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A CONSTITUTIONAL KING.

All loyal subjects of King George the Fifth of England, in all parts of the vast Empire over which he rules, are glad that with the courage of conscious innocence he has dragged into the fullest light a pestiferous slander and that the light has shewn its falsity.

We may not be interested in the Divine right of Kings, but we are all interested in this, that a worthy descendant of the greatest and best and purest of all sovereigns of all time now sits on the throne of Victoria the Good.

The King has by his action in this matter not only put an end to a vile slander, but he has also vindicated his right to be called a constitutional ruler, in that he stepped down from his throne and placed his kingly reputation as well as his personal honour in the hands of a jury of his people to be adjudicated upon by them in one of the ordinary courts of the land. The result has been what we all expected; and the slimy slander has shrivelled and disappeared in the fire of judicial investigation.

As to the contemptible reptile brood that hatched it, one of them is now spending a term, all too short, in prison, whilst his fellow conspirator, who, living outside its jurisdiction, could not be reached by an English court, has been disowned by his parents and stands disgraced in a country which despises him.

DOMINION LEGISLATION.

The third session of the eleventh Parliament of Canada commenced on November 17th, and will probably continue for another three months. Although none of the bills introduced have yet become law it will be interesting to refer, in more or less detail, to the more important of those which have been brought before Parliament to date.

As it is frequently the case, the majority of members who

have introduced legislation are lawyers; this is natural and proper. Further, one half of the bills introduced are fathered by lawyers. In the following pages we have, as a rule, mentioned the various members of the legal profession by whom the bills were introduced, but being usually on the side of the House farthest removed from the Government benches, their bills are not likely to become Acts of Parliament. It is to be regretted, that, no matter what party is in power, an opposition member has but little chance of impressing upon the Government his views respecting legislation required.

As with the Municipal Act in the province of Ontario, and the Municipal Code in the province of Quebec, the most fertile ground for improvement in Federal legislation is supposed to be the Railway Act. Among the amendments already proposed is one by Mr. Lancaster which requires a coroner to hold an inquest whenever a person is killed or receives injuries causing death on the property of, or by, or in a train of a railway company. It is alleged that, in some cases, coroners are not unduly anxious to cause trouble to the company. The labour members of Parliament would make more stringent the law respecting the payment of wages, and would not allow the company to withhold any part thereof for any reason whatsoever. One of last year's bills, of Mr. Sharpe (Ontario), which is again introduced would compel the company to make annual returns of money held and unpaid for one year, whether for money orders, cheques or transfers by telegraph, and requires the company to transfer the amount to the Minister of Finance. An amendment by Mr. Meighen demands that particulars respecting cattle guards in use be approved by the Railway Commission, and also is concerned with damages caused to or by cattle on a railway. Discrimination in the rates charged for suburban or commutation passengers' tickets is the reason for the bill introduced by Mr. Macdonell, somewhat on the line of the similar bill he introduced last year.

Free trade in railway charters may be said to be the text on which is based a bill introduced in the Senate to provide for the

incorporation of railway companies, which, by the way, is identical with a bill introduced by the same Senator last session. It provides that seven or more persons may, by agreement in writing, form themselves into an association for the purpose of constructing and operating a railway, and may obtain letters patent for such purpose. Notice of the agreement is to be given, similarly to the present law. Surveys may be made, and plans and estimates filed with the Board of Railway Commissioners, and if the Board is satisfied it may issue a certificate recommending the incorporation. Amalgamation and pooling with competing companies are forbidden. The tendency in recent years (as indicated in the Railway Committee of the House of Commons) is towards granting charters to those persons or companies who, it is believed, really intend to construct the railway, notwithstanding there may be an existing charter for a line which is almost parallel, but which has not been constructed.

The amendment to the Interest Act introduced last session by Mr. Miller was not then proceeded with. It provides that whenever any principal, interest or other money secured by mortgage is not paid when due, then if the person liable to pay or entitled to redeem gives the mortgagee one month's notice, in writing, of his intention to pay the money, and at the expiration of the time mentioned in the notice pays or tenders the money and interest to that time, or, at any time after it is so due pays or tenders to the mortgagee the money and interest to the time of payment or tender, and in addition one month's further interest in lieu of notice, no further interest shall be recoverable.

The Companies Act is not overlooked. Mr. Sharpe (Ontario) desires greater detail to be given in the directors' statement for the annual meeting, and very elaborate details must be given in the annual summary. The secretary of a company will no longer occupy a sinecure.

The Co-operative Credit Societies Bill introduced last session by Mr. Monk, and dropped, is again presented this year without any change. There seems to be a long-felt want for such a law in the province of Quebec, whereas delegations of retail mer-

chants are beginning to go to Ottawa in opposition to the bill. "Amongst ye be it, blind harpers!" Another bill, somewhat on the same line, entitled "An Act respecting Co-operation," which appeared last year, is again introduced; this time by Mr. Martin (Regina). The Government has manifested some interest in both these bills.

Among other commercial legislation is a bill of Mr. Carvell's, to fix the weight of a barrel of potatoes at 160 lbs. The want of such legislation has meant a loss of thousands of dollars to the farmers. A Government measure dealing with white phosphorus is for the stated purpose of minimizing the danger caused by white phosphorus in the manufacture of matches, and prohibits the importation of matches so made. Another Government measure prohibits the importation, manufacture, sale and use of opium, cocaine and morphine for other than scientific or medicinal purposes. The bill is introduced by the Minister of Labour, who conducted extensive investigations into the opium traffic in British Columbia the year before last. Exhaustive search may be made for the drugs, which may be seized, the burden of proof is put on the offender, and there are heavy penalties for offences against the Act. Offences may be tried before any judge of sessions, recorder, police or stipendiary magistrate, or two justices of the peace, and no conviction, judgment or order may be removed by certiorari into any court of record.

The bill respecting pure foods, introduced last session by Major Currie, is reintroduced this year. Very strict provisions are proposed. The bill applies to every article of food or drug which is packed, bottled, tinned or stored, or offered for sale, or prepared for meals. Complete provision is made for Government inspection, and there are heavy penalties for infractions of the law. The plan of the legislation seems to have been well thought out, and is worthy of careful consideration by Parliament.

Mr. Lewis seeks to prohibit the sale of poisons except on the authority of a medical certificate or prescription, and requires

all poisons to be in blue glass, three cornered or square bottles with rough corners, and the long list of poisons (most of which, by the way, can be found in the Ontario Pharmacy Act) has been amended.

The medical profession are seeking amendments to The Canada Medical Act. The subject has been on the tapis for some time, Dr. Roddick having introduced a bill several years ago looking to the unification of the provincial qualifications. The present bill openly recognizes homœopathic practitioners; they were entitled to this long ago. Under the present law rights and privileges are secured to "practitioners who now form a recognized distinct school in the practice of medicine." These words are now omitted, and homœopaths only are mentioned. The practical effect will be to exclude osteopaths.

The question having arisen as to whether the Exchequer Court has exclusive original jurisdiction to hear claims arising under provincial laws, an amendment is proposed by Mr. Barnard to make this clear.

The Daylight Saving Bill is again to the fore. We quoted it in full a year ago. The only change Mr. Lewis now proposes is to authorize municipalities to determine by by-law what time shall be the local time in such municipality. Last session the bill went to a committee, and much evidence pro and con was heard, but the bill was not pressed. The idea seems to be gradually gaining ground, and many employers of labour are now acting upon the principle.

The Dominion Elections Act is always a fruitful field for change. Mr. Macdonell has reintroduced his bill of last year regarding the candidates' deposit, and to make polling day a public holiday. The bill also extends the hours of polling. Another bill by Mr. Sharpe (Ontario) requires the deputy returning officer to exclude from the polling booth all persons not entitled to be present; there appears to be no such provision at present. Mr. Conmee, who is recognized as an authority on elections, reintroduced the bill, which we referred to last year, to enable a railway employee to vote at any divisional point on his railway. The

practical difficulties in the way of such legislation are too great to make it advisable that the bill should pass.

Mr. Lewis has reintroduced his bill respecting wireless telegraphy on ships, which requires sea-going passenger ships over 400 tons, and freight ships over 1200 tons, to be equipped with wireless apparatus. The same member has also reintroduced his bill requiring ships in inland waters to be marked with a discs, and with lines indicating the position of each deck. The load lines too must not be submerged.

It is an old complaint that "tipping" is an outrage, and largely on the increase, but it has not been taken seriously until now, when a bill has been introduced by Mr. Lewis entitled "An Act to prevent the giving and taking of Gratuities," which, by the way, only applies to the form of gift commonly known as a gratuity or tip. By this bill if any male employee corruptly accepts or attempts to obtain any gift as an inducement or reward for shewing favour to any person in relation to his employer's business, and any person corruptly giving any such gift, is guilty of an offence. It will be noticed that it is confined to *male* employees, so that the fair sex is still able to obtain the desired douceur. It is improbable that such a bill will pass, but even if such were the law we fear it would be no more effective than the common notice, "Please do not tip the waiter."

