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The legal fiction of exterritoriality has, according to our English exchanges, played an important part in the King's continental tour. The *Law Times* (London), referring to Taylor's International Law, says: "The visit of King Edward VII. to Paris being in the character of a 'Sovereign' visit, the British Embassy at Paris became the residence of the King, the embassy being exterritorial. The convenience and, indeed, the necessity of the fiction of exterritoriality in the case of a Sovereign who as the head of a State represents not only its dignity but its independence are manifest. A Sovereign to whom the privilege of entering upon foreign territory has been granted has immunity from the local jurisdiction of the foreign State so long as he remains there in his Sovereign capacity. No dues or taxes can be exacted from him; his house, which is his sanctuary, cannot be invaded by police or administrative officers; he cannot be subject to the jurisdiction, ordinary or extraordinary, of civil or criminal tribunals; and such immunities extend equally to every member of his suite."

A writer in the same journal refers to the difference between the powers possessed by Continental Governments and our own in connection with the prompt stoppage of the Paris-Madrid motor race: "The prompt stoppage of the Paris-Madrid motor race illustrates once more a salient point of difference between the powers possessed by Continental Governments and our own in the matter of issuing decrees and orders which have obligatory force. In this country, as is so clearly brought out by Professor Dicey in his Law of the Constitution, the rule of law prevents, as a general rule, any government department taking many steps of a precautionary nature which are inherent in Continental Executives. Unless under the express authority of a statute, no steps similar to those which have just been taken in France and Spain are open to the British Executive, and it may be worth while to point out that under the Light Locomotive (Ireland) Act recently passed, which sanctions the motor races in Ireland, there appears to be no authority to prohibit their continuation should it unfortunately happen that in their early stages they are accompanied by the like mishaps as befell the Paris-Madrid competitors and onlookers."

TRADES UNIONS.

Those who are interested in the development of our law by judicial decisions will no doubt observe with some curiosity the result of the litigation now going on in reference to the liability of Trades Unions to suit.

At one time the law recognized only individuals, partnerships, and corporations as capable of suing and being sued; latterly individuals carrying on business under other names than their own have been permitted to sue, or be sued by such names, but that is merely the case of the individual suing or being sued by a name, which, for business purposes, he has chosen to make his own. Recent events have developed the fact that aggregations of men may band together in voluntary associations and be able as a matter of fact by their combined action to commit torts. To make all the individual members of such associations parties to actions in respect of such torts, would no doubt be a difficult, if not impracticable, task, and yet unless all be made parties how can the common property of the association be made answerable for the wrong complained of? Attempts have been made of late to introduce into this class of actions the principle of representation, and to sue some of the members as representing not only themselves but the whole association. It must be confessed that this is a somewhat novel application of the principle of representation, and yet unless some such means are found for effectually sueing these voluntary associations there is danger that they may become privileged to do wrong without any liability to pay the penalty, which would not be for the well being of the community.

In the *Taff Vale case*, (1901) A.C. 426, the House of Lords determined that a registered union might be sued as a quasi corporation and that its funds might be made answerable for torts authorized by it through its executive officers. How far that decision is applicable in Ontario remains to be determined. The question has been recently before the Ontario Courts on questions of practice. In the *Metallic Roof Co.* v. *The Local Union*, 5 O.L.R. 424, a trade union, was sued eo nomine and service effected by sueing one of its executive officers, and the service was set aside on the ground that the association not being a corporation could not be sued by the name of the association, it not being shown or suggested that the union was registered, or had any statutory

power to hold property or act by agents as in the *Taff Vale case*, and the name of the union as a defendant was, as we understand the report, struck out. The plaintiff, we believe, then obtained an order appointing some of the defendants to represent themselves and all the other members of the union, and the effect of this order, we believe, now remains to be determined.

In the recent case of *Krug* v. *Berlin* (ante p. 332) judgment passed against a trades union for tort, but then the question of the liability of the union was not raised until in the opinion of the judge who tried the case, it was too late.

It may be remarked that the personal liability of the individuals composing such associations may be entirely illusory, if the common property is exempt. If the law in its present condition is ineffectual it should be amended without delay and all such associations placed on such a footing that they may be made responsible for their wrongful acts. It is clearly contrary to the first principles of justice that any class of the community should be able to do wrong with impunity.

CONCERNING THE JUDICIARY.

This is, at least so far as Ontario is concerned, a day of Judicial Commissions; also a time when the High Court Bench has been weakened by the illness or infirmity of several of its judges. Strangely enough, it is also a time when it is said that there is a necessity to form a Fourth Division of the Court and an increase in the number of the judges. There seems to be a little inconsistency in all this. It does not require much consideration to see that the proposed increase would be unnecessary if vacancies were promptly filled, if infirm judges were given a proper retiring allowance, if vigorous men were selected from the front rank of the profession, and, last but not least, if the judges were not taken from their proper judicial work, either to report upon allegations of bribery in connection with a political issue, or to go to the Yukon to inquire into the reasonableness or otherwise of some concessions. The common sense, business-like way of disposing of the alleged difficulty seems to be sufficiently obvious.

There is really no necessity to add to the number of the High Court judges. The question of expense, though a minor one, may be noticed. The proposed new Division will probably add some $20,000 to the yearly cost of the Court. All sorts of schemes have been invented to supplement the present utterly inadequate salaries of the judges. It would be much cheaper to give to each of the present judges an additional $1,000 per annum. But this is not the most important part of the subject. Is it fair to judges, or to suitors, or desirable as a matter of public policy, that various "pious frauds" in the line of indirectly increasing judicial salaries should be resorted to, or that they should have extra pay for outside work. The independence of the Bench is of vital importance both to the public and the profession—much more important than the the benefit resulting from having an occasional enquiry more satisfactorily conducted. There might be danger of this independence being jeopardized by the growing practice of taking judges from their proper work to discharge extra duties with extra emolument. All these things give occasion to the enemy to blaspheme. The consequence is just what might be expected: unpleasant remarks are made in reference to the judges, with the inevitable result of lessening the esteem in which the Bench of this province has heretofore been held. We are on the down grade in connection with matters affecting the dignity of the Bench and the respect for it in the public mind. It is time that more thought were given to these matters. The country cannot afford to have the judicial pedestal lowered. The effort must be to raise it, for it is not what it once was.

And here we are confronted with a somewhat difficult matter to discuss without the danger of being misunderstood. Their lordships Chancellor Boyd and Chief Justice Falconbridge, the Commissioners in charge of the Gamey-Stratton Bribery Commission, have closed the enquiry and made their report. The finding of the Commissioners is viewed favourably or adversely according to party predilections. The Commissioners, though holding high judicial positions, did not serve in that capacity but as ordinary citizens, and as such their finding has been sharply criticised, whether rightly or wrongly it is not our province to discuss. We assume it is right because they so find; but it must be remembered that the country at large really sits as the jury and will not abdicate its functions as the final Court of appeal

on the questions involved in the Gamey charges, for it is facts bearing on questions of political morality, and not points of law, that are involved. But what is to be deplored is that unworthy motives are attributed to the Commissioners. The mud-throwing, incident to a political conflict, reaches to the Bench. It was just this fear, no doubt, that induced a writer in these columns (ante p. 195) to hope that the judiciary might not be called upon to act, or might decline to do so. The learned judges who were appointed, and who undertook the burden of the reference, doubtless thought that they would be discharging a duty to the public by so doing; and without any question such as forum was a much more satisfactory one than the "bear garden" of a Parliamentary Committee.

It may also be said that the Commissioners exercised very properly a wise discretion in the liberal admission of evidence, though even here complaints have been made, not specially by counsel engaged for the prosecution, but by some of those on the jury, i.e., the public. We have nothing to say as to this, nor do we propose to discuss the evidence or to express any opinion on the finding of the Commission, as that would take us within the arena of political controversy, which should be studiously avoided by a professional journal. But what we do say—and we think it cannot be gainsaid—is, that the report will not, and naturally cannot be expected to, meet with the acquiescence of the community at large, for the simple reason that the enquiry involved party politics in connection with an incident in a somewhat bitter political contest. This non-acquiescence leads to evil results. When a judgment is given in a suit between individuals or corporations it is prima facie assumed that the finding is correct, and even the disappointed litigant generally accepts his defeat without calling the judge hard names. This has happily been the habit in the past. It will be a bad day for the country when people get out of this habit in the future, as we fear they are beginning to do; and it is just such enquiries as this which will operate in that direction, no matter how careful or fair the judges may be. For reasons such as these there are many who regret that the services of members of the Bench were invoked, and that these judges felt it their duty to accept the call.

To return to the proposed amendment of the Judicature Act in relation to the appointment of additional judges. These are wanted, if at all, in the Court of Appeal, so that there may be a sufficient force there to form, when occasion requires, two Divisions, and so prevent delays to litigants, delays which indeed often amount to an actual denial of justice. As suggested by the Attorney-General when moving the second reading of his Bill, the judges might with great advantage go over the docket from time to time and apportion cases to these Divisions, reserving important questions or new points of law or other special matters to be heard before the full Court.

One other matter, of minor importance perhaps, but not unworthy of notice in connection with the appointment of a Fourth Division, may be adverted to. In England there is one Chancellor and one Chief Justice. Here in the province of Ontario it is proposed that we should have one Chancellor and three Chief Justices, four in all, a situation which is suggestive of such parallels as the superabundance of colonels, or of the "four and twenty fighting men and five and thirty pipers" who, according to the comic song, proposed to raid a neighbouring clan. It would be more convenient as a matter of practical working of the judicial machinery that there should be one Chief for the whole High Court. For that matter there ought to be no Divisions at all, except in so far as it may be found convenient to apportion the judges from time to time for the more speedy dispatch of business. This was evidently the intention of those who reconstructed the Courts in view of the merger of law and equity. The proposed additional Division is we observe called the "Fourth Division": why not the "Exchequer Division," if the old names are to be preserved? But the fact is, the terms "King's Bench," the "Common Pleas," and "Chancery" are anachronisms. If there are to be four Divisions they might more appropriately be designated by the prosaic cardinal numbers "First," "Second," "Third," and "Fourth."

