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COMBINES.

There is no doubt that in any arrangement to limit trade, the prime factor is control. It may be control of the output, or the producers, or of the retail distributors, but everything centres on the device accepted to prevent competition.

There is nothing new about the matter to those in trade, but to lawyers it suggests novel developments in a subject to which little attention has been given.

Agreements in restraint of trade are familiar enough in respect to bargains not to compete within a limited area or for a prescribed time, but an essentially different problem is presented when the understanding is such that while all may compete anywhere or for any time, they agree to refrain from getting any advantage by the now classic "bargain price."

Our Criminal Code defines a conspiracy "in restraint of trade," (s. 516), as the agreement to do or procure to be done an unlawful act in restraint of trade. This leaves untouched a combination to do a lawful act which may be the foundation of a civil action, if it causes damages: *Quinn* v. *Leatham* (1901) A.C., p. 530.

Now, what is "restraint of trade?" The expression means the restricting of any one from doing as he pleases in trading. Hence, it involves a compelling: and when that may be the consequence of a perfectly lawful act, there is no ground for a criminal information unless the act producing the compulsion is unlawful.

The Code further provides (s. 518) that no prosecution shall be maintainable for conspiracy "for doing any act or causing any act to be done *for the purpose of a trade combination* unless such act is an offence *punishable by statute*. And the "trade combination" here spoken of is a combination "for regulating or altering the *relations* between any persons being masters or workmen, or the *conduct* of either in respect of his business or em-

ployment or contract of employment or service. Hence, unless an act affecting the relations between or conduct of members of those classes is punishable by statute, it is not one which is unlawful for persons to agree to do.

The offences created by statute on this subject are various, and are dealt with in ss. 520 to 526 of the Code, as amended by 62 & 63 Vict. c. 46, s. 1, and by 64 & 65 Vict. c. 46, s. 520. Those chiefly of interest at the present time are set out as follows in s. 520 (as amended):

"Everyone is guilty of an indictable offence and liable to a penalty not exceeding four thousand dollars, and not less than two hundred dollars, or to two years' imprisonment, or, if a corporation, is liable to a penalty not exceeding ten thousand dollars, who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company:

(*a*) To unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or

(*b*) To restrain or injure trade or commerce in relation to any such article or commodity; or

(*c*) To unduly prevent, limit or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or

(*d*) To unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property.

2. Nothing in this section shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees."

There are many persons whose interests may be brought within these provisions. As, for instance, the manufacturer, the wholesaler, the retailer, the common carrier and last, but not least, the consumer.

There are two sorts of combination usually effected. Typical of one species is the agreement between manufacturers to sell on favourable terms only to those occupying a certain trade status, such as wholesalers as distinguished from retailers. Another species is the agreement between common carriers or wholesalers to give a rebate to all without distinction who deal exclusively with the combination.

The former is based upon the idea that it is the right of any one to refuse to sell except to those he desires, and at such prices as he may choose. But it is an offence to "agree to unreasonably enhance the price" of any article or commodity. It is not necessary now that the agreement should be to do so "unlawfully." The combination to enhance is sufficient if the enhancement is unreasonably great.

It has heretofore seemed to be a sufficient excuse for such an agreement that to sell to the retail trade would injure the wholesaler. But if the manufacturer can sell, with profit, to a wholesaler at a price, it is difficult to argue that any addition to that price, based only upon desire to protect the wholesaler and confessedly not necessary to give a legitimate profit on a sale to him, is not an unreasonable enhancement. It is only reasonable if the rightfulness of combines for that purpose is admitted, which is begging the question.

The other agreement is a subtler form to accomplish the same end. It is clearly based on *The Mogul Steamship Co.* v. *McGregor* (1892) A.C. 25. In that case the giving of rebates was treated as an unobjectionable business practice. But, subject to the effect of the word "unduly" in our statute, it would seem that combination working by that means is one of the very evils aimed at by the Code.

In the *Mogul case* the combine offered rebates to those shippers who used their vessels to transport their tea. The effect of this was, of course, to secure business and take it away from their rivals. But two facts make an essential difference between what was done there and the operations of present combines. One was the arrangement that if there was no steamer of the combination at hand the shipper might ship in any vessel without losing his year's rebate, and the other feature was that, instead of limiting the transportation facilities, the combine undertook to have additional steamers on hand when their rivals were there.

A combination which agrees to give a rebate for exclusive dealing, but does not provide for outside buying in case of need, nor for extensive stocks, makes a close market and can easily, under the guise of rebates, unduly limit or lessen both the manufacture or production of an article and competition in its sale.

The cardinal principle of present day combines seems to be to gather production into a group and to prevent buyers going outside it. They regulate production so as to keep up the price. A rebate is merely the ruse adopted to bring the operation seemingly within the *Mogul case*. Without it, the combination would not appear legal. With it the moving cause seems to be, but is not, the desire to get a rebate. It is the agreement and arrangement to unduly limit production or competition, or to unreasonably enhance the price that is the offence.

No doubt other reasons for the combination will be suggested, but an agreement which is void of the merits which appeared in the *Mogul case* can hardly expect similar absolution. And one essential difference in the treatment of that decision is this: that while no action may lie, as in it, yet the agreement may be, inter se, illegal and unlawful, and if found to exist, may be evidence of a statutory offence. (See *Mulcahy* v. *Reg.*, L.R. 3 H.L., at p. 317.) To found an action, the conspiracy must invade the legal right of some person and cause him damage. But under the Code (unless the definition of conspiracy in s. 516 governs all cases) that is not necessary, and a conviction may be secured for a conspiracy or agreement in breach of the statute, even though there is no evidence of any overt act which invades the legal rights of any member of the public.

FRANK E. HODGINS.

As we anticipated, knowing the opinion of the Bar in his own neighbourhood, Mr. Justice Mabee's appointment has found favour with those best able to judge of his fitness for a judicial position; and this opinion has, we are told, to the extent of his judicial work up to the present time, been already verified. The new judge is in the prime of life, a sound lawyer and a forceful man. We can well expect that he will make a strong and able judge.

MOTORISTS AS CRIMINALS.

The legislation intended to safeguard the public in reference to the continued recklessness of automobilists is now generally accepted as entirely insufficient to remedy, or even to lessen the evils which were then complained of, and which still exist. An article in our last number dealt principally with the civil side of the question. The criminal aspect of the subject, as will be seen by extract from *Case and Comment,* which we append, is now receiving attention in the United States where the number of these modern juggernauts are very numerous. Something much more stringent in the way of a remedy must be found.

Motor cars, at least in the present initial stage of their use, bear a certain resemblance, so far as civil liability connected with them is concerned, to penned-back water or to the wild animals of a menagerie, or to the use of an electric current. The owner of such dangerous "wild beasts" owes a duty to the public to use extra care in the control and management thereof. Lord Hale says that where one keeps a beast, knowing that its nature or habits are such that the natural consequence of his being loosed is that he will harm men, "the owner must at his peril keep him up safe from doing hurt, for though he used his diligence to keep him up, if he escape and do harm the owner is liable to answer damages": *Fletcer* v. *Rylands,* L.R. 1 Ex. 281. And Bramwell, B., in *Nicolls* v. *Marsland,* L.R. 10 Ex. 260, says: "I am by no means sure that if a man keep a tiger and lightning broke his chain and he got loose and did mischief that the man who kept him would not be liable."

The great difficulty in the enforcement of the law as against these mundane meteors is the almost impossibility of identifying them.

The requirements of the statute that the numbers on these vehicles should be affixed in a conspicuous place and be plainly visible are not complied with. They are not visible even a few yards away; and, going at te speed they often do—generally twice as fast as the law allows—are quite undistiguishable, certainly so at night, when there is the greatest danger. The statute is evaded and ignored, and the police, when appealed to, say they are helpless. The necessity is to make identification so easy that

not only "he who runs may read" the number, but also that he who has been run over may also have had an opportunity of reading it.

The writer of the article above referred to discusses the situation in reference to the criminal aspect of the subject as follows: "A conviction of manslaughter for running over a person with an automobile was recently reported by the daily press in a Philadelphia case where a child five years old was struck and killed, and the driver of the machine after the accident put on more speed and escaped. On a verdict of guilty a sentence of eighteen months' imprisonment was imposed. The case may be appealed, and possibly the conviction may be reversed; but in any event it is a reminder of the fact that the reckless killing of a person, whether by an automobile or by any other means, may constitute manslaughter. Another case widely published by the press was that of the conviction, in Paris, of a wealthy American for the same offence. Other cases of persons killed by automobiles have been reported in numbers sufficient to shew that the question of the criminal liability of those who run the machines in such cases is a matter of some public interest. Many gentlemen run automobiles with full regard for the rights and safety of others; but a powerful machine, capable of tremendous speed, is a dangerous thing in the hands of an inconsiderate or reckless person; and with the great multitude of machines now in use, it is inevitable that many such persons will own or hire automobiles. Criticism and complaint against automobilists must not be unreasonable. They should be subjected to no more severity of treatment than the drivers of other vehicles who endanger the public. But the greater the power and speed, and the greater the danger, the greater must be the care to avoid harm. It is not unfair to automobilists to force against them the well-established principle of the law of negligence, that the care must be proportionate to the danger, and the further rule of the criminal law which makes the negligent killing of a person manslaughter. With the sudden and great multiplication of these vehicles in the streets the law on the subject cannot be brought home to the public too clearly or sharply."