Mr. Barnard seeks to prevent a gill net license being granted unless the grantee is a British subject residing in the province and "is capable of fulfilling the requirements as to stature and chest measurement provided by the regulations governing the admission of volunteers to the Naval Volunteer Force." The restriction, so peculiarly worded, is obviously aimed at the Japanese.

The inspection of railway locomotive steam boilers is desired by a bill standing in the name of Mr. Pardee. The idea has much to recommend it.

The Commission of Conservation is the body responsible for a bill introduced by Mr. Monk respecting water-powers. It is desired to prevent any water-power, easement, servitude,

right of user or usufruct upon or about any river or water-course controlled by the Crown being alienated, except by a lease for a period not to exceed fifty years. Any alienation must be recommended by the Commission, and before doing so full information must be obtained. Every transfer of a lease must be approved by the Governor in Council. Other extensive restrictions are provided. If the principle of the bill is adopted many changes will undoubtedly be made in its passage through Parliament.

The Juvenile Delinquents Act is amended to provide for the case of children other than Protestants and Roman Catholics. The intention is to include the Jews.

The numerous accidents resulting from fools with guns has suggested to Mr. Lewis an amendment to the Criminal Code, by which every one shall be guilty of an indictable offence and liable to two years' imprisonment who injures by shooting any person, although the person charged believed the object he was aiming at was a deer, moose, or other animal.

The "undesirable immigrant" has not escaped Mr. Lewis' eagle eye. Having been unsuccessful last year, he is again trying to prevent bowie knives and revolvers being introduced by this class of immigrants, and deportation is provided for. He also thinks it advisable that a permit should be granted by the chief of police or a magistrate before a revolver may be purchased, and makes it a criminal offence to sell one to a person who is intoxicated, or of unsound mind, or under the age of eighteen. He would also make it unpleasant for any person wounding another with a revolver, knife, stiletto or razor. Italians and coloured people will please take notice.

The Immigration Act which came into force last year is still in a transition stage, and must probably remain so for a while. The influx of immigration has caused unforeseen difficulties, and judicial decisions also have necessitated government amendments this session.

The most important measure thus far is undoubtedly the Bank Act. Every ten years provision must be made for a

renewal of the charters and corporate powers of all banks, which only exist for the period fixed by statute. On the first day of July in this year all existing charters expire. The necessity for their renewal gives an opportunity to consolidate the Act and make such amendments as have been found necessary. The more important of the changes will now be mentioned:

Provision is made for an external audit of the bank's affairs by the shareholders if they, or a small minority of them, desire it. Under the present system there is an internal audit by which the directors and management keep in touch with the bank's business. The new audit proposed is for the information of the shareholders, the real owners of the bank. In England the large joint stock banks have, by statute, a similar audit.

The bill makes changes with respect to the organization of banks. It is now made clear to subscribers for stock that they are undertaking a double liability. The necessary amount subscribed must also be paid in cash by the subscribers before the organization can take place. If, when a charter has been obtained but the provisional directors have failed to get the bank organized within the time limited by the Act, no part of the funds collected shall be disbursed for commissions or salaries among the promotors or provisional directors unless the subscribers themselves consent thereto. Some existing banks still have fifty dollar shares; these may now be converted into one hundred dollar shares without the necessity of obtaining a special Act.

No material changes have been made with regard to the business and powers of banks; only some slight modifications appear. A bank may lend money to a receiver duly authorized to borrow, and the lending bank may take security in such form and upon such property and assets as the court may allow. By a recent decision it was held that planks and boards were not included under the expression "products of the forest." It had been generally believed that they were covered by the Act of 1890. The expression is now defined to include timber and lumber of all kinds.

The administration of the law with regard to penalties and punishments for making false and deceptive statements in a return or document respecting the affairs of the bank has evidently been the reason for changes in this respect by the new law. Every president, vice-president, director, general manager and auditor is bound to make enquiries with regard to the accuracy of any account, statement, return, report, or document which these persons may prepare, sign or concur in. They must first obtain information which is reasonably adequate and sufficient to establish the facts, and they must believe that the account, return or report is true and correct before placing it before the shareholders or the Minister of Finance. The old form "to the best of my knowledge and belief" will no longer be accepted, but every reasonable means must be taken to ascertain the correctness of the document. The Bank of British North America, which received its charter directly from the Crown, is now brought under the provision provided for civil liabilities and penalties for making false and deceptive returns. This provision is not only reasonable but it is justified under the wording of the supplemental charter granted to that bank in 1870 by the Imperial authorities.

Section 156, which prescribes penalties for the use, without statutory authority, of expressions indicating that a banking business is being carried on, has been recast.

Changes of nomenclature now in use by banks have caused the expression "general manager" to replace "manager," the latter word only being used when the reference is to the officer in charge of a branch. The expression "cashier" has disappeared. The expression "chief office" now replaces the expression "head office," "chief office" and "chief place of business" which appear in miscellaneous fashion throughout the existing Act.

Many of the amendments will undoubtedly give rise to criticism and suggestions if for no other reason than that the banks were not consulted with regard to the amendments. To take an illustration we would refer to section 54, respecting the statement to be laid before the annual meeting. The amendment requires

that "the statement shall be signed on behalf of the Board by the general manager and three, at least, of the directors." At first blush this seems reasonable, but in practice where will be found three directors who can possibly vouch for "a clear and full statement of the affairs of the bank, exhibiting on the one part the liabilities of the bank, and on the other part the assets and resources thereof." If the general manager is dishonest, and the innocent director signs as heretofore (being misled by the statements of the manager upon subjects with which he, the director, cannot possibly be familiar) the director will, if the statement contains any false or deceptive statement, be held to have wilfully made such false or deceptive statement, and shall be responsible for all damages sustained by any person in consequence thereof, even although the signature of such director appears or is stated or intended to express consent, approval or concurrence merely according to the best of his knowledge and belief.

The provisions respecting audit proposed by the new Bank Act are not generally considered satisfactory. The alternative propositions seem to be: (*a*) the shareholders' audit, above-mentioned; (*b*) Government inspection; (*c*) an inspection by an inspector appointed by the Bankers' Association. A bill by a private member proposes that the Minister of Finance may, at least once in every two years, have an inspection made of any bank by an auditor or inspector appointed by him for that purpose. This method is objected to by the bankers on the ground that whenever such an inspection is made it thereby injures the reputation and standing of the bank inspected. The Bankers' Association would undoubtedly prefer to be authorized to appoint an inspector who might examine whenever the association thought it desirable. The association would take the responsibility, and no reflection need be cast upon any bank, and if upon such inspection irregularities were found, the banks themselves would, in most cases, be able to call a halt, and, if necessary, force gradual liquidation, and thereby protect better the interests of the shareholders and creditors. The recent suspension of a

bank—now in every one's mind—has suggested that, instead of the inspector of a bank being under the authority, in any way, of the general manager, he should report to the directors instead of to the manager (which is now done in the case of at least one bank in Ontario), but, having once been appointed, an inspector might only be dismissed by a vote of two-thirds of the directors. This would make his position stronger and tend to insure a more reliable and searching report. That more stringent legislative provisions and better protection to the public are required, few will question, in view of the three recent lamentable failures in Canadian banking institutions.

A Government measure of considerable importance is entitled "An Act to regulate the manufacture, storage and importation of Explosives." The title sufficiently indicates the purpose. The bill will be made to apply to all factories and explosives other than those the property of the Crown or the Government. The British Act has been largely followed. There are strict provisions as to inspection of explosives and the factories where they are made, as well as of places where they are stored. The many serious accidents in recent years caused by the unauthorized or careless use of explosive materials is more than sufficient justification for this legislation, which is under the control of the Minister of Mines, who may direct inquiries to be made into the cause of explosions.

Legislation affecting particular trades is not common, but an instance this session is a bill to compel railway companies to give better protection and accommodation to carpenters employed on the railway.

Some bills of commercial interest should be noticed. One by Mr. Lewis, based on the United States law, would limit the time within which food may be sold after being in cold storage. It may be difficult to determine this time, and the fitness of an article for food must depend largely upon the efficiency of the cold storage plant. The other bill referred to requires that when flour or meal is sold or offered for sale by the bag there shall be plainly marked or stamped on the bag the name of the manu-

facturer or packer, and his address, and the weight of the contents and the tare of the bag.

A consolidation of the Manitoba Grain Act and certain portions of the Inspection and Sale Act is being made by the Government. This is a matter of considerable importance to the North-West.

