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LAW REFORM.

A valued correspondent, a county judge of experience, discusses the above subject in a paper which we publish below. It is one that is old yet ever new. His thought is to simplify procedure and expedite the trial of causes. In this praiseworthy event he simply follows in the footsteps of prominent lawyers in the past and present; for all law reforms in the above directions have been initiated by members of the legal fraternity who have put patriotism above pecuniary considerations.

Apart from any question of the desirability of the changes suggested in this paper, and as to which we at present express no opinion, the time is perhaps not opportune for any further changes. We have recently had a general upheaval and re-adjustment of procedure, and a natural complaint would be that before practitioners can become familiar with a new state of things a further change is suggested. There are those who might consider that we have done enough for the present, and that it would be well to hasten slowly, and see the working out of changes that have been made during the past few years.

In the meantime, many of the suggestions of our correspondent are worthy of consideration, and possibly of adoption. Our readers will be glad to have his views, and we shall be glad to give them the benefit of any criticisms which they may desire to make in reference to the subject touched upon by the learned county judge.

The article he sends us reads as follows:—

"It occurs to me to suggest that it would save expense and expedite litigation if our civil courts were to adopt the procedure of the Mechanics and Wage-Earners' Lien Act and of the County Judges Criminal Court, and thus secure the speedy trial of all

non-jury actions on a day specially fixed for such purpose as soon as the pleadings are at issue, and at the minimum expense to the parties concerned.

The local judges in all the provinces of the Dominion have co-ordinate jurisdiction with the Superior Court judges in the trial of almost all criminal offences, except capital and rare political offences, and about ninety per cent. of all criminal offences sent up for trial in the whole province of Ontario are disposed of before the local judges in the province of Ontario.

The County Judges Criminal Court enables the accused to have his trial take place in a few days after he has been arrested, on a date fixed for such purpose.

About seventy per cent. of all such criminal offences are disposed of by the local judges without a jury, and the province saved the expense of empanelling juries for the trial of such offences. In 1911 there were 65,000 actions commenced in the 330 Division Courts in the province of Ontario, and the local judges held about 2,000 sittings and disposed of all contested cases without a jury, except only in 119 cases.

Division Court sittings are held nearly every month in the county towns, and about every other month in the other divisions, so that litigants have their claims disposed of expeditiously and at the minimum of cost.

In the province of Ontario the jurisdiction of the county courts has been increased from $200 to $500 in personal actions and from $400 to $800 in actions where the claim is liquidated.

This legislation had the effect of increasing the number of writs issued in the county courts about fifty-five per cent., and of decreasing the number of writs in the Supreme Court of Ontario about thirty-three per cent.

In 1912 there were 5,240 actions commenced in the county courts in Ontario, and over seventy-five per cent. of the contested actions were tried by the local judges without a jury.

In many counties the local judges have adopted the practice of disposing of non-jury actions as soon as the parties are ready for trial on a date specially fixed for such purpose.

In 1912 there were 3,666 actions commenced in the Supreme

Court of Ontario. Over sixty-eight per cent. of the contested actions were disposed of by a Judge without a jury.

The local judges have co-ordinate jurisdiction with the judges of the Supreme Court of Ontario in the trial of all actions brought under the Mechanics and Wage-Earners' Lien Act, and apparently dispose of almost all of these actions in their own counties on a date specially fixed for such purpose.

Actions involving the taking of lengthy accounts are frequently referred to the local judges for adjudication.

The Dominion Act now requires that all local judges in all the provinces should possess the same qualifications as judges appointed to the Superior Courts, and when all the local judges throughout Canada have co-ordinate jurisdiction with the Superior Court judges in the trial of offences punishable with imprisonment for life, there seems no reason why the respective Legislative Assemblies should not confer co-ordinate jurisdiction on the local judges to try all actions in the Supreme Courts of the respective provinces.

Such procedure would permit of about seventy-five per cent. of all the contested actions in the Supreme Court of Ontario being tried by the local judges or Superior Court judges without a jury on dates specially fixed for such purpose, as soon as the pleadings are at issue, without any delay or loss of time and at a minimum cost to the parties concerned, as is now done under the Mechanics and Wage-Earners' Lien Act and the Criminal Code.

Three or four judges of the Superior Courts in each of the cities of Halifax, St. John, Montreal, Toronto, Winnipeg, Regina, Edmonton and Vancouver could be assigned to take the non-jury sittings in the respective cities, and the clerk of such respective courts could fix definite days for the trial of each action at least ten days before the date of such trial, and if some actions consumed more time than estimated, a sufficient number of Superior Court judges should be available to dispose of all the actions on the dates fixed by the clerk of such courts.

It seems absurd that litigants with their counsel and witnesses should have to hang around the non-jury sittings in some of the said cities for five or six days at enormous expense before

they can proceed with the trial of their action. The jury cases could in the Supreme Court be set down for trial at the jury sittings of the county courts as well as at the sittings of the Supreme Court, and then no litigant would be required to wait longer than about three months for a jury sitting.

In view of the fact that the local judges in Quebec have exclusive jurisdiction in all actions, and that the local judges in British Columbia have almost similar jurisdiction, and that the jurisdiction of the County Courts in most of the provinces have been increased so that probably over ninety-five per cent. of the civil actions are disposed of by the local judges, the most satisfactory procedure would seem to be for the Legislative Assemblies of the different provinces to practically adopt the Quebec system by giving the Supreme Courts of the provinces jurisdiction in all civil actions involving amounts beyond the jurisdiction of the Division Courts, and give the local judges exclusive jurisdiction in the trial of all actions, and also have the provinces divided into judicial districts, in which judicial districts the resident judges could hold courts throughout such entire judicial district as might be designated by such resident judges from time to time."

We are told by the *Law Times* that there does not seem to be any disposition on behalf of suitors to avail themselves of the extended jurisdiction given by the English County Courts Act, which came into operation in 1905. It is not, therefore, a fact that in England, at all events, suitors desire to take their disputes to local county courts (corresponding to our Division Courts), rather than to be tried by the ordinary tribunals with a more formal procedure. Cheap law, like other cheap things, is not always satisfactory.

THE ALBERTA AND GREAT WATERWAYS RAILWAY CASE.

The decision of the Judicial Committee of the Privy Council in this case, delivered on January 31 last, was on appeal from a judgment in an action brought by the Government of Alberta against the Royal Bank of Canada, the Alberta and Great Waterways Railway Company, and the Canada West Construction Company, to recover $6,042,083.26, with interest, being the proceeds of the sale of certain bonds of the Railway Company, on deposit, at the time of action brought, with the Royal Bank of Canada. It is of epoch-making importance so far as concerns the powers of provincial legislatures in Canada, under the constitution of the Dominion established by the British North America Act, 1867, over "property and civil rights", or, at all events, over "civil rights", in the respective provinces. The following concise statement of the facts of the case will, I think, correctly explain the point decided by the Board, and satisfy the purposes of this article.

The Railway Company was incorporated in 1909 to build a railway within the province of Alberta, and empowered to issue bonds on which to raise the necessary funds for that purpose. These bonds the Government of the province guaranteed under statutory authority of the same year in that regard. They were taken up by a financial house in London, under an arrangement confirmed by Alberta statute and Orders in Council, whereby the money, the proceeds of the bonds, was to be deposited to the credit of a special account in the name of the provincial treasurer in the branch of the Royal Bank at Edmonton, in Alberta, to be paid out, from time to time, to the Railway Company, or its nominee, in monthly payments so far as practicable, as the construction of the lines of railway and the terminals was proceeded with to the satisfaction of the Lieutenant-Governor in Council, and according to certain specifications.

These arrangements were carried out in this way. As the proceeds of the bond issue in London came over to New York, the money was paid into the branch office of the Royal Bank in New York, and credited to the provincial treasurer, to the Railway Special Account. The Bank had its head office in Montreal, and

was incorporated under Dominion Law. The account in Edmonton was opened there in accordance with the arrangements above referred to. No money in specie was sent to the branch office which the Bank possessed there, but the general manager in Montreal arranged for the proper credit of the special account.

Now there appears to have been public uneasiness about the action of the Alberta Government in entering into the arrangements above described, and a Royal Commission of inquiry was appointed. While it was sitting there was a change of Government, and the new administration introduced and passed a statute on the validity of which the question to be decided in the appeal turned.

This statute, which became law on December 16, 1910, after setting out in its preamble that the Railway Company had made default in payment of interest on the bonds, and in construction of the line, and then, ratifying and confirming the guarantee by the province of the bonds, enacted that the whole of the proceeds of sale of the bonds, and all interest thereon, should form part of the general revenue fund of the province free from all claim of the Railway Company, or their assigns, and should be paid over to the treasurer without deduction. It is only fair to the province to add that the Act also provided that, notwithstanding the form of the bonds and guarantee, the province should, as between itself and the Railway Company, be primarily liable on the bonds, and should indemnify the Company against claims under them.

The local Courts held this Act *intra vires*, the Judicial Committee has held it *ultra vires*, and their judgment proceeds entirely upon the construction they place upon that clause of the British North America Act, 1867, which enacts that "in each province the legislature may exclusively make laws in relation to property and civil rights in the province" (sec. 92, sub-sec. 13), their lordships observing that they were not concerned with the merits of the political controversy which gave rise to the statute the validity of which was impeached.