Hon. Mr. Justice Clute, at the opening of the first sittings of the High Court in Belleville, at which he presided, was presented with an address by the Judiciary and Bar of the county expressing both personally and officially their hearty and sincere congratulations upon his well-merited elevation to the Bench, an honour worthy to be bestowed upon one who holds the esteem of the profession and the public. His fellow-practitioners and fellow-citizens felt especially pleased in offering their united felicitations with cordial good wishes for a successful and honoured career, and recalled the many happy associations of the past, and wished him all health and prosperity in the future.

Mr. Justice Clute made a happy and appropriate reply.

Lord Alverstone recently presided at a Moot Court held under the auspices of Gray's-Inn Moot Society, where a question of criminal law was debated. The Lord Chief Justice delivered the judgment of the Court, complimenting those who had taken part. He then referred to the Imperial Criminal Evidence Act of 1898, in connection with some of the arguments on the debate, and upheld the wisdom of allowing prisoners to testify on their own behalf. He expressed his satisfaction with the law as it stands, saying he agreed entirely with the experience of those who, having tried cases under this law and under the old law in England as well as in the colonies, were unanimously in favour of the Act. He could not accept the argument that its operation was to drag lambs to the slaughter, and he could not regard it as compelling people to go into the box in the hope that the prosecution might thereby eke out their case by cross-examination. His experience was that the only comments that a judge ever does make, certainly those he ever ought to make, which are against the prisoner, are in those cases only in which a certain substantial story has been told which admits or would admit of contradiction or denial upon the facts. The learned Chief Justice then continued, "There is one class of cases and one only, namely, sexual cases, such as rape, etc., in which the Act needs to be closely watched, inasmuch as in many cases prisoners will not admit, or insist on denying, that they have ever had anything to do with the woman at all, whereas in a great many of these cases the real defence is consent. In my opinion the Act is a most beneficial piece of legislation."

Even in England the question is sometimes raised as to whether the best men are appointed to the Bench. Mr. Justice Bigham at a recent Guildhall banquet remarked that the Bench of England was a product of the English people, and that although the Lord Chancellor nominates the judges and the King appoints them, it is the people who select and create the body out of which those nominations and appointments are made, and that the Bar being the road by which a man should reach the Bench, he must earn for himself a position at the Bar which will entitle him to that distinction, and "it is before the tribunal of the public that he must justify his pretensions to hold the office on which his aspirations are set." A writer in one of our exchanges remarks, "We wish we could say that this was a rule entirely without exceptions." The condition of things which exists in this country appears also to exist in England, although to a less extent, owing to various reasons which are not necessary at present to enlarge upon.

It has been said that Cervantes smiled Spain's chivalry away; whether this be so or not, it is quite certain that the reforms in legal procedure which have so largely done away with juries in civil cases are responsible for the decay of forensic eloquence in British communities. It appears, however, that oratory is still to the fore in the law Courts of Naples. Indeed, the advocate in that favoured city vies with the actor in drawing a crowd; and as there are over twelve hundred of the former class in practice, we fancy the latter get extremely busy in looking after their laurels. According to one authority the crowds will risk suffocation in order to hear a "prince du parquet." He further tells us that during a peroration by a "prince of the Bar" the audience will "tremble like a billow of the sea," and finally burst out into bravos in defiance of the calls to order of the presiding judge and "the screams of the tipstaves" (les glapissements des huissiers). When the CANADA LAW JOURNAL goes to Europe on its next vacation it will not fail to visit Naples.

THE CRIMINAL LIABILITY OF AN INCITER OR ABETTOR OF SUICIDE.

Each year sees an increase in the number of persons who, from various causes, seek relief from the trials of this life by suicide. The causes of suicide are as varied as the troubles of man, and the circumstances surrounding the death of these unfortunates, vary in almost every case. Some seek death while alone in the privacy of their rooms, while others prefer to die amid the hurry and din of the crowded city street. It is not infrequent that several persons wishing to die, mutually agree that they will kill themselves together, and in many cases one of the several obtains the means employed to produce death.

The Question.—It is in cases of this kind, where there is a mutual agreement to die together, and where for some reason one of the participants fails to accomplish his purpose, that an interesting and novel point of law arises. This point which is interesting alike to both lawyer and laymen is,—what is the criminal liability of the survivor, who has been a party to the agreement, and an abettor of the suicide?

At Common Law.—At the outset the investigator is met by a scarcity of adjudicated cases upon this subject, but there is no question as to the rule at common law. By the common law of England, suicide was considered a crime against the laws of God and man, the lands and chattels of the criminal were forfeited to the King, his body was interred in the highway with a stake driven through the head, and he was deemed a murderer of himself, and a felon felo de se(*a*). One who persuaded another to kill himself, and was present when he did so, was held to be guilty of murder as a principal in the second degree; and where two people mutually agreed to kill themselves together, and the means employed to produce death took effect upon one only, the survivor was held to be guilty of the murder of the one who died(*b*). In the early English cases the question as to whether the one who encouraged the suicide, was present when the act

(*a*) *Hales* v. *Petit*, Plowd. 253-261; Hale's P.C. 411-417, 2 id. 62; Hawk. Ch. 27; 4 Bl. Com. 95, 189, 190.

(*b*) Bac. Max. Reg. 15; *Rex* v. *Dyson*, Rus. & Ry. 523; *Regina* v. *Alison*, 8 Car. & P. 418.

was done, was a very important one. If he were not present at the act which caused the death, then he would be an accessory before the fact, and at the common law escape punishment, under the rule that the aider or abettor could not be tried until the principal was first tried and convicted(*c*). But it seems that the effect of this rule was, and is, largely avoided, by treating the person inciting suicide as a principal, instead of an aider and abettor(*d*).

The English Cases.—The case of *Rex* v. *Dyson*(*e*) was one where a man and woman by agreement went to a body of water, and the woman threw herself into the water and was drowned. The Court held that on account of the defendant Dyson being present and encouraging the woman to do the act, that he was a principal in the second degree, and guilty of murder. In another English case (*f*) the defendant handed the bottle containing laudanum to the deceased, asking her to drink of it, which she did, causing her death. Upon a trial of the case the defendant was held to be guilty of murder. In the case of *Regina* v. *Stornouth*(*g*) there was an agreement to commit suicide between one Stornouth and his wife on account of poverty. The agreement was mutual, and each purchased laudanum to carry out the agreement. The woman took the drug and died, Stornouth took a portion but did not die, and he left a note in the room, which they both had occupied, stating that they had made such an agreement, and that the laudanum taken by the woman had produced her death, but that his had not proven fatal, so that he must resort to other means. On the discovery of the body the defendant was arrested. Upon a trial for murder the Court said: "If there was an agreement, in consequence of which the woman destroyed herself, the prisoner is guilty, in law, of murder, and the fact that that might have been only a pretended agreement on his part, or that he might

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(*c*) *Russell's Case*, 1 Moody 356; *Reg* v. *Leddington*, 9 Car. & P. 79. These cases are cited and approved in *Com.* v. *Mink*, 123 Mass. 422, 25 Am. Rep. 109.

(*d*) *Blackburn* v. *State*, 23 Ohio St. 146.

(*e*) Russ. & R.C.C. 523.

(*f*) *Regina* v. *Jessop*, 10 Crim. L. Mag. 862.

(*g*) *Regina* v. *Stornouth*, 61 J.P. 729 (Q.B. Div.).

have had some idea of not carrying out his part of the agreement, or have changed his mind, made no difference in law." It will be noted that in all the English cases, where the defendant was held guilty of murder, that he was actually present, and did some act furthering the commission of the suicide.

The American Cases.—Most of the states of the Union have adopted the English common law, and the Acts of the British Parliament in aid thereof, as it existed up to the fourth year of the reign of James I., which was the year 1606, as far as the same was applicable to the new conditions and institutions; but the forfeiture of goods, or the dishonourable burial, which were elements of the English law pertaining to suicide, have never been adopted in this country, for the reason as one Court aptly says, "that they are not applicable to the spirit of our institutions." Probably the initial case in this country, in which the element of aiding and abetting suicide enters, was the Massachusetts case of *Commonwealth* v. *Bowen*(*h*). In that case, one Jewett was in prison under sentence of death, and the defendant, Bowen, having an opportunity to talk with him, advised him to commit suicide and procured and brought to him a rope for that purpose, and with which Jewett did hang himself. The indictment, drawn by Perez Morton, Attorney-General, contained two counts. The first count charged that the defendant "did counsel, hire, persuade, and procure said Jewett to kill himself." The second count charged directly that Bowen murdered Jewett by hanging. At the trial before Chief Justice Parker and Justices Jackson and Putman, the Attorney-General put in evidence, without objection, the verdict of the coroner's jury, finding in substance, that Jewett was found dead in prison, with a cord around his neck and around the iron grate, and concluding, in the form prescribed by the statute of 1783, that he "feloniously and as a felon of himself killed and murdered himself."(*i*) The Chief Justice, in charging the jury, said: "You have heard it said, gentlemen, that admitting the facts alleged in the indictment, still they do not amount to murder; for Jewett

(*h*) *Com.* v. *Bowen*, 13 Mass. 356.
(*i*) *Bowen's Trial*. 12.

himself was the immediate cause and perpetrator of the act which terminated in his own destruction. That the act of Bowen was innocent no one will pretend, but is his offence embraced by the technical definition of a principal in murder? Self-destruction is doubtless a crime of awful turpitude; it is considered in the eye of the law of equal heniousness with the murder of one by another. In this offence, it is true, the actual murderer escapes punishment; for the very commission of the crime, which the law would otherwise punish with its utmost rigour, puts the offender beyond the reach of its infliction. Now, if the murder of one's self is felony, the accessory is equally guilty as if he had aided and abetted in the murder; and I apprehend that if a man murders himself, and one stands by, aiding in and abetting the death, he is as guilty as if he himself was the murderer." In the case of *Commonwealth* v. *Mink*, decided in 1877 by the Supreme Court of Massachusetts(*j*), the earlier nolding in the *Bowen case*, placing suicide as a felony, was modified, and the Court while holding that in that state suicide was not technically a felon, yet the conviction was sustained, on the ground that suicide was unlawful and criminal as malum in se. In that case the defendant was engaged to be married to one Charles Ricker, who expressed his intention of breaking the engagement. This announcement so exasperated the defendant that she determined to take her own life, and, seizing a revolver, made an attempt to shoot herself. Ricker, being present, seized her, and attempted to prevent her carrying out her purpose, and in the struggle the pistol was accidently discharged, fatally wounding Ricker. The defendant was indicted and convicted of manslaughter. The Court held that suicide was a criminal act, and followed the principle that if one attempts to commit a criminal act, and thereby commits homicide, although no homicide was intended, the crime will be manslaughter.