The Government is wisely acquiring and retaining for Dominion public parks greater areas than were formerly included in the reserves set apart by the Forest Reserves Act and the Rocky Mountains Park Act. The purposes of forest reserves and forest parks are identical in many respects, while they differ in others. A forest reserve is withdrawn from occupation, whereas a forest park is primarily intended for the purposes of pleasure. It has been found necessary to change the boundaries of the existing reserves, and also to include a forest reserve covering the eastern slope of the Rocky Mountains. Power is also taken to expropriate property of private owners within an area desired for a park.

Much additional legislation is foreshadowed, but there is sufficient already in evidence to keep the Federal Parliament very busy for some months to come, apart from the time expected to be occupied in debating the reciprocity agreement, in discussing the report of the Printing Bureau investigation, and in the consideration of many other matters which loom up largely in the political horizon.

JUDGES AND ROYAL COMMISSIONS.

The undesirability of appointing judges to preside over Royal Commissions and do work outside the range of their proper judicial duties has, as we gather from our contemporary, *The Law Notes*, again come up for discussion in England. It would appear that Lord Justice Vaughan Williams, one of the Lord Justices of Appeal, was one of three Commissioners to report on matters connected with the Welsh Church. He seems to have disagreed with the other Commissioners, for they complained

of him as follows:—"We regret to be compelled to call attention to one difficulty which has made our task a most unenviable one. We refer to the behaviour of the chairman. He has throughout acted in an arbitrary and overbearing manner both in his personal relation with individuals of the Commission and in his conduct as chairman." Whether there was any cause for this complaint or not is immaterial, but such language shews that it is extremely undesirable that any one holding so high a position as does Lord Justice Vaughan Williams should be placed in such a position as to allow him to be open to such a charge. We have had similar experiences in this country and the dignity of the Bench—a most important asset in any country—has been thereby lowered. Moreover there is no need for it. There are plenty of men at the Bar as capable of doing efficient work on Commissions as any judge on the Bench. A criticism which would be hurtful so far as the Bench is concerned would only be a helpful advertisement to a man at the Bar. It is most undesirable, and it is so admitted by everyone, that a judge should be taken away from his court duties to do extra judicial work. It is only the exigencies of party politics that demand this objectionable practice.

THE CREATION OF PEERS.

The proposed exercise of the prerogative of the creation of peers in the event of a deadlock between the Houses of Parliament will render it of interest to recall the principal cases in which there has been recourse to this method of bringing the Houses into harmony. Towards the close of the reign of Queen Anne the creation of a batch of twelve peers simultaneously was advised in order to secure the assent of the Lords to the Peace of Utrecht. This was the first case in which the prerogative of the Crown had been used in the House of Lords to secure a majority for the Government. In Ireland, in 1776, eighteen Irish peers were created in a single day. The peerages were known to be the result of an engagement to support the

Government by their votes in the House of Lords. Before the second reading of the Reform Bill of 1832 no fewer than sixteen new peers had been created, to correct in some measure the notorious disproportion between the two parties in the House of Lords, and King William IV. gave his consent in writing to Earl Grey for the creation of such a number of peers as would be sufficient to ensure the passing of that measure, but his personal influence with the peers was successfully exerted to induce them to desist from further opposition.

Lord Brougham, who was Lord Chancellor in Earl Grey's Reform Cabinet, a generation later, in 1863, placed on record his feelings and his deep anxiety as a constitutional lawyer in reference to this step, in which he was, of course, participating to the full with the Prime Minister. His reflections are of singular interest, but, in reading his apprehensions of the consequences of the creation of peers to carry the Reform Bill, we must remember that the idea of placing a bar, by statute or otherwise, to the veto of the House of Lords on general legislation was not then even the subject of contemplation, however academic. "In recent times," wrote Lord Brougham in 1863, "the Government of which I formed a part, backed by a large majority of the Commons and the people out of doors, carried the Reform Bill through the Lords by the power which His late Majesty had conferred upon us of an unlimited creation of peers at any stage of the measure. . . . Nothing could be more thoughtless than the view which they took of this important question. They never reflected for a moment upon the chance of their soon differing with Lord Grey and myself—a thing which, however, speedily happened; never considered what must be the inevitable consequence of a difference between ourselves and the Commons; never took the trouble to ask what must happen if the peers thus become our partisans should be found at variance with King, Lords and people; never stopped to foresee that, in order to defeat our oligarchy, a new and still larger creation must be required": (Brougham's British Constitution, pp. 268-269).—*Law Times.*

REVIEW OF CURRENT ENGLISH CASES.

CONFLICT OF LAWS—CONTRACT TO ISSUE DEBENTURES—FLOATING CHARGE ON FOREIGN LAND—CLOG ON REDEMPTION—CHARTERED COMPANY—BREACH OF CHARTER—ULTRA VIRES.

British South Africa Co. v. *De Beers Con. Mines* (1910) 2 Ch. 502. In this case the Court of Appeal (Cozens-Hardy, M.R., and Farwell and Kennedy, L.JJ.) have affirmed the judgment of Eady, J. (1910) 1 Ch. 354 (noted ante, vol. 46, p. 303). The facts were that the defendant company had advanced to the plaintiff, a South African company, a large sum of money on the security of debentures which were a floating charge on the plaintiffs' property, and had stipulated for, and the plaintiffs had granted them, an exclusive right to work certain diamondiferous ground belonging to the plaintiffs as part of the security for the loan. The loan had been paid off, but the defendant company claimed to be still entitled to an exclusive right to work the diamondiferous ground. The plaintiffs claimed a declaration that the agreement was a clog on redemption and was void, or at all events was now at an end. The defendants contended that the "clog doctrine" did not apply to lands in South Africa, and that the case must be governed by the law of the situs of the land. For the plaintiffs it was argued that the clause was void not only on the ground of its being a clog on redemption, but also on the ground that it was ultra vires, because the plaintiffs were prohibited by their charter from granting a monopoly; that the contract was made in England and was governed by English law. The Court of Appeal upheld the plaintiffs' contention that it was an English contract and was therefore governed by the English law, and that the agreement constituted a clog on redemption, notwithstanding that the land affected was in a foreign country, where the doctrine did not prevail. It, therefore, became unnecessary to consider the question of ultra vires.

LANDLORD AND TENANT—COVENANT NOT TO ASSIGN WITHOUT LEAVE—CONSENT NOT TO BE WITHHELD FROM "A RESPECTABLE AND RESPONSIBLE PERSON"—LIMITED COMPANY A "PERSON."

In *Wilmott* v. *London Road Car Co.* (1910) 2 Ch. 525, it may be remembered that Neville, J., held (1910) 1 Ch. 754 (noted ante, vol. 46, p. 453) that a limited company could not be "a

respectable and responsible person" within the meaning of a covenant by a lessee not to assign without leave, the lessors agreeing not to withhold consent to an assignment to "a respectable and responsible person." The Court of Appeal (Cozens-Hardy, M.R., and Moulton and Farwell, L.JJ.) have now held that he was wrong, and that a limited company is a legal "person" and may be both "respectable and responsible."

WILL—CONSTRUCTION—DEVISE IN STRICT SETTLEMENT—TRUST FOR ACCUMULATION FOR PERSON WHO SHOULD BECOME ENTITLED TO REAL ESTATE—DISENTAILING DEED EXECUTED BEFORE EXPIRATION OF PERIOD FIXED FOR ACCUMULATION—RIGHT TO ACCUMULATION.

In re Trevanion, Trevanion v. *Lennox* (1910) 2 Ch. 538. In this case Joyce, J., was called on to construe the will of a testator who had devised his real estate to a trustee for his wife for life and after her death for his sons successively in tail male with remainders over, and he also directed that for a certain period the trustees should accumulate the rents and profits and hold the accumulations for the person who at the expiration of the said period should under the will be entitled to the possession and enjoyment of the real estate. The widow died, and before the period for accumulation had expired, the first tenant in tail executed a disentailing deed whereby he became absolutely entitled in fee simple, and the question was whether he was entitled to the accumulations or whether he must wait till the end of the period fixed for accumulation, and the learned judge held that the effect of the disentailing deed being to give him an absolute title to the land there could consequently be no other person who could become entitled under the will except himself, his heirs, or assigns, and, therefore, that he was entitled to the immediate payment of the accumulations, and that the trust for accumulation could no longer be enforced and he was entitled to be let into possession.

PRACTICE—ORIGINATING SUMMONS—PERSON CLAIMING UNDER RESULTING TRUST, WHERE DECLARED TRUST VOID FOR ILLEGALITY —RULE 765(A)—(ONT. RULE 938(A)).

Re Amalgamated Society of Railway Servants (1910) 2 Ch. 547. This was an application by originating summons by settlors to enforce a resulting trust on the ground that the trust they had declared by an instrument in writing was void for illegality.