The question involved was simply what is the proper construction of the above broad power of legislation conferred upon provincial legislatures in Canada, without any regard to the fact

that, as their lordships themselves have said in a former judgment like all other powers, it may be abused. In proceeding to construe it, the Board first refers to and illustrates by the case of *The National Bolivian Navigation Company* v. *Wilson*, 5 App. Cas. 176, the well-established principle of the Common Law that when money has been received by one person which in justice and equity belongs to another, under circumstances which render the receipt of it a receipt by the defendant to the use of the plaintiff, the latter may recover as for money had and received to his use; and that this principle applies when money has been paid to borrowers in consideration of the undertaking of a scheme to be carried into effect subsequently to the payment, and which has become abortive. The judgment then proceeds as follows:—

"The present case appears to their lordships to fall within the broad principle on which the judgments in that case (i.e. the Bolivian case) proceeded. The lenders in London remitted their money to New York to be applied in carrying out the particular scheme which was established by the statutes of 1909 and the Orders in Council, and by the contracts and mortgage of that year. The money claimed in the action was paid to the Bank as one of those designated to act in carrying out the scheme. The Bank received the money at its branch in New York, and its general manager then gave instructions from the head office in Montreal to the manager of one of its local branches, that at Edmonton in the Province of Alberta, for the opening of the credit for the special account. The local manager was told that he was to act on instructions from the head office, which retained control. It appears to their lordships that the special account was opened solely for the purposes of the scheme, and that when the action of the Government in 1910 altered its conditions, the lenders in London were entitled to claim from the Bank at its head office in Montreal the money which they had advanced solely for a purpose which had ceased to exist. Their right was a civil right outside the province, and the legislature of the province could not legislate validly in derogation of that right. In the opinion of their lordships the effect of the statute of 1910, if validly enacted, would have been to preclude the Bank from

fulfilling its legal obligation to return their money to the bondholders, whose right to this return was a civil right which had arisen, and remained enforceable outside the province. The statute was on this ground beyond the powers of the legislature of Alberta, inasmuch as what was sought to be enacted was neither confined to property and civil rights within the province, nor directed solely to matters of merely local or private nature within it":

these concluding words referring to another provision of the British North America Act, 1867, which gives provincial legislatures jurisdiction over "generally all matters of a merely local or private nature in the province."

The Board, therefore, has held that the legislature of Alberta could not legislate away the civil right of the bondholders, or the Bank on their behalf, to resist in the Courts of Alberta an action brought by the provincial treasurer of Alberta in those Courts for refusal to pay on his demand the moneys standing to his credit in the Bank at Edmonton, because the civil right of the bondholders to receive back the money advanced by them arose out of Alberta, and was enforceable out of Alberta by action against the Bank in Quebec.

Now, I would like again to observe that the question is one purely of the construction of the exclusive power given to provincial legislatures over civil rights in their respective provinces, without any regard to any injustice or injury which may be perpetrated by those legislatures in its exercise; and I would like to interpolate two further remarks, the apparent egotism of which I trust will be pardoned. The first is, that there is no one who would regret more than I should do any modification of, or restriction on, the right of appeal from our Canadian Courts to the Judicial Committee of the Privy Council. I regard that right of appeal as one of the soundest and healthiest of the many sound and healthy institutions of this most favoured land; and the decisions of the Privy Council upon questions arising under our Constitution as having been of the greatest benefit to this country, and as forming a record of which any Court in the world might be proud.

The second thing I wish to say is, that I have carefully studied

every reported judgment of the Privy Council upon questions arising out of the provisions of the British North America Act, 1867, relating to the distribution of legislative power between the Dominion Parliament and the provincial legislatures, and I have never seen the smallest loophole for criticism, or for doubt as to the correctness of any one of them before this last judgment. And I would consider the comment which I desire to make upon their lordship's judgment in this Alberta case entirely futile, if not quite unwarrantable, were it not that a careful study of the verbatim report of the argument before them shows that the construction for which I would contend was never submitted to the Board. It is a question in my mind whether the restriction which the judgment places upon the power of our provincial legislatures can, or ought to, be accepted as permanent until their lordships have at all events expressly overruled what I will now venture to suggest is the true construction of the clause in question.

The British North America Act, then, gives the provincial legislatures the exclusive power to make laws in relation to "civil rights in the province." When has a man a "civil right in the province?" I submit he has a civil right in the province whenever, and so far as, he can invoke the aid of the Courts of the province by way of action, or by way of defence, quite irrespective of where that civil right arose, and quite irrespective of whether the same state of facts gives him also a civil right which he can enforce, by way of action, or by way of defence, in any other jurisdiction. What is a civil right, except the right to invoke the aid and put into operation the machinery of the civil courts, directly or indirectly? In other words, my submission would have been that when the Imperial Parliament gave our provincial legislatures exclusive jurisdiction over "civil rights in the province," it was simply giving them complete control of their own provincial Courts. And this is entirely consistent with the power given them by the very next clause of the British North America Act, namely, over "the administration of justice in the province, including the constitution, maintenance, and organization of provincial Courts." And, generally, it is entirely consistent with

that autonomy and independence of the provinces, in regard to their own affairs, subject only to the express powers given to the Dominion Parliament, which the Privy Council has established by its former decisions.

It has taken but a few lines to state what my contention is about the meaning of the provincial power over civil rights in the province, but, if sustained, it would have established the validity of the Alberta Act. The province would have been entitled to hold the judgment it had obtained in the Alberta Courts, and to enforce it against any assets of the Royal Bank to be found in Alberta, whatever measure of respect would have been paid to that judgment in other jurisdictions. No doubt the bondholders would still have been free to sue the Bank in Quebec for recovery of their money as advanced on an enterprise which had become abortive; but inasmuch as the province had expressly renewed its guarantee of the bonds, they were, perhaps, not very likely to do so; and what would be the result of any such action on their part, under such anomalous circumstances, I am quite incompetent to say. But whether they took such action or not obviously could not affect the question of the proper construction of the British North America Act.

In a very famous judgment in 1883, *Hodge* v. *The Queen* (1883), 9 App. Cas. at p. 132, in reference to our Constitution, the Judicial Committee laid it down that when the British North America Act enacted that there should be a legislature for each province, and that its legislative assembly should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in section 92, it conferred authority as plenary and as ample within the limits prescribed by section 92 as the Imperial Parliament, in the plenitude of its power, possessed and could bestow. My contention, therefore, is that just as the Imperial Parliament can entirely control the action of the Courts in Great Britain and nullify any existing rights of action or defence, so can our provincial legislatures, so far as their own Courts are concerned, do the same thing, by virtue of their power over "civil rights in the province" and "the administration of justice in the province," saving always matters coming under Federal control.

—A. H. F. LEFROY in *Law Quarterly Review.*

ORAL MODIFICATION OF CONTRACTS REQUIRED BY THE STATUTE OF FRAUDS TO BE IN WRITING.

An ever-recurring question met by practitioners is: When may a written contract be modified, abrogated or discharged by parol, and when may it not? The question most frequently arises in connection with the trial of a cause involving a written contract which one party to the litigation seeks to vary or modify by parol testimony that would contradict the plain provisions of that contract. In such a case the rule is pretty well established that a party will not be heard to contradict the terms of the written agreement. In cases where the meaning of the contract is ambiguous, the court will receive parol testimony, not for the purpose of contradicting any portion of it, but in aid of it, by placing before the court evidence from which may be gathered the real intention of the parties. Because of the frequency with which these rules are applied, they have become too elementary to require citation of the legions of cases that support them.

From a consideration of the cases in which these rules are applied, it at once becomes apparent that the contracts involved are executed agreements. They are instances where one party to the written agreement has performed the stipulations required of him and is seeking to enforce his rights thereunder as a result of his performance, or where one party has offered and tendered performance and is claiming the benefits of an executed contract. Another phase of this question as to oral modification of written agreement is, May parties to a written contract modify, abrogate or discharge that contract while still executory by a subsequent agreement not in writing? In other words, can one party to a written contract enforce the provisions of that contract, when, before it is executed, the parties make a new agreement about the same subject matter, which new agreement is not reduced to writing? These seem simple questions, and yet they have arisen a considerable number of times in various jurisdictions, and the decisions have quite distinctly ranged themselves into two classes, depending upon the nature of the written contract which forms the subject of the controversy. The classification made by the

courts is with reference to whether the written contract is one within the Statute of Frauds or not. If a contract is reduced to writing by the parties of their own volition as a matter of convenience, and not because of any requirement of the statute, such a contract, while still executory, may be modified, abrogated or discharged by a subsequent oral contract regarding the same subject matter. It not being the intention of the writer to discuss the reasons assigned in support of this rule, suffice it to say, that by the substitution of such an oral contract for the written agreement, the parties have not been deprived of their rights, since the new oral contract may be enforced in an appropriate proceeding in the courts. If, on the other hand, the contract sought to be modified, abrogated or discharged is in writing because of the requirement of the Statute of Frauds, then, the courts hold, the subsequent contract cannot rest in parol but must be of equal dignity to the one sought to be modified. The writer purposes to shew the reasoning adopted by the courts in support of this last rule, and to shew some modifications made of it by a recent decision.

The purpose of the Statute of Frauds is clearly expressed in its name. The object of requiring certain contracts to be in writing in order to impart validity, was to prevent frauds arising from allowing the terms of those contracts to rest in parol. It is not strange, then, to see the original purpose of the Statute of Frauds carried forward into the decisions respecting the modification of those contracts, and even their abrogation and discharge. The California court, in the case of *Adler* v. *Friedman* 16 Calif. 139, has given the reason of the rule adopted in apt language. The plaintiff in the action sought to recover on a promissory note interest at the rate of 2½ per cent. per month in accordance with the terms of the note. On the trial the defendant offered to shew a reduction of the rate of interest by a parol agreement with the plaintiff. The rejection of this offer was assigned as error. In affirming the holding of the trial court, the appellate court said:—

"The general rule is, that extrinsic, verbal evidence is not admissible to contradict or vary the terms of a written agreement.

