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APPELLATE DIVISION.

February 10th, 1915.

RIDGE v. M. BRENNEN & SONS MANUFACTURING CO.

Easement—Right of Way—Overhanging Roof—Acquisition of Title by Possession—Interference with User of Way.

An appeal by the plaintiff from the judgment of the Senior Judge of the County Court of the County of Wentworth dismissing an action, brought in that Court, to compel the defendants to remove a cornice erected by them on their building and overhanging a strip of land over which the plaintiff had a right of way.

The strip belonged to a Mrs. Fell. The lands of both the plaintiff and Mrs. Fell were originally owned by the same person; that person conveyed the fee in one part to Mrs. Fell subject to the right of way in favour of the plaintiff over the rear 10 feet; and conveyed the fee in the other part to the plaintiff with the right of way described in the same terms.

The defendants, in repairing their building, which immediately adjoined the rear of Mrs. Fell's land, projected the cornice over the strip. The cornice was more than 17 feet above the ground, and there was no evidence that it interfered with the plaintiff's user of the way.

The appeal was heard by Meredith, C.J.O., Garrow, Maclaren, Magee, and Hodgins, JJ.A.

M. Malone, for the appellant, contended that the defendants would in 20 years acquire title to the land under the cornice, and would thus interfere with the plaintiff's user of the whole width of the way: Rooney v. Petry (1910), 22 O.L.R. 101, 107.

S. F. Washington, K.C., for the defendants, respondents, was not called upon. (In the Court below he cited and relied on

Goddard's Law of Easements, 7th ed., p. 5; Rex v. Jolliffe (1787), 2 T.R. 90; Clifford v. Hoare (1874), L.R. 9 C.P. 362; Hutton v. Hamboro (1860), 2 F. & F. 218; Harding v. Wilson (1823), 2 B. & C. 96; Sketchley v. Berger (1893), 69 L.T.R. 754.)

The judgment of the Court was delivered by MEREDITH, C.J.O.:—We think the law is plain. The only right of the appellant is a right of way; and the law is clear that, unless the cornice interferes with the reasonable use of the way, there is nothing of which the appellant can complain.

It would be quite open to the lady who owns the fee simple of the land, subject to this easement, to take objection to the cornice, and to get rid of the difficulty which Mr. Malone suggests would arise if the cornice were to remain 20 years.

The appeal must be dismissed with costs.

FEBRUARY 22ND, 1915.

BLOCH v. MOYER.

Negligence—Collision of Vehicles on Highway—Injury to Traveller in Hired Vehicle Driven by Servant of Owner—Liability—Cause of Collision—Rule of Road—Highway Travel Act, R.S.O. 1914 *ch.* 206, *secs.* 3 (1), 5 (1) *—Reasonable Care.*

Appeal by the plaintiff from the judgment of KELLY, J., ante 389.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

H. S. White, for the appellant.

H. G. Tucker, for the defendant.

THE COURT dismissed the appeal with costs.

HIGH COURT DIVISION.

MIDDLETON, J., IN CHAMBERS. FEBRUARY 22ND, 1915.

HILL v. TORONTO R.W. CO.

Venue—Irregularity in Naming—Rule 245(*b*)*—Waiver—Application to Change Venue under Rule* 245(*d*)*—Balance of Convenience.*

Appeal by the plaintiff from an order of the Master in Chambers, made upon the application of the defendants, changing the place of trial from Barrie to Toronto.

Forgie (Bicknell & Co.), for the plaintiff.
A. W. Langmuir, for the defendants.

MIDDLETON, J.:—This appeal was argued upon one narrow ground only. The plaintiff named as the place of trial the town of Barrie. The cause of action arose in Toronto, and the parties reside in Toronto; and, under Rule 245(*b*), Toronto should have been named as the place of trial. The statement of claim was delivered on the 13th January, the defence on the 22nd January, and issue was joined on the 25th January. On the 26th January, a jury notice was served. It was not until after this—on the 29th January—that the motion was made to change the place of trial. It is said that the naming of a place of trial other than that directed to be named under Rule 245(*b*) was an irregularity, and that the subsequent proceedings were a waiver of this irregularity.

In one sense this position is well taken: after pleading to the statement of claim, the defendants could not move to set it aside as irregular. The place of trial must, therefore, be taken to have been regularly named; but this does not preclude an application being made under Rule 245(*d*) to change the place of trial, upon the ground of the balance of convenience.

The balance of convenience is admittedly in favour of Toronto. The appeal, therefore, fails and must be dismissed.

Costs to the defendants in the cause.

MIDDLETON, J., IN CHAMBERS. FEBRUARY 22ND, 1915.

CANADA STEAMSHIP LINES LIMITED v. STEEL CO. OF CANADA LIMITED.

Pleading—Statement of Defence—Claim for Carriage of Goods —Defence Based on Alleged Agreement for Postponement of Payment—Reasonable Answer to Plaintiff's Claim.

Motion by the plaintiff company for an order striking out the statement of defence, on the ground that it disclosed no reasonable answer to the plaintiff company's claim.

R. I. Towers, for the plaintiff company.
G. Lynch-Staunton, K.C., for the defendant company.

MIDDLETON, J.:—The real question between the parties is not raised by this motion. The claim is to recover $7,500, said to be due for the carriage of freight during the season of 1914. The defence alleges that freight was carried during 1913, and that during that year certain claims were made by the defendant against the plaintiff, based upon negligence in the transmission of freight, and that in May, 1914, it was agreed that, in consideration of the payment of the 1913 account, the amount of the claim should be deducted from the 1914 account, and that the freight earned in 1914 should not be paid until all these unsettled claims should be adjusted.

The pleading does not set up the claims which are said to exist, and does not ask to have the amount due upon these claims set off against the plaintiff's demand. All that is set up is an agreement to postpone any demand for payment for the 1914 freight until the outstanding damage claims are adjusted.

On a motion such as this I am not entitled to go beyond the pleading itself. Both parties discussed at some length the letter of the 29th May, 1914, which is said to embody the agreement. The plaintiff argues with much force that the intention of that agreement was merely to save the defendant's rights as to its claims so as to enable them to be set off against the freight bill of 1914, instead of the freight bill of 1913, and that in fact there is no such agreement as that contended for by the defendant.

To construe this document and determine its true meaning is the function of the trial Judge, and not of a Judge in Chambers upon any interlocutory motion. The defendant has chosen to

put all its eggs in one basket. It relies solely upon the agreement to postpone as its defence in this action. If the trial Judge should be of opinion that there is no agreement to postpone the payment of the freight bill such as is alleged, then in the ordinary course he will give judgment for the amount of the plaintiff's claim. The defendant will then be left to assert its cross-claim in an independent action. It cannot be compelled to set up the claim in this action. It fails to set it up as an answer to the plaintiff's claim at its peril. It chooses to present the narrower question of the construction of the contract of May, 1914, as its sole defence in the action. Upon this it must stand or fall. The other issues are not tendered, and the plaintiff may safely prepare for trial, knowing that he has only this defence to meet.

The costs may be in the cause.

SUTHERLAND, J. FEBRUARY 22ND, 1915.

RE CLARKSON AND BASTEDO.

Vendor and Purchaser—Agreement for Sale of Land—Objection to Title — Registration of Judgment — Cloud on Title — Lands of Company in Liquidation—Winding-up Act, R.S.C. 1906 ch. 144, sec. 84.

Motion by Clarkson, liquidator of the Big Cities Realty and Agency Company Limited, as vendor, under the Vendors and Purchasers Act, in regard to an agreement for the sale by him of certain lands to Bastedo, as purchaser, for an order declaring that the registration of a certain judgment against the lands was not a cloud upon the title.

The motion was heard in the Weekly Court at Toronto.

W. A. Lamport, for the vendor.

J. C. M. Macbeth, for the purchaser.

SUTHERLAND, J.:—An order having been made for the winding-up of the Big Cities Realty and Agency Company Limited, in the course of the proceedings thereunder, a judgment of the Court of Appeal for Ontario, dated the 13th May, 1912, in an action wherein the liquidator and the company were plaintiffs, one Brown defendant, and John Linden and Elizabeth H. Linden appellants, was pronounced, in which it was, among other things, adjudged, that lots 11, 12, 38, and 39 (being the lots in question) were vested in the company, for all the estate, right,

title, and interest of the appellants therein and thereto, and subject, as to lots 11 and 12 (among others), to the rights conferred by the contracts affecting such lots.

By paragraph 4 of the judgment, it was "further ordered and adjudged that the said lands . . . are so vested in the said company" subject to certain claims. The judgment was registered in the registry office for the registry division of East Toronto on the 21st November, 1914.

It is said that in the course of the winding-up of the company, and for the purpose of paying the creditors thereof, it became necessary to sell the said lots; and, in accordance with the directions of the Master in Ordinary, and after due advertisement, they were sold accordingly. Thereupon the purchaser raised an objection to the title on the ground of the registration of the said judgment.

This is a motion on behalf of the vendor for a declaration that the registration of the said judgment does not constitute a valid objection to the title.

I am of opinion that, under the Winding-up Act, R.S.C. 1906 ch. 144, sec. 84, the registration of the judgment creates no lien upon the land, and does not constitute a valid objection to the title, in the circumstances disclosed in the material. I refer to Re Ideal Furnishing Co., Stewart-McDonald Co.'s Case (1908), 17 Man. R. 576.

As no question of costs is raised upon the motion, there will be no order as to costs.

SUTHERLAND, J. FEBRUARY 22ND, 1915.

MYERS v. TELLER.

Alien Enemy — Protection — Permit from Registrar of Alien Enemies—Temporary Residence in Canada—Right to Recover Money in Hands of Trustee—Refusal of Motion for Judgment.

Motion by the plaintiffs for summary judgment in an action to recover the sum of $5,500.

The motion was heard in the Weekly Court.

J. M. Godfrey, for the plaintiffs.

L. F. Heyd, K.C., for the defendant.

SUTHERLAND, J.:—This action was begun by writ of summons issued on the 13th January, 1915, and the plaintiffs' claim

endorsed thereon is against the defendant, as the manager of a business known as the Novelty Import Company, which the plaintiffs claim to own, for the sum of $5,500, which they allege to be in the possession of the defendant belonging to them in connection with the business, and which they say he has refused to pay, on the ground that one of the plaintiffs, Rudolph Saenger, is an alien enemy.

The plaintiff Saenger is a member of the Hebrew race, and was born in Germany. From 1893 until July, 1914, he had a residence and domicile in the city of Lyons, France, where he was carrying on the business of manufacturing silk in association with a partner. He was also interested in a business in the city of New York and the Novelty Import business in the city of Toronto.

In an affidavit filed on the motion, he says he left France on the 28th July, 1914, and went to New York. On the 11th January, 1915, he obtained a permit from the Registrar of Alien Enemies in Toronto which states that, "having subscribed to the undertaking by law required," he is "not subject to interference whilst he complies with its provisions."

The plaintiff Saenger in his affidavit also states that, on account of his long residence in France, he believed "he was a citizen of the French Republic, and was greatly surprised to find" that he had retained his German nationality. The plaintiff also says in his affidavit: "(13) That about the middle of November, 1914, the said defendant, Teller, informed me that, on account of the fact that I was a German citizen, and also on account of some difficulties which I had with my two partners in New York, he had registered himself as the sole partner of the Novelty Import Company, and had transferred the moneys in the bank to the new partnership of which he claimed to be the sole member. The said defendant stated to me that he had done this for my protection, and that he was simply a trustee of the money for me."

The defendant in one of his affidavits filed on the motion says: "(7) The said Rudolph Saenger was engaged in the manufacture of merchandise in the city of Lyons, in the Republic of France, and was in partnership with one Mr. Rentschler, and I was informed that, subsequent to the declaration of war between Germany, France, and England, the Government of France had 'sequestered' the business carried on by the said Saenger and Rentschler, and that the said Rentschler was taken into custody, and the said Saenger escaped from France."

In another affidavit he says: "(10) I have no objection to turn over these cheques to whoever is entitled to them: provided that I am not exposed to any danger from doing business with an alien enemy. . . . (13) I have always been willing and am now willing to turn over the business to whoever is entitled, and all moneys under my control, subject to the adjustment of my connection with the said business. (14) From the time the said Saenger reached Toronto, he has forced the sale of the goods at a much reduced price, and has intimated that he proposed to convert the same into money and leave the country as soon as possible. (15) The said goods are now being sold for much less than their real value. . . . (18) I have from time to time consulted my solicitors solely for the purpose of being guided as to what I should do, and I have, from the time of the declaration of hostilities between Great Britain and Germany, regarded myself as caretaker holding the business in trust."

While the plaintiff Saenger says that he intends to remain in Canada for some time in order to adjust his business affairs here, and that he has "no business dealing with Germany or any other country at war with the British Empire or Canada, that no moneys which" he "will receive will be sent by" him "to Germany or to any other country at war with Canada or the British Empire," he has nowhere expressly contradicted the statements made by the defendant in paragraph 7 of his affidavit mentioned.

The defendant having appeared to the writ and filed an affidavit under Rule 56, the plaintiffs make this motion for an order that they recover judgment herein against the defendant for the amount of their claim endorsed upon the writ, namely, the sum of $5,500.

The plaintiff Saenger is apparently an alien enemy. It is not at all clear that his residence here is for any other than a temporary purpose, and to enable him to realise upon his assets and take the money out of the Province.

Upon these facts, and under the circumstances of the war now existing, I do not think it would be expedient or proper for me at this time to make the order asked.

If the plaintiffs are in any way apprehensive about the safety of their money, an order may be made to pay it into Court pending the final disposition of the action.

The motion is, therefore, refused; costs to be costs in the cause.

MIDDLETON, J., IN CHAMBERS. FEBRUARY 26TH, 1915.

*RE WORTHINGTON AND ARMAND.

Mortgage—Absent Mortgagee—Trustee Act, secs. 2(q), 8, 9—Application by Mortgagor for Vesting Order upon Payment of Mortgage-money into Court—"Trustee"—Sale of Land Free from Incumbrance—Order under Conveyancing and Law of Property Act, sec. 21.

Application by A. H. Worthington for an order, under the Trustee Act, vesting in the applicant certain land in Ontario covered by a mortgage made by the applicant to J. T. Armand, upon payment into Court of the mortgage-money, and for leave to pay the money into Court.

D. Urquhart, for the applicant.

MIDDLETON, J.:—The mortgage bears date the 30th April, 1914. It is not produced, and I do not know whether it is yet due, according to its terms. Armand, the mortgagee, is a naturalised Canadian, holding a certificate granted the 23rd April, 1894. He left Canada for France on the 15th June, 1914, and while in Alsace was arrested as a spy and is now interned as a prisoner of war at Baden. He was heard from in January; but, owing to his situation, he cannot be communicated with, and it is impossible to obtain his signature to a discharge of the mortgage.

Armand had been resident at Montreal, and on the 10th November, 1914, a family council was held under the laws of the Province of Quebec, and Mr. Alban de Sars de Compte was appointed curator of Armand's property, Armand being an absentee. This appointment was afterwards homologated by the Superior Court of the Province.

These proceedings in the Province of Quebec, it is admitted, are not sufficient to enable the curator to reconvey the Ontario realty upon payment of the mortgage-money.

It is argued that the case falls within the provisions of the Trustee Act, R.S.O. 1914 ch. 121, and that I am therefore able to made an order vesting the land in the mortgagor, upon proper terms to secure the mortgage-money to the mortgagee.

Notwithstanding certain English cases, I am clearly of opinion that the Act does not apply. In the first place, by the in-

*To be reported in the Ontario Law Reports.

terpretation clause, sec. 2 (*q*), it is expressly provided that a "trustee" shall not include one who is merely a mortgagee. In the second place, the scheme of the Act itself differentiates between trustees and mortgagees. By sec. 8, the Court may make a vesting order in the case of an infant mortgagee. By sec. 9, the Court may make a vesting order where the mortgagee is dead, and there is difficulty in ascertaining his heir or devisee in whom the title to the land is vested. None of these sections deals with the case of an absent mortgagee. Most of these provisions would be unnecessary if the trustee sections were intended to apply to a mortgagee.

In English conveyancing practice a deed conveying property in trust for sale and directing payment of a debt out of the proceeds of the sale is by no means uncommon, and such a trust deed is frequently described as a "mortgage." This was the form of conveyance brought before Sir W. Page Wood, V.-C., in In re Underwood (1857), 3 K. & J. 745. This was held not to be a mortgage within the corresponding provision of the English Trustee Act, and therefore a vesting order was made under the trustee clauses.

In In re Keeler's Mortgage (1863), 32 L.J. Ch. 101, a mortgage, in the ordinary form, containing a power of sale providing that the surplus proceeds after payment of the mortgagee's claim should be held in trust for the mortgagor, came before Kindersley, V.-C. He thought that, no matter what doubt he might have entertained if the matter had been res integra, the case was governed by the decision of Wood, V.-C.

With this I cannot agree. The whole point of the earlier decision was that the instrument was a trust deed and not a mortgage. In the latter case the conveyance was undoubtedly a mortgage and not a trust deed, and it did not become a trust deed within the statute and lose its character of mortgage simply because there was a power of sale and a trust of the surplus money.

Notwithstanding this, the case has found its way into textbooks, without question, as an authority for the proposition urged by Mr. Urquhart.

In our own Courts it was at first held that a mortgagee, even as to the surplus in his hands after exercising the power of sale, was not a trustee within the statute (Western Canada Loan and Savings Co. v. Court (1877), 25 Gr. 151) ; but a more liberal construction afterwards prevailed, and in In re Kingsland (1879), 7 P.R. 460, Spragge, C., permitted payment into

Court by a mortgagee of the surplus money in his hands. This decision has ever since been followed.

The case of London and County Banking Co. v. Goddard, [1897] 1 Ch. 642, 650, shews clearly the distinction, and the true principle applicable. . . .

Upon the affidavits filed it appears that the property in question has been sold upon terms entitling the purchaser to call for a title free from incumbrance. This will enable the vendor to clear the title upon complying with sec. 21 of the Conveyancing and Law of Property Act, R.S.O. 1914 ch. 109. If the mortgage is not yet due, allowance will have to be made for future interest. If the mortgage is past due, no such allowance is necessary; but in either case there should be an allowance made for the costs of the motion for payment out.

I gathered that the curator appointed in Quebec is a concurring party to this application. If he is, no further notice need be given. If he is not, notice should be given to him before any order issues under the Conveyancing and Law of Property Act.

I say nothing as to the curator's right to receive the money from the Court. It will depend upon the domicile of the mortgagee and upon the law of the Province of Quebec. It may be that, upon its being shewn that the mortgagee was domiciled in that Province, and that, according to the law of the Province, such a curator is entitled to the money, an order may be made; but until a formal application is made it is premature to discuss this question.

SUTHERLAND, J., IN CHAMBERS. FEBRUARY 26TH, 1915.

RE BADDER v. ONTARIO CANNERS LIMITED.

County Courts—Jurisdiction of Junior Judge—Fixing Additional Sittings of Court—Acquiescence of Senior Judge—County Courts Act, R.S.O. 1914 *ch.* 59, *sec.* 19—*County Judges Act, R.S.O.* 1914 *ch.* 58, *secs.* 4, 6.

Motion by the defendants, in this and eight similar actions against the same defendants in the County Court of the County of Kent, for an order setting aside an appointment given by the Junior Judge of that Court for the trial of the actions before himself on the 27th February, 1915, on the ground that he had

acted without authority in fixing a sitting for the trial of the actions; and for an order prohibiting the Junior Judge from proceeding with the trial; and for a mandamus or order in the nature thereof directing the Senior Judge to hear and dispose of a motion to consolidate the actions and to fix a date for the trial thereof.

J. M. Pike, K.C., for the defendants.
J. S. Fraser, K.C., for the plaintiffs.

SUTHERLAND, J.:—After appearances had been entered by the defendant company, and the usual affidavits filed, the plaintiffs moved for speedy judgment before the Junior Judge, and upon the argument, instead of disposing of the motion finally, it was intimated that he would give an appointment and try the actions. The plaintiffs subsequently applied to him for an appointment for the trial of the actions under the County Courts Act, R.S.O. 1914 ch. 59, sec. 19, which is as follows: "Besides the regular sittings, additional sittings for trials without a jury may be held at such time as the Judge may direct or appoint; and such sittings shall be held as often as may be requisite for the due despatch of business."

The defendants launched a motion before the Senior Judge for the consolidation of the actions. When this latter motion came to be argued before him, he declined to hear it, and the defendants thereupon launched this motion.

It is contended on their behalf that the Judge referred to in sec. 19 is the Senior Judge of a County Court. By the County Judges Act, R.S.O. 1914 ch. 58, sec. 4, it is provided: "Unless otherwise expressed in the commission, where more than one Judge of a County or District Court is appointed for a county or district, the Judge whose Commission has priority of date shall be styled 'The Judge of the County or District Court of ' (as the case may be), and the other Judge of the same Court shall be styled 'The Junior Judge of the County or District Court of ' (as the case may be)."

And by the same Act (sec. 6) it is also provided: "Where any power or authority is, by this Act or otherwise, conferred upon or may be exercised by the Judge of a County or District Court, whether with reference to the holding of any of the Courts of the county or district which he may hold, or to the business of any of such Courts, or to any other matter or thing over which he has jurisdiction, the like power and authority

shall be possessed and may be exercised by a Junior Judge, subject to the general regulation and supervision of the Judge.''

It is contended on behalf of the defendants, that, in view of these sections, the Junior Judge had no authority to issue the appointments in question. I can see that, unless some arrangement concurred in by the two Judges were made as to the appointments under sec. 19, difficulty and confusion might sometimes arise. I am of opinion, however, that upon this application it is not necessary for me expressly to determine whether or not a Junior Judge has authority to issue an appointment under sec. 19 without the express concurrence of the Senior Judge.

In the present case the Senior Judge, when the motion for consolidation was made before him, was aware that the appointment for the trial of the actions had been given by the Junior Judge, and his refusal to consider the motion must, I think, be treated as an acquiescence on his part in the course taken by the Junior Judge in giving the appointments. I think it was in effect saying that, as the appointments had been given by the Junior Judge, he (the Senior Judge) would not interfere, and the trials might proceed before the Junior Judge.

Under these circumstances, I think the motion must be dismissed with costs.

SUTHERLAND, J., IN CHAMBERS. FEBRUARY 27TH, 1915.

*REX EX REL. MITCHELL v. McKENZIE.

Municipal Election—Eligibility of Candidate—Liability for Arrears of Taxes "at the Time of the Election"—Liability Existing on Nomination Day but not on Polling Day—Municipal Act, R.S.O. ch. 192, sec. 63(1)(s)—Corrupt Practices—Evidence—Intimidation—Illegal Acts of Agents—Knowledge of Candidate—Disqualification.

Appeal by David C. McKenzie, the respondent in a proceeding in the nature of a quo warranto under the Municipal Act, from an order of the Judge of the District Court of the District of Rainy River, voiding the appellant's election as Mayor of the Town of Fort Frances and declaring him disqualified by reason of corrupt practices at the election.

*To be reported in the Ontario Law Reports.

W. N. Ferguson, K.C., for the appellant.
G. H. Watson, K.C., for the relator.

SUTHERLAND, J.:—At the election for the Town of Fort Frances, held on the 4th January, 1915, the two candidates for the office of Mayor were: Louis Christie, who received 134 of the votes cast; and D. C. McKenzie, 150 votes; the latter, thus having a majority of 18, was, on the 5th January, declared by the clerk of the municipality to have been elected. His election was attacked by one Mitchell, an elector, before the Judge of the District Court of the District of Rainy River, who, after hearing evidence, gave judgment on the 5th February, 1915, unseating and disqualifying the said McKenzie. . . .

McKenzie now appeals.

As to the first ground of objection to the election of McKenzie, the facts are that at the close of the hour fixed by statute for nomination and after the clerk had read out the list of nominees for Mayor, namely, McKenzie and Christie, the latter claimed the seat "because of non-payment of taxes by McKenzie." It appears from the evidence to have been the fact that McKenzie was then apparently in arrears for some $200 for taxes for the year 1914, as to which a notice had been sent to him on the 5th October, 1914, the notice being for a larger amount of taxes in the whole, and he having in the meantime paid a portion thereof.

It also appears that at the time of the nomination he was on the list of those in default for taxes on the 15th December, 1914. On the day of nomination, but some time after eleven o'clock, McKenzie paid the remaining taxes. After doing so, and within the statutory time prescribed therefor, he subscribed to and filed the statutory declaration required under the Municipal Act, R.S.O. 1914 ch. 192, sec. 69, sub-sec. 4, Form 2. The fifth clause of this form is to the following effect: "I am not liable for any arrears of taxes to the corporation of this municipality."

Section 53 of the Act has reference to disqualification: "53.—(1) The following shall not be eligible to be elected a member of a council or be entitled to sit or vote therein: . . . (*s*) A person who at the time of the election is liable for any arrears of taxes to the corporation of the municipality."

If the election means the day of polling, then McKenzie had paid his alleged arrears of taxes before that time, and before taking the declaration, and, having subsequently been elected, could, so far as this ground is concerned, take and retain his seat. But it does not so mean. Election includes nomination; and,

consequently, McKenzie, being in arrears for taxes to the municipality at the time of his nomination, was disqualified as a candidate. As the District Court Judge has very truly said: "To hold that the day of polling is the day of election would enable a candidate who was disqualified to offer himself, and who, if there was only one candidate, might be declared elected contrary to the letter and spirit of the Act." See Regina ex rel. Adamson v. Boyd (1868), 4 P.R. 204, at p. 209; Rex ex rel. Zimmerman v. Steele (1903), 5 O.L.R. 565, at p. 572; Kennedy v. Dickson (1915), ante 769.

I am, therefore, of the opinion that McKenzie was properly unseated on this ground.

It appears that a company referred to in the judgment as "the power company or the paper company," of which one Backus is the president and managing director, has already had a good deal of litigation with the municipal corporation over its taxes, and a suit or suits are still pending in this connection. It also appears that the company has commenced an action against the corporation under some agreement in writing between them. It also appears from the evidence that the election was being run with two "tickets," one which may be said to be the ticket favoured by the power company, and another opposed to it; McKenzie heading the former and Christie the latter.

It also appears that McKenzie was associated with the power company to this extent, at all events, that he was the physician for its men, each of whom contributed $1 a month for his services.

The evidence discloses that some of the employees of the power company and its solicitor were very active in supporting the candidature of McKenzie and those on that ticket, and further that several aliens were induced to vote without any right to do so at the election, and that, in the case of two or three of those who voted, taxes which they had not paid up till then were paid on the day of voting by or at the instance of the power company or its employees.

It also appears that, at a public meeting held before the day of nomination, and at which others in addition to McKenzie were present and making addresses to the electors, McKenzie made use of language which the District Court Judge has found to be such that he was guilty of a corrupt practice within the meaning of sec. 189 of the Municipal Act and subject to disqualification as therein provided for.

The finding of the Judge upon this point is as follows: "In

this case I must find that the facts are that McKenzie, upon a public platform at the meeting of the electors of Fort Frances held on the 31st December last, called for the purpose of discussing public issues just prior to the municipal election, stated that he heard that Mr. Backus was going to cut off the lights of Fort Frances, and that he had gone to him and interceded and got him to agree not to cut them off before the election, as it might be considered an election dodge, and that Mr. Backus had stated to him that, if Mr. Christie was elected, the lights of the town would be turned off. . . . .'' He goes on to add: ''In considering this branch of the relator's case, it is necessary to consider the general conditions surrounding the election, which I have already set out. We have, at a large meeting of the public ratepayers called in view of the election, a statement made by a candidate that, if his opponent is elected, their lights will be cut off, and one of the ratepayers promptly characterises the statement as a threat. And the candidate as promptly replies that 'it is not a threat, it is a fact'—thus emphasising the threat rather than modifying its effect. . . . ''

There can be little or no doubt upon the evidence that the question of the relations between the power company and the municipality was one of the main issues in the municipal election contest. There can be no doubt either that the question whether the ratepayers were wise in continuing to have litigation with the power company, or whether it was not better to endeavour to adjust in an amicable way their differences with it, were also matters which were being publicly discussed.

While it is most important that nothing in the way of threat or intimidation should be used by a candidate in an election and the electors subjected to improper influences thereby, it is also important that candidates should have a reasonable amount of freedom fully and frankly to discuss the issues in which all electors are at the time concerned. It is true that some of those present at the meeting at which the language referred to is alleged to have been used by McKenzie, seemed to understand him to be threatening the electors with the consequences which might ensue, in case he were not, but his opponent were, elected.

While the version of what McKenzie said, as found by the Judge, is supported by evidence, which he had a right to believe, it is to be noticed that McKenzie denies that he used language exactly similar in import to what the Judge has found. McKenzie puts it in this way: ''I said that I was told that the lights would be turned off on the following Tuesday, but I inter-

ceded and asked the company not to shut off the light, at least before the election, for it would be interpreted as an election dodge. But, if they persisted in electing a council that were fighting the power company on every technicality that would arise, it was not unlikely the lights would be shut off." . . .

The power of disqualification exercisable by a Judge is one which, as it seems to me, should only be exercised in a plain case upon very clearly proved facts. I confess I have had some little difficulty in arriving at the conclusion I have in this matter; and, in consequence, have some hesitation in coming to a different conclusion than that arrived at by the District Court Judge, who may perhaps, having seen the witnesses, be in a somewhat better position than I am to estimate fully the effect of their evidence. Nevertheless, I have come to the conclusion that the words used by McKenzie, in the light of all the facts set out in the evidence, were not such as could properly be determined to be a threat under the section of the Act in question. I am not at all sure that they come under the meaning of the section at all.

The Judge has also found that the employees of the power company were by the evidence proved to have been the agents of McKenzie in committing illegal acts in connection with the election. Elsewhere in his judgment he says: "It is inconceivable that the respondent was not aware of these activities on the part of the power company and its employees in his behalf, and he has not been called as a witness to give evidence as to any objection on his part as to their activities."

I have not been able, after a careful perusal of the evidence, to see that any of the alleged illegal acts were brought to the knowledge of the respondent.

On the whole, therefore, I have come to the conclusion that the appeal should be dismissed in so far as the first ground is concerned, and that, in consequence, the judgment unseating the respondent should stand.

I am of opinion that, in so far as the judgment disqualifies the respondent, it should be set aside.

As the success has been divided, I think, in the circumstances, I will make no order as to the costs of this appeal.

RE BEATTY AND BROWN—SUTHERLAND, J.—FEB. 22.