DISSENTING JUDGMENTS.

To quote the language of a co-temporary (*Law Notes*): "the utility of the delivery of dissenting opinions by judges of a court is, to say the least, questionable; the reasons why they are written are numerous, very often interesting, more often unique, and sometimes inexplicable. The profession is prone to use them as the proverbial straw at which the drowning man will clutch; but like that straw they invariably go down with the cause in which they are used."

Speaking generally we are of the opinion expressed by Mr. Justice Pearce, of the Maryland Supreme Court, that dissenting opinions "are very often, and sometimes correctly regarded as idle, if not pernicious work. Nevertheless they are sometimes justified in order to relieve the dissenting judge from the imputation of that which, unexplained, might appear to be merely captious difference or obstinate adherence to individual opinion." Our co-temporary cites the language of a number of judges who give their reasons or excuses for giving dissenting opinions. One judge stated that he was moved by a desire to explain himself; another by reason of the magnitude of the issue involved; another because the judgment of the court below gave general surprise and was generally condemned, the decision being in his opinion rash and hasty; others (and this is a legitimate reason if the dissenting judge were right) fear of establishing vicious precedents.

We do not quarrel with the delivery of dissenting opinions in courts below, but we are strongly of the opinion that in any court that is in any sense an appellate court the judgment of the court should be pronounced as such, without giving the dissenting views of individual judges. That which is most important in the administration of law is certainty and uniformity. The delivery of dissenting judgments tends to uncertainty and promotes litigation.

The ideal plan for the preparation of judgments of a Court of Appeal would seem to be what we understand to be the one adopted by the Supreme Court of the United States. After the case has been argued the judges meet and settle what the judgment of the court should be. They then appoint one of their number to write the opinion. Copies of this opinion are sent to all the rest of the justices who concur in the judgment. They read these opinions and make what corrections and additions they

think proper. The judges then meet again when these changes are considered and the final form of the opinion is settled. Any justice who disagrees with the opinion of the court is entitled to write his own opinion and it is printed with the other.

Whether the same mode of arriving at a judgment is adopted by the Judicial Committee of the Privy Council we know not; at any rate, the same result is reached, but only the judgment of the court is pronounced, and dissenting opinions, if any, are rigidly suppressed. Of course, in a court of final appeal a dissenting opinion becomes almost an impertinence in the legal sense of that word.

The *Law Times* (London) some three years ago referred to this question, and the remarks of the writer on that occasion may be quoted with advantage: "Since, as a consequence of the discussions on the Australian Commonwealth Bill, the country has awakened to a sense of the deficiencies in the constitution and procedure of the Judicial Committee of the Privy Council (a tribunal in which, with all its faults, we cannot but feel a certain pride) objection has again been made to the rule which prevails in that court of pronouncing only one judgment, even although the members may not be unanimous. This rule, which is of a very ancient date, and which was reaffirmed by the committee itself shortly after its reconstruction by the Act of 1833, whatever may be said against it, has certainly some advantages, and, indeed, much might be urged in favour of its adoption in other courts. Certainty is the quality most desiderated in law, and this is undoubtedly much better attained where only one judgment is pronounced than where suitors and practitioners are embarrassed by the delivery of divergent judgments, or of judgments which, although reaching the same conclusion, are based upon different grounds. At all events it is difficult to understand how any loss of dignity is sustained, as one writer suggests, by the Judicial Committee in adhering to this time-honoured rule of practice."

It may be a pleasure to some judges to air themselves by giving a dissenting opinion; in fact some of them seem to have a special pride in so doing. Some litigants also may be interested and possibly comforted in knowing that one out of several judges was in their favour, but they derive no benefit, and it is very much more in the interest of the public at large that there should be certainty and uniformity.

Before leaving this subject it will not be amiss to add that, to some extent, the same kind of mischief to which we have adverted, as a regrettable consequence of reporting dissenting judgments, results from reporting concurring judgments also. The advantage of such additional light as is thrown upon the grounds of the decision by the latter description of judgments is often more than counterbalanced by the fact that the reasoning by which different judges are conducted to the same conclusion is apt to disclose a diversity of views as to one or more of the various fundamental doctrines which are dealt with in passing. It is sufficiently obvious that any such intimations of individual opinion are very likely to furnish both suggestions and material for future controversy whenever a case arises to which they seem to be applicable.

THE PRIVY COUNCIL AND NEW ZEALAND.

The Chief Justice of New Zealand, Sir Robert Stout, has justified his surname by some recent utterances in connection with a criticism of the Judicial Committee upon the judgment of his court in the case of *Wallis* v. *Solicitor-General for New Zealand*, 8 S. & T. Rep. 65. It appears that their Lordships of the Privy Council stated that in their opinion the appellant had been denied justice and intimated that the Colonial Court must have been led away from the justice of the case by a desire to be subservient to the Executive Government. The Chief Justice strongly denied this statement, saying in conclusion: "A great Imperial judicial tribunal sitting in the capital of the Empire and dispensing justice even to the meanest British subject from the uttermost parts of the earth, is a great and noble ideal; but if that tribunal is unacquainted with the laws which it is called upon to interpret or to administer, it may unconsciously become a worker of injustice. It is the duty of an appellate tribunal to consider and, if necessary, criticise the judgments of the courts below, but we are not surprised that the remarks made by the Judicial Committee have caused intense indignation throughout the colony."

In reference to the above observation as to a tribunal the judges of which are unacquainted with the laws they are called upon to interpret, it may be remarked that highly trained legal minds can readily apprehend laws which are different from those

which they have been accustomed to interpret; and we think it has generally been found that men in the front rank of English jurists, such as Lord MacNaghten, who is the principal offender in the above matter, have succeeded in grasping the various systems of law, Indian and Colonial, as well as English, which have come before them as members of the Judicial Committee. Certainly it is of inestimable advantage to have a tribunal which is absolutely free from any legal influence, prejudice or colouring.

The facts of the case in question appear to have been as follows: Some of the leading Maoris, at a certain place in New Zealand, made a grant of 500 acres of land with a view to establish near their own houses a college, to be under the control of bishops of the Church of England. The land was to be given "not merely as a place for the bishop for the time being, but in continuation for those bishops who shall follow and fill up this place, to the end that religion or faith in Christ may grow, and that it may be as it were a shelter against uncertain storms—that is against the evils of the world." It seems that the Maoris have only some such limited title as our Indians have in their reserves, and in order to vest the title of the land in question fully in the donees it was necessary that a grant thereof should also be made by the Crown. This was, accordingly done in 1850. The land was cleared by the donees but the college was not built, and after some years, the natives in the neighbourhood having greatly diminished, it was deemed inadvisable to build it. The trustees then applied to the Court for the approval of a new scheme, whereupon the Solicitor-General, on behalf of the Crown in New Zealand, intervened in the suit and contended that the object of the grant having failed the land reverted to the Crown either absolutely or in trust, and that in the grant, neither of the Maori donors, nor of the Crown, was any general charitable trust declared. The Colonial Court of Appeal decided in favour of the Crown, that the grant had become void because it appeared that the Crown had been "deceived" in the grant (of which alleged deception there was no evidence) and because the trust had come to an end.

It is almost unnecessary to say that the Judicial Committee had no hesitation in reversing so untenable a decision and one so contrary to the most elementary principles of the law governing charitable trusts. That the Colonial Court should have so flagrantly erred in its decision was extraordinary, and the Com-

mittee unnecessarily, but perhaps not altogether unnaturally, proceeded to find reasons for such an extraordinary conclusion; and they ask "why should the Court attribute to a Government of the past more than childlike simplicity in order that the Government of to-day might confiscate and appropriate property, etc.?" Moreover the committee declared that the defence of the Crown was a medley of allegations incapable of proof and statements derogatory to the Court.

The intervention of the Crown in a suit between private parties, if not unprecedented (see *Stanley* v. *Wild* (1900) 1 Q.B. 256) is certainly a most unusual proceeding, which could not have taken place without the concurrence of the Court, and its allowance in this case and the giving effect to the Crown's erroneous and unwarrantable pretensions in so plain a case indicated at least a want of legal capacity in the Colonial Court. The case however affords another instance, if any were needed, of the value of the Judicial Committee as an ultimate Court of Appeal.

We notice that the *Calcutta Weekly Notes* discusses this question and calls special attention to the wisdom of Lord MacNaghten's remarks and thinks that it will be a bad day for the Colonies if they ever depart from the principles he laid down in this case. The observations referred to are as follows: "The proposition advanced on behalf of the Crown is certainly not flattering to the dignity or the independence of the highest Court in New Zealand, or even to the intelligence of the Parliament. What has the Court to do with the Executive? Where there is a suit properly constituted and ripe for decision, why should justice be denied or delayed at the bidding of the Executive? Why should the Executive Government take upon itself to instruct the Court in the discharge of its proper functions? Surely it is for the Court, not for the Executive, to determine what is a breach of trust. Then, again, what has the Court to do with the prospective action of Parliament as shadowed forth by the Executive? No one disputes the paramount authority of the Legislature. Within certain limits it is omnipotent. But why should it be suggested that Parliament will act better if it acts in the dark and without allowing the Court to declare and define the rights with which it may be asked to deal?"

EQUITABLE ESTOPPEL AS APPLIED TO STATEMENTS OF INTENTION.