This rule is not infringed by the admission of such evidence to prove that the written agreement has been discharged, or to establish a new and distinct contract, upon a new consideration, which takes the place of, and is a substitute for the old. In the latter case, however, it must appear that the old agreement is rescinded and abandoned, and it is not competent to shew by parol the incorporation of new terms and conditions. It is obvious, too, that the new agreement must be valid in itself, and such may be made the basis of an action.

"Under our statute, parol evidence is not admissible, in any case, for the purpose of establishing a claim to interest beyond the statutory rate. Such a claim must be evinced by writing, or it is invalid and cannot be enforced. The effect of the proof in this case would have been to establish a contract upon which the plaintiff could not recover. No action can be maintained upon it, and no effect can be given to it as the modification of the terms of the original agreement."

The New York court, in *Hasbrouck* v. *Tappen*, 15 Johns. (N.Y. Com. Law Repts.) 200, was called upon to pass on the same question in an action on covenant to recover stipulated damages. The defendant had entered into a written agreement to convey to the plaintiff certain lands free and clear within a specified time or pay stipulated damages. The plaintiff extended the time orally, and it was contended on the trial that this oral extension of time amounted in law to a waiver of the stipulated damages. The Chief Justice charged the jury that the plaintiff was entitled to a verdict. After saying that such a parol agreement would be within the Statute of Frauds, the court said:

"If this is to be considered a new agreement, which in any manner affects the covenant, the plaintiff's whole remedy is gone. He can no more sustain an action for his real damages to be proved than he can for the stipulated damages; and this was not pretended at the trial. An agreement absolutely void can never be considered as altering, revoking or modifying a valid contract . . . but when the new contract is void in law, and the party without remedy if turned over to it, it would be extremely unjust."

This doctrine was approved in *Jewell* v. *Shroppel*, 4 Cowen

564, *Baldwin* v. *Munn*, 2 Wendell 405, and in *Delacroix* v. *Bulkley*, 13 Wendell 74, the court said:—

"A void agreement can never be considered an alteration of a valid contract."

The Supreme Court of the United States has also given expression to the same doctrine in similar language. *Swain* v. *Seamens*, 9 Wallace 254, was a case wherein the plaintiff sought to compel the defendant to cancel a certain mortgage, reliance being had upon a verbal modification of the terms of the mortgage. In holding contrary to the contentions of the plaintiff, the Supreme Court of the United States, after pointing out that the Wisconsin statute, which controlled in this case, provided that no interest in land except leases for less than one year shall be created except by operation of law or conveyance in writing, said:—

"Numerous authorities sanction the principle advanced by complainants in cases not within the Statute of Frauds, and which fall within the general rules of the common law, and in such cases it is held that the parties to an agreement though it is in writing, may, at any time before the breach of it, by a new contract not in writing, modify, waive, dissolve or annul the former agreement, if no part of it is within the Statute of Frauds. (Citing cases.)

"Reported cases may also be found where the rule is promulgated without any qualification; but the better opinion is, that a written contract falling within the Statute of Frauds cannot be varied by any subsequent agreement of the parties, unless such new agreement is also in writing. Express decision in the case of *Marshall* v. *Lynn*, 6 Mel. & W. 109, is, that the terms of a contract for the sale of goods falling within the Statute of Frauds cannot be varied or altered by parol; that where a contract for the bargain and sale of goods is made, stating a time for the delivery of them, an agreement to substitute another day for that purpose must, in order to be valid, be in writing."

This court has adhered to the reasons assigned in the foregoing case in a number of later decisions, and especially does it emphasize the distinction between contracts not within the Statute of Frauds and those within its operation in *Emerson* v. *Slater* 22 How. 42, *Hawkins* v. *U.S.*, 96 U.S. 689, *Chesapeake & O. Canal Co.* v. *Ray*, 101 U.S. 522. In the *Emerson* case the court said:—

"After the contract has been reduced to writing, the parties, in cases not within the Statute of Frauds, may, at any time before the breach of it, by a new contract not in writing, either waive, dissolve, or annul the former contract, or add to, or subtract from, or vary, or qualify the terms of it, and thus make a new contract."

In the *Hawkins* case the following language was used:—

"Subsequent oral agreements between the parties to a written contract not falling within the Statute of Frauds, if founded on a new and valuable consideration, may, when made before the breach of the written contract, have the effect to enlarge the time of performance specified in the written instrument, or may vary any other of its terms, or may waive and discharge it altogether."

In the *Chesapeake & O. Canal Co.* case the court said:—

"The terms of a contract under seal, where the Statute of Frauds is not involved may be varied by a subsequent parol agreement, express or implied."

It is to be noted that the authorities mentioned agree, that to discharge a written contract within the Statute of Frauds by a subsequent agreement between the parties, such subsequent agreement must be of equal dignity with that sought to be discharged, or, in other words, the new agreement must be such a contract as would be valid and capable of enforcement. No exception seems to have been recognized by any of them. Some courts, however, do qualify the rule to the extent that there may be sufficient performance under the new oral agreement as to take it without the Statute of Frauds, or, at least, to make it inequitable to allow a party to stand upon the written agreement after a part performance of the oral modification. Such seems to be the rule adopted by the Washington Supreme Court. The case of *Thill v. Johnston*, 60 Wash. 393, was an action brought to compel specific performance of a contract affecting real property, which, under the state statute, must be in writing. The defendant sought to shew that the written contract had been abrogated by a new oral contract. In holding that this was not permissible, the court said:—

"It is contended that the learned trial court erred in not

permitting the appellants to shew that this contract was abrogated by a new contract. The offers of proof on this subject consisted only of oral testimony tending to shew that the parties had abrogated the contract by making a new one. No competent evidence was offered to shew that any new contract having any effect upon the original one was made in writing. This original contract being for the conveyance of an interest in real property, it was, of course, required by law to be in writing. *Nichols* v. *Opperman*, 6 Wash. 618, 34 Pac. 162; *Brewer* v. *Cropp*, 10 Wash. 136 Pac. 866; *Swash* v. *Sharpstein*, 14 Wash. 426, 44 Pac. 862, 32 L.R.A. 796; *Graves* v. *Graves*, 48 Wash. 664, 94 Pac. 481.

"Counsel for appellants invoke the general rule that a written contract may be abrogated or modified by a subsequent parol contract made between the same parties, citing *Tingley* v. *Fairhaven Land Co.*, 9 Wash. 34, 36 Pac. 1098. This rule, however, does not authorize the abrogating of a contract by a new parol contract when the original contract is by law required to be in writing. Such a contract cannot be abrogated or rescinded by a parol contract, *except such new parol contract is accompanied by acts of part performance sufficient to take it out of the requirements of the law that it shall be in writing.* *Spinning* v. *Drake*, 4 Wash. 285, 30 Pac. 82, 31 Pac. 319.

"*It is suggested that the offers of proof included a shewing of part performance of the new contract. The only acts of part performance which we regard as at all referable to the new contract sought to be shewn was payment of the consideration therefor, but this of itself is not sufficient to take the place of the requirement of the law that such contract shall be in writing.*"

The next time the Washington court was called upon to pass on this question was in the case of *Gerard-Fillio Co.* v. *McNair*, 68 Wash. 321. In that case, the plaintiff declared on a written contract for commissions for the sale of real property, which under the Statute of Frauds was required to be in writing in order to be valid. The defendant pleaded in defence an oral modification of the written contract, or rather the discharge of the written contract by a subsequent oral contract entered into while the written contract was still executory and tender of

performance. The trial court sustained a motion for judgment on the pleadings in favour of the plaintiff. On appeal, the Supreme Court reversed the holding of the trial court, and in so doing, said:—

"The second question, whether the verbal contract modifying the original written contract was within the Statute of Frauds, is of more difficulty. In this state a contract employing an agent to sell or purchase real estate for a commission must be in writing in order to be valid. Rem. & Bal. Code, sec. 5289. And this court has held that a contract modifying or abrogating a prior written contract required by statute to be in writing must itself be in writing to be obligatory: *Spinning* v. *Drake*, 4 Wash. 285, 30 Pac. 82, 31 Pac. 319; *Thill* v. *Johnston*, 60 Wash. 393, 111 Pac. 225. And we have held also that an oral contract for the payment of a commission for selling or purchasing real estate, although fully performed, is not enforceable: *Keith* v. *Smith*, 46 Wash. 131, 89 Pac. 473. These principles are relied on to support the judgment of the trial court; but it seems to us they do not meet the question presented. While it is the rule that a written executory agreement to sell or purchase real estate cannot be rescinded or abrogated by an oral executory agreement to rescind or abrogate it, it does not follow that such an agreement cannot be modified or abrogated by an executed oral agreement. On the contrary it is recognized by our own cases above cited, and it is the rule of all the cases in so far as we are advised, that an executed oral contract to modify or abrogate a written contract, required by the statute to be in writing, can be successfully pleaded as a defence to an action of the original contract. To hold otherwise is to make the Statute of Frauds an instrument of fraud; *for it would be a fraud to allow a person to enforce a contract which he had agreed on sufficient consideration to modify or abrogate after he has accepted the consideration for its modification or abrogation. It is for this reason that equity allows a performance or a substantial part performance of a contract, invalid because not in writing, modifying or abrogating a valid contract to be pleaded as a defence to an action on the valid contract.* To do otherwise would be to allow one of the parties to have the benefit of both

contracts when in equity and good conscience he should have the benefit of but one. The case of *Keith* v. *Smith*, *supra*, is not contrary to these principles. To allow one entering into an oral contract to sell or purchase real estate on commission to recover his commission merely because he had performed the contract would render nugatory the statute requiring such contracts to be in writing. As was said in the case cited, a claim for commission from its very nature cannot be made until earned, and to hold that performance would take an action of this character out of the operation of the statute would nullify the statute itself."