The defendants took the preliminary objection that under Rule 765(*a*), (see Ont. Rule 938(*a*)), a settlor claiming by way of resulting trust in consequence of the illegality of the trust declared by him, is not a cestui que trust under the "trust of that instrument" and, therefore, not within the rule, and Eady, J., gave effect to the objection, and held that an action was necessary.

WILL—TRUST FOR ACCUMULATION TO MEET LIABILITIES UNDER LEASE—ACCUMULATION ACT, 1800 (THELLUSON ACT) (39-40 GEO. III. c. 98), ss. 1, 2—(10 EDW. VII. c. 46, ss. 2, 3 (ONT.)).

In re Hurlbatt, Hurlbatt v. *Hurlbatt* (1910) 2 Ch. 553. In this case the validity of a trust for accumulations beyond the statutory period was in question. A testatrix had devised leaseholds to trustees upon trust that they should yearly for the residue of the terms of years for which she held the property accumulate one-fourth of the rents and profits, which she directed to be invested, and that all dividends and income arising from such investments should be added thereto by way of accumulation, and that the same and all accumulations should be held as a reserve fund by the trustees to indemnify them against all claims for dilapidations which might arise in respect of the leaseholds, and, subject to such indemnity and claims, in trust for the equal benefit of her nephew and nieces. The testatrix died in 1879, and the 21 years allowed for accumulation by the Thellusson Act terminated in 1900. The last of the leases did not expire till 1909. One-fourth of the rents had been accumulated and the dilipidations had been paid for thereout. Warrington, J., following *Varlo* v. *Faden* (1859) 27 Beav. 255; 1 De J. F. & J. 211, held that the trust to accumulate until the end of the terms was valid, the trust being in the nature of a provision for payment of debts and therefore within the exception of s. 2 (s. 3 of Ontario Act).

SALE OF GOODS—IMPLIED WARRANTY OF FITNESS OF GOODS SOLD—PATENT OR TRADE NAME—SALE OF GOODS ACT, 1893 (56-57 VICT. c. 71), s. 14.

Bristol Tramways v. *Fiat Motors* (1910) 2 K.B. 831. By a contract in writing the plaintiffs bought from the defendants one Fiat omnibus which they had inspected and six Fiat omnibus chassis. The vehicles when delivered proved to be unfit to per-

form the work required of them. Lawrence, J., who tried the action, found as facts, that the vehicles in question had not a distinctive trade name, that the buyers relied on the defendants judgment; and that the vehicles were inadequate, and he gave judgment for the plaintiff, which the Court of Appeal (Cozens-Hardy, M.R., and Farwell and Kennedy, L.JJ.) affirmed, their Lordships holding that under s. 14 of the Sale of Goods Act there was an implied warranty that the goods were reasonably fit for the purpose they were required—and that the defendants were not protected from liability by the proviso relating to the purchase of goods known by a patent, or trade name, as to which there is no warranty except that they are in fact of the character contracted for.

SHIP — CHARTER-PARTY — OPTION TO CANCEL CHARTER-PARTY IF VESSEL DOES NOT ARRIVE BY FIXED DATE—TIME FOR EXERCISING OPTION.

Moel Tryvam Ship Co. v. *Andrew* (1910) 2 K.B. 844. In this case the defendants chartered a ship from the plaintiffs which was to go with all convenient speed to Newcastle, N.S.W., and there load a cargo of coal which the defendants bound themselves to ship. The defendants had an option, however, to cancel the charter-party if the ship had not arrived at Newcastle by December 15, 1907. The ship did not in fact arrive at Newcastle until 15 June, 1908. As soon as 15 December, 1907, had passed, the plaintiffs called on the defendants to exercise their option, but they refused to do so; but on the arrival of the ship in June, 1908, they then exercised their option and cancelled the charter-party. The plaintiff sued for a breach of contract, but Bray, J., who tried the action held that the plaintiffs were bound to send the ship to Newcastle notwithstanding it could not be got there by the date named, and that the defendants could not be called on to exercise their option until the ship was there. The action was therefore dismissed, and the Court of Appeal (Cozens-Hardy, M.R., and Farwell and Kennedy, L.JJ.) affirmed the decision.

SALE OF GOODS — DELIVERY IN INSTALMENTS — ACCEPTANCE OF FIRST INSTALMENT—REJECTION OF SUBSEQUENT INSTALMENTS —UNMERCHANTABLE—IMPLIED CONDITION AS TO FITNESS.

Jackson v. *Rotax Motor Co.* (1910) 2 K.B. 937 was an action by the vendor of goods to recover the price of goods which had

been rejected by the purchasers as being unmerchantable. The circumstances of the case were that the defendants had contracted to buy from the plaintiffs a quantity of motor horns to be delivered in instalments. The first instalment was received and accepted by the defendants, but subsequent deliveries were refused on the ground that the goods were unmerchantable, it appearing that owing to careless packing about one-half were dented, and they were badly polished. An Official Referee, who tried the action, found that the defects could be made good at a trifling expenditure, and gave judgment for the plaintiff for the price less the estimated cost of putting the horns in proper condition, and this judgment was affirmed by a Divisional Court (Darling and Bucknill, JJ.); but the Court of Appeal (Cozens-Hardy, M.R., and Farwell and Kennedy, L.JJ.) took a different view, and held that the Divisional Court had put an entirely new meaning on the words "merchantable," namely, that defective goods are merchantable if they only want some trifling thing done to make them saleable, for which their Lordships in appeal held there was no authority, and in their judgment the fact that a large part of the goods were not in fact fit for the market, constituted them unmerchantable, and the defendants were entitled to reject them in toto, and were not precluded from so doing by reason of their having accepted a previous instalment, or because some of the goods subsequently tendered were merchantable.

NEGLIGENCE—LESSOR AND LESSEE—CONTRACT BY LESSOR TO MAKE REPAIRS ON DEMISED PROPERTY—ACCIDENT OCCASIONED BY NEGLIGENCE OF LESSOR'S CONTRACTOR—LIABILITY OF LESSEE TO PERSONS INJURED—RIGHT OF LESSEE TO RECOVER AGAINST LESSOR'S CONTRACTOR.

City of Birmingham Tramways Co. v. *Law* (1910) 2 K.B. 965. This was a somewhat unusual case. The plaintiffs were lessees from a municipal corporation of a tramway. The lessors agreed to execute certain repairs thereon, and engaged the defendant to execute them; by his contract to which the lessees were not parties, he bound himself to indemnify the lessors against all claims arising from any negligence on his part in the execution of the repairs, and that he would be responsible for all accidents. During the repairs the tramcars continued to run, and owing to the defendant's negligence a car was derailed and the driver and passengers were injured, to whom the plaintiffs paid compensation for their injuries; this compensation the plaintiffs claimed now to recover from the defendant. The defendant contended

that there was no liability because by the terms of the lease the plaintiffs were debarred from making any claim against their lessors for any compensation for injuries caused by or arising out of the execution of the repairs, and because the corporation was not liable the defendant as the servant or agent of the corporation was not liable either—his duty to exercise care arising out of his contract with the corporation, to which the plaintiffs were not parties. It was also contended that the defendant's negligence did not render the plaintiffs liable to compensate their passengers, which liability, if any, must arose from the plaintiffs' own negligence. Lawrence J., who tried the action, however, held that the plaintiffs were entitled to succeed, because, as to them, the defendant, apart from his contract with the lessors, was in the position of a trespasser and had no right to be on their property at all, and to justify his being there at all he had to rely on his contract with the lessors, and that contract he had not carried out. As regards the question of the plaintiffs' liability to the injured passengers, the learned judge in effect held that the plaintiffs' liability arose because of the defendants' negligence, because the plaintiffs owed a duty to passengers to run the tramcars in safety, which duty they had failed in by reason of the defendant's negligence, to whom had been delegated the task of executing the necessary repairs.

COMPANY—DEBENTURE—FLOATING SECURITY—GARNISHEE ORDER.

Evans v. *Rival Granite Quarries* (1910) 2 K.B. 979. This was a contest between a debenture holder whose debenture constituted a floating charge on all the assets of a company, and an attaching creditor who had garnished the balance standing to the credit of the company at its bankers. Prior to the attaching order the debenture holder whose debenture was in arrear had demanded payment thereof by the company, but had taken no further step to enforce his security. After the attaching order he gave notice to the bank that he contested the attaching creditor's right and required the bank to pay the balance to him. The County Court judge made an order to pay over to the attaching creditor, but a Divisional Court (Phillimore and Bucknill, JJ.) set aside the order, but the Court of Appeal (Williams, Moulton and Buckley, L.JJ.) reversed their decision, and held that a floating charge, such as was in question here, can only be effectively brought into operation by the appointment of a receiver, it does not enable the holder to claim payment of some particular asset. Here, until the holder had exercised his right

the company was entitled to carry on its business in the ordinary way, and its creditors entitled to obtain payment of their debts, which could not be interfered with by the debenture holder merely giving notice of his claim. It may be remarked that the express point decided does not appear to have been covered by any previous decision.