The doctrine of estoppel constantly eludes the enquiring practitioner. Any aid in that regard will be helpful. We therefore give our readers the benefit of an article in the *Central Law Journal* of St. Louis on the subject. The references to authorities, which are numerous, are omitted. They can be found in the above journal, pp. 424 et seq. The article is as follows:

"*The Doctrine Defined.*—Briefly put, the doctrine of estoppel is that principle, by virtue of which, when one has assumed a particular attitude with reference to a certain subject matter, he will be precluded from varying his position to the prejudice of one who has varied his situation, on the faith of what the other party has spoken, omitted or performed. No attempt will be made to determine whether this doctrine is merely a rule of evidence, or whether it is one which bases a right. Whether it shall be placed among the principles of adjective law, or whether its application demands its recognition in substantive jurisprudence, is not within the limits of our subject and will not be essayed in this thesis.

The Representation must be of Fact.—The judges and text writers place first among the essentials of a situation in which this doctrine will be applied, that there be a representation of a material fact. There are three words here of importance, but most important, not alone to us, because it affects the matter upon which we are engaged, but to all, because it marks the breach between those material representations which will estop and those which will not, is the word *fact.* It may not be saying too much, if we declare that the representation must be one of fact; but careful text writers, apparently without reason upon the authorities, have stopped short of this assertion and have stayed with Dr. Bigelow, who says, in discussing the doctrine of estoppel, with reference to matters of opinion, "the rule we apprehend to be this, that where the statement or conduct is not resolvable into a statement of a fact, as distinguished from a statement of opinion or law, the party making it is not bound unless he is guilty of a clear moral fraud, or unless he stood in a relation of confidence toward him to whom it was made." If this sentence is examined carefully it will be seen that the genius of the last clause is not different from that of the first. A representation to amount to a clear moral fraud must,

we take it, be a false declaration of the opinion of the declarant, which then, allows of the resolution of that phrase into the first clause of the sentence, and leaves the rule, that the statement must be resolvable into one of fact. To be a trifle more explicit, a statement that the speaker is of a certain opinion, when he is not, is a moral fraud, and apparently is a false representation as to the fact concerning what his opinion really is. The doctrine of estoppel, as applied to the relation of confidence, spoken of in the last phrase of the second clause of the sentence under discussion, stands upon a little different footing than it does in the ordinary case. The representation here founds an estoppel, when it would not in the ordinary case, not because of any difference in it, but because the relation of the parties obliges the trustee to make his representation good. In the normal case, however, we believe the rule to be, that the representation which precludes the assertion of contrary circumstances, must be one of fact.

Representations of Matters of Opinion.—As a general rule it may be asserted that estoppels may not be based upon declarations of opinion. In consonance with this rule, it has been held that declarations depending upon the judgment or opinion of the declarant, as an estimate, will not, when honestly given, support an estoppel against him. The mere expression of an opinion upon facts equally known or open to both parties is not a representation that the hearer may rely upon to estop the speaker, for matter for estoppel must be a statement of fact.

Same Subject—Recommendation of Credit.—Typical among the cases applying this rule are those wherein a creditor has been applied to for information concerning the financial standing of his debtor, and having recommended it, is sought to be estopped from enforcing his claim by the one to whom the statement was made, who gave credit to the debtor in dependence upon it; but an attaching creditor, seeking priority over a general assignment, is held not to be concluded by an expression of an opinion as to his debtor's solvency some months prior to the assignment, and in harmony with statements made to him by the debtor; so, also, in the absence of bad faith, a mortgagee's statements that the mortgagor is doing a good business, and will be able to meet his obligations, will not warrant refusing him possession under his mortgage as against a receiver; and a bank's recommendation of a firm's credit, coupled with the statement that its members are

good business men, and possess property beyond their liabilities, will not preclude it from participation as a creditor in the firm assets; although at the time the statement was made the firm's account with it was overdrawn, since the declaration was merely one of opinion.

Same Subject—Boundaries.—Of like import are the cases of statements concerning the location of boundary lines, and the general rule is that these statements are merely declarations of opinion and will not preclude the speaker from thereafter denying their verity. An informal declaration by a landowner as to his boundary, not shown to have been advised, coupled with a refusal to give the adjoining owner a map, will not prevent the establishment of the true boundary. Although one relies on his neighbour's mistaken statement as to their boundary, and cuts his neighbour's timber, he must, nevertheless, pay therefor, and the statement will not protect him.

Same Subject—Miscellaneous Cases.—Force, as an estoppel, has also been denied upon the opinion of an injured party as to the cause of his injury, and his declaration that a certain person was not at fault. The statement of an attorney, who has a note given for the purchase price of the land, as to the amount due, will not prevent the subsequent purchaser, to whom it was made, being held liable for the true amount; so also an estoppel may not be based upon a declaration as to the extent of a grant or the effect of a deed if made without fraud or an intention to mislead, but, where one says he has no claim under an instrument, the provisions of which are intricate and obscure, it has been held that he is estopped from asserting any claim thereunder, one judge declaring "that the assertion of a particular construction and effect of a written instrument of an obscure or doubtful character, is equally good as an estoppel or as a disclaimer of title." This case does not appear to be in harmony with the general rule, and although I cannot find that it has been passed upon by the court of appeals, its principle is certainly shaken in some cases, which I will consider in the next paragraph.

Same Subject—Legal Conclusions.—The rule is that matter for estoppel must be statement of fact, not of law or opinion, on a proposition of law. The construction of a will and the interest taken by devisees, are matters of law, and statements concerning them will not preclude the speaker. So also the purchaser's opinion

as to the sufficiency of documents will not prevent his getting others, because the first were insufficient, even though he be a lawyer, and one's statement of a note, which it was suggested should be in his name or to his order, "it's all right, it makes no difference, it is payable to bearer and you can collect it," have been held not to raise estoppels.

The assertion by a pleader, of a mere legal conclusion, drawn from facts stated will not estop him neither will a statement in an affidavit, accompanying a petition of bankruptcy, concerning payment to the bankrupt by a third party, preclude the petitioner from denying the payment in his suit against the third party. A creditor may also show the truth, although by mistake he has said that a certain arrangement with the principal discharged the surety, and the payee's statement to the maker, that he is under no legal obligation to pay the note, is held not to preclude him from suing upon it.

These rules may well be said to be based upon the theory that everyone knows the law, and hence cannot be misled by a false statement of it, and where an attorney gave his opinion upon a title to one, who purchased upon the strength of it, he was estopped from declaring it defective when he subsequently purchases it.

Same Subject—The Promissory Note Cases.—Very nearly related to those cases which we have just been discussing, and it would seem upon the very line between fact and opinion, are the cases of declaration of validity or sufficiency of written instruments. Typical of these are the promissory note cases. The general rule is, that if one, about to purchase a note, goes to the maker seeking to learn of its sufficiency, and is informed that it is all right and will be paid, he may compel the maker to adhere to his statement, although he was then ignorant of his defense, as failure of consideration. This rule does not hold true however as to defenses subsequently arising, like total failure of consideration, unless the maker when approached by the intending purchaser, makes an independant promise to pay it.

Only a few of the cases upon this point have been cited, because, strictly speaking, these decisions can scarcely be considered within our subject, for we esteem it true that the defenses to which the doctrine of estoppel has been applied under these circumstances, present questions of fact rather than matters of law or opinion, and do not impair the rule that when a party to a note makes a declara-

tion concerning its legal effect, he is not precluded from subsequently denying its verity.

Same Subject—Relation to the Doctrine of Fraud.—The general doctrine under discussion is very nearly related to the principles applicable in cases of fraud. In fact some authorities have considered it one of them. It has been shown that statements of opinion will not found an estoppel, and under like circumstances, expressions of judgment will not raise an action or defense as fraud.

Representations as to Intention.—In order to create an estoppel in pais there must be a representation of an existing fact, and not a promise with respect to some future act. Thus, where a resident of Massachusetts told his creditor, also a resident there, that he intended going to California within a month to remain permanently, but would pay before he left, but failed to pay, and returning to Massachusetts to reside, upon being sued set up the statute of limitations, and the plaintiff claimed that he was estopped therefrom because of his statement as to his intended absence, Bigelow, C.J., said, "without undertaking to define the nature and kind of representations which will thus operate to preclude a party, we think it very clear that the statement proved at the trial of this case, which the plaintiff seeks to set up for the purpose of excluding the defense of the statute of limitations, does not come within this rule. In the first place, it does not appear that the representation made by the defendant of his intention to abandon his domicile in Massachusetts and take up his residence in California, was not perfectly true at the time it was made, and that he did not make it in entire good faith and with the purpose of carrying it into execution. This, however, may not be a decisive consideration. But in the next place it was a representation only of a present intention or purpose. It was not a statement of a fact or state of things actually existing, or past and executed, on which a party might reasonably rely as fixed and certain, and by which he might properly be guided in his conduct, and induced to change his position in the manner alleged by the plaintiff. The intent of a party, however positive and fixed, concerning his future action, is necessarily uncertain as to its fulfillment, and must depend on contingencies and be subject to be changed and modified by subsequent events and circumstances. Especially is this true in regard to the place of one's domicile. On a representation concerning such a matter no person could have a right to rely, or to regulate his action in relation to any subject in which his interest

was involved, as upon a fixed, certain and definite state of things permanent in its nature and not liable to change. A person cannot be bound by any rule of morality or good faith, not to change his intention, nor can he be precluded from showing such change merely because he has previously represented that his intentions were once different from those which he eventually executed. The doctrine of estoppel or exclusion of evidence on the ground that it is contrary to a previous statement of a party, does not apply to such a representation. The reason on which the doctrine rests is, that it would operate as a fraud if a party was allowed to aver and prove a fact to be contrary to that which he had previously stated to another for the purpose of inducing him to act and to alter his condition, to his prejudice on the faith of such previous statement. But the reason wholly fails when the representation relates only to a present intention or purpose of a party, because, being in its nature uncertain and liable to change, it could not properly form a basis or inducement upon which a party could reasonably adopt any final and permanent course of action." It has also been held, that a stepfather is not precluded from charging for the maintenance of his stepchildren, because he said he did not intend to make any charge; and where one said he did not calculate to make a certain person any trouble about his claim to certain land, he was not precluded from enforcing his claim against the one to whom the statement was made, when the latter has no reason for his inquiry. Likewise a promise to file a claim in a certain suit under a water craft act so that the promisee will get a title freed from it, has been held not to prevent the promisor asserting it against the property in the hand of the promisee.

