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Lord Halsbury entered on his 78th year on the 3rd ult. It is seventeen years since he became Lord Chancellor. It is said that he is as alert and erect as ever, with apparently no idea of taking a rest, which after half a century of hard work might seem to be a reasonable proposition. It was thought that he would have retired with his old friend and confidant Lord Salisbury, but he seems good for several years work yet.

A burglar was recently identified by means of the impression of his thumb on wet paint, of which a photograph was taken on June 27, immediately after the burglary was discovered, though he was not actually caught until August 14 following, when he was found attempting to commit another burglary. Enterprising detectives will, no doubt, take note of this, and remember to look out for finger impressions.

A writer in the *Central Law Journal* in a recent number contributes an interesting article as to the extent, and in what cases, damages may be recovered for mental suffering. There have been several cases reported lately on this subject, and the trend of the decisions incline to the view that the law affords no redress for mental suffering as a basis for an independent action. Those interested will find this article at page 202 of the current volume of that excellent periodical. The *Bombay Law Reporter* also recently discussed the same subject.

Dispensaries for the purpose of giving medical advice gratis are common, but we believe it is an entirely new departure which the city of Edinburgh has taken in establishing a dispensary for the purpose of enabling poor people to obtain good legal advice free of charge. This dispensary is open for two hours one night a week, and is carried on by men of standing in the legal profession,

so that the advice is not only free but reliable. It has, we learn, been worked for two years at a cost of about £30. During the last year the dispensary had 310 clients, representing 480 consultations, and the questions involved were all of sufficient importance to merit attention. More than a third of the applicants sought advice in matters concerning family relations—difficulties between husbands and wives, and parents and children ; and one gentleman wrote as many as fifty letters during his two months' attendance. In some of our larger towns and cities in Ontario similar charitable work might possibly be done. The work should, however, be committed to reliable practitioners duly accredited and approved of by, say, the County Judge, and not left to pettifoggers and mere busybodies. It seems that litigation is not undertaken by the Edinburgh dispensary, controversial matters being handed over to an accredited agent of the poor.

EXPERT EVIDENCE.

At the last sessions of the Dominion and Ontario Legislatures statutes were passed on the subject of expert evidence.

We assume that the Dominion Act, 2 Edw. 7, c. 9, can only be invoked in criminal proceedings or civil proceedings within the jurisdiction of the Dominion Parliament and would not be applicable in ordinary actions respecting property and civil rights within the jurisdiction of the Provincial Legislatures. The Ontario statute, 2 Edw. 7, c. 15, is somewhat similar to the Dominion Act, but limits the number to three experts on each side who may be called without leave, and it applies to actions, arbitrations and other proceedings.

The wisdom of the English law of evidence in excluding as a rule anything but testimony as to facts appears to be vindicated when we contemplate the extraordinary and sometimes ridiculous results due to the departure from the ordinary rule. As soon as witnesses are permitted to leave the beaten path of fact and to indulge in opinions the truth of the maxim, quot homines tot sententiæ, is manifested. Each expert witness generally seems to conceive himself called upon to support a theory favourable to the party who calls him, and the value of his opinion is guaged accordingly.

These legislative efforts to remedy what has practically become a farcical scandal may possibly be successful, but we are inclined

to think the German law deals more adequately with the difficulty. In Germany neither party can as of right give expert evidence. The Court first of all determines whether experts should be called at all; and, if it decides that they should be called, itself appoints them and regulates their number. By this means there seems more probability of obtaining a really valuable and impartial opinion. That is what is wanted and not merely a plausible theory to support the view of a particular litigant.

CLIENTS AND COUNSEL.

On the 24th of September last the Court of Appeal prematurely brought its sittings to a close not because all the cases set down to be heard had been disposed of, but because counsel engaged to argue several of them were absent elsewhere on circuit.

There are something over 800 practising barristers in Toronto and it seems strange that any Court in Toronto should have to adjourn its sittings because counsel could not be found to argue cases. The remedy of course is very much in the hands of solicitors, who seem to be content that their clients' cases shall thus be indefinitely postponed in order that they may have the services of some particular counsel who has really more work to do than he can properly attend to. Counsel of eminence will of course always command a large amount of business, and no one would reasonably grudge them all they can properly do, but we think both they and solicitors do themselves and their clients injustice when they try to put on one man's shoulders more than he can bear.

It would be far better for a counsel to raise his fees and confine himself to one Court than keep up a constant rush from one end of the Province to another in the endeavour, like Sir Boyle Roche's bird, to be in two places at once. There are some features in the English bar system which might be adopted here with advantage. The English rule is that a practising barrister should adopt a particular circuit and not go out of it except for a very extra large fee. Other leading counsel who do not go circuit confine their practice to particular Courts, thus in England each of the Courts of the Chancery Division Judges has, we believe, a separate bar, who practise in that Court only, unless specially retained for extra fees to plead elsewhere. Then again the English practice

of King's Counsel refusing cases in which a junior is not also retained is very greatly to the advantage of the junior bar, and incidentally to the advantage of the public. The circuit bar perhaps is no longer possible here because the arrangement of the circuits on the old plan of dividing the Province into districts and including all places within a district in the same circuit has long since been abandoned.

The Courts, of course, might prevent cases being postponed for non-attendance of counsel by refusing adjournments on that ground and insisting on cases being proceeded with when called in due course.

It is well known at Osgoode Hall that counsel who make sacrifices in order to be present in Court when their cases are called do not meet with much encouragement. We have heard of a learned K.C. who received a brief for a trial in the country which he returned when he found that it interfered with a case in which he was retained in the Court of Appeal, which latter case when called on in its order was obligingly adjourned by the Court because counsel on the other side had unfortunately been unexpectedly obliged to leave town—as it afterwards turned out, to hold the brief which his opponent had returned!

JUDGES v. JURIES.

The case of *McGann* v. *Railroad Company*, 70 N.Y.S. 684, brings up an old but interesting question as to how far a Court should go in setting aside verdicts as being against the weight of evidence The case in question was an action for damages for personal injuries. At the first trial a verdict was rendered for the plaintiff with $6,000 damages. The Court set it aside as being against the weight of evidence and a new trial was had. On the second trial the verdict was the same, and was again set aside. The third jury, possibly feeling that an affront had been put upon their brethren, sought to revenge themselves by giving a verdict for double the amount, viz., $12,000. This was also promptly disposed of as before. On the fourth trial the jury gave the plaintiff $5,500. This slight reduction did not affect the Court which still held to the opinion that the damages were still excessive and again set the verdict aside. On appeal, however, from this trial Court to the Supreme Court of the State it was held that in

view of there having been four trials and the various juries agreeing to the large damages above referred to, the last verdict should stand. One of the judges expressing himself as follows: "Where the right to a jury trial exists, it is intended that the verdict of the jury shall be conclusive upon the facts in the absence of legal error or bias, passion, prejudice, or corruption. Verdicts are set aside as against the weight of evidence, and new trials are granted on the theory that the jury have been influenced by bias, passion, prejudice, or corruption. While the trial court and the appellate division should not hesitate to set aside a verdict as against the weight of evidence where the ends of justice appear to require a new trial, yet, when it comes to setting aside a third verdict rendered in an ordinary action possessing no extraordinary features, the Court should hesitate lest it usurp the functions of the jury. A sufficient number of trials has now been granted to remove any suspicion of the existence of bias, passion, prejudice, or corruption, and it becomes a mere matter of judgment on questions of fact."

Two of the judges dissented on the ground that two wrongs (in this case four) did not make a right. In their opinion if the verdicts were wrong, as being the result of misconception, prejudice or partiality, they should not be allowed to stand—the law imposed a duty upon the Courts to review verdicts, and this duty should be done whensoever and as often as might be necessary in furtherance of justice.

It is difficult to get over such reasoning as this. If an injustice was done to the defendants by the first verdict it was equally so by the others, and if the first should not stand neither should the last. In the United States the decision arrived at by the Supreme Court would appear to be in accordance with the authorities. Each case must of course depend upon its own merits; but we are neither so enamoured of juries in this country nor in a general way so doubtful about our judges that we care to favour a rule that would make their wisdom and sense of right bow to the pertinacity of jurymen. On the other hand it may safely be said that the jury system would have a more limited operation in this Dominion were it not for the somewhat autocratic methods of an occasional occupant of the Bench or the peculiarity of view which is inherent in human nature, and which sometimes becomes a too marked feature in an individual judge.

INFORMAL BILLS AND NOTES.

The case of *Robinson* v. *Mann*, recently decided in the Supreme Court of Canada, vol. 31, page 484, has elicited more than usual interest in view of the conflicting decisions in several of the Courts of the Dominion, and from the fact that it is not in accord with the views of the judges in the likewise recently decided case of *Jenkins* v. *Coomber* (1898) 2 Q.B. 168. The question in each case was as to the proper construction of sec. 56 of the Bills of Exchange Act, 1890, of Canada, and of the like section of the English Bills of Exchange Act, 1882. In the Canadian case, one of the questions to be decided was: Did the party incur any liability by indorsing a note not made payable to him but to Molsons Bank and not indorsed by the payee.

The note in question was in form as follows:

$1,200.00. London, Sept. 25th, 1899.

Three months after date I promise to pay to the order of the Molsons Bank at the Molson Bank here twelve hundred dollars for value received.

W. Mann & Co.

Indorsed on the back was the name "George T. Mann."

Chief Justice Strong, in delivering the judgment of the Court, said: "Next, what was the legal effect of this indorsement? Sec. 56 of the Bills of Exchange Act, 1890, provides that, 'where a person signs a bill otherwise than as a drawer or acceptor he thereby incurs the liability of an indorser to a holder in due course and is subject to all the provisions of this Act respecting indorsers.' Then when the bank took the note was it not entitled to the benefit of the respondent's liability as an indorser? Certainly it was, for by force of the statute the indorsement operated as what has long been known in the French Commercial Law as an 'aval,' a form of liability which is now by the statute adopted in English law."