In the reports of the Supreme Court of Ohio, we find an interesting and able opinion, upon the subject of the liability of an abettor of suicide(*k*). In that case, one Blackburn, and a woman named Lowell, mutually agreed to commit suicide. The

(*j*) *Com.* v. *Mink*, 123 Mass. 429, 25 Am. Rep. 109.
(*k*) *Blackburn* v. *State*, 23 Ohio St. 146.

defendant mixed strychnine with wine, and in pursuance of the agreement the woman drank the mixture. There was some evidence tending to shew that the defendant, by threats, forced the woman to take the poison. The defendant was found guilty in the lower Court, and appealed, contending that, as suicide was not punishable, there could be no conviction as an accessory. To this contention the Court said: "Purposely and maliciously to kill a human being by administering to him or her poison, is declared by the law to be murder, irrespective of the wishes or the condition of the party to whom the poison is administered. The fact that the guilty party intends also to take his own life, and that the administration of the poison is in pursuance of an agreement that both will commit suicide, does not, in a legal sense, vary the case. If the prisoner furnished the poison to the deceased for the purpose and with the intent that she should with it commit suicide, and she accordingly took and used it for that purpose; or if he did not furnish the poison, but was present at the taking thereof by the deceased, participating, by persuasion, force, threats, or otherwise, in the taking thereof, or the introduction of it into her stomach or body then, in either of the cases supposed, he administered the poison to her, within the meaning of the statute." The judgment of conviction of the lower Court was accordingly affirmed.

The last judicial expression upon this subject is to be found in an opinion of the Supreme Court of Illinois, handed down in the year 1903(*l*). The facts in that case, briefly stated, are as follows: One Burnett, who was defendant below, was a married man, about 28 years of age, living with his wife in the City of Chicago, Illinois, and was a dentist by profession. The deceased, Charlotte S. Nichol, was a married woman living with her husband and children, in the same city, and residing about three blocks from the defendant's office. The two became acquainted, and the deceased formed a violent attachment for defendant. Deceased, fearing that she must leave Chicago, sought the defendant, and they spent the night together at a rooming house; during the night she constantly talked about committing suicide. On the evening of the death of deceased they were again at the

(*l*) *Burnett v. State*, 204 Ill. 208.

hotel, and deceased stated to defendant that she would not leave Chicago, but would commit suicide, stating that she had the morphine, and solicited defendant to die with her, which he refused to do. Defendant then visited a drug store and secured 25 quartergrain tablets of morphine, which he brought to their room. They then retired, and in the morning defendant discovered that Mrs. Nichol was dead. Upon this discovery the defendant himself took the morphine remaining in the bottle, but was discovered and conducted to the hospital before the drug took effect. While at the hospital the defendant made several confessions while still under the influence of the drug, which tended to show that he had agreed with deceased to take the poison together. Burnett was tried and convicted of murder in the lower Court. Upon appeal to the Supreme Court of that State, Judge Ricks in his opinion said: "The conviction of the defendant for murder in this case can only be sustained on the hypothesis that there was an agreement between him and Mrs. Nichol to commit suicide together, and that that agreement, in part, at least, was the inducing cause of the deceased taking the poison that produced her death. Upon the question whether, under the circumstances, suicide is a crime, we have a paucity of decisions. The general rule as stated by Wharton is: 'If two persons encourage each other to commit suicide jointly, and one succeeds and the other fails in the attempt upon himself, he is a principal in the murder of the other.' . . . There is no evidence, either by the admissions of the defendant or any witness, that the deceased took any morphine in the presence of the defendant, or that he gave her any, or bought any for her. The evidence rather tends to shew that while the defendant was gone to the drug store to get the morphine that he purchased, the deceased took that which she had. . . . We are not disposed to go to the extent of holding, as was done in the *Bowen case*, that suicide or self-destruction is a felony, but take the view that the latter pronouncement of the Massachusetts Court in the *Mink case*, and of the Ohio Court in the *Blackburn case*, more nearly announced the correct rule. . . . In the view that we entertain of the case at bar it is not necessary that suicide be held to be a crime. The charge against the defendant below, in both counts of the indictment, is murder. In the first he is charged with murdering Charlotte S.

Nichol by administering poison to her, and in the second count with murdering her by hiring, persuading and procuring her to take poison; and we think proof of either one of these charges would warrant the conviction of murder." It might be stated further that the Court gave as a reason for the reversal of the judgment of conviction, that there had been an entire failure of proof of any agreement to commit suicide together, or that deceased took the poison in the presence of defendant. The admissions of the defendant, made while he was under the influence of the drug, were held to be incompetent as evidence against him, and the Court stated that the jury should have been instructed that such admissions should be received with caution.

Conclusion.—Several general rules may be deducted from the decisions which we have reviewed, as to the liability of the inciter or abettor of suicide. First, the same strict requirement as to proof of every element which goes to make up the crime, applicable to criminal law in general, applies to the proof in suicide cases. Second, it must be shewn that the agreement to commit suicide together was in whole or in part the inducing cause of the deceased taking his or her life. Third, where a person is present when the deceased takes the poison, with the intent to take his or her life, and participates by persuasion, threats, or otherwise, in the taking thereof, such person is guilty of administering the poison.— *Central Law Journal.*

The same excellent journal remarks:—

"While it would be a fine thing to have a good unanimous opinion by the Supreme Court of United States, yet the office of the dissenting opinion is of frequent great importance, as we have the assurance that every question brought before the Court has been considered thoroughly by every judge on the bench."

It is a pity that an assurance in such a matter is requisite. The public have the right to the thoughtful consideration of their cases by every judge on the bench.

REVIEW OF CURRENT ENGLISH CASES.

NULLITY OF MARRIAGE—INCAPACITY OF FEMALE RESPONDENT—REFUSAL OF RESPONDENT TO SUBMIT TO MEDICAL EXAMINATION—EVIDENCE.

W. v. *S.* (1905) P. 231 was a petition by a man for a decree of nullity of marriage on the ground of the alleged incapacity of the respondent to consummate the marriage. The ceremony of marriage took place in April, 1900; it was proved that there had been no cohabitation, though the petitioner had urgently desired it. The respondent refused to submit to a medical examination, and had stated verbally and in writing to the petitioner, "I am no good." She filed no answer to the petition and adduced no evidence. Barnes, P.P.D., found as a fact that the respondent was at the time of the marriage and still was incapable, and granted the decree, and said that he desired expressly to refrain from treating it as a case of inference, but with all due respect to the learned judge that seems to be exactly what it is. The High Court of Justice for Ontario has assumed, rightly or wrongly, to declare a marriage void ab initio on the ground of duress (*Lawless* v. *Chamberlain*, 18 Ont. 266); whether it would do so for a cause of the kind in question in this case remains to be seen.

LANDLORD AND TENANT—DISTRESS—TRESPASS AB INITIO—SECOND DISTRESS FOR SAME RENT.

Grunnell v. *Welch* (1905) 2 K.B. 650 was an appeal from a County Court in an action of replevin. The facts were simple. The defendant, as landlord of the plaintiff, had employed a bailiff to levy a distress for rent in arrear; and the bailiff illegally broke in the front door and seized the plaintiff's furniture, but before selling it left the premises, and being refused admittance on his return made no attempt to regain possession. Subsequently the defendant put in a fresh distress for the same rent by a different bailiff, who seized the property replevied by the plaintiff. On behalf of the plaintiff it was contended that the second distress, being for the same rent as that for which the first seizure was made, was illegal. The County Court judge refused to give effect to that contention, and the Divisional Court (Kennedy and Ridley, JJ.,) held that he was right, because the first seizure was a trespass ab initio and void as a distress, and the landlord having had no opportunity of satisfying his claim thereunder, it was no bar to his issuing a second warrant in order to make a proper and lawful seizure.

ATTACHMENT OF DEBTS — GARNISHEE ORDER TO PAY OVER — COMPANY GARNISHEE — DEBENTURE HOLDER — PRIORITIES — RULES 622-624—(ONT. RULES 911, 914).