The English courts have not been behind our own in adhering to these rules and have declared that estoppel by representation does not apply to expressions de futuro, or to matters of intention. Lord Selborne said: 'I have always considered it to have been decided that the doctrine of estoppel by representations is applicable only to representations as to some state of facts, alleged to be at the time actually in existence, and not to promises de futuro, which if binding at all must be binding as contracts.'

After a consideration of all these authorities we believe the rule may be confidently reasserted that the doctrine of estoppel is not called into operation by expressions of opinion, legal conclusions, or intention, either present or future.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

TRUST—ADMINISTRATION—UNAUTHORIZED CHANGE OF INVESTMENT—SANCTION OF COURT—JURISDICTION.

Re Tollemache, (1903) 1 Ch. 457, was an unsuccessful application by a tenant for life to Kekewich, J., to obtain the sanction of the Court to trustees taking over an investment not authorized by the trusts. The case is deserving of consideration for the discussion it contains as to the circumstances under which the Court may authorize acts by trustees not directly provided for by the instrument creating the trust.

CHARITY—MORTMAIN—DEVISE OF INCOME OF LAND TO CHARITY—SALE OF LAND DEVISED FOR CHARITY—VESTING IN OFFICIAL TRUSTEE—MORTMAIN AND CHARITABLE USES ACT, 1891 (54 & 55 VICT., C. 73) SS. 3, 5, 6—(R.S.O. C. 112, SS. 3, 4, 5).

In re Ryland, Roper v. *Ryland*, (1903) 1 Ch. 467, is a case under the Mortmain and Charitable Uses Act, 1891 (see R.S.O., c. 112). By the will of a testator who died in 1900, real and personal estate were left to trustees upon trust for conversion, but subject to the direction that no part of the freehold and leasehold estate were to be sold during the life of the testator's wife without her consent. The income arising from the real estate and the rents of the unsold portion were to be divided during the life of the widow as follows, one-fourth to the widow and the remaining three-fourths among four named charities, to which after the widow's death the whole residuary estate was given. The question propounded by the trustees was whether the interest of the charities in the lands had become vested in the Official Trustee because it had not been sold within the time prescribed by the Act. Byrne, J., came to the conclusion that, according to the decision of the Court of Appeal, a gift of the proceeds of land directed to be sold is not "land" within the Act, *Re Sidebottom* (1902) 2 Ch. 389 (ante vol. 38, p. 751), yet that the gift of the

share of the rents until sale in this case was "land"; there were therefore two kinds of interests given to the charities by the will, one of which (the share of the rents until sale) was land, and the other the share of the proceeds of the land when sold, which was not "land", and the first interest not having been sold within the prescribed time, was vested now in the Official Trustee. The result is somewhat curious.

PRACTICE—TAXATION—COSTS OF WITNESSES, SUMMONED BUT NOT CALLED—FURTHER EVIDENCE ON APPEAL—VIEW BY COUNSEL FOR PURPOSE OF APPEAL.

In *Leeds Forge Co.* v. *Deighton's P. F. Co.*, (1903) 1 Ch. 475, an appellant gave notice that he would apply to the Appellate Court to be allowed to give further evidence on two points, and in anticipation that the leave would be granted, witnesses were summoned. The leave was granted and the further evidence given on one point, but it became unnecessary to adduce the further evidence on the second point, and no leave was asked as to that. The appeal being allowed with costs, the appellant claimed to be allowed the costs of the witnesses summoned to give further evidence but not called, as also the expense of a view by his counsel for the purpose of the appeal. The taxing office allowed the costs, and on appeal Farwell, J., held that the costs of the view were in the discretion of the taxing office and he declined to interfere, but as to the costs of the witnesses not called, he considered the taxing officer had no jurisdiction to allow them, as leave to give evidence on the point which the witness was summoned was neither asked nor granted.

WILL—CONSTRUCTION—GIFT OF RESIDUE TO TRUSTEES, "THEIR EXECUTORS ADMINISTRATORS AND ASSIGNS"—TRUSTS POINTING TO PERSONALTY.

Kirby-Smith v. *Parnell*, (1903) 1 Ch. 483, may be briefly noticed, the point being whether a general residuary gift of his "estate" to trustees, "their executors, administrators and assigns" would pass the residuary realty as well as personalty. The trusts declared, pointing merely to personal estate, e.g., "the interests, dividends and annual produce of such trust moneys." Buckley, J., decided that the realty passed, and that the trusts declared applied thereto as well as to the personalty.

LANDLORD AND TENANT—AGREEMENT FOR TENANCY—FAILURE OF AGREEMENT AS A PRESENT DEMISE—SPECIFIC PERFORMANCE.

Zimbler v. *Abrahams* (1903) 1 K.B. 577, was an action of ejectment by a landlord against his tenant. The defendant was let into possession of the premises by the plaintiffs' agent, who signed a document by which he purported to "have let" the house to the defendant at a weekly rental, and by which document the agent also agreed "not to raise Mr. Abrahams any rent as long as he lives in the house and pays rent regular. I shall not give him notice to quit. Any time Mr. Abrahams wishes to move out, I promise to return to him the £6 he has paid me on taking possession of the house." The plaintiffs treated the defendant as a weekly tenant and gave him notice to quit, but he not complying therewith, the action was brought. The case was tried by Darling, J., who gave judgment for the defendant on the ground that no breach of the agreement by the defendant had been proved. The Court of Appeal (Williams, Stirling, and Mathew, L.JJ.) being of opinion that the agreement could not be construed as a present demise, but could be relied on by defendant as an agreement to grant a lease, gave defendant leave to amend his pleadings by claiming a specific performance of the agreement, which the Court held should be granted on the terms of his paying all arrears of rent now due; and upon complying with those terms, the appeal was dismissed, and the judgment we presume was varied by directing specific performance, otherwise the plaintiffs were held entitled to recover.

INSURANCE—ACCIDENT—"INTERVENING CAUSE"—CONSTRUCTION OF POLICY.

In *Mardorf* v. *Accident Insurance Co.* (1903) 1 K.B. 584, the plaintiff claimed to recover on an accident policy against injury by accidental violence in case the insured should die within three months from the occurrence of the accident if it should be "the direct and sole cause" of his death: and the policy provided that it should not apply to death "caused by, or arising wholly or in part from, any intervening cause." On July 2 the assured accidentally inflicted a wound on his leg with his thumb-nail. On July 9 erysipelas set in. On July 12 blood poisoning ensued, and on July 16 septic pneumonia, of which complaint the assured died on July 22. It was admitted that the septic germs, the development of which resulted in the assured's death, were introduced

into his body at the time of the infliction of the wound. Wright, J., who tried the action, held that the erysipelas, blood poisoning, and pneumonia were not "intervening causes" within the meaning of the policy, but merely different stages in the development of the poison germs introduced at the time of the infliction of the wound, and that his death was caused directly and solely by the accidental injury and therefore that the plaintiff was entitled to recover.

MINERAL—CLAY—EXPROPRIATION—RAILWAY CLAUSES CONSOLIDATION ACT, 1845 (8 & 9 VICT., C 20) S. 77.

In re Todd and North Eastern Ry., (1903) 1 K.B. 603. A railway company being desirous of expropriating land for the purposes of widening their railway, it was referred to arbitrators to fix the compensation to be paid. The arbitrators found that the land in question under the surface or vegetable soil for a depth of 100 feet consisted of clay suitable for brick making, which clay is worked by open work and not by mining. The owners claimed that the clay was a mineral, and that they were entitled to dig and carry away the clay up to the boundary of the land already belonging to the company, and they further claimed to be paid for all the clay lying under the land proposed to be expropriated. The Railway Clauses Act, s. 77, provides that "the company shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away and used in the construction of the works, unless the same shall have been expressly purchased; and all such mines excepting as aforesaid shall be deemed to be excepted out of the conveyance of such lands unless they shall have been expressly named therein and conveyed thereby." Wright, J., in a case stated by the arbitrators, held that the clay was not a 'mineral' within the meaning of the clause, and that the owner was not entitled to payment therefor as such, and the Court of Appeal (Lord Halsbury, L.C., and Lord Alverstone, C.J., and Jeune, P.P.D.) upheld his decision, holding the case to be governed by the decision of the House of Lords in *Lord Provost of Glasgow* v. *Farie*, 13 App. Cas. 657.

SALE OF GOODS — WARRANTY — ARTICLE FIT FOR CONSUMPTION — IMPLIED WARRANTY—BREACH—DAMAGES—SALE OF GOODS ACT, 1893 (56 & 57 VICT., C. 71) S. 14.

Wren v. *Holt*, (1903) 1 K.B. 610, was an action to recover damages for breach of warranty that beer purchased by the plaintiff from the defendant by retail was fit for consumption, whereas in fact it contained arsenic which injured the plaintiff's health. The house was a 'tied house,' and defendant sold beer made by a firm of Holdue & Co., which the plaintiff preferred and expected to get. The jury found that the plaintiff's illness had been caused by arsenical poisoning due to defendant's beer, and was contributed to exceedingly by plaintiff's excessive drinking. The action was tried by Wills, J., who gave judgment for the plaintiff, and his decision was affirmed by the Court of Appeal (Williams, Stirling, and Mathew, L.JJ.) on the ground that the beer had been brought by description within the meaning of the Sale of Goods Act, 1893, s. 14, sub-s. 2, and that an examination by the buyer would not have revealed the defect, and that there was therefore an implied warranty by the seller that it was reasonably fit for consumption, for breach of which he was liable.

