

The
Ontario Weekly Notes

VOL. XVIII. TORONTO, AUGUST 13, 1920.

No. 22

HIGH COURT DIVISION.

SUTHERLAND, J.

AUGUST 6TH, 1920

RE SPROWL.

Will—Construction—Moneys Payable under Mortgage—Husband and Wife—Part Payable to Executors of Wife—Appropriation to Bequest Made in Will of Wife—Evidence as to Intention of Husband—Inadmissibility.

Motion by the executors of the wills of John Sprowl and Jane Sprowl for an order determining a question arising under the wills and a codicil to the will of John Sprowl.

The motion was heard in the Weekly Court, Toronto.

H. N. Farmer, for the executors.

L. M. Goetz, for residuary legatees under the will of John Sprowl.

H. S. White, for the United Presbyterian Church at Manswood, legatee under the will of Jane Sprowl.

SUTHERLAND, J., in a written judgment, said that John Sprowl died in 1887. By his will, after giving certain specific legacies, he bequeathed to his son James and his five daughters all the rest and residue of his estate to be equally divided amongst them. By the codicil he gave to his wife "the interest on all moneys of which I shall be possessed at the time of my death during the term of her natural life to be paid to her by my executors, and hereby direct that all the legacies bequeathed by my said will shall not be payable until after the death of my said wife."

Jane Sprowl, the widow of John Sprowl, died in July, 1916, leaving a will by which she devised and bequeathed and appointed all the real and personal estate which she was seised or possessed of or entitled to or over which she had any power of appointment to the United Presbyterian Church at Manswood "absolutely and forever."

In the lifetime of John Sprowl, namely, on the 2nd April, 1875, a mortgage was executed in favour of himself and Jane Sprowl, his wife, to secure payment of \$1,000; the mortgage to be void on payment of \$800 with interest at 15 per cent. per annum; \$400 to become due and be paid within 12 months after the death of John Sprowl, and the balance of \$400 within 12 months after the death of Jane Sprowl, if she should survive him; but, if she should die first, the balance of \$400 to be paid within 3 years after the death of John, with interest in the meantime to be paid half-yearly, the first payment of \$60 of interest to be made at the expiration of 6 months from the date of the mortgage and a like sum at the end of every 6 months thereafter, the one-half of the interest to be paid to John half-yearly and the other half to Jane; "said interest to cease at the death of the last survivor of said mortgagees."

The first instalment of \$400 was not in question; the second \$400 was the subject of the motion.

The learned Judge said that it was the duty of the executors of John to collect and get in the first \$400 for his estate within the time mentioned in the will or any further time reasonably necessary; and the reasonable presumption was that the remaining \$400 was payable after the death of Jane to her executors.

Evidence to shew a different intention on the part of John Sprowl was not admissible.

Everly v. Dunkley (1912), 27 O.L.R. 414, distinguished.

In the circumstances, the money in question must be regarded as the second \$400 payable under the mortgage, and, in consequence of its terms, payable to the executors of Jane after her death. Effect must be given to the bequest to the church, and the \$400 should be paid to the trustees thereof.

Costs of all parties of the motion should be paid out of the \$400.

DISHER v. LEVITT—SUTHERLAND, J.—AUG. 2.

Trusts and Trustees—Chattel Mortgage—Sale of Goods under—Satisfaction of Execution—Declaration—Costs.—Action for a declaration that the defendant held certain goods and chattels covered by a chattel mortgage in trust for the plaintiff and one H. B. Merrill and for other relief. The action was tried without a jury at Hamilton. SUTHERLAND, J., in a written judgment, after setting out the facts, said that he was unable to find that there was any settlement arranged between the plaintiff and the defendant in December, 1918, by which the latter was released from the trust in favour of the plaintiff with reference to the Merrill execution on which he received the Yates chattel mortgage. The position of the plaintiff was plainly and definitely indicated in the letter from his solicitors to the solicitor for the defendant, dated the 23rd December, 1918, as follows: "In this there is, so far as we are concerned, no interference whatever with what we may call the Merrill trust under the chattel mortgage, and no assumption in any way by Disher of the liability of your client in respect to this mortgage." The learned Judge was not able to find that there was later any concluded agreement which had any other effect. On the other hand, the defendant, having converted the goods and chattels to his own use, and afterwards undertaken to sell them, had made it impossible for him strictly to carry out the trust. The cheques, the discharge, and the deed would naturally and appropriately be given on the appeal from the judgment obtained by the plaintiff in the former action (for redemption) being abandoned, as it apparently was. By converting the goods, the defendant must be taken to have paid himself the balance due by the plaintiff to him (\$743.22 or \$721.73), and thereafter to hold the goods to pay the Merrill execution. By selling these goods he made it impossible to hold them for that purpose. The sale might have been collusive and might be open to question as to its genuineness. If it should be taken to be a bona fide one—and the defendant could hardly be heard to say that it was not—he had obtained in cash and notes more than sufficient to pay the Merrill execution. There should be a judgment declaring that the defendant was liable to pay to Merrill the amount due on his execution against the plaintiff, and requiring the defendant to pay to the plaintiff the amount of such execution, to be ascertained by the officer entering judgment, and also the plaintiff's costs of this action. W. S. MacBrayne, for the plaintiff. George Lynch-Staunton, K.C., for the defendant.

TWELFTH DIVISION COURT OF THE COUNTY OF
HASTINGS.

WILLS, JUN. CO. C.J.

JULY 15TH, 1920.

RE YOUNG AND WARD.

Criminal Law—Theft—Confederate States Treasury Note Found in Safe Purchased by Accused at Auction-sale—Intent—Purchase of Contents of Safe—Conviction by Justices Quashed on Appeal—Protection of Justices.

Appeal (under sec. 749 (a) of the Criminal Code) by Thomas Young from a conviction of the appellant by two Justices of the Peace for the theft of \$10 from W. A. Ward, the private prosecutor.

R. D. Ponton, for the appellant.

William Carnew, for the Crown and the private prosecutor, respondent.

WILLS, JUN. CO. C.J., in a written judgment, said that, at an auction sale of the household goods and effects of Ward, Young bought a child's iron savings-bank with a combination lock, which was opened after Young had had it in his possession for some time. In it he found a piece of paper, slightly torn, which turned out to be a \$10 treasury note of the Southern Confederate States, dated, "Richmond, February 17, 1864"—of course worthless as representing money or as a security for money.

Young did not return the note, and Ward, hearing that Young had found a \$10 note in the savings-bank which he bought, laid the charge of theft.

The learned Judge, after stating the facts, gave his decision as follows:—

"The contents of the safe, namely, the note, is absolutely valueless as money, and the intrinsic value as a piece of paper is so small that one cannot say readily that it has any value as such except that it is a piece of paper. Paper is worth money, and this must be worth something.

"Now, was theft committed?

"Theft is the act of fraudulently and without colour of right taking or converting to the use of any person, anything capable of being stolen with intent to deprive the owner, etc.: Criminal Code, sec. 347. Now, when the safe was handed to Young by the auctioneer there was no theft committed because he was the lawful purchaser of the safe, and in the safe, unknown to any one,

was the Confederate note. When the safe was opened and the Confederate note found by Young, did he fraudulently and without colour of right convert the same to his own use with intent to steal it? He says that, when he bought the bank, he believed that he had bought it and any contents, if there were any. I am strongly of that view, and am of opinion that the defendant was not guilty of theft, and certainly not guilty of the theft of \$10.

"There was no malice on the part of the prosecutor, shewn in this trial, nor would any charge have been laid if the defendant had promptly explained the contents of the safe, instead of letting it be understood that he had found \$10 in the safe. There was no arrest or confinement of the defendant, and the Justices of the Peace acted in good faith and without malice and are entitled to the protection of the Court, as are all other persons concerned in the hearing and trial of this case.

"I therefore order that the said appeal be and the same is hereby allowed, and that the said conviction be and the same is hereby quashed, with \$23.38 costs to be paid by the respondent to the Clerk of this Court, to be paid over by the said Clerk to the appellant. The Confederate note is to be handed to Ward."

CORRECTION.

In RE YOUNG AND WARD, ante 434, the last sentence on p. 435, "The Confederate note is to be handed to Ward," was not intended to form part of the *dispositif* of the judgment: it was merely a suggestion in view of some sentimental value placed by Ward upon the note.

INDEX.

The names of cases which have been reported in the Ontario Law Reports are followed by a reference to the volume and page; cases in 17 O.W.N. which, since the publication of the index to that volume have been reported in the Ontario Law Reports are included in this index; the names of cases to be reported in the Ontario Law Reports are marked*.

ABANDONMENT

See Infants, 5.

ABATEMENT.

See Vendor and Purchaser, 7.

ABROGATION.

See Contract, 26.

ABSENTEE.

See Death.

ACCIDENT.

See Highway—Negligence—Railway, 7, 8—Street Railway.

ACCIDENT INSURANCE.

See Insurance.

ACCOUNT.

See Church—Contract, 19—Evidence, 2—Executors and Administrators—Principal and Agent, 4—Railway, 3—Trusts and Trustees, 1, 11—Vendor and Purchaser, 6—Will, 18.

ACCOUNTANT OF SUPREME COURT OF ONTARIO.

See Sale of Land.

ACCRETIONS.

See Covenant, 3—Patent for Land.

ACQUIESCENCE.

See Company, 5—Contract, 6—Principal and Agent, 2.

ADDRESSES OF COUNSEL.

See Criminal Law, 3.

ADJUSTER.

See Insurance, 1.

ADMINISTRATION ORDER.

1. Application for—Small Estate—Trifling Disputes—Costs of Proceedings. *Re Lewis, Lewis v. Stokes*, 18 O.W.N. 217.—KELLY, J. (CHRS.)
2. Application for Leave to Appeal from—Small Estate—Sale of Land by one Executor—Ratification by the other—Possession of Land—Costs. *Re Lewis, Lewis v. Stokes*, 18 O.W.N. 245.—MIDDLETON, J. (CHRS.)

ADMINISTRATION PROCEEDING.

See Costs, 5—Deed, 3.

ADMISSIONS.

See Mortgage, 4.

ADOPTION.

See Infants, 5.

ADULTERY.

See Husband and Wife, 2, 5—Infants, 3.

ADVERSE POSSESSION.

See Limitation of Actions, 1.

AFFIDAVIT OF DOCUMENTS.

See Discovery, 2.

AFFIDAVITS.

See Chattel Mortgage—Judgment, 4—Practice, 1.

AGENT.

See Insurance, 2—Principal and Agent—Street Railway, 3.

AGREEMENT.

See Contract—Vendor and Purchaser.

AGREEMENT FOR LEASE.

See Damages, 1.

AIDING AND ABETTING.

See Ontario Temperance Act, 6.

ALIEN ENEMY.

See Criminal Law, 2.

ALIENATION OF AFFECTIONS.

See Husband and Wife, 2.

ALIMONY.

See Husband and Wife, 3-7, 11—Trial.

AMBIGUITY.

See Insurance, 1.

AMENDMENT.

See Company, 4, 5—Contract, 16—Criminal Law, 2—Gift, 2—Judgment Debtor—Municipal Corporations, 1—New Trial, 1—Ontario Temperance Act, 3—Pleading, 1—Practice, 1—Principal and Agent, 3.

ANNUITY.

See Trusts and Trustees, 1.

APPEAL.

1. To Appellate Division—Application for Leave to Appeal from Order of Judge in Chambers Vacating Registration of Claims of Mechanics' Liens upon Payment of Money into Court—Order Made in Action Brought inter Alia to Vacate Liens—Jurisdiction of Judge in Chambers—Mechanics and Wage-Earners Lien Act, secs. 27 (4), 33, 34—Amending Act, 6 Geo. V. ch. 30, secs. 1, 2—Rule 507—Necessity for Leave—Final Disposition of Part of Matter—Reason to Doubt Correctness of Order—Matters of Importance Involved—Leave Granted Quantum Valeat. *Yolles & Rotenburg Limited v. H. H. Robertson Co. Limited*, 18 O.W.N. 85, 126.—RIDDELL, J. (CHRS.)—APP. DIV.
2. To Appellate Division—Leave to Appeal from Order of Judge in Chambers Consolidating Actions—Importance of Question Raised—Doubt as to Correctness of Order—Consolidation of Actions—Indirect Substitution of New Plaintiff for one Disqualified. *Clarkson v. Davies*, 18 O.W.N. 62.—MIDDLETON, J. (CHRS.)
3. To Appellate Division—Motion for Extension of Time for Appealing from Order of Judge in Court—Delay—Intention to Appeal—Dismissal of Motion—Proceeding to Enforce Claim for Dower not to be Prejudiced—Costs. *Re Hodgins*, 18 O.W.N. 383.—MACLAREN, J.A. (CHRS.)
4. To Appellate Division—Question of Fact—Reversal of Judgment of Trial Judge—Consideration of Uncontradicted Facts, Documentary Evidence, and Inherent Probabilities—Sale of Goods—Agreement of Vendor to Take back and Repay Price—Evidence to Establish—Majority Judgment of Appellate Court. *Wm. Croft and Sons Limited v. Messerveys Limited*, 18 O.W.N. 69.—APP. DIV.

APPEAL—(Continued).

5. To Appellate Division—Report of Mining Commissioner pursuant to Reference in Action—Questions of Fact—Conflicting Evidence—Demeanour of Witnesses—Agreement—Refusal to Disturb Report—Partnership—Interests in Mining Property—Motion to Confirm Report—Further Appeal. *Trickey v. Ross*, 18 O.W.N. 128.—APP. DIV.

(See post, 8.)

6. To Appellate Division—Strangers to Action Appealing from Order of Judge of High Court Division—Status of Appellants—No Leave to Intervene Obtained—Application to Appellate Court for Leave—Lack of Material to Found Application—Proper Forum for Application—Expiry of Time for Appealing—Judicature Act, sec. 16 (f). *Carson v. Middlesex Mills Limited*, 18 O.W.N. 79.—APP. DIV.

7. To Judge in Court—Findings of Referee—Evidence. *Clarkson v. O'Brien*, 18 O.W.N. 193.—LENNOX, J.

8. To Judge in Court—Report of Mining Commissioner pursuant to Reference in Action—Questions of Fact—Conflicting Evidence—Demeanour of Witnesses—Agreement—Refusal to Disturb Report—Partnership—Interests in Mining Property—Motion to Confirm Report—Necessity for—Practice—Judgment on Further Directions—Costs—Counsel Fee. *Trickey v. Ross*, 18 O.W.N. 27.—ORDE, J.

(See ante, 5.)

9. To Supreme Court of Canada—Proposed Appeal by Plaintiffs to Supreme Court of Canada—Proposed Appeal by Defendants from same Judgment to Privy Council—Motions for Allowance of Security in both Cases—Supreme Court Act, R.S.C. 1906 ch. 139, sec. 75—Privy Council Appeals Act, R.S.O. 1914 ch. 54, sec. 3—Priority of Plaintiffs' Appeal by Earlier Filing of Security—Right of Appeal to Canadian Court—Refusal to Allow Security on Appeal to Privy Council. **Montreuil v. Ontario Asphalt Block Co. Limited*, 18 O.W.N. 314.—SUTHERLAND, J. (CHRS.)

See Administration Order, 2—Assessment and Taxes, 3—Company 10—Contract, 2, 3, 17—Costs, 2, 3—Criminal Law, 2—Damages, 2—Evidence, 2, 3—Fraud and Misrepresentation, 3—Guaranty—Highway, 1, 7—Husband and Wife, 2, 5, 6, 8—Judgment, 2—Landlord and Tenant, 5—Mechanics' Liens—Municipal Elections—Negligence, 5—Nuisance—Ontario

APPEAL—(Continued).

Railway and Municipal Board—Partnership—Practice, 1, 2, 3
 —Principal and Agent, 1, 3—Principal and Surety, 2—Railway,
 7—Sale of Goods, 8—Solicitor, 2, 3, 4—Street Railway, 2, 3
 —Telephone Company—Vendor and Purchaser, 5—Water, 2.

APPLICATION.

See Insurance, 2.

APPORTIONMENT.

See Landlord and Tenant, 2—Ship.

APPURTENANCE.

See Way, 3—Will, 16.

ARBITRATION AND AWARD.

Scope of Submission—"Any Disputes Arising under this Contract"—Sale of Pulpwood—Failure to Deliver Quantity Contracted for—Contract Subject to Fires and other Contingencies—Matter in Dispute Confined to Question whether Non-delivery Excused by Fires or Contingencies—Award of Damages for Breach of Contract—Jurisdiction of Arbitrators—Erroneous Decision as to what Comes within Submission—Evidence as to Damages Given before Arbitrators—Failure to Object—Effect of—Parol Submission of Question—Enforcement of Award. *Re Beaver Wood Fibre Co. Limited and American Forest Products Corporation*, 17 O.W.N. 437, 18 O.W.N. 281, 47 O.L.R. 66.—ROSE, J.—APP. DIV.

See Contract, 8—Landlord and Tenant, 5—Municipal Corporations, 6—Railway, 6.

ARSON.

See Criminal Law, 1.

ASSESSMENT AND TAXES.

1. Business Assessment—Liability of Hydro-Electric Power Commission of Ontario—Building Occupied by Commission in City—Exemption—Assessment Act, R.S.O. 1914 ch. 195, secs. 5 (7), 10 (1) (k), 45a.—Statute Law Amendment Act, 1918, 8 Geo. V. ch. 20, sec. 39—"Person"—Interpretation Act, R.S.O. 1914 ch. 1, sec. 29 (x)—"Property"—Place where Business Carried on—Office Premises—Computation of Tax according to Value of Land. *Re Hydro-Electric Power Commission of Ontario and City of Hamilton*, 17 O.W.N. 476, 47 O.L.R. 155.—APP. DIV.

ASSESSMENT AND TAXES—(Continued).

2. Income Assessment of Oil and Gas Company—Method of Assessment—Deductions from Gross Income Derived from Operation of Wells—Assessment Act, sec. 40 (6)—Income from “Mine or Mineral Work”—Separate Assessment of Income from each Well—“Income”—Sec. 2 (e) of Act—Cost of Operating—Losses in Previous Years—Cost of Drilling New Wells—Capital Expenditures. *Re Union Natural Gas Co. of Canada and Township of Dover*, 17 O.W.N. 390, 47 O.L.R. 1.—APP. DIV.
3. Lands of Upper Canada College—Exemption—Upper Canada College Act R.S.O. 1914 ch. 280, sec. 10—Assessment of College notwithstanding Exemption—Appeal to Court of Revision—Substitution of Tenant as Person Assessed—Assessment Act, R.S.O. 1914 ch. 195, sec. 69 (16)—Change Made without Notice to Tenant—Ineffective Assessment—Sec. 70—Inapplicability—Sec. 10a., Added to Upper Canada College Act in 1919 by 9 Geo. V. ch. 80—Interpretation of—Non-retroactivity—Effect as to Tenant under Existing Lease.—Appeal—Costs. *Noble v. Township of Esquesing*, 18 O.W.N. 60, 219, 47 O.L.R. 225, 520.—RIDDELL, J.—APP. DIV.
4. Local Improvement Rates—By-law Imposing Special Assessment on Land-owners for Part of Cost of Drainage Work—Powers of Council—Contract—Authority—By-laws of City—Lack of Petition—Work not done on “Initiative Plan”—Fundamental Defect—Local Improvement Act, R.S.O. 1914 ch. 193, secs. 5, 8, 9, 10, 38, 41—Fstoppe!—Deventures—Rectification of Mistake. *City of Sarnia v. McMurphy*, 18 O.W.N. 206, 47 O.L.R. 496.—APP. DIV.

See Church—Landlord and Tenant, 1.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

See Company, 9—Landlord and Tenant, 1—Will, 15.

ASSIGNMENT OF AGREEMENT.

See Contract, 29—Vendor and Purchaser, 11.

ASSIGNMENT OF BOOK-DEBTS.

See Chattel Mortgage.

ASSIGNMENT OF CHOSE IN ACTION.

See Contract, 17.

ASSIGNMENTS AND PREFERENCES.

Money Lent by Wife to Husband—Repayment by Deposit Made by Husband in Bank to Credit of Wife's Account—Preference of Wife over other Creditors—Intent to Prefer—"Payments of Money"—Assignments and Preferences Act, sec. 6 (1)—Deposits of Cheques not "Payments of Money"—Property Bought by Wife with Moneys Deposited—Charge in Favour of Creditors upon Property to Extent of Amount of Cheques and Interest—Gift of Property by Husband to Wife—Insolvency of Husband—Rights of Creditors. *Sutton v. Pursel*, 18 O.W.N. 384.—ROSE, J.

See Chattel Mortgage—Landlord and Tenant, 1—Will, 15.

ASSISTANT MASTER IN ORDINARY.

See Company, 10.

ATTORNEY.

See Principal and Agent, 5.

ATTORNEY-GENERAL.

See Marriage, 1.

AWARD.

See Arbitration and Award.

BAILMENT.

Sale of Motor Vehicle—Conditional Sale—Agreement Filed pursuant to Conditional Sales Act—Property Remaining in Vendors until Full Payment—Possession and User by Purchaser—Agreement of Purchaser to Make Repairs and Keep Car Free from Liens—Right of Vendors to Repossession upon Default—Injury to Vehicle—Liability of Purchaser for Necessary Repairs—Election—Release—Lien of Repairer—Default in Making Deferred Payments on Price of Vehicle—Right of Repairer to Maintain Lien as against Vendors—Implied Authority of Bailee to Subject Vehicle to Lien, notwithstanding Express Agreement to Keep Free—Action—Counterclaim—Costs. *Commercial Finance Corporation Limited v. Stratford*, 18 O.W.N. 156, 47 O.L.R. 392.—ORDE, J.

See Railway, 4.

BANKRUPTCY AND INSOLVENCY.

See Assignments and Preferences—Chattel Mortgage—Company, 6-10—Landlord and Tenant, 1—Sale of Goods, 8—Will, 15.

BANKS AND BANKING.

Assertion by Bank of Lien upon Shares of its own Stock Standing in Name of Customer—Bank Act, sec. 77—Estoppel—Equitable Title to Shares in Creditor of Customer—Knowledge of Bank—Failure to Disclose Lien—Duty—Interest—Silence—Title to Shares—Dividends on Shares—Costs. *Lazard Bros. & Co. v. Union Bank of Canada*, 17 O.W.N. 440, 18 O.W.N. 290, 47 O.L.R. 76.—MIDDLETON, J.—APP. DIV.

See Gift, 1, 2—Guaranty.

BEQUEST.

See Will.

BIAS.

See Contract, 8.

BIGAMY.

See Marriage, 2.

BILLS AND NOTES.

See Assignments and Preferences—Contract, 1—Gift, 1—Principal and Agent, 6—Promissory Notes.

BILLS OF LADING.