The Chief Justice adhered to the law as laid down by him in the case of *The Ayr American Plough Company* v. *Wallace*, decided in 1892, 21 S.C.R. 256. The last named case was on all fours with that of *Robinson* v. *Mann*. Wallace, who indorsed the note, which was made by one Clark to the plaintiff company, was sued in the Court below as maker. On the trial the plaintiff company was nonsuited. The Supreme Court of New Brunswick on appeal

refused a motion to set aside a nonsuit (N.B.R. vol. 30, p. 429); the Court being equally divided.

On appeal to the Supreme Court of Canada, the judgment of the Court below was sustained and the appeal dismissed. Chief Justice Strong, then Mr. Justice Strong, is thus reported: "As the law now stands since the Dominion Bills of Exchange Act, 1890, it is clear that under sec. 56 the respondent would have been liable as indorser, but only as indorser. It has been frequently said as regards the English Act (Bills of Exchange Act, 1882), that it was not intended by it to enact new law, but merely to declare and codify the law as it stood when the Act was passed. Sec. 56 of the English Act is identical in words with the same section of our Act. This seems to be conclusive."

In *Robinson* v. *Mann*, Mr. Justice Sedgewick, who was present when judgment was delivered by the Chief Justice, failed to stand by his obiter dictum in *Robinson* v. *Davis*, 27 S.C.R. at p. 574, in which he said: "Under no circumstances can the payee of a promissory note or the drawer of a bill of exchange maintain an action against an indorser where the action is founded upon the instrument itself."

In *Jenkins* v. *Coomber*, L.R. (1898) 2 Q.B. 168, it was held that the principles enunciated in *Steele* v. *McKinlay* (1880) 5 Appeal Cases, 754, were not affected by the provisions of the Bills of Exchange Act, 1882. The bill sued on in *Jenkins* v. *Coomber* was irregular. The plaintiffs drew upon Arthur Coomber for fifty-seven pounds and the draft was accepted by him. It was indorsed by Alfred Coomber, the defendant, under an agreement to indorse for the purpose of guaranteeing payment.

The judgment of Wills, J., is explicit and deserves careful perusual. The following are its salient points: "I do not think that the Bills of Exchange Act, 1882, was intended to effect such an important alteration in the law as to override the decision of the House of Lords in *Steele* v. *McKinlay*, 5 App. Cas., 754. That decision seems to me to be in force at the present time. It is clear that, in the present case, when the defendant wrote his name upon the bill it was not complete and regular on the face of it. Nor, indeed, did it become so at any time. Sec. 56 of the Bills of Exchange Act, 1882, provides that a person who signs a bill otherwise than as drawer or acceptor incurs the liabilities of an indorser to a holder in due course. But by s. 29 a holder in due course is a holder who has taken a bill complete and regular on the face of

it. Sec. 56 therefore does not apply. This was not on the face of it a regular and complete bill of exchange, since when the defendant indorsed it the bill had not been indorsed by the plaintiffs, to whose order it was payable. But then it is said that the defendant is liable under s. 55, sub-s. 2, as an indorser because his name was on the back of the bill. The Bills of Exchange Act certainly does not give much assistance as to the meaning to be attached to the word 'indorsement.' It says (s. 2): 'indorsement means an indorsement completed by delivery;' but it nowhere says what constitutes an indorsement. . . . . The cases which have been cited by Mr. Attenborough to establish the liability of the defendant as indorser are all cases where the bill was a complete and perfect instrument. Here, as I have already said, the bill was not a complete and negotiable instrument until it had received the indorsement of the drawers. . . . . The general principle since the Act of 1882 seems to me to be exactly as it was laid down in *Steele* v. *McKinlay*, and the contract of indemnity on which the plaintiff relies is one which is not recognized by the law merchant, but which arises solely from an agreement between the parties. It is, however, here relied upon as giving a primary liability against the defendant upon this bill of exchange. That, as Lord Watson points out in *Steele* v. *McKinlay*, will not do. If the agreement exists at all, it must exist as a contract of suretyship, and for that purpose it must satisfy the requirements of the Statute of Frauds."

The judgment of Kennedy, J., is no less explicit: "I am of the same opinion, and for the same reasons. I do not think that the doctrines laid down in *Steele* v. *McKinlay*, 5 App. Cas. 754, have been varied by the Bills of Exchange Act, 1882. In the edition of that Act by Mr. Chalmers, he expressly gives *Steele* v. *McKinlay* as an illustration to s. 56, without a suggestion that the law laid down in that case has in any way been altered. This document was, according to the law merchant, irregular, and therefore the defendant is not liable upon it to the plaintiffs. If it is sought to use it as an agreement of suretyship, it is insufficient to satisfy the provisions of the Statute of Frauds."

Sec. 56 of the Canadian Code is an exact transcript of s. 56 of the English Code, save and except the Canadian Code has the following additional words: "and is subject to all the provisions of this Act respecting indorsers." These words were added in

order that a person who signs a bill as a warrantor, or aval as he was called in the Civil Code of Quebec, should be entitled to notice of dishonour or protest.

The indorsement called an aval, signifying "underwriting," was adopted in the Quebec Code from the Civil Code of France. The term was not exclusively applied to indorsement. The aval might be made by one who gave his name as a guarantor for the acceptor by placing his name under that of the acceptor, and likewise as a guarantor for the drawer by placing his name under that of the drawer. If the aval were made for an indorser according to the Civil Code of France it was not necessary in order to hold him liable for the default of the one for whom he had become the guarantor to give him notice of dishonour. Now by the Canadian Code one who indorses pour aval is entitled to notice of dishonour the same as any other indorser. The liability of such an indorser is clearly stated by Lord Blackburn in *Steele* v. *McKinlay*, L.R. 5 App. Cas., at p. 772, in these words: "An aval for the honour of the acceptor, even if on the bill, is not effectual in English law, as appears by *Jackson* v. *Hudson*, 2 Camp., at p. 448. That case cannot now be questioned after the lapse of so many years, even if it could have been successfully impugned at the time, which I do not think it could. But the indorsement by a stranger to the bill on it to one who is about to take is efficacious in English law, and has the same effect as an aval. The effect according to English law, of such an indorsement, is recognized by Lord Holt in *Hill* v. *Lewis*, 1 Salk., at p. 133, and again in *Penny* v. *Innes*, 1 C. M. & R. 439; such an indorsement creates no obligation to those who previously were parties to the bill; it is solely for the benefit of those who take subsequently."

It is clear, if one indorse a bill or note for the purpose of becoming a guarantor for its payment on the part of any other person to it, a liability exists; but it is a liability or contract of suretyship, which must be specially declared on and otherwise meet the requirements of the Statute of Frauds.

These observations are presented with the utmost diffidence, considering the ability and eminence of the judges whose decision is brought under review. But free and open discussion of legal principles, apart from all considerations save a desire to reach just conclusions, is of course the surest way of attaining that fixity of

decision in our juridical system, which is the best guarantee of a people's liberty under a free government.

St. John, N.B. SILAS ALWARD.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

TRADE MARK—INVENTED WORD—NAME OF INVENTED ARTICLE—EXCLUSIVE USER.

In re Chesebrough's trade mark "Vaseline" (1902) 2 Ch. 1, was an application to remove the respondent's registered trade mark "Vaseline" from the registry, on the ground that they were not entitled to the exclusive use of the word. It appeared that one Chesebrough through whom the respondents claimed, was the inventor of the process for making a jelly from petroleum, and had patented the process in the United States, and had termed the product "Vaseline." No patent was taken out for the process in England, and it was used by many persons and the product called by various names, but that made by the respondents was always called "Vaseline," and in 1877 the word was registered by them as a trade mark. The applicant who sought its removal from the register, sought to bring the case within *Linoleum Manufacturing Co.* v. *Nairn* (1878) 7 Ch. D. 734, where it was held that a name given to a newly invented patented article cannot be the subject of a trade mark, and that after the expiration of the patent anyone is at liberty to use the name to designate the article; but the majority of the Court of Appeal (Williams and Stirling, L.JJ.) distinguished that from the present case, because here there was no patent, and the respondents were never at any time the sole makers in England of the substance which they called "Vaseline"; but that word was used and known as indicative of the article made by them. The judgment of Buckley, J. ordering the removal of the name from the register was therefore reversed; Cozens-Hardy, L.J. however dissented.

LIMITED COMPANY—SURRENDER OF SHARES—RELEASE OF SHAREHOLDERS FROM LIABILITY.

In *Bellerby* v. *Rowland & M.S.S. Co.* (1902) 2 Ch. 14, the Court of Appeal (Collins, M.R., Stirling and Cozens-Hardy, L.JJ.) have been unable to agree altogether with the judgment of Kekewich, J. (1901) 2 Ch. 265, (noted ante vol. 37 p. 773). The action it may be remembered was brought to rectify the register of shareholders of a limited company, so as in effect to cancel the surrender of certain shares which had been made to the company and to declare the surrenderers still entitled thereto. The shares in question were for £11 each on which only £10 had been paid, and the company's articles empowered the directors to accept a surrender of any member's shares on such terms as might be agreed, and in pursuance of this provision certain of the directors surrendered some of the shares held by them, with a view of making good to the company a loss which had been incurred. The company had since become prosperous and the directors desired to be restored to their former position. Kekewich, J., though of opinion that the surrender was illegal, yet refused to rectify the register on the ground that the justice of the case did not require it. The Court of Appeal agreed that the surrender was bad, but they overruled Kekewich, J. in so far as he refused to order a rectification of the register, on the ground that the surrender was invalid and the surrenderers had never ceased to be the holders of the shares. It may be noted that they waived all claim to past dividends.

COMPANY—WINDING UP—PRIVATE EXAMINATION—SOLICITOR OF WITNESS—UNDERTAKING OF SOLICITOR NOT TO DISCLOSE EXAMINATION OF CLIENT—COMPANIES ACT 1862 (25 & 26 VICT. C. 89) S. 115—(R.S.C. C. 129, S. 81).