STATUTE OF LIMITATIONS—SIMPLE CONTRACT DEBT — ACKNOWLEDGMENT OF DEBT—(R.S.O. C. 324, S. 38; C. 147, S. 1.)

Langrish v. *Watts* (1903) 1 K.B. 636, marks the difference in the operation of the Statute of Limitations affecting debts (R.S.O. c. 324 s. 38) and the Statute of Limitations (R.S.O. c. 147 s. 1) affecting realty. In the latter case after the prescribed period the title is extinguished and cannot be revived by an acknowledgment of title, whereas in the case of a debt barred by the Statute the right to sue may be revived by a subsequent acknowledgment. In the present case the action was commenced in 1902, and the plaintiff claimed to recover on a promissory note payable on demand made in 1881. The acknowledgment relied on was made in a letter written in 1901 written to the plaintiff's wife, in which the defendant admitted the debt but claimed that there had been certain payments on account, and wound up by saying, "At present I have no money on hand, . . . but as soon as there is another division I will send uncle some"; and this was held by Bruce, J., and the Court of Appeal (Williams, Stirling, and Mathew, L.JJ.) to be a sufficient acknowledgment to take the case out of the Statute of Limitations.

CHOSE IN ACTION—ASSIGNMENT OF CHOSE IN ACTION—RIGHT OF ASSIGNEE TO SUE FOR DAMAGES.

In *Torkington* v. *Magee* (1903) 1 K.B. 644, the Court of Appeal (Williams, Stirling, and Mathew, L.JJ.) allowed an appeal from the decision of the Divisional Court (1902) 2 K.B., 427 (noted ante vol. 38, p. 757), on the ground that assuming the plaintiff had the right, as assignee of a contract for the sale of a reversionary interest, to sue in his own name, which the Court did not decide, there was no cause of action, because the evidence showed that neither the plaintiff nor his assignee were ready to carry out the contract on their part according to its terms. The question therefore as to whether a chose of action of that kind is within the Judicature Act (see Ont. Jud. Act, s. 58, 6) cannot be said to be settled.

MUNICIPAL CORPORATION—DEMAND OF POLL, WHAT AMOUNTS TO—WITHDRAWAL OF DEMAND.

In *The King* v. *Dover* (1903) 1 K.B. 668, an application was made for a mandamus to the mayor of a municipality requiring him to hold a poll, and the question at issue was whether a poll had been duly demanded. An Act of Parliament provided that at meetings of the ratepayers the chairman shall propose the resolution and the meeting shall decide for or against its adoption, "provided that if any owner or ratepayer demands that such question be decided by a poll of owners and ratepayers" the poll is to be taken as therein provided. At a meeting of ratepayers a resolution had been declared carried, whereupon one of the ratepayers present demanded a poll and another rose and seconded it "if necessary"; the latter was told by the town clerk that it was unnecessary to second the demand, which had been acceded to, and the meeting separated. Afterwards the ratepayer who had demanded a poll withdrew the demand and the mayor refused to treat the action of the seconder as a demand by him, and the latter then applied for a mandamus and the Divisional Court (Lord Alverstone, C.J., and Ridley and Darling, JJ.) granted the application on the ground that the offer to second the demand was itself a demand; the Court moreover intimates a doubt whether a demand once made and acceded to can be afterwards withdrawn after the meeting has separated.

FRAUDULENT CONVEYANCE—DEED OF ARRANGEMENT WITH CREDITORS—DELAYING CREDITORS—13 ELIZ., C. 5—R.S.O. C. 334, S. 4.

Muskelyne v. *Smith* (1903) 1 K.B. 671. This was an appeal from the decision of the Divisional Court (1902) 2 K.B. 158 (noted ante vol. 38, p. 673). When the case was before the Divisional Court the principal question discussed was whether a deed made for the benefit of such of the creditors of the grantors as should execute the schedule was void under the Statute 13 Elizabeth c. 5, (R.S.O., c. 334) as against the plaintiffs who were creditors, but had not executed the schedule, the Divisional Court held that it was not. On the appeal the further ground was taken that the deed reserved benefits to the grantors, in that it authorized them to retain the property assigned and carry on their business subject to the supervision of the trustees, who were moreover empowered in their discretion to take possession and wind up the business and realize and divide the estate, and it was contended that the benefit thus secured to the debtors rendered the deed void under the statute, but the Court of Appeal (Williams, Stirling and Mathew, L.JJ.) held that it did not and dismissed the appeal. Stirling, L.J., adopts the dictum of Giffard, L.J., in *Alton* v. *Harrison*, L.R. 4 Ch. 622: "If the deed is bonâ fide—that is, if it is not a mere cloak for retaining a benefit to the grantor—it is a good deed under the statute of Elizabeth."

SHIP—MORTAGE OF SHIP—MORTGAGEE TAKING POSSESSION—FREIGHT PREVIOUSLY EARNED BUT UNPAID.

Shillito v. *Biggart*, (1903) 1 K.B., 683, was an interpleader issue, to determine whether a mortgagee of a ship on taking possession is entitled to freight previously earned, but then remaining unpaid. Walton, J., decided the question adversely to the mortgagee. The case was not covered by any previously reported case, but the decision is in accordance with the views expressed by James, L.J., in *Liverpool Marine Co.* v. *Wilson*, L.R. 7 Ch. at p. 511.

"SEALED VESSEL."

In *Mitchell* v. *Crawshaw*, (1903) 1 K.B., 701, the neat point decided by a Divisional Court (Lord Alverstone, C.J., and Wills and Channelle, JJ.) is that a bottle with a screw stopper and a gummed paper label over the stopper is not a "sealed vessel" within the meaning of a statute requiring intoxicating liquor in

certain cases to be sold in a "sealed vessel" because the gummed paper can be removed by being dampened. "Sealed" as defined by the Act means secured with any substance without the destruction of which the cork, plug, or stopper, cannot be withdrawn.

CARRIER—CONTRACT—EXEMPTION OF LIABILITY FOR LOSSES WHICH CAN BE COVERED BY INSURANCE—NEGLIGENCE OF CARRIERS' SERVANTS.

Price v. *Union Lighterage Co.* (1903) 1 K.B. 750, is a case which shows that it is not an easy thing for a carrier to escape liability for the negligence of himself or his servants. In this case goods were loaded on a barge under a contract with defendants for their carriage by which the defendants stipulated they were not to be liable "for any loss or damage to goods which can be covered by insurance." Through the negligence of the defendants' servants the barge sank, and the goods were lost. It was conceded by Walton, J., that the loss was one that could be insured against, but he nevertheless held that, in the absence of an explicit stipulation that the defendants were not to be liable for negligence, they were bound to use reasonable care, and the loss having been occasioned by the negligence of the defendants' servants they were liable therefor, notwithstanding the stipulation above mentioned.

VENDOR AND PURCHASER—CONTRACT FOR SALE OF REAL ESTATE—"WILFUL DEFAULT" BY VENDOR—INTEREST ON PURCHASE MONEY—DISPUTE AS TO FORM OF CONVEYANCE—LAND IN OCCUPATION OF VENDOR OCCUPATION RENT.

In *Bennett* v. *Stone* (1903) 1 Ch. 509, the Court of Appeal (Williams, Stirling, and Cozens-Hardy, L.JJ.) have affirmed the judgment of Buckley, J. (1902) 1 Ch. 226 (noted ante vol. 38, p. 298), but no two of them agree. The action was for specific performance of a contract for the sale of land, and the point in dispute was as to the interest payable on the purchase money and the liability of the vendors for an occupation rent. The conditions provided that if from any cause other than the wilful default of the vendors the purchase was not completed by Jan. 2, 1899, the purchase money was to bear interest at 5 per cent. The purchaser tendered a draft deed, to a clause in which the vendors objected, and they made a change which the purchaser refused to accept. The vendors then threatened to cancel the contract if the

clause they had drafted was not accepted, whereupon the purchaser brought the present action. It was found by all the judges of the Court of Appeal that the vendor's contention was honest, but that it was mistaken. Williams, L.J., considered that was "wilful default" and exonerated the purchaser from paying interest. Stirling, J., considered it was honest, but also none the less "wilful," but that it was not the real cause of the delay in completing, which was in fact due to the inability of the purchaser to find the money, and therefore the purchase was liable for interest. Cozens-Hardy, L.J., on the other hand, considered that because the contention as to the form of the conveyance was honest therefore it was not "wilful," and there was no wilful default on the part of the vendors. In the result, though for different reasons, Stirling and Cozens-Hardy, L.JJ., affirmed the judgment of Buckley, J., on this point. The purchaser also appealed on the ground that the vendors were chargeable with an occupation rent for the land of which they had been in occupation, but the appeal on this ground failed.

ESTOPPEL — REPRESENTATION — SOLICITOR AND CLIENT — INVESTIGATION OF TITLE — CONVEYANCE — SOLICITOR OF PURCHASER IN ADVERSE POSSESSION OF PART OF LAND PURCHASED.