Vendor and Purchaser—Agreement for Sale of Land—Title —Objection—Building Restrictions—Rights of Persons not before the Court — Application under Vendors and Purchasers Act.]—An application by the vendor, under the Vendors and Purchasers Act, for an order declaring that an objection to the title of the vendor, made by the purchaser, on the ground that the building restrictions set forth in a certain grant dated the 6th September, 1892, had not been complied with, had been satisfactorily answered by the vendor, and that the same did not constitute a valid objection to the title. SUTHERLAND, J., said that, upon the meagre material filed in support of this application, he did not think it would be proper to make the order asked. It was impossible to say that the rights of others might not be affected thereby. If the parties desired, a reference might be directed to the Master to investigate and deal with the matter. He could ascertain whether any persons whose rights might be affected objected. In the meantime, the learned Judge declined to make the order asked. E. C. Ironside, for the vendor. G. E. Newman, for the purchaser.

BICE V. HARNESS—BRITTON, J.—FEB. 23.

Contract—Payment for Services—Covenant—Breach—Damages—Quantum Meruit—Counterclaim—Interest—Costs.]—The plaintiff, Walter Bice, sued the defendant, his widowed sister, upon an agreement made (in writing and under seal) between them on the 27th April, 1908. The agreement recited that the defendant was the devisee and legatee of the estate of her father, Gilbert Bice, under a will dated the 24th April, 1908, subject to the condition that she should from the date of the will, during the life of Gilbert Bice, support and nurse him; and that the defendant needed the assistance of the plaintiff in so doing and in managing the affairs of the father; and the defendant covenanted to pay the plaintiff for such services the sum of $1,000, in one year after the death of the father, out of the estate bequeathed and devised to her, and in the event of it coming to her hands; and she further agreed to employ the plaintiff in the manner specified. The father died more than a year before the commencement of this action, and the defendant got possession of his estate. The learned Judge finds that the

plaintiff did not perform all the services required of him by the defendant; that the defendant did not at all times call upon the plaintiff when her father was in need of assistance; that the plaintiff unreasonably refused at one time to attend to his father and to assist the defendant in giving the father necessary care; that the defendant unreasonably neglected to request the plaintiff at time to do work in and about the care of the father, but employed another to render the necessary aid; that the plaintiff did render services which the defendant accepted and expected to pay for. The learned Judge was of opinion that the plaintiff was entitled to recover as upon a quantum meruit; and upon that basis and as damages for the breach of the defendant's covenant the plaintiff was entitled to recover $500. The defendant's counterclaim, so far as it was for moneys alleged to have been paid by her to secure the performance of the services which the plaintiff was to perform, was disallowed. The defendant's counterclaim upon promissory notes, etc., to the extent of $245.64, was allowed. No interest was allowed and no costs. Judgment for the plaintiff for $254.36, to be paid by the defendant, and, if not paid by her personally, to be paid out of the estate of her father. J. B. McKillop, for the plaintiff. J. M. McEvoy and P. H. Bartlett, for the defendant.

INDEX

The names of cases which have been reported in the Ontario Law Reports are followed by a reference to the volume and page; the names of cases to be reported later in the Ontario Law Reports are marked.*

ABATEMENT OF LEGACIES.

See Will, 5, 23.

ABSENTEE.

See Distribution of Estates, 1—Mortgage, 1.

ACCOMPLICE.

See Criminal Law, 3.

ACCOUNT.

Action for Account of Partnership Profits — Construction of Agreement—Provision for Account from Time to Time—Postponement of Trial to Obtain Evidence on Foreign Commission—Reversal of Order—Evidence not Necessary at Trial—Reference—Discretion of Trial Judge.]—The defendants in February, 1913, agreed to give the plaintiff one-tenth of the net profits in three mining claims. The agreement provided that the defendants should be free to deal with and dispose of the mining claims free from the plaintiff's control, but should account to the plaintiff from time to time, and such accounting should include all receipts and expenditures upon or in connection with the mining claims from November, 1908. By an action brought in 1914, the plaintiff sought an account of the said receipts and expenditures, and consequential relief:—*Held*, that the agreement conferred a right to an account, and that the only question at the trial of such an action is, whether the defendant is an accounting party; and, therefore, the trial of the action should not be postponed for the purpose of having evidence taken abroad, upon commission, for the purpose of shewing that certain payments made to the defendants were not made on account of the mining claims in which the plaintiff was interested—such evidence would be useful only upon a reference to take the account; and an order

postponing the trial was set aside, without prejudice to any action by the trial Judge. *Becher* v. *Ryckman*, 7 O.W.N. 149.—BOYD, C. (Chrs.)

See Company, 4—Contract, 27—Injunction, 3—Mortgage, 2—Partnership, 1, 2, 5—Principal and Agent, 2, 3, 6—Will, 18.

ACKNOWLEDGMENT.

See Limitation of Actions, 2, 4.

ACQUIESCENCE.

See Building—Building Contract, 3 — Conspiracy — County Courts, 1—Deed, 2.

ADEMPTION.

See Mortgage, 3.

ADMINISTRATION.

See Costs, 6—Partition—Will, 16.

ADMISSIONS.

See Criminal Law, 6—Deed, 2.

ADULTERY.

See Husband and Wife, 5.

ADVERTISING.

See Contract, 1—Mortgage, 6.

ADVICE OF COUNSEL.

See Malicious Prosecution, 2, 3.

AFFIDAVITS.

See Chattel Mortgage, 1—Discovery, 2—Judgment, 6, 10—Practice, 1, 2, 6, 7.

AGENT.

See Company, 1—Principal and Agent.

AGREEMENT.

See Contract.

ALIEN ENEMY.

1. Action by, Begun before War—Residence in Hostile Country—Dismissal of Action—Security for Costs—Stay of Proceedings. *Dumenko* v. *Swift Canadian Co. Limited*, 7 O.W.N. 155, 32 O.L.R. 87.—FALCONBRIDGE, C.J.K.B. (Chrs.)

2. Arrest and Detention on Suspicion—Habeas Corpus—Application for Release—Jurisdiction of Court—Dominion War Measures Act, 1914, secs. 6, 11—Consent of Minister of Justice—Necessity for—Naturalised Alien. *Re Beranek,* 7 O.W.N. 719, 33 O.L.R. 139.—MEREDITH, C.J.C.P. (Chrs.)

3. Protection—Permit from Registrar of Alien Enemies—Temporary Residence in Canada—Right to Recover Money in Hands of Trustee — Refusal of Motion for Judgment. *Myers* v. *Teller,* 7 O.W.N. 834.—SUTHERLAND, J.

4. Residence in Ontario—Action Begun before War—Right to Continue—Proclamation of August, 1914. *Oskey* v. *City of Kingston,* 7 O.W.N. 251, 32 O.L.R. 190.—BRITTON, J.

5. Right of Action in Time of War—Resident Alien "in Protection"—Qualifications—Royal Proclamation—Inquiry as to Conduct and Status of Alien Plaintiff—License—Stay of Proceedings pending Inquiry. *Bassi* v. *Sullivan,* 7 O.W.N. 38, 97, 32 O.L.R. 14.—HODGINS, J.A.

ALIENATION OF AFFECTIONS.

See Husband and Wife, 5.

ALIMONY.

See Husband and Wife, 1, 2, 3—Pleading, 4.

ALLUREMENT.

See Negligence, 1.

AMALGAMATION.

See Company, 7.

AMENDMENT.

See Contract, 4—Criminal Law, 5—Ditches and Watercourses Act—Division Courts, 1 — Insurance, 2 — Judgment, 10—Landlord and Tenant, 2—Partnership, 3—Pleading, 2—Practice, 1—Principal and Agent, 7—Title to Land, 2—Vendor and Purchaser, 2.

ANIMALS.

See Contract, 22, 23—Fraud and Misrepresentation, 7—Railway, 1—Sale of Animal.

ANNUITY.

See Will, 14.

APARTMENT HOUSE.

See Municipal Corporations, 12.

APPEAL.

1. Award under School Sites Act—Appeal to County Court Judge—Motion for Leave to Appeal to Appellate Division —R.S.O. 1914 ch. 277, sec. 20 (3)—Reasonable Ground—Discretion—Costs. *Re Jacobs and Toronto Board of Education,* 7 O.W.N. 452.—MIDDLETON, J.

2. Forum—Reference to County Court Judge for Trial of Action—Judge Treating Reference as Made to him as Local Master—Appeal from Report—Jurisdiction of High Court Division—Mortgage—Ratification—Promissory Note — Estoppel—Report Varied in one Respect—Costs. *Knowlton* v. *Union Bank of Canada,* 7 O.W.N. 817.—LENNOX, J.

3. Leave to Appeal from Order of Judge in Chambers—Debatable Question — Pleading — Statement of Claim — Addition of Cause of Action not Endorsed on Writ of Summons —Rule 109—Leave to Join two Distinct Claims—Parties —Rules 67, 68, 73. *Schmidt* v. *Schmidt,* 7 O.W.N. 392.—LENNOX, J. (Chrs.)

See Assessment and Taxes, 3—Building Contract, 1, 3—Company, 4—Conspiracy—Contract, 5, 8, 16, 19, 24, 27—Costs, 4—Covenant—Damages, 1—Ditches and Watercourses Act —Execution, 1—Fraud and Misrepresentation, 3, 5, 8—Fraudulent Conveyance, 1—Highway, 6—Innkeeper, 1—Judgment, 6—Land Titles Act, 3—Landlord and Tenant, 2—Master and Servant, 4, 13, 14, 15—Mines and Minerals, 3—Municipal Corporations, 7—Negligence, 2, 5, 6—Ontario Railway and Municipal Board—Parliamentary Elections—Partnership, 1—Practice, 3, 5—Promissory Notes, 2 —Railway, 7, 8, 9, 13, 14—Sale of Animal—Surgeon—Vendor and Purchaser, 2, 7, 9, 16—Will, 1, 4, 23.

APPEARANCE.

See Judgment, 11—Practice, 2, 7—Writ of Summons.

APPORTIONMENT OF DAMAGES.

See Fatal Accidents Act—Master and Servant, 5—Ship.

APPORTIONMENT OF RENT.

See Landlord and Tenant, 1.

ARBITRATION AND AWARD.

1. Consent of Parties to Disposition of all Matters in Question by Judge as Quasi-arbitrator—Equitable Award—Costs. *McKinney* v. *McLaughlin Carriage Co.*, 7 O.W.N. 702.—Falconbridge, C.J.K.B.

2. Misconduct of Arbitrator—View of Premises—Evidence—Setting aside Award—Costs. *Re Hardy and Lake Erie and Northern R.W. Co.*, 7 O.W.N. 308.—Middleton, J.

See Appeal, 1—Costs, 1—Ditches and Watercourses Act—Landlord and Tenant, 4—Municipal Corporations, 1, 7—Partnership, 4—Railway, 7, 8, 9—Solicitor, 2.

ARCHITECT.

Fees for Services in Erection of Building—Breach of Duty—Attempt to Remedy Defect in Construction—Bona Fides—Recovery of Fees—Deduction of Expense Caused by Abortive Attempt—Costs. *Meredith* v. *Roman Catholic Episcopal Corporation of Ottawa*, 7 O.W.N. 550.—Middleton, J.

See Building Contract, 1—Contract, 8—Mechanics' Liens, 1—Municipal Corporations, 12, 14.

ARREST.

See Alien Enemy, 2—Malicious Prosecution, 1.

ASSAULT.

See Criminal Law, 4, 5—Master and Servant, 17.

ASSESSMENT AND TAXES.

1. Income Tax—Non-resident—Adoption of Assessment Roll of Previous Year—Assessment Act, R.S.O. 1914 ch. 195, secs. 12, 56—Collector's Roll—Sec. 99 of Act—Omission of Particulars—Nullity—Inaccuracies in Roll, Oath, and Certificate. *City of Berlin* v. *Anderson*, 7 O.W.N. 790.—Reade, Jun.Co.C.J.

2. Liability for School Taxes. *Township of Stamford* v. *Ontario Power Co. of Niagara Falls*, 7 O.W.N. 646.—Falconbridge, C.J.K.B.

3. Tax Sale—Action to Set aside Sale Made for two Years' Taxes in Arrear—No Arrears for one Year—Validity of

Assessment—Irregularity—Validating Enactment—Assessment Act, 4 Edw. VII. ch. 23, sec. 22, sub-sec. (1) (d), sec. 172—Costs—Successful Appeal. *Millar* v. *Patterson*, 7 O.W.N. 714.—App. Div.

See Fraud and Misrepresentation, 8—Husband and Wife, 6—Limitation of Actions, 1, 2 — Municipal Corporations, 9—Municipal Elections, 1, 2—Ontario Railway and Municipal Board—Title to Land, 2—Vendor and Purchaser, 9.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

See Assignments and Preferences—Company, 13—Land Titles Act, 2—Title to Land, 1.

ASSIGNMENT OF CHOSE IN ACTION.

See Chattel Mortgage, 2—Promissory Notes, 3.

ASSIGNMENT OF INTEREST IN LAND.

See Vendor and Purchaser, 16.

ASSIGNMENT OF SECURITIES.

See Principal and Surety.

ASSIGNMENTS AND PREFERENCES.

Assignment for Benefit of Creditors—Claim of Assignee to Mortgage upon Land of Insolvent—Security for Maintenance of Imbecile—Originating Notice—Rule 600—Scope of. *Re Battrim*, 7 O.W.N. 778.—Britton, J.

ASSURANCE FUND.

See Land Titles Act, 3.

ATTORNEY-GENERAL.

See Criminal Law, 5—Marriage.

AWARD.

See Arbitration and Award.

BAIL.

See Criminal Law, 1, 7.

BAILMENT.

See Innkeeper, 1.

BALLOTS.

See Canada Temperance Act—Municipal Corporations, 10—Parliamentary Elections.

BANKRUPTCY AND INSOLVENCY.

See Assignments and Preferences—Contract, 1—Fraudulent Conveyance, 4.

BANKS AND BANKING.

Winding-up of Bank before Business Begun—Contributories—Subscribers for Stock—Allotment by Provisional Directors—Implied Powers—Membership in Banking Corporation—Contribution to Preliminary Expenses—Bank Act, secs. 11, 12, 13, 20, 34—Winding-up Act, secs. 2 (g), 51, 60, 93. *Re Monarch Bank of Canada,* 7 O.W.N. 274, 32 O.L.R. 207.—App. Div.

See Company, 15—Contract, 9, 10—Principal and Surety—Promissory Notes, 1, 5.

BENEFIT CERTIFICATE.

See Insurance, 1.

BENEVOLENT SOCIETY.

See Insurance, 1, 2, 6.

BEQUEST.

See Will.

BIAS.

See Landlord and Tenant, 4.

BICYCLIST.

See Negligence, 7, 8.

BILL OF LADING.

See Principal and Agent, 8.

BILLS AND NOTES.

See Promissory Notes.

BILLS OF SALE AND CHATTEL MORTGAGES.

See Chattel Mortgage.

BOARD OF RAILWAY COMMISSIONERS.

See Railway, 6.

BOUNDARIES.

See Building—Highway, 3—Title to Land, 1, 2—Vendor and Purchaser, 15.

BRITISH NORTH AMERICA ACT.

See Constitutional Law.

BUILDING.

Encroachment on Neighbour's Land—Street-line—Boundaries —Surveys—Dedication—Presumption — Acquiescence in Public User—Conventional Boundary—Projecting Eaves —Discharge of Water—Obstruction to Light—Easement— Implied Grant—Injunction—Damages — Costs. *Rous* v. *Royal Templar Building Co.,* 7 O.W.N. 161.—App. Div.

See Architect—Highway, 3—Landlord and Tenant, 4—Limitation of Actions, 3—Municipal Corporations, 12-14—Negligence, 6.

BUILDING CONTRACT.

1. Architect's Certificate—Claim of Building Owner for Bad Material and Improper Performance of Work — Finding of Referee that Amount Paid Exceeds Value of Work Done— Collusion between Builder and Architect—Construction of Contract—Specifications—Appeal from Findings of Referee—Costs. *Price* v. *Forbes,* 7 O.W.N. 712, 33 O.L.R. 136. —App. Div.

2. Contractor Delayed in Performance of Work by Delay of Prior Contractor—Additional Expense Occasioned to Contractor—Change in Circumstances—Implication of New Contract—Quantum Meruit — Evidence. *Webb* v. *Pease Foundry Co.,* 7 O.W.N. 212, 257.—App. Div.

3. Work Taken over by Municipality—Liability of Municipality for Acts of Engineer—Absence of Justification—Provisions of Contract—Delay—Claim of Contractor for Work Done —Forfeiture—Acquiescence—Quantum Meruit — Moneys Expended by Municipality in Completing Contract—Findings of Trial Judge—Appeal. *Beck* v. *Township of York,* 7 O.W.N. 493.—App. Div.

See Contract, 8—Mechanics' Liens.

BUILDING RESTRICTIONS.

See Landlord and Tenant, 1—Vendor and Purchaser, 13.

BUILDING SCHEME.

See Deed, 1.

BY-LAWS.

See Company, 1, 2, 5—Highway, 1, 2, 7, 8—Insurance, 2—Land Titles Act, 3—Municipal Corporations—Railway, 6—Street Railways, 3.

CALLS.

See Company, 1, 6.

CANADA TEMPERANCE ACT.

Voting on—Form of Ballot — Returning Officer — Injunction against Making Return. **Murdock* v. *Kilgour*, 7 O.W.N. 165.—LENNOX, J.

CANCELLATION.

See Contract, 3—Fraud and Misrepresentation, 5—Fraudulent Conveyance, 2—Vendor and Purchaser.

CARRIERS.

1. Carriage of Perishable Goods—Breach of Contract—Wrongful Delivery—Condition of Goods on Delivery—Damages—Cause of Deterioration in Value—Real Loss Caused by Deprivation of Control—Loss of Market—Rejection of Goods by Purchaser—Nominal Damages—Reference as to other Damages—Costs. *Lemon* v. *Grand Trunk R.W. Co.*, 7 O.W.N. 76, 32 O.L.R. 37.—APP. DIV.

2. Shipment of Grain—Placing in Elevator—Failure to Notify Shippers—Loss by Fire in Elevator—Insurance—Marine Policy—Adjustment — Insufficiency of Amount to Cover Loss—Negligence of Carriers — Damages. *Richardson* v. *Canadian Pacific R.W. Co.*, 7 O.W.N. 458.—BRITTON, J.

3. Transportation Company—Cartage of Machinery from Railway Station to Works of Vendee—Liability of Vendor and Consignee for Charges—Contract—Ratification—Estoppel—Evidence. *Dominion Transport Co.* v. *General Supply Co.*, 7 O.W.N. 55.—APP. DIV.

See Company, 5—Railway, 3.

CASES.

Besterman v. British Motor Cab Co., [1914] 3 K.B. 181, followed.]—See COSTS, 5.

Bourne, In re, [1906] 2 Ch. 427, referred to.]—See PARTNERSHIP, 3.

Burrowes v. Molloy (1845), 2 Jo. & Lat. 521, distinguished.]—See MORTGAGE, 5.

Campbell v. Community General Hospital, etc., of the Sisters of Charity, Ottawa (1910), 20 O.L.R. 467, followed.]—See MUNICIPAL CORPORATIONS, 3.

Damiens v. Modern Society Limited (1910), 27 Times L.R. 164, followed.]—See CONSPIRACY.

Elmer v. Crothers (1914), 6 O.W.N. 288, affirmed.]—See RELEASE.

Greenlands Limited v. Wilinshurst and London Association for the Protection of Trade, [1913] 3 K.B. 507, referred to.]—See CONSPIRACY.

Hanson v. Lancashire and Yorkshire R.W. Co. (1872), 20 W.R. 297, followed.]—See NEGLIGENCE, 10.

Hodgson, In re (1885), 31 Ch. D. 177, referred to.]—See PARTNERSHIP, 3.

Lawford v. Billericay Rural District Council, [1903] 1 K.B. 772, followed.]—See MUNICIPAL CORPORATIONS, 3.

Mullis v. Hubbard, [1903] 2 Ch. 431, applied.]—See MUNICIPAL CORPORATIONS, 13.

Neal and Town of Port Hope, Re (1914), 6 O.W.N. 701, affirmed.]—See MUNICIPAL CORPORATIONS, 1.

O'Keeffe v. Walsh, [1903] 2 I.R. 681, referred to.]—See CONSPIRACY.

Rex v. MacArthur (1904), 34 S.C.R. 570, distinguished.]—See MUNICIPAL CORPORATIONS, 1.

Rooney v. Petry (1910), 22 O.L.R. 101, 107, referred to.]—See EASEMENT.

Ryan and McCallum, Re (1912), 4 O.W.N. 193, referred to.]—See MUNICIPAL CORPORATIONS, 12.

Stormont Provincial Election, Re (1908), 17 O.L.R. 171, followed.]—See PARLIAMENTARY ELECTIONS, 1.

Tate and City of Toronto, In re (1905), 10 O.L.R. 651, approved.]—See MUNICIPAL CORPORATIONS, 1.

Taylor and Village of Belle River, Re (1910), 1 O.W.N. 608, 15 O.W.R. 733, approved.]—See MUNICIPAL CORPORATIONS, 1.

Tompkins v. Brockville Rink Co. (1899), 31 O.R. 124, applied.] —See MUNICIPAL CORPORATIONS, 13.

Victor Varnish Co., Re (1908), 16 O.L.R. 338, followed.]—See PRINCIPAL AND SURETY.

Young v. Town of Gravenhurst (1910-11), 22 O.L.R. 291, 24 O.L.R. 467, followed.]—See MUNICIPAL CORPORATIONS, 6.

CAUTION.

See Devolution of Estates Act—Will, 22.

CEMETERY COMPANY.

See Company, 2.

CERTIORARI.

See Criminal Law, 2, 5.

CHARGE ON LAND.

See Fraud and Misrepresentation, 8—Will, 9, 22.

CHARGE ON MORTGAGE.

See Fraud and Misrepresentation, 3.

CHARITABLE BEQUEST.

See Will, 14, 16.

CHATTEL MORTGAGE.

1. Affidavit of Execution—Non-fulfilment of Imperative Statutory Requirement—Bills of Sale and Chattel Mortgage Act, R.S.O. 1914 ch. 135, sec. 5—Date of Execution not Filled in—Invalidity of Instrument. *Martin* v. *Shapiro*, 7 O.W.N. 545, 32 O.L.R. 640.—MIDDLETON, J.

2. Validity—Pressure—Description of Goods—Bills of Sale and Chattel Mortgage Act, 10 Edw. VII. ch. 65, sec. 10—After-acquired Goods—Identification — Assignment of Debt — Right of Assignee to Recover—Reference. *Marks-Clavet-Dobie Co. Limited* v. *Russell Timber Co. Limited*, 7 O.W.N. 229.—KELLY, J.

3. Validity against Execution Creditor of Mortgagors—Intent—Family Partnership—Executor de son Tort—Consideration —Interpleader Issue—New Trial. *Weddell* v. *Douglas*, 7 O.W.N. 92, 216.—FALCONBRIDGE, C.J.K.B.—APP. DIV.

See Injunction, 3.

CHURCH.

See Highway, 9.

CLOSING OF STREET.

See Highway—Municipal Corporations, 1—Railway, 11.

CODICIL.

See Will.

COLLATERAL AGREEMENT.

See Contract, 3.

COLLATERAL SECURITY.

See Promissory Notes, 1, 5.

COLLISION.

See Negligence, 2, 3—Ship.

COLLUSION.

See Building Contract, 1—Solicitor, 3.

COMMISSION.

See Company, 4—Costs, 6—Principal and Agent.

COMMISSIONERS.

See Municipal Corporations, 6.

COMMON EMPLOYMENT.

See Master and Servant, 1.

COMMONS.

See Deed, 1.

COMPANY.

1. Calls—Authority of Directors—By-law—Quorum—Subscriber for Shares—Signature to Stock-agreement—Liability to Co-subscribers for Proportionate Share of Moneys Paid by them—Partnership—Agency—Conditional Subscription—Non-fulfilment of Condition—Waiver—Findings of Fact of Trial Judge *Canadian Ohio Motor Car Co.* v. *Cochrane*, 7 O.W.N. 698.—LATCHFORD, J.

2. Cemetery Company—Incorporation under Ontario Companies Act—Power to Sell Lands not Required for Cemetery Purposes—Reincorporation of Company under Companies Act,

2 Geo. V. ch. 31—Additional Powers—Act respecting Cemetery Companies, R.S.O. 1897 ch. 213—By-law—Petition—Order in Council—False Representations. **Smith v. Humbervale Cemetery Co.*, 7 O.W.N. 462.—BRITTON, J.

3. Directors—Action against, to Recover Amount of Unsatisfied Judgment against Company for Wages—Ontario Companies Act, 2 Geo. V. ch. 31, sec. 96—Joint and Several Liability of Directors—Discontinuance of Action against one Director Resident out of the Jurisdiction—Rules 67, 134, 165 — Parties—Non-joinder—Contribution or Indemnity. *Reuckwald* v. *Murphy,* 7 O.W.N. 191, 32 O.L.R. 133.—APP. DIV.

4. Directors—Managing Director—Breaches of Trust—Account —Compensation—Interest—Compound Interest — Credits —Claims for Commission—Expenses and Disbursements—Master's Report—Appeal. *Saskatchewan Land and Homestead Co.* v. *Moore,* 7 O.W.N. 684.—KELLY, J.

5. Dominion Incorporation—Provincial License—Company Doing Business as Carriers in City—Board of Police Commissioners—Powers of—By-law—Imposition of License Fee—Municipal Act, secs. 354, 422—Motion to Quash By-law—Discretion—Costs. **Re Major Hill Taxicab and Transfer Co. Limited and City of Ottawa,* 7 O.W.N. 747.—LENNOX, J.

6. Shares—Subscription—Allotment — Acceptance — Conduct —Directors—Action for Calls—Liability. *Fort William Commercial Chambers Limited* v. *Braden, Fort William Commercial Chambers Limited* v. *Dean, Fort William Commercial Chambers Limited* v. *Perry,* 7 O.W.N. 679,—APP. DIV.

7. Shares—Title to—Amalgamation—Contract — Novation — Failure of Consideration—Evidence. *Marshall* v. *Dominion Manufacturers Limited,* 7 O.W.N. 808.—MIDDLETON, J.

8. Shares—Title to—Contract—Trust—Parol Evidence — Collateral Transaction—Costs. *McConnell* v. *Murphy, Patton* v. *Murphy,* 7 O.W.N. 812.—MIDDLETON, J.

9. Wages of Servant—Unsatisfied Judgment for—Ontario Companies Act, R.S.O. 1914 ch. 178, sec. 98—Liability of Directors—Computation of Wages—Allowance for Board—Interest—Costs—Evidence — Application to Reopen Case

after Trial — Refusal — Suggested Defence. *Darrah* v. *Wright,* 7 O.W.N. 233.—LENNOX, J.

10. Winding-up—Contributory—Statute of Limitations—Contract under Seal—Period of Limitation. *Re Canadian Cordage and Manufacturing Co., Ferguson's Case,* 7 O.W.N. 130. —LENNOX, J.

11. *Winding-up—Order for, Made in another Province—Application for Leave to Proceed with Action Brought in Ontario—Forum—Dominion Winding-up Act, sec.* 125.]—The head office of the defendant company was in the Province of Quebec; they carried on business in Ontario as well as in Quebec. This action was brought in the Supreme Court of Ontario in respect of the death of the plaintiff's son, which occurred at the company's works in Ontario. After the commencement of the action, an order was made by a Quebec Court for the winding-up of the company under the Dominion Winding-up Act; and the plaintiff applied in the action to a Judge of the Supreme Court of Ontario for leave to proceed. The application was refused; it being *held,* that the application should be made to the Quebec Court in the winding-up proceedings; and that sec. 125 of the Winding-up Act did not authorise the Ontario Court to entertain the application. *Brewster* v. *Canada Iron Corporation Limited,* 7 O.W.N. 128.—KELLY, J. (Chrs.)

12. Winding-up—Order under Dominion Statute—Consent of Creditor or Shareholder—Sec. 12 of Statute. *Re National Automobile Woodworking Co. Limited,* 7 O.W.N. 22—FALCONBRIDGE, C.J.K.B.

13. Winding-up — Petition for—Discretion—Refusal—Assignment in Trust for Creditors. *Re M. A. Holladay Co.,* 7 O.W.N. 321.—LENNOX, J. (Chrs.)

14. Winding-up—Petition for—Inspection of Affairs and Management—Inspector's Report—Meeting of Shareholders to Consider—Companies Act, R.S.O. 1914 ch. 178, sec. 126. *Re Hamilton Ideal Manufacturing Co. Limited,* 7 O.W.N. 254.—KELLY, J. (Chrs.)

15. Winding-up—Receivership—Advances Made by Bank upon Security of Timber—Payment of Crown Dues by Bank—Claim for Repayment out of Assets of Bank in Priority to Claim of Mortgagee—Obligation of Company not Binding

on Mortgagee — Preferential Lien of Crown — Validity against Secured Creditors—Subrogation—Salvage — Court in Control of Fund—Equitable Administration. *Re Imperial Paper Mills of Canada Limited, Diehl* v. *Carritt*, 7 O.W.N. 630.—MIDDLETON, J.

16. Winding-up of Foreign Company Carrying on Business in Canada—Dominion Winding-up Act—Jurisdiction—Prior Liquidation Proceedings in Foreign Country—Distribution of Assets among Domestic and Foreign Creditors—Equality—Duty of Liquidator. *Re Breakwater Co.*, 7 O.W.N. 572, 33 O.L.R. 65.—MIDDLETON, J. (Chrs.)

See Contract, 9, 12, 17—Discovery, 1—Distribution of Estates, 2—Injunction, 2—Municipal Corporations, 5 — Principal and Agent, 1, 2—Promissory Notes, 4, 8—Trusts and Trustees—Unincorporated Society—Vendor and Purchaser, 14 —Will, 17.

COMPENSATION.

See Company, 4—Costs, 2—Infant, 2—Limitation of Actions, 3 —Municipal Corporations, 1, 2, 7—Railway, 7, 8, 9—Vendor and Purchaser, 17.

COMPROMISE.

See Executors and Administrators, 2.

CONCESSION.

See Highway, 7.

CONDITIONAL APPEARANCE.

See Writ of Summons.

CONSENT.

See Arbitration and Award, 1—Company, 12—Insurance, 4.

CONSOLIDATION OF ACTIONS.

See Contract, 8.

CONSPIRACY.