In re London & Northern Bank (1902) 2 Ch. 73, this was a winding up proceeding in which an examination of a witness was taken by the liquidator under the Companies Act (25 & 26 Vict. c. 89) s. 115. (R.S.C. c. 129, s. 81). The witness was attended by his solicitor who was himself summoned as a witness and who was also solicitor for third parties with whom the liquidator was in litigation, and for the purposes of which litigation the examination was taken. The liquidator objected to the solicitor being present at all, and also to his managing clerk attending, except on the terms of undertaking not to disclose the information obtained on the examination. Byrne, J. held that the examination was of a

private character, and that the solicitor was not entitled to be present thereat, and that the managing clerk could only attend on giving the required undertaking, and the Court of Appeal (Collins, M.R. and Stirling and Cozens-Hardy, L.JJ.) upheld his decision.

COMPANY—WINDING UP—LOSS OF CAPITAL — PROFITS EARNED BEFORE WINDING UP—DIVIDEND NOT DECLARED—"SURPLUS ASSETS"—PREFERENCE AND ORDINARY SHAREHOLDERS.

In re Crichton's Oil Co. (1902) 2 Ch. 86, a point arising in a winding up proceeding is decided. The capital of the company consisted of ordinary and preference shares of £10, paid in full. The preference shares were entitled to a cumulative preferential dividend. The articles of association empowered the directors to set aside profits for a reserve fund. For three years the business was carried on at a loss, and £4,346 of capital was lost. In the next year a profit of £1,675 was made, but no dividend was declared, or any appropriation made of that sum. The company went into liquidation, and upon the winding up the debts were all paid, and £7 per share was returned to the shareholders. The above-mentioned sum of £1,675 remained in the hands of the liquidators, and the question was, how it was to be distributed. The preference shareholders who had received no dividend for the three years the business was carried on at a loss, or for the following year, claimed that it should be distributed among them. The ordinary shareholders on the other hand claimed that it should be divided rateably among all the shareholders, and Wright, J., gave effect to the latter contention, and the Court of Appeal (Collins, M. R., and Stirling and Cozens-Hardy, L. JJ.) affirmed his order. The articles provided that in the event of a winding up "the surplus assets" were to be divided equally between all the shareholders, and it was held that the fund in question must be regarded as "surplus assets," all moneys remaining after payment of outside claims coming under that head.

PRACTICE—JURISDICTION—ENGLISH CONTRACT—FOREIGN DEFENDANT—ACTION TO ENFORCE CHARGE ON ASSETS IN FOREIGN COUNTRY—SERVICE OUT OF JURISDICTION—FOREIGN DEFENDANT NECESSARY OR PROPER PARTY TO ACTION AGAINST DEFENDANT WITHIN JURISDICTION—RULE 64 (g)—(ONT. RULE 162 (g).)

Duder v. *Amsterdamsch Trustees* (1902) 2 Ch. 133, was an action brought to enforce an alleged equitable charge on property and assets of an equitable company in Brazil. The action was

brought against the company, and also against the trustees of a debenture deed made by the company, such trustees being resident in Holland—and also a receiver appointed under the deed who was resident in England. The Dutch trustees moved to set aside the service of the writ of summons on them but Byrne, J. held that they were proper and necessary parties to the action against the other defendants and he therefore refused the motion—and on the application of the plaintiff a receiver was appointed in the action.

PRINCIPAL AND AGENT—FRAUD OF AGENT - BONA-FIDE PURCHASER FROM AGENT WITHOUT NOTICE—RECEIPT CLAUSE — AGENT APPARENT OWNER — ESTOPPEL.

Rimmer v. *Webster* (1902) 2 Ch. 163, was a contest between two innocent persons as to which should bear a loss occasioned by the fraud of another. The plaintiff was a trustee, and as such held a mortgage bond which he placed in the hands of a broker for sale, and, induced by false representations of the broker, he executed in his favour two deeds of transfer of the mortgage bond in two portions of £1,500 and £500 respectively, which sums in the transfers he acknowledged to have received from the transferee. The broker then borrowed £1,000 from the defendant and executed a formal sub-mortgage of the bond to him, producing the transfers as proof of title. The broker misappropriated the money and absconded. The plaintiff claimed a re-transfer of the bond free from defendant's mortgage, but Farwell, J., held that the plaintiff having clothed the broker with the apparent ownership of the bond and acknowledged the receipt from him of the purchase money, was estopped from disputing the title of the defendant.

SOLICITOR—TRUST—BREACH OF TRUST—MONEY LENT BY TRUSTEE TO SOLICITOR WITHOUT SECURITY — SUMMARY ORDER ON SOLICITOR TO REFUND MONEY RECEIVED IN BREACH OF TRUST—PRACTICE.

In re Carroll, Brice v. *Carroll* (1902) 2 Ch. 175, is an instance of the summary jurisdiction exercised by the court over solicitors. This was an administration action and in the taking of the accounts it appeared that the executor had lent the trust funds to his solicitor without security; the plaintiff thereupon applied upon notice of motion entitled in the action and also "in the matter of" the solicitor for an order to pay the amount so lent to him into court, and Farwell, J. made the order as asked.

MUNICIPAL LAW—BY-LAW REGULATING BUILDING—BREACH OF BY-LAW—INJUNCTION—JURISDICTION.

Mayor of Devonport v. *Tozer* (1902) 2 Ch. 182, was an action brought by a municipal body claiming an injunction to restrain the defendants from erecting buildings in breach of a by-law regulating the width of streets, and also to obtain a declaration that the plaintiffs were entitled to remove or pull down buildings already erected in breach of the by-law. Joyce J., dismissed the action holding that the plaintiffs could only enforce the by-law in the manner provided by the statute in pursuance of which it was made, viz., in this a case by a proceeding for penalties and the removing of the work done contrary to the by-laws as provided by the by-laws and statute, or by way of information on the part of the Attorney-General.

WILL—DEVISE OF REAL ESTATE—CONDITION THAT DEVISEE SHOULD TAKE AND USE TESTATOR'S NAME—DEATH OF DEVISEE BEFORE ESTATE FALLS INTO POSSESSION—NON-PERFORMANCE OF CONDITION.

In re Greenwood, Goodhart v. *Woodhead* (1902) 2 Ch. 198, was a summary application to determine the rights of parties under a will. The testator had devised his real estate to his daughter for life, and after her death to her children, and in case she should have no children then to one Newsome on condition of his taking the testator's name only. The testator died in 1853. His daughter was still living and married, but in her fifty-ninth year, and had no issue. Newsome died in 1855 without ever having taken the testator's name. He had been insane for eighteen months before he died. It became necessary for the purpose of administering his estate to determine whether or not he took any interest under the devise. Joyce, J., held that whether the condition were precedent or subsequent, its performance had not been rendered impossible by the act of God, and that Newsome never having complied with it, the devise to him could not take effect.

VENDOR AND PURCHASER—LEASEHOLD HOUSE—BREACH OF COVENANT TO REPAIR—RECEIPT FOR RENT—EVIDENCE OF PERFORMANCE OF COVENANT.

In re Highett and Bird (1902) 2 Ch. 214, was an application under the Vendors and Purchasers Act. The subject of the sale was a leasehold house, the lessee being bound by a covenant to repair. The time fixed for completion was the 6th November. On 27th September previously the vendor had been served with

notice by a municipal body requiring him to pull down or render secure part of the buildings on the premises as being a dangerous structure. On November 9th the vendor was served with an order of the Police Court requiring him to do the repairs within fourteen days. The vendor then made the present application for a declaration that the purchaser was bound to bear the expense of complying with the order. Eady, J. held that as under the contract the purchaser had the right to call for proof that all of the covenants under the lease had been performed up to the 6th November, the vendor was therefore bound to bear the expense; and he also held that a receipt for the last payment of rent was not evidence of performance of the covenants under the Conveyancing Act, where, as in this case, "the contrary appeared."

EASEMENT — LIGHT — DEROGATION FROM GRANT—BUILDING AGREEMENT — PLACE—CONVEYANCING AND LAW OF PROPERTY ACT 1881 (44 & 45 VICT. C. 41) S. 6—(R.S.O. C. 119, S. 12)

Godwin v. *Schweppes* (1902) 1 Ch. 926, is an illustration of the rule that though as laid down by Tindal, C.J. in *Swansborough* v. *Coventry* (1832) 2 Moo. & S. 362, 369; 35 R.R. 660, where the same person possesses a house having the actual use and enjoyment of certain lights, and also possesses the adjoining land, and sells the house to another person, although the lights be new, he cannot nor can anyone claiming under him build upon the adjoining land so as to obstruct or interrupt the enjoyment of those lights, yet this rule does not entitle a grantee of a house with the lights under words imported into the grant by the Conveyancing Act 1881, s. 6, (R.S.O. c. 119, s. 12) to any easement or light inconsistent with the intention to be implied from the circumstances existing at the time of the grant and known to the grantee, as was determined in *Birmingham* v. *Ross*, 38 Ch. D. 295. In the present case a block of houses was erected on the land of Oxby by one Sage under an agreement made in 1884, which also contemplated the erection of other buildings on the adjoining land of Oxby. In 1886 Oxby conveyed the block of houses to Sage, the foundations for the buildings on the adjoining land were then laid, and the wall of the house adjoining it was built as a party wall with apertures for chimneys, etc. In the conveyance of the houses to Sage a plan was embodied indicating the party wall and the proposed buildings on the adjoining land. The buildings on the adjoining land were

not erected, but the site of them was afterwards in 1887 conveyed by Oxby to Sage. The plaintiffs were Sage's successors in title of the houses, and the defendant his successors in title of the adjoining plot of land. The plaintiffs claimed to restrain the defendants from building on the adjoining land so as to obstruct the light to the houses as it existed at the date of the grant to Sage under which they claimed, but Joyce, J. held that they were not entitled to succeed, because it was in the contemplation of Sage under whom the plaintiffs claimed title at the time he took his deed, that the adjoining land was to be built upon, and therefore it was not a case of derogating from the grant.

WILL – CONSTRUCTION—MISDESCRIPTION OF LEGATEE—"WIFE."