Bell v. *Marsh* (1903) 1 Ch. 528, is a somewhat peculiar case. The plaintiff contracted to purchase a parcel of land and employed a solicitor who owned the adjoining premises to investigate the title and prepare the conveyance. A greenhouse in the solicitor's possession and which the client did not suppose he was purchasing, actually, though unknown to the solicitor, encroached two-thirds on the parcel the plaintiff was buying. This encroachment might have been discovered had the solicitor measured the property. The purchase was concluded in 1893. In 1898 the plaintiff discovered that part of the greenhouse was on the property conveyed to him, but he did not inform the solicitor, who died in 1899. In 1901 the plaintiff commenced the present action against the solicitor's representatives to recover that part of the site of the greenhouse comprised in his conveyance. The plaintiff admitted he was not induced to make the purchase by any representation of the solicitor as to the boundary, and that he knew before he entered into the contract that the greenhouse belonged to the solicitor. Buckley, J., who tried the action, was of the

opinion that the solicitor must be taken to have represented to his client that he would have a good title to the whole of the land purchased, and that the whole was effectually conveyed to him, and that therefore he and his representatives were estopped from setting up an adverse title to any part of the land thus purported to be conveyed. The Court of Appeal (Collins, M R., and Romer and Cozens-Hardy, L.JJ.) were able to take a broader view of the case, and came to the conclusion that as the plaintiff had not been induced to purchase by any misrepresentation made by the solicitor, and did not suppose he was buying any part of the greenhouse, his position was in no way altered after he entered into the contract by the representation (if any) arising from the solicitor's negligence, which was therefore not the proximate cause of loss to the plaintiff, and consequently there was no estoppel, and the action failed.

WILL—REMOTENESS—INVALID TRUST FOR SALE—NO GIFT OF INCOME—CONVERSION.

In re Appleby, Walker v. *Lever* (1903) 1 Ch. 565, was a question of construction. By the will of the deceased the testator directed his real estate to be sold and the proceeds divided among certain persons who were all ascertainable without infringing the rule against perpetuity. There was no express gift of the income until sale, and the trust for sale was void because not limited to take effect within the time prescribed by the rule against perpetuity. The question was therefore whether the persons entitled to share in the proceeds were entitled to the land, and whether as real or personal estate. The Court of Appeal (Collins, M.R., and Cozens-Hardy, L.JJ.) agreed with Byrne, J., that notwithstanding the trust for sale was bad, and there was no express gift of the income, the several persons who by the will were to share in the proceeds in the event of a sale were entitled to the land in specie as real estate.

COMPANY—PROSPECTUS—CONTRACT—OMISSION FROM PROSPECTUS OF MATERIAL CONTRACT — FRAUDULENT PROSPECTUS — SHAREHOLDER—DAMAGES—DIRECTORS, LIABILITY OF — COMPANIES ACT, 1867 (30 & 31 VICT., C. 131) S. 38 (2 ED. 7, C. 15, S. 34 D.)—DIRECTORS LIABILITY ACT (1890) (53 & 54 VICT., C. 64) (S. 3, SUB-S. 1)—(R.S.O., C. 216, S. 4).

Broome v. *Speak* (1903) 1 Ch. 586, was an action by a shareholder of a limited company to recover damages against directors for issuing a fraudulent prospectus. On September 21, 1898, the

directors of the company, then newly incorporated, entered into a contract with Bowden its promoter, confirmed by a resolution, that in consideration of his advancing £14,250 to enable the company to pay a deposit on its intended purchase of an undertaking introduced by him, and of his taking the risk of forfeiture of the deposit in the event of non-completion of the purchase, the company would repay the deposit by a certain day "together with £7,500 bonus for such loan." The deposit was raised by Bowden and paid to the vendors, and subsequently on October 10, 1898, by a contract, confirmed by a resolution of the directors, it was agreed between Bowden and the directors that upon the directors giving him "assurance that his right to recover proper remuneration for commission on introducing business" of the purchase "and raising the necessary deposit shall be honourably met at a future meeting of the directors," the contract of Sept. 21 was cancelled and the subject adjourned to a future meeting of the board. Certain contracts were mentioned in the prospectus as the "only" contracts entered into by the company and no mention whatever was made of the contracts of Sept. 21 or Oct. 10. Buckley, J., held that both of these contracts were such as were material to be specified in the prospectus under the Companies Act, s. 38 (2 Ed. 7, c. 15, s. 34 D), and that therefore the statement that the contracts specified were the "only" contracts made by the company was an untrue statement which rendered the directors liable under the Directors Liability Act, s. 3, sub-s. 1 (R.S.O. c. 216, s. 4, sub-s. 1) to shareholders who had bought shares on the faith of the prospectus; and that the measure of damages was the difference in the price paid for the shares and their fair value at the date of allotment.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

EXCHEQUER COURT OF CANADA.

Burbidge, J.] MACARTHUR AND KEEFE AND THE KING. [April 6.

Public works—Injurious affection—Closing up streets—Compensation.

The properties of the suppliants were injuriously affected by the construction of a public work which obstructed a highway upon which the properties, respectively, abutted. MacArthur's property was 190 feet from the place of obstruction, and Keefe's 240 feet. The suppliants' properties instead of being respectively situated as they were formerly on a main thoroughfare, were, by the change affected by the construction of the said public work, were situated at the extreme end of a street closed up at one end, and forming a cul de sac.

Held, that where the injurious affection concerned the personal convenience of the occupiers of the properties in question, the suppliants were not entitled to compensation, but that in so far as the value of the properties, in the hands of anyone, and used for any purpose to which they could be put, was lessened, the suppliants ought to recover therefor.

D. B. Maclennan, K.C., for suppliants. *F. H. Chrysler*, K.C., and *P. K. Halpin*, for respondent.

APPEAL FROM THE QUEBEC ADMIRALTY DISTRICT.

Burbidge, J.] DESROCHERS *v.* HAMBURG PACKET CO. [April 20.

Admiralty law—Shipping—Collision—Liability.

In a collision in Canadian waters between the steamship W. and the schooner M.A., the W. was found to be at fault in a matter that occasioned the collision. It was also found that the M.A. had contravened the regulations for preventing collisions in Canadian waters; but that such contravention did not contribute to the accident. In an action against the W. by the widow and universal legatee of the owner of the M.A.:

Held, 1. The W. was alone to blame and that the plaintiff was entitled to recover.

2. Where a collision occurs on the high seas, and the provisions of sec. 419 of The Merchant Shipping Act 1894, and the Imperial Regulations for Preventing Collisions at Sea are in force, the obligation is imposed on a

vessel that has infringed a regulation which is prima facie applicable to the case to prove, not only that such infringement did not but that it could not, by possibility, have contributed to the accident; but where the collision occurs in Canadian waters and the Act respecting the Navigation of Canadian waters (R.S.C., c. 79), and the regulations for the prevention of collisions made by the Governor-General in Council are in force, the vessel which contravenes one of them will not be held to be in fault unless such contravention has contributed to the collision: *The Cuba* v. *McMillan*, 26 S.C.R. 661.

L. P. Pelletier, K.C., *A. H. Cook*, K.C., and *F. Meredith*, K.C., for appellants (defendants). *C. Pentland*, K.C., and *A. R. Angers*, K.C., for respondents (plaintiffs).

Province of Ontario.

COURT OF APPEAL.

From Boyd, C.] [April 14.

CANADIAN PACIFIC R.W. CO. *v.* CITY OF TORONTO.

Landlord and tenant—Railway company—City lease—Usual covenants—Covenants to pay taxes and repair—Right of re-entry—Rent in arrear—Interest on.

An agreement made between the City of Toronto and the Canadian Pacific R.W. Co. provided, amongst other things, for a lease renewable in perpetuity, in successive terms of fifty years at an agreed rent, payable on named days, nothing being said about covenants.

Held, that the agreement was not self-contained, but that the execution of a formal lease was contemplated, which should contain the usual covenants, and that covenants to pay taxes, and for the right of re-entry for non-payment of rent or taxes, were, under the circumstances here, usual covenants.

Where by the agreement, a time was fixed for the commencement of the lease, and the railway company entered into possession, and had the enjoyment of the demised premises, but the title was not settled until some time afterwards, interest on arrears of rent which accrued due in the meantime, was allowed.

Judgment of BOYD, C., reversed in part.

Armour, K.C., and *McMurchy*, for plaintiffs. *Robinson*, K.C., and *Fullerton*, K.C., for defendants.

From Divisional Court.] [April 14.

EXCELSIOR LIFE INS. CO. *v.* EMPLOYERS' LIABILITY ASSURANCE CORPORATION.

IN RE FAULKNER.

Arbitration and award—Submission — Appointment of sole arbitrator—Appeal—Order of Judge in Chambers.

A submission contained in a policy of insurance provided "that, if any difference shall arise in the adjustment of a loss, the amount to be paid . . . shall be ascertained by the arbitration of two disinterested persons, one to be chosen by each party, and if the arbitrators are unable to agree, they shall choose a third, and the award of the majority shall be sufficient."

Held, reversing the decisions of a Divisional Court, 3 O.L.R. 93, and of STREET, J., 2 O.L.R. 301, that the submission was not one providing for a reference "to two arbitrators, one to be appointed by each party," within the meaning of the Arbitration Act, R.S.O. 1897, c. 62, s. 8; and, therefore, one party having failed, after notice from the other, to appoint an arbitrator, the other could not appoint a sole arbitrator.

Re Sturgeon Falls Electric Light Co. and Town of Sturgeon Falls, 2 O.L.R. 585, approved.

Held, also, that the order of STREET, J., dismissing an application to set aside the appointment of a sole arbitrator, was not made by him as persona designata, but was a judicial order from which an appeal lay.

J. H. Moss, for appellants. *R. McKay*, and *J. H. Fisher*, for respondents.

From Moss, J.A.] UFFNER *v.* LEWIS (No. 2). [May 8.
BOYS' HOME *v.* LEWIS (No. 2).

Will—Construction.