Geisse v. *Taylor* (1905) 2 K.B. 658 turns upon the effect of an order attaching a debt, and an order directing the garnishee to pay over. The garnishees were a limited company, and a debt due by them to a judgment debtor was attached, and they were subsequently ordered to pay the amount of the debt to the attaching creditor, and execution to enforce payment was thereupon issued. After service of the order to pay over, but before the execution was issued, the garnishees bonâ fide borrowed money from one Weston, and to secure repayment gave him a debenture covering all the property and assets of the company. The sheriff having seized property of the company, Weston, on the same day, claimed the goods seized, and appointed a receiver under the powers conferred by his debenture and the point to be determined therefore, was whether or not by virtue of his debenture Weston was entitled to priority over the execution. The County Court judge who tried the action found, as a fact, that the transaction between Weston and the garnishees was bonâ fide, and not entered into for the purpose of delaying or defrauding creditors, and that the effect of the garnishee order to pay over was not to create any lien or charge upon the garnishees' assets, and that the garnishees had power to mortgage their assets notwithstanding that an order to pay over had been made against them to the knowledge both of themselves and Weston, and this decision was affirmed by the Divisional Court (Lord Alverstone, C.J., and Kennedy and Jelf, JJ.).

PRACTICE—FRIVOLOUS AND VEXATIOUS APPLICATIONS—ABUSE OF PROCEDURE—FORM OF ORDER TO PREVENT FUTURE VEXATIOUS APPLICATIONS.

In *Kinnaird* v. *Field* (1905) 2 Ch. 306 the defendant had from time to time during the action made 29 interlocutory applications of a frivolous and vexatious character. In 18 of them he had been ordered to pay the costs, but had not done so, in four of them the plaintiffs were given costs in any event, and the remaining seven were abortive, either from irregularity in giving notice, or for non-appearance of the defendant to support them. The plaintiffs therefore now applied for an order to prevent the defendant from making any further interlocutory applications without first obtaining the leave of the Court, and the only question was as to what was the proper form of the order in such a case, and Warrington, J., settled a form which provided that the defendant should not be allowed to make any application

under the summons for directions, or to issue any summons on matters of procedure, or to serve any notice of motion to discharge any order in Chambers made on any such application as aforesaid without leave of a judge in Chambers, and in case he served notice of any such application on the plaintiffs without leave they were not to attend unless the judge shall so direct, and unless the judge gives such directions, the application should be dismissed without being heard. The defendant appealed from this order, but the Court of Appeal (Williams, Stirling and Cozens-Hardy, L.JJ.,) dismissed the appeal.

TRUSTEE—FRAUD OF CO-TRUSTEE ACTING AS BROKER FOR THE TRUST —ACCEPTING TRANSFER OF STOCK—TRUSTEE RECEIVING COMMISSION FROM HIS CO-TRUSTEE.

Shepherd v. *Harris* (1905) 2 Ch. 310 was an attempt to make a trustee liable for a loss occasioned by his co-trustee. The fraud was perpetrated under the following circumstances. Part of the trust funds was invested in Colonial securities, and at the request of the cestui que trust, on two separate occasions part of the money so invested was realized by a sale of the stock with a view to the proceeds being invested in other colonial securities bearing a higher rate of interest. The fraudulent trustee was a member of a reputable firm of stock brokers, and he was the senior trustee. He obtained the concurrence of his co-trustee to the sale and transfer of the stock, and produced to him the usual bought and sold notes of his firm, by which it appeared that they had sold the stock and purchased the required amount of new stock. The innocent trustee relied on these notes as showing that the transaction had been legitimately carried out, and the fraudulent transferee subsequently produced a forged receipt purporting to be a receipt for the price of one lot of the purchased shares, but in neither case did the innocent trustee attend in person to accept a transfer, and it was proved in evidence that it was not customary or usual so to do. As a matter of fact no purchase was made, and the fraudulent trustee misappropriated the proceeds of the sales. Farwell, J., held that the innocent trustee could not be made liable on the ground of his omission to attend in person to accept the transfer of the stock alleged to have been purchased, and that his confiding in his co-trustee to carry out the transaction honestly, he being at the time in good repute, could not be regarded as a breach of trust. The case is, however, an instance of the way in which the method of buying and selling stock on the stock exchange seems to lend itself to fraud. Had the procedure involved the payment of the price of the stock sold to the trustees and the payment by them

of the price of the stock supposed to have been purchased direct to the vendors as a separate transaction, it is possible the fraud would not have been so easily effected. On page 319 there appears to be a typographical error, a most unusual thing, by the way, and on line 3 the sentence "and there can be liability here," should probably read, "and there can be no liability here."

COVENANT NOT TO PRACTISE WITHIN SPECIFIED AREA—INJUNCTION —SOLICITOR—LETTERS POSTED OUTSIDE THE AREA ADDRESSED TO PERSONS WITHIN.

Edmundson v. *Render* (1905) 2 Ch. 320 was an action against a solicitor to restrain the breach of a covenant not to "do any work or act for or on behalf of any persons, usually done by solicitors within a radius of 15 miles" of a place named. The defendant had from a place without the 15 miles radius addressed solicitor's letters in respect to matters of contemplated litigation, to persons residing within the 15 miles radius. The defendant sought to construe the covenant as restricting the 15 miles radius to persons for whom the defendant should act, but Buckley, J., held that the covenant prohibited any work being done by the defendant as a solicitor within the prescribed radius, and that to write a solicitor's letter without the prescribed radius addressed to a person within that radius was a doing of work as a solicitor within the radius contrary to the covenant. As the learned judge puts it, if the defendant had made the demand in person instead of by letter, that would clearly have been a breach, and his making the post office his agent for transmitting the demand could make no difference in the character of the act.

COMPANY—WINDING-UP—"JUST AND EQUITABLE"—BUSINESS OF COMPANY CARRIED ON BY DEBENTURE HOLDERS—FAILURE TO SHEW PROBABILITY OF THERE BEING ASSETS TO SATISFY CLAIM OF PETITIONING CREDITOR—COMPANIES ACT, 1862 (25 & 26 VICT. C. 89) S. 79—(52 VICT. C. 32, S. 4(*e*) (D.)).

In re Chic (1905) 2 Ch. 345 was an application by an unsecured creditor to wind up a limited company. It appeared that the debenture holders of the company had appointed a receiver of all the property and assets of the company, who was carrying on the business of the company for the debenture holders. The petitioners were unable to shew that there would be any assets available for payment of their debt, but Warrington, J., held that

it was nevertheless under the circumstances "just and equitable" to grant the application, and he accordingly made a winding-up order.

VENDOR AND PURCHASER—DESCRIPTION OF PURCHASER BY FIRM NAME—EVIDENCE OF IDENTITY—PARTNERSHIP—LEGAL ESTATE —REALTY.

Wray v. *Wray* (1905) 2 Ch. 349 appears to be a case of first impression. The matter was brought before Warrington, J., to determine the legal effect of a deed of conveyance of land, which was made under the following circumstances. One William Wray carried on business in his own name at Laurel House, North Hill, Highgate, he took into partnership three other persons, and the business was carried on by them under the style of "William Wray." William Wray died and his widow was admitted as a partner, which was thereafter still carried on under the name "William Wray." While the business was so carried on the firm purchased the land and premises known as North Hill House, Highgate, and the conveyance was made by the widow of the one part and "William Wray of Laurel House, North Hill, Highgate in the County of Middlesex, optician (hereinafter called the purchaser) of the other part," and the question was whether this was a sufficient conveyance to vest the legal estate in the partners as joint tenants in fee. Warrington, J., held that it was, basing his decision on *Maugham* v. *Sharpe*, 17 C.B.N.S. 443, where it was held that a deed of chattels to "the City Investment & Advance Company" was a valid and sufficient conveyance in two persons named Sharpe and Baker, who carried on business in the name of "the City Investment & Advance Company." No doubt the learned judge has effectuated the intention of the parties, but his decision seems to come with something of a shock to old time notions of conveyancing.

TRIAL—SPECIFIC PERFORMANCE—COUNTERCLAIM FOR DEFAMATION —TRIAL BY JURY—RULE 426—(ONT. IND. ACT, SS. 102, 103).

Kinnaird v. *Field* (1905) 2 Ch. 361 was an action for specific performance of an agreement in which the defendant set up a counterclaim for defamation, which he contended constituted "an action" and entitled him to have the whole action tried by a jury —but Warrington, J., declined to accede to that contention, and the Court of Appeal (Williams, Stirling and Cozens-Hardy, L.JJ.,) affirmed his decision, though admitting that the defendant, if he desired it, was entitled to have his counterclaim so tried.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

EXCHEQUER COURT OF CANADA.

Burbidge, J.] IN RE BAIE DES CHALEURS RY. [March 27.

Insolvent railway—Unsecured creditor not assenting to scheme of arrangement—Opposition to scheme by another railway whose rights were sought to be affected thereby—Confirmation of scheme where creditors of same class receive unequal treatment.

An unsecured creditor who does not assent to a scheme of arrangement filed under s. 285 of the Railway Act, 1903, is not bound thereby.

It is a good objection to such scheme that it purports in terms to discharge the claim of such a creditor.

By a scheme of arrangement between an insolvent railway company and its creditors it was proposed to cancel certain outstanding bonds and to issue new debentures in lieu thereof against property that was at the time in the possession of the trustees for the bondholders of another railway company. Part of such new debentures were to be issued upon the insolvent company acquiring the control of certain claims, bonds and liens against the railway; and part upon a good title to the railway being secured and vested in the trustees for the new debenture holders. The railway company, the trustees for whose bondholders were in possession of the railway, objected to the scheme of arrangement. Its rights therein have not been determined or foreclosed.