Anderson v. *Berkley* (1902) 1 Ch. 936, is an instance of a misdescription of a legatee in a will, being cured by the Court of construction. In this case the testator had bequeathed a fund upon trust for his son's "wife Letitia" if she should survive him. The son died in New Zealand, and had written to the testator from thence stating that he had married Letitia Lilian Cumberland. It turned out after his death that though he had cohabited with her as his wife, they were never in fact married. Joyce, J. held, nevertheless, that Letitia Lilian Cumberland was entitled to the bequest, and that the words "my son's wife" might be rejected, if they had stood alone the result as the learned judge points out would have been different, so also if the gift had been conditional on the legatee remaining the widow of the testator's son.

TENANT FOR LIFE – REMAINDERMAN—CAPITAL OR INCOME—FINE ON SURRENDER OF LEASE.

In re Hunloke Fitzroy v. *Hunloke* (1902) 1 Ch. 941, decides (Eady, J.) the short point that as between a tenant for life and remainderman a fine paid in pursuance of an option contained in a lease as the consideration for a tenant for life accepting a surrender thereof, belongs absolutely to the tenant for life as a casual profit.

WILL—CONSTRUCTION GIFT OF RESIDUE TO INDIVIDUALS IN SHARES—GIFT OF INCOME FOR MAINTENANCE OF ALL—VESTED OR CONTINGENT.

In re Gossling Gossling v. *Elcock* (1902) 1 Ch. 945, brought up a question upon the construction of a will as to whether a share of residue bequeathed to several individuals on their attaining twenty-one was vested or contingent, one of them having died under

twenty-one. The will directed the income to be applied for the maintenance of all the legatees indiscriminately, and Eady, J. therefore held that the share of the deceased was not vested though semble, it would have been vested, if the direction had been to apply the income of the respective shares of each legatee for his or her maintenance.

RESTRAINT OF TRADE—COVENANT—"INTERESTED" IN SIMILAR BUSINESS—SERVANT.

Gophir Diamond Co. v. *Wood* (1902) 1 Ch. 950, was an action to restrain the defendant from committing a breach of covenant whereby he bound himself not to be interested directly or indirectly in a similar business to that of the plaintiffs within twenty miles of Regent Street. The alleged breach consisted in the defendant having accepted employment as a servant at a fixed salary in a similar business. Eady, J. held that this was not being "interested" within the meaning of the covenant, and he refused an injunction.

FRAUDULENT CONVEYANCE—ASSIGNMENT FOR BENEFIT OF CERTAIN CREDITORS—13 ELIZ. C. 5—(R.S.O. C. 334, S. 4).

Maskelyne v. *Smith* (1902) 2 K.B. 158, was an appeal by a claimant in interpleader proceedings from the deputy judge of a County Court. The defendant Smith had made an assignment for the benefit of such of his creditors as executed the schedule thereto. The plaintiffs were execution creditors who had not executed the schedule, and they seized under their execution goods assigned which were claimed by the assignee. The question was whether the deed was void as against the execution creditor under 13 Eliz. c. 5 (R.S.O. c. 334). The deputy judge held that it was, owing to the plaintiffs being omitted from the schedule, but the Divisional Court (Lord Alverstone, C.J., and Darling and Channell, J.J.) overruled his decision and held that the assignment was not void under the statute of Elizabeth.

ASSIGNMENT OF CHOSE IN ACTION—"ABSOLUTE ASSIGNMENT (NOT PURPORTING TO BE BY WAY OF CHARGE ONLY)"—SECURITY FOR DEBT—INSTRUMENT PASSING WHOLE RIGHT OF ASSIGNOR—JUDICATURE ACT, 1873 (36 & 37 VICT. C. 66) S. 2, SUB-S. 6 (R.S.O. C. 51 S. 58, SUB-S. 5).

In *Hughes* v. *Pump House Hotel Co.* (1902) 2 K.B. 190, the defendants appealed from the decision of Wright, J., on a preliminary point of law as to the plaintiffs' right to sue in their own

names as assignee of a chose in action. The plaintiffs were contractors for certain building work, under which contract they claimed to recover from the defendants £2,788. It appeared that in order to secure their current indebtedness to a bank, the plaintiffs by an instrument in writing had assigned to the bank all moneys due or to become due under the contract in question and empowered the bank to sue for the recovery thereof in the plaintiffs' name and to give effectual receipts and discharges for the moneys assigned. Notice in writing of this assignment had been given by the bank to the defendants. The question therefore was whether this was an absolute assignment or one purporting to be by way of charge only. Wright, J., considered it was to be by way of charge only, and held that the plaintiffs might proceed with the action, but the Court of Appeal (Matthew, and Cozens-Hardy, L.JJ.) reversed his decision, holding that as the effect of the instrument was to pass the whole right and interest of the assignors payable under the contract by way of security it was "an absolute assignment not purporting to be by way of charge only" within the meaning of the Judicature Act, s. 25, sub-s. 6 (Ont. Jud. Act, s. 58, sub-s. 5).

CRIMINAL LAW—SEAMAN—OFFENCE—DESERTION—ABSENCE WITHOUT LEAVE—WILFUL DISOBEDIENCE—MERCHANT SHIPPING ACT, 1894 (57 & 58 VICT. C. 60) S. 376, SUB-S. 1.

Edgill v. *Aleard* (1902) 2 K.B. 239. Upon a case stated by magistrates, the Divisional Court (Lord Alverstone, C.J., and Darling, and Channell, J.J.) held that under the Merchants Shipping Act, 1894 (57 & 58 Vict. c. 60) s. 376, sub-s. 1 (*d*), a seaman may be convicted of wilfully disobeying a lawful command of the master of the ship, although the act of disobedience amounts to the offence of desertion or absence without leave under clauses (*a*) or (*b*) of sub-s. 1.

EXECUTION—SEIZURE BY SHERIFF AND SUBSEQUENT WITHDRAWAL—NO RETURN TO WRIT.

Re a Debtor (1902) 2 K.B. 260, although a bankruptcy case, is deserving of notice because it turns on a principle of practice of general application. The question at issue was whether a notice of bankruptcy had been validly given, and this depended on whether the creditor giving the notice was in a position to do so, before obtaining a return to a fi. fa. which he had placed in the

sheriff's hands and under which goods had been seized, but which, being claimed by the debtor's wife and her trustees, were subsequently abandoned; on the abandonment of the seizure notice of bankruptcy was served on the debtor, no return to the fi-fa having been made by the sheriff. The Court of Appeal (Williams, Romer, and Stirling, L.JJ.) held that although under *Miller* v. *Parnell*, 6 Taunt. 370, if a judgment creditor causes a fi-fa to be executed by seizure of the debtor's goods he cannot have a writ of capias, or another fi-fa to another county till the fi-fa under which the seizure is made is completely executed and returned, even though he abandon the seizure of the goods; yet this is not so when the abandonment takes place in consequence of the goods seized being claimed by a third party, consequently the creditor had the right to give the bankruptcy notice.

PROBATE—EXECUTORS ACCORDING TO THE TENOR—TRUSTEES—DIRECTION FOR ADVANCEMENT AND MAINTENANCE OF CHILDREN.

In the goods of Kirby (1902) P. 188, a testator by his will directed the payment of his debts and testamentary expenses by his "executors hereinafter named." No executors were in fact named, but the will contained an expression of the testator's wishes as to the education and advancement of certain of his children, the cost of which was to be deducted from their respective shares and the remainder of the shares invested. The will appointed the widow and two of the testator's sons "trustees," gave them certain bequests "for their services," and disposed of the residue of the testator's property. Jeune, P.P.D., held that the trustees were "executors according to the tenor" and entitled to probate.

WILL—BENEFICIARY GIVING INSTRUCTIONS FOR WILL—PROBATE—PROBATE SUIT—COSTS.

Aylwin v. *Aylwin* (1902) P. 203, deals only with a question of costs. The plaintiff propounded a will for probate, the defendant, an adopted daughter of the testator, filed a caveat, and in her statement of defence and counter-claim pleaded undue execution, unsoundness of mind and memory, and want of knowledge and approval by the testator, and she counter-claimed probate of a prior will. It appeared that the principal beneficiary named in the will propounded by the plaintiff had taken instructions for the

will and communicated them to the solicitor who drew it up, and that the solicitor did not himself see the testator. The will was upheld, but the circumstances under which it was drawn were held by Jeune, P.P.D., to be such as to invite inquiry, and to justify the Court in refusing to award costs against the defendant.

WILL—PROBATE—INFORMAL DOCUMENT—WITNESSES DEAD—NO ATTESTATION CLAUSE—NO EVIDENCE OF HANDWRITING OF ONE WITNESS—"OMNIA PRÆSUMNUTER RITE ESSE ACTA."

In the goods of Peverett (1902) P. 205, a holograph document was propounded for probate. The instrument was informal, it purported to have been executed by the testatrix in the presence of two witnesses, both of whom were dead; there was proof of the signature of one but not of the other. There was no attestation clause. Jeune, P.P.D., held that on the principle of Omnia præsumnuter rite esse acta, it must be presumed that the document had been duly executed as a will, and administration with the will annexed was accordingly granted.

ADMINISTRATION OF ASSETS—INSUFFICIENCY OF GENERAL ASSETS—RESIDUARY ESTATE—TRUST DECLARED BY SEPARATE INSTRUMENT AFFECTING RESIDUE.

In re Maddock, Llewelyn v. *Washington* (1902) 2 Ch. 220, the judgment of Kekewich, J., (1901) 2 Ch 372 (noted ante vol. 37, p. 781), has failed to meet with the approval of the Court of Appeal. A testatrix by her will devised her residuary estate to her executor, and by a separate instrument which the executor admitted created a binding trust had directed a portion of the residue to be held in trust for certain named persons. The residuary personal estate, other than that comprised in the memorandum, was insufficient for the payment of debts. Kekewich, J., held that the debts were payable rateably out of the portion of the residue affected by the trust, and the portion not so affected. The Court of Appeal (Collins, M.R., and Cozens-Hardy and Stirling, L.JJ.) however was of the opinion that the memorandum declaring the trust must be treated as if its contents had been contained in the will so that the trust of the specified portion of the residue stood in the same position as a specific bequest, and consequently that the debts were payable first out of that part of the residue not affected by the trust, and the deficiency must be borne rateably by the part affected by the trust, and the real estate.