Several Defendants—Assessment of Damages against each Separately—Direction to Jury—Acquiescence—Appeal — Verdict—Evidence to Support.]—In an action against F. and W. for conspiracy to procure the plaintiff's wife to leave him and to cohabit with W., the jury found a verdict for the plaintiff, and assessed the damages against W. at

$6,000, and against F. at $2,000, and judgment was entered accordingly:—*Held*, upon the appeal of the defendant, F., that there was evidence to go to the jury that both defendants were guilty of the wrongs which they were alleged to have committed, and the verdict must stand.—2. That, as the trial Judge left it to the jury to assess the damages against each defendant separately, and that course was acquiesced in by the appellant's counsel, it was not open to the appellant to object to what was done, especially as, if another course had been taken, the damages might have been assessed against both defendants at $8,000: *Damiens* v. *Modern Society Limited* (1910), 27 Times L.R. 164.—3. The rule that where there is a single cause of action against several defendants arising from a joint wrong, although the defendants sever in their defences, the jury has no power to sever the damages, as established by *Greenlands Limited* v. *Wilmshurst and London Association for the Protection of Trade,* [1913] 3 K.B. 507, and the exceptions to it mentioned in *O'Keeffe* v. *Walsh,* [1903] 2 I.R. 681, were referred to but not considered. *McLean* v. *Wokes,* 7 O.W.N. 490.—App. Div.

CONSTITUTIONAL LAW.

School Laws of Ontario—Roman Catholic Separate Schools—English-French Schools—Regulations of Department of Education—Intra Vires—British North America Act, sec. 93—"Denominational Schools"—"Class of Persons"—Unauthorised Use of French Language—Disobedience of Regulations—Employment of Unqualified Teachers—Resolutions of School Board—Delegation of Powers—Personal Liability of Trustees for Costs—Declaration—Injunction—Mandamus—Damages. *Mackell* v. *Ottawa Separate School Trustees,* 7 O.W.N. 35, 315, 32 O.L.R. 245.—Lennox, J.

See Railway, 6.

CONTINGENT FEE.

See Solicitor, 1.

CONTINGENT REMAINDER.

See Will, 10.

CONTRACT.

1. Advertising—Provision as to Rate of Payment in Case of Insolvency of Advertiser—Construction—Penalty or Liqui-

dated Damages—Amount for which Creditor Entitled to Rank on Estate of Insolvent. *Ottawa Free Press Limited* v. *Walsh,* 5 O.W.N. 537.—MIDDLETON, J.

2. Agreement between Natural Gas Companies—Breach—Injunction—Costs. *Tilbury Town Gas Co. Limited* v. *Maple City Oil and Gas Co. Limited, Maple City Oil and Gas Co. Limited* v. *Tilbury Town Gas Co. Limited,* 7 O.W.N. 786.—LENNOX, J.

3. Agreement for Purchase of Vehicle—Cancellation—Action for Return of Deposit—Collateral Agreement—Evidence—Findings of Fact of Trial Judge. *Small* v. *Dominion Automobile Co. Limited,* 7 O.W.N. 700.—LENNOX, J.

4. Agreement or Lease—Water Power—Breach of Covenants—Forfeiture—Possession — Counterclaim — Rent—Former Action — Damages — Reference — Amendment — Costs. *Village of Morrisburg* v. *Sharkey,* 7 O.W.N. 728.—FALCONBRIDGE, C.J.K.B.

5. Agreement to Cut Timber—Misrepresentation as to Quantity—Election to Continue after True Quantity Known—Rectification of Contract—Payment for Work Done—Evidence—Findings of Trial Judge—Appeal. *Grant Campbell & Co.* v. *Devon Lumber Co. Limited,* 7 O.W.N. 209.—APP. DIV.

6. Agreements for Supply of Roofing Material and Construction and Placing of Roof—Defective Material—Defective Workmanship—Breach of Contract—Guaranty—Damages—Costs. *Canadian Malleable Iron Co.* v. *Asbestos Manufacturing Co. Limited and Creeper & Griffin Limited,* 7 O.W.N. 787.—BRITTON, J.

7. Breach—Action for Damages—Counterclaim—Dismissal of both—Costs. *King Construction Co.* v. *Canadian Flax Mills Limited,* 7 O.W.N. 606.—FALCONBRIDGE, C.J.K.B.

8. Breach—Defective Material Used in Building by Contractor—Want of Supervision by Architect—Separate Actions by Building Owner against Contractor and Architect—Actions Tried together and Consolidated by Order of Trial Judge—Judgment against both Defendants—Affirmance on Appeal—Variation in Form of Judgment—Effect of Judgment against one Defendant—Separate Contracts — Merger — Joinder of Parties—Rules 67, 134, 320—Damages—Costs—

Rights of Defendants inter se. *Campbell Flour Mills Co. Limited* v. *Bowes, Campbell Flour Mills Co. Limited* v. *Ellis,* 7 O.W.N. 331, 32 O.L.R. 270.—App. Div.

9. Company—Sale of Assets — Debenture Mortgage — Claim against Trustees—Securities Held by Bank—Subrogation—Evidence. *Stuart* v. *Bank of Hamilton,* 7 O.W.N. 727.—Middleton, J.

10. Construction—Guaranty—Payment for Timber—Lien of Bank under Securities—Time at which Liability for Payment Arose—Evidence—Surrounding Circumstances—Acts of the Parties—Conversion—Costs. *Quebec Bank* v. *Sovereign Bank of Canada,* 7 O.W.N. 214.—App. Div.

11. Construction—Sale of Goods—"At Factory Cost"—"Overhead Charges"—Royalties—List Price in Excess of Actual Cost—Refund of Excess. *Gramm Motor Truck Co. of Canada Limited* v. *Gramm Motor Truck Co. of Lima Ohio,* 7 O.W.N. 448.—Middleton, J.

12. Construction—Sale of Stock and Assets of Mercantile Company—Ascertainment of Amount Payable — Evidence — Acts and Conduct of Parties—New Agreement—Estoppel. *Toronto General Trusts Corporation* v. *Gordon Mackay & Co. Limited,* 7 O.W.N. 822, 33 O.L.R. 183.—Middleton, J.

13. Conveyance of Farm by Parents to Son—Bonds for Maintenance—Performance of Contract—Consideration. *Prier* v. *Prier,* 7 O.W.N. 22.—Falconbridge, C.J.K.B.

14. Exchange of Properties—Specific Performance—Misrepresentation—Warranty—Damages. *Johnson* v. *Hanna,* 7 O.W.N. 524.—Middleton, J.

15. Exchange of Properties—Specific Performance— Statute of Frauds—Untrue Representation. *Halliday* v. *Roy,* 7 O.W.N. 546.—Middleton, J.

16. Formation—Sale of Goods—Correspondence—Failure to Arrive at Concluded Bargain or Consensus ad Idem—Evidence—Findings of Trial Judge—Appeal. *Jackson* v. *Hawley,* 7 O.W.N. 300.—App. Div.

17. Goods Supplied to Company—Personal Liability of President—Undertaking to Pay—Substituted Contract—Evid-

ence—Statute of Frauds—Guaranty—Pleading. *Rolph & Clark Limited* v. *Goldman,* 7 O.W.N. 739.—LENNOX, J.

18. Payment for Services—Covenant — Breach — Damages—Quantum Meruit—Counterclaim — Interest — Costs. *Bice* v. *Harness,* 7 O.W.N. 846.—BRITTON, J.

19. Promissory Note—Partnership — Liability—Fraud—Findings of Fact of Trial Judge—Appeal. *Stimson v. Baugh and Proctor,* 7 O.W.N. 426.—APP. DIV.

20. Rectification — Breach — Damages. *Milo Candy Co.* v. *Browns Limited,* 7 O.W.N. 466.—LATCHFORD, J.

21. Rent of Plant at Sum per Diem—Computation of Days—Construction of Written Agreement—Inclusion of Sundays—Deductions from Contract-price. *Perry* v. *Brandon,* 7 O.W.N. 100, 32 O.L.R. 94.—APP. DIV.

22. Sale of Animals—Selection by Vendor—Failure to Deliver—Construction of Agreement—"And"—"Or"—Action for Breach of Contract. *Coffin* v. *Gillies,* 7 O.W.N. 354.—APP. DIV.

23. Sale of Animals for Breeding Purposes—Undertaking—Construction—Breach. *Baird* v. *Clark,* 7 O.W.N. 535.—MIDDLETON, J.

24. Sale of Timber—Formation of Contract—Consensus—Delay in Delivery of Timber—Inspection—Time of Shipment—Evidence—Findings of Trial Judge—Appeal. *Canada Pine Lumber Co.* v. *McCall,* 7 O.W.N. 296.—APP. DIV.

25. Services Rendered—Material Supplied—Money Paid—Claim for Balance—Counterclaim. *Fauquier* v. *King,* 7 O.W.N. 107.—APP. DIV.

26. Supply of Building Material—Contract-price—Ascertainment — Correspondence — Deductions — Costs. *Longford Quarry Co.* v. *Simcoe Construction Co.,* 7 O.W.N. 68.—MIDDLETON, J.

27. Supply of Coal by Brokers to Retailers—Prices Mentioned in Contract—Subsequent Variation—Evidence — Onus — Consideration—Account — Credits — Estoppel—Counterclaim—Findings of Trial Judge—Reversal on Appeal. *Kilbuck Coal Co.* v. *Turner & Robinson,* 7 O.W.N. 158, 673.—LENNOX, J.—APP. DIV.

28. Supply of Ice—Evidence—Payment according to Superficial Area. *Therien* v. *Mountjoy Lumber Co.*, 7 O.W.N. 257.—LENNOX, J.

29. Work and Labour—Action to Recover Payment for—Condition Precedent—Certificate of Engineer Withheld in Good Faith—Premature Action—Counterclaim. *Murdock* v. *Toronto Construction Co.*, 7 O.W.N. 120.—KELLY, J.

30. Work and Labour Undertaken for City Corporation—Change in Extent and Character of Work—Certificate of City Engineer—Dispensing with, as Condition Precedent to Payment—Extra Work—Absence of Written Order—Acceptance—Removing Obstruction—Contract Work—Salvage—Interest on Security Deposit—Interest on Amounts Claimed—Counterclaim—Unskilfulness in Performance of Work—Penalty for Delay. *Loomis* v. *City of Ottawa*, 7 O.W.N. 542.—MIDDLETON, J.

See Account—Building Contract—Carriers—Company, 7, 8, 10—Damages, 2—Executors and Administrators, 1, 2—Fraud and Misrepresentation—Fraudulent Conveyance, 1—Gift—Improvements—Infant, 1—Insurance—Judgment, 3—Master and Servant, 2, 17—Mechanics' Liens—Mortgage, 3, 4—Municipal Corporations, 3, 4—Principal and Agent—Promissory Notes—Railway, 3—Solicitor, 1—Stated Case—Title to Land, 2—Vendor and Purchaser—Water, 1, 5—Writ of Summons.

CONTRIBUTION.

See Company, 3.

CONTRIBUTORIES.

See Banks and Banking—Company, 10.

CONTRIBUTORY NEGLIGENCE.

See Highway, 4, 8—Master and Servant—Mines and Minerals, 1, 2—Railway, 13, 14, 15—Street Railways, 2—Water, 3.

CONVERSION OF CHATTELS.

Evidence — Liability — Damages—Third Parties — Liability over—Costs. *Toronto Electric Light Co.* v. *Gibson Electrics Limited*, 7 O.W.N. 106.—KELLY, J.

See Contract, 10.

CONVEYANCE OF LAND.

See Deed—Fraudulent Conveyance.

CONVICTION.

See Criminal Law—Municipal Corporations, 15.

CORPORATION.

See Company—Municipal Corporations.

CORROBORATION.

See Criminal Law, 3—Executors and Administrators, 1—Mortgage, 3.

CORRUPT PRACTICES.

See Municipal Elections, 2.

COSTS.

1. Arbitration under Dominion Railway Act—Taxation by Judge —Counsel Fee—Quantum—Arbitrators' Fees—Charges for Time Spent in Conference. *Re Dingwall and Cedar Rapids R.W. Co.*, 7 O.W.N. 540.—MIDDLETON, J. (Chrs.)

2. Expropriation Proceedings under Municipal Act—Distribution of Compensation Moneys—Payment into Court—Contestation as to Rival Claims—Discretion of Court—Obligation of Expropriating Body. *Re Linden and City of Toronto*, 7 O.W.N. 681.—MIDDLETON, J.

3. Scale of Costs—Action for Deceit Brought in Supreme Court —Damages Assessed by Jury at $100—Discretion—County Court Costs—Set-off. *Inch* v. *Brock*, 7 O.W.N. 227.—LENNOX, J.

4. Scale of Costs—Judgment of Trial Judge—Special Set-off—Ruling of Taxing Officer—Appeal—Rule 649. *Cardwell* v. *Breckenridge*, 7 O.W.N. 320.—MIDDLETON, J. (Chrs.)

5. *Several Defendants—Costs of Successful Defendant to be Paid by Defendant at Fault—Exoneration of Plaintiff.*]—In an action against a railway company and S., an individual, to recover damages for the flooding of the plaintiff's property, the judgment at the trial was in favour of the plaintiff as against both defendants; both defendants appealed; the appeal of the defendant S. was allowed and that of the railway company dismissed:—*Held*, that it was reasonable for the plaintiff to bring a joint action against

the two defendants rather than proceed against one only, and, failing, then against the other. The railway company brought witnesses to prove that the flooding was caused by the defendant S.; and, having failed to establish this, it should be ordered to pay the costs of S. in both Courts, to the exoneration of the plaintiff—the plaintiff's costs to include all costs incurred by reason of S. having been joined as a defendant.—*Besterman* v. *British Motor Cab Co.*, [1914] 3 K.B. 181, followed. *Nicholson* v. *Grand Trunk R.W. Co.*, 7 O.W.N. 480.—App. Div.

6. Taxed Costs in Lieu of Commission—Administration Proceeding—Rule 653. *Re Goldenberg*, 7 O.W.N. 789.—Riddell, J. (Chrs.)

See Alien Enemy, 1—Appeal, 1, 2—Arbitration and Award, 1, 2—Architect—Assessment and Taxes, 3—Building—Building Contract, 1—Carriers, 1—Company, 5, 8, 9—Constitutional Law—Contract, 2, 4, 6, 7, 8, 10, 18, 26—Conversion of Chattels—Covenant—Criminal Law, 5, 6—Damages, 1, 2—Division Courts, 1—Executors and Administrators, 1—Fraud and Misrepresentation, 3—Highway, 7—Husband and Wife, 1, 2, 3—Improvements—Infant, 2—Insurance, 6—Judgment, 1, 2, 3—Land Titles Act, 3—Landlord and Tenant, 1—Libel—Limitation of Actions, 3—Malicious Prosecution, 2—Master and Servant, 8, 17—Mortgage, 5—Municipal Corporations, 12—Negligence, 5, 7—Nuisance, 3—Partition—Partnership, 5—Pleading, 4—Practice, 3, 5—Principal and Agent, 3, 6—Promissory Notes, 5, 6—Sale of Animal—Solicitor—Title to Land, 3—Unincorporated Society, 1—Vendor and Purchaser, 3, 6, 10, 16—Venue, 1—Water, 1, 2—Way, 1—Will, 1, 10, 17, 23.

COUNTERCLAIM.

See Contract, 4, 7, 18, 25, 27, 29, 30—Damages, 2—Landlord and Tenant, 3—Master and Servant, 17—Mortgage, 4—Promissory Notes, 8.

COUNTY COURT JUDGE.

See Appeal, 1, 2—Ditches and Watercourses Act—Municipal Corporations, 16.

COUNTY COURTS.

1. Jurisdiction of Junior Judge—Fixing Additional Sittings of Court—Acquiescence of Senior Judge—County Courts Act,

R.S.O. 1914 ch. 59, sec. 19—County Judges Act, R.S.O. 1914 ch. 58, secs. 4, 6. *Re Badder* v. *Ontario Canners Limited,* 7 O.W.N. 839.—SUTHERLAND, J. (Chrs.).

2. Transfer of Action to Supreme Court of Ontario—Grounds for—Practice—County Courts Act, R.S.O. 1914 ch. 59, secs. 29, 30. *McConnell* v. *Township of Toronto,* 7 O.W.N. 745.—BRITTON, J. (Chrs.)

See Costs, 3—Judgment, 6.

COURT OF REVISION.

See Municipal Corporations, 9—Ontario Railway and Municipal Board.

COURTS.

See County Courts—Division Courts—Title to Land, 3.

COVENANT.

Restraint of Trade—Undertaking not to Enter into Competition with Established Business—Reasonableness—Extent of Territory — Breach — Managing Rival Business—"Agent or otherwise"—Injunction—Scope and Form of — Appeal — Costs. *Parkers Dye Works Limited* v. *Smith,* 7 O.W.N. 65, 207, 32 O.L.R. 169.—LATCHFORD, J.—APP. DIV.

See Contract, 4, 18—Mortgage, 4, 5—Vendor and Purchaser, 1.

CRIMINAL LAW.

1. Application for Bail—Charge of Treason—State of War. *Rex* v. *Rowens,* 7 O.W.N. 467.—LENNOX, J. (Chrs.)

2. Conviction—Motion to Quash—Practice—Certiorari—Rules of Supreme Court of Ontario Made in 1908—Authority to Make—Criminal Code, sec. 576—Power to Regulate Practice in Certiorari—Power to Abolish Writ. *Rex* v. *Titchmarsh,* 7 O.W.N. 505, 32 O.L.R. 569.—APP. DIV.

3. Evidence—Accomplice—Corroboration. *Rex* v. *Williams,* 7 O.W.N. 426.—APP. DIV.

4. Indecent Assault—What Constitutes—Criminal Code, sec. 292—Evidence. *Rex* v. *Louie Chong,* 7 O.W.N. 84, 32 O.L.R. 66.—APP. DIV.

5. Police Magistrate—Conviction for "Threatening"—Evidence of Assault—Imprisonment for Excessive Term — Habeas

Corpus—Discharge—Condition—Criminal Code, sec. 1120 (7 & 8 Edw. VII. ch. 18, sec. 14)—Amendment—Sec. 1121 of Code—Certiorari — Attorney-General — Protection of Magistrate—Costs. *Rex* v. *Peart,* 7 O.W.N. 126.—LENNOX, J. (Chrs.)

6. Police Magistrate's Conviction for Kidnapping — Plea of "Guilty"—Admission of Crown as to Nature of Offence —Hasty Proceedings—Quashing Conviction—Costs—Protection of Magistrate. *Rex* v. *Steckley,* 7 O.W.N. 137.—KELLY, J. (Chrs.)

7. True Bill for Murder—Application for Bail—Postponement of Trial at Instance of Crown. *Rex* v. *Rae,* 7 O.W.N. 162, 32 O.L.R. 89.—MEREDITH, C.J.C.P. (Chrs.)

See Alien Enemy, 2—Malicious Prosecution—Municipal Corporations, 15—Railway, 6.

CROWN ATTORNEY.

See Malicious Prosecution, 2, 3.

CROWN DUES.

See Company, 15.

CROWN LEASE.

See Water, 4.

CROWN PATENT.

Construction—Description of Land—Falsa Demonstratio—Plan —Mining Lease. *Re Finucane and Peterson Lake Mining Co. Limited,* 7 O.W.N. 194, 32 O.L.R. 128.—APP. DIV.

See Title to Land, 2.

CUSTODY OF INFANTS.

See Fatal Accidents Act.

CUSTOMS BROKER.

See Principal and Agent, 8.

DAMAGES.

1. Injury to Motor Car—Quantum of Damages—Evidence—Estimate of Cost of Repairs—Assessment by Jury—Appeal —Option Given to Defendant to Take Plaintiff's Injured Car—Payment of Increased Amount — Costs. *Laird* v. *Taxicabs Limited,* 7 O.W.N. 736.—APP. DIV.

2. Negligent Performance of Work under Contract—Loss of Profits—Cost of Repairs—Loss of Business—Counterclaim—Costs. *Huberdeau* v. *Villeneuve*, 7 O.W.N. 176.—FALCONBRIDGE, C.J.K.B.

3. Personal Injuries—Assessment of Damages—Expert Evidence. *Sawyer* v. *Canadian Pacific R.W. Co.*, 7 O.W.N. 166.—LENNOX, J.

See Building—Carriers, 1, 2—Conspiracy—Constitutional Law—Contract, 4, 6, 7, 8, 14, 18, 20—Conversion of Chattels—Fatal Accidents Act—Fire—Fraud and Misrepresentation, 1, 8—Highway, 6, 7—Husband and Wife, 5—Improvements—Innkeeper, 1—Landlord and Tenant, 1—Libel—Limitation of Actions, 3—Malicious Prosecution, 1—Master and Servant—Municipal Corporations, 5, 7—Negligence, 4, 7, 8, 9—Nuisance—Principal and Agent, 5, 8 — Promissory Notes, 8—Railway, 7, 8, 9, 11—Sale of Animal—Ship—Title to Land, 3 — Trespass to Land — Vendor and Purchaser, 3, 9—Water, 4, 5—Way, 1, 3.

DEATH.

See Distribution of Estates, 1—Fatal Accidents Act—Highway, 6—Insurance—Lunatic, 2—Master and Servant, 1-7—Negligence, 4, 5, 6—Partnership, 3—Railway, 4, 5—Will.

DEBENTURE MORTGAGE.

See Contract, 9.

DEBENTURES.

See Municipal Corporations, 11.

DECLARATION OF QUALIFICATION.

See Municipal Elections, 1.

DECLARATION OF TRUST.

See Land Titles Act, 2.

DECLARATORY JUDGMENT.

See Municipal Corporations, 12—Title to Land, 2, 3.

DEDICATION.

See Building—Deed, 1—Highway, 2.

DEED.

1. Construction—Building Scheme—Conveyances of Building Lots in Park—"Access to Streets, Avenues, Terraces, and

Commons"—Meaning of "Commons"—Unenclosed Spaces on Plan—Absence of Designation—Recreation Grounds — Representations of Vendors — Quasi-dedication to Purchasers of Lots—Easement—Implied Covenant—Estoppel —Co-operative Undertaking—Limitation of Rights of Purchasers—Registry Act—Purchaser for Value without Notice—Evidence. *Re Lorne Park,* 7 O.W.N. 558, 33 O.L.R. 51.—App. Div.

2. Settlement by Mother in Favour of Son—Action by Executrix of Mother to Set aside—Acquiescence—Estoppel—Mental Capacity of Settlor—Improvidence—Security for Advances—Evidence — Admissions of Son — Statements of Mother. *Jones* v. *Neil,* 7 O.W.N. 359.—App. Div.

See Contract, 13—Crown Patent—Fraudulent Conveyance—Husband and Wife, 4—Land Titles Act, 2—Title to Land, 3 —Vendor and Purchaser, 10, 17—Way, 2.

DEFAMATION.

See Libel.

DEFAULT JUDGMENT.

See Judgment, 1, 2, 4.

DEFECTIVE SYSTEM.

See Master and Servant—Mines and Minerals, 1, 2.

DENOMINATIONAL SCHOOLS.

See Constitutional Law.

DEPARTMENT OF EDUCATION.

See Constitutional Law.

DEPOSIT.

See Contract, 3, 30—Infant, 1—Landlord and Tenant, 3.

DEPUTY RETURNING OFFICER.

See Parliamentary Elections.

DESERTION.

See Husband and Wife, 2.

DEVISE.

See Title to Land, 3—Vendor and Purchaser, 12—Will.

DEVOLUTION OF ESTATES ACT.

Caution—Application by Administrator for Leave to Register after Expiry of Statutory Period—Infants—Official Guardian—R.S.O. 1914 ch. 119, sec. 15. *Re Mahler,* 7 O.W.N. 752.—SUTHERLAND, J. (Chrs.)

See Will, 22.

DIRECTORS.

See Banks and Banking—Company, 1, 3, 4, 6, 9—Discovery, 1 —Unincorporated Society, 1, 2.

DISCONTINUANCE OF ACTION.

See Company, 3.

DISCOVERY.

1. Examination of Parties—Company—Directors—Breaches of Trust—Fraud—Questions as to Sums Paid out of Treasury of Company to Directors—General Manager of Company Bound to Answer. *Moody* v. *Hawkins,* 7 O.W.N. 775.—SUTHERLAND, J. (Chrs.)

2. Examination of Person for whose Immediate Benefit Action Prosecuted—Rule 334—Affidavit of Defendant—Action by Administrators of Estate of Intestate—Interest of Next of Kin. *Trusts and Guarantee Co.* v. *Smith,* 7 O.W.N. 773, 33 O.L.R. 155.—RIDDELL, J. (Chrs.)

3. Production of Documents—Examination of Defendant—Postponement of Discovery until Liability to Account Established. *Foster* v. *Ryckman,* 7 O.W.N. 665.—MASTER IN CHAMBERS.

DISCRETION.

See Account—Appeal, 1—Company, 5, 13—Costs, 2, 3—Infant, 3—Land Titles Act, 3—Lunatic, 2—Practice, 3, 5—Vendor and Purchaser, 6—Will, 1, 11, 13.

DISMISSAL OF ACTION.

See Alien Enemy, 1—Negligence, 5—Practice, 5.

DISQUALIFICATION.

See Landlord and Tenant, 4—Municipal Elections, 1, 2.

DISTRESS.

See Improvements.

DISTRIBUTION OF ASSETS.

See Company, 16.

DISTRIBUTION OF ESTATES.

1. Absentee Next of Kin—Application for Declaration of Death without Leaving Issue—Evidence—Insufficiency. *Re Duncan,* 7 O.W.N. 539.—MIDDLETON, J.

2. Shares in Commercial Company—Election of two Beneficiaries to Take in Specie—Refusal of third Beneficiary to Accept Shares—Position and Duty of Administrator—Advice and Direction of Court. *Re Harris,* 7 O.W.N. 597, 648, 33 O.L.R. 83.—MIDDLETON, J.

See Will.

DISTRICT COURT JUDGE.

See Ontario Railway and Municipal Board.

DISTRICT COURTS.

See Judgment, 6.

DITCHES.

See Highway, 6.

DITCHES AND WATERCOURSES ACT.

Award of Township Engineer—Construction of Drain—Appointment of Engineer—Validity—De Facto Engineer — Amendment of Pleadings—Appeal from Award—Time—Ruling of County Court Judge—Land of Infant Affected by Award—Notice of Proceedings Given to Father of Infant—"Guardian of an Infant"—R.S.O. 1897 ch. 285, secs. 3, 8—Infants Act, R.S.O. 1914 ch. 153, secs. 28, 32—Sufficiency of Outlet. *Healy* v. *Ross,* 7 O.W.N. 246, 32 O.L.R. 184.—MIDDLETON, J.

DIVISION COURTS.

1. Jurisdiction—Amount in Controversy—Amendment—Prohibition—Costs. *Re Johnston* v. *Cayuga,* 7 O.W.N. 751.—BRITTON, J. (Chrs.)

2. *Jurisdiction—Prohibition—Actions to Recover Fees Paid to Clerk of Municipal Corporation—Resolution of Council—Ultra Vires—Question of Law—Right to Review Decision.*]—In actions to recover fees paid by the plaintiffs to the

Clerk of a municipal corporation, upon the ground that the exaction of the fees was not authorised by a resolution of the municipal council under which the Clerk purported to act, and, alternatively, that the resolution was *ultra vires,* the Judge presiding in the Division Court in which the actions were brought decided in favour of the plaintiffs; and the defendant moved for prohibition, contending that the Judge had no right to entertain the actions without the resolution having been in the first place quashed:—*Held,* that, if the Judge had erred, it was in determining a matter within his jurisdiction, and the Supreme Court of Ontario had no authority to review his decision; it was not the case of a Judge giving himself jurisdiction by an erroneous construction of a statute; and the motion was refused. *Re Morgan* v. *Billings, Re Martin* v. *Billings,* 7 O.W.N. 138.—MIDDLETON, J. (Chrs.)

3. Territorial Jurisdiction—Place where Cause of Action Arose —Whole Cause of Action — Prohibition — Limitation — Transfer of Action to Proper Court. *Re International Harvester Co.* v. *Kerton,* 7 O.W.N. 453.—MIDDLETON, J. (Chrs.)

4. *Trial of Plaint with Jury—Motion for Nonsuit—Power of Judge to Order New Trial without Application therefor.*]— A County Court Judge before whom and a jury an action in a Division Court is tried has power, without an application for a new trial, to order a new trial, where he considers the verdict of the jury perverse, instead of directing either a nonsuit or a dismissal of the action. *Re Barr Registers Limited* v. *Neal,* 7 O.W.N. 726.—BRITTON, J. (Chrs.)

DIVORCE.

See Fatal Accidents Act—Husband and Wife, 3.

DOCUMENTS.

See Discovery, 3—Municipal Corporations, 17.

DOMICILE.

Change—Evidence—Onus — Marriage — Quebec Law—Holograph Will — Revocation—Intestacy. *Seifert* v. *Seifert,* 7 O.W.N. 440, 32 O.L.R. 433.—MIDDLETON, J.

See Promissory Notes, 6—Succession Duty.

DOWER.

Equitable Estate of Husband—Vendors and Purchasers Act. *Re Mercurio and Jewett*, 7 O.W.N. 473.—MIDDLETON, J.

See Will, 14.

DRAINAGE.

See Ditches and Watercourses Act—Water, 2.

DRAINAGE TAXES.

See Fraud and Misrepresentations, 8.

EASEMENT.

Right of Way—Overhanging Roof—Acquisition of Title by Possession — Interference with User of Way.] — An action brought in a County Court to compel the defendants to remove a cornice erected by them on their building, overhanging a strip of land over which the plaintiff had a right of way, was dismissed, and the dismissal was affirmed upon appeal, where it was *held*, that, unless the cornice interfered with the reasonable use of the way, there was nothing of which the plaintiff could complain.—The owner of the fee simple in the land, subject to the easement, could object to the cornice and so get rid of the difficulty which might arise if the cornice were to remain 20 years, as in *Rooney* v. *Petry* (1910), 22 O.L.R. 101, 107. *Ridge* v. *M. Brennen & Sons Manufacturing Co.*, 7 O.W.N. 829.—APP. DIV.

See Building—Deed, 1—Title to Land, 1—Water, 1—Way.

EDUCATION.

See Constitutional Law.

ELECTION.

See Contract, 5—Distribution of Estates, 2—Fraud and Misrepresentation, 5—Principal and Agent, 7—Will, 14, 18.

ELECTIONS.

See Municipal Elections—Parliamentary Elections—Unincorporated Society, 1, 2.

ELECTRIC CURRENT.

See Master and Servant, 13.

ELECTRIC POWER.

See Municipal Corporations, 5, 6.

ELECTRIC RAILWAY.

See Railway, 12—Street Railways.

ELECTRIC SHOCK.

See Negligence, 4, 5.

ENCROACHMENT.

See Building—Highway, 3—Limitation of Actions, 3.

ENGINEER.

See Contract, 29—Ditches and Watercourses Act.

ENTICEMENT.

See Husband and Wife, 5.

EQUITABLE ESTATE.

See Dower.

EQUITABLE RELIEF.

See Vendor and Purchaser, 11.

ESCROW.

See Vendor and Purchaser, 6.

ESTATE.

See Distribution of Estates—Will.

ESTATE TAIL.

See Vendor and Purchaser, 12.