SALE OF GOODS—DELIVERY OF GOODS NOT ACCORDING TO CONTRACT —RESALE BY PURCHASER—CONDITION—WARRANTY—CONTRACT NEGATIVING WARRANTY.

Wallis v. *Pratt* (1910) 2 K.B. 1003. This is another action for breach of contract of sale of goods. The goods purchased were described as "common English sanfoin," the contract, however, expressly provided that "the sellers give no warranty express or implied as to growth, description or other matters." Seed equal to sample was delivered under the contract, and part of it was resold by the plaintiffs as "common English sanfoin." The sample and the seed delivered were not in fact "English sanfoin," but giant sanfoin, an inferior quality, but the difference could not be discovered until the seed had been sown and had come up. The plaintiffs reasonably and properly settled a claim for damages brought against them by their sub-purchaser, and now claimed to recover from the defendants the amount so paid. Bray, J., on a special case stated by an arbitrator, held that the defendants were liable, but the majority of the Court of Appeal (Williams and Farwell, L.JJ.) held that the plaintiffs having accepted and resold the seed had put it out of their power to treat the description of the goods sold as a condition, on a breach of which they were entitled to reject the goods, and could therefore only treat it as a warranty the breach of which would ordinarily entitle a purchaser to damages; but they were debarred from that relief by the condition excluding any warranty on the defendants' part. Moulton, L.J., dissented on the ground that by the terms of the contract the defendants were bound to deliver English sanfoin, which they had not done, and had therefore committed a breach of the contract for which the plaintiffs were entitled to damages.

PRACTICE—REPRESENTATIVE ACTION—ACTION BY SOME SHIPPERS OF GOODS ON A GENERAL SHIP, ON BEHALF OF THEMSELVES AND OTHER SHIPPERS—"PERSONS HAVING THE SAME INTEREST IN THE CAUSE OR MATTER"—RULE 131—(ONT. RULE 200).

Markt v. *Knight SS. Co.* (1910) 2 K.B. 1021. This was an action brought by some of the shippers of goods on a general

ship, against the shipowners to recover the value of the cargo, the plaintiffs claiming to sue on behalf of themselves and forty-four other shippers on the same vessel. The vessel had been sunk by a Russian cruiser as carrying contraband of war, and both ship and cargo had been wholly lost. The writ was indorsed with a claim for "damages for breach of contract and duty in and about the carriage of goods at sea." The defendants applied to set aside the writ, or, in the alternative, that so much of the writ as referred to the claims of other parties should be struck out. The Master refused the motion, and his refusal was upheld by a judge. The majority of the Court of Appeal (Williams and Moulton, L.JJ.), however, were of the opinion that the plaintiffs were not persons "in the same interest with those they claimed to represent," and that the plaintiffs consequently were not entitled to represent them. Buckley, L.J., however, dissented, and thought that the plaintiffs might sue on behalf of themselves and all other shippers of goods which were not contraband of war. Moulton, L.J., was of opinion that no representative action lies where the sole relief sought is damages, which seems to be common sense, for how could a judgment in an action constituted as in this case in any way enure to the benefit of persons not parties? The idea of a representative action is that the judgment rendered in it will enure to the benefit of all parties represented as, for example, to take a common case, the interpretation of a document in which many persons are interested, but an award of damages to the plaintiff in this case would not satisfy the claims of the parties they claimed to represent. It does not follow from this case that the several shippers might not join in one action. It merely decides that it is not a case in which a plaintiff could properly represent others who are not parties.

Correspondence

PAYMENT BY CHEQUE.

The Editor, CANADA LAW JOURNAL:

DEAR SIR,—Your note on payment by cheque, 47 C.L.J., p. 21, seems to imply that a cheque expressed to be "in full" of a debt may not be applied upon account, notice being given that it is only so accepted. In this connection the distinction between a debt and a tort seems important only as taking the latter out of the rule in *Cumber* v. *Ware*, 1 Str. 426, which, in any event is abrogated in Ontario by statute. In *Henderson* v. *Underwriters*, 65 L.T. 732, the cheque was given and accepted "in full," pursuant to an express agreement to that effect. This agreement was afterwards repudiated by the defendant and the repudiation accepted by the plaintiff. Of course it followed that the money paid under it must be returned. *Mason* v. *Johnston*, 20 Ont. App. 412, appears to be an express authority that a cheque payable to order, expressed to be "in full" of a debt may be retained and applied upon account, notice being given the debtor that it is only so accepted, and the balance demanded. If in error, kindly correct.

Yours truly,

SUBSCRIBER B.

REGINA, Jan. 18, 1911.

[If there is nothing in a case to warrant a plea of accord and satisfaction, except the circumstance that the debtor has sent his cheque marked "in full" which the creditor has retained and cashed, but notified the debtor he will not accept in full, we agree that that does not amount to accord and satisfaction and the creditor is entitled to sue for the balance. In addition to the cases referred to in our former note, we may mention another decision of the English Court of Appeal which seems to support this view, viz., *Miller* v. *Davies*, 68 L.T. Jour. 43. The fact that the cheque is made payable "to order" and has been indorsed by the creditor, according to *Mason v. Johnston* appears to make no difference. Our former note was an answer to an inquiry for cases subsequent to *Day* v. *McLea*.—EDITOR, C.L.J.]

REPORTS AND NOTES OF CASES.

England.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Lords Macnaghten, Atkinson, Shaw and Mersey.] [Nov. 1, 1910.

BURRARD POWER CO. *v.* THE KING.

Constitutional law—Water rights—Railway belt of British Columbia—Dominion or provincial jurisdiction.

Appeal from the judgment of the Supreme Court of Canada affirming the decision of the Exchequer Court (see ante, vol. 46, p. 332). A grant was made to the appellants of certain water rights in the railway belt of British Columbia by the Commissioners purporting to act under the Statute of British Columbia in that behalf.

Held, that this grant was invalid in that these water rights were vested in the Dominion Government and not in the Province of British Columbia, consequently the Provincial Legislature could not deal with them.

Lafleur, K.C., and *Hamer Greenwood*, for appellants. *Newcombe*, K.C., and *Bateson*, K.C., for respondents.

Lords Macnaghten, Atkinson, Shaw and Mersey.] [Nov. 1, 1910.

STANDARD IDEAL CO. *v.* SANITARY MANUFACTURING CO.

Trade mark—"Standard."

Appeal from the judgment of the Court of King's Bench for Quebec which confirmed a decision of the Superior Court of that province. By the judgment of the Court of King's Bench the defendant was restrained from using the word "Standard" in connection with certain articles upon which that word was stamped or from advertising or from so describing his wares and merchandise. The plaintiff was an American corporation, the defendant a Canadian company.

Held, that the word "Standard" cannot properly be registered as the trade mark under the Canadian Trade Mark and Design Act of 1879.

Shepley, K.C., *Lafleur*, K.C., and *C. A. Pope*, for appellants. *Doherty*, K.C., and *Trihey*, for respondents.

Dominion of Canada.

SUPREME COURT.

Man.] WILLIAMS *v.* BOX. [Nov. 2, 1910.

Title to land—Mortgage—Foreclosure—Equitable jurisdiction of court—Opening foreclosure—Construction of statute—Real Property Act, R.S.M. 1902—*Equity of redemption—Certificate of title.*

By the effect of 126 of the Manitoba Real Property Act, R.S.M. 1902, c. 148, as amended by s. 3of c. 75, 5 & 6 Edw. VII., the court has equitable jurisdiction to open up foreclosure proceedings in respect of mortgages foreclosed under sections 113 and 114 of the Act, notwithstanding the issue of a certificate of title, in the same manner and upon the same grounds as in the case of ordinary mortgages, at all events where rights of a third party holding the status of a bonâ fide purchaser for value have not intervened. Judgment appealed from (19 Man. R. 560) reversed. See 45 C.L.J. 491 and 46 C.L.J. 230.

Appeal allowed with costs.

Coyne, for appellant. *G. W. Baker,* for respondent.

B.C.] SISTERS OF CHARITY *v.* VANCOUVER. [Nov. 21, 1910.

Construction of statute—Quasi judicial duties—Delegation of legislative or administrative power.

The Vancouver Incorporation Act, 64 Vict. c. 54 (B.C.), by sub-s. 3 of s. 46 provides that "The buildings and grounds of and attached to and belonging to any incorporated seminary of learning, public hospital, or any incorporated charitable institution, whether vested in trustees or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, or if unoccupied, but not if otherwise used or occupied; provided, that such grounds shall not exceed in extent the amount actually necessary for the requirements of the institution. The question as to what amount of land is necessary shall be decided by the Court of Revision, whose decision shall be final."