See Railway, 2, 3.

BILLS OF SALE.

See Chattel Mortgage—Company, 4.

BOARD OF RAILWAY COMMISSIONERS.

See Mandamus.

BOOK-DEBTS.

See Chattel Mortgage.

BOUNDARIES.

Dispute between Neighbours—Recognised Line between Lots—Acceptance by Parties—Conduct—Trespass—Nominal Damages—Costs. *Walker v. Gallipau*, 18 O.W.N. 422.—KELLY, J.

See Limitation of Actions, 3—Mines and Mining—Patent for Land.

BRITISH NORTH AMERICA ACT.

See Carriers.

BUILDING.

Erection of Garage in Prohibited Area of City—Permit—By-law—Action by Ratepayer qui tam to Restrain Building—Status of Plaintiff—Motion for Interim Injunction. *Partridge v. Grant*, 18 O.W.N. 271.—RIDDELL, J.

See Contract, 4, 5, 6—Landlord and Tenant, 2, 3, 5.

BUILDING CONTRACT.

See Contract, 5.

BUILDING RESTRICTIONS.

See Covenant—Vendor and Purchaser, 8, 13.

BUILDING SCHEME.

See Covenant.

BULK SALES ACT.

See Evidence, 1.

BUSINESS ASSESSMENT.

See Assessment and Taxes, 1.

BY-LAWS.

See Assessment and Taxes, 4—Building—Company, 2—Injunction—Municipal Corporations, 2, 3—Street Railway, 1.

CALLS.

See Company, 6.

CANCELLATION OF CONTRACT.

See Contract, 10, 20—Vendor and Purchaser.

CARRIERS.

Dominion Express Company—Common Carriers—Obligations Modified as to Tariff-rates by Railway Act of Canada—Tariff Approved by Railway Board—Carriage of Intoxicating Liquors from Export Warehouse in Ontario to another Province—Prohibition by Ontario Board of License Commissioners—Powers of Board—Ontario Temperance Act, secs. 41, 46—Constitutional Law—Powers of Ontario Legislature—British North America Act, sec. 92 (16)—Interference with Trade and Commerce. **Graham & Strang v. Dominion Express Co.*, 18 O.W.N. 355.—MASTEN, J.

See Mandamus—Ontario Temperance Act, 4, 6—Railway, 1-5.

CENSORSHIP.

See Criminal Law, 2.

CERTIFICATES FOR SHARES.

See Banks and Banking—Contract, 23—Execution, 2.

CHAMBERS.

See Practice, 2.

CHANGE OF VENUE.

See Trial.

CHARGE ON LAND.

See Assignments and Preferences—Mortgage—Trusts and Trustees, 7.

CHARITABLE BEQUEST.

See Will, 2, 17.

CHATTEL MORTGAGE.

Affidavit of Bona Fides Made by Secretary-treasurer of Mortgagee-company—Omission of Statement of Deponent's Knowledge of Facts—Bills of Sale and Chattel Mortgage Act, R.S.O. 1914 ch. 135, sec. 12 (3)—Fatal Defect—Mortgage Void as against Creditors of Mortgagor—Assignment of Book-debts to Creditor of Insolvents—Unjust Preference—Pressure—Assignments and Preferences Act, R.S.O. 1914 ch. 134, sec. 5. **W. G. Craig & Co. Limited v. Gillespie*, 18 O.W.N. 257.—MIDDLETON, J.

CHEQUES.

See Assignments and Preferences—Contract, 1—Gift, 1—Principal and Agent, 6.

CHILDREN'S AID SOCIETY.

See Infants, 2.

CHOSE IN ACTION.

See Contract, 17.

CHURCH.

Rectory Lands—Rents and Profits and Revenue from Proceeds of Sale—Excess over \$2,000 per Annum Distributable among Incumbents of Churches in Township other than Original Church—Act to Amend Synod and Rectory Sales Act Affecting Diocese of Ontario, 1876, 39 Vict. ch. 109, secs. 3, 4 (O.)—Accounting by Rector of Church and Synod of Diocese—Sale of Lands not Coming within Description in Statute—Rent not Chargeable in Respect of Rectory and Parish house—Deduction of Taxes Charged against Rectory—Proceeds of Sale of School-house and Land, Sanctioned by 2 Geo. V. ch. 159 (O.)—Application of Excess-revenues—Basis of Accounting—Costs. *Swayne v. Synod of Diocese of Ontario*, 18 O.W.N. 390.—ROSE, J.

See Covenant, 1, 2—Vendor and Purchaser, 10—Will, 17.

CLOSING OF HIGHWAY.

See Highway, 7.

CODICIL.

See Will, 10.

COLLATERAL SECURITY.

See Principal and Surety, 1, 2.

COLLISION.

See Damages—Negligence—Ship.

COMMISSIONS.

See Company, 5—Principal and Agent, 1, 2, 3.

COMMON EMPLOYMENT.

See Negligence, 8.

COMPANY.

1. Action against Company and Directors to Recover Sums Paid by Shareholders for their Shares—Prospectus—Misrepresentations—Failure to Prove—Company Ordered to be Wound up—Liquidator Joined as Defendant without Authority from Court—Striking out Name of Liquidator—Dismissal of Action—Costs. *Butler v. Hamilton Lumber and Coal Co. Limited*, 18 O.W.N. 404.—KELLY, J.
2. Agreement Affecting Interests of Company and Shareholders—Adoption at Annual General Meeting—Notice of Meeting Given to Shareholders—Specification of Business to be Transacted—Failure to Include Consideration of Agreement—Representation of Shareholders—Proxies—Directors—Provision in Agreement for Payment of Lump-sum to President—By-laws of Company—Meeting not Properly Convened—Invalidity of Agreement—Injunction against Carrying out—Bona Fides—Honest Belief that Agreement for Benefit of Shareholders—Costs. *McDougall v. Black Lake Asbestos and Chrome Co. Limited*, 18 O.W.N. 117, 47 O.L.R. 328.—KELLY, J.
3. Extra Provincial Corporation—Extra Provincial Corporations Act, R.S.O. 1914 ch. 179, secs. 7, 16—Action Brought by Unlicensed Company—License Obtained pendente Lite—Validation of Contract Entered into in Violation of Statute. *C. C. Robbins Incorporated v. St. Thomas Packing Co.*, 18 O.W.N. 287.—APP. DIV.
4. Purchase of "Business" of Firm—Going Concern—Assumption of Trade-liabilities—Agreement—Ratification by Shareholders—Informal Meeting—All Shareholders Present—Unanimity—Bill of Sale—Covenant—Mistake—Ratification—Amendment—Negligence of Solicitor—Failure to Prove—Secret Profits—Subscriptions for Shares—Paid-up Shares—Promissory Notes—Counterclaim—Bill of Costs. *Classic Hosiery Co. Limited v. Fillis*, 18 O.W.N. 17.—LOGIE, J.

COMPANY—(Continued).

5. Resolution of Directors Fixing Remuneration of President and Manager of Company on Commission-basis—Correctness of Minutes of Meeting—Conflicting Evidence—Finding of Trial Judge—Payments Made to President—Scope of Resolution—Action by Shareholders to Compel Repayment to Company—Knowledge and Acquiescence—Estoppel—Failure to Shew Misrepresentation on Sale of Shares—Receipt of Dividends—Offer at Trial to Retain—Pleading—Amendment—Agreement with Vendors of Property to Company—Issue of Shares—Irregularity. *Hood v. Caldwell*, 18 O.W.N. 427.—SUTHERLAND, J.
6. Winding-up—Contributories—Application for Shares—Allotment—Notice—Acceptance—Special Contract as to Payment—Transfer of Shares not Paid for—Approval of Directors—Liability to Calls—Resolution of Directors—Dominion Companies Act, R.S.C. 1906 ch. 79, secs. 58, 59, 65, 66—“Call” Made upon Directors’ Shares only—Invalidity as “Call”—Novation—Powers of Company—Surrender—Compromise. **Re Port Arthur Waggon Co. Limited, Tudhope’s Case, Shelden’s Case*, 18 O.W.N. 278.—APP. DIV.
7. Winding-up—Contributories—Holders of Shares Partly Paid-up—Loan Corporations Act, R.S.O. 1897 ch. 205, sec. 15 (3)—Acceptance by Shareholders of another Company of Shares of Company in Liquidation—Issue of Certificate for Whole Share where Person Entitled to Fraction of Share—Liability for Amount Unpaid—Creditors. *Re Dominion Permanent Loan Co.*, 17 O.W.N. 436, 47 O.L.R. 87.—APP. DIV.
8. Winding-up—Directors—Payment of Dividends out of Capital—Liability—Ontario Companies Act, R.S.O. 1914 ch. 178, sec. 95. *Re Metropolitan Theatres Limited*, 18 O.W.N. 72.—APP. DIV.
9. Winding-up—Petition by Creditor for Order—Winding-up Act, R.S.C. 1906 ch. 144—Previous Assignment for Benefit of Creditors—Substantial Number of Creditors Desiring Winding-up to Proceed under Assignment—Adjournment of Petition—Costs. *Re British American Feldspar Limited*, 18 O.W.N. 313.—MASTEN, J. (CHRS.)
10. Winding-up—Winding-up Act, R.S.C. 1906 ch. 144—Offer to Purchase Assets—Consideration—Payment of Creditors’ Claims and Allotment of Shares in New Company to Shareholders of Insolvent Company—Power of Court to Sanction Acceptance of Offer—Sec. 34 (c) and (h) of Act—Approval

COMPANY—(Continued).

- of Large Majority of Shareholders—Rights of Minority—Approval of Court—Powers of Company—Ontario Companies Act, R.S.O. 1914 ch. 178, sec. 23 (*m*)—Effect of Winding-up Order—Rights of Creditors—Status and Jurisdiction of Assistant Master in Ordinary pro tem. upon Reference—Leave to Appeal from Order of Judge in Court—Winding-up Act, sec. 101. *Re Bailey Cobalt Mines Limited*, 17 O.W.N. 221, 228, 394, 47 O.L.R. 13.—SUTHERLAND, J.—LENNOX, J.—APP. DIV.
- See Chattel Mortgage—Contract, 17, 23, 29—Execution, 2—Guaranty—Sale of Goods, 8—Vendor and Purchaser, 3.

COMPENSATION.

- See Highway, 1, 7—Improvements—Municipal Corporations, 4, 5, 6—Railway, 6—Vendor and Purchaser, 4—Water, 1.

COMPROMISE.

- See Company, 6.

CONDITION.

- See Contract, 21—Sale of Goods, 7, 9.

CONDITIONAL SALE.

- See Bailment.

CONFIDENTIAL RELATIONSHIP.

- See Deed, 2.

CONFISCATION.

- See Ontario Temperance Act, 7.

CONFLICTING DECISIONS.

- See Discovery, 1.

CONSENT.

- See Highway, 7—Improvements—Mortgage, 1, 4—Principal and Surety, 1—Sale of Goods, 3—Trusts and Trustees, 2.

CONSENT JUDGMENT.

- See Limitation of Actions, 2.

CONSIDERATION.

- See Company, 10—Deed, 2, 4—Fraud and Misrepresentation, 2, 5—Trusts and Trustees, 7.

CONSOLIDATION OF ACTIONS.

- See Appeal, 2—Costs, 1—Practice, 3.

CONSPIRACY.

Removal of Person to Hospital for Insane—Hospitals for the Insane Act, R.S.O. 1914 ch. 295, secs. 7, 8—Certificate of two Medical Practitioners—Bona Fides—Reasonable Care—Honest Belief—Release of Person from Hospital—Evidence—Failure to Prove Conspiracy or Wrong of any Kind. *Lumsden v. Glidden*, 18 O.W.N. 354.—KELLY, J.

CONSTITUTIONAL LAW.

See Carriers.

CONTRACT.

1. Agreement for Sale of Land (House Property)—Formation of Contract—Receipt—Cheque—Statute of Frauds—Description of Property by Street and Number—Fee Simple—Locality of House—Name of Town in which Situated—Purchase-price—Statement of—Terms of Payment—Mortgage for Part of Price—Implication as to Property on which Mortgage to be Given—Interest—Rate of—Silence of Documents—Inference—Subsequent Offer—Specific Performance. *Peterson v. Bitzer*, 18 O.W.N. 251.—MASTEN, J.
2. Agreement to Refrain from Bringing Action—Conditions—Onus of Proof—Findings of Master—Appeal. *Northern Grocery Co. v. Parade*, 18 O.W.N. 95.—MASTEN, J.
3. Breach—Ear-marked Goods—Waiver — Injunction — Interim Order—Appeal. *F. E. Smith Limited v. Canadian Western Steel Corporation Limited*, 18 O.W.N. 160, 176.—LOGIE, J.—APP. DIV.
4. Builder—Preparation of Plans for Proposed Building—Project Abandoned—Payment for Plans—Implied Agreement—Evidence. *Yates v. Wright & Co.*, 18 O.W.N. 305.—APP. DIV.
5. Building Contracts—Amount Due to Contractor—Amount Overpaid to Contractor—Claim and Counterclaim—Evidence—Findings of Fact of Trial Judge—Dismissal of Contractor—Justification. *Miller v. Hunt*, 18 O.W.N. 194.—LATCHFORD, J.
6. Building of Houses for Railway Company—Sub-Contractors—Provision for Termination of Contract—Right Exercised by Principal Contractors in Good Faith and on Reasonable Grounds—Dissatisfaction—“All Parties Concerned”—Dissatisfaction of Railway Company—Acquiescence of Sub-contractors in Termination. *Boyer Brothers v. Doran & Devlin*, 18 O.W.N. 281.—APP. DIV.

CONTRACT—(Continued).

7. Delivery of Ore—Breach—Refusal to Complete Delivery—Excuses for Non-delivery—"Pinching out" of Ore—Failure to Prove—Contingencies—Increased Cost of Production—Impossibility of Performance—Extension of Time for Making Deliveries—Assessment of Damages at Date of Refusal to Make Further Deliveries—Measure of Damages—Contract-price—Market-price at Extended Date Greater than at Date of Original Breach. *Samuels v. Black Lake Asbestos and Chrome Co. Limited*, 18 O.W.N. 149.—KELLY, J.
8. Doing of Concrete Work upon Bridge—Interference by Building-owner—Breach of Implied Obligation—Damages—Asphalt Work Shewn on Plans—Clause Incorporating Plans in Specifications—Determination of Engineer of Owner that Asphalt Work Included in Contract—Misconstruction of Contract—Powers of Arbitrator Given to Engineer by Contract—Conflict between Interest and Duty—Disqualification—Interest—Bias—Absence of Fraud. *Law v. City of Toronto*, 18 O.W.N. 58, 47 O.L.R. 251.—MIDDLETON, J.
9. Formation—Agreement for Lease—Statute of Frauds—Agent—Letter to—Instructions for Preparation of Formal Lease—Lack of Accord as to Important Matter—Action for Breach of Agreement not Established—Costs. *Crawford & Walsh v. C. W. Lindsay Co. Limited*, 18 O.W.N. 254.—MIDDLETON, J.
10. Formation—Oral Agreement for Sale and Purchase of Land and for Lease—Small Sum Paid by Purchaser—Written Receipt Embodying Terms so far as Agreed upon—Failure to Agree upon Further Terms—No Concluded Agreement—Registration of Receipt—Judgment Directing Cancellation—Statute of Frauds—Counterclaim for Specific Performance—Dismissal. *Carom v. Komer*, 18 O.W.N. 240.—LATCHFORD, J.
11. Formation—Sale and Purchase of Land—Correspondence—Quotation or Offer—Purchaser Treating Letter as Offer and Accepting it—Description of Subject-matter of Contract. *Canadian Dyers Association Limited v. Burton*, 18 O.W.N. 83, 47 O.L.R. 259.—MIDDLETON, J.
12. Formation—Sale and Purchase of Land—Correspondence—Refusal of Vendor to Carry out Contract—Purchaser Absolved from Tendering Deed and Purchase-money—Specific Performance. *Beneteau v. Best*, 18 O.W.N. 238.—LATCHFORD, J.

CONTRACT—(Continued).

13. Money Placed in Hands of Defendant to Remit to Bank in Foreign Country to be Placed at Credit of Plaintiff—Conflict of Evidence as to Method of Remitting—Corroboration—United States Currency—Rate of Exchange—Finding in Favour of Plaintiff. *Stoyanoff v. Dimitroff*, 18 O.W.N. 421.—KELLY, J.
14. Option for Purchase of Oil-leases—Undertaking of Purchaser to Drill Wells and Develop Property during Option-period—Failure to Implement—Misrepresentations—Failure to Prove—Construction of Contract—Obligation to Fulfil Undertaking—Breach—Damages—Measure of—Evidence—Reference to Master to Assess Damage—Costs. *Kranz v. McCutcheon*, 18 O.W.N. 395.—MASTEN, J.
15. Parent and Child—Oral Bargain between Father and Son—Son Put in Possession of Land—Evidence to Establish Contract—Statute of Frauds—Acts of Part Performance—Improvements Made by Son—Death of Father Intestate—Action by Administratrix for Possession—Parties—Addition of Heirs at Law—Counterclaim. *Gallinger v. Gallinger*, 18 O.W.N. 49.—SUTHERLAND, J.
16. Parent and Child—Oral Promise of Father to Convey Land to Son—Consideration—Services of Son—Evidence—Corroboration—Possession Given to Son—Part Performance—Statute of Frauds—Subsequent Acceptance of Lease by Son—Estoppel—Claim for Specific Performance of Agreement—Claim for Improvements Made by Son—Claim for Wages—Amendment—Reference—Costs. *Harris v. Harris*, 18 O.W.N. 81, 47 O.L.R. 321.—APP. DIV.
17. Purchase of Assets of Company—Assumption of liabilities Amounting to Named Sum “or thereabouts”—Agreement by Purchaser to Pay to Vendor “or Persons Entitled thereto” Sum of Money Entrusted to Vendor—Trustee—Actions by “Persons Entitled” against Purchaser for Portions of Sum—Right of Purchaser to Set off Sum Paid in Excess of Named Liabilities—“Mutual Debts”—Parties to Actions—Necessity for Addition of Vendor-trustee as Party—Appeal—Costs—Assignments of Chose in Action—Rule 85—Assignments of Parts of Debt. *Best v. Beatty, Calvert v. Beatty*, 18 O.W.N. 67, 47 O.L.R. 265.—APP. DIV.
18. Remuneration for Services—Employment of Plaintiff in Regard to Particular Matter—Employers Taking Matter out of Hands of Plaintiff—Excuse—Agreement to Pay one Half of

CONTRACT—(Continued).

- Refund of Overpayments Made to Employers—Preventing Plaintiff from Obtaining Refund—Interference—Damages for Breach of Implied Contract. *Getzler v. Dominion Foundries and Steel Limited*, 18 O.W.N. 215.—ROSE, J.
19. Sale of Farm, Implements, and Stock—Claim of Purchaser that all Chattels not Delivered—Items of Claim—Success as to one only—Counterclaim—Mortgage—Waste—Injunction—Removal of Timber—Damages—Account—Reference—Costs. *Fuller v. Storms*, 18 O.W.N. 235.—KELLY, J.
20. Sale of Goods—Shipments not Made in Due Time—Right of Purchasers to Cancel Contract—Purchasers Treating Contract as Subsisting—Waiver—Recovery of Price of Goods Shipped up to Time when Vendors Received Notice to Discontinue Deliveries. *Bonner-Worth Co. v. Geddes Brothers*, 18 O.W.N. 269.—LATCHFORD, J.
21. Sale of Machine—Executory Agreement for Future Sale on Performance of Conditions—Return of Machine by Purchaser—Refusal of Vendor to Accept—Machine Held to Purchaser's Order—Action for Price—Provisions of Agreement—Remedy of Vendor—Forfeiture of Deposit—No right in Purchaser to Dictate Remedy. *S. F. Bowser Co. Limited v. Wilson*, 18 O.W.N. 341.—APP. DIV.
22. Sawing Logs—Action for Price—Inferiority of Lumber Delivered—Counterclaim—Damages—Costs. *Rowe v. Hamilton*, 18 O.W.N. 161.—MIDDLETON, J.
23. Share-certificates Pledged by Defendant—Redemption by Plaintiff—Agreement between Plaintiff and Defendant—Issue as to Ownership of Certificates—Payment or Equivalent of Payment by Defendant of Sum Paid by Plaintiff—Findings of Fact of Trial Judge. *Charbonneau v. Jewell*, 18 O.W.N. 307.—ROSE, J.
24. Sub-contractor for Government Works—Work not Conforming to Specifications and not Satisfactory to Government Engineer—Damages for Refusal to Supply Material and Do Work over again—Measure of—Return of Money Paid—Counterclaim—Drawback—Failure to Do Portions of Work—Measure of Damages—Failure of Principal Contractors to Supply Material—Loss thereby to Sub-contractor not Shewn—Payment for Use of Defendant's Plant in Doing Work he should have Done—Declaration—Reference to Ascertain Damages—Costs. *Canadian Stewart Co. Limited v. Hodge*, 18 O.W.N. 417.—ROSE, J.

CONTRACT—(Continued).

25. Supply of Electrical Energy—Payment for—Ascertainment of Amount—Settling Judgment. *Ontario Power Co. of Niagara Falls v. Toronto Power Co. Limited*, 18 O.W.N. 123.—MIDDLETON, J.
26. Supply of Natural Gas—Orders of Ontario Railway and Municipal Board—Control of Supply and Distribution—Natural Gas Act, 1918, 8 Geo. V. ch. 12—Ontario Railway and Municipal Board Act, R.S.O. 1914 ch. 186, secs. 3, 21, 22, 23, 25, 26, 29, 37—Amending Act, 5 Geo. V. ch. 31—Public Inquiry—Notice to Consumers—Notice Antecedent to Orders—Opportunity to Apply for Review or to Appeal—Effect of Act of 1918 upon Contract—Impossibility of Enforcement—“Abrogation” or “Suspension”—Sale and Disposal under Orders of Board—Permits—Rate of Payment—Construction of Orders of Board—Public Utilities Act, R.S.O. 1914 ch. 204—Threat to Stop Supply of Gas in Default of Payment—Illegal Act—Injunction—Interim Order—Costs. *Dominion Sugar Co. v. Northern Pipe Line Co.*, 17 O.W.N. 470, 47 O.L.R. 119.—APP. DIV.
27. Supply of Natural Gas—Provisions of Lease Incorporated in Agreement—Stipulation for Annual Payment in Respect of Easement—Breach of Agreement—Damages—Costs. *Brown v. United Gas Companies Limited*, 18 O.W.N. 378.—LATCHFORD, J.
28. Supply of Paper—Construction—“150 Tons Approximately per Year.”—“The Whole of the Purchasers’ Requirements”—Delivery Exceeding 150 Tons in each of two first Years—Application of Excess on Amount to be Delivered in third Year—Estimate—Breach of Contract—Damages. *British Whig Publishing Co. v. E. B. Eddy Co. Limited*, 18 O.W.N. 255.—MIDDLETON, J.
29. Undertaking of Investor with Promoter of Company to Underwrite Shares—Agreement to “Subscribe for” and Purchase Shares—Construction of Agreement—Conditional Undertaking—Authority to Pledge or Hypothecate Agreement to “Banking Institution”—Assignment of Agreement to Trust Company—Contingent Liability only Passing by Assignment—Action by Trust Company against Executor of Investor—Liability to Pay for Shares not Established. *Montreal Trust Co. v. Richardson*, 18 O.W.N. 336.—APP. DIV.
- See Appeal, 4, 5, 8—Arbitration and Award—Assessment and Taxes, 4—Company, 2, 3, 4, 6—Damages, 1, 2—Deed—Fraud and

CONTRACT—(Continued).