ESTOPPEL.

See Appeal, 2—Carriers, 3—Contract, 12, 27—Deed, 1, 2 — Fraud and Misrepresentation, 5—Husband and Wife, 4— Landlord and Tenant, 4 — Municipal Corporations, 11 — Will, 7, 10.

EVICTION.

See Landlord and Tenant, 1.

EVIDENCE.

See Account—Arbitration and Award, 2—Company, 8, 9—Contract, 10, 12, 27—Criminal Law, 3—Damages, 3—Deed, 2 —Discovery—Distribution of Estates, 1—Domicile—Executors and Administrators, 1—Fraud and Misrepresentation, 7, 9—Highway, 3, 5—Husband and Wife, 4 — Inn-

keeper, 1—Insurance, 3, 6—Landlord and Tenant, 4 — Master and Servant, 10, 13, 16—Mortgage, 3—Negligence, 2, 4, 9, 10—Promissory Notes, 3—Railway, 9, 10, 13, 15—Surgeon—Title to Land, 3—Will, 1.

EXAMINATION OF PARTIES.

See Discovery, 1.

EXCHANGE OF PROPERTIES.

See Contract, 14, 15—Fraud and Misrepresentation, 1—Vendor and Purchaser, 1, 2.

EXECUTION.

1. Action for Declaration in Aid—Husband and Wife—Interest of Husband in Land Vested in Wife—Evidence—Appeal. *Labatt Limited* v. *White,* 7 O.W.N. 160.—App. Div.

2. Renewal—Ex Parte Order—Judgment—Statute of Limitations. **Doel* v. *Kerr,* 7 O.W.N. 826.—Master in Chambers.

3. Right of Renewal, when Judgment more than 20 Years Old —Limitations Act, 10 Edw. VII. ch. 34, sec. 49—Application of—"Civil Proceeding"—"Action" — Presumption of Satisfaction in Absence of Payment or Acknowledgment —Con. Rule 872 of 1897—Execution Act, 9 Edw. VII. ch. 7, sec. 10—Execution Kept Alive by Renewals. *Poucher* v. *Wilkins,* 7 O.W.N. 670, 33 O.L.R. 125.—App. Div.

See Chattel Mortgage, 3—Judgment, 3—Practice, 3.

EXECUTOR DE SON TORT.

See Chattel Mortgage, 3.

EXECUTORS AND ADMINISTRATORS.

1. Action against Executors—Claim upon Estate of Deceased Person for Services Rendered and Expenses Incurred—Evidence—Documents Signed by Aged Person Shortly before Death—Lack of Independent Advice—Corroboration—Recovery of Reduced Amount—Costs. *Wilson* v. *McMorran,* 7 O.W.N. 221.—Hodgins, J.A.

2. Claim of Estate under Contract—Uncertainty of Construction—Compromise—Approval of Court on Behalf of Infants. *Re Coleman,* 7 O.W.N. 133.—Lennox, J.

See Deed, 2—Devolution of Estates Act—Discovery, 2—Distribution of Estates, 2—Mortgage, 3—Partition—Will.

EXPERT WITNESSES.

See Damages, 3—Surgeon.

EXPROPRIATION.

See Costs, 2—Municipal Corporations, 7—Railway, 7, 8, 9—Water, 5.

EXTRAS.

See Contract, 30.

FAIR COMMENT

See Libel.

FAIR WAGE CLAUSE.

See Municipal Corporations, 4.

FALSA DEMONSTRATIO.

See Crown Patent.

FALSE REPRESENTATIONS.

See Company, 2—Fraud and Misrepresentation.

FAMILY PARTNERSHIP.

See Chattel Mortgage, 3.

FATAL ACCIDENTS ACT.

Damages—Apportionment—Persons Entitled — Divorced Wife—Infant Children—Custody—Maintenance—Allowance out of Fund in Court. *Bartleff* v. *Northern Ontario Light and Power Co.*, 7 O.W.N. 402.—LENNOX, J.

See Highway, 6—Master and Servant, 1-7—Negligence, 6—Street Railways, 1—Trial, 3.

FENCES.

See Highway, 6—Railway, 1.

FIRE.

Destruction of Property—Negligence—Evidence — Damages — Remoteness. *Nixon* v. *Nickerson*, 7 O.W.N. 255.—LENNOX, J.

See Carriers, 2—Railway, 2, 10.

FIRE INSURANCE.

See Principal and Agent, 9.

FORECLOSURE.

See Judgment, 8—Mortgage, 2, 4, 5—Title to Land, 1.

FOREIGN COMMISSION.

See Account.

FOREIGN COMPANY.

See Company, 16.

FOREIGN DIVORCE.

See Husband and Wife, 3.

FOREIGN DOMICILE.

See Promissory Notes, 6.

FOREIGN JUDGMENT.

See Promissory Notes, 3.

FOREIGN LANDS.

See Supreme Court of Ontario—Vendor and Purchaser, 16.

FOREIGN LAW.

See Solicitor, 1.

FORFEITURE.

See Building Contract, 3—Contract, 4—Fraud and Misrepresentation, 2—Judgment, 3—Landlord and Tenant, 1, 3—Vendor and Purchaser, 5.

FORUM.

See Company, 11—Promissory Notes, 6.

FRAUD AND MISREPRESENTATION.

1. Exchange of Properties—Mortgage—Evidence—Findings of Fact of Trial Judge—Damages. *Tucker* v. *Titus, Titus* v. *Tucker,* 7 O.W.N. 44.—FALCONBRIDGE, C.J.K.B.

2. Forfeiture of Share in Agreement for Purchase of Land—Rights of Assignee of Share—Purchaser for Value without Notice. *Keyser* v. *Pearson,* 7 O.W.N. 606.—LATCHFORD, J.

3. Option for Purchase of Land — Acceptance — Resale at Increased Price—Purchaser for Value without Notice—Re-

medy of Vendor against Original Purchasers—Payment of Difference in Price—Charge on Mortgage for Amount Due for Principal, Interest, and Costs—Appeal—Costs. *Steere* v. *Howard,* 7 O.W.N. 562.—App. Div.

4. Promissory Notes Given for Share in Partnership—Negotiations for Partnership—Uberrima Fides—Part Inducement by Fraudulent Misrepresentation—Repudiation—Delay—Excuse. *Glaeser* v. *Klemmer,* 7 O.W.N. 14.—Falconbridge, C.J.K.B.

5. Purchase of Interest in Invention—Contract—Rescission—Conduct—Election—Evidence—Finding of Trial Judge—Appeal—Estoppel. *Carrique* v. *Catts and Hill,* 7 O.W.N. 500, 32 O.L.R. 548.—App. Div.

6. Purchase of Mining Claims—Undertaking to Return Purchase-money. *Lake View Consols Limited* v. *Flynn,* 7 O. W.N. 322.—Latchford, J.

7. Sale of Animal—Evidence—Failure to Prove Fraud. *Rogers* v. *Wylie,* 7 O.W.N. 790.—Lennox, J.

8. Sale of Farm—Inducement to Purchase—False Representation as to Amount of Drainage Taxes Charged on Land—Evidence — Finding of Fact of Trial Judge — Damages, Measure of — Compensation for Existing Loss — Anticipated Relief from Taxes by Crown or Municipality—Provision for Benefit of Vendor—Findings of Fact of Trial Judge—Appeal. *Laduc* v. *Tinkess,* 7 O.W.N. 31, 384.—Britton, J.—App. Div.

9. Sale of Plant and Business—Action for Balance of Price—Evidence—Failure of Defendants to Prove Misrepresentations. *Barker* v. *Nesbitt,* 7 O.W.N. 17, 679.—Falconbridge, C.J.K.B.—App. Div.

See Company, 2—Contract, 5, 14, 15, 19—Discovery, 1—Husband and Wife, 4—Infant, 1—Injunction, 1—Promissory Notes, 2—Unincorporated Society, 1 — Vendor and Purchaser, 2, 17.

FRAUDULENT CONVEYANCE.

1. Action by Judgment Creditor of Grantor to Set aside—Agreement—Consideration—Lien for Services—Evidence—Finding of Fact of Trial Judge—Appeal. *Ellis* v. *Ellis,* 7 O.W. N. 283.—App. Div.

2. Action by Judgment Creditor to Set aside—Evidence—Absence of Intent to Defraud—Estoppel—Unregistered Reconveyance to Debtor—Cancellation—Dismissal of Action. *Davidson* v. *Forsythe*, 7 O.W.N. 762.—CLUTE, J.

3. Action to Set aside—Evidence—Intent to Defraud. *Aspinall* v. *Diver and Breen*, 7 O.W.N. 828.—LENNOX, J.

4. Husband and Wife—Insolvency of Husband—Voluntary Conveyance to Wife—Pretended Consideration—Evidence—Intent. *Long Dock Mills Co.* v. *Dickey*, 7 O.W.N. 692.—LATCHFORD, J.

5. Husband and Wife—Property Conveyed to Wife by Stranger—Interest of Husband—Rights of Creditor of Husband—Absence of Fraud. *Bateman* v. *Scott*, 7 O.W.N. 722.—BRITTON, J.

See Execution, 1—Husband and Wife, 4—Supreme Court of Ontario.

GAS COMPANY.

See Municipal Corporations, 2.

GIFT.

Condition—Intended Marriage—Contract Broken off—Recovery of Gifts made in Contemplation of Marriage—Limitation. *Seiler* v. *Funk*, 7 O.W.N. 179, 32 O.L.R. 99.—APP. DIV.

See Husband and Wife, 6—Will.

GROSS NEGLIGENCE.

See Highway, 5.

GUARANTY.

See Contract, 6, 10, 17—Principal and Surety—Vendor and Purchaser, 18.

GUARDIAN.

See Ditches and Watercourses Act—Infant, 2, 4.

HABEAS CORPUS.

See Alien Enemy, 2—Criminal Law, 5—Lunatic, 1.

HAWKERS.

See Municipal Corporations, 15.

HIGH SCHOOLS.

See Schools.

HIGHWAY.

1. Closing and Sale of Unopened Portion of Street as Shewn on Plan—Adoption by Municipality for Public Use not Shewn —By-law of Council—Municipal Act, 1903, secs. 629, 632, 637, 640—Surveys Act, 1 Geo. V. ch. 42, sec. 44—Mala Fides—Evidence—By-law Quashed and Sale Set aside. *Jones* v. *Township of Tuckersmith, Re Jones and Township of Tuckersmith*, 7 O.W.N. 579.—LATCHFORD, J.

2. Dedication—By-law of Municipality—Waiver of Conveyances —Evidence. *Reaume* v. *City of Windsor*, 7 O.W.N. 647.— MIDDLETON, J.

3. Encroachment of Building upon City Street—Failure to Prove Boundary of Street—Evidence—Plans and Surveys. *City of Toronto* v. *Pilkington Brothers Limited and Weber*, 7 O.W.N. 806.—MIDDLETON, J.

4. *Improper Use of Highway—Motor Vehicle Left Standing for Unreasonable Time—Injury to Horse—Liability of Owners of Car—Proximate Cause of Injury—Negligence—Contributory Negligence—Motor Vehicles Act, 2 Geo. V. ch.* 48— "*Dead*" *Car—Necessity for Lights.*]—The plaintiff was *held* entitled to recover damages from the defendants for injury sustained by reason of his horse being frightened by the defendants' motor car, which was left standing upon the highway unlighted for 3½ hours, that being deemed an unreasonable time. The accident occurred in the evening, and the car was not lighted. The majority of the members of the Court were of opinion that the liability was under the common law; MULOCK, C.J.Ex., and CLUTE, J., were of opinion that there was liability under the Motor Vehicles Act. *Bailey* v. *Findlay*, 7 O.W.N. 24, 159—SCOTT, Co.C.J.— APP. DIV.

5. Injury to Pedestrian by Fall upon Ice-covered Sidewalk— Liability of Municipal Corporation—Evidence—Negligence —"Gross Negligence"—Municipal Act, R.S.O. 1914 ch. 192, sec. 460, sub-sec. 3. *Gauthier* v. *Village of Caledonia*, 7 O. W.N. 171.—LATCHFORD, J.

6. Nonrepair—Death of Child by being Thrown from Waggon— Liability of Township Corporation—Negligence—Failure to Fence Ditches—Evidence — Action by Parents under

Fatal Accidents Act — Damages — Reduction on Appeal. *Kinsman* v. *Township of Mersea,* 7 O.W.N. 101.—App. Div.

7. Nonrepair—Injury to Traveller—Road Assumed by County Corporation—Highway Improvement Act, 1 Edw. VII. ch. 16 (O.)—Duty to Repair and Maintain—Negligence—Absence of Guard-rail at Dangerous Place — Liability of County Corporation—Limits of Road Assumed—By-law —Construction—"Concession"—Damages — Costs. *Ackersviller* v. *County of Perth,* 7 O.W.N. 435, 32 O.L.R. 423. —Meredith, C.J.C.P.

8. Obstruction—Trolley Pole in Travelled Part of City Street —Injury to Travellers by Vehicle Striking Pole—Absence of Guard or Light—Statutory Authority—Municipal By-law—Negligence—Contributory Negligence — Findings of Jury—Nuisance. *Weir* v. *Hamilton Street R.W. Co.,* 7 O. W.N. 495, 609, 32 O.L.R. 578.—App. Div.

9. Snow and Ice on Sidewalk Opposite Church Property Used as Rink—Escape of Water from Rink Causing Dangerous Condition—Personal Injury to Passer-by—Claim against City Corporation—Failure to Give Notice in Time—Claim against Trustees of Church—Nuisance—Failure to Protect Passers-by—Responsibility of Trustees for Action of Subordinate Church Organisation—License. *Grills* v. *City of Ottawa,* 7 O.W.N. 520.—Middleton, J.

See Judgment, 9—Land Titles Act, 3—Municipal Corporations, 1, 2, 5, 7, 9, 14—Negligence—Railway, 11, 15—Street Railways—Water, 3—Way, 1.

HIGHWAY IMPROVEMENT ACT.

See Highway, 7.

HIGHWAY TRAVEL ACT.

See Negligence, 3.

HOLOGRAPH WILL.

See Domicile.

HUSBAND AND WIFE.

1. Alimony—Costs—Rule 388. *Price* v. *Price,* 7 O.W.N. 606.— Kelly, J.

2. Alimony — Desertion — Lump Sum Fixed for Alimony — Money Lent—Interest—Costs. *Berlet* v. *Berlet,* 7 O.W.N. 67.—Lennox, J.

3. Alimony—Wife Leaving Husband, with Intention of not Returning, and Obtaining Divorce in Foreign Country—Bar to Action—Refusal of Husband to Receive Wife back after Divorce — Costs—Rule 388. *Rosswrom* v. *Rosswrom,* 7 O.W.N. 583.—Kelly, J.

4. Conveyance of Lands of Husband to Wife Subject to Trust—Reconveyance in Pursuance of Trust—Action by Judgment Creditors of Wife to Set aside Reconveyance—Absence of Fraudulent Intent—Evidence—Estoppel. **Windsor Auto Sales Agency* v. *Martin,* 7 O.W.N. 471.—Lennox, J.

5. Enticement of Wife—Alienation of Affections—Deprivation of Consortium—Findings of Jury—Absence of Adultery—Right of Action—Damages—Separate Counts—Overlapping—Reduction of Damages. *Bannister* v. *Thompson,* 7 O.W.N. 46, 32 O.L.R. 34.—App. Div.

6. House and Land Purchased by Husband—Action by Wife to Establish Co-ownership—Evidence—Contributions to Purchase-price—Separate Earnings—Gift—Payment of Taxes—Possession. *Kaakee* v. *Kaakee,* 7 O.W.N. 648.—Kelly, J.

See Dower—Execution, 1—Fraudulent Conveyance, 4, 5—Marriage—Mines and Minerals, 3—Principal and Agent, 7—Title to Land, 3—Vendor and Purchaser, 2.

ICE.

See Highway, 5, 9—Water, 3.

IMMINENT DANGER.

See Railway, 15.

IMPROVEMENTS.

Agreement for Purchase of Land—Moneys Expended by Purchaser—Right to Recover—Absence of Privity—Wrongful Distress—Damages—Costs. *Mortson* v. *Lamourie,* 7 O.W.N. 177.—Falconbridge, C.J.K.B.

See Limitations of Actions, 3—Will, 10.

IMPROVIDENCE.

See Deed, 2.

INCOME TAX.

See Assessment and Taxes, 1.

INDECENT ASSAULT.

See Criminal Law, 4.

INDEMNITY.

See Company, 3—Land Titles Act, 3.

INDEPENDENT ADVICE.

See Executors and Administrators, 1—Solicitor, 1.

INDEPENDENT CONTRACTOR.

See Master and Servant, 1—Negligence, 6.

INFANT.

1. Agreement for Purchase of Land—Payment of Sum as Deposit—Right to Recover—Absence of Fraud — Consideration. *Short* v. *Field,* 7 O.W.N. 400, 758, 32 O.L.R. 395.—BOYD, C.—APP. DIV.

2. Guardian of Estate—Trust Company — Encroachment on Capital for Infant's Maintenance and Education—Allowance to Guardian on Passing Accounts—Disallowance on Appeal — Benefit of Infant — Costs of Action Brought against Company—Loan and Trust Corporations Act, R.S. O. 1914 ch. 184, sec. 18 (*c*)—Powers of Trust Companies—Compensation of Guardians. *Re Rundle,* 7 O.W.N. 350, 32 O.L.R. 312.—APP. DIV.

3. Maintenance—Infant Entitled to Share of Estate under Will —Application of Income—Discretion of Trustees—Application of Father of Infant for Payment of Income to him—Benefit of Infant. *Re Ayre,* 7 O.W.N. 454.—MIDDLETON, J. (Chrs.)

4. Maintenance out of Funds in Hands of Guardian—Encroachment upon Capital—Power of Court—Infants Act, R.S.O. 1914 ch. 153, sec. 31 (2)—Rules of Court—Summary Application—Order Authorising Guardian to Pay Moneys to Mother of Infants — Originating Notice. *Re Adkins Infants,* 7 O.W.N. 654, 33 O.L.R. 110.—MEREDITH, C.J.C.P. (Chrs.)

5. *Next Friend—Married Woman.*]—An infant cannot sue by a married woman as next friend. The new Rules of the Supreme Court (1913), Rules 91 et seq., have made no difference in this respect. *Wainburgh* v. *Toronto Board of Education,* 7 O.W.N. 396.—MIDDLETON, J. (Chrs.)

See Devolution of Estates Act—Ditches and Watercourses Act —Executors and Administrators, 2—Fatal Accidents Act—Master and Servant, 5—Municipal Corporations, 8.

INJUNCTION.

1. Action to Set aside Sale of Property—Fraud and Misrepresentation—Interim Injunction — Continuance — Terms — Payment into Court—Speedy Trial. *Peppiatt* v. *Reeder*, 7 O.W.N. 753.—SUTHERLAND, J.

2. Interim Injunction—Company—Purchase of Property—Action by Shareholder to Restrain—Evidence — Refusal to Continue Injunction—Speedy Trial. *Hawkins* v. *Miller*, 7 O.W.N. 752.—SUTHERLAND, J.

3. Interim Injunction Restraining Sale under Chattel Mortgage —Qui tam Action—Simple Contract Creditor—Preference —Account—Dissolution of Injunction. *Bassi* v. *Sullivan*, 7 O.W.N. 38, 97, 32 O.L.R. 14.—HODGINS, J.A.

See Building—Canada Temperance Act—Constitutional Law—Contract, 2—Covenant—Judgment, 5—Municipal Corporations, 5, 17—Municipal Elections, 1—Nuisance—Principal and Surety—Title to Land, 1—Vendor and Purchaser, 9—Water, 1, 5—Way, 1—Will, 2.

INNKEEPER.

1. Liability for Luggage of Inmate Lost or Stolen—Lodging House or Boarding House Keeper—Negligence—Jury—Innkeepers Act—Bailment—Want of Reasonable Care — Finding of Fact by Appellate Court—Judicature Act, sec. 27—Damages—Evidence—Credibility of Witnesses. *Macdonell* v. *Woods*, 7 O.W.N. 342, 32 O.L.R. 283.—APP. DIV.

2. Lien—Innkeepers Act, 1 Geo. V. ch. 49—Supplementary to Common Law — Lien on Property of Stranger. *United Typewriter Co.* v. *King Edward Hotel Co.*, 7 O.W.N. 193, 32 O.L.R. 126.—APP. DIV.

INSANITY.

See Lunatic.

INSOLVENCY.

See Assignments and Preferences—Contract, 1—Fraudulent Conveyance, 4—Mines and Minerals, 1.

INSPECTION.

See Mines and Minerals, 1.

INSURANCE.

1. Life Insurance—Benefit Certificate—Society Subject to Act respecting Benevolent Provident and other Societies, R.S.O. 1897 ch. 211—Repeal of Act by Companies Act, 7 Edw. VII. ch. 34, sec. 211 (3)—Preservation of Rights of Beneficiaries—Rules of Society—Designation of Next of Kin as Beneficiaries—Will of Assured—Lien for Premiums Paid. *Re Nicholson and Canadian Order of Foresters*, 7 O.W.N. 623.—MIDDLETON, J. (Chrs.)

2. Life Insurance—Benevolent Society—Contract of Insurance —Life Expectancy Benefit Fund—Beneficiary Fund—Payment to Member on Attaining Certain Age—Change in Bylaws—Validation by Statute—Death Benefit — Increased Assessment Premiums—Agreement of Member to be Bound by Amendments—Right of Member as Creditor. *Grainger* v. *Order of Canadian Home Circles*, 7 O.W.N. 649, 33 O.L. R. 116.—APP. DIV.

3. Life Insurance — Failure to Give Affirmative Proof of Death of Assured—Presumption from Long Absence Unheard of —Hearsay Evidence—Admissibility — Limitation of Time for Bringing Action—Computation of Time — Insurance Act, R.S.O. 1914 ch. 183, sec. 165—Declaration of Death. *Duffield* v. *Mutual Life Insurance Co. of New York*, 7 O.W.N. 345, 32 O.L.R. 299.—APP. DIV.

4. Life Insurance—Payment of Insurance Money into Court—Order for Payment out to Widow—Application to Vacate Order—Necessity for Personal Consent of Widow. *Re McFarlane and Order of Canadian Home Circles*, 7 O.W.N. 97.—MIDDLETON, J. (Chrs.)

5. Life Insurance—Policy—Non-forfeiture Clause — Construction—Surrender Value—Period of Ascertainment — Debt Due by Assured for Premium and Loan Covered by Surrender Value—Interest—Proofs of Death—Waiver by Denal of Liability. *Devitt* v. *Mutual Life Insurance Co. of Canada*, 7 O.W.N. 575, 33 O.L.R. 68.—BRITTON, J.

6. Life Insurance—Presumption of Death of Insured—Seven Years' Absence without being Heard from—Evidence —

Proofs of Death—Waiver—Authority of Chief Officer of Benevolent Society — New Trial — Costs. *Linke* v. *Canadian Order of Foresters*, 7 O.W.N. 516, 795, 33 O.L.R. 159. —BRITTON, J.—APP. DIV.

See Carriers, 2—Principal and Agent, 9.

INSURANCE BROKER.

See Principal and Agent, 9.

INTENT.

See Fraudulent Conveyance—Husband and Wife, 4.

INTEREST.

See Company, 4, 9—Contract, 18, 30—Husband and Wife, 2—Insurance, 5—Mortgage, 3, 5—Principal and Agent, 3—Promissory Notes, 5—Vendor and Purchaser, 3—Will, 13, 22.

INTERPLEADER.

See Chattel Mortgage, 3—Promissory Notes, 3.

INTERVENTION.

See Marriage.

INTESTACY.

See Distribution of Estates—Domicile—Title to Land, 4—Will.

INTIMIDATION.

See Municipal Elections, 2.

INTOXICATING LIQUORS.

See Canada Temperance Act.

INVITATION.

See Negligence, 1.

JOINDER OF PARTIES.

See Company, 3—Contract, 8.

JOINT TENANCY.

See Partnership, 3.

JUDGMENT.

1. Default in Payment of Costs—Motion to Set aside Judgment —Extension of Time for Moving—Leave to Defend—Rule 176—Terms—Costs—Security. *Chisholm* v. *Goldfields Limited*, 7 O.W.N. 547.—LENNOX, J. (Chrs.)

2. Default Judgment—Order Setting aside—Indulgence—Terms—Costs—Promissory Note—Action on — Defence—Threat of Criminal Prosecution. *Herrington* v. *Carey,* 7 O.W.N. 473.—MASTER IN CHAMBERS.

3. Execution—Judgment for Part of Purchase-money of Land—Inability to Convey Land if Money Realised by Execution—Agreement — Construction—Assignment—Merger—Forfeiture—Sale of Land — Judgment Unenforceable except as to Costs. *H. H. Vivian Co. Limited v. Clergue,* 7 O.W.N. 109, 261, 32 O.L.R. 200.—KELLY, J.—APP. DIV.

4. Motion for Judgment in Default of Defence—Practice—Certificate of State of Cause. *Dyke* v. *Bourns,* 7 O.W.N. 132. —LENNOX, J.

5. Satisfaction of Judgment—Trial of Issue—Parties—Sheriff—Solicitor—Injunction. *Brazeau* v. *Bedard,* 7 O.W.N. 613.—MIDDLETON, J.

6. Summary Judgment—Action for Money Demand—Specially Endorsed Writ of Summons—Affidavit of Defendant—Insufficiency—Rule 56—Appeal from Judgment of District Court—Time—County Courts Act, sec. 44—Extension—Indulgence. *Carter* v. *Hicks,* 7 O.W.N. 734, 33 O.L.R. 149. —APP. DIV.

7. Summary Judgment—Application for—Evidence—Defence—Unconditional Leave to Defend. *Naiman* v. *Wright,* 7 O.W.N. 728.—BRITTON, J. (Chrs.)

8. Summary Judgment—Mortgage—Foreclosure — Defence — Rules 56, 57. *Taylor* v. *Edwards,* 7 O.W.N. 119.—KELLY, J. (Chrs.)

9. Summary Judgment—Mortgage Action—Facts and Circumstances Entitling Defendants to Defend—Marshalling of Assets—Judgment for Sale of Part of Mortgaged Land—Reservation of Right to Apply for Sale of Part Taken by Municipal Corporation for Street. *McCowan* v. *City of Toronto,* 7 O.W.N. 815.—MIDDLETON, J. (Chrs.)

10. Summary Judgment—Motion for—Rule 56—Company-defendant—Affidavit of Principal Officer—Information and Belief—Sufficiency — Cross-examination — Disclosing Defence—Amendment of Writ of Summons. *Robinson Bro-*

thers Cork Co. Limited v. *Perrin & Co. Limited*, 7 O.W.N. 43, 105,—HOLMESTED, SENIOR REGISTRAR—MIDDLETON, J. (Chrs.)

11. Summary Judgment—Rule 62—Action Begun by Specially Endorsed Writ—Motion for Judgment before Appearance. *Canadian General Electric Co.* v. *Dodds*, 7 O.W.N. 665.—MASTER IN CHAMBERS.

See Alien Enemy, 3—Company, 3, 9—Contract, 8—Execution, 2, 3—Land Titles Act, 2—Lunatic, 2—Mortgage, 2—Municipal Corporations, 12—Partnership, 1—Practice, 2, 3, 4, 6—Principal and Agent, 7—Promissory Notes, 3—Title to Land, 2, 3—Vendor and Purchaser, 14, 16.

JURISDICTION.

See Alien Enemy, 2—Appeal, 2—Company, 11, 16—County Courts—Division Courts—Malicious Prosecution, 1—Marriage—Municipal Corporations, 4—Ontario Railway and Municipal Board—Provincial Board of Health—Railway, 6 —Ship—Street Railways, 3—Supreme Court of Ontario—Title to Land, 3.

JURY.

See Conspiracy—Costs, 3—Damages, 1—Division Courts, 4—Highway, 8—Husband and Wife, 5—Innkeeper, 1—Malicious Prosecution, 2, 3—Master and Servant — Mines and Minerals, 1—Negligence—Railway—Street Railways, 1, 2—Water, 3.

JURY NOTICE.

See Trial.

JUSTICE OF THE PEACE.

See Criminal Law, 5, 6—Malicious Prosecution, 1.

KIDNAPPING.

See Criminal Law, 6.

LAND TITLES ACT.

1. Application under sec. 99 for Order Modifying Building Restrictions—Opposition by Person Interested—Refusal of Order. *Re Legate*, 7 O.W.N. 566.—MIDDLETON, J. (Chrs.)

2. Mortgage in Form Prescribed by Short Forms Act—Inability to Register—Deed of Assignment for Benefit of Creditors—Registration of —Priorities—R.S.O. 1914 ch. 126, secs. 30

(2), 45, 115—Form of Judgment—Rectification of Records —Declaration of Trust — Costs. *John Macdonald & Co. Limited* v. *Tew,* 7 O.W.N. 325, 32 O.L.R. 262.—App. Div.

3. Refusal to Register Purchaser from Municipality as Owner of Portion of Highway Closed by Municipal By-law—"Notice of Proposed By-law"—Municipal Act, R.S.O. 1914 ch. 192, sec. 475—Insufficiency of Notice—Description of Land—Time for Considering Proposed By-law—Indemnity to Assurance Fund—R.S.O. 1914 ch. 126, sec. 123 (10) — Discretion of Master of Titles—Appeal—Costs. *Re Rogers,* 7 O.W.N. 717.—Middleton, J. (Chrs.)

LANDLORD AND TENANT.

1. Action for Damages for Non-payment of Rent—Surrender—Acceptance by Reletting—Eviction—Forfeiture of Rent Accrued—Apportionment of Rent—Apportionment Act, R.S.O. 1914 ch. 156, sec. 4—Payment for Occupation—Deductions—Costs. *Crozier* v. *Trevarton,* 7 O.W.N. 111, 32 O.L.R. 79.—Boyd, C.

2. Flooding of Demised Premises — Knowledge of Landlord — Concealment of Defect—Appeal—New Trial — Leave to Amend. *Miles* v. *Constable,* 7 O.W.N. 125.—App. Div.

3. Lease—Claim for Forfeiture—Surrender—Possession—Counterclaim—Return of Deposit—Deduction of Rent—Money Lent. *Anglischick* v. *Rom,* 7 O.W.N. 42.—Britton, J.

4. Termination of Lease—Buildings of Lessee—Payment for, by Lessor—Submission to three Persons to Fix Amount to be Paid—Arbitration or Valuation — Conduct of Valuator—Bias—Disqualification—Functions of Valuators — Method of Valuation—Entire Building—Estoppel — Sufficiency of Valuation—Joint Act of Valuators—Evidence—Enforcement of Valuation. *Campbell* v. *Irwin,* 7 O.W.N. 71, 32 O.L.R. 48.—App. Div.