Certain parts of the two last excerpts from opinions have been italicised to shew that under the holdings of the Washington court a contract, void under the law because not in writing, if partially performed, may be successfully pleaded in defence to an action on the valid contract sought to be abrogated or discharged by the invalid oral contract, although it be substituting for the valid contract one that the plaintiff could not enforce should he seek to make it the basis of an action. In this respect these holdings differ essentially from those quoted earlier in this article. It is also to be noted that in the *Thill* case the court says that the payment of a consideration for the making of the new oral contract would not take it out of the Statute of Frauds sufficiently to permit it to be interposed as a successful defence, while in the *Gerard Fillia Co.* case it expressly says that it would be inequitable to permit the plaintiff to maintain his action on the original written contract "when he has accepted the consideration for its modification or abrogation."

If the holding of the Washington court is a proper modification of the general rule on this subject, though we have been unable to find any cases in other jurisdictions to the same effect, the law would seem to be that in cases where the parties have sought to modify or abrogate a written contract within the Statute of Frauds while still executory by a subsequent oral contract invalid because not in writing, such oral contract may not be pleaded in defence unless the party seeking to enforce the original written contract has received some substantial benefit under the modified oral contract. It is to be noted, however, that the modification

of the rule, to a degree at least, nullifies the purpose of the Statute of Frauds, for it permits the results of litigation to be determined by oral testimony, one of the things primarily sought to be eliminated by the enactment of the statute. We believe the holding of the California courts in the *Adler* case, to the effect that the contract pleaded in defence "must be valid in itself, and such may be made the basis of an action," to be the better rule, for while it may work a hardship in individual cases, a thing that is not uncommon to the law, it would, at least, eliminate the possibility of perjured oral testimony, and render definite and known what would otherwise become indefinite and uncertain.—*Central Law Journal.*

An action for personal injury once instituted passes to the representative of the pursuer on his death. If, however, the injured person dies without raising action, does the right of action transmit to the executors? On this question there have been divergent views. In some cases the opinion was expressed that the moment the delict has taken place the right vests in the sufferer of it, which right is part of his patrimony, and transmits to his executors like any other piece of property. The other view was, and it has been the one which has received favour from recent decisions, particularly *Bern* v. *Montrose Asylum* (20 R. 889), that if a person who has sustained injury dies without taking steps to obtain reparation, his executor cannot take action. This left open the question whether the only way in which the injured person could intimate his intention to enforce his right to reparation was by raising action. The institution of an action certainly is the best proof that the injured person intended to press his claim; but is it the only proof? The Court have now held, in *McEnaney* v. *The Caledonian Railway* ([1913], 1 S.L.T. 373), that there are other ways of manifesting such intention so as to give a title to executors to recover. In that case the claim had been intimated by the deceased to the third party responsible, and the deceased in his will specially assigned to his executors his claim against the railway company. The action was raised after the death of the party injured, but it has been found that his executors had a title to pursue it.—*Law Magazine.*

REVIEW OF CURRENT ENGLISH CASES.

MORTGAGE — DEBENTURE — FLOATING CHARGE — COMPANY RESTRAINED FROM CREATING FURTHER CHARGE IN PRIORITY TO FIRST DEBENTURES—POWER TO DEAL WITH PROPERTY—SUBSEQUENTLY ACQUIRED PROPERTY—SPECIFIC MORTGAGE SUBJECT TO PROVISIONS OF FIRST MORTGAGE—PRIORITY.

In re Stephenson Co., Poole v. The Company (1913) 2 Ch. 201. This was a contest between debenture holders of a company. In 1899 the company issued debentures secured by a trust deed which constituted a specific and floating charge on the company's property, and whereby it was provided that the company, notwithstanding the charge, might deal with its assets but not to create any further charge over its property generally to rank *pari passu* with or in priority or otherwise than in subordination to the security thereby created. Subsequently the company purchased freeholds, and by a further trust deed the company granted to the trustees certain freeholds, including such newly acquired property, by way of trust, to secure a new issue of debentures subject to the provision of the first deed. The second deed also contained a general charge on all the company's assets subject to the first deed. On behalf of the debenture holders secured by this second deed it was contended that the first deed only prohibited a general charge, but not a specific charge, and that as to the property acquired after the first deed the second debenture holders were entitled to priority over the first deed. But Parker, J., held that the security of the second series of debenture holders was as to all of the property included therein subsequent to the first deed, and this decision was affirmed by the Court of Appeal (Cozens-Hardy, M.R., and Farwell and Kennedy, L.JJ.).

STATUTE OF LIMITATIONS—REAL PROPERTY LIMITATION ACT, 1874 (37-38 VICT., C. 57)—LIMITATION ACT, 1623 (21 JAC. 1, C. 16)—(STATUTE OF LIMITATIONS (10 EDW., C. 34, ONT.), SS. 20, 40)—DEBTS CHARGED ON LAND—DEBTS PAYABLE OUT OF MIXED FUND—DEBTS WHETHER BARRED AGAINST PERSONAL BUT NOT AGAINST REAL ESTATE.

In re Raggi, Bruss v. *Young* (1913) 2 Ch. 206. The facts in this case were that a testator who died in 1907 by his will devised

back of the record that the same was a cause proper to be tried by a special jury." The action was tried on the 27th January, 1913, but the certificate of the Judge was not given until 24th April following. The Court of Appeal (Cozens-Hardy, M.R., and Kennedy L.J.) held that this was not a sufficient compliance with the Act.

MOTOR CAR—OFFENCE—OWNER—REFUSAL TO GIVE INFORMATION AS TO DRIVER OF MOTOR CAR—OMISSION TO SPECIFY OFFENCE COMMITTED BY DRIVER—MOTOR CAR ACT, 1903 (3 EDW. VII. c. 36), s. 1 (3).

Ex p. Beecham (1913), 3 K.B. 45. The applicant in this case was the owner of a motor car who had been convicted under the Motor Car Act, 1903 (3 Edw. VII. c. 36), s. 1 (3), for refusing to give information as to the driver of the car by whom an offence had been committed. An objection was taken before the magistrate that the information did not specify what particular offence had been committed nor where it had been committed; but the objection was, as the Divisional Court (Bankes, and Lush, JJ.) held, properly overruled. There appears to be no such provision in the Ontario Act, 2 Geo. V. c. 48.

CRIMINAL LAW—SENTENCE—WHIPPING AUTHORISED OF OFFENDER WHOSE AGE DOES NOT EXCEED SIXTEEN YEARS — OFFENDER OVER SIXTEEN AT TIME OF CONVICTION.

The King v. *Cawthron* (1913), 3 K.B. 168. This was a curious case. The defendant had been convicted of an offence against a female child and had been sentenced to a year's imprisonment at hard labour. The statute under which the conviction was had provided "that in the case of an offender whose age does not exceed sixteen, the Court may instead of sentencing him to any term of imprisonment, order him to be whipped." The prisoner was under sixteen when the offence was committed but over sixteen when convicted. He applied to have the sentence changed to whipping; but the Court of Criminal Appeal (Darling, Rowlatt, and Atkin, JJ.) held that it could not be done, that the statute only authorized whipping of offenders who were under sixteen at the time of conviction.

WILL—CONSTRUCTION—CHARGE OF DEBTS ON LAND AND PERSONALTY IN FOREIGN COUNTRY—MIXED FUND—NON-EXONERATION OF RESIDUARY PERSONALTY—REALTY—PERSONALTY.

In re Smith, Smith v. *Smith* (1913) 2 Ch. 216. This was an administration action, and the question dealt with relates to the proper order for the administration of assets in the following circumstances. By a will made in 1905 the testator, after appointing executors and trustees, gave certain legacies free of duty, and, subject to the payment of the said legacies, duties, debts, and funeral and testamentary expenses, he devised and bequeathed all his real and personal property in the Argentine Republic to his trustees upon trust to sell, and, after payment of the expenses of the sale, to pay the residue to the children of his two brothers in equal shares; and the testator devised and bequeathed the residue of his real and personal estate in trust for the plaintiff. The testator died in 1910 domiciled in England. The question submitted to the court was whether the charge of debts and legacies on the real and personal estate in the Argentine had the effect of exonerating the residuary personal and real estate. Eve, J., held that the charge created by the will was confined in its operation to the Argentine property; that the rule of construction which requires that there must be found in the will not only an intention to charge the realty but also to exonerate the personalty before the latter can be exonerated, applies to a charge on realty situate in a foreign country; that if there had been a mixed fund created the residuary estate might have been exonerated, but that in the present case a mixed fund for payment of debts, etc., had not been created, because the trust for conversion was not for payment of debts and legacies, but only of the balance of the property after payment of debts and legacies, etc. He therefore came to the conclusion that the devise of the Argentine realty charged with payments of debts and legacies made it an auxiliary fund to the personalty, but did not operate to exonerate the personalty from its primary liability; but he also held that as the rule of construction applicable to realty does not apply to personalty, the charge of the debts and legacies on the Argentine personalty did exonerate the residuary personalty of its primary liability therefor.

SETTLEMENT — CONSTRUCTION — HOTCHPOT CLAUSE— — COVENANT TO SETTLE AFTER-ACQUIRED PROPERTY—TRUSTS BY REFERENCE.