Held, per DAVIES, DUFF and ANGLIN, JJ.:—The functions in respect of the limitation of exemptions from taxation so vested in the Court of Revision are quasi-judicial and must be exercised in each case with respect to that case alone; it is not vested with power to lay down a general rule based solely upon general considerations.

Per IDINGTON, J.:—The provision in question was merely a delegation of a legislative or administrative power, probably carrying with it a duty, but in no manner implying the discharge of a judicial duty subject to review or supervision.

In proceedings, by certiorari, to remove a decision of the Court of Revision, the evidence adduced in support of the contention that the court had failed to dispose of the question in a proper manner consisted merely of a minute of its proceedings whereby it was resolved "that all charitable institutions mentioned in sub-section 3 of section 46 of Vancouver Incorporation Act' be exempted from taxation to the extent of the area occupied by the buildings thereon and an additional amount of land equal to 25 per cent. of the area, and that the assessment roll for 1900, as amended, be confirmed."

Held, affirming the judgment appealed from (15 B.C. Rep. 344), that this minute, in the absence of further evidence, was not incompatible with the view that the Court of Revision had examined each particular case before deciding to act in the sense of the minute and that it would be a proper direction in each individual case.

Judgment appealed from (15 B.C. Rep. 344) affirmed, and appeal dismissed with costs.

Lafleur, K.C., for appellant. *Craig*, for respondents.

Man.] [Nov. 21, 1910.

LEWIS *v.* STANDARD MUTUAL FIRE INS. CO.

Fire insurance policy—Statutory conditions—Gasoline on premises—Illuminating oils insured—Notice of loss—Remedial clause in Act—Discretion of court.

By the Manitoba Fire Insurance Act, R.S.M. 1902, c. 87, an insurance company insuring against loss by fire is not liable "for loss or damage occurring while . . . gasoline . . . is stored or kept in the building insured or containing the property insured unless permission is given in writing by the company." Insurance was affected "on stock consisting chiefly of illuminat-

ing and lubricating oils, etc., and all other goods kept by them for sale." A small quantity of gasoline was in the building containing the stock when it was destroyed by fire.

Held, gasoline being an illuminating oil, it was part of the stock insured and the above statutory condition could not be invoked to defeat the policy.

Per ANGLIN, J.:—If gasoline was not insured as an illuminating oil it was within the description of "all other goods kept for sale."

By s. 2 of the Insurance Act "where, by reason of necessity, accident or mistake the conditions of any contract of fire insurance on property in this province as to the proof to be given to the insurance company after the occurrence of a fire have not been strictly complied with . . . or where from any other reason the court or judge before whom a question relating to such insurance is tried or inquired into considers it inequitable that the insurance should be deemed void or forfeited by reason of imperfect compliance with such conditions," the company shall not be discharged from liability.

By statutory condition 13 (*a*) in the sch. to the Fire Insurance Policy Act every person entitled to make a claim "is forthwith after loss to give notice in writing to the company."

Held, FITZPATRICK, C.J., dissenting, that the above clause applies to said condition.

Judgment appealed against (19 Man. R. 720), *sub nom. Prairie City Oil Co.* v. *Standard Mutual Fire Ins. Co.*, 46 C.L.J. 271, 462, reversed, FITZPATRICK, C.J., dissenting.

Appeal allowed with costs.

Coyne and *S. H. Green*, for appellant. *Affleck*, for respondents.

Dom. Ry. Board.] [Dec. 9, 1910.

BLACKWOODS CO. *v.* CANADIAN NORTHERN RLY. CO.

Railway Board—Jurisdiction—Spur tracks.

The Board of Railway Commissioners for Canada has not the power to order that a private industrial spur-track or siding, constructed and operated under an agreement between a railway company and the owner of the land upon which it is laid, and used only in connection with the business of such owner, shall be also used and operated as a branch of the railway with which it is connected. See 46 C.L.J. 750.

Appeal allowed with costs.

W. L. Scott, for appellants. *Chrysler*, K.C., for respondents.

Province of Ontario.

COURT OF APPEAL.

Full Court.] REX *v.* WISHART. [Dec. 31, 1910.

Criminal law—Fugitive Offenders Act—Arrest in Ontario warrant issued in Ireland—Endorsing warrant—Commitment of accused to await return—Police magistrate.

Appeal by defendant from an order of MEREDITH, C.J.C.P., who refused to discharge defendant from custody upon a warrant issued in Ireland and not endorsed as required by the Fugitive Offenders Act, R.S.C. 1906, c. 154, s. 8. The prisoner was brought upon habeas corpus, and remanded to the custody of the jailer at Toronto. He had been apprehended and brought before the police magistrate of the city under a provincial warrant, but when the warrant was produced it was not endorsed by the Governor-General or a judge as provided by the Act. Upon the argument for the discharge, the Chief Justice endorsed the warrant and confirmed the commitment. It was contended that the police magistrate could not proceed finally to deal with the case and commit the prisoner, the warrant not having been endorsed.

Held, 1. The requisition for the endorsement of the warrant was enacted with an object beyond that of merely rendering it available for the apprehension of the accused without any other warrant. The endorsation is a requirement for the protection of the accused against frivolous or vexatious proceedings. The expression "endorsed warrant" has greater significance than as a mere term of distinction between it and another warrant.

2. It is safer in dealing with the matter involving restraint of liberty to adhere to the primary meaning of the language used, in the absence of a context manifestly controlling it, and pointing clearly to a different meaning.

Appeal allowed and defendant discharged.

O'Connor, for defendant. *Cartwright*, K.C., for the Crown.

Full Court.] REX *v.* SAM SING. [Dec. 31, 1910.

Criminal law—Carnal knowledge of girl by prisoner on his own premises.

Case stated by the judge of the County Court of Carleton,

by whom the prisoner was convicted under Crim. Code s. 217, for having a girl on his premises for immoral purposes.

Held, the case was one not of permitting, but of committing the defilement of a girl on the premises. Sec. 217 relates only to parties who induce or knowingly suffer girls under 18 to resort to, or be upon, their premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally. This is inapplicable to the facts of this case; a civil action might lie, but there is criminal liability under the code. Prisoner discharged.

G. F. Henderson, for the prisoner. *Cartwright*, K.C., and *Bayley*, K.C., for the Crown.

Full Court.] Dec. 30, 1910.

REX *v.* FREJD.

Criminal law—Conviction by justices not having jurisdiction —Imprisonment under—Habeas corpus—Order quashing warrant of commitment and directing bringing of prisoner before justices for preliminary hearing—Crim. Code, sec. 1120.

Appeal by the defendant from an order of CLUTE, J.

The defendant was apprehended on a charge of issuing a false cheque and brought before two justices of the peace at Cochrane. He pleaded guilty and they imposed a sentence of imprisonment in the Central Prison at Toronto. The offence was an indictable one, and not one of those which two justices are, under Part XVI. of the Criminal Code, authorized to try. They should have held only a preliminary inquiry, and sent the accused to the gaol of the district to await trial until bailed. Being taken to the Central Prison, he applied for and obtained a writ of habeas corpus and certiorari in aid, and, on the papers being returned thereunder, moved for his discharge. CLUTE, J., made an order quashing the warrant of commitment to the Central Prison, but, instead of discharging the defendant from custody, ordered that he be removed back to Cochrane and brought before the two justices for a preliminary hearing upon the charge. CLUTE, J., considered that the case came within sec. 1120 of the Criminal Code, 1906 (formerly sec. 752 of the Criminal Code, 1892), now amended by 7 and 8 Edw. VII. ch. 18, sec. 14, and, as amended, providing that, whenever any prisoner in custody

charged with an indictable offence has taken proceedings before a court or judge by way of certiorari, habeas corpus, or otherwise, to have the legality of his imprisonment inquired into, such judge or court may, with or without determining the question, make an order for the further detention of the person accused, and direct the judge or justice under whose warrant he is in custody, or any other judge or justice, to take any proceedings, hear such evidence, or do such further act as, in the opinion of the court or judge, may best further the ends of justice.

The defendant appealed from the order.

MAGEE, J.A.:—The tendency of legislation is to prevent the ends of justice being interfered with by reasons of mistakes, and to ensure the substantial carrying out of the law; and, indeed, the furtherance of these ends is the express object of sec. 1120. There is no reason why a mistake in or after conviction for a crime should not be remedied as well as one before—indeed, rather the contrary. If there is nothing in principle against it, are the words of this section wide enough to cover cases of conviction, or is there anything to indicate that they were not so intended? We gain little or no assistance from any of the words in the section other than the words "charged" and "accused," which are here challenged, although one's attention is drawn by the words "legality of his imprisonment" and "further detention of the person accused." But is a person any the less "charged with" an offence or "accused" of it because the charge or accusation has been established? . . .