Held, that the railway company was entitled to be heard in opposition to the scheme, and that the latter was open to objection in so far as it purported to give authority to issue a part of the new debentures upon acquiring the control of such claims, bonds and liens, and without any proceedings to foreclose or acquire the rights of such railway company in the railway.

No scheme of arrangement under the Railway Act, 1903, ought to be confirmed if it appears or is shewn that all creditors of the same class are not to receive equal treatment.

T. C. Casgrain, K.C., and *W. D. Hogg*, K.C., for motion to confirm. *F. S. Maclennan*, K.C., and *J. J. Meagher*, contra.

Burbidge, J.] IN RE POWELL AND THE KING. [April 25.

Public officer—Assignment of salary—Public policy.

Held, 1. The provisions respecting the assignments of choses in action found in R.S.O. c. 51, s. 58, sub-s. (5) and (6), are not binding upon the Crown as represented by the Government of Canada.

2. On grounds of public policy the salary of a public officer is not assignable by him.

3. Neither the librarian of Parliament nor the Auditor-General of Canada has power to bind the Crown by acknowledging explicitly or implicitly an assignment of salary by an officer or clerk employed in the library of Parliament.

J. Lorne McDougall, jr., for suppliant. *Newcombe*, K.C., and *Gisborne*, for respondent.

Burbidge, J.] THE KING *v.* LOVEJOY. [April 25.

Smuggling—Penalties—Averments in information—Sufficiency of—Demurrer—Jurisdiction.

1. In an information for smuggling, laid under the provisions of s. 192 of the Customs Act, it is a sufficient averment to allege that the defendants "in order to defraud the revenue of Canada did evade the payment of the duties upon said dutiable goods imported by them into Canada; and did fraudulently import such goods into Canada without due entry inwards of such goods at the Custom House." It is not necessary to charge the defendant with all the offences mentioned in such section; and the information is good in law if it sets out any one of the offences mentioned in the said section.

2. In such an information where it is sought to recover, in addition to the value of the goods smuggled, a sum equal to the value of the goods, it is necessary to allege that the goods were "not found." The offender is only liable to forfeit twice the value of the goods when such goods are not found but their value has been ascertained.

3. The penalty "not exceeding two hundred dollars and not less than fifty dollars" mentioned in s. 192 of the Customs Act as recoverable before "two justices of the peace or any other magistrate having the powers of two justices of the peace," cannot be sued for in the Exchequer Court of Canada. *Barraclough* v. *Brown* (1897) A.C. 615 referred to.

4. While a claim for penalties in respect of goods smuggled more than three years before the filing of the information would

be prescribed under s. 240 of the Customs Act, where the goods have been seized by a customs officer such seizure is to be deemed a commencement of the proceeding within the meaning of s. 236.

Solicitor-General of Canada and *R. Taschereau*, for plaintiff. *D. Macmaster*, K.C., for defendants.

QUEBEC ADMIRALTY DISTRICT.

Routhier, C.J., Local Judge.] [May 1.

MORTON DOWN & CO. *v.* SS. LAKE SIMCOE.

Security for costs—English practice—Application made by defendant after plaintiff files particulars of claim.

Under the provisions of Rule 228 of the General Rules and Orders for practice and procedure in Admiralty cases in the Exchequer Court of Canada applying the English practice to cases not provided for by such Rules, an order for security for costs may be granted in Admiralty proceedings on motion of the defendant after the plaintiff has filed particulars of his statement of claim.

Claude Hickson, for motion for security. *C. A. Duclos*, K.C., contra.

Burbidge, J.] IN RE ROBINSON AND THE KING. [May 8.

Intercolonial Railway—Contract for services—Conditional increase of salary—Impossibility of performance of condition—Promises by Crown's officers—Liability.

H., while general traffic manager of the Intercolonial Railway offered to secure the appointment of R. to a position in H.'s department of the railway at a salary of $2,000 per annum. R. refused that amount, but signified his willingness to accept $2,400. H., after obtaining the permission of the Minister of Railways to offer R. $2,100 per annum wrote to him: "I would be prepared to alter the terms of my letter to read $2,100, with the assurance that should you, as I feel confident you can, develop the traffic on your division to my satisfaction, your salary should be increased to $2,400 on the 1st January, 1899." R. accepted the appointment upon these terms, and entered upon the duties of his office Jan. 1, 1898. In the following autumn H. resigned his position on the railway. Shortly after, namely, in Sept., 1898, the department offered to appoint R. as general travelling freight agent of the railway, with headquarters at Toronto; and

R. accepted the new office on the assurance contained in a letter from W., the then general freight agent of the railway, that "there is to be no change in the salary of the present position and the one in the West." R. entered upon his new duties Oct. 10, 1898, and discharged the same until April, 1903, when his services were dispensed with. He had never been paid a salary during his employment by the Department of Railways of more than $2,100 per annum, and after his retirement he filed a petition of right claiming a balance of salary due him at the rate of $2,400 from Jan. 1, 1899, basing such claim upon H.'s letter on Dec. 16, 1898, and W.'s letter above mentioned.

Held, 1. Even if the assurance of increase of salary contained in such letter was more than an engagement or liability in honour, the contingency upon the happening of which the salary was to be increased had never in fact arisen. Before the time arrived when it could happen, two things had occurred to prevent it, neither of which was in the contemplation of the parties when the appointment was made. H. has resigned his position, and was no longer in the position to say whether R. had, or had not, developed the traffic to his satisfaction; and secondly, R. had ceased to hold the office in respect of which the increase of salary had been promised, and had accepted another office in connection with the traffic department of the railway.

2. The fair meaning of W.'s promise that there would be no change in the salary on R.'s acceptance of his new office in the traffic department, was that R. would be paid the same amount of salary in the new position as that which he was then receiving, namely, $2,100

3. W. not having been shewn to have had any authority to bind the Crown by a promise to give any such increase of salary, no such authority was to be implied from the fact that he was at the time the general freight agent of the railway, and as such R.'s immediate superior officer.

Geo. Bell, for suppliant. *Chrysler*, K.C., and *C. J. R. Bethune*, for respondent.

Burbidge, J.] [May 8.

CHAMBERLAIN METAL WEATHER STRIP CO., OF DETROIT; AND CHAMBERLIN METAL WEATHER STRIP CO., LTD. *v.* WILLIAM PEACE AND PEACE METAL WEATHER STRIP CO.

Canadian patent No. 74,708 — Infringement — Metal weather strips—Prior American patent—Narrow construction.

The defendants had manufactured a form of metallic weather strip in Canada very much nearer to that shewn and described

in an American patent of a date prior to the Canadian patent owned by the plaintiffs than it was to any of the forms shewn and described in the plaintiffs' patent.

Held, that if the plaintiffs' patent was good, it was good only for the particular forms of weather strips shewn and described therein; and that upon the facts proved the defendants had not infringed.

J. G. Ridout, for plaintiffs. *Lynch-Staunton*, K.C., and *J. Chisholm*, K.C., for defendants.

Burbidge, J.] [May 8.

IN RE JOSEPH HENRY AND OTHERS, CHIEFS AND COUNCILLORS OF THE MISSISSAUGAS OF THE CREDIT AND THE KING.

Indians—Mississauga band—Claim for restitution of moneys to trust fund—Discretion of superintendent-general—Jurisdiction to interfere—Crown as trustee—Effect of treaties.

1. A claim against the Crown based upon the 111th section of the British North America Act, 1867 and upon Acts of the Legislature of the Province of Canada and of the Parliament of Canada, is a claim "arising under any law of Canada" within the meaning of clause (*d*) of s. 16 of the Exchequer Court Act. *Yule* v. *The Queen*, 6 Ex. C.R. 123, 30 S.C.R. 35, referred to.

2. Where the Court has no jurisdiction to grant relief in an action, it has no authority to make a declaration binding the rights of the parties. This rule should be strictly followed in all cases where the jurisdiction of the Court depends upon statute and not upon common law. *Barraclough* v. *Brown* (1897) A.C. 623 referred to.

3. While under the provisions of certain treaties and of certain statutes of the Legislature of the Province of Canada and of the Parliament of Canada, the Crown stands in the position of trustee for the Indians in respect of certain lands and moneys, such position is not that of an ordinary trustee. The Crown does not personally execute the trust; the superintendent-general of Indian affairs having, under the Governor-in-Council, the management and control of such lands and moneys. For the manner in which the affairs of the Indians is administered the Dominion Government and the superintendent-general are responsible to Parliament, and Parliament alone has authority to review the decision arrived at, or the action taken by them. In all such cases the Court has no jurisdiction to review their discretion. Then there is this further difference between the Crown as a trustee and an ordinary trustee, viz., that the Crown is not bound by

estoppel, and no laches can be imputed to it; neither does it answer for the negligence of its officers.

4. Under the Treaty of Feb. 28, 1820, there is nothing to prevent the Crown from making provision for the maintenance of the Mississauga Band of Indians out of any capital moneys arising from the sale or leasing or other disposition of surrendered lands.

5. Under Treaty No. 19, made Oct. 28, 1818, the Crown's obligation is to pay the Mississaugas of the Credit a fixed annuity of $2,090. So far as this treaty is concerned the Crown is not a trustee, but a debtor; and the right of the Indians to such annuity cannot be impaired by any departmental adjustment of the Indian funds to which the Indians themselves are not parties.