WILL—CONSTRUCTION—GIFT TO A CLASS—GIFT OVER ON DEATH "WITHOUT LEAVING ISSUE."

In re Schnadhorst, Sandkuh v. *Schnadhorst* (1902) 2 Ch. 234, the judgment of Joyce, J., (1801) 2 Ch. 338 (noted ante vol. 37, p. 776) was affirmed by the Court of Appeal (Collins, M.R., and Stirling and Cozens-Hardy, L.JJ.) The case arises on the construction of a will whereby the testator gave his residuary estate to his widow for life and on her death to apply the income in the maintenance and education of his children until the youngest who should be living, who being a son, should attain 21, or being a daughter, should attain 21, or marry, and subject thereto the trust fund was to be held in trust for all his sons attaining 21, and his daughters attaining 21, or marrying, in equal shares, and the testator directed that if any of his children should die leaving issue, such issue should take his or her deceased parent's share equally as tenants in common. The question was whether the children took defeasible or indefeasible estates. In other words, whether the gift over on their "dying without issue" took effect merely on their so dying before attaining 21, or marrying, or whether it took effect in case of their so dying at any time. Joyce, J., held that it took effect on their so dying at any time, and the Court of Appeal agreed with that view, and consequently that the children only took vested indefeasible interests if and when they should die without leaving issue, no matter when such death might happen.

VENDOR AND PURCHASER—PROPERTY PURCHASED FOR BUILDING—LATENT DEFECT—MISDESCRIPTION—UNDERGROUND CULVERT—CONDITION OF SALE.

In re Puckett & Smith (1902) 2 Ch. 258, land was offered for sale on the specific statement by the vendors that it was suitable for building purposes, whereas in fact it was materially unfitted therefor, owing to the existence of an underground culvert on the property unknown to the vendors. A condition of sale provided that "the property being open for inspection, the purchaser shall be deemed to buy with full knowledge of the actual qualities and condition thereof. If any error shall be proved in the particulars the same shall not annul the sale, nor shall any compensation be allowed in respect thereof." The purchaser inspected the property before the sale, but failed to discover the culvert until after the contract had been entered into, and in the opinion of the Court no

reasonable inspection would have enabled the purchaser to discover the culvert. It was in evidence that it would cost £500 to deal with the culvert in such a way as to make the land suitable for such a building as was contemplated by both parties. Under these circumstances the Court of Appeal (Collins, M.R., and Stirling and Cozens-Hardy, L.JJ.) affirming, Kekewich, J., held that the condition of sale above referred to did not apply as the defect was latent, and that the vendors had failed to make a good title.

Correspondence.

AUDI ALTERAM PARTEM.

To the Editor CANADA LAW JOURNAL:

Your editorial in the September number of the JOURNAL on Mr. Justice Meagher's connection with the Sydney incident is unjust to that judge. Newspaper reporters in their desire to make copy had sent exaggerated reports in the first instance, and comments on the judge's conduct have been based on the facts set out in these reports.

On the second day of a special term of the Court at Sydney, with more than sixty-five cases for trial on the docket, an adjournment for forty-five minutes for lunch was taken. The Court was then engaged in the trial of an ejectment suit, with a large number of witnesses present on both sides from a distant part of the county. When the judge, accompanied by the sheriff, reached the steps of the court house he found the door completely blocked, and counsel, solicitors and witnesses vainly trying to get out. The members of the Maritime Board of Trade were arranged on the steps to have a photograph taken. The judge had no knowledge of who the persons were, or what they were doing there, and considered that the steps were blocked by idlers who were watching some exhibition. The sheriff vainly attempted to make a way through the crowd for the judge, and the judge ordered the crowd to stand aside, not because his exit was blocked, but because persons having business in the Court were detained. Unfortunately the members of the Board of Trade who were nearest the door did not know the sheriff, nor did they recognize the judge, and the judge was hissed after he had made his way through. He

had the courage to characterize the conduct of the men who hissed him as was deserved, and there is a dispute about the words he used.

In the afternoon the matter was discussed by the Board of Trade. A few of the members thought that the whole Board had been insulted, and made inflammatory speeches. Very many of the members of the Board of Trade conceived that they had a grievance against the judge, and one of the Halifax delegates, who is a very respectable man, spoke to the judge as he was descending to the ground floor of the court house from the court room that afternoon. Unfortunately this member of the Board in speaking to the judge used too strong language, and which he afterwards regretted. The judge at the time was going down the same stairs among solicitors, litigants and witnesses who were leaving the court house, and he pointed out to this member that he was holding a term of the Court, and that no person ought to use such insulting language to a judge in the court house. The member at once said: "I will go out on the street and repeat it," and followed the judge from the court house to the sidewalk where the language previously objected to was repeated. The judge then ordered the sheriff to arrest this gentleman. As soon as the full effect of the expressions used to the judge became apparent to the member in question, he himself regretted that he had used the objectionable words to the judge, and went and told him so. The incident then ended.

A committee of the Board of Trade was appointed to enquire into the matter, and their report was briefly that when Mr. Justice Meagher was leaving the court house the member in question had used language which the judge considered to be an insult, and the judge ordered his arrest, and that on apologizing the member was discharged. No comment was made upon the judge's conduct. The judge was placed in this position, that he was told on the staircase crowded with solicitors, litigants, witnesses, and officers of his court that the language used by him at noon was disgraceful, and his conduct was a disgrace to the city he came from, and he had to protect himself.

I cannot comprehend how the last paragraph of your editorial could have appeared in a legal journal: "The authorities in Ottawa should take notice of the matter, and prevent the occurrence of any such unseemly, and so far as the arrest was concerned,

illegal conduct in the future." It is scarcely necessary to say that the authorities in Ottawa have nothing to do with the matter, and it is trite learning that if a judge "is assaulted, libelled or abused within what may fairly be called the precincts of his court, this is a contempt, and the judge may summarily order the arrest of the pe. on committing the contempt." It is true that this power is seldom exercised, and the books say that it is better for a judge to proceed in the usual way by attachment, but, until your article was written, no legal journal or authority had ever called in question a judge's power to protect himself from insult in the precincts of his court.

Had your article appeared in any other than a legal journal, I would not write this note, as the public know how prone reporters are to colour incidents to make sprightly paragraphs, but in a legal journal the members of the profession expect a fair discussion of their conduct if any comment upon it is considered necessary.

AN OFFICER OF THE COURT.

Halifax.

[We have pleasure in publishing the above letter, and shall be glad to give reasonable space to any other explanation or statement of facts submitted either by Judge Meagher or his friends. What appeared in this journal was published in good faith and without any desire to injure the Judge; we having, as we conceived, a duty in the premises. If the facts are true, as submitted to this journal, the right of comment certainly existed, and we did not seek to go beyond such right. If by any mistake or incorrectness of fact we have done Judge Meagher an injustice, we shall be only too glad to set the matter right, and every opportunity will be given in these columns to have the truth appear before the public.]

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Que.] TOUSSIGNANT *v.* NICOLET. [May 14.

Appeal—Jurisdiction—Annulment of proces-verbal—Matter in controversy.

The Supreme Court of Canada has no jurisdiction to entertain an appeal in a suit to annul a proces-verbal establishing a public highway notwithstanding that the effect of the proces-verbal in question might be to involve an expenditure of over $2,000 for which the appellants' lands would be liable for assessment by the municipal corporation. *Dubois* v. *Village of Ste. Rose*, 21 Can. S.C.R. 65; *The City of Sherbrooke* v. *McManamy*, 18 Can. S.C.R. 594; *County of Vercheres* v. *Village of Verennes*, 19 Can. S.C.R. 365, and *Bell Telephone Co.* v. *City of Quebec*, 20 Can. S.C.R. 230 followed. *Webster* v. *City of Sherbrooke*, 24 Can. S.C.R. 52, 268, and *McKay* v. *Township of Hinchinbrooke*, 24 Can. S.C.R. 55, referred to. *Reburn* v. *Parish of Ste. Anne*, 15 Can. S.C.R. 92, overruled. Appeal quashed with costs.

Lafleur, K.C., for the motion *Atwater*, K.C., contra.

N.S.] GRANT *v.* ACADIA COAL CO. [May 27.

Negligence—Working of mines—Statutory mining regulations—R.S.N.S. (5 ser.) c. 8—Fault of fellow-workmen.

The defendant company employed competent officials for the superintendence of their mines, and required that the statutory regulations should be observed. A labourer was sent to work in an unused balance which had not been fenced or inspected and an explosion of gas occurred from the effects of which he died. In an action for damages by his widow,

Held, reversing the judgment appealed from (TASCHEREAU and SEDGEWICK, JJ., dissenting) that as the company had failed to maintain the mine

in a condition suitable for carrying on their works with reasonable safety they were liable for the injuries sustained by the employee, although the explosion may have been attributable to neglect of duty by fellow-workmen. Appeal allowed with costs.

Mellish, for appellant. *Newcombe*, K.C., and *Drysdale*, K.C., for respondents.

N.B.] CORNWALL *v.* HALIFAX BANKING CO. [May 27.

Insurance—Application—Beneficiary not named in policy—Right to proceeds—Accident policy—Act for benefit of wives and children.

Where, through error, and unknown to the insured, the beneficiary mentioned in the application for insurance is not named in the policy, he is nevertheless entitled to the benefit of the insurance. DAVIES and MILLS, JJ., dissenting.

Per SEDGEWICK, J.—The New Brunswick Act for securing to wives and children the benefits of life insurance (55 Vict. c. 25) applies to accident insurance as well as to straight life. Appeal allowed with costs.

C. J. Coster, for appellant. *Armstrong*, K.C., for respondent.

Ont.] CLERGUE *v.* MURRAY. [May 27.

Principal and agent—Sale of land—Authority to agent—Price of sale.