Misrepresentation—Husband and Wife, 8—Judgment—Lunatic—Mortgage—Municipal Corporations, 2, 3—Principal and Agent—Principal and Surety—Promissory Notes—Railway, 1—Sale of Goods—Trusts and Trustees—Vendor and Purchaser.

CONTRIBUTORIES.

See Company, 6, 7.

CONTRIBUTORY NEGLIGENCE.

See Negligence, 1, 2, 10—Street Railway, 1, 2.

CONVEYANCE OF LAND.

See Deed—Husband and Wife, 9—Principal and Agent, 5—Trusts and Trustees, 4.

CONVERSION.

See Will, 18.

CONVICTION.

See Criminal Law—Highway, 3—Malicious Prosecution—Ontario Temperance Act.

CORPORATION.

See Company—Municipal Corporations—Will, 17.

CORROBORATION.

See Contract, 13, 16—Evidence, 1, 2, 3—Gift, 2—Husband and Wife, 8—Lunatic, 1—Trusts and Trustees, 4.

COSTS.

1. Defence to Action Withdrawn when Action Came on for Trial—Disposition of Costs by Trial Judge—Consolidation of Actions—Interlocutory Costs. *Royal Bank of Canada v. Carmichael*, 18 O.W.N. 378.—LENNOX, J.
2. Proceeding to Set aside Election to Municipal Office—Municipal Act, secs. 160-186—Costs of Motion before Master in Chambers and of Appeal to Judge in Chambers—Application of Ordinary Tariff of Supreme Court—Originating Motion—Tariff A., Item 17—Counsel Fee—Quantum—Discretion of Taxing Officer—Review—Costs of Appeal—Case not Covered by Tariff—Analogy to Original Motion—Rule 2—Examination of Witnesses upon Motion—"Preliminary Proceedings"—Item 12 of Tariff A.—Application of, by Analogy—One Allowance for all Examinations—Repeal of Former Rules Governing Proceedings in Relation to Controverted Municipal Elections. *Rex ex rel. Dart v. Curry*, 17 O.W.N. 417, 47 O.L.R. 45.—MIDDLETON, J. (CHRS.)

COSTS—(Continued).

3. Scale of Costs—Action Brought in Supreme Court of Ontario—Trespass to Land—Easement—Declaration as to User of Way—Judgment for Plaintiff with Nominal Damages and Costs—Determination by Taxing Officer of Scale of Costs—Rule 649—Appeal—Pleading—Issue Raised as to Title—Proof of Value of Land Affected by Easement—Onus—Jurisdiction of County Court—County Courts Act, sec. 22 (1) (c). *Parry v. Parry*, 18 O.W.N. 53, 365, 399, 47 O.L.R. 217.—ORDE, J. (CHRS.)—APP. DIV.
 4. Security for Costs—Application by Defendants for Increased Security—Increase of Costs by Reason of Counterclaim—Distinction between Counterclaim Proper and Set-off. *Begg Limited v. Edwards*, 18 O.W.N. 232.—CAMERON, MASTER IN CHAMBERS.
 5. Taxation—Defendants Severing—Rule 669—Practice—Parties Representing same Estate and Interest—Receiver of Share of Person Having Interest in Estate—Administration Proceeding. *Re Shields, Shields v. London and Western Trust Co.*, 17 O.W.N. 490, 18 O.W.N. 127, 47 O.L.R. 174.—MIDDLETON, J. (CHRS.)—APP. DIV.
- See Administration Order, 1, 2—Appeal, 3, 8—Assessment and Taxes, 3—Bailment—Banks and Banking—Boundaries—Church—Company, 1, 2, 4, 9—Contract, 9, 14, 16, 17, 19, 22, 24, 26, 27—Damages, 1—Death—Deed, 8—Execution, 2—Fraud and Misrepresentation, 5—Gift, 2—Guaranty—Highway, 3—Husband and Wife, 2, 3, 8, 11—Infants, 3—Judgment, 1-4—Landlord and Tenant, 1, 2, 3—Limitation of Actions, 2—Lunatic, 2—Mechanics' Liens—Mines and Mining—Mortgage, 2, 3, 6—Municipal Corporations, 6—Negligence, 2, 6—New Trial, 1, 2—Ontario Temperance Act, 1—Partnership—Practice, 1, 3—Principal and Agent, 4—Promissory Notes, 2—Railway, 1, 5—Sale of Goods, 6, 9, 10—Ship—Solicitor—Trusts and Trustees, 3, 4, 6, 10, 11—Vendor and Purchaser, 2, 6, 11, 14—Way, 2—Will, 6.

COUNSEL FEES.

See Appeal, 8—Costs, 2.

COUNTERCLAIM.

See Bailment—Company, 6—Contract, 5, 10, 15, 19, 22, 24—Costs, 4—Evidence, 3—Fraud and Misrepresentation, 1—Gift, 2—Highway, 6—Husband and Wife, 3—Judgment, 4—Sale of Goods, 1, 6, 9—Vendor and Purchaser, 5.

COUNTY COURT JUDGE.

See Judgment, 5—Municipal Elections.

COUNTY COURTS.

See Costs, 3—Husband and Wife, 2—Judgment, 1—Practice, 2.

COURTS.

See Appeal—Costs, 3—Husband and Wife, 2—Judgment, 1—Marriage, 2—Partnership—Practice, 2—Will, 19.

COVENANT.

1. Building Scheme—Subdivision of Tract of Land—Part Reserved for Use as Residential Property—Restrictive Negative Covenant—Erection of Church-building in Breach of—Action to Restrain Use of Building and Compel Removal—Status of Plaintiff—Absence of Interest—Plaintiff not Damned—Evidence—Circumstances of Case—Extraordinary Remedy Refused. *Page v. Campbell*, 18 O.W.N. 333.—APP. DIV.
 2. Conveyance of Land—Building Restrictions—Grantee Confined to Building Private Dwelling Houses—Proposed Erection of Church-building—Breach of Covenant—Restraint by Injunction—Requirement that Building be Commenced within one Year—Neglect to Enforce—Waiver or Estoppel—Right of “Physician” to Exercise Profession in Private Dwelling House—Church-corporation Doing Work of “Healing.” *Re Second Church of Christ Scientist and Dods*, 18 O.W.N. 409.—ORDE, J.
 3. Conveyance of Land—Grant of Right of Way over Road—Covenant to Keep Road in Repair—Construction of Covenant—Consideration of Attendant Circumstances—Excuse for Non-performance—Impossibility of Performance—Change in Condition—Action of Water upon Bank of Lake—Encroachment—Soil Newly Covered by Water Vested in Crown—Enforcement of Covenant to Perform Illegal Act—Damages for Non-performance—Public Policy. **Kerrigan v. Harrison*, 18 O.W.N. 263.—APP. DIV.
- See Company, 4—Deed, 2, 4, 5—Highway, 4—Landlord and Tenant, 1, 2—Vendor and Purchaser, 2, 13.

CREDITORS.

See Assignments and Preferences—Chattel Mortgage—Company, 6-10—Evidence, 1—Fraudulent Conveyance—Husband and Wife, 1—Mortgage, 6—Principal and Surety, 1, 2—Sale of Goods, 8—Will, 15.

CRIMINAL LAW.

1. Arson—Setting Fire to Dwelling-house and Store of Prisoner—Contents Insured beyond Value—Circumstantial Evidence—Sufficiency of, to Support Conviction. *Rex v. Ercolino*, 18 O.W.N. 43.—APP. DIV.
2. Having Prohibited Publications in Possession—Police Magistrate's Convictions—Motions to Quash—Publications in Enemy Language—Dominion Orders in Council—War Measures Act, 1914, sec. 6—"Prohibited Literature"—"Object-ionable Matter"—Censorship—Refusal to Quash Convictions—Appeal—An endment of Convictions. *Rex v. Zura*, *Rex v. Ollikkila*, 18 O.W.N. 65, 47 O.L.R. 263.—APP. DIV.
3. Murder—Trial—Order of Addresses of Counsel—Criminal Code, sec. 944—Waiver by Counsel for Crown of Right to Sum up—Right of Reply—Prejudice—Commenting on Failure of Accused to Testify—Canada Evidence Act, R.S.C. 1906 ch. 145, sec. 4 (5)—Judge's Charge—Verdict of Man-slaughter not Possible on Evidence—Misdirection or Non-direction—Remarks on Evidence—Conduct of Case by Coun-sel for Crown. *Rex v. Coppen*, 18 O.W.N. 165, 47 O.L.R. 399.—APP. DIV.
4. Pretending to be Able to Discover Stolen Goods—Criminal Code, sec. 443—"Pretends"—"Skill and Knowledge in an Occult Craft or Science"—Intent to Deceive—Honest Belief in Powers—Communication with Departed Spirits—Evidence—Conviction. **Rex v. Pollock*, 18 O.W.N. 295.—APP. DIV.
5. Procedure—Motion to Quash Police Magistrate's Conviction for Vagrancy—Rules of 1908 Made pursuant to Criminal Code—Rule 1285—Motion not Made Returnable within 6 Months after Conviction—Fatal Objection. *Rex v. Willison*, 18 O.W.N. 190.—LENNOX, J. (CHRS.)
6. Theft—Confederate States Treasury Note Found in Safe Purchased by Accused at Auction-sale—Intent—Purchase of Contents of Safe—Conviction by Justices Quashed on Appeal—Protection of Justices. *Re Young and Ward*, 18 O.W.N. 434.—WILLS, JUN. CO. C. J.

See Highway, 3—Ontario Temperance Act—Revenue.

CROWN.

See Covenant, 3—Patent for Land.

CROWN ATTORNEY.

See Ontario Temperance Act, 1.

CRUELTY.

See Husband and Wife, 3, 6, 7.

CURRENCY.

See Contract, 13—Principal and Agent, 4.

CUSTODY OF INFANTS.

See Infants.

CUSTOMER.

See Banks and Banking—Gift, 1.

DAMAGES.

1. Breach of Agreement for Lease of Premises—Infirmity of Title of Lessor—Bona Fides—Measure of Damages—Proper and Necessary Legal Expenses—Costs. *Rotman v. Pennett*, 18 O.W.N. 177, 47 O.L.R. 433.—LENNOX, J.
2. Breach of Executory Agreement for Purchase of Piano from Manufacturer—Measure of Damages—Difference between Cost of Manufacture and Sale-price—Loss of Profits—Duty of Vendor to Mitigate Damages—Absence of Open Market—Appeal—Reduction of Amount Assessed. *Mason & Risch Limited v. Christner*, 17 O.W.N. 421, 18 O.W.N. 309, 47 O.L.R. 52.—MIDDLETON, J.—APP. DIV.
3. Personal Injuries—Negligence of Street Railway Company—Collision—Quantum of Damages Assessed by Jury—Motion for New Assessment on Ground of Excess. *Pell v. Toronto and York Radial R.W. Co.*, 18 O.W.N. 46.—APP. DIV.

See Arbitration and Award—Boundaries—Contract, 7, 14, 18, 19, 22, 24, 27, 28—Costs, 3—Covenant, 3—Deed, 4, 5—Fatal Accidents Act—Fraud and Misrepresentation, 4—Highway, 2—Landlord and Tenant, 2—Mines and Mining—Municipal Corporations, 6—Negligence, 3, 5, 7—New Trial, 2—Nuisance—Principal and Agent, 3—Railway, 1—Sale of Goods, 1, 3, 4, 9—Ship—Water, 1, 2—Way, 1.

DEATH.

Presumption—Absentee for Long Period—Owner of Land Expropriated for School Purposes—Compensation—money Paid into Court—Payment out to Heirs-at-Law of Absentee—Evidence of Possession—Limitations Act—Costs. *Re Richer*, 18 O.W.N. 360.—KELLY, J. (CHRS.)

See Deed, 6—Fatal Accidents Act—Gift, 1, 2—Husband and Wife, 8—Mortgage, 1—Negligence, 9—Principal and Agent, 5—Settlement—Trusts and Trustees, 4, 5, 7—Will.

DEBENTURES.

See Assessment and Taxes, 4.

DECEIT.

See Fraud and Misrepresentation.

DECLARATION OF TRUST.

See Trusts and Trustees, 4, 9.

DEED.

1. Construction—Conveyance of Land—Remainder after Grant in Fee Simple—Repugnancy. *Re Chauvin*, 18 O.W.N. 178.—MIDDLETON, J.
2. Conveyance of Interest in Farm by Father to Son—Consideration—Maintenance of Father and Payment of Mortgage—Covenant of Son—Failure to Fulfill—Action to Set aside Deed—Lack of Confirmation by Father—Delay in Bringing Action—Confidential Relationship—Reliance of Father upon Son—Solicitation of Son—Lack of Independent Advice—Improvidence. *Gervais v. Gervais*, 18 O.W.N. 30.—ROSE, J.
3. Conveyance of Interest in Land—Deed Alleged to be Subject to Oral Agreement—Failure to Prove—Conveyance to Trust Company—Validity—Administration of Estate—Action—Parties. *Morley v. Fidelity Trust Co.*, 18 O.W.N. 275.—APP. DIV.
4. Conveyance of Land by Mother to Son—Consideration—Covenant of Son to Pay off Mortgage—Performance of—Covenant to Maintain Mother upon Land—Part Performance—Action by Administrator of Mother's Estate to Set aside Deed—Improvidence—Duress—Evidence—Claim for Damages for Breach of Covenant to Maintain—Personal Claim—"Actio Personalis Moritur cum Persona"—Claim by Virtue of Possession—Limitations Act. *Johnston v. Johnston*, 18 O.W.N. 11.—SUTHERLAND, J.
5. Conveyance of Land (Farm Lot)—Covenant for Quiet Possession Free from all Incumbrances save as Mentioned—Recital of Agreement for Sale of Standing Timber upon North Half of Lot—Agreement in Fact Covering Part of South Half—Vendor Standing by Agreement—Claim for Reformation of Deed—Breach of Covenant—Damages—Reference. *Willett v. McCarthy*, 18 O.W.N. 192.—LENNOX, J.
6. Conveyance of Land to Husband and Wife—Construction—Grantees Described as Joint Tenants and Parties of Second Part—Grant to and Habendum to Parties of Second Part

DEED—(Continued).

- without More—Death of Husband—Wife Taking Whole Estate by Survivorship—Conveyancing and Law of Property Act, R.S.O. 1914 ch. 109, sec. 13—Exception—Declaration under Vendors and Purchasers Act. *Re Billett and Davidson*, 18 O.W.N. 425.—LENNOX, J.
7. Conveyance of Part of Land in Question in Action—Application for Order Authorising—Interests of Other Persons—Refusal of Application. *De Olloqui v. Cowan*, 18 O.W.N. 359.—KELLY, J. (CHRS.)
8. Rectification—Omission of one Lot in Description of Lands Conveyed by Trustee—Inadvertence or Error—Conveyance of Omitted Lot to Innocent Purchaser—Action to Set aside Conveyance—Costs. *Crompton v. Morgan*, 18 O.W.N. 399.—SUTHERLAND, J.
- See Covenant—Fraudulent Conveyance—Husband and Wife, 9—Principal and Agent, 5—Sale of Land—Settlement.

DEFEASANCE.

See Promissory Notes, 1.

DEMURRAGE.

See Railway, 3.

DEPOSITIONS.

See Ontario Temperance Act, 6.

DEROGATION.

See Landlord and Tenant, 3.

DESERTED WIVES' MAINTENANCE ACT.

See Husband and Wife, 3.

DESERTION.

See Husband and Wife, 3, 6, 11.

DEVISE.

See Will.

DIRECTORS.

See Company, 1, 2, 5, 6, 8.

DISCOVERY.

1. Examination of Plaintiff Residing Abroad—Place for Examination—Rule 328—"Just and Convenient"—Conflicting Decisions—Judicature Act, sec. 32. *Hamilton v. Hamilton*, 18 O.W.N. 133, 47 O.L.R. 359.—MIDDLETON, J. (CHRS.)

DISCOVERY—(Continued).

2. Production of Documents—Correspondence—Order for Better Affidavit. *Matthew-Addy Co. v. Canadian Malleable Iron Co. Limited*, 18 O.W.N. 234, 321.—CAMERON, MASTER IN CHAMBERS—MASTEN, J. (CHRS.)

See Solicitor, 3.

DISCRETION.

- See Highway, 7—Revenue—Solicitor, 2—Telephone Company—Way, 2—Will, 18.

DISMISSAL OF SERVANT.

See Master and Servant.

DISTRESS.

See Landlord and Tenant, 1.

DISTRIBUTION.

See Trusts and Trustees, 12—Will.

DIVIDENDS.

See Banks and Banking—Company, 5, 8.

DIVORCE.

See Husband and Wife, 10.

DOCUMENTS.

See Discovery, 2.

DOMICILE.

See Infants, 3.

DONATIO MORTIS CAUSA.

See Gift, 1.

DOWER.

See Appeal, 3—Husband and Wife, 9, 10.

DRAINAGE.

See Assessment and Taxes, 4—Municipal Corporations, 4, 6—Water, 1.

DURESS.

See Deed, 4.

EASEMENT.

See Contract, 27—Costs, 3—Limitation of Actions, 1—Vendor and Purchaser, 8—Way—Will.

EDUCATION.

See Schools.

ELECTION.

See Bailment—Guaranty—Landlord and Tenant, 5—Partnership.

ELECTIONS.

See Municipal Elections.

EMBARGO.

See Sale of Goods, 3.

EMBARRASSMENT.

See Pleading, 1.

ENCROACHMENT.

See Covenant, 3—Limitation of Actions, 3.

ENGINEER.

See Contract, 8.

EQUITABLE DECREE.

See Vendor and Purchaser, 6.

EROSION.

See Covenant, 3.

ESTATE.

See Deed, 1—Improvements—Way, 3—Will.

ESTOPPEL.

See Assessment and Taxes, 4—Banks and Banking—Company, 5—Contract, 16—Covenant, 2—Insurance, 1—Judgment, 2—Sale of Goods, 4—Way.

EVIDENCE.

1. Action by Creditor to Set aside Sale by Debtor of Interest in Assets of Partnership—Bulk Sales Act, 1917, 7 Geo. V. ch. 33 (O.)—Application of Act—Question whether Action Brought within 60 Days after Notice to Creditor of Sale Having been Made—Sec. 9 of Act—Evidence—Conflicting Testimony of two Solicitors of Equal Credibility—Preference Given to Recollection of one who Affirms—Other Circumstances—Corroboration—Onus. *McLennan v. Fulton*, 18 O.W.N. 373.—Rose, J.
2. Corroboration—Claim against Estate of Deceased Person—Ontario Evidence Act, sec. 12—Items of Account—Extent to which Corroboration Required—Separate Corroboration for each—Findings of Trial Judge—Appeal. *Mushol v. Benjamin*, 18 O.W.N. 175, 47 O.L.R. 426.—App. Div.

EVIDENCE—(Continued).

3. Corroboration—Claim against Estate of Deceased Person—Transactions between Plaintiff and Deceased—Counterclaim for Money Received by Plaintiff for Deceased—Defence that Plaintiff Received it in Payment of a Debt—Testimony of Plaintiff—Corroboration by Facts and Circumstances Disclosed—Ontario Evidence Act, R.S.O. 1914 ch. 76, sec. 12—Finding of Trial Judge—Appeal. *Jacob v. Mushol*, 18 O.W.N. 303.—App. Div.
- See Appeal, 4, 5, 7, 8—Arbitration and Award—Company, 5—Contract, 2, 4, 13, 15, 16—Covenant, 1—Criminal Law, 1, 3, 4—Death—Deed, 4—Fraud and Misrepresentation, 3—Gift, 2—Guaranty—Highway, 6—Husband and Wife, 1, 5-8—Infants, 5—Insurance, 2—Limitation of Actions, 1—Lunatic, 1—Marriage, 1—Mines and Mining—Municipal Corporations, 5, 6—Municipal Elections—Negligence, 9—Nuisance—Ontario Temperance Act—Principal and Agent, 2—Promissory Notes, 1, 2—Sale of Goods, 7—Trusts and Trustees, 4, 7, 10—Vendor and Purchaser, 9—Water, 2—Will, 13.

EXAMINATION OF JUDGMENT DEBTOR.

See Judgment Debtor.

EXAMINATION OF PARTIES.

See Discovery, 1—Solicitor, 3.

EXCAVATION.

See Land.

EXCHANGE.

See Contract, 13—Principal and Agent, 14.

EXECUTION.

1. Renewal of Fi. Fa. Lands—Time for—Sheriff's Sale under Writ not Renewed in Time—Possession of Land. *Douglas v. Hannah*, 18 O.W.N. 397.—LENNOX, J.
2. Seizure and Sale by Sheriff of Company-shares—Previous Pledge of Shares to Creditor of Execution Debtor—Interest of Execution Debtor alone Exigible—Deposit of Share-certificate—Redemption—Costs. *Thomas v. McTavish*, 18 O.W.N. 243.—ROSE, J.

See Mortgage, 2—Trusts and Trustees, 3.

EXECUTORS AND ADMINISTRATORS.

Passing Executors' Accounts—Gifts of Money Made by Testator to his Father—Improvvidence—Money not Chargeable against Executors. *Re Reid*, 18 O.W.N. 97.—LATCHFORD, J.

See Administration Order—Contract, 15, 29—Deed, 4—Gift, 2—Money Lent—Mortgage, 1—Promissory Notes, 1—Trusts and Trustees, 7, 11—Will.

EXECUTORY AGREEMENT.

See Damages, 2.

EXEMPTION.

See Assessment and Taxes, 1, 3.

EXPERTS.

See Nuisance.

EXPORTATION.

See Sale of Goods, 3.

EXPRESS COMPANY.

See Carriers—Mandamus.

EXPROPRIATION.

See Highway, 1—Railway, 6.

EXTRA PROVINCIAL CORPORATION.

See Company, 3.

FALSE IMPRISONMENT.

See Judgment, 4—Malicious Prosecution.