The proceedings of certiorari and habeas corpus, in which the power is given, may arise at either stage, and the legislature has given no indication of an intention to limit the words of a beneficial provision. I see no reason so to limit it. If, then, the section applies after a valid conviction, is it, as here argued, less applicable after a wholly void conviction, made without jurisdiction, and when the prisoner is not absolved from being tried for his offence, and there is nothing in which the charge could be said to merge? The argument appears to be stronger against such a conclusion. The section uses the words "further detention," but that does not necessarily mean detention in the same place, but detention in the custody of the law. . . .

Appeal dismissed.

Hassard, for defendant. *Cartwright*, K.C., for the Crown.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] PRATT *v.* BALCOM ET AL. [Jan. 14.

Dced—Reservation of life estate—Money charge—Question of intention.

Where a father and mother by deed conveyed all their property to two of their sons subject to a life estate in the grantors and to the payment of certain sums of money to other children of the grantors, the grantees took the property subject to such life estate and to such payments.

Under a deed or will whether moneys are a charge upon land is always a question of intention to be gathered from the terms of the instrument.

Roscoe, K.C., for appellant. *J. J. Ritchie*, K.C., contra.

Longley, J.] [January 24, 1911.

THE CUMBERLAND RAILWAY & COAL CO. *v.* MCDOUGALL ET AL.

Contempt of court—Acts constituting—Attachment for.

An order granted by a judge of the Supreme Court and affirmed by the court on appeal, restrained certain persons specifically mentioned and others described generally as members of the United Mine Workers of America, being members of district 36 of that organization and all members of Local Union 469, of the United Mine Workers of America, until final judgment, from besetting the places where plaintiff company carries on its business, from intimidating by violence or threats persons employed by the company and from persistently following such persons in a disorderly manner through the streets, etc., with a view to inducing them to break their contracts. It was established by affidavits produced on behalf of the plaintiff that a crowd of between three and four hundred persons, for the most part members of Local Union 469, and including the defendants, patrolled the street in the vicinity of the exit from plaintiff's mine about the time when the men employed therein were leaving their work, and assailed them with offensive cries such as "scab," and jostled them in a

forcible manner, and impeded them in their efforts to reach their homes.

Held, 1. Sufficient ground for an attachment for contempt.

2. No distinction could be made between the persons who were specifically named in the restraining order and those who were included within its general terms.

Mellish, K.C., for application. *O'Connor*, K.C., for defendants, contra.

Meagher, J.] CHISHOLM *v.* HALIFAX TRAM CO. [Jan. 25.

Street railroads—Defective condition of track—Liability of company for injuries resulting from—Damages.

Plaintiff, a medical man, was thrown from his sleigh and severely injured in consequence of one of the runners of plaintiff's sleigh being caught by a guard rail at a curve on defendant's line. The guard rail at the point where the accident occurred was shewn to be unreasonably high being nearly if not quite two inches above the level of the other rail. The evidence shewed that numerous other accidents happened at the same point attributable to the same cause, and that the effect of injuries received in plaintiff's case, apart from confinement to the house and loss of business, was to permanently injure one of his arms and to incapacitate him in part from the practice of one branch of his profession.

Held, under the circumstances it was to be assumed that defendant company had notice of the defective condition of the rail but that independently of that it was bound to keep its track in a reasonably safe condition for the public, and having failed to do so it was responsible in damages. The plaintiff was entitled to recover against defendant company the sum of $2,800 and costs.

J. J. Ritchie, K.C., for plaintiff. *Mellish*, K.C., for defendant.

Province of Manitoba.

COURT OF APPEAL.

Full Court.] COPPEZ *v.* LEAR. [Dec. 2, 1910.

Wages—Assignment of.

Appeal from judgment of Prendergast, J., noted vol. 46, p. 747. Dismissed with costs.

Full Court.] STANGER *v.* MONDOR. [Dec. 20, 1910.

Registry Act—Real Property Act—Filing deed after application for certificate of title—Priority.

Appeal from judgment of Robson, J., noted vol. 46, p. 745, dismissed with costs.

KING'S BENCH.

Mather, C.J.] CITY OF WINNIPEG *v.* BROCK. [Dec. 19, 1910.

Municipality—Meaning of "passage of the by-law"—Jurisdiction of judge as persona designata—Winnipeg charter—Injunction—By-law taking effect on the happening of some contingent event.

Where a statute provides that a municipality may pass a by-law for diverting or closing up roads and streets and conveying the same or any part thereof to a railway company and for determining what persons or classes of persons are injuriously affected by the closing of such streets, and enacts that no other persons or classes of persons shall be entitled to any compensation for damages thereby caused to them, unless they appeal to a judge of the Court of King's Bench "within ten days after the passage of the by-law," and that such judge upon such appeal may order that an appellant shall be entitled to compensation, the judge to whom any such application is made is only a persona designata and has no jurisdiction to entertain it or make any order if the application is not made within the time limited, notwithstanding the statute goes on to say that the decision of such judge shall be final and conclusive and shall not be appealed from or moved against by any party. The expression "pasasge of the by-law" means the final assent thereto by the council and the signature and sealing of the same, and the day when that takes place is the date of the passage of the by-law, although it contains a provision that it shall not take effect until the happening of some named contingency.

Ex parte Rashleigh, 2 Ch. D. 9 and *Hinding* v. *Cardiff*, 2 O.R. 329, followed.

If a landowner, relying on an order of a judge made upon his application by way of appeal under such a by-law more than

ten days after its passage, is proceeding to have his damages assessed by arbitration, the court will restrain such proceedings by injunction, because such an order is wholly without jurisdiction and therefore absolutely null and void.

A municipal by-law is not invalid merely because it is only to take effect in the future upon the happening of some contingent event.

Dillon on Municipal Corporations, par. 309; *Bradley* v. *Perkins*, 33 Sou. R. 351, and 28 Cyc. 392 et seq., followed.

Clark, K.C., for plaintiff. *Fullerton*, for defendant.

Robson, J.] RE FEDORENKO, No. 2. [Dec. 17, 1910.

Extradition—Requisition from foreign government—Extradition treaty with Russia, articles VIII. and IX.

When, under the terms of an extradition treaty with a foreign government, as in the case of the treaty with Russia printed in the *Canada Gazette*, for 1887 at page 1918, Articles VIII. and IX., a requisition from that government for the surrender of a fugitive is provided for as preliminary to any proceedings for the arrest of the fugitive, any such proceedings taken without such requisition having been made are entirely unauthorized, and the fugitive, even after he has been committed for extradition by a judge of this court, should be discharged upon habeas corpus.

Sections 3 and 10 of our Extradition Act, R.S.C. 1906, c. 155, distinctly provide that nothing in the Act which is inconsistent with any of the terms of an extradition treaty shall have effect to contravene the treaty.

Re Lazier, 3 Can. Cr. Cas. 167, 26 A.R. 260, distinguished on the ground that there was no corresponding provision in the extradition treaty with the United States.

Howell and *A. V. Hudson*, for the Empire of Russia. *Hagel*, K.C., and *Finklestein*, for prisoner.

Mathers, C.J.] [Dec. 30, 1910.

ARMSTRONG *v.* TYNDALL QUARRY CO.

Master and servant—Wrongful dismissal—Measure of damages—Corporation—Seal—Liability of company upon contract not under its seal—Presumption of yearly hiring.

Held, 1. A company incorporated under the Manitoba Joint

Stock Companies Act to carry on a quarrying business will be liable for wrongful dismissal of a person employed to act as general foreman by the manager of the company, although the contract is not under its seal. *McEdwards* v. *Ogilvie*, 4 M.R., followed.

2. By the law of England and Canada, a general hiring, no time being specified, will be presumed to be for a year certain, especially if it is at a yearly salary. *Buckingham* v. *Surrey & Hants Canal Co.*, 46 L.T.N.S. 885; and *Rettinger* v. *McDougall*, 9 U.C.C.P. at p. 487, followed.

3. The onus is on the defendant seeking to shew, in reduction of damages for the wrongful dismissal of the plaintiff, that he might have obtained other employment by reasonable diligence, and a discharged workman is not bound to accept a less remunerative position or one of a lower grade even at the same wages, nor need he abandon home and place of residence and go to another province or country to seek employment. Sedgwick on Damages, 206; *Costigan* v. *Mohawk*, 2 Denio at p. 616; 26 Cyc. 1015, and MacDonell on Master and Servant, 159, followed.

4. The tribunal assessing the damages in such a case, whether a jury or a judge trying it without a jury, has to speculate on the chance of the servant getting a new place and arrive at the best conclusion it can in view of all the circumstances as to the probable time that will elapse before another similar employment can be obtained, bearing in mind that the law considers that employment in any ordinary branch of industry can be obtained by a person competent for the place. *Beckham* v. *Drake*, 2 H.L.C. at p. 666, and *Sowdon* v. *Mills*, 30 L.J.Q.B. 176, followed.