M., owner of an undivided three-quarter interest in land at Sault Ste. Marie, telegraphed to her solicitor at that place "sell if possible, writing particulars; will give you good commission." C. agreed to purchase it for $600 and the solicitor telegraphed M. "Will you sell three quarter interest, sixty-seven acre parcel, Korah, for six hundred, hard cash, balance year? Wire stating commission." M. replied "Will accept offer suggested. Am writing particulars; await my letter." The same day she wrote the solicitor: "Telegram received. I will accept $600; $300 cash and $300 with interest at one year. This payment I may say must be a marked cheque at par for $300 minus your commission, $15; and balance, $300, secured." The property was encumbered to the extent of over $300, and the solicitor deducted this amount from the purchase money and sent M. the balance which she refused to accept. He also took a conveyance to himself from the former owner, paying off the mortgage held by the latter. In an action against M. for specific performance of the contract to sell:

Held, affirming the judgment of the Court of Appeal that the only authority the solicitor had from M. was to sell her interest for $585 net, and the attempted sale for a less sum was of no effect.

Held, further, that the conveyance to the solicitor by the former owner was for M.'s benefit alone. Appeal dismissed with costs.

Ritchie, K.C., and *Marsh*, K.C., for appellant. *Aylesworth*, K.C., for respondent

Ont.] G.T.R.W. Co. *v.* MILLER. [May 27.

Negligence — Railway train — Collision — Duty of engineer — Rules — Contributory negligence.

By rule 232 of the G.T.R. Co. "Conductors and enginemen will be held equally responsible for the violation of any of the rules governing their trains, and they must take every precaution for the protection of their trains even if not provided for by the rules." By rule 52 enginemen must obey the conductor's orders as to starting their trains unless such orders involve violation of the rules or endanger the train's safety, and rule 65 forbids them to leave the engine except in case of necessity. Another rule provides that a train must not pass from double to single track until it is ascertained that all trains due which have the right of way have arrived or left. M. was engineman on a special train which was about to pass from a double to a single track and when the time for starting arrived he asked the conductor if it was all right to go, knowing that the regular train passed over the single track about that time. He received from the conductor the usual signal to start and did so. After proceeding about two miles his train collided with the regular train and he was injured. In an action against the company for damages in consequence of such injury:

Held, affirming the judgment of the Court of Appeal that M. was not obliged before starting to examine the register and ascertain for himself if the regular train had passed, that duty being imposed by the rules on the conductor alone; that he was bound to obey the conductor's order to start the train, having no reason to question its propriety; and he was, therefore, not guilty of contributory negligence in starting as he did. Appeal dismissed with costs.

Walter Cassels, K.C., and *Rose*, for appellant. *Clark*, K.C., and *Campbell*, for respondent.

Ont.] TOWN OF AURORA *v.* VILLAGE OF MARKHAM. [June 9.

Appeal — Quashing by-law — Appeal de plano — Special leave.

The appeals to the Supreme Court from judgments of the Court of Appeal for Ontario are exclusively governed by the provisions of 60-61 Vict. c. 34, and no appeal lies as of right unless given by that Act. Therefore there is no appeal de plano from a judgment quashing a by-law (3 Ont. L. R. 609) though an appeal is given in such case by the Supreme and Exchequer Courts Act.

The Supreme Court will not entertain an application of special leave to appeal under the above Act after a similar application has been made to the Court of Appeal and leave has been refused.

Application for leave to appeal refused.

Aylesworth, K.C., for motion. *Raney*, contra.

Que.] ROYAL ELECTRIC CO. *v.* HEVE. [June 9.

Negligence—Operations of a dangerous nature—Supplying electric light—Insulation of electric wires.

The defendants are a company engaged in supplying electric light to consumers in the city of Montreal under special charter for that purpose. They placed a secondary wire, by which electric light was supplied to G.'s premises in close proximity to a guy wire used to brace primary wires of another electric company which, although ordinarily a dead wire, might become dangerously charged with electricity in wet weather. The defendants' secondary wire was allowed to remain in a defective condition for several months immediately preceding the time when the injury complained of was sustained, and it was at that time insufficiently insulated at a point in close proximity to the guy wire. While attempting to turn on the light of an incandescent electric lamp on his premises, on a wet and stormy day, G. was struck with insensibility and died almost immediately. In an action to recover damages against the company for negligently causing the injury,

Held, affirming the judgment appealed from, that the defendants were liable for actionable negligence as they had failed to exercise the high degree of skill, care and foresight required of persons engaging in operations of a dangerous nature. Appeal dismissed with costs.

Atwater, K.C., and *Champagne*, K.C., for appellants. *Brodeur*, K.C., and *Bissonet*, for respondent.

Ont.] RICE *v.* THE KING. [June 11.

Appeal—Criminal case.

The Act of the Dominion Parliament respecting appeals from the Court of Appeal for Ontario to the Supreme Court (60 & 61 Vict c. 34) applies only to civil cases. Criminal appeals are still regulated by the provisions of the Criminal Code. Motion dismissed.

Robinette, K.C., for motion. *Cartwright*, K.C., and *H. Guthrie*, K.C., contra.

Province of Ontario.

COURT OF APPEAL.

Moss, J.A.] [July 4.

TRUSTEES OF SCHOOL SECTION 5, CARTWRIGHT *v.* TOWNSHIP OF CARTWRIGHT.

Leave to appeal—Public schools—Selection of site.

This was an application for leave to appeal from the order of a Divisional Court (ante p. 548) allowing an appeal from an order of a judge in Chambers, and granting a mandamus to the municipality requiring it to

pass a by-law to issue debentures for the purpose of a school site and erection of a school house.

Held, that as the first order had been made in Chambers, and as the applicants were the respondents in the Divisional Court, and would have been entitled to appeal as of course if the motion had been heard in the first instance by a judge sitting in court, and as there were reasons of a substantial kind for questioning the judgment complained of and affecting the discretion to be exercised; and as there were questions as to the construction of a statute and the matter was of public interest, leave should be granted. Order made.

Aylesworth, K.C., for township. *Riddell*, K.C., for school trustees.

Osler, J.A.] [Sept. 5.

IN RE EQUITABLE SAVINGS L. & B. ASSOCIATION.

Companies—Ontario Winding up Act—Appeal to Court of Appeal—Practice on appeal—Final order.

Ontario Joint Stock Companies Winding Up Act, R.S.O. 1897, c. 222, s. 27, contains the Code of proceedings on an appeal from any order or decision of the Court under that Act, no provision being made in the consolidated rules or elsewhere. There is no provision that reasons pro and con the appeal are required, or any delivery or settlement of the proposed case. The practice when the case has come before a single judge has been to send up the original papers and hear the appeal upon them.

Semble, an order of a County Judge rescinding an order previously made by him under s. 41 of the above Act for the dissolution of a company is a final order, and therefore an appealable one.

C. D. Scott, for the respondent. *Aylesworth*, K.C., for the appellant.

From Meredith, C.J.] [Sept. 9.

PROVIDENT CHEMICAL WORKS *v.* CANADA CHEMICAL MANUFACTURING CO.

Trade mark—Fancy name—Descriptive letters—Forum—Exchequer Court.

The letters C.A.P., standing for the words "cream acid phosphates," a fancy name for acid phosphates manufactured by the plaintiffs, were held to constitute a valid trade mark, and an injunction was granted against the use thereof by the defendants, who had used these letters in the sale of goods of the same class, but ostensibly as standing for the words "calcium acid phosphates."

Judgment of MEREDITH, C.J., 2 O.L.R. 182; 37 C.L.J. 668, reversed.

The amendments to the Exchequer Court Act since the decision in *Partlo* v. *Todd* (1877), 14 A.R. 444 (1888), 17 S.C.R. 196, have not had

the effect of giving that Court exclusive jurisdiction to adjudicate as to the validity of a registered trade mark, and in answer to an action in the High Court of Justice for Ontario to restrain the infringement of a registered trade mark, its invalidity may be shewn.

Betts, and *Hume Cronyn*, for appellants. *Shepley*, K.C., and *Flock*, for respondents.

From Boyd, C.] SAWERS *v.* CITY OF TORONTO. [Sept. 9.

Assessment and taxes—Distress—Owner—Agreement to purchase—Local improvement rates.

The judgment of BOYD, C., 2 O.L.R. 717; ante p. 27, was affirmed.

McCullough, and *McKeown*, for appellant. *Fullerton*, K.C., and *Chisholm*, for respondents.

From Ferguson, J.] BEAM *v.* BEATTY (No. 2). [Sept. 9.

Infant—Bond—Ratification.

A bond, with a penalty, of an infant to indemnify against loss or damage in respect of shares in a company purchased on the faith of representations made by the infant is void and not merely voidable, and cannot be adopted and ratified by the obligor after he has attained his majority.

Judgment of FERGUSON, J., 3 O.L.R. 345, reversed.

McBurney, for appellant. *Lynch-Staunton*, K.C., and *Marquis*, for respondent.

From Street, J.] [Sept. 9.

RITCHIE *v.* VERMILLION MINING COMPANY.

Company—Mining company—Purchase and sale of land—Irregularities in proceedings.

A mining company subject to the provisions of the Ontario Companies Act, R.S.O. 1897, c. 191, and the Ontario Mining Companies Incorporation Act, R.S.O. 1897, c. 197, has power to buy and sell land, and a sale in good faith of all the land owned at the time by the company is not necessarily invalid, for there is nothing to prevent the business of the company being continued by the purchase of other land.

Nor can such sale made in good faith be restrained at the instance of a dissentient minority of shareholders on the ground that irregularities have occurred in the conduct of the proceedings of the company leading up to the sale, or on the ground that the approving majority are also shareholders in a rival company and are in carrying out the sale furthering the interests of that rival company.

Judgment of STREET, J., 1 O.L.R. 654; 37 C.L.J. 347, affirmed.

Aylesworth, K.C., and *N. F. Davidson*, for the appellants. *Wallace Nesbitt*, K.C., *Riddell*, K.C., and *Robert McKay*, for the respondents.

From Macwatt, Co.J.] REX *v.* TREVANNE. [Sept. 18.

Depositions of witness—Criminal law—Inability of witness to attend trial – Preliminary enquiry—Opportunity to cross-examine—Crim. Code, s. 687.