FAMILY SETTLEMENT.

See Trusts and Trustees, 13.

FATAL ACCIDENTS ACT.

Reasonable Expectation of Benefit from Continuance of Life of Mother and Grandmother of Plaintiffs—Death Caused by Negligence of Defendants—Evidence—Findings of Jury—Damages—Quantum. *Clark v. Toronto R.W. Co.*, 18 O.W.N. 322.—LENNOX, J.

See Ice—Negligence, 9—Railway, 9.

FENCES.

See Limitations of Actions, 1, 3.

FICTITIOUS NAME.

See Ontario Temperance Act, 1.

FIRE.

See Criminal Law, 1—Railway, 2.

FIRE INSURANCE.

See Judgment, 2.

FIXTURES.

See Landlord and Tenant, 5.

FORECLOSURE.

See Limitation of Actions, 2—Mortgage, 2, 3, 4.

FOREIGN BILLS.

See Promissory Notes, 2.

FOREIGN EXECUTORS.

See Mortgage, 1.

FORFEITURE.

See Contract, 21—Municipal Corporations, 5—Will, 17.

FORUM.

See Appeal, 6—Practice, 1, 2.

FOSTER-PARENTS.

See Infants, 2.

FRANCHISE.

See Telephone Company.

FRAUD AND MISREPRESENTATION.

1. Agreement for Sale of Land—False Representation by Purchaser—Inducement to Vendor to Enter into Contract—Dismissal of Purchaser's Action for Specific Performance—Counterclaim of Vendor for Rescission. *Smith v. Carveth*, 18 O.W.N. 90.—ORDE, J.
2. Procuring Execution of Agreements and Payment of Money—Failure of Consideration—Recovery of Money Paid—Joinder of Parties—Two Plaintiffs Claiming Moneys Paid by each Separately. *Corp v. Schlemmer*, 18 O.W.N. 63.—LENNOX, J.
3. Sale of Business—Action for Deceit—Necessity for Proof beyond Reasonable Doubt—Evidence—Failure to Satisfy Trial Judge—Appeal—Claim for Articles not Delivered on Sale—Dismissal of Action without Prejudice to Claim. *Brown v. Mawhinney*, 18 O.W.N. 310.—APP. DIV.
4. Sale of House—False Representation as to Renewal of Ground-lease—Rescission—Damages. *Haslip v. Hughes*, 18 O.W.N. 108.—LATCHFORD, J.

FRAUD AND MISREPRESENTATION—(Continued).

5. Sale of Land and Chattels—Acceptance of Threshing Outfit as Part of Consideration—Misrepresentations as to Condition of Outfit—Reliance on—Inducement for Making Contract—Claim by Subvendee of Outfit against Original Owner—Evidence—Reliance on Representations—Costs. *Cattanach and Davis v. Elgie*, 18 O.W.N. 162.—KELLY, J.
- See Company, 1—Contract, 8, 14—Insurance, 2—Judgment, 2—Trusts and Trustees, 12—Vendor and Purchaser, 7.

FRAUDULENT CONVEYANCE.

- Transfer of Land by Husband to Wife—Husband Engaged in Hazardous Business—Conveyance Voluntary on its Face—Evidence—Failure to Shew Valuable Consideration—Indebtedness of Husband—Conveyance Declared Void against Creditors. *McCowan v. Jermyn*, 18 O.W.N. 158.—LENOX, J.

FREIGHT.

- See Railway, 1, 4—Sale of Goods, 10.

FRIVOLOUS ACTION.

- See Malicious Prosecution.

GARAGE.

- See Building.

GAS.

- See Contract, 26, 27.

GAS COMPANY.

- See Municipal Corporations, 5.

GIFT.

1. Cheque Drawn by Customer on Savings-bank Account for Full Amount to Credit of Drawer—Delivery of Pass-book with Cheque—Presentation for Payment after Death of Drawer—Bank not Notified of Death—Revocation of Authority of Bank to pay Cheque—Bills of Exchange Act, secs. 165, 167—Evidence—Donatio Mortis Causa—Requisites of. *Kendrick v. Dominion Bank and Bownas*, 18 O.W.N. 138, 47 O.L.R. 372.—LATCHFORD, J.
 2. Money Withdrawn from Bank under Power of Attorney—Evidence Establishing Gift—Action by Executors of Donor against Donee—Corroboration—Money Withdrawn to Pay Claim of Donee's Husband—Withdrawal after Death of
- 40—18 O.W.N.

GIFT—(Continued).

Donor—Powers of Attorney Act, R.S.O. 1914 ch. 106, sec. 3—Excessive Claim—Counterclaim—Amendment — Costs. *Rose v. Church*, 18 O.W.N. 249.—ROSE, J.

See Executors and Administrators—Trusts and Trustees, 7—Will.

GUARANTY.

Indebtedness of Company to Bank—Action against Guarantors—Defences—Innocent Misrepresentation by Bank-manager as to Security to be Transferred to Guarantors—Security not Actually Transferred—Election, after Discovery of Mistake as to Security, to Stand by Transaction—Further Evidence Adduced upon Appeal—Effect of—Election to Affirm Original Transaction—Costs. *Bank of Ottawa v. Carson*, 18 O.W.N. 42.—APP. DIV.

HIGH SCHOOLS.

See Schools.

HIGHWAY.

1. Expropriation of Toll-road by Provincial Government—Compensation Fixed by Ontario Railway and Municipal Board—Appeal—Public Works Act, R.S.O. 1914 ch. 35, sec. 32—Quantum—Evidence—Financial Loss—Replacement Value—Earning Value—Potential Value. *Re Nepean and North Gower Consolidated Macadamised Road Co.*, 18 O.W.N. 368.—APP. DIV.
2. Nonrepair—Break in Surface of Road—Injury to Person Driving on Road—Wheel of Vehicle Going into Hole on Dark Night—Liability of Township Corporation—Absence of Direct Notice of Condition of Road—Breach of Statutory Duty—Municipal Act, sec. 46C—Evidence—Failure to Shew Adoption of all Reasonable Means to Prevent Continued Existence of Dangerous State of Nonrepair—Damages—Injury to Married Woman—Expense Incurred by Husband. *Richardson v. Township of Warwick*, 18 O.W.N. 106.—ROSE, J.
3. Nonrepair—County Corporation — Conviction — Penalties—Orders of Court of General Sessions—Irregularity—Jurisdiction—Motion for Direction to Inferior Court to State a Case—Undertaking not to Enforce Penalties—Costs. *Rex v. County of Lennox and Addington*, 18 O.W.N. 299.—APP. DIV.

HIGHWAY—(Continued).

4. Nonrepair—Defective Grating Forming Part of Sidewalk—Injury to Pedestrian—Liability of Municipal Corporation—Claim by Corporation for Indemnity from Owner and Tenants of Premises Fronting on Sidewalk—Grating Put in for Benefit of Occupant of Premises—Liability at Common Law for Negligence—Liability under secs. 64 (1), (2), and 483 of Municipal Act—Duty to Repair—Covenant of Tenants with Owner. *Anticknap v. City of St. Catharines*, 18 O.W.N. 199, 47 O.L.R. 462.—APP. DIV.
5. Nonrepair—Injury to Person Walking on Sidewalk—Defective Condition—Nonfeasance—Misfeasance—Municipal Act, sec. 460—Construction and Effect—Failure to Give Notice under sub-sec. 4—Absence of “Reasonable Excuse” under sub-sec. 5—Dismissal of Action. *Fuller v. City of Niagara Falls*, 18 O.W.N. 129.—LENNOX, J.
6. Road Laid out and Opened in Place of Original Road—allowance—Municipal Act, R.S.O. 1914 ch. 192, sec. 493—Land-owner—Private Way—Removal of Gate by Township Corporation—Public Highway—Evidence—Counterclaim—Striking out, with Leave to Bring Action for Relief Claimed. *Hostetter v. Township of Grantham*, 18 O.W.N. 82.—APP. DIV.
7. Street Shewn on Registered Plan—Closing of Part of Street—Registry Act, R.S.O. 1914 ch. 124, sec. 86—Order of County Court Judge—Owner of Lots Abutting on Street, Sold according to Plan—Necessity for Consent from—Lots not Fronting on Part of Street Closed and Owner not Deprived of Access by Closing—Construction of sub-sec. 4 of sec. 86—Depreciation in Value of Lots—Compensation—Closing of Street for Benefit of Private Corporation without Advantage to Public—Discretion of Judge—Appeal. **Re Hinton Avenue Ottawa*, 18 O.W.N. 275.—APP. DIV.

See Municipal Corporations, 5—Negligence.

HIGHWAY CROSSING.

See Railway, 7, 8.

HOSPITAL FOR INSANE.

See Conspiracy.

HUSBAND AND WIFE.

1. Action against Husband and Wife for Debt Incurred in Respect of Business Carried on by Husband—Failure to Establish Partnership between Husband and Wife—Absence of Evidence of Holding out. *Mortimer Co. Limited v. Reinke*, 18 O.W.N. 292.—APP. DIV.

HUSBAND AND WIFE—(Continued).

2. Action by Husband against Seducer of Wife—Alienation of Affection Causing Loss of Consortium—Cause of Action apart from Adultery—Jurisdiction of County Court—County Courts Act, sec. 21 (1) (b)—Evidence—Failure to Support Claim for Loss of Consortium—Husband and Wife Living together when Action Commenced—Dismissal of Action—Appeal—Costs. *Ballard v. Money*, 17 O.W.N. 472, 47 O.L.R. 132.—APP. DIV.
3. Alimony—Action for—Farm Conveyed to Wife—Husband Leaving Farm upon Order of Wife—Payment of Allowance Fixed by Order under Deserted Wives' Maintenance Act, R.S.O. 1914 ch. 152—Failure to Prove Cruelty—Desertion not (in Circumstances) a Ground for Alimony—Counterclaim—Ownership of Farm and Chattels—Improvements Made by Husband—Lien—Costs. *Wilson v. Wilson*, 18 O.W.N. 388.—KELLY, J.
4. Alimony — Action for — Motion for Judgment — Absentee-defendant Served by Publication—Rule 354—Proof of Marriage and of Existence of Assets upon which Judgment may be Realised—Reference to Fix Quantum of Alimony. *Lewis v. Lewis*, 18 O.W.N. 372.—LENNOX, J.
5. Alimony—Circumstances Disentitling Wife to—Adultery—Absence of Direct Proof—Circumstantial Evidence—Findings of Fact of Trial Judge—Appeal—Rejection of Evidence as to Conduct of Husband in Placing Temptation in Way of Wife. *Sylvester v. Sylvester*, 18 O.W.N. 363.—APP. DIV.
6. Alimony—Cruelty — Desertion — Evidence — Findings of Trial Judge—Appeal. *Riches v. Riches*, 18 O.W.N. 329.—APP. DIV.
7. Alimony—Cruelty—Meaning of, in Law—Evidence—Unreasonable Demands for Sexual Intercourse. **Bagshaw v. Bagshaw*, 18 O.W.N. 334.—APP. DIV.
8. Ante-nuptial Agreement—Money Contributed by Wife towards Purchase-money of Homestead—Death of Husband—Promise to Make Will—Statute of Frauds—Ontario Evidence Act, sec. 12—Action against Executors—Evidence—Corroboration—Appeal—Costs. *Goodall v. Smoke*, 18 O.W.N. 116, 247.—LENNOX, J.—APP. DIV.
9. Dower—Application for Order Dispensing with Concurrence of Wife to Bar Dower in Conveyance of Land—Dower Act, sec. 14—Issue Directed to Determine Facts. *Re Ranger*, 18 O.W.N. 245.—KELLY, J. (CHRS.)

HUSBAND AND WIFE—(Continued).

10. Dower—Divorce. *Re Hodgins*, 18 O.W.N. 231.—MIDDLETON, J.
11. Separation Agreement—Action by Wife to Set aside—Improv-
dence—Lack of Independent Advice—Alimony—Desertion
—Quantum of Allowance—Costs. *Hunt v. Hunt*, 18 O.W.N.
187.—MIDDLETON, J.
- See Assignments and Preferences—Deed, 6—Fraudulent Convey-
ance—Highway, 2—Infants—Marriage—Negligence, 2—Trial
—Trusts and Trustees, 7—Will, 13, 18.

HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO.

See Assessment and Taxes, 1.

ICE.

Harvesting Ice Formed on Navigable Water—Protection of
Public—Duty to Guard Opening—Ice-field Set apart and
Enclosed—Opening within Ice-field not Specially Guarded—
Boys Entering Ice-field Drowned by Going through Opening
—Warning—Action by Mother under Fatal Accidents Act—
Negligence at Common Law—Breach of Statutory Duty
—Criminal Code, sec. 287 (a)—Effective Cause of Accident—
Duty to Guard Dangerous Place within Enclosure. *Cas-
taldi v. Denison*, 18 O.W.N. 39, 47 O.L.R. 237.—APP. DIV.

See Negligence, 8.

IMPOSSIBILITY OF PERFORMANCE.

See Contract, 7—Covenant, 3.

IMPROVEMENTS.

Mistake of Title—Lease of Land with Option to Purchase—
Belief of both Parties that Lessor Owner in Fee Simple—
Subsequent Discovery that Lessor Life-tenant only—Large
Expenditures on Improvements before Discovery of Mistake
—“Lasting Improvements”—Conveyancing and Law of
Property Act, R.S.O. 1914 ch. 109, sec. 37—Action by Remain-
dermen for Recovery of Possession—Condition of Granting
Relief—Compensation for Lasting Improvements Enhancing
Value of Land—Equitable Decree—Parties—Addition of
Plaintiffs in Representative Capacity without their Consent
—Reversal of Order Made at Trial. *Montreuil v. Ontario
Asphalt Block Co. Limited*, 18 O.W.N. 37, 47 O.L.R. 227.—
APP. DIV.

See Assessment and Taxes, 4—Contract, 15, 16—Husband and
Wife, 3—Landlord and Tenant, 5—Trusts and Trustees, 13.

IMPROVIDENCE.

See Deed, 2, 4—Executors and Administrators—Husband and Wife, 11.

INCOME ASSESSMENT.

See Assessment and Taxes, 2.

INCOME WAR TAX ACT.

See Revenue.

INDEMNITY.

See Highway, 4—Railway, 1, 9.

INDEPENDENT ADVICE.

See Deed, 2—Husband and Wife, 11.

INDEPENDENT CONTRACTOR.

See Negligence, 8.

INDULGENCE.

See Practice, 1.

INFANTS.

1. Custody—Child of Tender Years in Custody of Mother Living apart from her Husband—Application by Father for Custody—Issue—Determination in Favour of Father—Welfare of Infant. *Re Fleet*, 18 O.W.N. 14.—KELLY, J.
2. Custody—Neglected Child—Children's Aid Society—Foster-home Found by Society—Application by Parents for Custody of Child—Welfare of Child—Rights of Foster-parents. *Re Driscoll*, 18 O.W.N. 35.—APP. DIV.
3. Custody—Right of Father—Adultery of Mother—Infants Act, sec. 2 (3)—Intention of Father to Take Children Abroad—Domicile—Welfare of Children—Costs. *Re Bell*, 18 O.W.N. 241.—MIDDLETON, J. (CHRS.)
4. Custody—Separation of Father and Mother—Children of Tender Age—Welfare of—Superior Right of Father. *Re McLaughlin*, 18 O.W.N. 321.—MASTEN, J. (CHRS.)
5. Custody of Illegitimate Child—Right of Mother—Abandonment—Adoption of Child by Strangers!—Welfare of Child—Finding of Judge upon Oral Evidence. *Gordon v. Adamson*, 18 O.W.N. 191.—MIDDLETON, J.

See Negligence, 7, 10.

INFORMATION.

See Ontario Temperance Act, 3.

INJUNCTION.

Interim Order—Application for—Municipal Corporations—Residential By-laws—Permit for Installation of Gasoline Tank upon Premises—Injury to Owner of Neighbouring Premises—Danger of Irreparable Damage not Shewn—Inconvenience and Loss—Dismissal of Application—Questions Arising on Motion Left for Trial. *Thompson v. Cheeseworth*, 18 O.W.N. 419.—LENNOX, J.

See Building—Company, 2—Contract, 3, 19, 26—Covenant—Landlord and Tenant, 3—Mines and Mining—Money Lent—Mortgage, 5—Water, 1—Way, 1.

INSOLVENCY.

See Assignments and Preferences—Chattel Mortgage—Company, 6-10—Landlord and Tenant, 1—Sale of Goods, 8—Will, 15.

INSPECTION.

See Negligence, 5—Sale of Goods, 4, 9.

INSURANCE.

1. Accident Insurance—Policy Insuring against Loss in Respect of Motor-car—Peculiar Accident not Covered by Terms of Policy—Construction of Policy—Absence of Ambiguity—Conduct of Adjuster—Estoppel—Provision of Policy Guarding against Waiver—Powers of Adjuster—Absence of Authority from Insurers. **Wampler v. British Empire Underwriters Agency*, 18 O.W.N. 312.—ORDE, J.

2. Life Insurance—Default in Payment of Premium—Lapse of Policy—Reinstatement upon Application of Insured and Payment of Arrears—Untrue Answers to Questions in Application—Findings of Jury—Absence of Fraud—Answers Written by Agent of Company—Conditions of Policy—Canada Insurance Act, 1910, secs. 84, 85, 95 (d), (j)—Authority of Agent—Whether Agent of Insured—Reopening of Question whether Evidence upon which Reinstatement Granted was Satisfactory. *Bird v. New York Life Insurance Co.*, 18 O.W.N. 212, 47 O.L.R. 510.—ORDE, J.

See Judgment, 2—Will, 4, 11.

INTEREST.

See Contract, 1—Mortgage, 2, 4—Promissory Notes, 1—Trusts and Trustees, 11—Vendor and Purchaser, 1, 5, 6.

INTERVENTION.

See Appeal, 6.

INTOXICATING LIQUORS.

See Carriers—Mandamus—Ontario Temperance Act.

INVESTMENTS.

See Will, 4.

IRREGULARITY.

See Municipal Elections.

JOINDER OF PARTIES.

See Fraud and Misrepresentation, 2.

JOINT TENANTS.

See Deed, 6.

JUDGE'S CHARGE.

See Criminal Law, 3—Sale of Goods, 7.

JUDGMENT.

1. Agreement Made after Commencement of Action in County Court—Payment of Money—claim by Instalments—Default in Payment after Half of Amount Paid—Judgment Entered for Full Amount Claimed—Irregularity—Practice—Setting aside Judgment—Costs. *Victoria Electric Supply Co. Limited v. Palter and Nelson*, 18 O.W.N. 110.—APP. DIV.
2. Effect of Judgment in Former Action—Claim for Reformation of Insurance Policies Sued upon in Former Action and for Recovery thereon—*Res Judicata*—Second Action not Frivolous or Vexatious—Order Staying Second Action—Reversal on Appeal—Claim for Damages for Fraud—Actionable Claim—Time-limit for Bringing Action—Ontario Insurance Act, sec. 194, condition 24—Estoppel—Rules 124, 222—Appeal—Costs. *Ross v. Scottish Union and National Insurance Co.*, 18 O.W.N. 77, 47 O.L.R. 308.—APP. DIV.
3. Report of Official Referee—Reference for Trial of Action—Necessity for Motion for Judgment—Judicature Act, secs. 65, 67—Costs. *Brown v. Coleman Development Co.*, 18 O.W.N. 185.—LENNOX, J.
4. Summary Judgment—Rule 57—Claim for Possession of Goods under Chattel Mortgage—Specially Endorsed Writ of Summons—Defences Set up by Affidavit of Merits—Goods Owned by Partnership Mortgaged by one Partner—Description of Goods—Insufficiency—Leave to Defend—Counterclaim for False Imprisonment—Striking out—Prejudicing Trial of Plaintiff's Action—Rules 115, 124, 137—Jury Trial—Judicature Act, sec. 53—Costs. *Wash Tom v. Wong Sing*, 18 O.W.N. 113.—ORDE, J. (CHRS.)

JUDGMENT—(Continued).

5. Trial of Action—Reference to County Court Judge—Judicature Act, secs. 45, 65—Judgment or Report. *Hydro-Electric Power Commission of Welland v. Hill*, 18 O.W.N. 231.—MIDDLETON, J. (CHRS.)
- See Contract, 25—Husband and Wife, 4—Limitation of Actions, 2—Mortgage, 2—Practice, 1, 2—Principal and Agent, 2.

JUDGMENT DEBTOR.

- Examination of—Unsatisfactory Answers—Motion to Commit—Rule 587—Unsatisfactory Disposition of Property—Notice of Motion—Refusal to Amend. *Porter v. Porter*, 18 O.W.N. 134.—MIDDLETON, J. (CHRS.)

JUDICIAL COMMITTEE.

- See Appeal, 9.

JURISDICTION.

- See Appeal, 1—Arbitration and Award—Company, 10—Costs, 3—Highway, 3—Husband and Wife, 2—Mandamus—Marriage, 2—Mechanics' Liens—Practice, 1, 2—Will, 19.

JURY.

- See Damages, 3—Fatal Accidents Act—Master and Servant—New Trial, 2—Railway, 8—Sale of Goods, 7—Street Railway, 1.

JUSTICE OF THE PEACE.

- See Criminal Law—Ontario Temperance Act—Revenue.

LACHES.

- See Promissory Notes, 2—Sale of Goods, 4.

LAND.

- Excavation in—Withdrawal of Lateral Support from Land of Neighbour—Failure to Maintain Retaining Wall—Subsidence of Neighbour's Land—Liability of Owner Acquiring Land after Excavation Made. **Foster v. Brown*, 18 O.W.N. 297.—APP. DIV.

- See Municipal Corporations, 4—Patent for Land—Sale of Land—Vendor and Purchaser—Will.

LAND TITLES ACT.

- See Principal and Agent, 5.

LANDLORD AND TENANT.