LEASE.

See Contract, 4—Landlord and Tenant—Water, 4.

LEAVE TO APPEAL.

See Appeal—Ontario Railway and Municipal Board.

LEAVE TO PROCEED.

See Company, 11.

LEGACY.

See Mortgage, 3—Promissory Notes, 6—Will.

LEVEL HIGHWAY CROSSING.

See Railway, 15.

LIBEL.

Pleading—Defence of Fair Comment—Error in Judge's Charge Induced by Defendant—Mistrial—Damages — New Trial —Costs. *Jackes* v. *Mail Printing Co.*, 7 O.W.N. 677.—App. Div.

LICENSE.

See Alien Enemy, 5—Company, 5—Highway, 9—Water, 1.

LIEN.

See Company, 15—Contract, 10—Fraudulent Conveyance, 1—Innkeeper, 2—Insurance, 1—Limitation of Actions, 2—Mechanics' Liens—Pleading, 2—Promissory Notes, 5—Solicitor, 2, 3—Will, 10.

LIFE ESTATE.

See Will.

LIFE INSURANCE.

See Insurance.

LIGHT.

See Building.

LIMITATION OF ACTIONS.

1. Possession of Land—Limitations Act—Claim under Purchase at Tax Sale by Prior Owner of Land—Title—Possession Prior to Tax Deed—Subsequent Possession—Character of Possession — Evidence — Assessment Act, R.S.O. 1914 ch. 195, secs. 94, 171. *Soper* v. *City of Windsor*, 7 O.W.N. 373, 32 O.L.R. 352.—App. Div.

2. Possession of Land—Statutory Title by Virtue of Limitations Act — Payment of Taxes — Acknowledgment — Lien for Taxes. *East* v. *Clarke*, 7 O.W.N. 586.—Kelly, J.

3. Possessory Title to Land—Evidence—Building—Encroachment—Retention of Land Encroached upon — Improvements under Mistake of Title—Conveyancing and Law of Property Act, R.S.O. 1914 ch. 109, sec. 37—Compensation —Damages for Trespass—Costs. *Harrison* v. *Schultz*, 7 O.W.N. 131, 757.—Middleton, J.—App. Div.

4. Promissory Note—Acknowledgment in Writing. *Wood* v. *Tromanhauser,* 7 O.W.N. 375, 32 O.L.R. 370.—App. Div.

See Company, 10—Easement—Execution, 2, 3—Insurance, 3—Mortgage, 4—Practice, 3—Railway, 2—Will, 10.

LIQUIDATED DAMAGES.

See Contract, 1.

LOAN AND TRUST CORPORATIONS ACT.

See Infant, 2.

LOCAL IMPROVEMENT.

See Municipal Corporations, 9.

LOCAL MASTER.

See Appeal, 2.

LOCAL OPTION.

See Municipal Corporations, 10.

LOST LUGGAGE.

See Innkeeper, 1.

LUNATIC.

1. Confinement in Public Asylum for Insane—Application for Habeas Corpus—Evidence—Report of Alienist. *Re O'Donnell,* 7 O.W.N. 605.—Middleton, J. (Chrs.)

2. Money in Court—Accumulation of Surplus Income—Allowance for Maintenance of Person Entitled after Death of Lunatic—Discretion of Court—Lunacy Act, R.S.O. 1914 ch. 68, sec. 12—Judgment. *Ryan* v. *Cooley,* 7 O.W.N. 93.—Middleton, J. (Chrs.)

See Assignments and Preferences—Will, 12.

MAGISTRATE.

See Criminal Law, 5, 6—Malicious Prosecution, 1.

MAINTENANCE.

See Contract, 13—Fatal Accidents Act—Infant—Lunatic, 2—Master and Servant, 5—Will, 13.

MALICIOUS PROSECUTION.

1. Arrest—Jurisdiction of Magistrate—Improper Motive—Bonâ Fide Claim of Right—Damages—Trust—Purchase of Land

—Notice—Evidence. *Herrington* v. *Cochran*, 7 O.W.N. 225.—LENNOX, J.

2. Reasonable and Probable Cause—Advice of Counsel—Approval of Crown Attorney—Malice—Finding of Jury — Dismissal of Action—Costs. *McMullen* v. *Wetlaufer*, 7 O. W.N. 244, 32 O.L.R. 178.—MIDDLETON, J.

3. Reasonable and Probable Cause—Advice of Counsel—Approval of Crown Attorney—Malice—Findings of Jury—Belief of Defendant in Guilt of Plaintiff at Time of Laying Information. *McMullen* v. *Wetlaufer*, 7 O.W.N. 797, 33 O. L.R. 177.—APP. DIV.

MALPRACTICE.

See Surgeon.

MANDAMUS.

See Constitutional Law—Municipal Corporations, 14, 16—Provincial Board of Health—Water, 5.

MARINE INSURANCE.

See Carriers, 2.

MARRIAGE.

Action for Judicial Declaration of Nullity—Jurisdiction of Supreme Court of Ontario—Perpetual Stay of Action—Judicature Act, R.S.O. 1897 ch. 51, secs. 25, 26, 28, 34—Marriage Act, R.S.O. 1914 ch. 148, secs. 36, 37—Intervention of Attorney-General. *Reid* v. *Aull*, 7 O.W.N. 85, 123, 32 O.L.R. 68.—MIDDLETON, J.

See Domicile—Gift—Title to Land, 3.

MARRIED WOMAN.

See Husband and Wife—Infant, 5—Practice, 3—Vendor and Purchaser, 2—Will, 21.

MARSHALLING OF ASSETS.

See Judgment, 9.

MASTER AND SERVANT.

1. Death of Servant—Action under Fatal Accidents Act—Explosion of Hot Water Range in Hotel Kitchen—Negligence —Evidence—Employment of Competent Person—Responsibility of Hotel Company for Negligence of Manager—

Common Employment—Duty of Master—Reasonable Care —Independent Contractor—Findings of Jury. *Junor* v. *International Hotel Co.*, 7 O.W.N. 420, 32 O.L.R. 399.—App. Div.

2. Death of Servant—Action under Fatal Accidents Act—Failure to Establish Relationship of Master and Servant—Absence of Contract—Findings of Jury—Negligence — Dangerous Place—Invitee—Duty of Owner—Patent Danger—Knowledge of Invitee—Cause of Death. *Beckerton* v. *Canadian Pacific R.W. Co.*, 7 O.W.N. 51.—App. Div.

3. Death of Servant—Action under Fatal Accidents Act—Negligence—Evidence—Findings of Jury—Damages. **Hull* v. *Seneca Superior Silver Mines Limited*, 7 O.W.N. 403.—Lennox, J.

4. Death of Servant—Action under Fatal Accidents Act—Negligence—Railway—Deceased Walking on Tracks Struck by Train—Findings of Jury—Nonsuit — Appeal. *Guardian Trust Co.* v. *Dominion Construction Co.*, 7 O.W.N. 611.—App. Div.

5. Death of Servant—Negligence—Damages under Fatal Accidents Act — Apportionment — Allowance to Widow for Maintenance of Infants. *Findlay* v. *Hydro-Electric Commission of Ontario*, 7 O.W.N. 322.—Falconbridge, C.J. K.B.

6. Death of Servant—Negligence—Evidence—Findings of Jury —Motion for Nonsuit. *Christie* v. *London Electric Co.*, 7 O.W.N. 703.—Britton, J.

7. Death of Servant—Workman Employed in Mine—Explosion —Negligence—Failure to Inspect—Findings of Jury—Evidence—Mining Act, R.S.O. 1914 ch. 32, sec. 164, Rule 10. *Musumicci* v. *North Dome Mining Co.*, 7 O.W.N. 48.—App. Div.

8. Injury to Servant—Cause of Injury—Evidence—Fault of Fellow-servant — Notice under Workmen's Compensation for Injuries Act not Given in Time—No Liability at Common Law—Costs. *Tighe* v. *Township of Tyendinaga*, 7 O.W.N. 548.—Middleton, J.

9. Injury to Servant—Falling of Beam—Defective Hook—Negligence—Evidence—Findings of Jury—Cause of Injury—Negativing Cause not Found. *Dawson* v. *Hamilton Bridge Co.,* 7 O.W.N. 413.—App. Div.

10. Injury to Servant—Miner Working at Bottom of Shaft—Falling of Bucket and Cross-head—Breaking of Cable—Evidence—Res Ipsa Loquitur—Application of Rule—Onus—Negligence—Defects — Want of Inspection — Damages. *Kolari* v. *Mond Nickel Co.,* 7 O.W.N. 410, 32 O.L.R. 470.—App. Div.

11. Injury to Servant—Negligence—Course of Employment—Order of Foreman of Works—Evidence—Findings of Jury. *Pemberton* v. *Hamilton Bridge Co.,* 7 O.W.N. 387.—Kelly, J.

12. Injury to Servant—Negligence—Defective System—Evidence — Findings of Jury — Liability at Common Law. *Wasyliszyn* v. *Canada Cement Co.,* 7 O.W.N. 270.—App. Div.

13. Injury to Servant—Negligence—Electric Current—Escape of Dangerous Element—Evidence — Onus — Findings of Fact of Trial Judge—Appeal. *Raynor* v. *Toronto Power Co.,* 7 O.W.N. 512, 32 O.L.R. 612.—App. Div.

14. Injury to Servant—Negligence—Explosion in Hotel Kitchen—Defect in Hot Water Plant—Liability at Common Law—Workmen's Compensation for Injuries Act, R.S.O. 1897 ch. 160, sec. 6 (*a*)—Findings of Jury—Finding by Appellate Court on Evidence—Judicature Act, sec. 27 (2). *Miller* v. *International Hotel Co.,* 7 O.W.N. 423.—App. Div.

15. Injury to Servant—Negligence of Foreman of Works — Findings of Jury—Absence of Finding as to what Negligence Consisted in—Finding by Appellate Court on Facts—Judicature Act, R.S.O. 1914 ch. 56, sec. 27 (2)—Workmen's Compensation for Injuries Act, R.S.O. 1914 ch. 146, sec. 3 (*c*) — Contributory Negligence — Causa Causans. *Turner* v. *East,* 7 O.W.N. 377, 32 O.L.R. 375.—App. Div.

16. Injury to Servant of Municipal Corporation—Explosion of Gas—Duty to Take Reasonable Care—Evidence—Negligence—Res Ipsa Loquitur—Inference—Case for Jury—Nonsuit. *Collier* v. *City of Hamilton,* 7 O.W.N. 277, 32 O.L.R. 214—App. Div.

17. Wages—Assault—Wrongful Dismissal—Agreement of Hiring—Construction—Notice — Damages—Counterclaim — Costs. *Cowper-Smith* v. *Evans*, 7 O.W.N. 179, 259.—App. Div.

See Mines and Minerals, 1, 2—Municipal Corporations, 6—Negligence, 10—Railway, 4, 5, 13, 14.

MASTER OF TITLES.

See Land Titles Act, 3.

MECHANICS' LIENS.

1. Building Contract—Sub-contractor—Value of Work Done—Recovery from Main Contractor—Provisions of Sub-contract—Waiver of Lien—Benefit of Owner—Architect's Certificate. *Shipway Manufacturing Co.* v. *Loew's Theatres*, 7 O.W.N. 292.—App. Div.

2. Material-man—Time for Registering Lien—Mechanics Lien Act, R.S.O. 1914 ch. 140, sec. 22 (2)—Time when "Last Material" Furnished—Trifling Item—Contract. *Hurst* v. *Morris*, 7 O.W.N. 370, 32 O.L.R. 346.—App. Div.

MERGER.

See Contract, 8—Judgment, 3.

MESNE PROFITS.

See Title to Land, 3.

MINES AND MINERALS.

1. Injury to Miner—Explosion of Charge in Drilled Hole—Negligence—Want of System of Inspection and Reporting—Findings of Jury—Evidence—Mining Act, R.S.O. 1914 ch. 32, secs. 164, 174, 175—Workmen's Compensation for Injuries Act, R.S.O. 1914 ch. 146—Statutory Duty—Contributory Negligence—Master and Servant. *Danis* v. *Hudson Bay Mines Limited*, 7 O.W.N. 365, 32 O.L.R. 335.—App. Div.

2. Injury to Miner—Explosion of Charge in Drilled Hole—Master and Servant—Negligence—Defective System—Evidence—Contributory Negligence—Findings of Trial Judge—Statutory Duty of Mine-owners—Mining Act of Ontario, R.S.O. 1914 ch. 32, sec. 164. *Doyle* v. *Foley-O'Brien Limited*, 7 O.W.N. 780.—Clute, J.

3. Interest in Mining Claims—Husband and Wife—Evidence—Decision of Mining Commissioner—Appeal. *Re Jessop and Jessop,* 7 O.W.N. 405.—App. Div.

See Fraud and Misrepresentation, 6—Master and Servant, 7, 10—Vendor and Purchaser, 18.

MINING COMMISSIONER.

See Mines and Minerals, 3.

MINING LEASE.

See Crown Patent.

MISCONDUCT.

See Arbitration and Award, 2.

MISDIRECTION.

See Libel.

MISREPRESENTATION.

See Fraud and Misrepresentation.

MISTAKE.

See Limitation of Actions, 3—Parliamentary Elections, 1—Will, 10.

MONEY BY-LAW.

See Municipal Corporations, 11.

MONEY IN COURT.

Payment out. *Re School Section 5 in the Township of Stephen and Hill,* 7 O.W.N. 121.—Lennox, J. (Chrs.)

See Lunatic, 2—Promissory Notes, 3.

MONEY LENT.

See Husband and Wife, 2—Landlord and Tenant, 3.

MORTGAGE.

1. Absent Mortgagee—Trustee Act, secs. 2(*q*), 8, 9—Application by Mortgagor for Vesting Order upon Payment of Mortgage-money into Court—"Trustee" — Sale of Land Free from Incumbrance—Order under Conveyancing and Law of Property Act, sec. 21. *Re Worthington and Armand,* 7 O.W.N. 837, 33 O.L.R. 191.—Middleton, J. (Chrs.)

2. Action for Foreclosure—Motion for Summary Judgment—Account. *Halstead* v. *Sonshine,* 7 O.W.N. 729.—Britton, J. (Chrs.)

3. Action for Mortgage-money by Executors of Deceased Mortgagee—Services Rendered by Mortgagor to Mortgagee—Promise to Pay for by Legacy—Specific Performance—Interest—Compound Interest—Ademption or Satisfaction—Evidence—Corroboration. *Eastern Trust Co.* v. *Berube*, 7 O.W.N. 114.—LENNOX, J.

4. Foreclosure—Title of Mortgagor—Remedy upon Mortgagor's Covenant for Payment—Statute of Limitations—Counterclaim—Breach of Agreement—Statute of Frauds. *Curry* v. *Girardot*, 7 O.W.N. 642.—MIDDLETON, J.

5. *Priority—Covenant—Construction—Claim for Reformation—Principal and Interest—Redemption—Foreclosure—Sale—Notice—Costs.*]—The owner of land mortgaged it to the defendant G. to secure $1,500, the principal falling due on the 21st December, 1911. The mortgage contained a proviso for acceleration of the time for payment of the principal upon default as to interest, and also a proviso enabling the mortgagor to pay off the whole or any part of the principal on any interest day without notice or bonus. The owner conveyed the land to the defendant C., having on the 22nd June, 1910, made a second mortgage in favour of the plaintiff for $500, repayable in monthly instalments, the last of which was to fall due before the principal of the earlier mortgage by effluxion of time. The defendant C. made default in payment of both mortgages, and both he and his grantor were financially worthless. The defendant G. was a party to the mortgage-deed in favour of the plaintiff, and covenanted that he would not collect or receive payment of or seek to collect any of the principal moneys secured by his mortgage, but would allow the principal to remain unpaid and would collect the interest thereon only until and while the moneys secured by the second mortgage should remain unpaid. It appeared that the amount realisable from the property would be insufficient to satisfy the first mortgage:—*Held*, that the effect of the covenant was to postpone the calling in of G.'s principal so long as the moneys secured by the plaintiff's mortgage were in fact unpaid. The right of G. to receive his interest being expressly stipulated for, the case was distinguished from *Burrowes* v. *Molloy* (1845), 2 Jo. & Lat. 521. As, under the covenant, G. was entitled to interest upon his principal so long as it remained unpaid, this charge for which priority was pre-

served was really equivalent to the principal itself; and there was nothing to justify the declaration of priority sought by the plaintiff.—It being in the interest of all that the land should be sold, the judgment against the defendant C. was changed from foreclosure to sale; notice to be given to the defendant C.; and each mortgagee to be at liberty to add his costs of the action to his security. *McKey* v. *Conway*, 7 O.W.N. 62.—MIDDLETON, J.

6. Reference for Sale—Advertising — Procedure in Master's Office. *Gilbert* v. *Reynolds*, 7 O.W.N. 827.—LENNOX, J.

See Appeal, 2—Assignments and Preferences—Company, 15—Contract, 9—Fraud and Misrepresentation, 1, 3—Judgment, 8, 9—Land Titles Act, 2—Succession Duty—Title to Land, 1, 4—Vendor and Purchaser, 6.

MOTION FOR JUDGMENT.

See Practice, 4, 7.

MOTOR VEHICLES.

See Negligence, 2, 7, 9.

MOTOR VEHICLES ACT.

See Highway, 4—Negligence, 9.

MUNICIPAL CORPORATIONS.

1. *Closing Street—Injury to Neighbouring Land — Compensation—Award—Value of Property Dependent upon Existence of Access by Closed Street.*]—Where arbitrators fixed the compensation to land-owners, under the Municipal Act, for injury to lands by the closing of a street in the town, not on the basis of the depreciation of the lands for the purpose for which they were used, but on the basis of the value of the property, irrespective of the particular use which might be made of it, being so dependent upon the existence of access by the closed street as to be substantially diminished by its obstruction, it was *held*, that no exception could be taken to the principle adopted.—The closing of a portion of a street at a distance from where the land in respect of which compensation is sought actually abuts upon it, may give rise to damage, when the value of the property is affected.—*In re Tate and City of Toronto* (1905), 10 O.L.R. 651, and *Re Taylor and Village of Belle River* (1910), 1 O.W.N. 608, 15 O.W.R. 733, ap-

proved.—*Rex* v. *MacArthur* (1904), 34 S.C.R. 570, distinguished.—Judgment of KELLY, J., 6 O.W.N. 701, affirmed. *Re Neal and Town of Port Hope,* 7 O.W.N. 264.—APP. DIV.

2. Construction of Sewer in Highway—Necessary Lowering of Gas Company's Main—Expense of —Liability for—Rights of Gas Company in Soil, 11 Vict. ch. 14—Injurious Affection of Land—Right to Compensation — Municipal Act, R.S.O. 1914 ch. 192, secs. 325, 398 (7). *City of Toronto* v. *Consumers Gas Co.,* 7 O.W.N. 58, 32 O.L.R. 21.—APP. DIV.

3. *Contract with Company to Supply Water to Citizens—Powers of City Corporation, General and Special—35 Vict. ch. 80—42 Vict. ch. 78—Beneficial Contract—Executed Contract—Absence of Corporate Seal—Municipal Estimates.*]—The tendency of decision and legislation is against interference by the Courts with municipal government.—A municipality has, under its general control of municipal affairs, power to buy and distribute water where it is necessary for the health and well-being of the inhabitants.—Apart from general powers, the Corporation of the City of Ottawa had, by virtue of the statutes 35 Vict. ch. 80 and 42 Vict. ch. 78, ample authority to make an arrangement with a dairy company for a supply of water to the citizens.—The contract in question was one which was beneficial to the municipality, and was an executed contract, and the absence of a formal contract under the seal of the corporation afforded no reason why the municipality should not meet its just obligations, even though the contract was not essential for its purposes.—*Lawford* v. *Billericay Rural District Council,* [1903] 1 K.B. 772, and *Campbell* v. *Community General Hospital, etc., of the Sisters of Charity, Ottawa* (1910), 20 O.L.R. 467, followed.—There is no foundation for the argument that the operation of the rule derived from these authorities is to be confined to cases in which the goods are to be supplied to the municipality itself.—The municipal estimates containing a sum for water supplies, the Court was not concerned with the question whether the sum paid to the dairy company should be charged against the water-rates. *Wright* v. *City of Ottawa and Ottawa Dairy Co. Limited,* 7 O.W.N. 151.—MIDDLETON, J.

4. Contract for Purchase of Crushed Stone — "Fair Wage Clause"—Labourers outside of Municipality—Exceeding Territorial Limits of Jurisdiction — Contract and Fair Wage Stipulation intra Vires—Power of Court to Exercise Supervisory Jurisdiction over Municipal Action. *Rogers* v. *City of Toronto,* 7 O.W.N. 600, 33 O.L.R. 89.—MIDDLETON, J.

5. Distribution and Supply of Electrical Power—Public Utilities Act, R.S.O. 1914 ch. 204, secs. 34, 35, 36—Management of Works and Operations Entrusted to Commission—Company Authorised to Supply Electric Power—Erection of Poles and Wires in Streets of Municipality—By-law of Municipal Corporation Authorising Use of Company's Poles for Stringing Wires of Corporation—Restriction to Supply of Power and Light for Use of Corporation—Interference with Company's Appliances—Declaration—Injunction—Damages. *Lincoln Electric Light and Power Co. of St. Catharines Limited* v. *Hydro-Electric Commission of St. Catharines,* 7 O.W.N. 688.—FALCONBRIDGE, C.J.K.B.

6. *Electrical Supply Works—Management by Commission — Public Utilities Act, 3 & 4 Geo. V. ch. 41, sec. 34—Status of Commission—Agent of Corporation—Injury to Workman—Action for Damages for Negligence—Non-liability.*] —The council of a city corporation established by by-law, under sec. 34 of the Public Utilities Act, 3 & 4 Geo. V. ch. 34, a body called a "commission" to control and manage the distribution and supply of electrical energy for the city corporation. The plaintiff, who was employed as a workman by the commission, was injured by reason of the negligence of the commission, as he alleged:—*Held,* that the commission was merely the agent of the city corporation, and that the plaintiff could not maintain against the commission an action for damages for his injury.—*Young* v. *Town of Gravenhurst* (1910-11), 22 O.L.R. 291, 24 O.L.R. 467, followed. *Scott* v. *Hydro-Electric Commission of City of Hamilton,* 7 O.W.N. 385.—KELLY, J.

7. Expropriation of Land—Severance of Farm by Taking Strip for New Road—Part of Old Road Conveyed to Land-owner —Arbitration and Award—Compensation for Land Taken —Value of Trees in Orchard—Damage by Severance—Injurious Affection—Appeal from Award—Evidence — In-

crease in Amount—Municipal Act, 1913, sec. 325 (1). *Re Fowler and Township of Nelson*, 7 O.W.N. 265.—App. Div.

8. Injury to Boy under 16 Permitted to Drive Horse in Streets of City—Infraction of City By-law Authorised by Municipal Act, R.S.O. 1914 ch. 192, sec. 400, sub-sec. 49—Breach of Statutory Duty—Protection of Public—Cause of Action against Employer—Costs. *Milligan* v. *Thorn*, 7 O.W.N. 310, 32 O.L.R. 195.—Middleton, J.

9. Local Improvement—Construction of Roadway—Petition of Land-owners for Relief from Assessment—Local Improvement Act, R.S.O. 1914 ch. 193, sec. 9, sub-sec. (2), Added by 4 Geo. V. ch. 21, sec. 42—Construction and Meaning—Petition Launched after Execution of Work but before Confirmation of Assessment by Court of Revision. *Re Kemp and City of Toronto*, 7 O.W.N. 704.—Ont. Ry. & Mun. Bd.

10. Local Option By-law—Voting on—Inspection and Preservation of Ballots—Applicant for Order—Status—Municipal Act, R.S.O. 1914 ch. 192, secs. 146, 147, 279. *Re Jarvis Local Option By-law*, 7 O.W.N. 751.—Sutherland, J. (Chrs.)

11. Money By-law—Motion to Quash—Approval of By-law by Railway and Municipal Board—Municipal Act, R.S.O. 1914 ch. 192, sec. 295 (4)—Approval Certificate Set aside by Board—By-law Standing Approved when Notice of Motion to Quash Served—Estoppel—Right of Board to Entertain Motion when Bar Removed—Illegality of By-law—Issue of Debentures to Raise Money for High School Building. *Re Harper and Township of East Flamborough*, 7 O.W.N. 468, 32 O.L.R. 490.—Riddell, J.

12. *Regulation of Buildings—Apartment House — Structural Alterations Requiring Municipal Approval — Neglect to Submit Plans to City Architect—By-law—Municipal Act, R.S.O.* 1914 *ch.* 192, *sec.* 400 (4)*—Building Constructed in Accordance with By-law—Refusal to Order Destruction—Declaratory Judgment—Costs.*]—A by-law of the plaintiff corporation provided that plans shall be submitted to the City Architect before the erection or alteration of an apartment house is undertaken, and if during the progress of the work it is desired to deviate in any essential manner from the terms of the application, drawings or specifications,

notice of intention to alter or deviate shall be given in writing to the Inspector of Buildings, and his written assent must be first obtained; but alterations which do not involve any change in the structural parts, or conflict with the requirements of the by-law, may be made without this permission. In an action for an injunction to restrain the defendant from altering an apartment house without submitting a plan:—*Held,* that the alterations proposed were structural alterations which under the by-law required municipal approval.—(2) That sec. 400, sub-sec. 4, of the Municipal Act, R.S.O. 1914 ch. 192, is wide enough to authorise the requirement of the by-law that, when a change is being made in the work permitted from the plans approved, this change shall also be submitted for sanction.—*Re Ryan and McCallum* (1912), 4 O.W.N. 193, referred to.—(3) That the building as now being constructed was in conformity with the requirements of the by-law; and, although the plans for the alterations had not been submitted for approval, the discretion of the Court ought to be exercised so as not to order the destruction of the building.—(4) That there should be a declaration that the building was improperly altered without submission of the plans, but no consequent relief except a direction for payment by the defendant of the plaintiff corporation's costs of the action. *City of Toronto* v. *Ryan,* 7 O.W.N. 89.—MIDDLETON, J.

13. *Regulation of Buildings—By-law—Permit for Building—Anticipated Use of Building in Breach of Police Commissioners' By-law—Nuisance—Risk of Owner—Action to Restrain Issue of Permit—Status of Plaintiff as Ratepayer and Adjoining Owner.*]—A ratepayer and adjoining owner cannot maintain an action to restrain a municipal corporation from granting a permit to a land-owner for the erection of a building upon his land, on the ground that the building may be used as a music hall or place of amusement, contrary to a by-law of the police commissioners for the municipality, passed under sec. 420 of the Municipal Act, or that it may be used in such a manner as to constitute a nuisance.—*Tompkins* v. *Brockville Rink Co.* (1899), 31 O.R. 124, and *Mullis* v. *Hubbard,* [1903] 2 Ch. 431, applied. —When the plans and specifications of the proposed building conform to the building by-law, the municipality's permit should issue.—*Quære,* whether the powers of the police commissioners covered any use to which the building might

be put. *Mackenzie* v. *City of Toronto,* 7 O.W.N. 820.—MIDDLETON, J.

14. Regulation of Buildings—Residential Streets—"Fronts"—Municipal Act, R.S.O. 1914 ch. 192, sec. 406 (10)—Municipal By-law—Highway—Approval of Plan of Subdivision—Municipal Amendment Act, 4 Geo. V. ch. 33, sec. 20—Mandamus to City Architect—Approval of Plans of Building. *Re Charlton and Pearce,* 7 O.W.N. 174.—MEREDITH, C.J.C.P. (Chrs.)

15. Regulation of Hawkers and Peddlers—By-law—Municipal Act, 1903, sec. 583, sub-sec. 14—Conviction for Peddling "Carpet Sweepers"—Construction of Statute. *Wright* v. *Jarvis,* 7 O.W.N. 608.—WARD, Co.C.J.

16. Resolution of Council Directing Inquiry by County Court Judge—Charges against Police Force—Authority of Board of Police Commissioners—Municipal Act, R.S.O. 1914 ch. 192, sec. 248—Construction and Scope—Refusal of Mandamus. *Re City of Berlin and County Judge of County of Waterloo,* 7 O.W.N. 588, 33 O.L.R. 73.—MIDDLETON, J. (Chrs.)

17. Right of Access of Public and Newspaper Representatives to Municipal Buildings and Offices—Right to Information for Purpose of Publication—Municipal Act, R.S.O. 1914 ch. 192, secs. 219, 237—Right to Inspect Certain Documents—Injunction. *Journal Printing Co.* v. *McVeity,* 7 O.W.N. 633, 796, 33 O.L.R. 166.—MIDDLETON, J.—APP. DIV.

See Building Contract, 3—Company, 5—Contract, 30—Costs, 2—Division Courts, 2—Highway — Judgment, 9—Land Titles Act, 3—Master and Servant, 16—Negligence, 1, 4—Nuisance, 2—Railway, 6—Schools—Street Railways, 3.

MUNICIPAL ELECTIONS.

1. Disqualification of Councillor—Liability for Arrears of Taxes—Municipal Act, R.S.O. 1914 ch. 192, secs. 53 (1) (*s*), 242 (1), and Form 2—Declaration of Qualification —Issue of Warrant for New Election—Motion for Injunction. *Kennedy* v. *Dickson,* 7 O.W.N. 769.—SUTHERLAND, J.

2. Eligibility of Candidate—Liability for Arrears of Taxes "at the Time of the Election"—Liability Existing on Nomina-

tion Day but not on Polling Day—Municipal Act, R.S.O. 1914 ch. 192, sec. 53 (1) (*s*)—Corrupt Practices—Evidence —Intimidation—Illegal Acts of Agents — Knowledge of Candidate—Disqualification. *Rex ex rel. Mitchell* v. *McKenzie,* 7 O.W.N. 841, 33 O.L.R. 196.—SUTHERLAND, J. (Chrs.)

3. Nomination Meeting—Hour for Holding—Violation of Statute—Municipal Act, secs. 63, 64 (4), 68—Avoidance of Election—Saving Effect of sec. 150—Evidence that Result Affected by Non-compliance with Statute. *Rex ex rel. Yates* v. *Lawrence,* 7 O.W.N. 819.—MIDDLETON, J. (Chrs.)

MUNICIPAL FRANCHISES ACT.

See Street Railways, 3.

MURDER.

See Criminal Law, 7.

NATURALISATION.

See Alien Enemy, 2.

NAVIGABLE WATERS PROTECTION ACT.

See Water, 4.

NEGLIGENCE.

1. Children Killed in Sand-pit Owned by Municipal Corporation—Nuisance—Cause of Death—Duty of Corporation—Knowledge of Children's Resort to Pit — Knowledge of Teamster Employed by Corporation—Findings of Jury—Evidence—Invitation—Allurement. *Robinson* v. *Village of Havelock,* 7 O.W.N. 60, 32 O.L.R. 25.—APP. DIV.