At a preliminary enquiry before a magistrate on a charge of indecent assault on a female, the latter's depositions were taken, the prisoner being represented by counsel, but before her cross-examination was concluded the proceedings were adjourned to a fixed date on account of her illness. Meanwhile, after consulting the County Crown Attorney, the magistrate determined to send the case to Sarnia, and so telegraphed to prisoner's counsel asking a reply whether he would come up or not. Counsel replied that if the magistrate intended to send the prisoner to trial at any rate, it would be no use of his coming, and accordingly he did not further attend the proceedings. On the day to which adjournment had been made, the magistrate went out to the residence of the witness, and obtained her signature to her depositions as already taken, neither the prisoner nor his counsel being present, and afterwards resumed the enquiry at his own office, the prisoner being present, but not the witness, and on the evidence already taken the prisoner was committed to trial. At the trial the witness was proved to be too ill to attend and her depositions taken as above were tendered by the Crown and admitted.

Held, that, in view of s. 687 of the Criminal Code, the depositions were improperly received in evidence, the prisoner's counsel not ever having had a full opportunity of cross-examining the witness, and not having waived that right as contended by the Crown.

Ford, for the Crown. *Tremeear*, for the prisoner.

From Lount, J.] [Sept. 19.

NELSON COKE AND GAS CO. *v.* PELLATT.

Company—Preference shares—Creation of—Validity—Memorandum and articles of association—Subscription for shares—Contract by deed—Delivery to agent of company—"Issue" and "allotment" of shares—Calls—Resolutions and letters—"Offer"—Withdrawal—Formal allotment.

In an action by a company against an alleged subscriber for shares to recover the subscription price, the defendant contended that preference shares of the company had not been lawfully created, there not having been any special resolution of the company for that purpose, as provided by s. 55 of the Companies Act of British Columbia, R.S.B.C. c. 44, under which the company was incorporated.

Held, that provisions for preference shares in the memorandum and articles of association were legal and valid features of the constitution of the company. *Ashbury* v. *Riche*, L.R. 7 H.L. 653, and *In re South Durham Brewery Co.*, 31 Ch. D. 261, followed.

The defendant signed and sealed a document in the form of a covenant or agreement with five named persons, described as the applicants for the company's charter, and with the company when incorporated, to become a shareholder in the company to the amount of 200 shares of common and 200 shares of preference stock, when the same should be issued and allotted to him, and to accept the stock when allotted to him, and to pay for the same when a call or calls should be made upon him by the directors.

The defendant afterwards signed and sealed a document contained in a stock subscription book, reading: "We, the undersigned, do hereby severally subscribe for, and agree to take, the respective amounts of the capital stock of the Nelson Coke and Gas Company, Limited, and of the class thereof, set opposite to our respective names as hereunder and hereinafter written, and to become shareholders in said company, to the said amounts, when and as the said stock so subscribed for by us, severally, shall be issued and allotted to us; and we do hereby severally covenant, each with the other and others, with the said company and the directors thereof, to accept the said stock when the same shall be allotted to us, severally, and to pay for the same, to the said company, at par, when and as a call or calls for payment shall be made upon us severally by the directors." The amounts were the same as in the first instrument. The defendant and two other persons who had executed the first instrument, executed the new one a few days after the first. The other two struck their names out of the first instrument, but the defendant did not do so. He said that in executing the second document he did not intend it as a subscription for 400 shares in addition to the former.

Semble, that the appellant's execution of the second document did not supersede the first; but nothing turned upon that question, the legal effect of both being the same.

When the defendant executed the agreement he was in constant communication with a director of the company, and they were associated together in obtaining subscriptions for shares on behalf of the company.

Held, that the contract was one entered into by the appellant with the company, at the request of one of its directors, acting for and on behalf of the company; that it was to be treated as an ordinary contract between individuals; that it was something more than an application or request for shares: it had all the elements of a completed contract, by deed, for valuable consideration; the deed was not delivered in escrow, but was delivered to the company through its agent; the contract, being by deed, was not revocable, but was at once operative without the company's acceptance, and, not having been repudiated by the company, was valid and binding on both parties. *Xenos* v. *Wickham*, L.R. 2 H.L. 296, followed.

The appellant's subscription was made in September, 1899, and on the 4th December following the board passed a resolution that the subscribed

for preferred stock be called up in full, and that the treasurer notify all subscribers to pay the amount of their subscriptions on or before the 18th January, 1900. On the 16th December the treasurer wrote to the defendant notifying him that the directors had made a call upon the preference shareholders for the whole amount of the stock subscribed by them, and mentioning the date and place for payment and the number of shares and amount required. On the 13th March, 1900, the board passed a similar resolution with respect to the shares of common stock, and calling for payment in full on or before the 12th April, and the treasurer wrote to the defendant notifying him in the same way.

Held, that the defendant's contract being to take the shares when and as they were "issued" and "allotted," these words, taken together, meant no more than some signification by the company of its assent that the defendant was or had become the owner of the number of shares which he had agreed to take, and that the resolutions and letters were a sufficient issue and allotment of the shares, and the defendant thereupon became bound to accept and pay for them.

The defendant, being repeatedly pressed for payment, asked for time. In November, 1900, he assumed to withdraw his offer, and the company then made a formal allotment of the shares to him, and notified him thereof.

Semble, that the formal allotment, if necessary, was in time; the appellant could not get rid of the obligation of his deed by any mere notice of repudiation and withdrawal. *Nasmith* v. *Manning*, 5 A.R. 126, 5 S.C.R. 440, distinguished.

Judgment of LOUNT, J., 2 O.L.R. 390; 37 C.L.J. 698, reversed.

Watson, K.C., for plaintiffs (appellants). *H. J. Scott*, K.C., and *Macrae*, for defendant.

Maclennan, J.A.] [Oct. 2.

CENTAUR CYCLE CO. *v.* HILL.

Court of Appeal—Joint appeal of two parties—Security furnished by one—Payment into Court—Abandonment of appeal—Motion for payment out—Costs—Set off—Increased security—Limitation of amount—Rule 830.

Two defendants appealed to the Court of Appeal from a judgment of the High Court; the notice of appeal was a joint one; and $200 was paid into Court, as security for the respondents' (plaintiffs') costs of appeal, by one of the appellants, but in the name of both and for the joint benefit.

Held, that the appellant who had paid the money in was not entitled, upon abandoning his appeal, to have the money paid out to him, the other appellant desiring and intending to avail himself of the deposit and to proceed with the appeal.

The first appellant's notion for payment out being dismissed with costs to the other appellant, and it appearing that by the judgment appealed against the first appellant was entitled to be indemnified by the other against all amounts payable by the first under the judgment, and to recover from the other any amount so paid and his costs of the action, etc.

Held, that the costs of the motion should be set off against anything the first appellant might already have paid, or might ultimately have to pay under the provisions of the judgment referred to, as the result of the appeal.

Held, under the circumstances of the case, that the appeal would be more expensive than usual, and that the security should be increased to $400; but that upon the true construction of Rule 830, sub.-ss. 1, 4, 8, where security is given by payment into Court, it cannot be increased to more than $400.

Middleton, for plaintiffs. *W. H. Blake*, K.C., and *C. W. Kerr*, for defendant Hill. *Raney*, for defendant Love.

HIGH COURT OF JUSTICE.

Divisional Court]. REX *v.* JAMES. [July 18.

Fruit Marks Act, 1891, 1 Edw. VII., c. 27 D.—Fraudulent packing—Possession for sale—Faced or shewn surface—Meaning of.

The mere having in possession packages of fruit fraudulently packed, such possession being for the purpose of sale, is an offence under s. 7 of the Dominion Fruit Marks Act, 1891, 1 Ed. VII., c. 27, it being immaterial that no one was imposed on, and no fraud intended by the person charged with the offence.

"The faced or shewn surface" of the package is not limited to the branded end, but applies to any shewn surface thereof.

J. D. Montgomery, for defendant. *R. B. Beaumont*, contra.

Street, J., Britton, J.] [Sept. 17.

MERCHANTS BANK *v.* SUSSEX.

Ca. sa.—Issue of concurrent after expiry of original—Con. Rule 874—Motion for discharge from custody—Appeal from discretion of Judge—Discretion of Divisional Court.

A concurrent writ of ca. sa. should not be issued after the original writ with which it is concurrent has expired by lapse of time under Con. Rule 874, and will be set aside as having been improperly issued.

The right to make a motion to be discharged from custody upon the merits and upon the ground of concealment by the plaintiff of material facts upon the application founded upon Con. Rule 1047 is confined to the case of an order for arrest made before judgment and does not extend to a ca. sa.

The defendant had been arrested under an invalid concurrent writ of ca. sa. and was in the custody of a sheriff to the knowledge of the plaintiff's solicitor who prepared an affidavit entirely suppressing the fact of the arrest and upon which he obtained an order for and issued a new writ of ca. sa. Upon an appeal to a Divisional Court from a judgment of a Judge in Chambers refusing to set aside the latter order and writ and motion to be discharged,

Held, that the application should not be treated as an appeal upon new material from the discretion of the Judge who made the order, as such an application having for its object the setting aside of the order and writ must upon the authorities have failed: *Damer* v. *Busby* (1871) 5 P. R. 356, at p. 389, but was really one to the undoubted jurisdiction of the Court to set aside in its discretion orders which had been made by the wilful concealment or perversion of material facts and that a clear case had been made out and the order and writ should be set aside and prisoner discharged from custody.

Judgment of FALCONBRIDGE, C.J.K.B., reversed.

J. F. Jones, for appeal. *J. H. Moss*, contra.

Street, J.] REX EX REL. MCFARLANE *v.* COULTER. [Sept. 26.

Quo warranto—Election of Reeve—Fiat of County Judge and Proceedings in County Court—Order of County Judge setting aside—Appeal to Judge in Chambers.