In re Fraser, Ind v. *Fraser* (1913) 2 Ch. 224. In this case the construction of a marriage settlement made in 1847 was in ques-

tion, whereby a fund belonging to the husband and another belonging to the wife were settled, subject to life interests to the husband and wife, in trust for such children of the marriage as the husband and wife jointly should appoint, and as to the unappointed part for children in equal shares. Then followed a clause that no child in whose favour an appointment was made should take any share in the unappointed funds without bringing his appointed share into hotchpot. The settlement also contained a covenant by the wife to settle her after-acquired property. The husband and wife appointed the whole of the original trust funds in favour of five of their children—there being two other children in whose favour no appointment was made. Two legacies to the wife came in subsequently and were caught by the covenant. The husband and wife died without making any further appointment, and the question was whether the five children could participate in the unappointed after-acquired property without bringing their appointed shares into hotchpot; and Sargant, J., held that they could not, His Lordship being of opinion that the settlement of the after-acquired property could not be regarded as a separate settlement, but, on the contrary, that the after-acquired property must be treated as a mere accretion to the original trust fund.

MASTER AND SERVANT—TRADE SECRET—SECRET PROCESS—CONFIDENTIAL EMPLOYMENT—IMPLIED OBLIGATION OF SERVANT—INFORMATION AS TO SECRET PROCESS ACQUIRED DURING EMPLOYMENT—INFORMATION COMMITTED TO MEMORY—IMPROPER USE OF INFORMATION—INJUNCTION.

Amber Size & Chemical Co. v. *Menzel* (1913) 2 Ch. 239. This was an action to restrain the defendant, a former employee of the plaintiffs, from disclosing or making use of information acquired by him as to a secret process of the plaintiffs while in their employment. The court found as a fact that the plaintiffs had a secret process, and that the defendant while in their employment had acquired material information in reference to it—although the details of the process were not disclosed to the court. The question was raised by the defence whether, in the absence of any express contract, the defendant could be restrained from making use of the information he had acquired while in the plaintiffs' service; and Astbury, J., who tried the action, held that there was an implied contract by an employee not to disclose secret information acquired in the course of his employment, and he granted the injunction, but intimated that he felt some difficulty

in granting it, owing to the process not having been disclosed to the court, but suggested that if it should become necessary to enforce the order, the plaintiffs could then, under proper safeguards against it being otherwise divulged, make known the process to the court.

GIFT OF CHATTELS—VOID DEED—ACKNOWLEDGMENT—VOLUNTARY GIFT—SUBSEQUENT DELIVERY OF DEED EXECUTED BY ATTORNEY WITHOUT AUTHORITY BY DONOR IN PERSON—PASSING PROPERTY.

In re Seymour, Fielding v. *Seymour* (1913), 1 Ch. 475. The simple question in this case was whether a deed of gift which had been executed by attorney without authority, had been subsequently ratified by the donor. The facts were that in February, 1896, the deed of gift of certain chattels was executed by one Leighton in assumed exercise of a power of attorney from Mrs. Seymour in favour of her daughter Miss Seymour. In 1898, Mrs. Seymour's solicitor, amongst other business read over the deed of gift to her, and made the following note of the interview so far as it related to the deed. "Attending you as to the deed of gift to Miss S., and you desired us to retain the same on her behalf. You would have a copy made of the original inventory and would send us the original to keep with the deed. And also as to the P.A. given to S. Leighton and reminding you that this had been prepared by Mr. Marston and had never been in our possession." Mrs. Seymour afterwards sent the inventory to her solicitors with a note in her own handwriting: "Mr. Seymour's catalogue with annotations of pictures and works of art at 5 Chesterfield Gardens, now the property of Miss Seymour." The daughter subsequently became insane, and in her affidavit as to her property Mrs. Seymour did not include the articles which were the subject of the deed of gift. By her will, made in 1910, Mrs. Seymour disposed of her pictures, furniture, etc., in trust for her daughter for life, and then for other persons. She died in 1911. It was then discovered that the power of attorney under which Mr. Leighton had assumed to execute the deed of gift was not wide enough for that purpose. Joyce, J., held that the deed of gift had been so acknowledged by Mrs. Seymour, in 1898, as to be in effect a delivery of the deed by her, and therefore that the property in the chattels therein comprised had passed to the daughter; and his decision was affirmed by the Court of Appeal (Cozens-Hardy, M.R., and Buckley, and Hamilton, L.JJ.).

STATUTE OF LIMITATIONS—SHARE OF PROCEEDS OF SALE OF LAND HELD IN TRUST—REAL PROPERTY LIMITATION ACT, 1833 (3 & 4 W. 4, c. 27), ss. 1, 34—REAL PROPERTY LIMITATION ACT, 1874 (37-38 VICT. c. 57), s. 8—(10 EDW. 7, c. 34, ss. 1, 5).

In re Fox, Brooks v. *Marston* (1913) 2 Ch. 75. In this case Warrington, J., holds that a mortgagor's interest in a share of the proceeds of land held in trust for sale is, under the interpretation clause of the English Statute of Limitations, 1833, s. 1 (see 10 Edw. 7, c. 34, s. 1 (Ont.)), an interest in land, and that after the lapse of twelve (in Ontario ten) years, in the absence of any payment or acknowledgment, the right of the mortgagee to recover it is barred under s. 34, (Ont. Act, s. 5).

MARRIAGE SETTLEMENT—COVENANT TO SETTLE PROPERTY—INTEREST IN EXPECTANCY.

In re Mudge (1913) 2 Ch. 92. In this case a covenant to settle property contained in a marriage settlement was sought to be enforced. The circumstances were as follows. In 1864 a testatrix gave a fifth share of her residuary estate to her daughter Williamina for life, with remainder to her children, but if she died without issue (which happened) then to her next of kin as if she had not been married. In 1865 Jane, another daughter of the testatrix, married, and by her marriage settlement covenanted that any real or personal property to which she was then entitled for any estate or interest whatsoever in reversion, remainder or expectancy, should be settled upon the trusts of the settlement. In 1912, Williamina died without issue, leaving Jane her sole next of kin, and Neville, J., held that Jane's interest at the date of her marriage in Williamina's share was not a mere spes successionis, but an "interest in expectancy," and as such was subject to the covenant.

INSURANCE COMPANY—WINDING-UP—CURRENT POLICIES—CLAIMS OF POLICY HOLDERS — CONTINGENT CLAIMS MATURING AFTER WINDING-UP ORDER — "VALUING A POLICY" — MEASURE OF DAMAGES.

In re Law, Car & General Insurance Corporation (1913) 2 Ch. 103. This was a winding-up proceeding against an insurance company, and the question to be determined was the basis on which the claims of certain policy holders were provable. The

policies in question were against risks under the Employers' Liability Act and Workmen's Compensation Acts, and the Court of Appeal (Cozens-Hardy, M.R., and Buckley, and Kennedy, L.J.J.) (reversing Neville, J.) hold that the holders were entitled to prove (1) for any ascertained amounts due under the policies at the date of the winding-up order; and (2) also in respect of liabilities in the shape of weekly payments which had arisen at the date of the winding-up order, the future-accruing payments to be valued as prescribed by the Assurance Companies Act, 1909; and (3) for the value of the policy as an indemnity against future liabilities during the currency of the policy, to be estimated upon the basis of a partial return of the premium. But the court held that he was not entitled to prove in addition in respect of liabilities which may have arisen under the policy after the date of the winding-up order.

ADMINISTRATION—WILL—LEGACY ON RELEASE OF ANNUITY UNDER A SETTLEMENT — DEFICIENCY OF ASSETS — ABATEMENT OF LEGACY.

In re Whitehead, Whitehead v. *Street* (1913) 2 Ch. 56. The point decided by Farwell, L.J., in this case was simply this, viz., that where a legacy is given to a legatee subject to a condition that it shall be accepted in satisfaction of the claims of the legatee under a settlement; in case of a deficiency of assets, such a legacy must abate with all other legacies and is not entitled to any priority over them.

MORTGAGOR AND MORTGAGEE — FORECLOSURE — PARTIES — FIRST MORTGAGE OF ONE SHARE—SECOND MORTGAGE OF THREE SHARES OF THREE CO-MORTGAGORS—RIGHT OF INDEMNITY BETWEEN CO-MORTGAGORS — FORECLOSURE OF FIRST MORTGAGE — CO-MORTGAGORS UNDER SECOND MORTGAGE NOT MADE PARTIES.

Gee v. *Liddell* (1913) 2 Ch. 62. This was a mortgage action in which the facts were somewhat unusual. Three persons, John, William and Walter, were, respectively, entitled to a one-third share in a sum of money under the will of a testator who died in 1860. In 1881 William mortgaged his share to Barlow to secure £1,500. In 1882 John, William and Walter mortgaged their shares to the Equity & Law Life Assurance Society to secure £17,876, subject as to William's share to the prior mortgage to Barlow. As between the three mortgagors it was agreed that

John and his share should be primarily liable for £13,407, William for £3,129 and Walter for £1,340, and that each of them should contribute in these proportions to the payment of the debt, and should indemnify the others against the payment of the proportion for which he was primarily liable. In 1882 Barlaw brought a foreclosure action against William and foreclosed his mortgage, but John and Walter were not made parties to the action. The fund which was the subject of the mortgages having been paid into Court, this was an application for the payment out of the money to the parties entitled, and it was held by Warrington, J., that John and Walter were necessary parties to the foreclosure proceedings against William and that as against John and Walter the foreclosure of William's share was ineffectual, and as to them and persons claiming under them William's share must be first applied in payment of the Barlow mortgage, and secondly in making good its due contribution to the mortgage to the insurance company, but as to William and the persons claiming under him the foreclosure remained absolute, and the balance of his share after making the payments aforesaid belonged to Barlow and those claiming under him.