1. Assignment by Insolvent Tenant for Benefit of Creditors—Lease—Yearly Rent Reserved—Covenant by Tenant to Pay Rent and to Pay Municipal Taxes—Failure to Pay—Payment by Landlord—Assessment Act, secs. 37, 94, 95—Claim to Preferential Lien upon Assets of Tenant—Construction of Covenant—Payment of Taxes not a Payment of Rent—Claim of Landlord to be Subrogated to Municipality's Right of Distress—Surety—Person Liable with Tenant—Mercantile Law Amendment Act, sec. 3—Right to Priority in Respect of Rent in Arrear—Costs of Action—Remedies of Municipality—Use of—General Right of Subrogation. *Boone v. Martin*, 18 O.W.N. 28, 265, 47 O.L.R. 205.—ROSE, J.—APP. DIV.
2. Lease—Special Proviso as to Rent in Case of Destruction of "Building" on Premises—Construction—Group of Buildings—Premises Becoming Unfit for Occupancy—Purposes of Lease—Uses to which Premises Put—Determination of Lease—Conditions Precedent—Liability for Rent up to Day of Surrender—Apportionment Act, R.S.O. 1914 ch. 156, sec. 4—Action to Recover Rent for Longer Period or for Damages for Breaches of Covenants—Costs. *Cyclone Woven Wire Fence Co. Limited v. Canada Wire and Cable Co. Limited*, 18 O.W.N. 103.—ROSE, J.
3. Lease of Part of Building for Purposes of Store—Erection by Landlord of Stairway on Outer Wall of Store—Interference with Access of Light—Derogation from Lessee's Rights—Unauthorised Use of Wall—Demise Including both Sides of Wall—Absence of Reservation in Lease—Exclusive Use of Cellar by Lessee, though not Included in Description of Part Leased—Interpretation of Lease by Conduct of Parties—Description Explained by Possession—Use of Vacant Land Adjoining Store—Lease not under Seal—Pleading—Delay in Taking Proceedings to Stop Erection of Stairway—Injunction—Declaration—Costs. *G. Tamblyn Limited v. Austin*, 18 O.W.N. 357.—KELLY, J.
4. Monthly Tenancy—Proceedings under Overholding Tenants Provisions of Landlord and Tenant Act, R.S.O. 1914 ch. 155—Proof of Notice to Tenant—Onus—Written Notice—Oral Notices—Failure to Shew Termination of Tenancy. *Re Rousseau and Leclair*, 18 O.W.N. 340.—APP. DIV.
5. Payment by Landlord of Value of "Buildings and Improvements" of Tenant—Fixtures—Trade Fixtures—Tenant's Fixtures—Articles Affixed to Freehold for Use in Business

LANDLORD AND TENANT—(*Continued*).

Carried on in Building upon Demised Premises—Construction of Lease—Arbitration and Award—Effect of Opinion of Court—Case Stated by Arbitrators under Arbitration Act, sec. 29—Award Following Opinion Expressed—Motion to Set aside Award upon Ground that Opinion Erroneous—Appeal—Right of Tenant to Remove Fixtures—Election not to Exercise. *Re McConkey Arbitration*, 18 O.W.N. 171, 47 O.L.R. 411.—APP. DIV.

See Assessment and Taxes, 3—Contract, 9, 10—Damages, 1—Highway, 4—Vendor and Purchaser, 14.

LATERAL SUPPORT.

See Land.

LEASE.

See Contract, 9, 10, 14, 27—Landlord and Tenant.

LEAVE TO APPEAL.

See Appeal, 1, 2—Company, 10—Mechanics' Liens—Ontario Railway and Municipal Board—Practice, 3.

LICENSE.

See Company, 3.

LICENSE COMMISSIONERS.

See Carriers.

LIEN.

See Appeal, 1—Bailment—Banks and Banking—Husband and Wife, 3—Landlord and Tenant, 1—Mechanics' Liens.

LIFE INSURANCE.

See Insurance, 2.

LIGHT.

See Landlord and Tenant, 3.

LIMITATION OF ACTIONS.

1. Dispute as to Ownership of Strip of Land between Houses on Adjoining Lots—Paper-title—Exclusive Adverse Possession—Evidence—Fences—Roof of House Projecting over Strip—Easement. **De Vault v. Robinson*, 18 O.W.N. 328.—APP. DIV.
2. Exclusion of Owner (Son) of Undivided Half Interest in Land—Possession of Co-owner (Father)—Extinction of Interest of Son in Lifetime of Father—Death of Father Intestate—Share of Son Claiming under Father—Possession Taken by

LIMITATION OF ACTIONS—(*Continued*).

Mother and Daughters—Exclusion of Son—Right Acquired by Possession—Interest of Mother—Limitations Act, R.S.O. 1914 ch. 75—Mortgage—Claim of Mortgagees under Foreclosure—Redemption—Consent Judgment—Costs. *Toronto General Trusts Corporation v. Rahelly*, 18 O.W.N. 94.—LENNOX, J.

3. Possession of Land—Dispute as to Ownership of Narrow Strip Extending from Swamp on Boundary between two Lots to Rear of Lots—Fences—Swamp Regarded as Boundary—Encroachment—Establishment of Title by Possession—Necessity for Defining Original Line between Lots. *McCannel v. Hill*, 18 O.W.N. 343.—APP. DIV.

See Death—Deed, 4—Judgment, 2—Mortgage, 4—Municipal Corporations, 4, 6—Trusts and Trustees, 11—Will, 15.

LIMITATION OF LIABILITY.

See Railway, 5—Vendor and Purchaser, 1.

LIQUIDATOR.

See Company, 1.

LIQUOR.

See Ontario Temperance Act.

LOAN CORPORATIONS ACT.

See Company, 7.

LOCAL IMPROVEMENTS.

See Assessment and Taxes, 4.

LOSS OF CONSORTIUM.

See Husband and Wife, 2.

LOSS OF PROFITS.

See Damages, 2.

LUGGAGE.

See Railway, 5.

LUNATIC.

1. Contract—Necessaries—Board and Lodging—Claim of Brother against Estate of Deceased Sister—Evidence—Corroboration—Ontario Evidence Act, sec. 12. *Morrow v. Morrow*, 18 O.W.N. 35, 47 O.L.R. 222.—APP. DIV.
2. Provision for, by Will—Right to Home and Maintenance on Farm Devised—Sale of Farm—Approval of Court—Security

LUNATIC—(Continued.)

for Maintenance—Payment of Part of Purchase-money into Court—Allowance for Maintenance—Costs. *Re Hogan*, 18 O.W.N. 272.—KELLY, J. (CHRS.)

See Conspiracy.

MAGISTRATE.

See Criminal Law—Ontario Temperance Act—Revenue.

MAINTENANCE OF LUNATIC.

See Lunatic, 2.

MAINTENANCE OF PARENT.

See Deed, 2, 4.

MALICIOUS PROSECUTION.

False Imprisonment—Action for—Conviction Standing Unreversed—Dismissal of Action as Frivolous and Vexatious—Misconduct of Solicitor. *Willison v. Ward*, 18 O.W.N. 190.—MIDDLETON, J. (CHRS.)

MANDAMUS.

Common Carriers—Express Company—Carriage of Intoxicating Liquors—Motion in Action for Interim Mandatory Order—Motion Turned into Motion for Judgment—Nature of Order—Whether Grantable in Action—Leave to Serve Originating Notice for Order in Nature of Prerogative Writ—Exclusive Jurisdiction of Railway Board over Express Companies—Railway Act of Canada, 9 & 10 Geo. V. ch. 68, secs. 362, 363, 364—Jurisdiction over Tolls and Tariffs—Prohibition of Transportation—Jurisdiction of Court not Ousted—Preliminary Objections Overruled—Consideration of Merits—Judgment for Declaration and Mandamus. **Graham & Strang v. Dominion Express Co.*, 18 O.W.N. 316.—MASTEN, J.

See Carriers.

MANDATORY INJUNCTION.

See Water, 1—Way, 2.

MARITIME LAW.

See Ship.

MARRIAGE.

1. Action for Declaration of Nullity—Evidence—Marriage Act, R.S.O. 1914 ch. 148, secs. 36 (1), 37 (4)—Notice to Attorney-General—Amending Acts, 6 Geo. V. ch. 32 and 9 Geo. V. ch. 35. *Owen v. Craven*, 18 O.W.N. 237.—LATCHFORD, J.

MARRIAGE—(Continued).

2. Bigamous Marriage—Action for Declaration of Nullity—Jurisdiction of Supreme Court of Ontario—Marriage Act, R.S.O. 1914 ch. 148, secs. 36, 37. *Ranger v. Ranger*, 18 O.W.N. 66.—APP. DIV.

See Husband and Wife.

MARRIAGE SETTLEMENT.

See Settlement—Trusts and Trustees, 8.

MARRIED WOMAN.

See Husband and Wife.

MARSHALLING.

See Mortgage, 6.

MASTER AND SERVANT.

Wrongful Dismissal of Servant—Evidence—Findings of Jury. *Perry v. British American Shipbuilding Co.*, 18 O.W.N. 124.—LENNOX, J.

See Contract, 18—Negligence, 6, 8.

MASTER IN CHAMBERS.

See Practice, 1.

MECHANICS' LIENS.

Action Brought to Vacate Registration of Liens—Order Made in Action Vacating Liens upon Payment of Money into Court—Jurisdiction—Mechanics and Wage-Earners Lien Act, secs. 27 (4), 33, 34—Amending Act, 6 Geo. V. ch. 30, secs. 1, 2—Money Paid into Court Transferred to Credit of Proceeding to Enforce Liens—Payment out of Portion Applicable to Discharged Lien—Appeal—Costs—Leave to Appeal. *Yolles & Rotenberg Limited v. H. H. Robertson Co. Limited*, 18 O.W.N. 85, 126.—RIDDELL, J. (CHRS.)—APP. DIV.

See Appeal, 1.

MEETINGS OF COMPANY.

See Company, 2, 4.

MILITARY SERVICE.

See Municipal Corporations, 1.

MINES AND MINING.

Boundaries of Mining Locations—Dispute as to Ownership of Strip of Land between Boundaries—Evidence—Failure to Establish Line Run by Surveyor—Failure to Shew Paper-title—Possession by Plaintiffs of Part of Land in Dispute—

MINES AND MINING—(Continued).

Assertion of Right and Title—Right to Retain Possession against Defendants—Declaration—Injunction—Damages—Costs. *M. J. O'Brien Limited v. La Rose Mines Limited*, 18 O.W.N. 337.—App. Div.

See Appeal, 5, 8—Assessment and Taxes, 2.

MINING COMMISSIONER.

See Appeal, 5, 8.

MISAPPROPRIATION.

See Principal and Agent, 6.

MISCONDUCT.

See Malicious Prosecution.

MISDIRECTION.

See Criminal Law, 3—Negligence, 9.

MISFEASANCE.

See Highway, 5

MISREPRESENTATION.

See Fraud and Misrepresentation.

MISTAKE.

See Assessment and Taxes, 4—Company, 4—Deed, 8—Guaranty—Improvements—Mortgage, 5—Solicitor, 3.

MONEY.

See Contract, 13—Principal and Agent, 4.

MONEY LENT.

Action for, against Executrix of Debtor—Mortgage Security Accepted by Creditor—Right to Sue for Original Debt—Injunction against Removal of Assets from Ontario. *White v. Anderson*, 18 O.W.N. 361.—LENNOX, J.

See Assignments and Preferences.

MONOPOLY.

See Municipal Corporations, 2.

MORTGAGE.

1. Application by Mortgagor for Order Vesting Legal Estate in him—Payment of Mortgage-moneys—Trustee Act, sec. 9—Death of Mortgagee (Trustee) and Cestui que Trust—Status of Foreign Executors of Deceased Executor of Cestui que Trust—Absence of Consent from Legal Personal Representative of Mortgagee—Refusal of Application. *Re McKay*, 18 O.W.N. 101.—ORDE, J.

MORTGAGE—(Continued).

2. Foreclosure—Action for—Judgment for Sale—Execution against Lands of Mortgagor—Payment by Purchaser to Execution Creditor—Deduction from Purchase-money—Deduction from Claim under Mortgage—Addition to Amount of Personal Judgment against Mortgagor—Interest—Rate of—Date of Confirmation of Master's Report—Rule 502—Costs. *Lane v. Javan*, 18 O.W.N. 20.—LOGIE, J.
 3. Foreclosure—Final Order—Sale to Third Person—Prompt Application to Open Foreclosure—Weighing of Equities—Terms—Costs. *Dovercourt Land Building and Savings Co. v. Dunvegan Heights Land Co.*, 17 O.W.N. 482, 47 O.L.R. 105.—MEREDITH, C.J.C.P. (CHRS.)
 4. Foreclosure of Rights of Principal Debtor—Effect as to Property of Surety—Foreclosure Set aside as Nullity—Effect of Judgment—Admissions and Consent of Counsel—Interest pendente Lite—Limitations Act, sec. 18—Rate of Interest post Diem—Mortgage-deed—Construction—Computation of Interest—Compound Interest. *Martin v. Evans*, 18 O.W.N. 151, 247.—MIDDLETON, J.—APP. DIV.
 5. Power of Sale—Notice of Exercising—Default in Payment of Mortgage-moneys—Interim Injunction Restraining Mortgagee from Proceeding—Motion to Continue—Alleged Variation in Terms of Payment—Oral Agreement—Statute of Frauds—Notice of Exercising Power of Sale—Mistake in Stating Amount of Principal Due—Power to Remedy—Power of Sale Exercisable without Notice. *Schario v. Jackson*, 18 O.W.N. 233.—KELLY, J.
 6. Two Parcels of Land Mortgaged by one Instrument Executed by two Several Owners—Subsequent Conveyance by one Owner of his Parcel to the other, after Second Charge Made upon it in Favour of Creditor—Application of Doctrine of "Marshalling" in Favour of Creditor—Assumption of both Debts by same Person—Absence of Direct Liability of Grantee to Creditor—Parties—Subrogation—Declaration—Costs. *Ernst Bros Co. v. Canada Permanent Mortgage Corporation*, 18 O.W.N. 136, 47 O.L.R. 362.—ORDE, J.
- See Contract, 1, 19—Limitation of Actions, 2—Money Lent—Practice, 1—Principal and Agent, 6—Trusts and Trustees, 7, 11—Vendor and Purchaser, 2, 3, 4, 12—Will, 13.

MORTMAIN AND CHARITABLE USES ACT.

See Sale of Land—Will, 17.

MOTION FOR JUDGMENT.

See Judgment, 3.

MOTOR VEHICLES.

See Bailment—Insurance, 1—Negligence — Railway, 7—Street Railway, 1.

MOTOR VEHICLES ACT.

See Negligence, 3, 4, 7—Street Railway, 1.

MUNICIPAL CORPORATIONS.

1. Action of Council of Agricultural Township—Payment out of Funds of Township Corporation of Expenses of Delegation to Dominion Government to Protest against Order in Council respecting Military Service—Farm-workers in Agricultural Township—"Matter Pertaining to or Affecting the Interests of the Corporation"—Municipal Act, sec. 427 (4 Geo. V. ch. 33, sec. 19)—Powers of Council—Reasonable Exercise—Onus—Power of Court to Review Action of Council—Action by Ratepayer *qui tam*—Parties—Refusal of Council to Permit Corporation to be Added as Plaintiff—Amendment—Addition of Corporation as Defendant. *Millmine v. Eddy*, 18 O.W.N. 70, 47 O.L.R. 275.—APP. DIV.
2. By-law—Agreement between City Corporation and Street Railway Company—Increase in Rates for Passenger Service—Former By-law Validated by Statute 59 Vict. ch. 105—Effect of—Variation—Necessity for Sanction of Legislature—Monopoly—Municipal Franchises Act—Interests of Street Railway Company—Reasonableness of By-law—Municipal Act, sec. 249 (2). *Re Joyce and City of London*, 18 O.W.N. 111, 47 O.L.R. 335.—APP. DIV.
3. By-law Authorising Execution of Contract—By-law Acted upon by Execution of Contract by Proper Officers—Attempted Repeal of By-law by By-law Passed in Following Year—Illegality or Ineffectiveness of Repealing By-law—Action to Set aside Repealing By-law, and for declaration of Validity of Original By-law—Municipal Act, sec. 283—Change in Personnel of Council—Corporation Bound by Contract—Reasonable Cause of Action Disclosed by Statement of Claim. *Lawrason v. Town of Dundas*, 18 O.W.N. 22.—LATCHFORD, J. (CHRS.)
4. Drainage—Construction of Works—Statutory Authority—Injury to Land—Action—Remedy by Proceedings for Compensation—Municipal Drainage Act, sec. 98—Municipal Act, 41—18 o.w.n.

MUNICIPAL CORPORATIONS—(Continued).

secs. 325, 326 (1)—Limitation of Actions—Raising Level of Road—Closing of Culvert—Depth and Width of Drain Exceeding Provision of By-law—Effect of—Remedy. **Spratt v. Township of Gloucester*, 18 O.W.N. 284.—APP. DIV.

5. Injury to Pipes of Gas Company Laid in Highway—Compensation under Municipal Act—Right of Gas Company to—Property of Gas Company—Injurious Affection—Company's Special Act, 28 Vict. ch. 88—Pipes Maintained in same Place for 40 Years—Presumption of Legality—Onus—Forfeiture—Evidence—Pipes Used for other than Lighting Purposes—Question whether User Unwarranted—Determination in Action—Effect of Unwarranted User. **Re Ottawa Gas Co. and City of Ottawa*, 18 O.W.N. 381.—APP. DIV.
 6. Negligence—Sewage and Drainage System—Throwing Water on Lands of Plaintiff—Street-crossings Preventing Surface-water Flowing into River—Catch-basins Allowed to Become Choked—Right of Action—Remedy by Arbitration to Fix Compensation—Time-limit for Bringing Action—Municipal Act, secs. 331, 460—Limitations Act—Damages—Evidence—Quantum—Reference—Costs. *Rudd v. Town of Arnprior*, 18 O.W.N. 411.—KELLY, J.
- See Assessment and Taxes—Building—Highway—Injunction—Landlord and Tenant, 1—Negligence, 6—Ontario Railway and Municipal Board—Street Railway, 3—Telephone Company—Water, 1.

MUNICIPAL ELECTIONS.

Proceeding to Set aside Election of Reeve of Town—Irregularities of Deputy Returning Officers—Finding of County Court Judge that Result of Election Affected—Municipal Act, sec. 150—Absence of Finding that Election Conducted in Accordance with Principles Laid Down in Act—Evidence—Onus—Appeal. *Re Eastview Municipal Election, Gladu v. White*, 18 O.W.N. 210.—ROSE, J. (CHRS.)

See Costs, 2.

MUNICIPAL FRANCHISES ACT.

See Municipal Corporations, 2.

MURDER.

See Criminal Law, 3.

NATURAL GAS.

See Contract, 26, 27.

NECESSARIES.

See Lunatic, 1.

NEGLECTED CHILD.

See Infants, 2.

NEGLIGENCE.

1. Collision of Motor-vehicle with Backing Train at Highway Crossing in City—Injury to one Occupant of Car—Findings of Jury—Negligence of Railway Company—Neglect of Statutory Requirements—Railway Act, secs. 274, 276—Contributory Negligence of "those in Charge" of Car—Car Hired by five Occupants—Driving Entrusted to one—"Persons in Control"—Rule as to Non-identification of Passenger with Driver—Inapplicability. *Dixon v. Grand Trunk R. W. Co.*, 17 O.W.N. 468, 47 O.L.R. 115.—APP. DIV.
2. Collision of Street-car and Motor-vehicle at Highway Crossing—Injury to Driver of Motor-car and Wife—Findings of Jury—Negligence of Motorman of Electric Car—Contributory Negligence of Driver and Owner of Motor-car—Ultimate Negligence of Motorman not Shewn—Failure of Owner and Driver to Recover—Wife not Affected by Husband's Contributory Negligence—Right of Wife to Recover—Costs. *Hoffman v. Hamilton Grimsby and Beamsville Electric R.W. Co.*, 18 O.W.N. 92.—KELLY, J.
3. Collision of Street-car and Motor-vehicle in Highway—Injury to Passenger in Motor-vehicle—Non-paying Guest of Driver—Want of Ordinary and Reasonable Care—Vehicle Driven by one of two Co-owners—Action against both Owners—Negligence of Driver—Cause of Collision—Liability of Owners—Motor Vehicles Act, sec. 19 as Amended (7 Geo. V. ch. 49, sec. 14, and 8 Geo. V. ch. 37, sec. 8)—Damages. *Parlov v. Lozina and Raolovich*, 18 O.W.N. 139, 47 O.L.R. 376.—MIDDLETON, J.
4. Collision of Street-car and Motor-vehicle in Highway—Injury to Voluntary Passenger in Motor-truck—Finding of Jury—Negligence of Drivers of both Vehicles—Liability of Owner of Truck Driven by Employee but not Engaged in Owner's Business—Liability at Common Law—Motor Vehicles Act, sec. 19, as Amended (7 Geo. V. ch. 49, sec. 14, and 8 Geo. V. ch. 37, sec. 8)—Violation of Provisions of Act—Voluntary Passenger not Identified with Driver. **Gray v. Peterborough Radial R.W. Co.*, 18 O.W.N. 260.—ORDE, J.

NEGLIGENCE—(Continued).

5. Collision of Street-cars—Brake Failing to Work—Lack of Inspection—Neglect of Motorman—Evidence—Findings of Jury—Injury to Passengers—Damages—Appeal. *Vaughan v. Toronto and York Radial R.W. Co.*, 18 O.W.N. 44.—APP. DIV.
6. Employee of Plaintiff Company Killed by Touching Live Wire—Payment by Plaintiff Company to Dependents under Workmen's Compensation Act—Liability of Defendants to Reimburse Plaintiff—Electric Company—City Corporation—Responsibility for Leaving Wire Hanging—Evidence—Finding of Fact of Trial Judge—Costs. *Bell Telephone Co. of Canada v. Ottawa Electric Co. and City of Ottawa*, 18 O.W.N. 1.—LENNOX, J.
7. Highway Accident—Child Injured by Motor-vehicle—Excessive Speed—Want of Care—Conditions Calling for More than Ordinary Care—Motor Vehicles Act, sec. 23—Disproof of Negligence—Failure to Satisfy Onus—Duty of Driver—Agent or Servant of Owner—Liability of Owner—Damages—Expenses Incurred by Parent—Compensation for Injury to Infant—Court not Bound by Statement of Counsel. *Whitten v. Burtwell*, 18 O.W.N. 51, 47 O.L.R. 210.—ORDE, J.
8. Men Hired by Ice-harvesters to Haul Ice with Horses and Sleighs from Lake to Point of Shipment—Loss of Horses by Falling through Ice—Channels in Ice Cut by Direction of Foreman—Men Hired, whether Servants or Independent Contractors—Findings of Jury—Employment of Competent Foreman—Common Employment—Negligence of Fellow-servant. *McDonald v. Davis Smith Malone Co. Limited, Blyth v. Davis Smith Malone Co. Limited*, 18 O.W.N. 202.—APP. DIV.
9. Reckless Driving of Motor-car on Highway—Injury to Person Struck by Car—Subsequent Death—Action under Fatal Accidents Act—Cause of Death—Injury Sustained or Disease not Arising from Injury—Trial by Jury—Directions to Jury—Form of Question—Misdirection—New Trial—Evidence—Nonsuit. *Hurst v. Murray*, 18 O.W.N. 345.—APP. DIV.
10. Street Railway—Injury to Child Attempting to Cross Track by Street-car Striking him—Failure to Give Warning—Contributory Negligence—Question for Jury—Nonsuit Set aside and New Trial Directed. *Marks v. Toronto R.W. Co.*, 18 O.W.N. 169.—APP. DIV.