A testator by his will gave to two trustees his estate, real and personal, and directed the trustees to pay (1) to a sister a legacy of $500, and in case of her death to her daughter, and in case of the death of her daughter to the daughter's children in equal shares; (2) to a niece a legacy of $500; (3) to the children of another niece a legacy of $500; and (4) to a charitable institution a legacy of $500; with a direction that should there not be sufficient to pay all the legacies there should be a proportionate abatement; and then directed that should there be any residue after payment of the legacies it should be divided and paid "to and among my legatees hereinbefore named and referred to, and my said trustees or the survivor of them in even or equal shares and proportions:

Held, that the children of the niece, who were five in number, were entitled between them to one-fifth of the residue and not to one-ninth each.

Judgment of Moss, J.A., affirmed.

Proceedings were taken in the year 1882 for the administration of the estate and without, as was held in the previous judgment of this Court, 27 A.R. 242, proper proceedings being taken it was assumed that there were no children of the niece and the amount of their legacy and their share in the residue was divided between the charitable institution, the trustees and one of the other legatees:

Held, that the trustees and the charitable institution were bound to repay the excess which they had received—per Curiam, with interest from the date of proceedings taken by the children of the niece; and, per MACLENNAN, J.A., dissenting, with interest from the date of distribution under the report in the administration proceedings.

Judgment of Moss, J.A., reversed.

D'Arcy Tate, for appellants. *Teetzel*, K.C., and *A. M. Lewis*, for Boys' Home. *Shepley*, K.C., and *William Bell*, for Lewis and Morgan. *F. W. Harcourt*, for infant.

HIGH COURT OF JUSTICE.

Boyd C.] McMAHON *v.* COYLE. [March 24.

Short form lease—Breach of covenant.

The right of re-entry under the Short Form lease applies to the breach of a negative as well as of an affirmative covenant, so that there is a right of re-entry for breach of the covenant not to assign or sublet without leave. *Toronto General Hospital* v. *Denham* (1880) 31 C.P. 207 followed.

The making of an agreement for the assignment of a lease, the settlement of the terms thereof and the taking of possession by the assignee constitute sufficient evidence of the breach of such covenant, so that the fact of the document showing the transfer not having been made until after action brought was immaterial.

Porter, for plaintiff. *Clute*, K.C., and *Morden*, for defendants.

Winchester, M.C.] O'FLYNN *v.* MIDDLETON. [March 31.

Costs—Lien of solicitor—Lands subject of action—Registry of lis pendens—Discharge of.

Consol. Rule 1129, which empowers a court or a judge to declare that a solicitor, who has been employed to prosecute or defend any case, etc., shall have a lien on the property recovered or preserved through his instrumentality is construed liberally, so as not to deprive the solicitor of his lien.

A lis pendens registered by a solicitor against land, the subject matter of a redemption action, wherein costs were incurred by the solicitor will not be discharged on a motion therefor in Chambers, but will be left for the decision for the trial judge after the hearing of the evidence.

Du Vernet, K.C., for plaintiff. *Moss*, for defendant.

Divisional Court.] KAVANAUGH *v.* CASSIDY. [April 7.

Costs—Security for costs—Residence out of Ontario—Con. Rule 1198b.

A man of about thirty-six years of age who had since childhood lived in the United States came to Toronto in October, 1902, to inspect for his employers, brokers in New York, a branch office in Toronto. He was then instructed by his employers to act as telegraph operator in the Toronto office. These brokers gave up business in a few weeks and he then was employed as a telegraph operator by their successors. The business of the successors also came to an end within a few weeks and in connection with that business the plaintiff was accused by the defendant of fraud and arrested, this action for damages being brought in consequence thereof. He was an unmarried man and had been in the habit of living with his mother in Kansas City when out of employment, and he stated on cross-examination that he would return to the United States if he could find employment there:—

Held, that under these circumstances the defendant was entitled to security for costs of the action.

J. E. Cook, for defendant. *S. B. Woods*, for plaintiff.

Street, J.] REX *v.* FOSTER. [April 8.

Criminal law—Conviction under Ontario Liquor Act, 1902—Removal by certiorari—Subsequent issue of commitment—Invalidity—Amendment—Application of statute relating to Justices of the Peace—Irregularities—Name of informant—Name of defendant—Sentence—Adjudication—Fine.

The defendant was convicted on the 3rd February, 1903, before a judge designated under s. 91 of the Ontario Liquor Act, 1902, of an illegal act within the meaning of that section, and was sentenced to be imprisoned for one year and to pay a penalty of $400. On the same day a warrant was issued by the judge, committing the defendant to gaol in pursuance of the conviction, and under this warrant he was arrested and lodged in gaol. On the 30th January, 1903, a writ of certiorari was issued to the judge and a County Crown Attorney, commanding them to send to the High Court of Justice all summonses, proceedings, etc., had before the judge against the defendant and two others. This was served on the judge on the 2nd February before the date of the conviction and before the issue of the warrant.

Held, that the proceedings against the defendant were removed from the court below by the issue and service of the certiorari, and that the subsequent proceedings were void.

By 2 Edw. VII, c. 12, s. 15 (O.), the provisions of the Criminal Code respecting amendment of proceedings before justices of the peace are made applicable to all cases of prosecutions under Provincial Acts.

Held, not to apply to proceedings under the Liquor Act, 1902.

Semble, that in a conviction of this kind it was no objection, on habeas corpus, that the name of the informant did not appear, nor that the prisoner was prosecuted under the name of "Foster," whereas his name was "Forster."

Semble, also, that there was a sufficient sentence and adjudication, although the particular language which might have been necessary in a conviction by a magistrate was not made use of in the record of the proceedings; but, at all events, there was no reason why the sentence of imprisonment should not stand good, even if the adjudication of the fine were objectionable.

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

Trial—Britton, J.] [April 9.

CAREW *v.* GRAND TRUNK R.W. Co.

Railway—Farm crossing—Obligation to provide—Dominion Railway Act—Midland Railway Co.—Ontario statutes.

The plaintiff's father in 1882 conveyed part of his farm to the Midland Railway Co, who constructed their railway so as to sever the farm, but did not agree to make a farm crossing. In 1900 the father conveyed to the plaintiff all the farm not previously conveyed to the railway company.

Held, that the plaintiff could not compel the defendants, who had acquired the Midland Railway in 1893, to provide a farm crossing, either by virtue of the Dominion Railway Act or of Ontario legislation applicable to the railway before 1893.

Review of the statutes affecting the Midland Railway Company.

Ontario Lands and Oil Co. v. *Canada Southern R.W. Co.*, 1 O.L R. 215, followed.

Ruddy for plaintiff. *Riddell*, K.C., for defendants.

Falconbridge, C.J.K.B., Street, J., Britton, J.] [April 11.

PRING *v.* WYATT

Malicious prosecution—Fair statements of facts to magistrate—Liability of defendant for magistrate erroneous view—Information for theft—Belief of ownership—Belief of theft—Authorizing charge—Reasonable and probable cause—New trial.

The defendant with a collie dog was passing the plaintiff's house when the plaintiff and his son claimed the dog as theirs and took possession of it. The defendant went to a magistrate and stated the facts and the magistrate drew an information stating that the plaintiff did "unlawfully have and

keep in his possession and take away a black collie dog . . . the property of the complainant" which was sworn by the defendant; a search warrant was issued to a constable who took the dog out of the plaintiff's possession, he insisting that it was his dog. The constable then laid an information against the plaintiff, charging that he "unlawfully did have and keep in his possession a black collie dog the property of Mr. Wyatt," and the plaintiff was summoned. Before the magistrate the plaintiff's counsel objected that the information and summons did not charge the plaintiff with any offence and at the request of the defendant and his counsel the information was amended by inserting the words "steal and take away." The magistrate dismissed the charge. In an action for malicious prosecution,

Held, that the defendant having fairly stated the facts to the magistrate he was not liable in damages for the erroneous view of the magistrate tha he had jurisdiction to issue the search warrant, nor for summoning the plaintiff apparently to dispose of the question as to the property in the dog.

Held, also, that there was evidence that the defendant assented to the alteration charging the plaintiff with the crime of theft and his prosecution on that charge and that the defendant was not justified in charging the plaintiff with having stolen the dog because he believed the dog was his own; that the real question was not whether the defendant believed the dog to be his own, but whether he believed that the plaintiff had stolen him; that is, taken him without any belief that he had the right to take him; and that the trial judge should have left the case to the jury, telling them that if they found that the defendant had authorized the charge of theft and honestly believed when the amendment was made that the plaintiff had stolen his dog they should find for the defendant, otherwise they should find for the plaintiff—the case should not have been taken from the jury upon the ground that reasonable and probable cause for a criminal prosecution had been shewn and a new trial was ordered.

Judgment of the County Court of the County of Middlesex reversed.

J. H. Moss, for the appeal. *J. A. Meredith*, contra.

Meredith, J.] [April 14.

ST. MARY'S CREAMERY CO. *v.* GRAND TRUNK R.W. CO.

Railways—Bill of lading—Condition requiring insurance—Breach of—Loss of goods—Negligence.

Under sec. 246 of the Railway Act, a railway company is precluded from setting up a condition endorsed on a bill of lading relieving the company from liability for damage sustained to goods while in transit, where the damage is occasioned through negligence.

Where, therefore, a condition of a bill of lading given by a railway company on a shipment of goods, required the consignor to effect an

insurance therein, which in case of loss or damage to the goods, the company were to have the benefit of, the company are precluded from setting up the breach of such a condition as a ground for relief from liability, when the damage to the goods has been occasioned through negligence.

Idington, K.C., and *Harstone*, for plaintiffs. *Walter Cassels*, K.C., and *Forster*, for defendants.

Falconbridge, C.J.K.B., Street, J., Britton, J.] [April 18.

BERRY *v.* DAYS.

Covenant—Double—Severable—Waiver of part—Assignable—Injunction.