COMPANY ARTICLES OF ASSOCIATION—BOARD OF DIRECTORS—APPOINTMENT OF MANAGING DIRECTOR—POWER TO REVOKE APPOINTMENT OF MANAGING DIRECTOR.

Nelson v. *Nelson* (1913) 2 K.B. 471. In this case the plaintiff, who had, under power conferred on the board of directors of the defendant company, by its articles of association, been appointed the managing director of the company, sued the company for damages for breach of the agreement, under which he was appointed. The articles provided that the board of directors might appoint a managing director, and also revoke the appointment. By the agreement with the plaintiff, he was appointed on the terms that he should hold office so long as he continued a director, and retained his due qualification, and efficiently performed the duties of the office. Subsequently, while the plaintiff was fulfilling the conditions of the agreement, the board of directors revoked his appointment. Scrutton, J., who tried the action, held that the articles of association did not empower the board to revoke the appointment at will, but for good cause only, and, therefore, that the plaintiff was entitled to recover.

SOLICITOR AND CLIENT—UNCERTIFICATED SOLICITOR—COSTS AND DISBURSEMENTS—RETAINER OF COSTS OUT OF CLIENT'S MONEYS —SOLICITORS ACT, 1874 (37-38 VICT. C. 68), S. 12.

Browne v. *Barber* (1913) 2 K.B. 553, is a case which shows that there is a difference between English and Ontario statute law, in regard to solicitors practising without a certificate. The English Solicitors Act, 1874, s. 12, provides that, where an unqualified person acts as a solicitor, he can recover no fee reward, or disbursement, for anything so done. It was therefore held, in this case, by the Court of Appeal (Williams, Farwell, and Kennedy, L.JJ.), affirming Channell, J., that, where an unqualified person acts as a solicitor, he cannot retain out of any moneys of his client, which come to his hands, any fee, reward, or disbursement. Under the Ontario Act (2 Geo. V. c. 28), a penalty of $40 is imposed on a solicitor practising without a certificate (s. 24); and he is made liable to suspension (s. 25); and he cannot recover any fee, or reward, or disbursement, for anything done by him while imprisoned or suspended (s. 27). By s. 4, persons practising without being admitted, are guilty of a contempt of Court. But the Ontario Act does not appear to contain any similar provision to that of the English Act of 1874 above mentioned. When the Ontario statute was recently under revision, it seems a pity a similar provision to that of the English Act of 1874, was not included.

STATUTE OF LIMITATIONS (21 JAC., C. 16)—(10 EDW. VII. C. 34, SS. 46-49)—TRUST—EXPRESS TRUST—SHIPPING AGENT—SALE OF CARGO AND PAYMENT OF CLAIMS BY AGENT—BALANCE IN AGENT'S HANDS.

Henry v. *Hammond* (1913) 2 K.B. 515. This was an action brought by a principal against his agent, who had been employed by the plaintiff to sell a cargo of goods which had been salved, and out of the proceeds pay all claims and expenses in connection with the cargo. This the defendant did, in 1883, and a balance remained in his hands, which was not paid over to the plaintiff, and of which he did not know. This balance appeared in the defendant's balance sheets from 1884 to 1888 as a debt owing, the name of the vessel carrying the cargo had been first mentioned, but the name of the creditor was not stated, and in 1889 it was carried to profit and loss in his accounts, and thereafter did not appear on the balance sheets. The defendant set up the Statute

the sale of the "after-acquired property" by some act done by him after the property is acquired by him; and an assignee acquired no valid title by such instrument to such property when there was no *novus actus: Lunn* v. *Thornton*, 1 C.B. 379, 14 L.J.C.P. 161.

But if a seller or mortgagor agrees to sell or mortgage property, real or personal, of which he is not possessed at the time, and he receives the consideration for the contract, and afterwards becomes possessed of property answering the description in the contract, a Court of equity would compel him to perform the contract, and that the contract would, in equity, transfer the beneficial interest to the mortgagee or purchaser immediately on the property being acquired. This, of course, assumes that the supposed contract is one of that class of which a Court of equity would decree specific performance. If it be so, then, immediately on the acquisition of the property described, the vendor or mortgagor would hold it in trust for the purchaser or mortgagee, according to the terms of the contract: Lord Westbury in *Holroyd* v. *Marshall*, 10 H.L.C. 191; *Coyne* v. *Lee*, 14 O.A.R. 503, 23 C.L.J. 413; *Tailby* v. *Official Receiver* (1888), 13 A.C. 523; *Lazarus* v. *Andrade*, 5 C.P.D. 319; *Leatham* v. *Amor*, 47 L.J.Q.B. 581; *Re Panama, etc., Mail Co.*, L.R. 5 Ch. 318.

On a contract or bill of sale purporting to assign goods to be acquired in the future, if the goods be sufficiently described to be identified on acquisition by the seller, the equitable interest in them passes to the buyer as soon as they are acquired (*Tailby* v. *Official Receiver* (1888), 13 A.C. 523; *Holroyd* v. *Marshall*, 10 H.L.C. 191; *McAllister* v. *Forsyth*, 12 Can. S.C.R. 1; *A. E. Thomas, Limited* v. *Standard Bank of Canada*, 1 O.W.N. 379; *Fraser* v. *Macpherson*, 34 N.B.R. 417 (affirmed by Supreme Court of Canada)), and if not so described the property will not pass until the seller does some act appropriating them to the contract (*Langton* v. *Higgins* (1859), 28 L.J. Ex. 252), or unless the buyer takes possession of them under an authority to seize: *Hope* v. *Hayley* (1856), 25 L.J.Q.B. 155.

If the mortgage covers future acquired stock, and there is, under the terms of the mortgage, an implied license to the mortgagor to carry on his business and sell the stock, the *bonâ fide* purchasers from the mortgagor will get a good title, notwithstanding that the mortgage was duly registered, and especially when the mortgage provides that until default the mortgagor shall be entitled to make use of the stock without hindrance or disturbance by the mortgagee; but if the mortgagor fraudulently sells the goods to *bonâ fide* purchasers not in the ordinary course of business, the mortgagee will be entitled thereto, because the right of the mortgagor to deal with the goods is subject to the implied condition that the dealing shall be in the ordinary course of business (*National Mercantile Bank* v. *Hampson*, 5 Q.B.D. 177; *Walker* v. *Clay*, 49 L.J.C.P. 560; *Dedrick* v. *Ashdown*, 15 Can. S.C.R. 227, 242); but the goods to be afterwards acquired must be in some way specifically described, for goods which are wholly undetermined, as, for instance, "all my future personalty," will not pass as future-acquired property: *Tadman* v. *D'Epineuil*, 20 Ch. D. 758; *Lazarus* v. *Andrade*, 5 C.P.D. 318; *Belding* v. *Read*, 3 H. & C. 955.

the Rules of Court, and has no effect upon the operation of the Statute of Limitations. This point, however, is now met in Ontario by The Interpretation Act (7 Edw. 7, c. 2) s. 7, which, in such circumstances, would appear to extend the time for bringing an action until the next day which is not a holiday.

LIBEL—INNUENDO—TRADE PUBLICATION—LIST OF DECREES IN ABSENCE—ERRONEOUS ENTRY—IMPUTATION OF INSOLVENCY.

Stubbs v. *Russell* (1913) A.C. 386. This was an appeal in a libel action from a Scotch court. The libel in question was published in a weekly paper published by the defendant purporting to give a list of judgments which had been pronounced in the Small Debts Courts against persons in their absence. The list was headed with a statement that in no case did the publication of the decree imply inability to pay on the part of anyone named. The plaintiff was a tradesman, and in the list of judgments one was stated to have been given against him, the fact being that he had paid the debt sued for and the action had been dismissed. The plaintiff averred that the publication falsely and calumniously represented that he was unable to pay his debts, and the court below had directed an issue to be tried. The House of Lords (Lord Haldane, L.C., and Lords Halsbury, Kinnear and Shaw) were of the opinion that the entry, when read in connection with the explanatory note, was incapable of bearing the defamatory meaning alleged, and that therefore there was no question to go to a jury, and the issue ought to have been disallowed.

FRAUD—CONTRACT INDUCED BY MISREPRESENTATION—APPEAL ALLOWED ON FACTS.

Glasgow & S.W. Ry. v. *Boyd* (1913) A.C. 404 may be here briefly noted as being a case in which the House of Lords reversed the judgment of the Court of Session, in an action to set aside a contract induced by alleged fraudulent misrepresentations, on the facts, their Lordships being of the opinion that the alleged fraud had not been proved.

HEARING IN CAMERA—PUBLICATION OF PROCEEDINGS AFTER TRIAL—CONTEMPT OF COURT—COMMITTAL—APPEAL—CRIMINAL PROCEEDINGS.