Magee, K.C., *A. G. Chisholm* and *R. V. Sinclair*, for suppliants. *Newcombe*, K.C., for respondent.

Burbidge, J.] [July 19.

IN RE ATLANTIC AND LAKE SUPERIOR RY. CO. *v.* THIBAUDEAU AND OTHERS.

Railway scheme of arrangement—Petitioners not in possession of railway—Application to confirm.

Where the petitioners for the confirmation of a scheme of arrangement, filed under the provisions of the Railway Act, 1903, s. 285, are not in possession of the railway which they seek to mortgage as security for the issue of new bonds, the application to confirm will be refused.

F. S. Maclennan, K.C., for the motion to confirm. *T. C. Casgrain*, K.C., contra.

Burbidge, J.] IN RE FINIGAN AND THE KING. [Oct. 4.

Public work—Negligence—Freight elevator—Use of by employees—City by-law—Liability of Crown.

The suppliant, an employee of the post office of the City of Montreal, was injured by falling from a lift to the floor of the basement. The lift was used for the transfer of mail bags and matter with those in charge of them from one floor to another in the post office building. It was proved that the lift was constructed in the usual and customary manner of freight elevators, but the suppliant contended that as the lift was allowed to be used by certain employees in going from one floor to another, it

should have been provided with guards or something to prevent anyone from falling from it, as the suppliant did, while passing from the first floor to the basement.

Held, 1. Such user by the employees did not constitute the lift a passenger elevator and impose a duty upon those in charge of it to see that it was better protected than it was.

2. In any event the suppliant was not using the lift as a passenger at the time of the accident. but to transfer mail matter, of which he was then in charge.

3. The by-law of the ity of Montreal respecting freight and passenger elevators, passed Feb. 4, 1901, did not affect the liability of the Crown in this case. The lift in question was built in 1897, before the enactment of such by-law, and was situated in the post office at Montreal, which building constitutes part of the public property of the Dominion, and so was within the exclusive legislative authority of the Parliament of Canada.

Duclos, K.C., and *H. N. Chauvin*, for suppliant. *Leet*, K.C., for respondent.

Province of Ontario.

COURT OF APPEAL.

From Gen. Sess., Brant.] [June 29.

REX *v.* DRUMMOND.

Criminal law—Perjury—Evidence of proceeding in which offence committed—Indictment and trial—Production of record—Conviction—Substantial wrong or miscarriage—Crim. Code ss. 691, 746 (f).

Upon a trial for perjury alleged to have been committed at a previous trial for a criminal offence, the fact of the previous trial must be proved by the production of the indictment and the formal record, or of a certificate under s. 691 of the Criminal Code; the evidence of the clerk of the Court, accompanied by the production of his minutes of the trial, and the evidence of the Court stenographer who took down the evidence at the trial, are not proof of the indictment and trial.

Even if no substantial wrong or miscarriage were occasioned by the reception at the trial for perjury of something which was not legal evidence of the fact of the former trial, s. 746 (*f*) of the Code cannot be applied to uphold a conviction.

Conviction by the Chairman of the General Sessions of the Peace for the County of Brant set aside, and a new trial ordered.

Heyd, K.C., for the prisoner. *Cartwright*, K.C., for the Crown.

From Divisional Court.] [June 29.

DOYLE *v.* DIAMOND FLINT GLASS CO.

Release—Repudiation—Fraud—Restoration of money paid—Negligence—Fatal Injuries Act—Expectation of benefit.

Upon appeal by the defendants from the judgment of a Divisional Court, 8 O.L.R. 499, as to some of the questions arising in the action, and upon cross-appeal by the plaintiff upon one question,

Held, affirming the judgment, that the evidence fully sustained the findings of the jury as to the cause of the accident and the defendants' negligence; that the plaintiff was not entitled to recover any damages on behalf of the mother of the deceased; and that the release was procured from the plaintiff under circumstances that rendered it invalid as a bar to the plaintiff's claim.

It was argued before the Court of Appeal that because the plaintiff, while repudiating the release, had not restored or offered to restore the money paid as the consideration for her executing it, she was not in a position to attack the transaction.

Held, that the plaintiff had not before action elected to affirm or disaffirm the transaction, and the bringing of the action was a declaration of intention to disaffirm. The release having been found invalid, the plaintiff should not be deprived of the benefit of that finding; but, being relieved, she should be required to return or otherwise make good the money paid to her; and she was ordered to bring it into Court.

Hewson v. *Macdonald* (1882) 32 C.P. 407 distinguished.

Clough v. *London and North-Western R.W. Co.* (1871) L.R. 7 Ex. 26 followed.

Shepley, K.C., and *R. H. Greer*, for defendants. *Clute*, for plaintiff.

From Divisional Court.] [June 29.

MCINTOSH *v.* FIRSTBROOK BOX CO.

Master and servant—Injury to servant—Employment of child in factory—Misrepresentation as to age—Dangerous machinery—Warning—Negligence—Jury—New trial.

The Court, OSLER, J.A., dubitante, affirmed the judgment of a Divisional Court, 8 O.L.R. 419, setting aside a nonsuit and directing a new trial of an action for damages for injuries received by the infant plaintiff while employed by the defendants in their factory, he being only ten years of age, but having represented his age as fourteen when seeking the employment.

Shepley, K.C., and *R. H. Greer*, for appellants. *Bicknell*, K.C., and *J. W. Bain*, for respondents.

Full Court.] [June 29.

CITY OF HAMILTON *v.* HAMILTON STREET R.W. CO. (No. 1).

Street railways—Contract with municipality—Payment of percentage on gross receipts—Intra vires—Meaning of "gross receipts."

Held, affirming the judgment of MEREDITH, J., 8 O.L.R. 455, that the agreement between the parties for the payment by the defendants to the plaintiffs of a certain percentage of the defendants' gross receipts was intra vires of both; that the term "gross receipts" included fares paid by passengers outside the limits of the City of Hamilton (excepting fares for service entirely outside of the city); and that the term also included moneys received from the sale of tickets which might possibly not be used in payment of fares.

Armour, K.C., and *Levy*, for defendants, appellants. *MacKelcan* K.C., and *Riddell*, K.C., for plaintiffs, respondents.

Full Court.] [June 29.

CITY OF HAMILTON *v.* HAMILTON STREET RY. CO. (No. 2).

Street railways — Contract with municipality — Intra vires — "Workmen's tickets"—Action to enforce contract—Parties —Attorney-General—Specific performance—Injunction.

Held, affirming the judgment of STREET, J., 8 O.L.R. 642, that the agreement of which the enforcement was sought in this action was intra vires; that by the terms of the agreement the defendants were bound to sell on their cars tickets known as "workmen's tickets" or "limited tickets," and to receive them from all persons tendering them as fares during certain specified hours of the day; that the plaintiffs could maintain the action without the aid of the Attorney-General; and that performance of the contract could be enforced by the Court by injunction.

City of Kingston v. *Kingston Electric Ry. Co.* (1898) 25 A.R. 462 distinguished.

Armour, K.C., and *Levy*, for defendants, appellants. *MacKelcan*, K.C., and *Riddell*, K.C., for plaintiffs.

Full Court.] [Oct. 13.

CITY OF TORONTO *v.* TORONTO ELECTRIC LIGHT CO.
CITY OF TORONTO *v.* INCANDESCENT LIGHT CO.

Amalgamation of companies—Notice to a municipal corporation —Agreement not to lease to, amalgamate with, or sell out to another company—Forfeiture—Laches—Waiver.

In 1889 the City of Toronto entered into similar agreements with each of the above companies by which they gave them a right to construct, lay down and operate underground wires conduits and appliances for the distribution and supply of electricity throughout the city, to take up, renew, alter and repair the same under the supervision of the city engineer and to his satisfaction, and to make openings in the streets, etc., of the city; all such openings to be made at such times and places and in such manner as the city engineer might direct. When it was necessary for the companies to make such openings they were to give at least ten days' notice to the mayor and city engineer, specifying the portion of the roadbed in which they desired such openings. Both agreements contained the following prohibitive provision: "The company shall not, without the consent of the corporation, lease to, amalgamate with or sell out to any other company, corporation, firm or individual, and in case the company shall lease to, etc., all rights granted by this agreement shall cease and be forfeited." On Feb. 22, 1896, the Incandescent Company sold out to the Electric Company all their assets and the shareholders transferred their shares.

The plaintiffs now sought a declaration that this sale was a violation of the agreement, and that defendants had forfeited all rights severally granted to them under the two agreements, and asked for an injunction restraining them from any longer constructing, laying down or operating any conduits, wires or appliances in the streets of the city, and to compel the immediate removal of all such conduits, etc.

The Electric Company contended that as mere purchasers they did not fall within the above prohibition. The plaintiffs contended that what was done was an amalgamation of the two companies. The Incandescent Company admitted that they sold out to the Electric Company, but contended that the plaintiffs allowed their assigns to operate, use, alter and repair the underground system formerly owned by them, and that the city had dealt with the Electric Company as their assigns for upwards of seven years. The Electric Company further urged that plaintiffs consented to their operating the underground system acquired from the Incandescent Company and had allowed them to spend large sums of money in extending the system so purchased.

Held, 1. The Electric Company had not, in purchasing, fallen within the prohibition in their agreement, for to hold otherwise would be to add to the prohibitive clause the word "buy," which it did not contain.