2. *Collision between Street Car and Automobile—Derailment of Car—Res Ipsa Loquitur—Attempt to Prove Cause of Derailment—Evidence — Findings of Jury — Appeal — New Trial.*]—In an action to recover damages for injury resulting to the plaintiff from a collision of his automobile with an electric street car of the defendant company, it appeared that the vehicles were going in opposite directions; the automobile was upon the street car track when the street car was 800 feet away; the automobile turned off the track and travelled on the south side of the road until it again turned into the track to avoid another vehicle standing near the kerb. The automo-

bile was struck by the front of the street car behind its front wheel. The plaintiff asserted that the automobile had turned out of the car track again, and that the street car left the rails, running into the automobile; the defendant company maintained that, when the automobile attempted to get off the track, it skidded, and hit the front of the car, and that the car was derailed as the result of this blow. The plaintiff at the trial proved the derailing of the street car and the injury to his automobile, and then attempted to prove as the cause of the derailing the negligent leaving of a coupling-pin upon the rail. The jury found (1) that the defendant company was to blame; (2) that the street car "must have left the track before the collision;" and (3) that the motorman should have stopped his car when he first saw the automobile, 800 feet away from him:—*Held*, that the plaintiff could not have judgment upon the third finding, for what was found was not negligence, and, if negligence, did not cause the accident.—*Held*, also, that *res ipsa loquitur* could not be applied in regard to the second finding. The plaintiff having assigned a specific cause for the derailing, the defendant company was relieved from the general obligation to rebut negligence, and was obliged to shew only that the derailing was not caused as the plaintiff alleged—the refusal of the jury to find the negligence set up by the plaintiff being equivalent to a finding that it did not exist.—The action was dismissed. *Curry* v. *Sandwich Windsor and Amherstburg R.W. Co.*, 7 O.W.N. 140.—MIDDLETON, J.—On appeal, a new trial was ordered: 7 O.W.N. 739.—APP. DIV.

3. Collision of Vehicles on Highway—Cause of Collision—Findings of Fact of Trial Judge—Injury to Traveller in Hired Vehicle Driven by Servant of Owner—Liability of Owner of other Vehicle in Absence of Negligence—Rule of Road—Highway Travel Act, R.S.O. 1914 ch. 206, secs. 3 (1), 5 (1) —Reasonable Care. *Bloch* v. *Moyer*, 7 O.W.N. 389, 630.—KELLY, J.—APP. DIV.

4. Death Caused by Electric Shock—Liability of Employer of Deceased—Failure to Protect Electric Lamp—Liability of City Corporation Supplying Electric Current—Evidence—Onus—Damages. *Oskey* v. *City of Kingston*, 7 O.W.N. 251, 32 O.L.R. 190.—BRITTON, J.

5. Death Caused by Electric Shock—Liability of Telephone Company—Evidence of Negligence—Finding of Trial Judge—Reversal on Appeal—Dismissal of Action as against one of two Defendants—Costs Ordered to be Paid by the other *Till* v. *Town of Oakville,* 7 O.W.N. 667, 33 O.L.R. 120.—App. Div.

6. Death of Servant of Contractor Engaged in Demolishing Building—Collapse of Wall—Dangerous Condition—Action under Fatal Accidents Act against Contractor and Owner—Independent Contractor—Workmen's Compensation for Injuries Act—Findings of Jury—Appeal. *Simberg* v. *Wallberg,* 7 O.W.N. 100.—App. Div.

7. Injury to Bicyclist by Motor Vehicle—Rule of Road—Excessive Speed—Evidence—Damages—Costs. *Hodgins* v. *Lindsay,* 7 O.W.N. 133.—Falconbridge, C.J.K.B.

8. Injury to Bicyclist on Highway—Negligence of Driver of Lorry—Evidence—Verdict of Jury — Questions not Submitted—Quantum of Damages. *Pickering* v. *Toronto and York Radial R.W. Co.,* 7 O.W.N. 287.—App. Div.

9. Injury to Pedestrians on Highway by Motor Vehicle—Evidence—Onus—Motor Vehicles Act—Findings of Trial Judge—Damages—Stay of Proceedings. *Brooks* v. *Lee,* 7 O.W.N. 219.—Lennox, J.

10. *Injury to Workman—Breaking of Chain in Moving Steel Plates—Absence of Evidence of Defect or Weakness—Inference from Fact of Chain Breaking—Action by Workman against Master—Nonsuit.*]—The mere breaking of chains, ropes, planks, ladders, or other things meant to support or carry weight, is not prima facie evidence of negligence.—*Hanson* v. *Lancashire and Yorkshire R.W. Co.* (1872), 20 W.R. 297, followed.—In an action by servant against master for damages for injuries sustained by some heavy plates in the master's works falling on the servant, who was helping to raise them by a chain, when the chain broke, there was no evidence, apart from the mere breaking, that the chain was or was suspected to be weak or defective; and it was *held,* that there was no evidence of defect or negligence which could properly be submitted to the jury. *Haywood* v. *Hamilton Bridge Works Co. Limited,* 7 O.W.N. 231.—Kelly, J. (But see Master and Servant, 10.)

See Carriers, 2—Damages, 2—Fire—Highway, 4-8—Innkeeper, 1—Master and Servant—Mines and Minerals, 1, 2—Municipal Corporations, 6—Particulars—Principal and Agent, 8 — Railway — Ship — Street Railways, 1, 2 — Surgeon—Water, 3.

NEW TRIAL.

See Chattel Mortgage, 3—Division Courts, 4—Insurance, 6—Landlord and Tenant, 2—Libel—Negligence, 2—Vendor and Purchaser, 2.

NEWSPAPER.

See Municipal Corporations, 17.

NEXT FRIEND.

See Infant, 5.

NOMINATION.

See Municipal Elections, 3.

NONREPAIR OF HIGHWAY.

See Highway, 5, 6, 7.

NONSUIT.

See Division Courts, 4—Master and Servant, 4, 6, 16—Negligence, 10—Railway, 4—Street Railways, 2.

NOTICE.

See Ditches and Watercourses Act—Land Titles Act, 3—Malicious Prosecution, 1—Master and Servant, 8, 17—Solicitor, 3—Vendor and Purchaser, 9, 16—Water, 1.

NOTICE OF MOTION.

See Municipal Corporations, 11.

NOVATION.

See Company, 7.

NUISANCE.

1. Noise and Vibration—Damages—Injunction—Judicature Act, sec. 18—Stay of Operation of Injunction—Opportunity to Abate Nuisance. *Bornett* v. *Ostler File Co.*, 7 O.W.N. 474.—LATCHFORD, J.

2. Noise and Vibration from Operation of Electric Pumps—Depreciation in Value of Neighbouring House—Evidence — Possibility of Operation of Municipal Waterworks by Steam

Power—Statutory Authority—Injunction — Damages—Reference — Scope. *Chadwick* v. *City of Toronto,* 7 O.W.N. 182, 32 O.L.R. 111.—App. Div.

3. Noise and Vibration from Use of Steam-hammers in Factory —Interference with Enjoyment of Neighbouring Dwelling-houses—Injunction—Restriction — Stay of Operation to Permit of Abatement of Nuisance—Damages — Fourteen Separate Actions—Rule 66—Costs. *Gagnon* v. *Dominion Stamping Co.,* 7 O.W.N. 530.—Latchford, J.

4. Smoke, Dust, and Noise from Industrial Works—Interference with Enjoyment of Neighbouring Dwelling-houses—Direct and Peculiar Injury to Individuals — Evidence—Sunday Work—Damages—Injunction—Temporary Stay of Operation—Opportunity to Abate Nuisance. *Taylor* v. *Mullen Coal Co.,* 7 O.W.N. 764.—Lennox, J.

See Highway, 8, 9—Municipal Corporations, 13—Negligence, 1 —Railway, 6—Water, 3.

NULLITY.

See Marriage.

OBSTRUCTION.

See Highway, 8—Water, 4, 5—Way, 3.

OFFICIAL GUARDIAN.

See Devolution of Estates Act.

ONTARIO RAILWAY AND MUNICIPAL BOARD.

Jurisdiction—Appeal from Decision of District Court Judge on Appeal from Court of Revision—Application for Leave to Appeal to Supreme Court of Ontario, Appellate Division—Assessment Act, R.S.O. 1897 ch. 224, secs. 75, 84—Municipal Institutions in Territorial Districts Act, R.S.O. 1897 ch. 225, secs. 40-59—Assessment Act, 4 Edw. VII. ch. 23, sec. 76—4 Edw. VII. ch. 24, sec. 5—5 Edw. VII. ch. 24, secs. 1, 2, 3—Ontario Railway and Municipal Board Act, 6 Edw. VII. ch. 31, secs. 43, 52—10 Edw. VII. ch. 88, sec. 18—Assessment Amendment Act, 1913, 3 & 4 Geo. V. ch. 46, sec. 13—Municipal Act, 1913, 3 & 4 Geo. V. ch. 43—Ontario Railway and Municipal Board Act, 1913, 3 & 4 Geo. V. ch. 37. *Re Ontario and Minnesota Power Co. and Town of Fort Frances,* 7 O.W.N. 289, 32 O.L.R. 235.—App. Div.

See Street Railways, 1, 3.

OPTION.

See Damages, 1—Fraud and Misrepresentation, 3—Sale of Animal—Vendor and Purchaser, 7.

ORDER IN COUNCIL.

See Company, 2.

ORIGINATING NOTICE.

See Assignments and Preferences.

PARENT AND CHILD.

See Contract, 13—Deed, 2—Devolution of Estates Act—Street Railways, 1.

PARLIAMENTARY ELECTIONS.

1. *Ballots—Counterfoils with Numbers Attached—Mistake of Deputy Returning Officer—Ontario Election Act, sec.* 108 *—Construction—Saving Validity of Ballots—Ballots Improperly Marked by Voters.*]—Upon a recount of the ballots cast at a provincial election, a County Court Judge rejected three ballots marked with a single line, one marked with a cross low down, one with two words upon it, and certain ballots given out by a deputy returning officer with the counterfoils attached and numbers on the counterfoils, then marked by the voters, and so deposited in the ballot box:—*Held,* upon appeal, that the ballots last mentioned should not have been rejected: the voters were not to be disfranchised for the mistake of the deputy: sec. 108 of the Ontario Election Act.—*Re Stormont Provincial Election* (1908), 17 O.L.R. 171, followed.—*Held,* also, that the ballot with the cross not within the space opposite the name of one of the candidates was improperly rejected, as there was a clear indication that the voter intended to cast his vote for that candidate.—In other respects the decision of the County Court Judge was affirmed. *Re East Lambton Provincial Election, Martyn* v. *McCormick,* 7 O.W.N. 29.—MEREDITH, C.J.O.

2. Recount of Ballots—Appeal — Ballot Marked in Ink — Ontario Election Act, R.S.O. 1914 ch. 8, sec. 102—Ballot not Stamped by Returning Officer—Sec. 71 (2)—Imperative or Directory Provision—Curative Section, 114—Marks on Ballots—Discrepancy between Number of Ballots Marked and Number Issued—Poll Book—Declined and Rejected Ballots

—Form of Return. *Re South Oxford Provincial Election, Mayberry* v. *Sinclair, Sinclair* v. *Mayberry,* 7 O.W.N. 1. 32 O.L.R. 1.—CLUTE, J.

PART PERFORMANCE.

See Vendor and Purchaser, 9.

PARTICULARS.

Statement of Claim—Negligence. *Farmers Bank of Canada* v. *Menzies,* 7 O.W.N. 134.—MASTER IN CHAMBERS.

See Pleading, 2.

PARTIES.

See Appeal, 3—Company, 3—Contract, 8—Judgment, 5—Street Railways, 3.

PARTITION.

Application for Order for Partition or Sale—Administration—Rules 612, 613—Caution—R.S.O. 1914 ch. 119, sec. 15 (*d*) —Executor—Payment of "Obligations"—Costs. *Steele* v. *Weir,* 7 O.W.N. 99.—APP DIV.

See Will, 10.

PARTNERSHIP.

1. Account—Allowance for Use by Firm of Plant of Individual Partner—Judgment—Construction — Reference — Report —Evidence—Appeal. *McGillivray* v. *O'Toole,* 7 O.W.N. 784.—BRITTON, J.

2. Account—Profits of Separate Business Carried on by one Partner—Assent of other Partner—"Competing" Business —Sale of Property of Firm after Death of one Partner—Purchase by Trustee for Surviving Partner—Adequacy of Price—Liability to Account for Profits on Resale—Allowance to Surviving Partner for Services in Liquidation—Trustee Act, R.S.O. 1897 ch. 129, sec. 40—1 Geo. V. ch. 26, sec. 66—Trustee—Express Trustee. *Livingston* v. *Livingston,* 7 O.W.N. 406, 32 O.L.R. 480.—APP. DIV.

3. *Death of Partner—Action by Surviving Partner in Name of Firm—Rule* 100—*Amendment of Style of Cause — Land Conveyed to Partnership—Title—Joint Tenancy—Conveyancing and Law of Property Act, R.S.O.* 1914 *ch.* 109, *sec.* 13—*Land Vesting in Surviving Partner—Action for Possession—Right to Redeem—Ability of Surviving Part-*

ner to Reconvey.]—The defendant conveyed land to two persons named in the deed as grantees, with the words "trading as W. H. & Co." added. One of the two died, and the other brought, in the firm name, an action for possession of the land. The defence was that the land was conveyed as security only, and the defendant asked to be allowed to redeem:—*Held*, that Rule 100 applies only where, at the time of the bringing of the action, two or more persons are claiming as partners. Partners carry on business jointly, and upon the death of one partner the whole partnership estate vests in the survivor. The style of cause was amended so as to read "J. B. H., sole surviving member of the firm of W. H. & Co., plaintiff."—2. That the surviving partner—the transaction being a partnership transaction—could make title without the executors of the deceased partner if the defendant should be found entitled to a reconveyance.—*In re Bourne*, [1906] 2 Ch. 427, and *In re Hodgson* (1885), 31 Ch.D. 177, referred to.—3. That the holding of the partners was as joint tenants and not as tenants in common: and the position was not affected by sec. 13 of the Conveyancing and Law of Property Act, R.S.O. 1914 ch. 109. *Harris* v. *Wood*, 7 O.W.N. 611.—MIDDLETON, J. (Chrs.)

4. Dispute—Provision in Partnership Articles for Reference to Arbitrator—Appointment by Judge of High Court—Persona Designata—Condition Precedent. *Re Wood Vallance & Co.*, 7 O.W.N. 814.—MIDDLETON, J.

5. Dissolution by Death of Partner — Account — Reference — Winding-up—Costs. *Rymal* v. *McGill*, 7 O.W.N. 789.—LENNOX, J.

See Account—Chattel Mortgage, 3—Company, 1—Contract, 19—Fraud and Misrepresentation, 4—Will, 18.

PATENT FOR INVENTION.

See Fraud and Misrepresentation, 5—Pleading, 1.

PAYMENT.

See Pleading, 6—Promissory Notes, 3.

PAYMENT INTO COURT.

See Costs, 2—Injunction, 1—Insurance, 4—Mortgage, 1—Principal and Agent, 3—Solicitor, 2.

PAYMENT OUT OF COURT.

See Insurance, 4—Money in Court.

PEDDLERS.

See Municipal Corporations, 15.

PENALTY.

See Contract, 1, 30.

PERMIT.

See Municipal Corporations, 13.

PERPETUITY.

See Will, 14, 20.

PERSONA DESIGNATA.

See Partnership, 4.

PLANS.

See Crown Patent—Deed, 1—Highway — Municipal Corporations, 12.

PLEADING.

1. Action for Infringement of Patents for Inventions—Validity of Patents—Inconsistent Pleadings—Rule 157. *Visor Knitting Co.* v. *Penmans Limited* (No. 2), 7 O.W.N. 121.—MASTER IN CHAMBERS.

2. Action for Possession of Motor Car—Statement of Defence—Assertion of Lien for Debt—Insufficiency — Particulars — Leave to Amend. *McKinney* v. *McLaughlin*, 7 O.W.N. 21.—FALCONBRIDGE, C.J.K.B.

3. Reply—Statute of Frauds—Action for Possession of Land—Equitable Defence under Agreement for Purchase—Judicature Act, sec. 16—Rule 155. *Wingrove* v. *Wingrove*, 7 O.W.N. 827.—MASTER IN CHAMBERS.

4. Statement of Claim—Addition of Cause of Action not Endorsed on Writ of Summons—Rule 109—Alimony—Separate Action — Costs — Undertakings — Security for Costs. *Schmidt* v. *Schmidt*, 7 O.W.N. 228, 257, 392, 427.—MASTER IN CHAMBERS—LATCHFORD, J. (Chrs.)—LENNOX, J. (Chrs.)—APP. DIV.

5. Statement of Claim—Motion to Strike out—Further Consideration—Practice. *Chalmers* v. *City of Toronto*, 7 O.W.N. 827.—RIDDELL, J.

6. Statement of Defence—Claim for Carriage of Goods—Defence Based on Alleged Agreement for Postponement of Payment —Reasonable Answer to Plaintiff's Claim. *Canada Steamship Lines Limited* v. *Steel Co. of Canada Limited*, 7 O.W.N. 832.—MIDDLETON, J. (Chrs.)

7. *Statement of Defence—General Denial—Failure to Allege Facts—Rule* 142.]—Rule 142 of the Rules of 1913, which extends the operation of the former Rule (269), requires the defendant not only to admit such material allegations of the plaintiff as are true, but also to set forth the facts upon which he relies, even though this may involve the assertion of a negative. The mere denial of the plaintiff's allegations, though made seriatim and not in general terms, is not of itself a compliance with the Rule, the aim of which is to have set out on the record a clear statement of the issues to be tried.—Portions of a statement of defence were ordered to be struck out, unless the defendant should, within a specified time, amend by stating the facts on which he rested his defence. *Lampert* v. *Barrett*, 7 O.W.N. 574.—KELLY, J. (Chrs.)

See Appeal, 3—Contract, 17—Ditches and Watercourses Act—Libel—Particulars—Practice, 1—Vendor and Purchaser, 2.

PLEDGE.

See Promissory Notes, 5.

POLICE COMMISSIONERS.

See Company, 5—Municipal Corporations, 13, 16.

POLICE MAGISTRATE.

See Criminal Law, 5, 6.

POSSESSION OF LAND.

See Limitation of Actions—Title to Land, 2, 3—Will, 10.

POSTPONEMENT OF TRIAL.

See Account—Criminal Law, 7.

POWER OF APPOINTMENT.

See Will, 21.

POWER OF ATTORNEY.

See Title to Land, 3.

PRACTICE.

1. Action Begun by Writ of Summons Specially Endorsed—Affidavit of Merits Made by Defendant—New Claim Added by Amendment of Endorsement—Necessity for New Affidavit of Merits—Pleading—Rules 56, 127, 128. *Farah* v. *Lawless,* 7 O.W.N. 725.—Britton, J. (Chrs.)

2. Affidavit Filed with Appearance to Specially Endorsed Writ —Rule 56(1), (4)—"Good Defence upon the Merits"—Defective Affidavit—Motion for Summary Judgment under Rule 57—Leave to Move Substantively for Permission to File Proper Affidavit—Duty of Officer of Court Receiving Affidavit when Filed. *Leushner* v. *Linden,* 7 O.W.N. 456, 757, 33 O.L.R. 153.—Riddell, J. (Chrs.)

3. Ex Parte Order—Rules 215, 216—Leave to Issue Execution—Extending Time for Moving against Order—Rule 176—Discretion — Appeal — Setting aside Order and Execution—Statute of Limitations — Costs — Judgment against Married Woman. *Joss* v. *Fairgrieve,* 7 O.W.N. 184, 32 O.L.R. 117.—App. Div.

4. *Judgment — Reference — Order for Payment in Accordance with Report—Motion for Judgment on Report not Necessary—Judicature Act, secs. 64, 65—Rule 772—Form 75.*]—Where a judgment directs a reference to ascertain the amount due to a party and orders payment in accordance with the referee's finding, forthwith after confirmation of his report, no further judgment or order is necessary. A judgment so directing payment is within the power of the Court: the provisions of secs. 64 and 65 of the Judicature Act, R.S.O. 1914 ch. 56, perhaps contemplate a hearing on further directions in all cases of reference, but do not expressly so provide. The practice of giving judgment by anticipation in the order of reference approved. See Rule 772 and Form 75. *Dyet* v. *Truesdale,* 7 O.W.N. 663.—Meredith, C.J.C.P.

5. Late Delivery of Statement of Claim in Order to Avoid Early Trial —Irregularity — Motion to Set aside Statement of Claim and for Dismissal of Action—Refusal—Discretion of Master—Appeal—Costs. *Schuch* v. *Meldrum,* 7 O.W.N. 690. —Middleton, J. (Chrs.)

6. Summary Judgment—Rule 57—Affidavit of Defendant Filed under Rule 56 — Failure to Cross-examine — Affidavit of

Plaintiff in Support of Motion. *Langdon-Davies Motors Canada Limited* v. *Gasolectric Motors Limited,* 7 O.W.N. 107, 32 O.L.R. 84.—APP. DIV.

7. *Writ of Summons—Special Endorsement—Affidavit Filed by Defendant with Appearance—Rule* 57—*Motion for Judgment.*]—Rule 57 (Rules of 1913) gives the right to the plaintiff to cross-examine the defendant upon the affidavit filed with his appearance to a specially endorsed writ, quite apart from the making of any motion for judgment. *Clark* v. *International Mausoleum Co. Limited,* 7 O.W.N. 94.—MIDDLETON, J. (Chrs.)

See Account—Alien Enemy, 1, 3, 4—Appeal—Assignments and Preferences—Company, 3—Contract, 8 — Costs — County Courts—Criminal Law, 1, 2—Discovery—Division Courts Execution—Fatal Accidents Act—Insurance, 4—Judgment —Lunatic—Money in Court—Mortgage, 6—Nuisance, 3—Particulars—Partition—Partnership, 3 — Pleading — Solicitor—Stated Case—Trial—Venue—Writ of Summons.

PREFERENCE.

See Injunction, 3.

PREFERENTIAL LIEN.

See Company, 15.

PRESCRIPTION.

See Title to Land, 1—Way.

PRESSURE.

See Chattel Mortgage, 2.

PRESUMPTION.

See Building—Execution, 3—Insurance, 3, 6—Title to Land, 3.

PRINCIPAL AND AGENT.

1. Agent's Commission on Sale of Block of Shares in Commercial Company—Evidence—Employment of Agent—Sale Effected through Instrumentality of Agent—Quantum of Commission. *Westbrook* v. *Kernahan,* 7 O.W.N. 465.—LENNOX, J.

2. Agent's Commissions on Sales of Company-shares—Evidence —Agreement—Percentage Rate—Commissions on Sales in Agent's Territory—Account—Reference. *Harris* v. *Townsend,* 7 O.W.N. 801.—LENNOX, J.

3. Agent's Commissions on Sales of Goods—Account—Demand—Payment into Court—Interest—Commissions upon Goods Taken in Exchange—Costs. *Miller & Richard* v. *Lanston Monotype Machine Co.,* 7 O.W.N. 241.—MIDDLETON, J.

4. Agent's Commission on Sale of Land. *Shorey* v. *Powell,* 7 O.W.N. 44.—FALCONBRIDGE, C.J.K.B.

5. Agent's Commission on Sale of Land—Agreement—Evidence—Failure of Agent's Negotiations—Subsequent Sale by Principal to Purchaser Found by Agent at Lower Price—General Employment—Quantum of Commission or Damages—Arrangement to Divide Commission with Agent of Purchaser—Effect of. *Hunt* v. *Emerson,* 7 O.W.N. 15, 488, 32 O.L.R. 532.—FALCONBRIDGE, C.J.K.B.—APP. DIV.

6. Agent's Commission on Sales of Land—Payments—Deductions—Account—Reference—Indulgence—Costs. *Grills* v. *Canadian Securities Corporation Limited,* 7 O.W.N. 546.—LENNOX, J.

7. Authority of Agent—Husband and Wife—Action against both — Election to Take Judgment against Wife only — Amendment. *Simcoe Construction Co.* v. *McMurtry,* 7 O.W.N. 515.—APP. DIV.

8. Customs Broker—Breach of Duty—Depriving Principal of Control over Goods—Negligently Entrusting Sub-agent with Bill of Lading Endorsed in Blank—Loss of Goods—Negligence of Sub-agent—Liability of Broker—Third Parties—Liability over — Sub-agent — Railway Company — Breach of Contract—Damages — Evidence — Findings of Fact of Trial Judge. *Wolsely Tool and Motor Car Co.* v. *Jackson Potts & Co.,* 7 O.W.N. 617, 33 O.L.R. 96.—MEREDITH, C.J.C.P.

9. Insurance Broker—Fire Insurance Obtained for Principal—Payment of Amount of Premiums to Agent — Premiums Paid by Broker by System of Credits—Set-off Assented to by Payee Equivalent to Actual Payment—Validity of Policies. **Antiseptic Bedding Co.* v. *Louis Gurofski,* 7 O.W.N. 95.—MIDDLETON, J.

See Municipal Corporations, 6—Title to Land, 3.

PRINCIPAL AND SURETY.

Guaranty—Debt Paid to Bank by Guarantor—Assignment of Securities Held by Bank—Effect of—Bank Act, R.S.C.

1906 *ch.* 29, *sec.* 88—*Right of Society to Possession of Principal's Premises and to Carry on Business—Interim Injunction—Terms.*]—The plaintiffs were indebted to a bank; the indebtedness was guaranteed by the defendant; and the bank also held security given by the plaintiffs under the Bank Act, sec. 88. The defendant paid the amount due to the bank, took an assignment of the debt and the securities, and then took possession of the plaintiffs' factory and goods, and proceeded to carry on the plaintiffs' business and sell the plaintiffs' goods:—*Held,* following *Re Victor Varn Co.* (1908), 16 O.L.R. 338, that the securities taken by the bank under sec. 88 were not assignable by the bank so as to transfer the special lien or security to a third person; and K., as guarantor, was not subrogated to the rights of the bank in the securities on payment of the debt.—An injunction was granted until the trial, upon terms. *Chesley Furniture Co. Limited* v. *Krug,* 7 O.W.N. 144.—KELLY, J.

PRIVATE WAY.

See Way.

PROCLAMATION.

See Alien Enemy, 4, 5.

PRODUCTION OF DOCUMENTS.

See Discovery, 3.

PROFITS.

See Partnership, 2—Vendor and Purchaser, 3, 8.

PROHIBITION.

See Division Courts, 1, 2, 3.

PROMISSORY NOTES.

1. Accommodation Note—Endorsement to Bank as Collateral Security for Debt of Payee—Debt Paid before Action Begun—Claim of Bank to Hold Note for Subsequent Debt—Evidence—Findings of Fact of Trial Judge. *Bank of Ottawa* v. *Hall,* 7 O.W.N. 475.—KELLY, J.

2. Action against Makers of Joint and Several Note—Denial of Signatures—Allegations of Fraud—Effect of one Maker being Relieved—Bills of Exchange Act, sec. 49—Findings of Fact of Trial Judge—Appeal. *McLarty* v. *Dixon,* 7 O.W.N. 347, 466.—APP. DIV.

3. Action on Note—Payment—Onus — Failure to Satisfy—Interpleader Issue—Assignment of Chose in Action—Validity—Evidence—Fraudulent Intent—Creditors under Foreign Judgment—Proof of Judgment—Right to Share in Fund in Court. *St Jean* v. *Laurin,* 7 O.W.N. 702.—FALCONBRIDGE, C.J.K.B.

4. Company—Settlement of Differences—Evidence. *Toronto Brick Co.* v. *Brandon,* 7 O.W.N. 646, 666.—FALCONBRIDGE, C.J.K.B.

5. Completion and Delivery—Findings of Fact of Trial Judge—Transfer to Bank as Collateral Security for Bill of Exchange Discounted for Customer and Dishonoured—Holder in Due Course—Right of Bank to Recover Amount of Bill and Interest — Special Lien — General Banker's Lien — Agreement—Pledge—Bills of Exchange Act, sec. 54 (2)—Liability of Customer for Costs Incurred by Bank in Respect of other Commercial Paper. *Sterling Bank of Canada* v. *Zuber,* 7 O.W.N. 189, 32 O.L.R. 123.—APP. DIV.

6. Failure of Consideration—Legacy—Will—Attempted Cancellation of Note by Cross-instrument—Renunciation in Writing—Bills of Exchange Act—Testamentary Intention—Evidence—Foreign Domicile—Forum—Costs. *Snider* v. *Snider,* 7 O.W.N. 445.—MIDDLETON, J.

7. Liability of Endorser—Intention—Transfer of Claim—Evidence. *Frame* v. *Hay,* 7 O.W.N. 738.—APP. DIV.

8. Purchase-price of Company-shares—Rebate—Credit on Notes—Counterclaim—Recovery of Balance Due on Notes—Damages. *Garrett* v. *Fischer,* 7 O.W.N. 666.—FALCONBRIDGE, C.J.K.B.

See Appeal, 2—Contract, 19—Fraud and Misrepresentation, 4—Judgment, 2—Limitation of Actions, 4.

PROOFS OF DEATH.

See Insurance, 3, 5, 6.

PROVINCIAL BOARD OF HEALTH.

Approval of Plans for Water Supply System of City of Ottawa—Duty of Board—Public Health Act, 2 Geo. V. ch. 58—Special Act 4 Geo. V. ch. 84—Jurisdiction of Court—Mandamus. *Re City of Ottawa and Provincial Board of Health,* 7 O.W.N. 569, 33 O.L.R. 1.—MIDDLETON, J. (Chrs.)

PROVINCIAL RIGHTS.

See Constitutional Law.

PROVISIONAL DIRECTORS.

See Banks and Banking.

PUBLIC HEALTH ACT.

See Provincial Board of Health.

PUBLIC UTILITIES ACT.

See Municipal Corporations, 5, 6.

QUANTUM MERUIT.

See Building Contract, 2, 3—Contract, 18.

QUEBEC LAW.

See Domicile.

RAILWAY.