Defendant covenanted with the plaintiff that he would not "directly or indirectly engage in the drug business in said Village of L or within a radius of ten miles therefrom during a term of five years from this date . . . and that he will not open or have part in a third or further drug store in . . . during a term of five years from this date." The plaintiff sold his share in the drug business to the defendant and actively promoted a partnership between him and his (plaintiffs) son, which was continued for some months when the defendant sold out to the son. The plaintiff afterwards acquired the business and sold it to his co-plaintiff by bill of sale, reciting the covenant and extended its benefit to the purchaser and covenanted with him to save him harmless from a breach of the covenant by the defendant. In an action to restrain the defendant from carrying on a third drug store which he had opened.

Held, 1. For the first five years there were two concurrent severable covenants and that while the plaintiff might, by his conduct, have waived a breach of the first not to enter into business during the five years, he had not waived any breach of the second not to open or have part in a third store.

2. The covenant was assignable and the right to enforce it did not terminate by reason of the plaintiff having gone out of business, and an injunction was granted restraining the defendant from opening, carrying on or having part in a third store for the ten years.

Judgment of MacMahon, J., affirmed.

Paterson, K.C., for the appeal. *Proudfoot*, K.C., contra.

Britton, J.] KINGSTON *v.* SALVATION ARMY. [May 4.

Parties—Unincorporated Association.

The Salvation Army, the duly appointed officers of which are entitled under R.S.O. 1897, c. 162, to solemnize marriages, and which, under R.S.O. 1897, c. 307, may hold property in Ontario, may be sued in the courts of Ontario.

A. E. Hoskin, for defendants. *D'Arcy Tate*, for plaintiff.

Britton, J.] EMPIRE LOAN AND SAVINGS CO. *v.* MCRAE. [May 14.

Validity and forfeiture—Liquidated damages—Sale of land—Specific performance—Extension of time for payment.

After judgment in an action by the vendors of land for specific performance and before issue of the same, the vendors agreed to extend the time for the payment of the purchase money for three months, upon the terms of the purchaser paying down $500, which extension was embodied in the judgment, and it was agreed between the parties as follows: "If the defendant shall pay the balance of the purchase money within the time limited by the judgment, the plaintiff shall give credit to the defendant upon the said balance for the said sum of $500, but if the defendant shall fail to make payment of the said balance within the time limited by the said judgment, then, the plaintiff shall not be bound to give credit to the defendant upon the said balance for the said sum of $500, and in this respect time shall be of the essence of the contract." A few days after the expiry of the time limited by the judgment, the purchaser tendered the purchase money less $500, which the vendor refused to accept.

Held, that the above provision was of the nature of a forfeiture and not of liquidated damages, and the purchaser was entitled to be relieved from the terms of the judgment and to have a conveyance of the property upon paying the balance due after credit given for the $500.

C. D. Scott, for vendor. *Middleton*, for purchaser.

Falconbridge, C.J.K.B., Street, J., Britton, J.] [May 18.

HEFFERMAN *v.* TOWN OF WALKERTON.

Municipal law—Procedure by-law—Subsequent by-law passed in disregard of its provisions—Merits—Court's discretion.

The Mayor of a town had a member of the Town Council removed from the council chamber for disorderly conduct. The Councillor brought an action against the Mayor which was tried and dismissed with costs which costs the Mayor was unable to collect. The Council with a view to provide him with funds to pay the costs in June introduced a by-law for $125 "to remunerate the Mayor for the present year." In September the Council in passing the estimates included an item of $300 for "Law costs, etc.," which the defendants said was known to be intended to cover the $125 and the plaintiff denied. In December a resolution was passed that the by-law be read a second and third time, passed, signed and sealed. The by-law was not submitted to a committee of the whole, which objection was taken at the time by the plaintiff although it was submitted to the Finance Committee who reported "that funds for the same be reported from the general funds" which report was adopted by the Council and the

by-law was read a third time and ordered to be signed and sealed. The vote being four for the by-law and two against it, the Mayor presiding and ruling on the objection that there was not a two-third vote in favour of the resolution (out of the seven present of which he was one) but not voting. The by-law was signed and it was sealed next morning and a cheque issued to the Mayor.

The Council had under section 326 of the Municipal Act previously passed a by-law to regulate their proceedings which provided that any appropriation of money amounting to $25 should be submitted to a committee of the whole; that after the passing of the estimates any by-law proposing an expenditure of money should receive a two-thirds vote of the members present; and that any member present who was interested should not vote. In an action for an injunction to restrain the Council from remunerating the Mayor and prevent its payment,

Held, (STREET, J., dissenting) that the plaintiff had no merits; that the case was not one in which it was just or convenient that an injunction should be granted; that the by-law was as fully considered by the Council and the same members as if considered in committee of the whole; that the money was on hand and the Council desired that it should be paid, that there was no evidence that the ratepayers were objecting to the payment; that the plaintiff was hostile to the Mayor and should not be allowed to thwart the will of the Council on account of a slip; that if there could be a case in which there is any discretionary power in the court this was one; that the action was not brought in the interest of the ratepayers but as a personal matter and in the exercise of discretion, and under the circumstances the appeal was dismissed.

Judgment of BOYD, C., affirmed.

Per STREET, J., The Mayor being precluded from voting as being interested his being present in the room made no difference, and the vote of four against two was a two-third vote, but the $125 appropriation for the Mayor was not included in the $300 appropriation for "law costs, etc.," in the estimates, and the provisions of the by-law regulating proceedings were binding upon the Council and could be insisted on by any member and a by-law passed in disregard of its provisions and of the protest of a minority should not be supported when it is promptly attacked.

J. E. Jones, for the appeal. *Shaw*, K.C., contra.

THE LIVING AGE adds another to its notable series on European politics by reprinting, in the number for June 13, the striking article from the last *Quarterly Review*, entitled "The Macedonian Maze." The writer is outspoken in his criticism of the methods of the Macedonian Revolutionary Committee. The carefully prepared article on the late Archibald Temple which has just appeared in *The Church Quarterly Review*, will interest many. The number for June 20 reproduces it.

Book Reviews.

Frauds on Creditors and Assignments for the Benefit of Creditors, by W. R. Percival Parker, B.A., LL.B., of the Toronto Bar. Toronto: Canada Law Book Co., 1903.

This treatise discusses the rights and remedies of creditors as determined by Canadian law in four cognate classes of transactions: Transfers of property made with intent to defraud creditors; Fraudulent preferences; Assignments for the benefit of creditors; and composition arrangements. In dealing with these important branches of commercial law the author has considered and fully set forth the statutory law of all the Canadian provinces except Quebec, and the decisions of Federal and Provincial Courts as well as the leading English cases. Numerous American cases are also cited.

The subjects of fraudulent transfers and fraudulent preferences, upon which there has been hitherto no extended Canadian work, have been treated with great fullness. Not only the common forms of fraudulent transactions provided against by the statute of Elizabeth, but the more ingenious attempts at defrauding creditors and evading one statute under the ægis of another, have been exposed and discussed.

A matter of special interest in connection with the subject of proceedings is the discussion of the conflict of different provincial laws where a fraudulent conveyance made in one province includes property in provinces or countries other than the one where the remedy is sought. Under the head of the Administrationon of the Insolvents' Estate there are chapters on the Assignment, the Assignee, the Ranking of claims and Composition Arrangements; treating all the principal matters in regard to the winding up of the insolvent's estate. In the appendix are a number of conveyancing and other forms of practical utility, including special forms of assignments, composition deeds, deeds of sale, release, inspectorship and extension arrangements.

The author is already favourably known as one of the authors of a treatise on the Law of Companies, and has increased the obligation of the profession in producing this much needed work. The book is well arranged and the law applicable to the various points discussed is stated concisely and intelligibly and for the most part in the very words used by the court or legislature declaring it. The work is a valuable addition to Canadian legal literature.

The publishers, The Canada Law Book Company, are to be commended for the very attractive form in which this book makes its appearance. In typography, paper and binding it is fully up to the high standard of excellence which has been set by this enterprising house.

Courts and Practice.

PRACTICE.

Company law—Winding-up.

The form of order for the appointment of provisional liquidators, as approved by the judges, was published ante vol. 37, at p. 665. The following is a form recently authorized, applicable to a further stage of the proceedings, and now being used in Chambers at Osgoode Hall:

In the matter of

Upon the application of the petitioning creditor herein, in the presence of counsel for , upon hearing read the order made this day for the winding up of the said Company and the papers and documents read and referred to on the application for the said order, and upon hearing what was alleged by counsel for the petitioner.

1. It is ordered that of the of in the County of be, and he is hereby appointed provisional liquidator of the estate and effects of the above named Company, upon giving security to the satisfaction of of the Supreme Court of Judicature at for the due performance of his duties.

2. It is further ordered that it be referred to the said to appoint a permanent liquidator or liquidators of the estate and effects of the said above named Company, and to take all necessary proceedings for and in connection with the winding up of the said Company, and to fix the security to be given by the said liquidator or liquidators upon his or their appointment and the remuneration to be paid to the said liquidator or liquidators.

3. It is further ordered, in pursuance and by virtue of the statute in that behalf, that all such powers as are conferred upon the Court by the Winding-up Act and amending Acts, as may be necessary for the said winding-up of the said Company be and the same are hereby delegated to the said

4. And it is further ordered that the costs of the said petition and order for winding up and of this motion, be taxed and be paid by the said permanent liquidator out of the assets of the said Company which shall come to his hands.

COURT SITTINGS.

Special sittings of the Exchequer Court of Canada for the trial of cases, etc., have been fixed as follows:

City of St. John, N.B., Sept. 8.	Town of Calgary, N.W.T., Oct. 5.
City of Halifax, N.S., Sept. 15.	City of Vancouver, B.C., Oct. 12.
City of Winnipeg, Man., Sept. 29.	City of Victoria, B.C., Oct. 19.