Scott v. *Scott* (1913) A.C. 417. This was an appeal from the decision of the Court of Appeal (1912) p. 241 (noted *ante* p. 66),

to the unsatisfactory character of which decision we there drew attention. The case, it will be remembered, arose out of a case of nullity of marriage which had been ordered to be tried in camera. Subsequently to the trial the petitioner, through her solicitor, obtained copies of the notes of evidence and sent them to certain persons in defence of her reputation; whereupon the respondent moved to commit the petitioner and her solicitor for contempt of court in publishing the proceedings of the case after an order had been made that it should be heard in camera. On the return of the motion the parties apologized, but were ordered to pay the costs of the motion. From this order they appealed, and the Court of Appeal held that the proceeding to commit for contempt was in the nature of a criminal proceeding, and therefore that the appeal did not lie. Their Lordships (Lord Haldane, L.C., and Lords Halsbury, Loreburn, Atkinson and Shaw) have given what we think will be regarded as a classical judgment in the case, and have once and for all cleared the air on the points involved in a way which will probably be regarded by the profession and public at large in a very satisfactory manner. In the first place, their Lordships hold that the High Court has not an absolute discretion to direct matrimonial cases to be heard in camera, in the way the former ecclesiastical courts had done, but that matrimonial cases, like all other cases, are *prima facie* to be heard in public, subject, however, to the right of the court to direct a hearing in camera where it is necessary in the interests of justice, and except in the cases of wards of court and lunatics, where the court is exercising a paternal jurisdiction; and that unless it is necessary for the attainment of justice all causes ought to be heard in public. It is not enough that the evidence is likely to be of an unsavoury character, or that the parties agree to a hearing in camera. In the present case their Lordships find there was no valid reason for the order. As to what degree of secrecy is to be observed as to matters heard in camera their Lordships do not lay down any universal rule, but rather the simple principle that it is only where the disclosure would be likely to defeat or interfere with the ends of justice that it can be judicially restrained. In the present case the disclosure had no such effect, and their Lordships held there was in fact no contempt; the order appealed from was reversed with costs. The constitutional aspect of the case is well and vigorously dealt with by Lord Shaw. It may be noted that, in view of the importance of the questions involved and the probability that the respondent might not be represented by counsel, the Attorney-General adopted the unusual course of

providing counsel to argue the case from the respondent's standpoint, and that the costs so occasioned were not thrown upon the respondent.

REGISTRATION OF TITLES—KNOWLEDGE OF UNREGISTERED RIGHTS —RECTIFICATION OF REGISTER.

Loke Yew v. *Port Swettenham Rubber Co.* (1913) A.C. 491. This was an appeal from the Malay Straits Court. In the Malay Straits a Registration of Titles Act is in force which provides that a person named in the certificate of title issued thereunder is entitled to an indefeasible title, except on the ground of fraud or of adverse possession for the prescriptive period. In June, 1910, Eusope was the registered owner of 322 acres of land, 58 acres of which were in the adverse possession of Loke Yew. The plaintiffs by their agent contracted to purchase the 322 acres, and as an inducement to Eusope to sell agreed to make their own arrangements with Loke Yew. The plaintiffs obtained a transfer from Eusope and caused themselves to be registered as owners of the 322 acres, and brought the present action to eject Loke Yew. The Malay Court gave judgment for the plaintiffs, but the Judicial Committee of the Privy Council (Lords Atkinson, Shaw and Moulton) reversed the decision, holding that the plaintiffs, having bought with the knowledge of the defendants' possession, had obtained the transfer by fraud and misrepresentation, and that as the rights of third parties did not intervene, they could not better their position by registration of their title; and that the defendant in the circumstances was entitled to a rectification of the register.

FIRE INSURANCE—POLICY—CONDITION REQUIRING DISCLOSURE OF OTHER INSURANCES—SUBSTITUTION OF OTHER INSURANCES FOR THOSE DECLARED—TRANSFER OF INTEREST—LEASE—(INSURANCE ACT, ONT., 2 GEO. V., c. 33, STATUTORY CONDITIONS 3, 5).

National Protector Fire Ins. Co. v. *Nivert* (1913) A.C. 507. This was an appeal from His Majesty's Supreme Court for the Ottoman Dominions. The action was brought to recover the amount of two policies of insurance on buildings and their contents, which were subject to conditions that the insured should be bound to declare by writing whether there were other insurances, and the same were to be mentioned in the policy itself or by memorandum thereof endorsed thereon by the company.

At the time of effecting the insurance the plaintiff had concurrent insurances which were recorded on the policies. Subsequently these insurances were replaced by other insurances for a slightly larger amount, the excess being due to certain improvements made to the buildings, and additions to the contents. These substituted insurances were not communicated to the defendants, who contended that the omission to notify them thereof rendered the policies void. The Supreme Court had refused to give effect to this contention, and the Judicial Committee of the Privy Council (Lords Atkinson, Shaw, and Moulton) affirmed the decision, holding that the condition in question meant only that the fact that the property covered was further insured should be declared, and that the insured had committed no breach of the condition, and was entitled to recover upon the policies. See The Insurance Act (2 Geo. V. c. 33, Ont.), statutory condition 5. It may be noted that this decision was arrived at notwithstanding that the substituted insurances were effected in other companies than those mentioned in the policies. Another point in the case was, that, pending the policy, the insured had leased the property insured, and it was contended that this constituted a transfer of his interest in the property insured, which under a condition in the policy rendered it void; but this contention also failed. See Ontario Insurance Act, statutory condition 3.

PARLIAMENT—DISQUALIFICATION—CONTRACT WITH THE SECRETARY OF STATE FOR INDIA IN COUNCIL—CONTRACT FOR THE PUBLIC SERVICE—22 GEO. III. c. 45—41 GEO. III. c. 52—21 & 22 VICT. c. 106—(R.S.C. c. 10, s. 14; 8 EDW. VII. c. 5, s. 11, ONT.).

In re Samuel (1912) A.C. 514. This was a matter referred to the Judicial Committee of the Privy Council (Lord Haldane, L.C., and Lords Halsbury, Loreburn and Dunedin) by an order of His Majesty in Council. The Postmaster General was a member of a firm holding a contract with the Secretary of State for India in Council, and the question submitted to their Lordships was whether this fact disqualified him from sitting and voting as a member of Parliament; and their Lordships held that under 22 Geo. III. c. 45, s. 1 (see R.S.C. c. 10, s. 14; 8 Edw. VII. c. 5, s. 11 Ont.), a contract with the Governor General of India in Council is within the statute, and is a contract on behalf of the Crown, and that the Postmaster was therefore disqualified, and that the Act covers all contracts made for the public service not only in the United Kingdom but anywhere else.

Correspondence.

Toronto, October 1, 1913.

The Editor, CANADA LAW JOURNAL.

Dear Sir,—The writer of the editorial headed "The Tinkers' Act" in your issue of September, 1913, has overlooked the fact that the sections of the Statute Law Amendment Act are arranged in the order preserved in the Revised Statutes. He is quite in error in supposing that there is no method observed in the arrangement of the sections. As to whether the method adopted is the most convenient, there may be some question, but it has been found so by a number of professional men who note their statutes quite as carefully as the writer of the editorial.

As to the amendments to the Coroners' Act to which the writer refers, these will be found in another place in the statutes in their proper order, with other corrections and amendments of the Act. The reason for the duplication of the sections is that it was not thought well that amendments to the same Act should appear partly in one place and partly in another. The amendments to the Coroners' Act having been passed before the Statute Law Amendment Act, the subsequent amendments made by the latter Act were directed to be incorporated in the Act amending the Coroners' Act in the annual volume.

I venture to say that no professional man who has the slightest knowledge of the facts, or who considers the short time allowed for the winding up of the work of the Session, would hesitate to pronounce the criticism uncalled for and unfair.

Yours faithfully,

ALLAN M. DYMOND.

[We gladly publish Mr. Dymond's letter, though we do not accept his concluding remarks. We are still of the opinion that it would be more convenient to the profession if the Statute Law Amendment Acts were, in future, arranged on some such plan as we have suggested. So far as we can see, none of these Acts have ever had any method apparent to the ordinary reader.

Of course, in making the remarks we did, we had no intention of imputing any blame to the Law Clerk. Our sole aim in drawing attention to the matter was, if possible, to secure in future more attention to the arrangement of the sections of this annual Act, so as to facilitate the keeping track of the amendments and render less troublesome to practitioners the labour of annotating the statutes. Mr. Dymond is too good and painstaking an officer not to see the desirability of doing all that can be done in that direction.—ED. C.L.J.]

REPORTS AND NOTES OF CASES.

Province of Ontario.

SUPREME COURT—APPELLATE DIVISION.

Mulock, C.J.Ex., Clute, Riddell, Sutherland, and Leitch, JJ.] [12 D.L.R. 588.

HILL *v.* RICE LEWIS & SON.

Negligence—Dangerous agencies—Defective cartridges—Liability of seller.

A retail vendor is not answerable for personal injury sustained by the purchaser of a sealed box of cartridges of a certain description and make, as the result of the box containing one cartridge of a different kind and of the explosion of the cartridge after it had missed fire because of its being the wrong size, where the plaintiff relied solely on his own judgment and not that of the vendor, in making the purchase.

The Moorcock, L.R. 14 P.D. 64, and *Hamlyn* v. *Wood*, [1891] 2 Q.B. 488, applied.

J. W. McCullough, for plaintiff. *J. D. Montgomery*, for defendants.

Province of Alberta.

SUPREME COURT.

Harvey, C.J., Scott, Simmons, and Walsh, JJ.] [12 D.L.R. 598.

RE CLEARWATER ELECTION (No. 2).

1. *Elections—Disputed ballots—Duty of whom to count.*

Under the Alberta Election Act, 9 Edw. VII, ch. 3, it is the duty of the returning officer and not of a deputy returning officer or of a court of inquiry, to open envelopes containing disputed ballots allowed by such court, and count them. (*Per* Scott, Simmons, and Walsh, JJ.)

Re Clearwater Election, 11 D.L.R. 355, affirmed in part.