2. What was done was not an amalgamation of the two companies, as the purchase was for cash and for cash only, and the Incandescent Company acquired no interest whatever by the transaction in the assets, affairs or otherwise of the other company.

3. Inasmuch as the actions were not commenced until April, 1902, the plaintiffs had by their long delay and by their conduct after the alleged breach, and before the action, lost their right to complain, and had thereby waived the alleged forfeiture. The evidence clearly shewed that they had knowledge of the facts upon which the right to claim a forfeiture rested, and it was not necessary to prove actual notice to the plaintiffs of what had taken place between the companies.

4. There was in the conduct of the plaintiffs much more than a passive acquiescence, something indeed which amounted to an active encouragement to the defendants to think and believe that they, the plaintiffs, did not intend to claim the benefit of the forfeiture.

5. Notice or knowledge can only be brought home to a corporation through those who act for, or represent it; and notice to the city engineer should, under the circumstances, be sufficient; but the evidence shewed much more than that, and warranted the conclusion that knowledge of what the city engineer called the "absorption" of the one company by the other might safely be imputed to the city council as a whole, especially so as no civic official had given evidence to impeach or deny such an inference. The plaintiffs having such knowledge were bound to act with reasonable promptness in claiming the forfeiture.

Both actions were dismissed with costs.

Shepley, K.C., and *Fullerton*, K.C., for the City of Toronto. *Aylesworth*, K.C., and *Johnston*, K.C. for the Toronto Electric Light Co. *H. O'Brien*, K.C., and *J. S. Lundy*, for the Incandescent Light Co.

From Official Arbitrator.] [Nov. 13.

IN RE TATE AND CITY OF TORONTO.

Highway—Closing highway—Property injuriously affected.

A property on the west side of a street running north and south was held to have been "injuriously affected" within the meaning of s. 437 of the Municipal Act, 1903, by the closing of

a street running from the first street in an easterly direction opposite the property in question and an award of compensation by the official arbitrator to the owner of the property was upheld, the principle of *Metropolitan Board of Works* v. *McCarthy* (1867) L.R. 7 H.L. 243 being applied.

Fullerton, K.C., for appellants. *Denton*, for respondent.

HIGH COURT OF JUSTICE.

MacMahon, J.] REX v. TUCKER. [Oct. 28.

Criminal law—Summary conviction—Appeal to sessions—Form of recognizance—Payment of fine—Repayment on allowance of appeal—Costs—Public Schools Act. s. 103.

A person elected as school trustee, who has under the provisions of s. 103 of the Public Schools Act (R.S.O. 1897, c. 292), been ordered by a justice of the peace to pay a fine of $20 because of alleged refusal to perform the duties of the office, has, having regard to the provisions of s. 7 of the Ontario Summary Convictions Act (R.S.O. 1897, c. 90), a right of appeal to the general sessions.

Payment of the fine does not bar the right of appeal, when the payment is made contemporaneously with the expression of intention to appeal, and under pain of distress.

In re Justices of York and Peel, Ex parte Mason (1863) 13 C.P. 15 followed. *Rex* v. *Neuberger* (1902) 9 B.C.R. 272 distinguished.

A recognizance to appear at the general sessions and "enter an appeal" is sufficient.

Upon the allowance of such an appeal repayment of the fine and costs and payment of the costs of the appeal are properly ordered.

Regina v. *McIntosh* (1897) 28 O.R. 603 followed.

J. J. Drew, for private prosecutor. *W. M. Douglas*, K.C., for defendant.

Divisional Court.] FISKEN *v.* MARSHALL. [Oct. 31.

Insurance—Life insurance—Assignment—Assignee's selection of option—Revocation of selection—Husband and wife—Declaration in wife's favour—Attachment of debts.

The assured assigned shortly before its maturity an endowment policy to a creditor by an assignment absolute in form,

there being an agreement, however, that the creditor should apply to the company for the cash surrender value and should pay the surplus thereof over his indebtedness to the assured's wife. The assignee after the time limited by the policy for the purpose, elected to take the cash surrender value. After this a judgment creditor of the assured obtained an attaching order against the company. The assignee then, before any action had been taken by the company in respect of the election made by h[illegible] revoked it, and the husband executed a declaration that the policy was to be held subject to the assignment, for the benefit of his wife.

Held, 1. The assignee's election not having been made within the time limited was a mere proposal to the company; that his revocation before action taken by the company put an end to it; and that the cash surrender value was not payable by the company.

2. In any event notwithstanding the attaching order the assured's declaration in his wife's favour took effect and defeated the attaching creditor's claim.

The principle of *Weckes* v. *Frawley* (1893) 23 O.R. 235 approved and applied.

Judgment of WINCHESTER, Co. J., affirmed.

Kingsford, for appellant. *Bayly*, for respondents.

Trials—Anglin, J.] [Nov. 3.

ROGERSON *v.* CAMPBELL.

Will — Construction — Restraint on alienation — Exercise of power.

Alexander McLellan devised a 100-acre lot to his daughter, subject to the following condition: "I therefore order and will that my said daughter shall not sell or will or dispose of this 100 acre lot to any person or persons except to one or more of my children or grandchildren to whom she may dispose of it if it is her will to do so." The daughter retained the ownership during her life and then attempted to make the following disposition of the property. She first charged upon it two legacies of $1,000 each, and then directed that her husband might occupy the land for one year after her death, and subject to these charges, and her debts and testamentary expenses, devised the land to her executors upon trust for the plaintiff, one of Alexander McLellan's grandchildren, as beneficial owner. There were several other children and grandchildren of Alexander McLellan surviving.

Held, that the restraint on alienation in Alexander McLellan's will was valid, and that inasmuch as the daughter's will

must be held to have been made by her in pursuance of the power of disposition given her by him, and she intended to defeat the restraint against alienation by indirect means, the legacies in her will failed, as also her devise of the right of occupation in favour of her husband and the plaintiff took the whole property free from any condition.

Strathy, K.C., for plaintiff. *H. Lennox*, for defendant.

MacMahon, J.] HILL'S CASE. [Nov. 11.

Company—Winding-up—Contributory—Allotment.

A subscriber for a share in a company was debited in the company's stock ledger with one share, was placed on the "shareholders' list," and was drawn upon for the first payment of ten per cent. and paid the draft. There was no formal allotment to him.

Held, that what had been done must be taken to have been done by authority of the directors and to be a mode of allotment "ordained" by them within the meaning of the Companies Act, R.S.O. 1897, c. 191, s. 26.

H. McP. Clark, for liquidator. *MacInnes*, for contributory.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] McDONALD *v.* McDONALD. [Sept. 5.

Deed—Prior unregistered deed—Notice—Disseisin—Copy of deed from registry office—Proof of execution of original not required.

On May 8, 1888, N.M. made a deed of a piece of land to her son H.M., and about three years later made a second deed of the same piece of land to H. The grantee under the latter deed placed his deed on record about a month earlier than the deed to H.M. under which plaintiff claimed.

Held, 1. Bonâ fide purchasers for value, claiming under H. were not affected with constructive notice of the prior deed to H.M., although that deed had in the meantime been registered and there was evidence that H. personally, at the time he took his deed, had knowledge of its existence.

2. Evidence that plaintiff, claiming under the unrecorded

deed took two years' hay off the property and arranged with F., who lived on an adjoining property, to look after it for him, and that F. cut logs and pastured cattle for a time as compensation for doing so, was not sufficient to support a disseisin, there being evidence on the other hand to shew that the land was not fenced, and was spoken of as the "commons," and that others pastured cattle there and that subsequently purchasers obtained timber from it.

3. The trial judge was in error in rejecting a copy of a deed from the registry office tendered on behalf of defendant and which purported to have been executed by the grantor under whom both parties claimed.

It is not necessary in order to procure the admission in evidence of a certified copy of a registered deed from the books of the registry office to also prove the execution of the original deed, the statute respecting the registration of deeds requiring proof on oath of the execution of the deed before it is admitted to registry.

H, Mellish, K.C., for appellant. *W. B. A. Ritchie*, K.C., for respondent.

Full Court.] DAGLEY *v.* DAGLEY. [Nov. 14.

Parol gift of land followed by possession and permanent improvements sustained in favour of donee against donor—Equitable jurisdiction of Court.

Defendant made a gift of a piece of land to his son R. after his marriage for the purpose of erecting a house upon, in which to live. R. went into exclusive possession of the land with defendant's consent, and made permanent improvements, including the erection of a house at a cost of between five and six hundred dollars. Defendant at various times promised to give R. a deed of the land, but failed to do so, and after the death of R. ejected his widow and resumed possession of the land with the improvements.

Held, that the Court in the exercise of its equitable jurisdiction would protect the donee and those claiming under him in the enjoyment of the property, and that it was not open to defendant after having made an oral gift of the land to his son, and the expenditures made on the faith of that gift to avail himself of the defence of the Statute of Frauds, and that plaintiff who claimed as widow of R. was entitled to a conveyance of one undivided half of the land in question, or to a partition.

Freeman, for plaintiff. *Paton*, for defendant.

Province of New Brunswick.

SUPREME COURT.

Tuck, C.J.] PAPAGORGIOUV *v.* TURNER. [May 26.

False arrest—Smuggling alien into U.S.—Arrested in U.S. by U.S. official—Imprisonment and deportation of alien

The plaintiff, a Greek, suffering from a contagious disease, had been refused admission into the United States. He was induced by one Sarafik, a U.S. immigration official, who pretended to be a friend, to allow himself to be smuggled into Eastport On their arrival at Eastport, according to arrangement made by Sarafik, the defendant, a district immigration officer for Maine, arrested all four, Sarafik being arrested at his own request. The plaintiff was held as witness against smugglers for some days, then sent to prison in New York and finally deported to Naples. On his return, he sued defendant. A verdict was entered for defendant, he having denied any complicity with Sarafik.