NEGLIGENCE—(Continued).

See Company, 4—Damages, 3—Fatal Accidents Act—Highway, 4
—Ice—Municipal Corporations, 6—Principal and Surety, 2
—Railway, 2, 3, 7, 8, 9—Solicitor, 1—Street Railway, 1, 2.

NEW TRIAL.

1. Amendment of Pleadings—Costs. *Coleman v. Powell*, 18
O.W.N. 283.—APP. DIV.

2. Jury—Unsatisfactory Findings—Excessive Damages—Costs.
Donovan v. Canadian Pacific R.W. Co., 18 O.W.N. 327.—
APP. DIV.

See Negligence, 9, 10—Pleading, 1—Sale of Goods, 4.

NONDIRECTION.

See Criminal Law, 3.

NONFEASANCE.

See Highway, 5.

NONREPAIR.

See Highway, 2-5.

NONSUIT.

See Evidence, 9, 10—Railway, 8.

NOTICE.

See Assessment and Taxes, 3—Company, 2, 6—Contract, 26—
Evidence, 1—Highway, 2, 5—Landlord and Tenant, 4—
Marriage, 1—Mortgage, 5—Promissory Notes, 2—Railway,
2, 3, 6—Sale of Goods, 5, 9—Sale of Land—Trusts and Trust-
tees, 9—Vendor and Purchaser, 11.

NOTICE OF DEATH.

See Gift, 1.

NOTICE OF MOTION.

See Judgment Debtor.

NOTICE OF SALE.

See Mortgage, 5.

NOTICE TO QUIT.

See Vendor and Purchaser, 14.

NOVATION.

See Company, 6.

NUISANCE.

Sulphur Smoke Stream from Smelting Works—Injury to Crops—Evidence—Scientific Testimony of Experts—Findings of Fact of Trial Judge—Damages—Appeal. *Lindala v. Canadian Copper Co.*, 17 O.W.N. 397, 47 O.L.R. 28.—APP. DIV.

See Water, 1.

NULLITY.

See Marriage—Mortgage, 4.

OCCULT CRAFT OR SCIENCE.

See Criminal Law, 4.

OCCUPATION RENT.

See Trusts and Trustees, 13.

OIL AND GAS.

See Assessment and Taxes, 2.

OIL-LEASES.

See Contracts, 14.

ONTARIO RAILWAY AND MUNICIPAL BOARD.

Application to, for Approval of Sale of Telephone System—Township Corporations—Telephone Company—Conduct of Board upon Hearing—Ontario Railway and Municipal Board Act—Leave to Appeal from Order of Board—Certificate of Board as to Conduct of Hearing. *Re Consolidated Telephone Co. and Townships of Caledon and Erin*, 18 O.W.N. 248.—APP. DIV.

See Contract, 26—Highway, 1—Street Railway, 3—Telephone Company.

ONTARIO TEMPERANCE ACT.

1. Magistrates' Conviction for Offence against sec. 40—Keeping Intoxicating Liquor for Sale—Taking Liquor from Express Office—Use of Fictitious Name—Application of sec. 70—Possession of Liquor—Presumption under sec. 88—Failure to Rebut to Satisfaction of Magistrates—Decision of Magistrates not Reviewable on Motion to Quash Conviction—Trial of Accused—Criminal Code, sec. 715—Accused not "Admitted to Make his Full Answer and Defence"—Consultation of Magistrates with Crown Attorney before Convicting—Argument Addressed to Magistrates and Crown Attorney by Counsel for Prosecutor in Absence of Defendant and his Counsel—Crown Attorneys Act, R.S.O. 1914 ch. 91, sec. 8 (g)—Unfair Trial—Conviction Quashed with

ONTARIO TEMPERANCE ACT—(Continued).

- Costs to be Paid by Magistrates—Protection of Magistrates. *Rex v. Hogan*, 18 O.W.N. 56, 47 O.L.R. 243.—MASTEN, J. (CHRS.)
2. Magistrates' Convictions for Offences against sec. 40—Keeping Intoxicating Liquor for Sale—Liquor Found in Possession of Defendants—Presumption under sec. 88—Evidence to Rebut—Findings of Magistrate not Reviewable by Court—Dismissal of Motions to Quash. *Rex v. Punnitt*, *Rex v. Lerman*, *Rex v. Davis*, 18 O.W.N. 229.—MIDDLETON, J. (CHRS.)
 3. Magistrates' Conviction for Offence against sec. 41—Having or Giving Intoxicating Liquor in Place other than Dwelling-house of Accused—Information Laid for "Giving" only—Amendment of Information by Changing to "Having or Giving"—Amendment Made after three Months from Date of Offence—Sec. 61 (2) of 6 Geo. V. ch. 50, as Amended by 9 Geo. V. ch. 60, sec. 19—Effect of sec. 78, Giving Power to Amend—Conviction for "Having or Giving"—Whole Conviction Bad—Uncertainty of Conviction in Alternative—Evidence—Information Obtained by Magistrate out of Court—Basis of Conviction and Penalty—Conviction Quashed—Power to Amend. *Rex v. Kaplan*, 17 O.W.N. 484, 47 O.L.R. 110.—MEREDITH, C.J.C.P. (CHRS.)
 4. Magistrate's Conviction for Offence against sec. 41—Having Intoxicating Liquor in Place other than Private Dwelling House—Defendant Carrying Liquor from Place out of Ontario to his own Dwelling House in Ontario—Sec. 43 of Act—Conviction Made on Ground that Accused "could not Act as his own Carrier"—Erroneous View of Law—Conviction Quashed. *Rex v. Kozak*, 18 O.W.N. 135, 47 O.L.R. 378.—MIDDLETON, J. (CHRS.)
 5. Magistrate's Conviction for Offence against sec. 41—Having Intoxicating Liquor in Lodging-house—Sec. 2(i) (i)—Liquor Procured on Prescription of Physician—Statutory Presumption of Guilt—Sec. 88—Evidence. *Rex v. Smith*, 18 O.W.N. 220.—KELLY, J. (CHRS.)
 6. Magistrate's Conviction for Offence against sec. 41—Having Intoxicating Liquor in a Public Place—Carrier for Hire—Absence of Control—Aiding and Abetting—Sec. 84 (2) (7 Geo. V. ch. 50, sec. 30)—Evidence—Depositions—Signing by Defendant. **Rex v. Cramer*, 18 O.W.N. 348.—MEREDITH, C.J.C.P. (CHRS.)

ONTARIO TEMPERANCE ACT—(Continued).

7. Magistrate's Conviction for Offences against secs. 40 and 41—Separate Offences—Sec. 98—Evidence—Presence of Intoxicating Liquor in Dwelling House—Prima Facie Proof of Guilt—Sec. 88—Finding of Magistrate—Review on Motion to Quash—Sale or Exposure for Sale—Seizure of Liquor in Transit—Confiscation—Effect of—Sec. 70—Conviction of Another in Respect of same Liquor—Effect of—Bar—Sec. 84 (Amended by 7 Geo. V. ch. 50, sec. 30). *Rex v. Hagen*, 18 O.W.N. 145, 47 O.L.R. 384.—ORDE, J. (CHRS.)

See Carriers.

OPENING FORECLOSURE.

See Mortgage, 3.

OPTION.

See Contract, 14.

ORDERS IN COUNCIL.

See Criminal Law, 2—Municipal Corporations, 1.

ORIGINATING NOTICE.

See Mandamus.

OVERHOLDING TENANT.

See Landlord and Tenant, 4.

PARENT AND CHILD.

See Contract, 15, 16—Deed, 2, 4—Fatal Accidents Act—Infants—Limitation of Actions, 2.

PART PERFORMANCE.

See Contract, 15, 16—Deed, 4—Trusts and Trustees, 13.

PARTIES.

See Appeal, 2—Building—Contract, 15, 17—Costs, 5—Covenant, 1—Deed, 3—Discovery, 1—Fraud and Misrepresentation, 2—Improvements—Mortgage, 6—Municipal Corporations, 1—Practice, 2, 3.

PARTNERSHIP.

Action for Declaration of Dissolution—Settlement of Action—Dispute as to—Finding of Referee—Reversal on Appeal—Judgment for Sum Agreed upon in Settlement or for Percentage of Profits—Reference—Election—Costs—Appeal Entered in Wrong Forum. *Robinson v. Morrison*, 18 O.W.N. 132.—MIDDLETON, J.

See Appeal, 5, 8—Evidence, 1—Husband and Wife, 1—Judgment, 4—Trusts and Trustees, 12.

PASSENGER.

See Negligence, 1, 3, 4, 5—Railway, 5—Street Railway, 1.

PASSING ACCOUNTS.

See Executors and Administrators—Trusts and Trustees, 8.

PATENT FOR LAND.

Description—Boundaries—"Land"—Water—Accretions. *Cuthill v. Lloyd*, 18 O.W.N. 352.—ROSE, J.

PAYMENT.

See Contract, 23—Principal and Agent, 6.

PAYMENT INTO COURT.

See Appeal, 1—Lunatic, 2—Mechanics' Liens—Railway, 5.

PENALTIES.

See Highway, 3—Ontario Temperance Act, 3—Revenue.

PERMITS.

See Contract, 26.

PERPETUITIES.

See Settlement—Will, 17.

PERSONAL REPRESENTATIVE.

See Executors and Administrators—Mortgage, 1.

PHYSICIAN.

See Covenant, 2—Ontario Temperance Act, 5.

PLANS.

See Contract, 4—Highway, 7—Railway, 6.

PLEADING.

1. Statement of Claim—Libel—Amendment—Substitution of New Statement of Claim after Order for New Trial—Effect of Order—Addition of Causes of Action—Embarrassment—Direction for Speedy Trial. *Leonard v. Wharton*, 18 O.W.N. 125.—APP. DIV.
 2. Statement of Defence—Motion to Strike out Paragraphs Raising Issues Tried in Previous Action—Right to Attack Pleading of Defendant on this Ground—Matter to be Determined at Trial. *Ross v. Scottish Union and National Insurance Co.*, 18 O.W.N. 160.—MIDDLETON, J.
- See Company, 5—Costs, 3—Landlord and Tenant, 3—New Trial, 1—Principal and Agent, 3.

PLEDGE.

See Contract, 29—Execution, 2.

POLICE MAGISTRATE.

See Criminal Law, 2, 5—Ontario Temperance Act—Revenue.

POSSESSION OF LAND.

See Limitation of Actions—Mines and Mining—Practice, 1—Will, 16.

POWER OF APPOINTMENT.

See Settlement—Trusts and Trustees, 8—Vendor and Purchaser, 10—Will, 8, 14, 17.

POWER OF ATTORNEY.

See Gift, 2—Principal and Agent, 5.

POWER OF SALE.

See Mortgage, 5.

PRACTICE.

1. Action by Mortgagee for Possession of Mortgaged Land—Judgment Signed upon Default of Appearance for Possession and Costs—Absence of Affidavit or Order under Rule 43—Motion to Set aside Judgment—Leave to File Affidavit nunc pro tunc—Jurisdiction of Master in Chambers—Plaintiff not Entitled to Indulgence—Writ of Summons Amended without being Re-served—Irregularity of Judgment—Abuse of Practice of Court—Oppressive Costs—Interference by Court Mero Motu—Order for Substituted Service of Writ Improperly Made—Rule 16—Costs of ex Parte Motion—Rule 658—Costs of Amending Writ—Costs of Motion and Appeal. *Morrow v. Morgan*, 17 O.W.N. 450, 47 O.L.R. 97.—MIDDLETON, J. (CHRS.)
2. Action in County Court—Motion Made to Judge of Supreme Court of Ontario to Set aside Judgment—Want of Jurisdiction—Summary Judgment Granted under Rule 62—Right of Appeal in Action in Supreme Court—Rules, 505, 506—Forum for Motion for Judgment—Court or Chambers—Rule 205 et seq.—Scope of Rule 62—“Urgency”—Parties—Alternative Claim against two Defendants—Rule 67—Judgment Entered against both. *Oliver v. Frankford Canning Co. and Presqu’ Isle Canning Co.*, 17 O.W.N. 407, 47 O.L.R. 43.—MIDDLETON, J.
3. Consolidation of Actions—Indirect Substitution of New Plaintiff for one Disqualified—Appeal—Costs—Leave to Appeal. *Clarkson v. Davies*, 18 O.W.N. 125.—APP. DIV.
4. Stay of Proceedings—Motion to Stay Second of two Actions—Refusal to Stay—Directions as to Trial. *Clarkson v. Davies (Two Actions)*, 18 O.W.N. 193.—ORDE, J. (CHRS.)

PRACTICE—(Continued).

See Administration Order—Appeal—Costs—Criminal Law, 5—
Deed, 7—Discovery—Evidence—Execution—Judgment
—Judgment Debtor—New Trial—Partnership—Pleading—
Solicitor—Trial.

PREFERENCE.

See Assignments and Preferences—Chattel Mortgage.

PREFERENTIAL LIEN.

See Landlord and Tenant, 1.

PRESCRIPTION FOR INTOXICATING LIQUOR.

See Ontario Temperance Act, 5.

PRESUMPTION.

See Death—Municipal Corporations, 5—Ontario Temperance
Act, 1, 2, 5—Promissory Notes, 2.

PRETENCE.

See Criminal Law, 4.

PRINCIPAL AND AGENT.

1. Agent's Commission on Sale of Goods—Evidence—Findings
of Trial Judge—Appeal. *Scully v. Scott*, 18 O.W.N. 293.—
APP. DIV.
2. Agent's Commission on Sale of Land—Statutes—Operation of
—Statute of Frauds, sec. 13 (6 Geo. V. ch. 24, sec. 19)—Action
for Commission—Statutory Requirement of Agreement in
Writing—Condition Precedent to Bringing Action—Agree-
ment Made before Statute Became Operative, but not
Enforceable until afterwards—Bar of Remedy—Retrospective
Operation—Evidence—Procedure—Provision Postponing
Coming into Effect of Statute—Hardship—Remedial Legis-
lation—Effect of Judgment. *Smith v. Upper Canada College*,
17 O.W.N. 405, 47 O.L.R. 37.—MIDDLETON, J.

(See the next case.)

3. Agent's Commission on Sale of Land—Commission Payable
out of Purchase-money when Received—Large Portion of
Purchase-money not Received by Reason of Subsequent
Agreement Made between Vendor and Purchaser without
Privity of Vendor's Agent—Action for Balance of Commission
notwithstanding that Whole of Purchase-money not Received
—Dismissal of Action upon Question of Law Raised in Plead-
ings—Effect of sec. 13 of Statute of Frauds (6 Geo. V. ch. 24,
sec. 19)—Appeal—New Point Taken by Court—Implied

PRINCIPAL AND AGENT—(Continued).

Agreement of Vendor to Do Nothing to Prevent Payment of Purchase-money—Damages for Breach of Implied Contract—Judgment Dismissing Action Set aside, Leaving Case for Trial on New Basis—Necessity for Amendment of Pleadings. **Smith v. Upper Canada College*, 18 O.W.N. 370.—APP. DIV.

4. Contract—Remittance of Money to Foreign Country—Disobedience by Agent of Instructions of Principal—Profit Made by Agent—Currency—Exchange—Accounting—Costs. *Raeff v. Dimitroff*, 18 O.W.N. 164.—KELLY, J.
5. Power of Attorney—Authority to Convey Land—Transfer of Land under Land Titles Act after Death of Donor of Power—Powers of Attorney Act, R.S.O. 1914 ch. 106, secs. 2, 3—Absence of Provision Authorising Conveyance in Name of Representatives—Construction of Instrument—Land Titles Act—Transfer of Land by Instrument Executed in Name of Deceased Donor—Validity—Form of Execution by Attorney—Purchase-money of Land Held by Attorney for Estate of Deceased. *Re McCarty*, 18 O.W.N. 73, 47 O.L.R. 285.—APP. DIV.
6. Solicitor Acting for Mortgagee—Authority to Receive Mortgage money from Mortgagor—Payment by Unmarked Cheque of Mortgagor to Order of Solicitor—Deposit of Cheque to Solicitor's Credit in Bank—Cheque Drawn by Solicitor Honoured after Advice that Mortgagor's Cheque duly Paid—Misappropriation by Solicitor of Money Credited to him—Payment Made to him before Revocation of Authority—Payment of Mortgage-debt to Mortgagee. *Delory v. Guyett*, 17 O.W.N. 474, 47 O.L.R. 137.—APP. DIV.

See Insurance, 2.

PRINCIPAL AND SURETY.

1. Promissory Note—Accommodation Makers—Sureties—Additional Security Collateral to Chattel Mortgage Given by Debtor to Creditor—Failure to Keep Chattel Mortgage Alive as against Creditors—Effect of Taking New Chattel Mortgage after Original had become Ineffective—Advice Given to Creditor by Solicitor—Surety—Consent to Substitution of New Mortgage for Old—Meaning of "Collateral." *Bryans v. Peterson*, 18 O.W.N. 75, 47 O.L.R. 298.—APP. DIV.
2. Promissory Notes Endorsed by Surety—Securities Deposited with Creditor as Collateral to Notes—Securities Entrusted by Creditor to Principal Debtor for Collection—Failure of Principal Debtor to Account for Moneys Collected—Effect

PRINCIPAL AND SURETY—(Continued).

upon Liability of Surety—Right of Trustee (Creditor) to Appoint Agent—Duty of Trustee in Selection of Agent—Absence of Negligence—Acquiescence of Surety—Evidence—Findings of Trial Judge—Appeal. *Routley v. Gorman and Coran*, 18 O.W.N. 173, 47 O.L.R. 420.—APP. DIV.

See Mortgage, 4.

PRIVATE WAY.

See Highway, 6—Way.

PRIVY COUNCIL.

See Appeal, 9.

PROBATE.

See Will.

PRODUCTION OF DOCUMENTS.

See Discovery, 2.

PROFITS.

See Principal and Agent, 4.

PROHIBITED PUBLICATIONS.

See Criminal Law, 2.

PROMISSORY NOTES.

1. Action on, by Executor of Deceased Payee—Defence—Oral Agreement between Maker and Payee—Agreement in De-feasance of Contract Contained in Notes—Evidence—Inadmissibility—Interest. **Bonham v. Bonham*, 18 O.W.N. 258.—ROSE, J.
2. "Foreign Bills"—Action against Endorser—Defence—Want of Due Presentment, Notice, and Protest—Protest Necessary to Hold Endorser—Bills of Exchange Act, R.S.C. 1906 ch. 119, secs. 25, 112—Law of Pennsylvania—Waiver of Right to Object to Want of Notice—Promise to Pay—Presumption—Onus — Laches — Ignorance — Note Payable at Office of Payees in Foreign City—Payees Ceasing to have Office there—"Proper Place" for Presentment—Presentment Dispensed with—Recovery upon two out of three Notes—Tender before Action—Costs. *Sparks v. Hamilton*, 17 O.W.N. 427, 47 O.L.R. 55.—ROSE, J.

See Company, 4—Principal and Surety, 1, 2.

PROMOTER.

See Contract, 29.

PROSPECTUS.

See Company, 1.

PROTEST.

See Promissory Notes, 2.

PROXIES.

See Company, 2.

PUBLIC POLICY.

See Covenant, 3.

PUBLIC SCHOOLS.

See Schools.

PUBLIC UTILITIES ACT.

See Contract, 26.

PUBLIC WORKS ACT.

See Highway, 1.

QUASHING CONVICTION.

See Criminal Law, 5.

RAILWAY.

1. Carriage of Goods—Contract—Delivery without Payment or Indemnity—Recovery of Damages by Shipper against Carriers—Company to which Goods Delivered Made Liable over to Carriers—Third Party—Costs. *Friedman v. Canadian Pacific R.W. Co.*, 18 O.W.N. 128.—APP. DIV.
2. Carriage of Goods—Destruction by Fire of Goods at Station of Destination—Liability of Railway Company—Conditions of Bill of Lading—Notice of Arrival of Goods—Time for Taking Delivery—Absence of Negligence—Carriers—Warehousemen. *Nazzareno v. Algoma Eastern R.W. Co.*, 18 O.W.N. 142.—LATCHFORD, J.
3. Carriage of Goods—Injury and Loss in Transit—Failure to Shew Negligence—Want of Proper Care—Freight and Demurrage Charges—Notice to Consignee—Bill of Lading—Storage Charges—Account—Reference. *Sparks v. Canadian Pacific R.W. Co.*, *Canadian Pacific R.W. Co. v. Sparks*, 18 O.W.N. 300.—APP. DIV.
4. Carriage of Goods—Shipment in Car—Deficiency in Quantity Found in Car at End of Transit—Evidence—Carriers Deprived by Consignee of Possession, Dominion, and Control—Termination of Relationship of Bailor and Bailee—Carriers or Warehousemen. **Russell Motor Car Co. Limited v. Canadian Pacific R.W. Co.*, 18 O.W.N. 288.—APP. DIV.

RAILWAY—(Continued).

5. Carriage of Passenger's Luggage—Loss of Trunk Checked by Passenger—Limitation of Liability—General Order of Railway Board—Powers of Board—Railway Act, R.S.C. 1906 ch. 37, secs. 30 (*h*), (*i*), 31, 340 (3)—“Personal Baggage”—Payment into Court—Costs. *Sherlock v. Grand Trunk R.W. Co.*, 18 O.W.N. 208, 47 O.L.R. 473.—Rose, J.
6. Expropriation of Land—Ontario Railway Act, 1906—Date of “Taking”—Deposit of Plan of Location—Service of Notice of Expropriation—Registry Act—Plan of Subdivision—Sale of Lots—Rights of Purchaser—“Owner”—True Owner at Time of “Taking”—Compensation—Arbitration. **Re Toronto Suburban R.W. Co. and Rogers*, 18 O.W.N. 347.—APP. DIV.
7. Level Highway Crossing—Motor-vehicle Crossing Track Struck by Engine of Train—Injury to and Death of Occupants of Vehicle—Action for Damages—Negligence—Evidence—Excessive Speed of Train—Signal to “Slow down”—Duty of Engine-driver—Duty of Brakesman of Shunting Train—Warning to Occupants of Vehicle—Findings of Trial Judge—Appeal. *Walker v. Grand Trunk R.W. Co.*, 18 O.W.N. 197, 47 O.L.R. 439.—APP. DIV.
8. Level Highway Crossing—Motor-vehicle Struck by Engine of Train—Negligence—Evidence—View Obstructed by Box-cars on Siding—Finding of Jury—Nonsuit. *Bogle v. Canadian Pacific R.W. Co.*, 18 O.W.N. 266.—KELLY, J.
9. “Trackage Agreement” between Railway Companies—Running Rights—Trainran on Rear of Lessee-company's Train Killed by Engine of Lessor-company Backing into Train—Action under Fatal Accidents Act against Lessor-company—Negligence Found by Jury—Judgment against Lessor-company—Claim for Indemnity against Lessee-company—Breaches of Trackage Agreement and Negligence—Finding of Trial Judge. *Reed v. Michigan Central R.R. Co.*, 18 O.W.N. 415.—KELLY, J.