2. *Mandamus—Subject of relief—Election—Performance of duty, by returning officer.*

Mandamus will not lie, under sec. 235 of the Alberta Election Act, 9 Edw. VII. ch. 3, to compel a returning officer to open

envelopes containing disputed ballots allowed by a court of enquiry, and add them to election returns, where he has properly added the votes cast, with the exception of the disputed ballots as required by law; since his neglect to add the disputed ballots was not a wilful delay, neglect, or refusal to perform the duties imposed upon him by law; and adequate relief could be obtained on a recount before a District Court judge.

Re Clearwater Election, 11 D.L.R. 355, reversed in part.

3. *Disputed ballots—Power of District Court Judge to count in first instance.*

A District Court judge, on a recount of an election by way of an appeal, has power to open envelopes containing disputed ballots and count those allowed by a court of enquiry.

Frank Ford, K.C., and *Eager*, for H. W. McKinney. *C. C. McCaul*, K.C., for A. W. Taylor. *Alex. Stuart*, K.C., for J. H. Clarke.

Province of Saskatchewan.

SUPREME COURT.

Newlands, Johnstone, Lamont and Brown, J.J.] [12 D.L.R 678.

REX *v.* RATZ.

1. *Criminal law—Accessory as such—Accomplice.*

An accessory before the fact to the crime of murder is an accomplice with his principal within the rule requiring the corroboration of his testimony against the latter. (*Per* Newlands and Brown, JJ.)

Rex v. *Tate*, 21 Cox Cr. Cas. 693, and *Rex* v, *Beauchamp*, 25 Times L.R. 330, followed; *R.* v. *Reynolds*, 15 Can. Cr. Cas. 210, distinguished.

2. *Trial—Homicide—Instructions—Evidence of accomplice.*

A new trial will be granted for the failure of a trial judge to caution the jury, on a trial for murder, against acting on the uncorroborated testimony of an accomplice, who had already been tried and convicted, where there was no corroborating evidence.

H. V. Bigelow, for accused. *T. A. Colclough* (Deputy Attorney-General), for the Crown.

Haultain, C.J., Newlands, Johnstone, and Brown, JJ.] [12 D.L.R. 648.

REX *v.* HUTCHINS.

Evidence—Marriage license issued in United States—Authentication—Bigamy.

A copy of a marriage license and of a return shewing the performance of a ceremony thereunder, is admissible in evidence without further proof, under sec. 23 of the Canada Evidence Act, when certified under the seal of a Court of record of a state of the United States.

A conviction of bigamy cannot be sustained where the sole proof of the second marriage is an admission of the accused that he and the woman "went through a form of marriage."

T. A. Colclough, for the Crown. No one for accused.

Haultain, C.J., Newlands, Lamont, and Brown, JJ.] [12 D.L.R. 656.

REX *v.* QUONG WING.

Constitutional law—Regulations of business—Prohibiting white females frequenting or being employed in places kept or managed by Orientals.

Ch. 17 of the Sask. Statutes of 1912, prohibiting any white woman or girl residing, lodging or working in, or frequenting any restaurant, laundry or other place of business or amusement, kept, owned or managed by a Chinaman, Japanese or other Oriental person, is not *ultra vires*.

Hodge v. *The Queen*, 9 A.C. 117, 132, and *Cunningham* v. *Tomey Homma*, [1903] A.C. 151, specially referred to; *Union Colliery Co.* v. *Bryden*, [1899] A.C. 580, distinguished.

W. B. Willoughby, for appellant. *J. N. Fish*, for respondent.

Province of British Columbia

COURT OF APPEAL.

Macdonald, C.J.A., Irving, Martin, and Galliher, JJ.A.] [12 D.L.R. 582.

CANADIAN LOAN & MERCANTILE CO. LTD. *v.* LOVIN.

Real estate brokers—Compensation—Failure to complete.

Where an employee of a real estate brokerage company having property listed for sale, introduced a probable buyer who

that if persons meet to fight intending to continue till they give in from injury or exhaustion, the fight is unlawful whether gloves are or are not used.

An exhibition of fighting with fists or hands, to witness which an admission fee is charged to the public and at which it is announced that the stake money will go to the contestant who knocks out his opponent in a stipulated number of rounds is a "prize fight" within the Criminal Code: *Steele* v. *Maber*, 6 Can. Cr. Cas. 446.

But a sparring match with gloves under Queensbury or similar rules given merely as an exhibition of skill and without any intention to fight until one is incapacitated by injury or exhaustion, is not a "prize fight": *The King* v. *Littlejohn*, 8 Can. Cr. Cas. 212.

A sparring or boxing match for a given number of rounds which would not ordinarily exhaust either participant, is not a "prize fight," although the boxers were paid fixed sums, not depending upon the result, for giving the exhibition: *The King* v. *Fitzgerald*, 19 Can. Cr. Cas. 145.

Beck, J.] RE BAYLIS INFANTS. [13 D.L.R. 150.

Infants—Parents' right to custody—Welfare of child to govern.

In determining whether the father or mother, who are living apart, shall have the custody of a minor child, the wishes of the mother are to be considered, as well as the wishes of the father, but the primary consideration is the welfare of the child.

In awarding the custody of infants to their mother as against the father, the order should provide that the latter shall have reasonable access to them.

H. A. Mackie, for applicant. *A. F. Ewing*, for mother.

Province of Saskatchewan.

SUPREME COURT.

Haultain, C.J., Johnstone, Lamont, and Brown, JJ.] [13 D.L.R. 182.

RURAL MUNICIPALITY OF VERMILLION HILLS *v.* SMITH (No. 2).

Taxes—Action for collection—Who may maintain—Rural municipality—Taxes assessed by local improvement district.

A rural municipality that succeeds a local improvement district, may, in the name of its council, recoved unpaid land taxes

Labour performed in making streets, which have not been dedicated as public highways, in a tract of land being sub-divided for the owner's profit, is not work done on public highways for which a lien is denied by sec. 3 of the B.C. Mechanics' Lien Act, R.S.B.C. 1911, ch. 154, but is lienable under sec. 6 of the Act.

One who furnishes a contractor with horses, waggons and drivers for the use on premises he is improving, is, under sec. 6 of the B.C. Mechanics' Lien Act, R.S.B.C. 1911, ch. 154, entitled to a lien for their hire.

Webster v. *Real Estate Imp. Co.* (Mass.), 6 N.E.R. 71, followed.

Maclean K.C., *Higgins* and *Bass*, for appellants, claimants. *Bodwell*, K.C., and *Moore*, for respondents, defendants.

Macdonald, C.J.A., Irving, and Galliher, JJ.A.] [12 D.L.R. 675.
McELMON *v.* B. C. ELECTRIC RY. CO.

Electricity—Injury from—Destruction of building by fire—Crossed wires—Negligence—Lack of safety devices.

Negligence sufficient to render an electric company liable for the destruction of a building from fire originating from an electric current of abnormally high voltage being carried upon wires leading into the building, may properly be inferred from the fact that several hours before the fire the company's high voltage wires became crossed with low potential service wires on the same poles, which trouble had been corrected prior to the fire; where it also appeared that the use of a simple safety device by the electric company on the pole nearest the building would have prevented the abnormally high current entering it, and that the electrical installation for the service of the burned building was not defective.

L. G. McPhillips, K.C., and *Duncan*, for appellants, defendants. *S. S. Taylor*, K.C., and *Brown*, for plaintiff, respondent.

Book Reviews.

The Canadian Law of Banks and Banking, the Clearing House, Currency and Dominion Notes, Bills, Notes, Cheques and other Negotiable Instruments. By JOHN DALATRE FALCONBRIDGE, M.A., LL.B., Barrister-at-Law, one of the Lecturers of the Law Society of Upper Canada. Second edition. Toronto: Canada Law Book Company, Limited. 1913.

The first edition of this valuable work was published in 1907. In this new edition the whole book has been revised, and the Canadian and English cases brought down to date. All

recent legislation affecting the subjects dealt with, such as the currency of 1910 and amendment to the Bank Act, which has just come into force, has been introduced and discussed. The new Bank Act receives the attention of Mr. H. M. P. Eckardt in an interesting article which forms one of the chapters of the book.

A new feature of this edition is a comparison drawn between our Bills of Exchange Act and the Negotiable Instrument Law now in force in most of the States of the American Union. The commercial relations between us and our neighbours to the south of us is so close that the help thus given to Canadian lawyers will be much appreciated.

The contents are given under the following general headings: —Book I., Banking and the Bank Act; Book II., Negotiable Instruments and Bills of Exchange Act, and the cases referred to are collected and noted under appropriate sub-heads.

We have nothing but praise for this most excellent work. It has now become a necessity to all practising lawyers. Bank men and business men will also find it most useful, as they will readily see by glancing at the index and the table of forms.

Barron and O'Brien on Chattel Mortgages and Bills of Sale. A complete annotation of the Provincial statutes dealing with mortgages and sales of personal property. Second revised edition. 1913. Toronto: Canada Law Book Company, Cromarty Law Book Co., Philadelphia.

Many changes have taken place in the law on these subjects since the last edition which appeared seventeen years ago. These have been embodied and noted in the book before us. Our readers are so familiar with this standard work that it is unnecessary to do more than to call attention to this revision.

The Law Quarterly Review, edited by Rt. Hon. Sir Frederick Pollock, Bart., D.C.L., LL.D. July. London: Stevens & Sons, Ltd.

The contents of this interesting number are as follows:— The usual Notes of Cases; Sketches of the Life of John Westlake, K.C.; Constitutional History and the Year Books, The Alberta and Great Waterways Railway Case (by A. H. F. Lefroy, K.C., Toronto); Future Estates; Limitations of Land to Unborn Generations; The Transaction of Sale in the Saxon Times; Powers of Distress and Bills of Sale Act; Our Manor of East Greenwich; Book Reviews, etc.