Held, that the defendant was not liable for any acts committed by him in the United States in accordance with their immigration law.

Pugsley, A.-G., and *Allen*, K.C., for plaintiff. *Dyer*, A.-G. of Maine, and *Currey*, K.C. for defendant.

McLeod, J.] IN RE CUSHING SULPHITE PULP CO. [Oct. 16.

Dominion Winding-up Act—Power of judge to restrain proceedings in equity—Enabling or restraining power—Exceptional circumstances.

A suit was brought in equity on behalf of the bondholders of the Pulp Company for foreclosure of a mortgage on the company's mill for non-payment of interest on bonds and a decree made for foreclosure and sale of the mill and other property of the company by a referee in equity, the sale to take place July 15th, 1905. On an application under the Dominion Winding-up Act on behalf of George S. Cushing, one of the bondholders, made April 25th, 1905, McLeod, J., made an order for the winding-up of the company under the Act, and ordered the sale of the company's property under the foreclosure to be postponed to Nov. 1, 1905, in order that the liquidators might sell the property instead of the mortgagee. In consequence of an appeal from that order, the sale could not be carried out November 1st. This application was made to further postpone sale. It was argued for the mortgagee that: (1) The winding-up judge had no power over the referee in equity to order a postponment of the sale.

(2) Under the Dominion Winding-up Act, R.S.C. c. 129, s. 16, the power of the winding-up judge was merely an enabling power and he having postponed the sale once, was functus officio in that respect. (3) The rights of all parties would be conserved by the mortgagee's sale fully as well as if the property was sold by the liquidators.

Held, that the winding-up judge had power to rescind his former order and that s. 16 of the Winding-up Act gives the judge power over any proceedings in equity against the company. In this case, there were exceptional circumstances justifying the postponement of the sale in Equity Court, namely: appeal from winding-up order, inadequate advertising for the first date of sale, the trustees of the mortgagees being in possession of the property under a doubtful right, and the fact that the directors of that company after petition presented had cancelled the company's contracts and so destroyed its earning power. Sale postponed to May 1st, 1906.

Pugsley, A.-G., *Currey*, K.C., *Barnhill*, K.C., *Earle*, K.C., *Powell*, K.C., and *Hanington*, K.C., for the various parties.

Province of Prince Edward Island.

SUPREME COURT.

Sullivan, C.J., Hodgson, J., Fitzgerald, J.] [Nov. 13.

RE O'BRIEN.

Certiorari—Service of summons—Reasonable time.

On Sept. 16, 1905, the defendant was tried and convicted, in his absence, of a third offence against the Canada Temperance Act and sentenced to four months' imprisonment by the Stipendiary magistrate of King's County. At the trial a constable swore that he had served the summons upon the defendant's wife at his house on Sept. 15, the day previous, and this was adjudged by the Stipendiary to be a godo service. Defendant and his wife in their affidavits to ground application for a certiorari to quash conviction deposed that the summons had been served at 11.30 p.m. on the night of Sept. 15, returnable the next day at 10 a.m. at a place 25 miles distant. Defendant himself being absent did not get summons till the next forenoon.

Held, that evidence of the hour of service and of the distance from Court were material elements to enable the magistrate to determine whether defendant had had a reasonable notice as required by s. 853 of the Criminal Code. Not having such evidence there was no ground upon which the magistrate could find that a

reasonable time had elapsed between the service of the summons and the time at which the defendant was required to appear. The magistrate, therefore, acted without jurisdiction: *The Queen* v. *Smith*, L.R. 10 Q.B. 604, supports this view, which is not inconsistent with *Ex parte Hopwood*, 15 Q.B. 120, nor with *Ex parte Williams*, 21 L.J. 46. Summons absolute for writ of certiorari.

Mellish, for defendant. *Peters*, K.C., A.-G., contra.

Province of Manitoba.

KING'S BENCH.

Dubuc, C.J.] [Oct. 20.

NORTH-WEST THRESHER CO. *v.* DARRELL.

Sale of goods—Sale of Goods Act, R.S.M. 1902, c. 152, ss. 15, 16—Implied warranty—Damages.

Action on promissory notes given by defendant for price of a threshing engine, separator and other machinery sold under a written contract containing an express warranty that the machinery was made of good materials, well constructed and, with proper use and management, able to do as good work as any other of the same size and rated capacity made for the same purpose, and that, if found unsatisfactory, written notice should be given within three days . . . "and the company will be allowed to furnish another machine or return the notes, and if the company shall furnish another machine the terms of the warranty shall be held to be fulfilled, and the company shall be subject to no further liability. The use of the machinery after the expiration of the time named in the said warranty, shall be evidence of the fulfilment of the warranty and full satisfaction to the purchaser." The first engine supplied was found to be defective and the plaintiffs delivered another one which defendant used for six weeks and then abandoned. He, however, did not notify the plaintiffs of any defect until after he abandoned it, and the judge found as a fact that it was a good engine and satisfied the warranty in the contract.

Held, 1. The express warranty as to the first engine did not exclude the implied warranty provided for by R.S.M. 1902, c. 152, s. 15, as sub-s. (*d*) of s. 16 says that an express warranty or condition does not negative a warranty or condition "implied by this Act." unless inconsistent therewith, and defendant was entitled to set off the damages suffered by him in consequence of the first engine having been found defective against the plaintiffs' claim.

2. The supplying of the second engine should not be considered as an absolute fulfilment of the plaintiffs' warranty not-

withstanding the above quoted provisions of it, for then it would mean that the plaintiffs, after delivering a bad and defective machine, could exonerate themselves by substituting another one just as bad or worse. Such could not have been the intent and understanding of the parties at the time of entering into the contract.

3. Defendant should be allowed interest on his damages as he had to pay interest on his promissory notes.

Verdict for plaintiffs for balance of claim after deducting $535.50 as damages allowed to defendant. No costs to either party.

Metcalfe and *E. E. Sharpe*, for plaintiffs. *Wilson* and *Baker*, for defendant.

Book Reviews.

A Short History of Roman Law, by PROFESSOR GIRARD, of the University of Paris, translated by A. H. F. LEFROY, M.A., Barrister-at-Law, and J. H. CAMERON, M.A. Toronto: Canada Law Book Co.

This is a translation of the first portion of Prof. Girard's Manuel Elémentaire de Droit Romain. This little book by the eminent French Professor of Roman law will be welcomed by English-speaking students. It is full of the research which may be said to favourably characterize continental as contrasted with English scholarship, and embodies the result of the researches of numerous French, German, and Italian authors to which English and Canadian students would not generally have direct access. It is, moreover, we believe, the only Short History of Roman Law to be found published separately. We notice that in the last edition of his Justinian's Institutes Dr. Moyle refers to M. Girard's manuel as a "masterly work, which it is much to be desired should be translated into English." We are glad that two members of our own local University should have been the first to set their hands to this task. It deals mainly with the political institutions and the law-making machinery of ancient Rome rather than with the internal development of that law. We notice especially that the remarks upon the subject of the Twelve Tables are peculiarly interesting and illuminative; and the general bibliography in the appendix is of very special value. Students of Roman law can scarcely have a better little book to commence upon. It is all the more valuable to those of English-speaking nations, as the translation seems to have been excellently done and free from the gaucheries which so frequently mar the rendering of French books into English.

Bench and Bar.

James Pitt Mabee, of the City of Toronto, Ontario, K.C., to be a judge of the Supreme Court of Judicature for Ontario* and a member of the Chancery Division of said High Court.

Peter Edmund Wilson, of Nelson, British Columbia, Barrister at Law, has been appointed Judge of the County Court of East Kootenay and Local Judge of the Supreme Court of British Columbia.

Courts and Practice.

Admiralty Court Business.

A late Parliamentary return gives the following as the judicial business brought before the respective District Admiralty Courts in Canada since 1892:—

	Judge's Salary.	No. of Actions.	No. of Inter-motions.	No. of Trials.	Amount involved.
Ontario	$ 600	311	366	118	$381,220
Nova Scotia	1,000	174	195	59	928,683
Quebec	1,000	155	189	48	637,874
B. Columbia	1,000	153	213	50	909,555
New Brunswick	1,000	123	50	62	181,220
P. E. Island	800	10	7	3	29,368

The Ontario Court appears to have the largest amount of business,—about double the number of actions and trials to those in the Eastern Maritime Courts. The average for each district gives 154 actions and 57 trials, while Ontario had 311 actions and 118 trials. By the Act of 1895 c. 39, the Courts of Admiralty are declared to be "Superior Courts," and the judges in Admiralty of the Exchequer Court of Canada to be "judges of a Superior Court."

Ontario Sittings.

There will be no sitting of the Non-jury Court during the week commencing Monday, December the 4th. The Court will be continued for one week, commencing Monday, 11th December, 1905, at 11 a.m.

The sittings for the trial of actions at St. Catharines has been postponed until the 14th December. The sittings at Cornwall has been postponed until 8th January, 1906. The non-jury sittings at Toronto is postponed from the 4th to the 11th December next.

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*A Justice of the High Court of Justice for Ontario.

ANALYTICAL INDEX

Of the Contents of this Volume.