In a quo warranto proceeding in which the fiat giving leave to serve a notice of motion to set aside the election of a township reeve had been granted by a County Court Judge and the proceedings entitled in his County Court, a motion was made before him to set aside all the proceedings in the relation, and he made an order setting them aside and quashing them with costs. On an appeal to a Judge in Chambers,

Held, that no appeal from such an order lies to a Judge in Chambers, as appeals from the County Courts in ordinary cases are given to a Divisional Court, and the appeal from the decision of a County Court Judge to a Judge of the High Court given by 55 Vict., c. 42, s. 187, sub-s. 3 (O.) "under this section" is from the decision of the County Court Judge upon the merits on the trial of the contested election, and not the quashing without a trial of the fiat upon which the proceedings were founded.

Quære whether the County Court Judge had power to make such an order.

Reg. ex rel. Grant v. *Coleman* (1882) 7 A.R. 619, referred to.

Douglas, K.C., for appellant. *Rodd*, contra.

Boyd C.] QUIRK *v.* DUDLEY. [Sept. 26.

Injunction—Oral slander—Mind-reading.

Injunction granted until the trial to restrain the defendants who profess to be mind-readers, pretending to give information at their public entertain ments as to the cause of the death of the plaintiff's husband, intimating as they had done at such entertainments, that he had met with his death at the hands of a supposed friend, and thereby suggesting the idea that his late partner and the plaintiff were concerned in the matter.

Couch, for plaintiff. *Muir*, for defendant.

Boyd, C.] RE TURNER, TURNER *v.* TURNER. [Sept. 26.

Will—Construction—Devise to wife subject to condition of making a will in favour of children.

A testator devised his estate to his wife absolutely for herself, her heirs and assigns forever, in lieu of dower, but upon the express condition that she make a will providing for two of his children "and if she should fail or neglect to make the will it's my will that instead of my said estate being so devised and bequeathed to her, the same shall be equally divided share and share alike, between my said two children, their heir and assigns forever. All residue of my estate not herein-before disposed of I give and devise and bequeath unto my said wife."

Held, that under the above devise, the widow, who had complied with the conditions by making the will in favour of the two children, took an estate in fee simple in lands forming part of the said residuary estate, but that she could not revoke the will, and the judgment should so declare.

Proudfoot, K.C., for motion. *Harcourt*, for official guardian.

Province of Nova Scotia.

SUPREME COURT.

Townshend, J.] KINSMAN *v.* ONDERDONK. [May 23.

Attachment of debts—Bank official—Service—Priority—Order IX., rule 8.

A garnishing summons had been served on the Bank of Nova Scotia by two creditors of an absconding debtor. One was served on the president

and secretary of the bank at the head office; the other had previously served a summons on the manager of the branch of the bank in which the money of the absconding debtor was deposited, and he subsequently served the president.

Held, that the first service on the president at the head office must have priority.

Roscoe, K.C., and *Fullerton*, for the respective creditors. *Webster*, K.C., for Bank of Nova Scotia.

Province of New Brunswick.

SUPREME COURT.

McLeod, J.] STEWART *v.* FREEMAN (No. 2). [Oct. 9.

Bill—Demurrer.

A bill is not demurrable unless it absolutely appears that on the facts disclosed in the bill being established at the hearing the bill must be dismissed; and where the case for relief contained in the bill depends upon facts admitting of variation in their proof from their statement in the bill demurrer will not lie, though no relief, or relief in modified form, may be granted at the hearing.

A. B. Connell, K.C., in support of demurrer. *D. McLeod Vince* and *J. C. Hartley*, contra.

Province of Manitoba.

KING'S BENCH.

Full Court.] LEWIS *v.* BARRE. [July 12.

Sale of goods—Delivery in accordance with contract—Acceptance and rejection—Quality of goods.

This was an action for butter sold and delivered. The plaintiff's contention was that the defendants had contracted for all the butter they had on hand and such as they might manufacture during 1899 without any warranty as to quality. The defendant accepted part and subsequently rejected the remainder. At the trial it was held by RICHARDS, J., that the defendant contracted for "fine" butter only, that it was not proved to

have been of that quality and the property had not passed. Upon appeal to the Full Court,

Held, that the quality was a condition of the contract and the acceptance of part of the butter as "fine" did not bind the defendant to accept that which was not in that condition. See *Dyment* v. *Thompson*, 13 S.C.R. 303. Appeal dismissed with costs.

Howell, K.C., and *Mathers*, for plaintiff. *Ewart*, K.C., and *Robson*, for defendant.

Province of British Columbia.

SUPREME COURT.

Full Court.] BOYLE *v.* VICTORIA YUKON TRADING COMPANY. [July 29.

Foreign judgment, action on—Proof of—Exemplification—Judgment founded on void contract—Right to question—Final and unalterable—Company—Extra-territorial contracts of carriage—Ultra vires—B.N.A. Act, ss. 91 and 92.

Appeal from judgment of DRAKE, J., giving judgment for plaintiff on a judgment recovered in the Yukon Territory. The company was incorporated in British Columbia and was sued for damages on a contract to carry goods from Bennett in British Columbia to Dawson in the Yukon Territory.

Held, a default judgment obtained in a foreign jurisdiction though liable to be set aside so long as it stands, is "final and conclusive" within the meaning of that expression as applied to foreign judgments, and consequently it may be sued on in this province.

In an action on a foreign judgment the defendant is entitled to challenge the validity of the judgment on the ground that it is manifestly erroneous such as being founded on an ex facie void contract.

The province may create a company with power to undertake extra-territorial contracts of carriage and so it is not ultra vires of a company incorporated in British Columbia to contract to carry goods from British Columbia to a point in the Yukon Territory.

Per MARTIN, J.: An exemplification of judgment under the seal of the court in which the judgment was pronounced is equivalent to the original judgment exemplified and notice under the Evidence Act of intention to produce it in evidence is unnecessary.

L. P. Duff, K.C., for appellant. *F. Peters*, K.C. (*W. M. Griffin*, with him), for respondent.

Book Reviews.

Conveyancing and other Forms. A collection of precedents adapted to meet the present law; comprising forms in common use, with clauses applicable to special cases. Second edition, revised and enlarged, by A. H. O'Brien, M.A., of Osgoode Hall, Barrister-at-Law, author of "Chattel Mortgages and Bills of Sale," "A Digest of the Game and Fishing Laws of Ontario;" Assistant Law Clerk of the House of Commons: Canada Law Book Company, Toronto, 1902.

For many years the Ontario practitioner was obliged, with more or less labour and thought, to draft any document required in his practice, or else was driven to adapt forms taken from English and American books on conveyancing, often unsuitable and inappropriate to the conveyancing usages of Ontario

The first edition of Mr. O'Brien's book appeared in 1893. It was carefully and accurately compiled, and the forms given in it were such as most lawyers needed in the demands of their business; but this and all other books of conveyancing forms may now be said to be superseded by the work before us, which is a revised and enlarged edition of Mr. O'Brien's first book, yet so changed and so comprehensive as to be in fact a new work rather than a second edition.

A number of forms which had ceased to be of practical use are now omitted, and the forms remaining have been revised or re-written with care. The additions are numerous, and, as stated in the preface, are chiefly in relation to companies, banking, copyright, Crown lands, mining, bills and notes, and maritime law, many of which forms have become more necessary within the last few years. In addition to those of Manitoba, there have been added forms from British Columbia, North-West Territories and Nova Scotia, also an interesting sketch of the conveyancing practice of Quebec.

The company forms include those for by-laws, syndicate agreements for purchase and expropriation of property and many others. With the forms relating to copyrights and patents appear useful extracts from the statutes and Orders-in-Council giving the rules and regulations in regard to these matters. This information has not before been given in any book of forms or conveyancing, and will save the necessity of corresponding with officials, or a study of the Revised Statutes of the Dominion from the last, and now antiquated, revision of 1886 to the present date, to ascertain what, if any, amendments were made, and whether Orders-in-Council have been from time to time passed dealing with the subject.

Throughout the book appear notes of cases and extracts from statutes, where these are valuable to explain the necessity of any particular clause in

the text, or to call attention to some danger of error, and in the appendix is a concise exposition on the law of dower as it now stands in the various provinces.

The convenience and utility of a good, accurate and practical book of legal forms can hardly be over-estimated, and the profession is indebted to Mr. O'Brien for a work which can not, we think, fail to meet its requirements in this regard. The work of the printer is excellent, resulting in the production of a book which is perhaps the best in style and arrangement that has as yet been issued by any law publisher in this country.

A treatise on the law of Fraud and Mistake, by WILLIAM WILLIAMSON KERR; third edition by SIDNEY E. WILLIAMS, of Lincolns Inn, Barrister at Law. London: Sweet & Maxwell, Limited, 3 Chancery Lane, Law Publishers, 1902.

This is a new addition of a standard work and will be gladly received by the profession. It brings the cases down to the end of November, 1901. The last edition was published in 1883. Since then many important alterations have taken place both in the law of fraud and in the law of mistake. This has rendered necessary a thorough reconsideration of the whole subject. This Mr. Williams appears to have carefully attended to. Too much praise cannot be bestowed upon these well-known publishers for the material part of the work.

Accidents to Workmen, by R. M. MINTON-SENHOUSE. Second edition, London: Sweet & Maxwell, 3 Chancery Lane, W. C., Law publishers, 1902.

This is a treatise on the English Employers' Liability Act, Lord Campbell's Acts, and The Workmen's Compensation Acts and matters relating thereto.

One is not surprised to be told in the preface that much of the first edition (by Messrs. Minton-Senhouse and Emery) has required to be rewritten and remodelled, for no branch of the law has given a greater amount of work to courts and text writers. The treatise is excellent in itself, and the author has arranged a convenient system of references whereby the reader is enabled to ascertain with ease that part of any of the Acts treated of to which he may desire to refer. The work cannot be said to be in any way exhaustive; but it will, nevertheless, be a very useful addition to any lawyer's library. It would be much more so, at least in this country, if references had been made to the leading Canadian authorities. It is surprising that with few notable exceptions English text writers do not refer to our cases. Where the branch of law discussed is of equal interest in both countries this omission is a mistake. Doing so would add largely to the value of the book not only in Canada but in all other Colonial possessions.