See Negligence, 1—Street Railway.

RATEPAYERS.

See Municipal Corporations, 1.

RATIFICATION.

See Administration Order—Company, 4.

REASONABLE EXCUSE.

See Highway, 5.

RECEIPT.

See Contract, 1, 10.

RECEIVER.

See Costs, 5—Vendor and Purchaser, 3.

RECTIFICATION.

See Assessment and Taxes, 4—Deed, 5, 8—Judgment, 2.

RECTOR.

See Will, 17.

RECTORY LANDS.

See Church.

REDEMPTION.

See Contract, 23—Execution, 2.

REFERENCE.

See Company, 10—Judgment, 3, 5—Municipal Corporations, 6
—Partnership—Railway, 3.

REFORMATION.

See Assessment and Taxes, 4—Deed, 5, 8—Judgment, 2.

REGISTERED PLAN.

See Highway, 7.

REGISTRY LAWS.

See Mechanics' Liens—Railway, 6.

REINSTATEMENT.

See Insurance, 2.

RELEASE.

See Bailment—Principal and Surety, 1—Vendor and Purchaser, 13.

RELIGIOUS GIFT.

See Will, 17.

REMAINDER.

See Deed, 1.

RENEWAL OF EXECUTION.

See Execution, 1.

RENEWAL OF LEASE.

See Fraud and Misrepresentation, 4.

RENT.

See Landlord and Tenant, 1, 2.

RENUNCIATION.

See Will, 11.

REPAIRER'S LIEN.

See Bailment.

REPEAL.

See Municipal Corporations, 3.

REPLY.

See Criminal Law, 3.

REPORT.

See Appeal, 5, 8—Contract, 2—Judgment, 3, 5—Mortgage, 2—Partnership.

REPUGNANCY.

See Deed, 1.

RES JUDICATA.

See Judgment, 2—Pleading, 2.

RESCISSION.

See Contract, 10, 20—Fraud and Misrepresentation, 1, 4—Vendor and Purchaser.

RESULTING TRUST.

See Trusts and Trustees, 4.

RETAINER.

See Solicitor, 1, 2.

RETROACTIVITY.

See Principal and Agent, 2.

REVENUE.

Income War Tax Act, 1917, sec. 9 (1)—Returns—Default—Penalty — Quantum — Discretion of Magistrate. *Rex v. Thompson Manufacturing Co. Limited*, 17 O.W.N. 460, 47 O.L.R. 103.—LATCHFORD, J. (CHRS.)

REVOCATION.

See Gift, 1.

RIGHT OF WAY.

See Way.

ROAD.

See Highway.
42—18 o.w.n.

RULES.

(RULES OF 1908 MADE PURSUANT TO THE CRIMINAL CODE.)

1285.—See Criminal Law, 5.

(CONSOLIDATED RULES, 1913.)

- 2.—See Costs, 2.
- 16.—See Practice, 1.
- 43.—See Practice, 1.
- 57.—See Judgment, 4.
- 62.—See Practice, 2.
- 67.—See Practice, 2.
- 85.—See Contract, 17.
- 124.—See Judgment, 2.
- 205 et seq.—See Practice, 2.
- 222.—See Judgment, 2.
- 328.—See Discovery, 1.
- 354.—See Husband and Wife, 4.
- 502.—See Mortgage, 2.
- 505.—See Practice, 2.
- 506.—See Practice, 2.
- 507.—See Appeal, 1.
- 587.—See Judgment Debtor.
- 602.—See Vendor and Purchaser, 11, 14.
- 649.—See Costs, 3.
- 658.—See Practice, 1.
- 669.—See Costs, 5.
- 676.—See Solicitor, 3.

SALE OF BUSINESS.

See Fraud and Misrepresentation, 3.

SALE OF GOODS.

1. Action for Price—Dispute—Adjustment of Amount Due—Counterclaim or Set-off—Damages for Breach—Special Circumstances — Knowledge of Parties — Contract Made in Reference thereto—Evidence—Alteration in Contract—Time for Deliveries—Default. *Oliver-Scrim Lumber Co. Limited v. Great Lakes Dredging Co. Limited*, 18 O.W.N. 47.—APP. DIV.
2. Action for Price—Quality of Fish Delivered—Deduction for Shortage—Findings of Trial Judge. *Pastorius v. Danto & Co.*, 18 O.W.N. 13.—KELLY, J.
3. Contract—Goods to be Imported from New Zealand—Defendants (Vendors) Contracting as Principals—Breach by Vendors—Repudiation of Contract—Embargo upon Exportation from New Zealand—Effect of—Suspension of Contract during Total Embargo—Exportation with Consent of Minister of

SALE OF GOODS—(Continued).

- Customs—Absence of Endeavour to Obtain Consent—Duty of Vendors—Damages—Measure of—Reference. *Schmidt v. Wilson & Canham Limited*, 18 O.W.N. 15, 47 O.L.R. 194.—LOGIE, J.
4. Contract—Quality of Goods—Action for Damages for Inferiority—Acceptance without Inspection—Inferiority Revealed by Subsequent Inspection—Warranty of Quality—Waiver—Right of Rejection—Estoppel—Laches—Delay in Giving Notice and Making Claim—Damages—Measure of—New Trial. **Merrill v. Waddell*, 18 O.W.N. 279.—APP. DIV.
 5. Contract—Repudiation by Seller—Silence of Buyer—Necessity for Notice of Assent to Repudiation as Definite Breach—Repudiation Treated by Buyer as Inoperative—Contract Kept Alive for Benefit of both Parties—Subsequent Delivery of Goods—Refusal to Accept—Right of Seller to Recover Sale-price. *Geddes Brothers v. American National Red Cross*, 17 O.W.N. 43, 478, 47 O.L.R. 163.—ROSE, J.—APP. DIV.
 6. Contract—Time for Delivery—Failure of Vendor to Deliver—Excuse—"Usual Contingency Clause"—Shortage of Cars—Inability to Obtain Raw Material—Duty of Vendor—Disregard of other Contracts—Counterclaim—Costs. *Robertson v. Canadian Fertilizer Co.*, 18 O.W.N. 143.—KELLY, J.
 7. Milking Machine—Representation—Condition for Return if not as Represented—Action for Price—Verdict of Jury—Evidence—Rejection of—Judge's Charge. *Richardson v. Hibbert*, 18 O.W.N. 302.—APP. DIV.
 8. Reliance of Buyer on Skill of Seller—Machine Required for Specific Purpose to Knowledge of Seller—Machine Found Unworkable—Right to Reject—Waiver—Return of Machine—Return "on Consignment"—Evidence—Findings of Master—Appeal—Disallowance of Claim of Creditor against Insolvent Estate in Winding-up Matter. *Re Sarnia Metal Products Co. Limited*, 18 O.W.N. 98.—KELLY, J.
 9. Shipment in Car-loads—Shortage in Quantities Received—Contracts—Absence of Notice of Shipment and of Opportunity for Inspection—Acceptance and Payment—Right to Recover Damages—"Terms" of Contract—Presence of Solder upon Brass Sockets—Condition—Implication—Defect in Material Discoverable on Inspection—Shipment of Material not Called for by Contract—Loss on Shipment—Right to

SALE OF GOODS—(Continued).

Recover—Counterclaim—Refusal to Accept Part of Goods—Damages for—Costs—Set-off. *Garson v. Empire Manufacturing Co. Limited*, 18 O.W.N. 2.—ROSE, J.

10. Two Contracts to Furnish Seed-corn—Evidence—Bulk Delivered Different from Thing Contracted for in first Contract—Failure of Claim for Price—Acceptance of Corn Shipped under second Contract—Shipment of Quantity Greater in one Case and Less in the other than Contracted for—Effect of—Demurrage and Freight Paid by Purchaser—Deduction from Price of Corn Accepted—Costs. *McDougall v. William Rennie Co. Limited*, 18 O.W.N. 5.—ROSE, J.

See Appeal, 4—Bailment—Contract, 20—Damages, 2—Principal and Agent, 1—Trusts and Trustees, 3.

SALE OF HOUSE.

See Fraud and Misrepresentation, 4.

SALE OF INTOXICATING LIQUOR.

See Ontario Temperance Act.

SALE OF LAND.

Mortmain and Charitable Uses Act, R.S.O. 1914 ch. 103, secs. 2 (2) (d), 7, 10—Land Conveyed to Humane Society by Deed of Gift—Time for Selling Fixed by Act—Extension of Time—Sale with “all Reasonable Speed”—Land Vested in Accountant of Supreme Court of Ontario—Notice to Accountant—Order for Immediate Sale—Execution of Conveyance. *Re Toronto Humane Society*, 18 O.W.N. 414.—LENNOX, J. (CHRS.)

See Administration Order, 2—Church—Contract, 1, 10, 11, 12, 19—Deed, 7—Fraud and Misrepresentation, 1, 5—Principal and Agent, 2, 3—Trusts and Trustees, 11—Vendor and Purchaser.

SALE OF SYSTEM.

See Telephone Company.

SCALE OF COSTS.

See Costs, 3.

SCHOOLS.

Public Schools—Transfer and Appointment of High School Teacher to Principalship of Public School—Powers of Board of Education—Procedure at Meeting—Composition of Board—Representatives of Separate School Board—Boards of Education Act, R.S.O. 1914 ch. 269, secs. 22, 23—Internal

SCHOOLS—(Continued).

Management of Board's Affairs—Interference by Court—Confirmation of Appointment—Public Schools Act, R.S.O. 1914 ch. 266, secs. 2 (o), 73 (n), 87 (2)—Rights of Minority—Technical Qualifications of Teacher. *Howard v. Toronto Board of Education*, 18 O.W.N. 350.—KELLY, J.

SEAL.

See Landlord and Tenant, 3.

SECRET PROFITS.

See Company, 4.

SECRET TRUST.

See Trusts and Trustees, 13.

SECURITY.

See Appeal, 9—Guaranty—Money Lent—Principal and Surety, 1, 2—Trusts and Trustees, 1, 2, 5.

SECURITY FOR COSTS.

See Costs, 4.

SEDUCTION.

See Husband and Wife, 2.

SELF-SERVING STATEMENT.

See Trusts and Trustees, 7.

SEPARATE SCHOOLS.

See Schools.

SEPARATION AGREEMENT.

See Husband and Wife, 11.

SERVICE OF PROCESS.

See Husband and Wife, 4—Practice, 1.

SERVITUDE.

See Way.

SET-OFF.

See Costs, 4—Sale of Goods, 1, 9.

SETTLEMENT.

Trust-deed—Construction—Power of Appointment—Exercise by Will—Construction of Will—Rule against Perpetuities—Validity of Exercise of Power—Invalid Limitations—Provisions for Benefit of Persons not Objects of Power—Distribution among Appointees after Death of Life-tenant Having Power of Appointment. *Re Goodhue Trusts*, 18 O.W.N. 7, 47 O.L.R. 178.—MASTEN, J.

See Trusts and Trustees, 8.

SETTLEMENT OF ACTION.

See Partnership.

SEVERANCE.

See Vendor and Purchaser, 8.

SEWERS.

See Municipal Corporations, 6.

SHARES AND SHAREHOLDERS.

See Banks and Banking—Company, 1, 2, 4, 5, 6, 7, 10—Contract, 23, 29—Execution, 2—Trusts and Trustees, 1.

SHERIFF'S SALE.

See Execution, 1, 2.

SHIP.

Collision of Motor-boats in Inland Waters—Proximate Cause of Collision—Breach of Rules of Road by Defendants—Contributory Breach by Plaintiffs—Rigid Enforcement of Rules—Joint Liability—Apportionment of Damages—Canada Shipping Act, R.S.C. 1906 ch. 113, sec. 918—Exemption of "Ship" from Registration under sec. 5—Limitation of Liability under sec. 921 (d)—Assessment of Damages—Imperial Maritime Conventions Act, 1911, 1 & 2 Geo. V. ch. 57—Loss of Use of Boat—Possession of another Boat—Costs. *Croswell v. Daball*, 18 O.W.N. 119, 47 O.L.R. 354.—LOGIE, J.

See Trusts and Trustees, 10.

SHORTAGE.

See Sale of Goods, 2, 6, 9—Trusts and Trustees, 12.

SIDEWALK.

See Highway, 4.

SMELTING WORKS.

See Nuisance.

SOLICITOR.

1. Action against Solicitor for Negligence in Giving Bad Advice—Evidence—Retainer or Employment not Shewn—Finding of Fact of Trial Judge—Dismissal of Action. *Davidson v. Goodwill*, 18 O.W.N. 34.—ORDE, J.
2. Bill of Costs—Retainer—Findings of Taxing Officer—Evidence—Taxation—Appeal—Costs. *Re Solicitors*, 18 O.W.N. 163.—LOGIE, J.
3. Taxation of Bill of Costs Rendered to Client—Services in County Court Actions—Rule 676—Tariff of Costs—Allow-

SOLICITOR—(Continued).

ances over and above Party and Party Costs—Discretion of Taxing Officer—Assessment on Quantum Meruit Basis—Appeal—Examinations for Discovery—Charge for Fees of Examiner not Paid when Bill Rendered—Liability of Solicitor—Mistake in Item of Bill—Correction of Clerical Error. *Re Solicitor*, 18 O.W.N. 225; 47 O.L.R. 522.—MIDDLETON, J.

4. Undertaking of Person (not Client) with Solicitor to Pay Costs in Connection with Certain Proceedings—Taxation of Solicitor's Bill—Scope of Undertaking—Appeal from Taxation. *Re Solicitor*, 18 O.W.N. 126.—APP. DIV.

See Company, 4—Evidence, 1—Malicious Prosecution—Principal and Agent, 6.

SPECIFIC PERFORMANCE.

See Contract, 1, 10, 12, 16—Fraud and Misrepresentation, 1—Trusts and Trustees, 13—Vendor and Purchaser.

STATED CASE.

See Highway, 3.

STATUTE OF FRAUDS.

See Contract, 1, 9, 10, 15, 16—Husband and Wife, 8—Mortgage, 5. Principal and Agent, 2, 3—Trusts and Trustees, 4.

STATUTE OF LIMITATIONS.

See Death—Deed, 4—Limitation of Actions—Mortgage, 4—Municipal Corporations, 4, 6—Trusts and Trustees, 11—Will, 15.

STATUTES.

28 Vict. ch. 88 (Can.) (Ottawa Gas Company)—See MUNICIPAL CORPORATIONS, 5.

30 & 31 Vict. ch. 3, sec. 92 (16) (Imp.) (British North America Act)—See CARRIERS.

39 Vict. ch. 109, secs. 3, 4 (O.) (Amending Synod and Rectory Sales Act Affecting Diocese of Ontario)—See CHURCH.

59 Vict. ch. 105 (O.) (London Street Railway)—See MUNICIPAL CORPORATIONS, 2.

R.S.O. 1897 ch. 51, sec. 38 (Judicature Act)—See WILL, 19.

R.S.O. 1897 ch. 205, sec. 15 (3) (Loan Corporations Act)—See COMPANY, 7.

R.S.C. 1906 ch. 37, secs. 30 (*h*), (*i*), 31, 340 (3) (Railway Act)—See RAILWAY, 5.

R.S.C. 1906 ch. 37, secs. 274, 276—See NEGLIGENCE, 1.

STATUTES—(Continued).

- R.S.C. 1906 ch. 79, secs. 58, 59, 65, 66 (Companies Act)—See COMPANY, 6.
- R.S.C. 1906 ch. 113, sec. 918 (Canada Shipping Act)—See SHIP.
- R.S.C. 1906 ch. 119, secs. 25, 112 (Bills of Exchange Act)—See PROMISSORY NOTES, 2.
- R.S.C. 1906 ch. 119, secs. 165, 167—See GIFT, 1.
- R.S.C. 1906 ch. 139, sec. 75 (Supreme Court Act)—See APPEAL, 9.
- R.S.C. 1906 ch. 144 (Winding-up Act)—See COMPANY, 9.
- R.S.C. 1906 ch. 144, secs. 34 (c), (h), 101—See COMPANY, 10.
- R.S.C. 1906 ch. 145, sec. 4 (5) (Evidence Act)—See CRIMINAL LAW, 3.
- R.S.C. 1906 ch. 146, sec. 287 (a) (Criminal Code)—See ICE.
- R.S.C. 1906 ch. 146, sec. 443—See CRIMINAL LAW, 4.
- R.S.C. 1906 ch. 146, sec. 715—See ONTARIO TEMPERANCE ACT, 1.
- R.S.C. 1906 ch. 146, sec. 944—See CRIMINAL LAW, 3.
- 6 Edw. VII. ch. 30 (O.) (Railway Act)—See RAILWAY, 6.
- 9 & 10 Edw. VII. ch. 32, secs. 84, 85, 95 (d), (j) (D.) (Insurance Act)—See INSURANCE, 2.
- 1 & 2 Geo. V. ch. 57 (Imp.) (Maritime Conventions Act)—See SHIP.
- 2 Geo. V. ch. 159 (O.) (Belleville Rectory Lands)—See CHURCH.
- 3 & 4 Geo. V. ch. 9, sec. 77 (D.) (Bank Act)—See BANKS AND BANKING.
- R.S.O. 1914 ch. 1, sec. 29 (x) (Interpretation Act)—See ASSESSMENT AND TAXES, 1—WILL, 17.
- R.S.O. 1914 ch. 35, sec. 32 (Public Works Act)—See HIGHWAY, 1.
- R.S.O. 1914 ch. 54, sec. 3 (Privy Council Appeals Act)—See APPEAL, 9.
- R.S.O. 1914 ch. 56, sec. 12 (Judicature Act)—See WILL, 19.
- R.S.O. 1914 ch. 56, sec. 16 (f)—See APPEAL, 6.
- R.S.O. 1914 ch. 56, sec. 32—See DISCOVERY, 1.
- R.S.O. 1914 ch. 56, sec. 35—See VENDOR AND PURCHASER, 1.
- R.S.O. 1914 ch. 56, secs. 45, 65—See JUDGMENT, 5.
- R.S.O. 1914 ch. 56, sec. 53—See JUDGMENT, 4.
- R.S.O. 1914 ch. 56, secs. 65, 67—See JUDGMENT, 3.
- R.S.O. 1914 ch. 59, sec. 21 (1) (b) (County Courts Act)—See HUSBAND AND WIFE, 2.
- R.S.O. 1914 ch. 59, sec. 22 (1) (c)—See COSTS, 3.
- R.S.O. 1914 ch. 65, sec. 29 (Arbitration Act)—See LANDLORD AND TENANT, 5.
- R.S.O. 1914 ch. 70, sec. 14 (Dower Act)—See HUSBAND AND WIFE, 9.
- R.S.O. 1914 ch. 75 (Limitations Act)—See DEATH—DEED, 4—LIMITATION OF ACTIONS—MUNICIPAL CORPORATIONS, 4, 6—WILL, 15.

STATUTES—(Continued).

- R.S.O. 1914 ch. 75, sec. 18—See MORTGAGE, 4.
 R.S.O. 1914 ch. 75, secs. 24, 47—See WILL, 18.
 R.S.O. 1914 ch. 75, secs. 46, 47—See TRUSTS AND TRUSTEES, 11.
 R.S.O. 1914 ch. 76, sec. 12 (Evidence Act)—See EVIDENCE, 2, 3
 —HUSBAND AND WIFE, 8—LUNATIC, 1.
 R.S.O. 1914 ch. 91, sec. 8 (g) (Crown Attorneys Act)—See ONTARIO
 TEMPERANCE ACT, 1.
 R.S.O. 1914 ch. 102 (Statute of Frauds)—See CONTRACT, 1,
 9, 10, 15, 16—HUSBAND AND WIFE, 8—MORTGAGE, 5.
 R.S.O. 1914 ch. 102, sec. 13—See PRINCIPAL AND AGENT, 2, 3—
 TRUSTS AND TRUSTEES, 4.
 R.S.O. 1914 ch. 103, secs. 2 (2) (d), 7, 10 (Mortmain and Charitable
 Uses Act)—See SALE OF LAND.
 R.S.O. 1914 ch. 103, sec. 10—See WILL, 17.
 R.S.O. 1914 ch. 106, secs. 2, 3 (Powers of Attorney Act)—See
 PRINCIPAL AND AGENT, 5.
 R.S.O. 1914 ch. 106, sec. 3—See GIFT, 2.
 R.S.O. 1914 ch. 109 (Conveyancing and Law of Property Act)—
 See WILL, 16.
 R.S.O. 1914 ch. 109, sec. 13—See DEED, 6.
 R.S.O. 1914 ch. 109, sec. 37—See IMPROVEMENTS.
 R.S.O. 1914 ch. 120, sec. 27 (Wills Act)—See WILL, 16.
 R.S.O. 1914 ch. 120, secs. 30, 31—See TRUSTS AND TRUSTEES, 8.
 R.S.O. 1914 ch. 121, sec. 9 (Trustee Act)—See MORTGAGE, 1.
 R.S.O. 1914 ch. 121, sec. 37—See WILL, 18.
 R.S.O. 1914 ch. 122 (Vendors and Purchasers Act)—See DEED, 6
 —VENDOR AND PURCHASER, 8-14.
 R.S.O. 1914 ch. 124, sec. 86 (Registry Act)—See HIGHWAY, 7.
 R.S.O. 1914 ch. 126 (Land Titles Act)—See PRINCIPAL AND
 AGENT, 5.
 R.S.O. 1914 ch. 133, sec. 3 (Mercantile Law Amendment Act)—
 See LANDLORD AND TENANT, 1.
 R.S.O. 1914 ch. 134, sec. 5 (Assignments and Preferences Act)—
 See CHATTEL MORTGAGE.
 R.S.O. 1914 ch. 134, sec. 6 (1)—See ASSIGNMENTS AND PREFER-
 ENCES.
 R.S.O. 1914 ch. 135, sec. 12 (3) (Bills of Sale and Chattel Mortgage
 Act)—See CHATTEL MORTGAGE.
 R.S.O. 1914 ch. 140, secs. 27 (4), 33, 34 (Mechanics and Wage-
 Earners Lien Act)—See APPEAL, 1—MECHANICS' LIENS.
 R.S.O. 1914 ch. 148, secs. 36, 37 (Marriage Act)—See MARRIAGE,
 1, 2.
 R.S.O. 1914 ch. 151 (Fatal Accidents Act)—See FATAL ACCIDENTS
 ACT—NEGLIGENCE, 9—RAILWAY, 9.

STATUTES—(Continued).