Howell and *Locke*, for plaintiff. *Hough*, K.C., and *A. C. Ferguson*, for defendants.

MacDonald, J.] [January 6.

WINNIPEG *v.* TORONTO GENERAL TRUSTS CORPORATION.

Municipality—Compensation for injury to land caused by exercise of municipal powers when no part of the land actually taken—Date from which time allowed for making claim is to be computed.

Sec. 775 of the Winnipeg Charter, 1 & 2 Edw. VII. c. 77, provides that every claim for compensation for any damage

necessarily resulting to an owner of land entered upon, or used by the city in the exercise of any of its powers, or injuriously affected thereby (the right to which is given by the preceding section), shall be made within one year from the date when the real property was so entered upon, taken or used, or when the alleged damages were sustained or became known to the claimant.

Held, in the case of real property not entered upon, taken or used by the city but only injuriously affected by the exercise of its powers, the year allowed for making the claim for compensation counts only from the date of the completion of the work provided for by the by-law, or from the date when the damages became known to the claimant if that date was later, and not from the date of the commencement of the work, as it would in the case of land entered upon, taken or used.

Clark, K.C., for the plaintiff. *Wilson*, K.C., *Hoskin*, K.C., and *McKerchar*, for the several defendants.

RULES OF COURT—ONTARIO.

For the convenience of the profession in the Province of Ontario we publish the Rules of the Court of the Supreme Court of Judicature for Ontario, promulgated December 31st, 1910.

1304. Any condition precedent to the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be, and subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case by the plaintiff or defendant shall be implied in his pleading.

1305. Rule 806, as amended by Rules 1277 and 1303, is hereby repealed, and the following substituted therefor:

(1) The Appeal Book shall, when a printed book is necessary, be printed in accordance with the rules in Schedule A hereto, and, unless these rules are complied with, shall not be received without the leave of a Judge.

(2) If the press has not been carefully corrected, the Court in its discretion may (*a*) disallow the cost of printing; (*b*) decline to hear the appeal; or (*c*) make such order as to postponement and payment of costs as may seem just.

(3) In the Appeal Book there shall not be any unnecessary repetition of headings and documents; and parts of documents that are not relevant to the subject matter of the appeal, or are merely formal, shall not be printed at length, but any document not printed shall be referred to in its appropriate place in the book.

(4) When one party objects to the printing of any document, or part of document, upon the ground that it is not necessary, and the other party insists upon it being printed, it shall be printed with a note indicating that it is printed at the instance of that party, and if upon taxation it is found that the printing was unnecessary, the costs of such printing shall be disallowed to, and in any event shall be paid by the party at whose instance it was printed.

(5) When a book is printed in form suitable for use upon an appeal to His Majesty in council, 50 copies, and in all other cases, 30 copies, in sheet form unbound, shall be deposited with the Registrar for use upon any further appeal, in addition to eleven bound copies for the use of the Court.

SCHEDULE A.—RULES AS TO PRINTING.

1. The book shall be printed upon both sides of the paper, which shall be of good quality, not less than 60 pounds to the ream.

2. The sheet when folded and trimmed shall be 11 inches long and 8½ inches wide.

3. The type in the text shall be pica, but long primer shall be used in printing accounts, tabular matter and notes.

4. The number of lines on each page shall be 47, as nearly as may be, exclusive of headlines, each line to be 5¾ inches in length, exclusive of marginal notes, and every tenth line on each page shall be numbered in the margin, and the other margin shall be one and one-half inches wide.

5. The books shall be bound in paper, not less than 65 pounds to the ream, and the backs shall be reinforced with cloth.

6. In cases in which an appeal lies to His Majesty in Council, and in any other case in which the parties so agree or a Judge upon the application of either party so directs, marginal notes, such as are required upon an Appeal to His Majesty in Council shall be printed.

7. In other cases there shall be a headline on each page of evidence, giving the name of the witness and stating whether the evidence is on examination-in-chief, cross-examination, or

as the case may be, and answers shall follow the questions immediately and not commence a separate line.

8. All exhibits shall be grouped, and be printed in chronological order.

9. At the beginning of the book there shall be an index setting out in detail the contents of the book in four parts, as follows:

Part 1. A statement of the case and each pleading, order or other document in chronological order, with its date.

Part 2. Each witness by name, stating whether for plaintiff or defendant, examination-in-chief or cross-examination, or as the case may be.

Part 3. Each exhibit, with its description, date and number in the order of filing.

Part 4. All judgments in the Courts below, with the reasons for judgment, and the name of the Judge delivering the same, and the reasons for and against appeal.

10. The name of the Court, Judge or Official appealed from shall be stated on the cover and title page.

11. The book shall contain the date of the first proceeding and of the delivery of the several pleadings, but the style of the cause shall not be repeated.

12. Disbursements reasonably and properly incurred for printing Appeal Books in the form prescribed by these Rules shall be allowed.

1306. Rule 748 and Form 78 are hereby repealed and the following enacted in lieu thereof:

748. The Master before he proceeds to hear and determine shall require an appointment according to Form No. 78 to be served upon all persons made parties before the judgment appearing to have any lien, charge or incumbrance upon the lands in question, subject to the plaintiff's mortgage, and shall in the notice to the other parties interested, required by Rule 658, state the names and nature of the claims of those so notified, and of those added under the provisions of Rule 746 as appearing to have a lien, charge or incumbrance upon the said lands. Such notice may be in the Form 78a.

Form 78. *Notice to parties by writ having incumbrances.*

(Court and Cause.)

Having been directed by the judgment in this action to inquire whether any person other than the plaintiff has any lien, charge or incumbrance upon the lands in question in this action subsequent to the plaintiff's claim, and to take an account of the

amount due to the plaintiff and any such person. And it having been made to appear that you may have some lien, charge or incumbrance thereon you are hereby notified that I have appointed day, the day of next at my chambers in the Court House at at o'clock to proceed with the said inquiry and to determine the amount of the claim of the plaintiff, and of such incumbrancers as may come in and prove their claims before me.

If you fail to attend upon such appointment, and to prove your claim, the reference may proceed in your absence, and you will receive no further notice of the proceedings in this action, and you will be treated as disclaiming any lien, charge or incumbrance upon the said lands, and will stand foreclosed from any such claim.

Dated this day of 19 .

W. L., Master.

Form 78a. *Notice to original defendants other than incumbrancers.*

(Court and Cause.)

Having been directed by the judgment in this action to inquire whether any person other than the plaintiff has any lien, charge or incumbrance upon the lands in question in this action subject to the plaintiff's claim thereon.

You are hereby notified that it has been made to appear to me that the persons named in the schedule hereto may have some lien, charge or incumbrance thereon, and I have, therefore, caused such of them as are not already parties thereto to be added as parties in my office, and I have appointed day, the day of next at my chambers in the Court House at at o'clock, to inquire and determine whether the said parties have any such lien, charge or incumbrance, and to fix and ascertain the amount thereof, and the amount of the plaintiff's claim upon his security.

If you do not then and there attend, the reference will be proceeded with in your absence, and you will receive no further notice of the proceedings in this action.

Dated this day of 19 .

W. L., Master.

SCHEDULE.

Incumbrancer.		Nature of claim.
E.g.	A. B.	Mortgage dated.
	C. D.	Execution.
	E. F.	Mechanics lien.

1307, Rule 777, as amended by Rule 1278, is further amended by adding the words "or matter" after the word "action," where it first occurs in subsection (1) of Rule 777.

Flotsam and Jetsam.

Ascum—"I see there's some talk upon the question of abolishing capital punishment. Would you vote to abolish it?

Logie—"No, sir; capital punishment was good enough for my ancestors, and it's good enough for me."—*Exch.*

The return of a sailor and a lawyer as representatives of Portsmouth at the recent General Election, reminds one that Portsmouth was once represented by a member who united in himself the qualifications of both professions. This was Erskine, who served four years in the navy before he left the sea to become the most famous advocate in the annals of the English law. He was elected for Portsmouth on the 20th November, 1783, but lost his seat at the dissolution in the following March. He won it back again, however, at the General Election in the autumn of 1790, and retained it until he was made Lord Chancellor and raised to the peerage on the 7th of February, 1806.—*Law Notes.*

Some years ago there was a well-known K.C., with a large practice, who had the Cockney habit of dropping his "h's." He had a strange and an intense dislike to the late Lord Selborne, who, it will be remembered, was the compiler of a deservedly popular anthology of hymns. The counsel in question was one day seated inside the Bar awaiting the opening of the court, and when the usher announced the approach of his Lordship, he was heard to remark sotto voce, "'Ere 'e comes, the 'oly old 'umbug, a 'ummin' 'is 'ims—'ow I 'ate 'im!"—*Law Notes.*