1. *Animals Killed on Track—Primary Negligence — Defective Fence—Proximate Cause of Damage—Railway Act, R.S.C. 1906 ch. 37, secs. 254, 255, 295, 427—Statutory Obligation —Violation.*]—Section 254 of the Railway Act, R.S.C. 1906 ch. 37, imposes upon a railway company the obligation of erecting and maintaining fences and gates "sufficient to prevent cattle and other animals from getting on the railway lands"—the word "lands" having been added by 9 & 10 Edw. VII. ch. 50, sec. 5:—*Held*, that the defendants, a railway company, by leaving an opening in their fence across the plaintiff's lands, violated the obligation imposed by the statute—they did not so construct their fence as to prevent the plaintiff's horses from getting on their lands, along which they strayed to an open gate between such lands and the contiguous lands of another railway company, where they were killed; and, by sec. 427, the defendants were liable for the damage sustained by the plaintiff.—The immunity conferred by sec. 295 is restricted to the company supplying the gate.—The defendants' primary negligence was in not properly fencing their land where it crossed the plaintiff's farm, and the damage to the plaintiff resulted from that negligence, even if the defendants were not responsible for the gate being open. *Behan* v. *Canadian Pacific R.W. Co.*, 7 O.W.N. 238.—Latchford, J.

2. Burning Worn-out Ties on Right of Way—Damage by Spread of Fire—Negligence—Common Law Liability—Statutory Time-limit on Action—"Injury Sustained by Reason of the Construction or Operation of the Railway"—Railway Act, R.S.C. 1906 ch. 37, sec. 306—Duty Imposed by sec. 297. *Greer* v. *Canadian Pacific R.W. Co.,* 7 O.W.N. 180, 32 O.L.R. 104.—App. Div.

3. Carriage of Goods—"Settlers' Effects" — Reduced Rate — Illegal Contract—Dominion Railway Act, R.S.C. 1906 ch. 37, secs. 77, 315, 317, 319, 320, 326, 341. *Watson* v. *Canadian Pacific R.W. Co.,* 7 O.W.N. 186, 32 O.L.R. 137.—App. Div.

4. Death of Servant — Fireman on Locomotive Engine — Fall from Train on Bridge — Negligence — Cause of Death — Width of Bridge—Fireman Leaning from Train—Evidence —Findings of Jury—Nonsuit. *Dunn* v. *Wabash R.R. Co.,* 7 O.W.N. 153.—Middleton, J.

5. Death of Servant — Line-man Run over by Engine of another Railway Company—Trespasser—Workmen's Compensation for Injuries Act—Conforming to Orders of Superior—Negligence — Evidence — Absence of Warning — Findings of Jury. **Sharpe* v. *Canadian Pacific R.W. Co.,* 7 O.W.N. 167.—Britton, J.

6. Dominion Railway Company—Conviction under Municipal By-law—Emission of Smoke — Nuisance — Operation of Railway—Regulations of Dominion Board of Railway Commissioners —Jurisdiction of Municipality—Constitutional Law. **Rex* v. *Canadian Pacific R.W. Co.,* 7 O.W.N. 568.—Middleton, J. (Chrs.)

7. Expropriation of Land—Compensation—Award—Value of Land Taken and Injurious Affection of Land not Taken—Appeal—Increase in Amount Awarded. *Re Ruddy and Toronto Eastern R.W. Co.,* 7 O.W.N. 796.—App. Div.

8. Expropriation of Land — Taking Part of Golf Course —Compensation—Necessity for Acquiring other Lands — Damages Measured by Cost of Additional Lands—Value of Land Taken—Purpose for which Used—Damages from Severance—Evidence—Loss by Reduction of Area—Additional Items of Damage—Cost of Rearrangement of Course

—Damage to Club-house—Smoke, Noise, and Vibration—Award — Appeal — Increase in Amount. *Re Brantford Golf and Country Club and Lake Erie and Northern R.W. Co.*, 7 O.W.N. 197, 32 O.L.R. 141—App. Div.

9. Expropriation of Land—Taking Part of Grounds Surrounding Residence—Compensation — Value of Land Taken—Value of Trees—Injury to Remainder of Property by Taking River Front—Evidence—Price Obtained on Sale of Neighbouring Property—Obstruction of Access to River—Depreciation of Property by Vibration, Smoke, and Noise—Appeal—Increase of Amount Awarded by Arbitrators. *Re Muir and Lake Erie and Northern R.W. Co.*, 7 O.W.N. 201, 32 O.L.R. 150.—App. Div.

10. Fire from Locomotive Engine—Destruction of Property—Control of Engine at Time of Escape of Fire—Liability of Railway Company—Evidence—Findings of Jury—Ontario Railway Act, R.S.O. 1914 ch. 185, sec. 139. *Conway* v. *Dennis Canadian Co.*, 7 O.W.N. 236.—Britton, J.

11. Injury to Neighbouring Property by Construction and Operation—Closing of Street—Subsidence of Building—Disconnection of Sewer—Loss of Rent—Damage by Blasting—Damage by Smoke, Noise, and Vibration—Construction of Subway. *Clavir* v. *Canadian Northern Ontario R.W. Co.*, 7 O.W.N. 695.—Falconbridge, C.J.K.B.

12. Injury to Person Crossing Track of Electric Railway on Company's Land—Private Driveway across Track Used with Knowledge of Company—Dangerous Crossing—Duty to Give Warning of Approach of Car—Negligence—Findings of Jury—Evidence—Dominion Railway Act, sec. 274. **Gowland* v. *Hamilton Grimsby and Beamsville Electric R.W. Co.*, 7 O.W.N. 591,—Kelly, J.

13. *Injury to Servant—Brakesman — Negligence of Engine-driver—Findings of Jury—Workmen's Compensation for Injuries Act, R.S.O.* 1914 *ch.* 146, *sec.* 3 (*e*)—*Contributory Negligence—Evidence—Appeal—Equal Division of Court.*] —The plaintiff, a brakesman in the defendants' service, was injured in the operation of a train, and brought this action to recover damages. Among other findings of negligence, the jury found that the èngine-driver "should not have moved ahead without the proper signal according to the

custom of the plaintiff, which sudden jerk caused the plaintiff to fall off" the engine. They also found against contributory negligence:—*Held,* by MULOCK, C.J.Ex., and CLUTE, J., that judgment was properly entered for the plaintiff: the defendants were responsible for the driver's negligence (Workmen's Compensation for Injuries Act, R.S.O. 1914 ch. 146, sec. 3 (*e*); that negligence was the cause of the injury; and the finding against contributory negligence could not be disturbed.—Per HODGINS, J.A., and RIDDELL, J., that the finding against contributory negligence could not be maintained—the plaintiff having broken the rule which required him to stop the train when the lever failed to work.—The Court being divided, the judgment for the plaintiff stood. *McCauley* v. *Grand Trunk R.W. Co.,* 7 O.W.N. 336.—APP. DIV.

14. Injury to Servant — Conductor of Freight Train — Negligence—Contributory Negligence—Findings of Fact of Trial Judge—Appeal—Defective Ladder on Car Forming Part of Train on Way to Repair-shop—Breach by Railway Company of Statutory Duty—Railway Act, R.S.C. 1906 ch. 37, sec. 264(5)—Proximate Cause of Injury—Servant's Disobedience of Rules of Company. *Smith* v. *Grand Trunk R.W. Co.,* 7 O.W.N. 380, 32 O.L.R. 380.—APP. DIV.

15. Level Highway Crossing—Destruction of Vehicle by Train—Injury to Person in Vehicle—Negligence—Contributory Negligence—Findings of Jury — Evidence — Rule Passed after Accident—Inadmissibility — No Substantial Wrong or Miscarriage—Judicature Act, sec. 28—Doctrine of "Imminent Danger." *City of London* v. *Grand Trunk R.W. Co., Summers* v. *Grand Trunk R.W. Co.,* 7 O.W.N. 502, 32 O.L.R. 642.—APP. DIV.

See Carriers, 1—Costs, 1—Master and Servant, 4—Principal and Agent, 8—Street Railways.

RATIFICATION.

See Appeal, 2—Carriers, 3.

REASONABLE AND PROBABLE CAUSE.

See Malicious Prosecution, 2, 3.

REBATE.

See Promissory Notes, 8.

RECEIVER.

See Company, 15.

RECOUNT.

See Parliamentary Elections.

RECTIFICATION.

See Contract, 5, 20—Land Titles Act, 2—Mortgage, 5 — Vendor and Purchaser, 5.

REDEMPTION.

See Mortgage, 5—Partnership, 3.

REFERENCE.

See Account—Contract, 4—Mortgage, 6—Nuisance, 2—Partnership, 1, 5—Practice, 4—Principal and Agent, 2, 6—Way, 3.

REGISTRY LAWS.

See Deed, 1—Land Titles Act—Mechanics' Liens — Title to Land, 2—Vendor and Purchaser, 14—Will, 22.

RELEASE.

Action for Damages for Personal Injuries—Settlement after Action Brought—Validity—Payment of Money—Receipt.] —The judgment of SUTHERLAND, J., 6 O.W.N. 288, was affirmed, on the ground that the release given by the defendant was valid. *Elmer* v. *Crothers,* 7 O.W.N. 83.—APP. DIV.

RELIEF AGAINST FORFEITURE.

See Vendor and Purchaser, 5.

REMAINDER.

See Will.

RENEWAL.

See Execution, 2, 3.

RENT.

See Landlord and Tenant.

RENUNCIATION.

See Promissory Notes, 6.

REPLY.

See Pleading, 3.

RES IPSA LOQUITUR.

See Master and Servant, 10, 16—Negligence, 2.

RESCISSION.

See Contract, 3—Fraud and Misrepresentation, 5—Fraudulent Conveyance, 2—Vendor and Purchaser.

RESOLUTION OF MUNICIPAL COUNCIL.

See Division Courts, 2—Municipal Corporations, 16.

RESTITUTION.

See Vendor and Purchaser, 8.

RESTRAINT OF TRADE.

See Covenant.

RESULTING TRUST.

See Will, 13.

RETURNING OFFICER.

See Canada Temperance Act—Parliamentary Elections, 2—Unincorporated Society, 1.

REVENUE.

See Succession Duty.

REVOCATION OF WILL.

See Domicile—Title to Land, 3—Will.

RIGHT OF WAY.

See Easement—Way.

RIPARIAN RIGHTS.

See Water, 4.

ROAD.

See Highway.

ROYALTIES.

See Contract, 11.

RULES.

(RULES of 1908 made under Criminal Code, sec. 576.)

See Criminal Law, 2.

(CONSOLIDATED RULES, 1897.)

872.—See Execution, 3.

(CONSOLIDATED RULES, 1913.)

25.—See WRIT OF SUMMONS.
56.—See Judgment, 6, 8, 10—Practice, 1, 2, 6.
57.—See Judgment, 8—Practice, 2, 6, 7.

62.—See Judgment, 11.
67.—See Appeal, 3—Company, 3—Contract, 8
68.—See Appeal, 3.
73.—See Appeal, 3.
91 *et seq.*—See Infant, 5.
100.—See Partnership, 3.
109.—See Appeal, 3—Pleading, 4.
126.—See Stated Case.
127.—See Practice, 1.
128.—See Practice, 1.
134.—See Company, 3—Contract, 8.
142.—See Pleading, 7.
155.—See Pleading, 3.
157.—See Pleading, 1.
165.—See Company, 3.
176.—See Judgment, 1—Practice, 3.
215.—See Practice, 3.
216.—See Practice, 3.
245.—See Venue, 2.
320.—See Contract, 8.
334.—See Discovery, 2.
388.—See Husband and Wife, 3.
398.—See Trial, 2.
600.—See Assignments and Preferences.
612.—See Partition.
613.—See Partition.
649.—See Costs, 4.
653.—See Costs, 6.
772.—See Practice, 4.

SALE OF ANIMAL.

Warranty—Sale for Particular Purpose—Express Warranty—Breach—Evidence—Return of Horse — Damages — Price Paid for Horse—Expenses of Keep—Deduction of Actual Value of Animal—Findings of Fact of Trial Judge—Appeal—Costs—Option of Return of Animal. *Wood* v. *Anderson*, 7 O.W.N. 101, 731, 33 O.L.R. 143.—FALCONBRIDGE, C.J.K.B.—APP. DIV.

See Contract, 22, 23—Fraud and Misrepresentation, 7.

SALE OF ASSETS OF COMPANY.

See Contract, 12.

SALE OF BUSINESS.

See Fraud and Misrepresentation, 9.

SALE OF GOODS.

See Contract, 3, 11, 16, 17—Principal and Agent, 3—Sale of Animal.

SALE OF HOTEL.

See Vendor and Purchaser, 3.

SALE OF LAND.

See Fraud and Misrepresentation—Injunction, 1 — Improvements—Infant, 1—Judgment, 3—Mortgage, 1, 5, 6—Partition—Principal and Agent, 4, 5, 6—Vendor and Purchaser—Will, 7, 22.

SALE OF MINING CLAIM.

See Vendor and Purchaser, 18.

SALE OF TIMBER.

See Contract, 24.

SALVAGE.

See Company, 15—Contract, 30.

SATISFACTION OF JUDGMENT.

See Execution, 3—Judgment, 5.

SATISFACTION OF MORTGAGE.

See Mortgage, 3.

SCALE OF COSTS.

See Costs, 3, 4.

SCHOOL SITES ACT.

See Appeal, 1.

SCHOOLS.

High School District Composed of two Municipalities—Cost of Erection of School Building—Payment in Proportion to Equalised Assessment — Municipal By-law Providing for Raising Excessive Amount — Order Quashing — High Schools Act, R.S.O. 1914 ch. 268, secs. 6, 38 (4), (8). *Re Fowler and Village of Waterdown*, 7 O.W.N. 309.—LATCHFORD, J.

See Appeal, 1—Assessment and Taxes, 2—Constitutional Law—Municipal Corporations, 11.

SEAL.

See Company, 10— Municipal Corporations, 3.

SECURITIES.

See Contract, 9, 10—Principal and Surety.

SECURITY FOR COSTS.

See Alien Enemy, 1—Pleading, 4.

SEPARATE ESTATE.

See Will, 21.

SEPARATE SCHOOLS.

See Constitutional Law.

SERVANT.

See Master and Servant.

SERVICE OUT OF THE JURISDICTION.

See Writ of Summons.

SET-OFF.

See Costs, 3, 4—Principal and Agent, 9.

SETTLEMENT.

See Deed, 2—Release—Solicitor, 3.

SETTLERS' EFFECTS.

See Railway, 3.

SEWER.

See Municipal Corporations, 2.

SHARES AND SHAREHOLDERS.

See Banks and Banking—Company—Distribution of Estates, 2—Injunction, 2—Principal and Agent, 1, 2—Promissory Notes, 8—Trusts and Trustees—Will, 17.

SHERIFF.

See Judgment, 5.

SHIP.

Collision of Ships in Inland Waters—Action for Damages—Jurisdiction of Supreme Court of Ontario—Negligence—Evidence—Findings of Fact of Trial Judge—Appeal—Contravention of art. 29—Damages—Apportionment — Both Vessels at Fault—Canada Shipping Act, R.S.C. 1906 ch. 113, sec. 918. *Shipman* v. *Phinn*, 7 O.W.N. 363, 32 O.L.R. 329. —App. Div.

SOCIETY.

See Company—Insurance—Unincorporated Society.

SOLICITOR.

1. Agreement with Client Made in Foreign Country—Foreign Law—Lex Loci Contractus—Contingent Fee—Share of Estate—Agreement Made after Relationship of Solicitor and Client Arose—Duty of Solicitor—Absence of Independent Advice—Action to Set aside Agreement—Evidence—Extortionate and Unconscionable Bargain. *MacMahon* v. *Taugher*, 7 O.W.N. 9, 477, 32 O.L.R. 494—Kelly, J.—App. Div.

2. Lien for Costs—Property Recovered or Preserved by Solicitor's Efforts—Arbitration—Payment of Money into Court—Claimants—Priority. *Linden* v. *Bastedo*, 7 O.W.N. 603.—Middleton, J.

3. Settlement of Litigation without Notice to Solicitor for one Party—Absence of Collusion—Absence of Notice of Lien——Application for Payment of Solicitor and Client Costs—Refusal of—Costs of Application—Provision for Payment of Party and Party Costs. *Lochrie* v. *Kearney*, 7 O.W.N. 567.—Middleton, J. (Chrs.)

See Judgment, 5—Will, 1.

SPECIALTY DEBTS.

See Succession Duty.

SPECIFIC PERFORMANCE.

See Contract, 14, 15—Mortgage, 3—Vendor and Purchaser.

STATED CASE.

Preliminary Question of Law—Contract—Statute of Frauds—Refusal to Entertain Case—Determination of Case not Decisive of Action—Rule 126 — Judicature Act, sec. 32 (2). *Constable* v. *Russell*, 7 O.W.N. 746.—Latchford, J.

STATUTE OF FRAUDS.

See Contract, 15, 17—Mortgage, 4—Pleading, 3—Stated Case—Vendor and Purchaser, 9.

STATUTE OF LIMITATIONS.

See Company, 10—Easement—Execution, 2, 3—Limitation of Actions—Mortgage, 4—Practice, 3—Title to Land, 2—Will, 10.

STATUTES.

11 Vict. ch. 14 (C.) (Incorporating Toronto Gas Company)—See MUNICIPAL CORPORATIONS, 2.

30 & 31 Vict. ch. 3, sec. 93 (Imp.) (British North America Act)—See CONSTITUTIONAL LAW.

35 Vict. ch. 80 (O.) (Ottawa Waterworks)—See MUNICIPAL CORPORATIONS, 3.

42 Vict. ch. 78 (O.) (Ottawa Waterworks)—See MUNICIPAL CORPORATIONS, 3.

R.S.O. 1897 ch. 51, secs. 25, 26, 28, 34 (Judicature Act)—See MARRIAGE.

R.S.O. 1897 ch. 51, sec. 38—See TITLE TO LAND, 3.

R.S.O. 1897 ch. 129, sec. 40 (Trustee Act)—See PARTNERSHIP, 2.

R.S.O. 1897 ch. 160, sec. 6 (*a*) (Workmen's Compensation for Injuries Act)—See MASTER AND SERVANT, 14.

R.S.O. 1897 ch. 211 (Act respecting Benevolent Provident and other Societies)—See INSURANCE, 1.

R.S.O. 1897 ch. 213 (Act respecting Cemetery Companies)—See COMPANY, 2.

R.S.O. 1897 ch. 224, secs. 75, 84 (Assessment Act)—See ONTARIO RAILWAY AND MUNICIPAL BOARD.

R.S.O. 1897 ch. 225, secs. 40-59 (Act respecting Municipal Institutions in Territorial Districts)—See ONTARIO RAILWAY AND MUNICIPAL BOARD.

R.S.O. 1897 ch. 285, secs. 3, 8 (Ditches and Watercourses Act)—See DITCHES AND WATERCOURSES ACT.

3 Edw. VII. ch. 19, sec. 583 (14) (O.) (Municipal Act)—See MUNICIPAL CORPORATIONS, 15.

3 Edw. VII. ch. 19, secs. 629, 632, 637, 640 (O.)—See HIGHWAY, 1.

4 Edw. VII. ch. 23, sec. 22, sub-sec. (1) (*d*), sec. 172 (O.) (Assessment Act)—See ASSESSMENT AND TAXES, 3.

4 Edw. VII. ch. 23, sec. 76 (O.)—See ONTARIO RAILWAY AND MUNICIPAL BOARD.

4 Edw. VII. ch. 24, sec. 5 (O.) (Amending Act respecting Municipal Institutions in Territorial Districts)—See ONTARIO RAILWAY AND MUNICIPAL BOARD.

5 Edw. VII. ch. 24, secs. 1, 2, 3 (O.) (Amending the same Act)—See ONTARIO RAILWAY AND MUNICIPAL BOARD.

6 Edw. VII. ch. 31, secs. 43, 52 (O.) (Ontario Railway and Municipal Board Act)—See ONTARIO RAILWAY AND MUNICIPAL BOARD.

R.S.C. 1906 ch. 29, secs. 11, 12, 13, 20, 34 (Bank Act)—See BANKS AND BANKING.
R.S.C. 1906 ch. 29, sec. 88—See PRINCIPAL AND SURETY.
R.S.C. 1906 ch. 37 (Railway Act)—See COSTS, 1.
R.S.C. 1906 ch. 37, secs. 77, 315, 317, 319, 320, 326, 341—See RAILWAY, 3.
R.S.C. 1906 ch. 37, secs. 254, 255, 295, 427—See RAILWAY 1.
R.S.C. 1906 ch. 37, sec. 264(5)—See RAILWAY, 14.
R.S.C. 1906 ch. 37, sec. 274—See RAILWAY, 12.
R.S.C. 1906 ch. 37, secs. 297, 306—See RAILWAY, 2.
R.S.C. 1906 ch. 113, sec. 918 (Shipping Act)—See SHIP.
R.S.C. 1906 ch. 115, sec. 4 (Navigable Waters Protection Act)—See WATER, 4.
R.S.C. 1906 ch. 119 (Bills of Exchange Act)—See PROMISSORY NOTES, 6.
R.S.C. 1906 ch. 119, sec. 49—See PROMISSORY NOTES, 2.
R.S.C .1906 ch. 119, sec. 54 (2)—See PROMISSORY NOTES, 5.
R.S.C. 1906 ch. 144, secs. 2 (*g*), 51, 60, 93 (Winding-up Act)—See BANKS AND BANKING.
R.S.C. 1906 ch. 144, sec. 12—See COMPANY, 12.
R.S.C. 1906 ch. 144, sec. 84—See VENDOR AND PURCHASER, 14.
R.S.C. 1906 ch. 144, sec. 125—See COMPANY, 11.
R.S.C. 1906 ch. 146, sec. 287 (Criminal Code)—See WATER, 3.
R.S.C. 1906 ch. 146, sec. 292—See CRIMINAL LAW, 4.
R.S.C. 1906 ch. 146, sec. 576—See CRIMINAL LAW, 2.
R.S.C. 1906 ch. 146, secs. 1120, 1121—See CRIMINAL LAW, 5.
R.S.C. 1906 ch. 152 (Canada Temperance Act)—See CANADA TEMPERANCE ACT.
7 Edw. VII. ch. 16 (O.) (Highway Improvement Act)—See HIGHWAY, 7.
7 Edw. VII. ch. 34, sec. 211 (3) (O.) (Companies Act)—See INSURANCE, 1.
7 & 8 Edw. VII. ch. 18, sec. 14 (O.) (Amending Criminal Code) —See CRIMINAL LAW, 5.
9 Edw. VII. ch. 7, sec. 10 (O.) (Execution Act)—See EXECUTION, 3.
10 Edw. VII. ch. 34, sec. 49 (O.) (Limitations Act)—See EXECUTION, 3.
10 Edw. VII. ch. 65, sec. 10 (O.) (Bills of Sale and Chattel Mortgage Act)—See CHATTEL MORTGAGE, 2.
10 Edw. VII. ch. 88, sec. 18 (O.) (Amending Assessment Act) —See ONTARIO RAILWAY AND MUNICIPAL BOARD.
1 Geo. V. ch. 26, sec. 66 (O.) (Trustee Act)—See PARTNERSHIP, 2.

1 Geo. V. ch. 42, sec. 44 (O.) (Surveys Act)—See HIGHWAY, 1.
1 Geo. V. ch. 49 (O.) (Innkeepers Act)—See INNKEEPER.
2 Geo. V. ch. 31 (O.) (Companies Act)—See COMPANY, 2.
2 Geo. V. ch. 31, sec. 96 (O.)—See COMPANY, 3.
2 Geo. V. ch. 42, secs. 3, 4 (O.) (Municipal Franchises Act)—See STREET RAILWAYS, 3.
2 Geo. V. ch. 48 (O.) (Motor Vehicles Act)—See HIGHWAY, 4—NEGLIGENCE, 9.
2 Geo. V. ch. 58 (O.) (Public Health Act)—See PROVINCIAL BOARD OF HEALTH.
3 & 4 Geo. V. ch. 36, secs. 232, 250, 251 (O.) (Railway Act)—See STREET RAILWAYS, 3.
3 & 4 Geo. V. ch. 37 (Ontario Railway and Municipal Board Act)—See ONTARIO RAILWAY AND MUNICIPAL BOARD.
3 & 4 Geo. V. ch. 41, sec. 34 (O.) (Public Utilities Act)—See MUNICIPAL CORPORATIONS, 6.
3 & 4 Geo. V. ch. 43 (O.) (Municipal Act)—See ONTARIO RAILWAY AND MUNICIPAL BOARD.
3 & 4 Geo. V. ch. 43, sec. 325 (1) (O.)—See MUNICIPAL CORPORATIONS, 7.
3 & 4 Geo. V. ch. 46, sec. 13 (O.) (Assessment Amendment Act)—See ONTARIO RAILWAY AND MUNICIPAL BOARD.
R.S.O. 1914 ch. 8, secs. 71, 102, 114 (Election Act)—See PARLIAMENTARY ELECTIONS, 2.
R.S.O. 1914 ch. 8, sec. 108—See PARLIAMENTARY ELECTIONS, 1.
R.S.O. 1914 ch. 24 (Succession Duty Act)—See SUCCESSION DUTY.
R.S.O. 1914 ch. 32, sec. 164 (Mining Act)—See MASTER AND SERVANT, 7—MINES AND MINERALS, 2.
R.S.O. 1914 ch. 32, secs. 164, 174, 175—See MINES AND MINERALS, 1.
R.S.O. 1914 ch. 56, sec. 18 (Judicature Act)—See NUISANCE, 1.
R.S.O. 1914 ch. 56, sec. 27—See INNKEEPER, 1.
R.S.O. 1914 ch. 56, sec. 27 (2)—See MASTER AND SERVANT, 15.
R.S.O. 1914 ch. 56, sec. 28—See RAILWAY, 15.
R.S.O. 1914 ch. 56, sec. 32 (2)—See STATED CASE.
R.S.O. 1914 ch. 56, secs. 64, 65—See PRACTICE, 4.
R.S.O. 1914 ch. 58, secs. 4, 6 (County Judges Act)—See COUNTY COURTS, 1.
R.S.O. 1914 ch. 59, sec. 19 (County Courts Act)—See COUNTY COURTS, 1.
R.S.O. 1914 ch. 59, secs. 29, 30—See COUNTY COURTS, 2.
R.S.O. 1914 ch. 59, sec. 44—See JUDGMENT, 6.

R.S.O. 1914 ch. 68, sec. 12 (Lunacy Act)—See LUNATIC, 2.
R.S.O. 1914 ch. 75 (Limitations Act)—See LIMITATION OF ACTIONS—TITLE TO LAND, 2.
R.S.O. 1914 ch. 76, secs. 45, 46 (Evidence Act)—See TITLE TO LAND, 3.
R.S.O. 1914 ch. 109, sec. 13 (Conveyancing and Law of Property Act)—See PARTNERSHIP, 3.
R.S.O. 1914 ch. 109, sec. 21—See MORTGAGE, 1.
R.S.O. 1914 ch. 109, sec. 37—See LIMITATION OF ACTIONS, 3.
R.S.O. 1914 ch. 119, sec. 14 (Devolution of Estates Act)—See WILL, 22.
R.S.O. 1914 ch. 119, sec. 15—See DEVOLUTION OF ESTATES ACT.
R.S.O. 1914 ch. 119, sec. 15 (*d*)—See PARTITION.
R.S.O. 1914 ch. 120 (Wills Act)—See WILL, 15.
R.S.O. 1914 ch. 121 (Trustee Act)—See WILL, 22.
R.S.O. 1914 ch. 121, secs. 2 (*q*), 8, 9—See MORTGAGE, 1.
R.S.O. 1914 ch. 122 (Vendors and Purchasers Act)—See VENDOR AND PURCHASER, 12, 13—WILL, 8.
R.S.O. 1914 ch. 124 (Registry Act)—See TITLE TO LAND, 2.
R.S.O. 1914 ch. 126, secs. 30 (2), 45, 115 (Land Titles Act)—See LAND TITLES ACT, 2.
R.S.O. 1914 ch. 126, sec. 99—See LAND TITLES ACT, 1.
R.S.O. 1914 ch. 126, sec. 123 (10)—See LAND TITLES ACT, 3.
R.S.O. 1914 ch. 135, sec. 5 (Bills of Sale and Chattel Mortgage Act)—See CHATTEL MORTGAGE, 1.
R.S.O. 1914 ch. 140, sec. 22 (2) (Mechanics Lien Act)—See MECHANICS' LIENS, 2.
R.S.O. 1914 ch. 146 (Workmen's Compensation for Injuries Act)—See MASTER AND SERVANT, 8—NEGLIGENCE, 6—RAILWAY, 5.
R.S.O. 1914 ch. 146, sec. 3 (*c*)—See MASTER AND SERVANT, 15.
R.S.O. 1914 ch. 146, sec. 3 (*e*)—See RAILWAY, 13.
R.S.O. 1914 ch. 148, secs. 36, 37 (Marriage Act)—See MARRIAGE.
R.S.O. 1914 ch. 151 (Fatal Accidents Act)—See FATAL ACCIDENTS ACT—STREET RAILWAYS, 1—TRIAL, 3.
R.S.O. 1914 ch. 153, secs. 28, 32 (Infants Act)—See DITCHES AND WATERCOURSES ACT.
R.S.O. 1914 ch. 153, sec. 31(2)—See INFANTS, 4.
R.S.O. 1914 ch. 156, sec. 4 (Apportionment Act)—See LANDLORD AND TENANT, 1.
R.S.O. 1914 ch. 178, sec. 98 (Companies Act)—See COMPANY, 9.
R.S.O. 1914 ch. 178, sec. 126—See COMPANY, 14.
R.S.O. 1914 ch. 183, sec. 165 (Insurance Act)—See INSURANCE, 3.

R.S.O. 1914 ch. 184, sec. 18(c) (Loan and Trust Corporations Act)—See INFANT, 2.
R.S.O. 1914 ch. 185, sec. 139 (Railway Act)—See RAILWAY, 10.
R.S.O. 1914 ch. 185, sec. 155.—See STREET RAILWAYS, 2.
R.S.O. 1914 ch. 192 (Municipal Act)—See COSTS, 2.
R.S.O. 1914 ch. 192, secs. 53 (1) (s), 242 (1)—See MUNICIPAL ELECTIONS, 1, 2.
R.S.O. 1914 ch. 192, secs. 63, 64 (4), 68, 150—See MUNICIPAL ELECTIONS, 3.
R.S.O. 1914 ch. 192, secs. 146, 147, 279—See MUNICIPAL CORPORATIONS, 10.
R.S.O. 1914 ch. 192, secs. 219, 237—See MUNICIPAL CORPORATIONS, 17.
R.S.O. 1914 ch. 192, sec. 248—See MUNICIPAL CORPORATIONS, 16.
R.S.O. 1914 ch. 192, sec. 295 (4)—See MUNICIPAL CORPORATIONS, 11.
R.S.O. 1914 ch. 192, secs. 325, 398 (7)—See MUNICIPAL CORPORATIONS, 2.
R.S.O. 1914 ch. 192, secs. 354, 422—See COMPANY, 5.
R.S.O. 1914 ch. 192, sec. 400 (4)—See MUNICIPAL CORPORATIONS, 12.
R.S.O. 1914 ch. 192, sec. 400 (49)—See MUNICIPAL CORPORATIONS, 8.
R.S.O. 1914 ch. 192, sec. 406 (10)—See MUNICIPAL CORPORATIONS, 14.
R.S.O. 1914 ch. 192, sec. 460 (3) (Municipal Act)—See HIGHWAY, 5.
R.S.O. 1914 ch. 193, sec. 9 (2) (Local Improvement Act)—See MUNICIPAL CORPORATIONS, 9.
R.S.O. 1914 ch. 195, secs. 12, 56 (Assessment Act)—See ASSESSMENT AND TAXES, 1.
R.S.O. 1914 ch. 195, secs. 94, 171—See LIMITATION OF ACTIONS, 1.
R.S.O. 1914 ch. 204, secs. 34, 35, 36 (Public Utilities Act)—See MUNICIPAL CORPORATIONS, 5.
R.S.O. 1914 ch. 206, secs. 3 (1), 5 (1) (Highway Travel Act)—See NEGLIGENCE, 3.
R.S.O. 1914 ch. 207 (Motor Vehicles Act)—See NEGLIGENCE, 9.
R.S.O. 1914 ch. 268, secs. 6, 38 (4), (8) (High Schools Act)—See SCHOOLS.
R.S.O. 1914 ch. 277, sec. 20 (3) (School Sites Act)—See APPEAL, 1.
4 Geo. V. ch. 2, secs. 6, 11 (D.) (War Measures Act)—See ALIEN ENEMY, 2.

