — *Absence of Notice of Hearing before Referee to Parties Interested*—Act 53 Vict., c. 4, s. 160.] A motion to confirm report of a Referee, on a reference for the appointment of a guardian, recommending the appointment of the father, was refused where the order of reference was not attached to the report as required by Act 53 Vict., c. 4, s. 170, and the evidence taken by the Referee was not entitled in the matter, was in lead-pencil writing, contained abbreviations impossible to understand, and it appeared that relatives of the infant, except her father, had not been notified of the hearing before the Referee. *In re TURNER, AN INFANT* 318

— *Report*—*Exceptions*—*Costs* 191
See **COSTS**, 4.

REHEARING—*Decree*—*Application to vary* 494
See **DECREE**.

RES JUDICATA — *Probate Court* — *Probate of will devising real estate*—*Conclusiveness of, in Court of Equity*... 535
See **PROBATE COURT**, 2.

RESULTING TRUST—*Lumber license* — *Public sale*—*Purchase in trust* — *Parol agreement* — *Statute of Frauds* 54
See **FRAUDS**, **STATUTE OF**.

— *Purchase of land by husband in name of wife* 348
See **MARRIED WOMAN**, 2.

REVOCATION — *Power of attorney* — *Death of grantor* 126
See **POWER OF ATTORNEY**.

RIGHT OF WAY—*Agreement*—*Evidence*—*Use*.
See **EASEMENT**, 2.

RIPARIAN RIGHTS — *Diversion of stream* — *Dam*—*Injury from* — *Proof of damage* 303
See **DAMAGES**.

— *Floatable river* — *Use of stream* — *Mill owner* — *Timber driving* — *Obstruction*—*Injunction* 488
See **INJUNCTION**, 6.

SAINT JOHN CITY — *Charter of* — *Boundary of city at low water mark* — *Right of city to fishery beyond low water mark* ... 398
See **FISHERY**.

SECURITY FOR COSTS.

See **COSTS**, 5, 6, 7.

SHIP—*Charter party*—*Arrival of Vessel at Loading Berth*—*Notice*—*Lay Days*—*Demurrage*—*Delay in Loading Caused by Failure of Railway to Forward Cargo*—*"Customary Despatch"*—*Weather-working Days*—*Refusal to Sign Bills of Lading* — *Injunction*.] By charter party a vessel was to proceed to the port of St. John and load lumber; the vessel was to haul to loading berth as required by charterer; cargo was to be furnished at customary despatch; lay days were to commence from the time vessel was ready to receive cargo, and written notice was given to the charterer; bills of lading were to be signed as presented without prejudice to the charter party, and vessel was to have an absolute lien on cargo for demurrage. On arrival the vessel proceeded to the Ballast wharf when the master was notified by charterer that cargo would be furnished at the Government wharf. On August 28th the master mailed a notice to the charterer that vessel was at loading berth and would be ready to receive cargo on the 29th. When notice was sent vessel was not at loading berth. The cargo was brought to the berth by the Intercolonial Railway, but owing to pressure of traffic the railway was unable to commence forwarding cargo until a number of days after vessel was at berth, or to forward cargo thereafter on a number of days, and during which no loading took place. A claim for demurrage was made by the master, and he refused to sign bills of lading unless the claim was settled or notice thereof was inserted in bills of lading. An injunction having been obtained restraining the vessel from proceeding with the cargo to sea it was agreed that all questions in dispute between the shipowner and charterer should be determined in the injunction suit. *Held*. (1) that lay days did not commence to run until delivery of cargo began, as the notice should not have been given until vessel was at loading berth ready to receive cargo. (2) That under the evidence there is not in the lumber trade at the port of St. John a recognized custom to furnish cargo at a particular rate; that the words "customary despatch" meant that cargo should be furnished at the usual despatch of a charterer having a cargo ready for loading, and that this was at the rate of 35M. per weather-working day; any substantial work to count as half a day. (3) That delay in furnishing cargo was to be borne by charterer. (4) That master should have signed bills of lading, and that the injunction was properly granted. *CUSHING v. McLEOD* 63