4 Geo. V. ch. 21, sec. 42 (O.) (Amending Local Improvement Act)—See MUNICIPAL CORPORATIONS, 9.

4 Geo. V. ch. 33, sec. 20 (O.) (Municipal Amendment Act)—See MUNICIPAL CORPORATIONS, 14.

4 Geo. V. ch. 84 (O.) (Ottawa Waterworks)—See PROVINCIAL BOARD OF HEALTH.

STATUTORY DUTY AND AUTHORITY.

See Highway, 8—Mines and Minerals, 1, 2—Municipal Corporations, 8—Nuisance, 2—Railway, 1, 2, 14.

STAY OF PROCEEDINGS.

See Alien Enemy, 1, 5—Marriage—Negligence, 9.

STREET.

See Highway—Way, 1.

STREET RAILWAYS.

1. Child Run over by Car and Killed—Height of Fender—Approval of Ontario Railway and Municipal Board—Negligence—Finding of Jury—Evidence to Support—Action under Fatal Accidents Act—Parents of Child of Six—Reasonable Expectation of Pecuniary Benefit from Continuance of Life. *La Fortune* v. *City of Port Arthur,* 7 O.W.N. 328.—APP. DIV.

2. Injury to Person on Highway—Negligence—Evidence—Findings of Jury—Motion for Nonsuit—Speed of Car—Sounding Whistle—Ontario Railway Act, R.S.O. 1914 ch. 185, sec. 155—Contributory Negligence—Ultimate Negligence. *Humberstone* v. *Toronto and York Radial R.W. Co.,* 7 O.W.N. 711.—APP. DIV.

3. Laying Rails on Streets under Authority of By-law not Submitted to Electors — Statutory Requirement — Action by Persons Affected to Restrain Laying of Rails and to Compel Removal—Locus Standi—Special and Particular Injury—Parties—Municipal Corporation—Jurisdiction — Ontario Railway and Municipal Board—Municipal Franchises Act, 2 Geo. V. ch. 42, secs. 3, 4—Ontario Railway Act, 3 & 4 Geo. V. ch. 36, secs. 232, 250, 251. *Mitchell and Dresch* v. *Sandwich Windsor and Amherstburg R.W. Co.,* 7 O.W.N. 508, 32 O.L.R. 594.—APP. DIV.

See Highway, 8—Negligence, 2—Railway, 12.

SUBROGATION.

See Company, 15—Contract, 9.

SUBSTITUTED CONTRACT.

See Contract, 17.

SUCCESSION DUTY.

Mortgages on Land out of Province—Specialty Debts—Domicile of Testator—Succession Duty Act, R.S.O. 1914 ch. 24. *Re Fisher,* 7 O.W.N. 754.—WINCHESTER, SURR. CT. J.

SUMMARY JUDGMENT.

See Judgment, 6-11—Mortgage, 2—Practice, 2, 6.

SUNDAY.

See Contract, 21—Nuisance, 4.

SUPREME COURT OF ONTARIO.

Jurisdiction—Foreign Lands—Action to Set aside Fraudulent Conveyance—Parties Resident in Ontario.]—Although all the parties to an action brought in the Supreme Court of Ontario, to set aside as fraudulent against the plaintiff a conveyance of land situated out of the Province of Ontario by one defendant to the other, resided in Ontario, it was *held,* that the Court had no jurisdiction to grant the relief sought. *Canadian Land Investment Co.* v. *Phillips,* 7 O.W.N. 652.—CLUTE, J. (Chrs.)

See County Courts, 2—Criminal Law, 2—Marriage—Ontario Railway and Municipal Board—Ship.

SURGEON.

Negligence—Malpractice — Evidence—Expert Witness—Finding of Fact of Trial Judge—Appeal. *Cassan* v. *Haig,* 7 O.W.N. 267.—APP. DIV.

SURRENDER OF LEASE.

See Landlord and Tenant, 1, 3.

SURRENDER VALUE.

See Insurance, 5.

SURROGATE COURTS.

See Title to Land, 3.

SURVEYS.

See Building—Highway—Title to Land, 2.

TAX SALE.

See Assessment and Taxes, 3—Limitation of Actions, 1.

TAXATION OF COSTS.

See Costs, 1, 4, 6.

TAXES.

See Assessment and Taxes—Husband and Wife, 6.

TELEPHONE COMPANY.

See Negligence, 5.

TENANTS IN COMMON.

See Will, 11.

TERRITORIAL JURISDICTION.

See Division Courts, 3.

TESTAMENTARY CAPACITY.

See Will, 1.

THIRD PARTIES.

See Conversion of Chattels—Principal and Agent, 8.

THREATS.

See Criminal Law, 5—Judgment, 2.

TIMBER.

See Company, 15—Contract, 5, 10, 24—Trespass to Land.

TIME.

See Contract, 10, 21—Insurance, 3 — Judgment, 1, 6 — Land Titles Act, 3—Master and Servant, 8—Mechanics' Liens, 2—Municipal Elections, 2, 3—Practice, 3, 5—Railway, 2—Vendor and Purchaser—Will, 13.

TITLE TO LAND.

1. Ascertainment of Boundary-line between Tiers of Lots—Evidence—Ownership of Legal Estate—Mortgage—Foreclosure—Possession—Non-user—Right of Way — Easement—Prescription—Injunction—Conveyance to Assignee for Benefit of Creditors—Title Outstanding in Assignee. *Epstein* v. *Lyons,* 7 O.W.N. 323, 428.—App. Div.

2. Boundaries—Descriptions in Crown Patents—Marsh Land—Sinuosities—Surveys—Agreement—Bonâ Fide Purchasers

for Value without Notice—Registry Act—Leave to Amend —Possessory Title—Evidence—Statute of Limitations—Assessment—Declaratory Judgment. *Ledyard* v. *Young,* 7 O.W.N. 146.—MIDDLETON, J.

3. Devise—Will—Revocation by Marriage—Void Marriage by Reason of Previous Marriage—Evidence of Previous Marriage—Sufficiency—De Facto Marriage—Presumption from Cohabitation—Proof of Death of Testatrix—Presumption from Grant of Probate—Onus—Jurisdiction of Surrogate Court—Judicature Act, R.S.O. 1897 ch. 51, sec. 38—Conveyance under Power of Attorney—Alteration of Sealed Instrument—Presumption as to Time of Making—Evidence Act, R.S.O. 1914 ch. 76, secs. 45, 46—Possession of Land—Mesne Profits—Declaration of Title — Damages—Costs. *Hedge* v. *Morrow,* 7 O.W.N. 279, 32 O.L.R. 218.—APP. DIV.

4. Intestacy—Stepchildren of Intestate — Vendors and Purchasers Act—Question between Owner and Mortgagee. *Re Bustard and Dunlop,* 7 O.W.N. 135.—FALCONBRIDGE, C.J. K.B.

See Limitation of Actions—Partnership, 3—Trespass to Land—Vendor and Purchaser—Will.

TORT.

See Writ of Summons.

TRANSPORTATION COMPANY.

See Carriers, 2.

TREASON.

See Criminal Law, 1.

TRESPASS TO LAND.

Title—Damages—Loss of Timber—Quantum. *Bausch* v. *Williams,* 7 O.W.N. 404.—LENNOX, J.

See Limitation of Actions, 3—Railway, 5—Vendor and Purchaser, 9—Way, 1.

TRIAL.

1. Jury Notice—Motion to Strike out—Adjournment to be Heard by Trial Judge. *Bagwell* v. *Toronto General Trusts Corporation,* 7 O.W.N. 549.—LENNOX, J. (Chrs.)

2. Jury Notice—Motion to Strike out—Action to be Tried at Sittings for both Jury and Non-jury Cases—Practice—Rule 398. *J. A. Guilmette Co.* v. *Parisien,* 7 O.W.N. 313.—BRITTON, J. (Chrs.)

3. Jury Notice—Motion to Strike out—Action under Fatal Accidents Act—Delay of Trial. *Leach* v. *Lincoln Electric Light Co.,* 7 O.W.N. 403.—MIDDLETON, J. (Chrs.)

4. Jury Notice—Striking out—Judge in Chambers. *Moore* v. *Canadian Order of Foresters,* 7 O.W.N. 96.—MIDDLETON, J. (Chrs.)

See Account—Appeal, 2—Criminal Law, 7—Division Courts, 4—Judgment, 5—Libel—Practice, 4, 5.

TRUST COMPANY.

See Infant, 2—Will, 4, 12.

TRUSTS AND TRUSTEES.

Shares in Limited Commercial Company Held by Trustee for Estate—Issue of New Shares—Purchase by Trustee for himself—Loss of Control of Company—Depreciation in Value of Shares—Conflict between Interest and Duty—Removal of Trustee—Action Previously Brought to Determine Duty of Trustee Pending and Undisposed of—Declaration of Trust with Respect to New Shares—Evidence. *Rose* v. *Rose,* 7 O.W.N. 416, 32 O.L.R. 481.—APP. DIV.

See Alien Enemy, 3—Company, 4, 8—Contract, 9—Discovery, 1—Husband and Wife, 4—Infant—Malicious Prosecution, 1—Mortgage, 1—Partnership, 2—Unincorporated Society, 1—Vendor and Purchaser, 10, 16—Will.

ULTIMATE NEGLIGENCE.

See Street Railways, 2.

ULTRA VIRES.

See Division Courts, 2—Unincorporated Society, 2.

UNINCORPORATED SOCIETY.

1. Election of Directors and Officers—Persons Entitled to Vote—Determination by Returning Officer—Absence of Fraud—Rules of Society—Irregularity—Breach of Trust—Costs. *Wirta* v. *Vick,* 7 O.W.N. 758.—RIDDELL, J. (Chrs.)

2. Property of Society—Dissident Members—Ultra Vires Action of Majority—Breaking-up of Society into Factions—True Line of Succession—Election of Directors. *Wirta* v. *Vick,* 7 O.W.N. 384.—App. Div.

VALUATION.

See Landlord and Tenant, 4.

VENDOR AND PURCHASER.

1. Agreement for Exchange of Lands—Mistake as to Incumbrance—Impossibility of Carrying out Agreement—Covenant—Refusal of Specific Performance. *Gilmour* v. *Charpentier,* 7 O.W.N. 519—Middleton, J.

2. Agreement for Exchange of Lands—Validity of—Married Woman—Professional Advice — Approval of Husband — Evidence—Findings of Trial Judge—Appeal — Misrepresentations—Evidence—Pleading—Amendment—New Trial. *Wauchope* v. *Hobbs,* 7 O.W.N. 294.—App. Div.

3. Agreement for Sale of Hotel—Neglect or Inability of Vendor to Carry out—Damages—Return of Money Paid—Sum to Cover Expenses—Claim for Prospective Profits—Interest —Costs. *Cardinal* v. *Proctor,* 7 O.W.N. 394.—Boyd, C.

4. Agreement for Sale of Land—Absence of Title in Vendor—Vendor not in Position to Call for Conveyance at Time of Agreement—Refusal of Specific Performance. *Argue* v. *Beach,* 7 O.W.N. 522.—Middleton, J.

5. Agreement for Sale of Land—Claim for Reformation—Evidence—Relief against Forfeiture — Payment of Purchase-money—Extension of Time. *Dannangelo* v. *Mazza,* 7 O.W. N. 99.—App. Div.

6. Agreement for Sale of Land—Escrow—Condition—Consent of Mortgagee—Failure to Notify—Delay—Action for Specific Performance—Discretion of Court—Return of Down-payment—Costs. *Denton* v. *Tossy,* 7 O.W.N. 156.—Falconbridge, C.J.K.B.

7. Agreement for Sale of Land—Formation of Contract—Option —Acceptance—Failure to Make Payment — Evidence — Findings of Trial Judge—Appeal. *Shafer* v. *Ross,* 7 O.W. N. 81.—App. Div.

8. Agreement for Sale of Land—Inability of Vendor to Make Title—Rescission by Purchasers—Damages for Failure of Vendor to Make Title—Loss of Bargain—Profits—Vendor's Damages by Reason of Purchasers' Dealings with Land—Destruction of Buildings—Inability of Purchasers to Make Complete Restitution—Damages for Deficiency. *McNiven* v. *Pigott*, 7 O.W.N. 593, 33 O.L.R. 78.—MIDDLETON, J.

9. Agreement for Sale of Land—Oral Agreement—Possession Taken by Purchaser — Payment of Taxes — Statute of Frauds—Part Performance—Agreement Enforced against Grantee of Vendor with Actual Notice—Trespass—Injunction—Appeal—Damages. *Cook* v. *Barsley*, 7 O.W.N. 161.—APP. DIV.

10. Agreement for Sale of Land—Specific Performance—Water Lot—Conveyance—Title—Trust for Remaindermen—Costs. *Ontario Asphalt Block Co.* v. *Montreuil*, 7 O.W.N. 323, 32 O.L.R. 243.—APP. DIV.

11. Agreement for Sale of Land—Time Fixed for Closing Sale—Extension of Time—Payment of Money by Purchaser to Vendor—Repudiation by Vendor—Time of Essence—Right of Vendor to Treat Agreement as Terminated and to Recover Money Paid—Equitable Relief. *Winnifrith* v. *Finkleman*, 7 O.W.N. 357, 32 O.L.R. 312.—APP. DIV.

12. Agreement for Sale of Land—Title—Doubt as to—Will—Construction—Devise—Estate Tail or Fee Simple Subject to Devise over in Event of Death "without Leaving any Issue"—Application under Vendors and Purchasers Act. *Re Gifford and Wagner*, 7 O.W.N. 217.—MEREDITH, C.J. C.P.

13. Agreement for Sale of Land—Title—Objection to—Building Restrictions—Rights of Persons not before the Court—Application under Vendors and Purchasers Act. *Re Beatty and Brown*, 7 O.W.N. 846.—SUTHERLAND, J.

14. Agreement for Sale of Land—Title—Objection to—Registration of Judgment—Cloud on Title—Lands of Company in Liquidation—Winding-up Act, R.S.C. 1906 ch. 144, sec. 84. *Re Clarkson and Bastedo*, 7 O.W.N. 833.—SUTHERLAND, J.

15. Agreement for Sale of Land—Uncertainty as to Land Intended to be Sold—Description—Boundaries—Evidence of Identity—Small Element of Uncertainty — Disregard by Court. *Donohue* v. *McCallum,* 7 O.W.N. 534.—Boyd, C.

16. Agreement for Sale of Land outside of Province—Assignment by Vendor of Interest in Land after Agreement—Trust—Notice—Obligation of Assignee to Convey to Purchaser—Agreement between Vendor and Assignee—Finding of Fact of Trial Judge—Appeal—Title to Land—Specific Performance—Costs—Form of Judgment. *Campbell* v. *Barrett and McCormack,* 7 O.W.N. 205, 32 O.L.R. 157.—App. Div.

17. Sale and Conveyance of Land—Deficiency in Acreage—Compensation—Provision in Agreement for Sale—Misrepresentation not Amounting to Fraud. *Fee* v. *Dorr,* 7 O.W.N. 680.—Falconbridge, C.J.K.B.

18. Sale of Mining Claims—Guaranty of Title—Failure to Make Title—Recovery of Purchase-money. *Curry* v. *Mattair,* 7 O.W.N. 465.—Lennox, J.

See Dower—Fraud and Misrepresentation—Improvements—Infant, 1—Judgment, 3—Pleading, 3 — Principal and Agent, 4, 5, 6—Title to Land, 4—Will, 8.

VENUE.

1. Application to Change—Convenience—Expense—Witnesses—Costs. *Renfrew Machinery Co.* v. *Dewar,* 7 O.W.N. 320.—Latchford, J. (Chrs.)

2. Irregularity in Naming—Rule 245 (*b*)—Waiver—Application to Change Venue under Rule 245 (*d*)—Balance of Convenience. *Hill* v. *Toronto R.W. Co.,* 7 O.W.N. 831.—Middleton, J. (Chrs.)

VESTING ORDER.

See Mortgage, 1.

VIEW.

See Arbitration and Award, 2.

VOLUNTARY CONVEYANCE.

See Fraudulent Conveyance.

VOTING.

See Canada Temperance Act—Municipal Corporations, 10—Unincorporated Society, 1.

WAGES.

See Company, 3, 9—Master and Servant, 17—Municipal Corporations, 4.

WAIVER.

See Company, 1—Highway, 2—Insurance, 5, 6—Mechanics' Liens, 1—Venue, 2.

WAR.

See Alien Enemy—Criminal Law, 1.

WAR MEASURES ACT.

See Alien Enemy.

WARRANTY.

See Contract, 14—Sale of Animal.

WATER.

1. Agreement Affecting Land—Easement or License—Notice—Finding of Fact—Construction of Agreement—Duration of Right under—Injunction—Costs. *Milner* v. *Brown,* 7 O.W.N. 303.—Meredith, C.J.C.P.

2. Flooding of Premises—Obstruction of Drain—Cause of Obstruction—Evidence—Fault of one Defendant—Exoneration of the Other—Costs of Successful Defendant to be Paid by Defendant at Fault. *Nicholson* v. *Grand Trunk R.W. Co.,* 7 O.W.N. 480.—App. Div.

3. Frozen Surface of Bay of Quinté—Public Highway—Right of Travel Paramount to Right of Ice-cutters—Hole Cut in Ice and Insufficiently Guarded—Criminal Code, sec. 287—Runaway Horse Falling into Hole—Liability of Ice-cutters—Findings of Jury—Negligence—Contributory Negligence—Nuisance. *Little* v. *Smith,* 7 O.W.N. 483, 32 O.L.R. 518.—App. Div.

4. Invasion of Riparian Rights—Obstruction Placed on Waters of Navigable Lake in Front of Plaintiffs' Land—Lease from Crown of Lands Covered by Water—Reservation of Rights of Navigation and Access from Shore—Navigable Waters Protection Act, R.S.C. 1906 ch. 115, sec. 4—Illegal Obstruction—Interference with Navigation—Interference

with Right of Access of Riparian Proprietor—Right of Action—Special Damage. *Baldwin* v. *Chaplin,* 7 O.W.N. 637. —LATCHFORD, J.

5. Unlawful Obstruction of Stream by Dams—Right of Lower Owner to Flow of Water—Mandatory Order for Removal of Obstructions—Injunction—Damages — Agreement — Expropriation. *McDougall* v. *Town of New Liskeard,* 7 O.W. N. 256.—LENNOX, J.

See Contract, 4—Highway, 9—Landlord and Tenant, 2—Municipal Corporations, 3.

WATERWORKS.

See Nuisance, 2—Provincial Board of Health.

WAY.

1. Assertion of Right of User—Street—Grant of Right—Prescription—Way of Necessity—Evidence — Trespass — Injunction—Damages—Costs. *Vansickle* v. *James,* 7 O.W.N. 473.—KELLY, J.

2. Private Way—Grant of Right of Way by Deed—Proviso—Construction—Termini a quo and ad quem—User—Means of Access to Lot other than Lot to which Easement Appurtenant. *Grant* v. *Lerner,* 7 O.W.N. 564.—MIDDLETON, J.

3. Private Way—Obstruction—Damages — Reference. *Fitzgerald* v. *Canada Cement Co.,* 7 O.W.N. 321.—FALCONBRIDGE, C.J.K.B.

See Easement—Highway—Title to Land, 1.

WILL.

1. Action to Establish—Evidence—Onus—Testamentary Capacity—Failing Memory and Senile Decay—Procurement of Will by Others—Stealth, Haste, and Contrivance—Duty of Solicitor Called in to Prepare Will—Revocation of Former Wills—Executors Propounding Will—Costs—Discretion—Appeal. *Murphy* v. *Lamphier,* 7 O.W.N. 45, 32 O.L.R. 19. —APP. DIV.

2. Action to Set aside—Motion for Interim Injunction Restraining Executors from Dealing with Estate — Evidence. *Thompson* v. *Thompson,* 7 O.W.N. 23.—FALCONBRIDGE, C.J. K.B.

3. Construction—Absolute Interest not Subject to Trust—Inquiry as to Persons Named in Will. *Re Lucas,* 7 O.W.N. 474.—Falconbridge, C.J.K.B.

4. Construction—Appointment of Trust Company as "Executor and Trustee"—Revocation by Codicil of Appointment of Executor and Appointment of Individuals as Executors—Effect as to Trusteeship—Appeal—Consent Order Appointing Additional Trustee. *Re Messenger,* 7 O.W.N. 125.—App. Div.

5. Construction—Bequest for Benefit of Son and Son's Widow—Death of Son in Lifetime of Testator—Right of Widow—Provision for Abatement. *Re Hickey,* 7 O.W.N. 142, 164.—Middleton, J.

6. Construction—Devise and Bequest to Widow—Limitation to "Natural Life"—Application to Devise—Life Estate in Land Devised. *Re Nelson,* 7 O.W.N. 250, 425.—Latchford, J.—App. Div.

7. Construction—Devise of Farm to Eldest Son—Provision for Use of Farm by two other Sons till Devisee "Comes to Reside"—Death of one Son—Survivor Continuing in Possession—Acceptance of Leases from Eldest Son in Ignorance of Right—Estoppel—Inoperative Restriction on Sale of Farm—Right of Devisee to Put an End to Occupation by "Coming to Reside" or by Sale. *Greenlees* v. *Greenlees,* 7 O.W.N. 432.—Boyd, C.

8. Construction — Devise to Sons — Substitutional Devise to Issue of Sons—Possible Intestacy in Certain Events—Title to Land—Vendors and Purchasers Act. *Re Mino and Ellis,* 7 O.W.N. 240.—Middleton, J.

9. Construction—Devise to Wife for Life with Remainder to Son—Legacies Charged on Land—When Payable. *Re McClean,* 7 O.W.N. 696.—Latchford, J.

10. Construction—Devises—Estates for Life and in Remainder—Contingent Remainder upon Contingent Remainder—Rule against "Double Possibilities"—Intestacy as to Second Remainder—Right of Heirs of Testator, Ascertained at his Death—Improvements under Mistake of Title—Lien for—Possession of Land—Title—Limitations Act — Partition—Estoppel—Costs. *Stuart* v. *Taylor,* 7 O.W.N. 551, 33 O.L.R. 20.—App. Div.

11. Construction—Division of Estate among Named Brothers and Sisters by one Brother "according to his Best Judgment"—Trust—Imperative Direction—Discretion—Limited Power—Division Based upon Equality—Exercise of Judgment as to Attaining Equality—Tenancy in Common—One Sister Named in Will Predeceasing Testator—Intestacy as to her Share—Ascertainment of Next of Kin of Testator at his Death—Sister Surviving Testator but Dying before Division—Vested Share Passing to Representatives. *Re Hislop,* 7 O.W.N. 614.—MIDDLETON, J.

12. Construction—Gife of Income—Investment of Corpus—Absolute Estate—Mental Incapacity of Legatee—Payment of Corpus to Trust Company. *Re Sheard,* 7 O.W.N. 103.—MIDDLETON, J.

13. Construction—Gift of Income to Wife for Life or Widowhood "for the Maintenance of herself and our Children"—Equal Division of Corpus among Children upon Death or Remarriage of Wife—Provision for Advancement to Sons—Resulting Trust—Obligation of Wife to Maintain Children—Discretion—Reference to Fix Allowances—Postponement of Time for Conversion of Real Estate into Money—Effect upon Advancement—Interest upon Sums Advanced—Appointment of "Managers" of Estate—Remuneration—Provision Depriving Executors of Remuneration—Acceptance of Office with Disability Attached. *Re Singer,* 7 O.W.N. 625.—MIDDLETON, J.

14. Construction—Gift of Income to Wife for Life, Subject to Certain Charges—Legacies—Annuities—Gifts to Missionary Society—Charitable Bequests—Cy Pres Doctrine—Uncertainty—Perpetuity—Dower—Election — Lapsed Legacies. *Re Short,* 7 O.W.N. 525.—BRITTON, J.

15. Construction—Gift of Property to Trustee and Executrix—Failure to Name Beneficiary—Blank Left in Will—Wills Act, sec. 58—Trust as in Case of Intestacy. *Re LeBlond,* 7 O.W.N. 398.—MIDDLETON, J.

16. Construction—Gift of Whole Estate to Wife Subject to three Gifts Following it—Legacies Payable out of Real Estate after Wife's Death—Gift of Personal Estate Unexpended at Wife's Death to Charities—Reference to Ascertain Amount "Unexpended"—Judgment for Administra-

tion of Estate—Rights of Heirs at Law after Payment of Legacies. *British and Foreign Bible Society* v. *Shapton*, 7 O.W.N. 658.—MEREDITH, C.J.C.P.

17. Construction — "Interest of Stock" Used as Meaning Shares in Company—"Any Male Heirs"—"Equally Divided between"—Person in Existence and Unascertained Class of Persons—Vested Interest—Costs. *Re Challoner*, 7 O.W.N. 742.—LENNOX, J.

18. Construction—Partnership between Father and Son—Bequest by Father to Son of Half Share in Property of Partnership and Division of Remaining Half among all Children Equally—Effect of — Election—Liability to Account. *Re Wallace*, 7 O.W.N. 683.—MIDDLETON, J.

19. Construction—Power of Executors of Deceased Executrix to Convey Lands of Testator. *Re Macaulay*, 7 O.W.N. 134. —FALCONBRIDGE, C.J.K.B.

20. Construction—Trust—Failure of — Perpetuity—Tendency to Create Perpetuity. *Re McLellan*, 7 O.W.N. 447. — MIDDLETON, J.

21. Construction—Trust—Realty and Personalty — Power of Appointment—Cestui que Trust—Gift over, in Default of Exercise of Power, to Representatives of Donee—Absolute Estate—Rule in Shelley's Case—Married Woman—Separate Estate. *Re Hooper*, 7 O.W.N. 104.—MIDDLETON, J.

22. Execution of Trusts—Surviving Executor—Trustee Act, R.S.O. 1914 ch. 121—Sale of Land Charged with Payment of Legacies—Caution — Registration — Devolution of Estates Act, R.S.O. 1914 ch. 119, sec. 14—Transfer of Interests—Interest on Legacies. *Re Luton*, 7 O.W.N. 768.— LENNOX, J.

23. Legacies—Insufficiency of Estate to Pay in Full—Abatement—Legacy to Creditor in Satisfaction of Debt—Claim to Priority—Payment of Legacy in Full by Executors—Disallowance—Appeal—Costs. *Re Rispin*, 5 O.W.N. 507.— APP. DIV.

See Domicile—Infant, 3—Insurance, 1—Promissory Notes, 6—Title to Land, 3—Vendor and Purchaser, 12.

WINDING-UP.

See Banks and Banking—Company, 10-16—Partnership, 5 —Vendor and Purchaser, 14.

WITNESSES.

See Surgeon—Venue.

WORDS.

"According to his Best Judgment"—See WILL, 11.
"Action"—See EXECUTION, 3.
"Agent or otherwise"—See COVENANT.
"And"—See CONTRACT, 22.
"Any Male Heirs"—See WILL, 17.
"At Factory Cost"—See CONTRACT, 11.
"At the Time of the Election"—See MUNICIPAL ELECTIONS, 2.
"Civil Proceeding"—See EXECUTION, 3.
"Class of Persons"—See CONSTITUTIONAL LAW.
"Comes to Reside"—See WILL, 7.
"Commons"—See DEED, 1.
"Competing Business"—See PARTNERSHIP, 2.
"Concession"—See HIGHWAY, 7.
"Denominational Schools"—See CONSTITUTIONAL LAW.
"Equally Divided between"—See WILL, 17.
"For the Maintenance of herself and our Children"—See WILL, 13.
"Fronts"—See MUNICIPAL CORPORATIONS, 14.
"Good Defence upon the Merits"—See PRACTICE, 2.
"Gross Negligence"—See HIGHWAY, 5.
"Guardian of an Infant"—See DITCHES AND WATERCOURSES ACT.
"Imminent Danger"—See RAILWAY, 15.
"In Protection"—See ALIEN ENEMY, 5.
"Interest of Stock"—See WILL, 17.
"Natural Life"—See WILL, 6.
"Notice of Proposed By-law"—See Land Titles Act, 3.
"Obligations"—See PARTITION.
"Operation of the Railway"—See RAILWAY, 2.
"Or"—See CONTRACT, 22.
"Overhead Charges"—See CONTRACT, 11.
"Settlers' Effects"—See RAILWAY, 3.
"Threatening"—See CRIMINAL LAW, 5.
"Trustee"—See MORTGAGE, 1.
"Unexpended"—See WILL, 16.

"Without Leaving any Issue"—See Vendor and Purchaser, 12.

WORK AND LABOUR.

See Building Contract—Contract, 6, 8, 25, 29, 30—Damages, 2 —Mechanics' Liens.

WORKMEN'S COMPENSATION FOR INJURIES ACT.

See Master and Servant—Mines and Minerals, 1—Negligence, 6—Railway, 5, 13.

WRIT OF CERTIORARI.

See Criminal Law, 2.

WRIT OF SUMMONS.

Service out of the Jurisdiction—Rule 25 (*e*), (*h*)—Breach of Contract — Tort — Conditional Appearance. *Fletcher* v. *Chalifoux,* 7 O.W.N. 122.—Master in Chambers.

See Appeal, 3—Judgment, 6, 10, 11—Practice, 1, 2, 7—Pleading, 4.

WRONGFUL DISMISSAL.

See Master and Servant, 17.

WRONGFUL DISTRESS.

See Improvements.