- R.S.O. 1914 ch. 152 (Deserted Wives' Maintenance Act)—See HUSBAND AND WIFE, 3.
- R.S.O. 1914 ch. 153, sec. 2 (3) (Infants Act)—See INFANTS, 3.
- R.S.O. 1914 ch. 155, secs. 75-78 (Landlord and Tenant Act)—See LANDLORD AND TENANT, 4.
- R.S.O. 1914 ch. 156, sec. 4 (Apportionment Act)—See LANDLORD AND TENANT, 2.
- R.S.O. 1914 ch. 178, sec. 23 (*m*) (Companies Act)—See COMPANY, 10.
- R.S.O. 1914 ch. 178, sec. 95—See COMPANY, 8.
- R.S.O. 1914 ch. 179, secs. 7, 16 (Extra Provincial Corporations Act)—See COMPANY, 3.
- R.S.O. 1914 ch. 183, sec. 171 (5) (Insurance Act)—See WILL, 4.
- R.S.O. 1914 ch. 183, sec. 194, condition 24—See JUDGMENT, 2.
- R.S.O. 1914 ch. 185, sec. 59 (Railway Act)—See STREET RAILWAY, 3.
- R.S.O. 1914 ch. 186 (Ontario Railway and Municipal Board Act)—See ONTARIO RAILWAY AND MUNICIPAL BOARD.
- R.S.O. 1914 ch. 186, secs. 3, 21, 22, 23, 25, 26, 29, 37—See CONTRACT, 26.
- R.S.O. 1914 ch. 186, sec. 7—See STREET RAILWAY, 3.
- R.S.O. 1914 ch. 186, secs. 9, 47, 48—See TELEPHONE COMPANY.
- R.S.O. 1914 ch. 192, secs. 64 (1), 483 (Municipal Act)—See HIGHWAY, 4.
- R.S.O. 1914 ch. 192, sec. 150—See MUNICIPAL ELECTIONS.
- R.S.O. 1914 ch. 192, secs. 160-186—See COSTS, 2.
- R.S.O. 1914 ch. 192, sec. 249 (2)—See MUNICIPAL CORPORATIONS, 2.
- R.S.O. 1914 ch. 192, sec. 283—See MUNICIPAL CORPORATIONS, 3.
- R.S.O. 1914 ch. 192, secs. 325, 326 (1)—See MUNICIPAL CORPORATIONS, 4.
- R.S.O. 1914 ch. 192, secs. 331, 460—See MUNICIPAL CORPORATIONS, 6.
- R.S.O. 1914 ch. 192, sec. 427—See MUNICIPAL CORPORATIONS, 1.
- R.S.O. 1914 ch. 192, sec. 460—See HIGHWAY, 2, 5.
- R.S.O. 1914 ch. 192, sec. 493—See HIGHWAY, 6.
- R.S.O. 1914 ch. 193, secs. 5, 8, 9, 10, 38, 44 (Local Improvement Act)—See ASSESSMENT AND TAXES, 4.
- R.S.O. 1914 ch. 195, secs. 2 (*e*), 40 (6) (Assessment Act)—See ASSESSMENT AND TAXES, 2.
- R.S.O. 1914 ch. 195, secs. 5 (7), 10 (1) (*k*), 45*a*.—See ASSESSMENT AND TAXES, 1.
- R.S.O. 1914 ch. 195, secs. 37, 94, 95—See LANDLORD AND TENANT, 1.
- R.S.O. 1914 ch. 195, secs. 69 (16), 70—See ASSESSMENT AND TAXES 3.

STATUTES—(Continued).

- R.S.O. 1914 ch. 197 (Municipal Franchises Act)—See MUNICIPAL CORPORATIONS, 2.
- R.S.O. 1914 ch. 198, sec. 98 (Municipal Drainage Act)—See MUNICIPAL CORPORATIONS, 4.
- R.S.O. 1914 ch. 204 (Public Utilities Act)—See CONTRACT, 26.
- R.S.O. 1914 ch. 207, sec. 15 (Motor Vehicles Act)—See STREET RAILWAY, 1.
- R.S.O. 1914 ch. 207, sec. 19—See NEGLIGENCE, 3, 4.
- R.S.O. 1914 ch. 207, sec. 23—See NEGLIGENCE, 7.
- R.S.O. 1914 ch. 266, secs. 2(o), 73(n), 87(2) (Public Schools Act)—See SCHOOLS.
- R.S.O. 1914 ch. 269, secs. 22, 23 (Boards of Education Act)—See SCHOOLS.
- R.S.O. 1914 ch. 280, secs. 10, 10a. (Upper Canada College Act)—See ASSESSMENT AND TAXES, 3.
- R.S.O. 1914 ch. 295, secs. 7, 8 (Hospitals for the Insane Act)—See CONSPIRACY.
- 4 Geo. V. ch. 25 (O.) (Workmen's Compensation Act)—See NEGLIGENCE, 6.
- 4 Geo. V. ch. 33, sec. 19 (O.) (Amending Municipal Act)—See MUNICIPAL CORPORATIONS, 1.
- 5 Geo. V. ch. 2, sec. 6 (D.) (War Measures Act, 1914)—See CRIMINAL LAW, 2.
- 5 Geo. V. ch. 31 (O.) (Amending Ontario Railway and Municipal Board Act)—See CONTRACT, 26.
- 6 Geo. V. ch. 24, sec. 19 (O.) (Amending Statute of Frauds)—See PRINCIPAL AND AGENT, 2, 3.
- 6 Geo. V. ch. 30, secs. 1, 2 (O.) (Amending Mechanics and Wage-Earners Lien Act)—See APPEAL, 1—MECHANICS' LIENS.
- 6 Geo. V. ch. 32 (O.) (Amending Marriage Act)—See MARRIAGE, 1.
- 6 Geo. V. ch. 50, sec. 2 (i) (i) (O.) (Ontario Temperance Act)—See ONTARIO TEMPERANCE ACT, 5.
- 6 Geo. V. ch. 50, sec. 40 (O.)—See ONTARIO TEMPERANCE ACT, 1, 2, 7.
- 6 Geo. V. ch. 50, sec. 41 (O.)—See CARRIERS—ONTARIO TEMPERANCE ACT, 3, 4, 5, 6, 7.
- 6 Geo. V. ch. 50, sec. 43 (O.)—See ONTARIO TEMPERANCE ACT, 4.
- 6 Geo. V. ch. 50, sec. 46 (O.)—See CARRIERS.
- 6 Geo. V. ch. 50, sec. 61 (2) (O.)—See ONTARIO TEMPERANCE ACT, 3.
- 6 Geo. V. ch. 50, sec. 70 (O.)—See ONTARIO TEMPERANCE ACT, 1.
- 6 Geo. V. ch. 50, sec. 78 (O.)—See ONTARIO TEMPERANCE ACT, 3.
- 6 Geo. V. ch. 50, sec. 84 (O.)—See ONTARIO TEMPERANCE ACT, 6, 7.
- 6 Geo. V. ch. 50, sec. 88 (O.)—See ONTARIO TEMPERANCE ACT, 1, 2, 5, 7.
- 7 Geo. V. ch. 33, sec. 9 (O.) (Bulk Sales Act)—See EVIDENCE, 1.

STATUTES—(Continued).

- 7 Geo. V. ch. 49, sec. 14 (O.) (Amending Motor Vehicles Act)—
See NEGLIGENCE, 3, 4.
- 7 Geo. V. ch. 50, sec. 30 (O.) (Amending Ontario Temperance Act)
—See ONTARIO TEMPERANCE ACT, 6, 7.
- 7 Geo. V. ch. 50, sec. 70 (O.)—See ONTARIO TEMPERANCE ACT, 7.
- 7 & 8 Geo. V. ch. 28, sec. 9 (1) (D.) (Income War Tax Act)—See
REVENUE.
- 8 Geo. V. ch. 12 (O.) (Natural Gas Act)—See CONTRACT, 26.
- 8 Geo. V. ch. 20, sec. 39 (O.) (Amending Assessment Act)—See
ASSESSMENT AND TAXES, 1.
- 8 Geo. V. ch. 31, secs. 24, 25, 87, 106 (O.) (Telephone Act)—See
TELEPHONE COMPANY.
- 8 Geo. V. ch. 37, sec. 8 (O.) (Amending Motor Vehicles Act)—See
NEGLIGENCE, 3, 4.
- 9 Geo. V. ch. 35 (O.) (Amending Marriage Act)—See MARRIAGE, 1.
- 9 Geo. V. ch. 60, sec. 19 (O.) (Amending Ontario Temperance
Act)—See ONTARIO TEMPERANCE ACT, 3.
- 9 Geo. V. ch. 80 (O.) (Amending Upper Canada College Act)—
See ASSESSMENT AND TAXES, 3.
- 9 & 10 Geo. V. ch. 68, secs. 362, 363, 364 (D.) (Railway Act)—
See MANDAMUS.

STAY OF PROCEEDINGS.

See Practice, 4.

STOLEN GOODS.

See Criminal Law, 4.

STREET.

See Highway.

STREET RAILWAY.

1. Injury to Passenger Alighting in Highway between Stopping
Places—Street-car Stopped at Point between Stopping
Places—Duty of Company to Safeguard Passenger—Passenger
Injured by Motor-Vehicle—Municipal By-law—Motor Ve-
hicles Act, sec. 15—Findings of Jury—Negligence—Contribu-
tory Negligence—Evidence. **Ellis v. Hamilton Street R.W.
Co.*, 18 O.W.N. 226.—KELLY, J.
2. Injury to Person Attempting to Get on Car—Negligence of
Conductor—Car Started after Intention Perceived—Contribu-
tory Negligence—Moving Car—Emergency—Finding of Trial
Judge—Reversal on Appeal. **Squires v. Toronto R.W. Co.*,
18 O.W.N. 294.—APP. DIV.

STREET RAILWAY—(Continued).

3. Poles and Wires upon City Streets—Removal at Expense of Company for Purposes of Toronto Electric Commission—Order of Ontario Railway and Municipal Board—Dissent of Member of Board—Ontario Railway and Municipal Board Act, R.S.O. 1914 ch. 186, sec. 7—Determination of Question of Law by Chairman—Appeal from Order of Board—No Statutory Authority for Making Company Liable for Cost of Removal—Railway Act, R.S.O. 1914 ch. 185, sec. 59—Absence of Agreement to Pay—Position of Commission—Statutory Agent—Remedy by Action. **Re Toronto Electric Commissioners and Toronto R.W. Co.*, 18 O.W.N. 366.—APP. Div.

See Damages, 3—Municipal Corporations, 2—Negligence, 2, 3, 4, 5, 10.

SUBMISSION.

See Arbitration and Award.

SUBROGATION.

See Landlord and Tenant, 1—Mortgage, 6.

SUBSIDENCE.

See Land.

SUMMARY JUDGMENT.

See Judgment, 4—Malicious Prosecution—Practice, 2.

SUPREME COURT OF CANADA.

See Appeal, 9.

SUPREME COURT OF ONTARIO.

See Appeal.

SURETY.

See Mortgage, 4—Principal and Surety.

SURRENDER.

See Company, 6—Landlord and Tenant, 2.

SURVEYOR.

See Mines and Mining.

SURVIVORSHIP.

See Deed, 6—Will, 14.

SUSPENSION.

See Contract, 26.

SYNDICATE.

See Trusts and Trustees, 12.

SYNOD.

See Vendor and Purchaser, 10—Will, 17.

TARIFF RATES.

See Carriers.

TAXATION OF COSTS.

See Costs, 5—Solicitor, 2, 3, 4.

TAXES.

See Assessment and Taxes—Church—Landlord and Tenant, 1—Vendor and Purchaser, 5.

TELEPHONE COMPANY.

Sale of Parts of System and Plant to Township Corporations—Approval of Ontario Railway and Municipal Board—Necessity for—Application by Company Refused—Appeal by Leave—Ontario Telephone Act, 1918, 8 Geo. V. ch. 31, secs. 24, 25, 87, 106—Ontario Railway and Municipal Board Act, R.S.O. 1914 ch. 186, secs. 9, 47, 48—Inclusion of Franchise in Sale of System—Board not Acting Judicially but as Delegate of Legislature—Discretion—Review—Parties to Application Heard by Chairman only by Authority of Board—Report of Chairman to Board—Adoption by Board without Hearing Parties again. **Re Consolidated Telephone Co. and Townships of Caledon and Erin*, 18 O.W.N. 401.—APP. DIV.

See Negligence, 6—Ontario Railway and Municipal Board.

TENANT.

See Landlord and Tenant.

TENANT FOR LIFE.

See Improvements.

TENDER OF DEED.

See Contract, 12.

TENDER OF MONEY.

See Promissory Notes, 2—Vendor and Purchaser, 5.

TERMINATION OF CONTRACT.

See Contract, 6.

THEFT.

See Criminal Law, 6.

THIRD PARTIES.

See Railway, 1.

TIMBER.

See Contract, 19, 22—Deed, 5.

TIME.

See Appeal, 3, 6—Contract, 7—Execution, 1—Judgment, 2—
Limitation of Actions—Railway, 2—Sale of Goods, 1, 6—
Sale of Land—Vendor and Purchaser.

TITLE TO LAND.

See Costs, 3—Damages, 1—Improvements—Vendor and Purchaser.

TOLL-ROAD.

See Highway, 1.

TOLLS.

See Mandamus.

TORONTO ELECTRIC COMMISSION.

See Street Railway, 3.

TRACKAGE AGREEMENT.

See Railway, 9.

TRADE AND COMMERCE.

See Carriers.

TRADE FIXTURES.

See Landlord and Tenant, 5.

TRESPASS.

See Boundaries—Costs, 3.

TRIAL.

Venue—Motion by Plaintiff to Change—Action for Alimony—
Preponderance of Convenience—Speedy Trial. *Van Patter v.*
Van Patter, 18 O.W.N. 153.—LOGIE, J. (CHRS.)

See Costs, 1—Criminal Law—Judgment, 3, 4, 5—Ontario Temperance Act—Pleading, 1, 2, 4.

TRUST COMPANY.

See Contract, 29—Deed, 3—Trusts and Trustees, 6.

TRUSTS AND TRUSTEES.

1. Agreement to Hold Company-shares as Security for Payment of Annuity—Breach of Trust—Delivery up of Shares to Another—Accounting—Payment of Value of Shares—Findings of Trial Judge. *Steinhoff v. Wilson*, 18 O.W.N. 63.—SUTHERLAND, J.
2. Appointment of New Trustee—Consent of Beneficiaries—Dispensing with Security. *Re Smith*, 18 O.W.N. 262.—LENNOX, J.

TRUSTS AND TRUSTEES—(Continued).

3. Chattel Mortgage—Sale of Goods under—Satisfaction of Execution—Declaration—Costs. *Disher v. Levitt*, 18 O.W.N. 433.—SUTHERLAND, J.
4. Conveyance of Land to Trustees without Explanation of Nature of Trust—Evidence—Attempt to Establish Parol Declaration—Testimony of Interested Parties—Need of Corroboration—Statute of Frauds—Effect of Deed—Resulting Trust in Favour of Grantor—Lands Subject of Trust Treated as Part of Residuary Estate—Costs. *Fleming v. Royal Trust Co.*, 18 O.W.N. 386.—KELLY, J.
5. Death of Trustees Appointed by Will—Appointment of New Trustees—Security—Construction of Will. *Re Glidden*, 18 O.W.N. 362.—MASTEN, J.
6. Failure of Trustees to Agree—Removal of Trustees and Appointment of Trust Company in their Stead—Disposition of Rentals of Trust-property—Costs. *Re Curran*, 18 O.W.N. 98.—MIDDLETON, J.
7. Land of Married Woman Conveyed by her and her Husband to Purchaser—Mortgage for Part of Purchase-money Taken in Name of Husband—Subsequent Release of Equity of Redemption to Husband on Payment of Money—Death of Husband and Subsequent Death of Wife—Claim of Devisee of Wife to Land—Evidence—Declaration of Wife as Executrix when Applying for Probate of Husband's Will—Self-serving Statement—Inadmissibility—Resulting Trust—Presumption—Rebuttal—Consideration—Gift—Onus—Declaration in Favour of Devisee of Wife, Subject to Charge for Money Paid by Husband. *Hart v. Toronto General Trusts Corporation*, 18 O.W.N. 147, 47 O.L.R. 387.—LOGIE, J.
8. Marriage Settlement—Power of Appointment—Exercise by Will—General Devise and Bequest—Sufficiency—Wills Act, R.S.O. 1914 ch. 120, secs. 30, 31—Discharge of Trustees upon Passing Accounts. *Re Hammond*, 18 O.W.N. 253.—LENNOX, J.
9. Property and Money Transferred to Person to Keep till Return of Transferor from War—Transfers Absolute in Form—Finding and Declaration of Trust—Breach of Trust—Sale of Property to Third Person with Notice—Judgment for Return of Money and Payment of Value of Property. *Bowler v. Redman*, 18 O.W.N. 286.—APP. DIV.

TRUSTS AND TRUSTEES—(Continued.)

10. Purchase of Vessel—Alleged Purchase in Trust for Plaintiff—Evidence—Failure to Prove Trust—Findings of Fact of Trial Judge—Costs. *Torno v. Callaghan*, 18 O.W.N. 96.—ORDE, J.
11. Sale of Land—Satisfaction of Mortgage out of Purchase-money—Balance of Proceeds of Sale—Application by Trustee—Credit for Sums Expended—Small Balance Remaining Due—Limitations Act, R.S.O. 1914 ch. 75, secs. 46, 47—Interest—Action by Administrator of Estate of Cestui que Trust for Account—Costs. *Keefer v. Macdonell*, 18 O.W.N. 429.—KELLY, J.
12. Trustee under Syndicate Agreement—Distribution of Fund in Hands of Trustee—Failure of Syndicate Project—Claims of Members of Syndicate who had not Paid their Shares in Full—Equity Arising from Initial Fraud—Money in Hand Insufficient to Produce Equality—Partnership Rule—Shortages Chargeable against those who had not Paid in Full. *Re Sinclair and Hill*, 18 O.W.N. 19.—MIDDLETON, J.
13. Will—All Property of Testatrix Given to Daughters—Secret Trust in Favour of Son—Whether Enforceable—Evidence—Agreement of Daughters to Convey House to Son—Possession of House Given to Son—Part Performance—Claim for Specific Performance—Agreement Part of Family Settlement not Carried out—Recovery of Possession of House—Improvements Made and Taxes Paid by Son—Deduction from Occupation-rent. *Donovan v. Donovan*, 18 O.W.N. 318.—ROSE, J.
- See Contract, 17—Deed, 8—Mortgage, 1—Principal and Surety, 2—Settlement—Will, 1, 18.

ULTIMATE NEGLIGENCE.

See Negligence, 2.

UNDERTAKING.

See Highway, 3—Solicitor, 4.

UNDERWRITING.

See Contract, 29.

UPPER CANADA COLLEGE.

See Assessment and Taxes, 3.

VAGRANCY.

See Criminal Law, 5.

VEHICLES.

See Negligence.

VENDOR AND PURCHASER.

1. Agreement for Sale of Land—Action for Balance of Purchase-money—Defence—Limitation of Liability of Each of Several Purchasers to Share of Purchase-money Applicable to Share in Purchase—Construction of Agreement—Representation as to Effect—Evidence—Interest post Diem—Rate of Interest upon Interest—Judicature Act, sec. 35. *Jones v. Spencer*, 18 O.W.N. 130.—MIDDLETON, J.
2. Agreement for Sale of Land—Failure of Purchaser to Complete Purchase on Day Named in Agreement—Readiness of Vendor to Complete—Rescission by Vendor—Justification—Dismissal of Action for Specific Performance—Conduct of Vendor—Costs—Assumption of Mortgages by Purchaser—Substitution of Name of Grantee in Draft Conveyance—Covenant. *Neeley v. Reid*, 18 O.W.N. 392.—LENNOX, J.
3. Agreement for Sale of Land—Declaration of Court that Agreement Valid and Subsisting—Subdivision of Land by Purchaser and Sales of Lots—Moneys Received by Vendor in Respect of Proceeds of Sales of Lots in Subdivision—Reference to Ascertain Amount—Vendor-company ordered to be Wound up—Reference for Winding-up—Receiving Order—When Terminated—Accounting by Receiver—Mortgagees—Leave to Proceed upon Mortgage notwithstanding Liquidation—Proceeding by Action to Enforce Mortgage. *Diamond v. Western Realty Limited, Re Western Realty Limited*, 18 O.W.N. 25.—MIDDLETON, J.
4. Agreement for Sale of Land—Deficiency in Quantity of Land—Condition as to Objection to Title—Right of Vendor to Rescind—Right of Purchasers to Specific Performance with Compensation—Amount of Compensation Fixed by Court—Protection of Purchasers against Mortgage. *Pellegrino v. Mulhern*, 18 O.W.N. 32.—ORDE, J.
5. Agreement for Sale of Land—Provision for Reduction of Price on Payment of Full Balance on or before Day Named in Agreement—Offer to Pay after Day Named—Tender—Evidence—Necessity for Strict Compliance with Contract—Waiver—Action for Specific Performance—Counterclaim—Recovery of Instalments of Purchase-money, Interest, and Taxes—Appeal—Reduction of Amount Recovered on Counterclaim. *Diett v. Orechkin*, 18 O.W.N. 109.—APP. DIV.

VENDOR AND PURCHASER—(Continued).

6. Agreement for Sale of Land—Purchase-money Payable in Instalments—Purchaser Taking Possession—Large Payments Made by Purchaser—Inability to Complete Payments—Default—Refusal to Decree Specific Performance—Claim by Purchaser to Recover Payments Made—Claim by Vendor to Retain Payments — Equitable Decree — Accounting — Charges against Purchaser to be Deducted from Sums Paid and Balance to be Refunded to Purchaser—Interest—Costs. *Gowans v. Pillsbury*, 18 O.W.N. 24.—LENNOX, J.
7. Agreement for Sale of Land—Time Made of Essence—Action by Vendor for Specific Performance—Defence—Delay of Vendor—Purchaser not Ready to Close on Day Named in Agreement—Alleged Misrepresentation as to Width of Lots—Claim by Purchaser for Abatement of Price. *Rice v. Knight*, 18 O.W.N. 393.—LENNOX, J.
8. Agreement for Sale of Land—Title—Objection to—Building Restrictions—Severance of Tenement—Erection of Garage on Northerly Half—Right of Access through Southerly Half—Easement—Way. *Re Dunlop and Elliott*, 18 O.W.N. 182.—LENNOX, J.
9. Agreement for Sale of Land—Title—Objection to—Inconclusive Evidence of Title—Application under Vendors and Purchasers Act—Trial of Issue or Renewal of Motion on Additional Evidence. *Re Matthews*, 18 O.W.N. 423.—LENNOX, J.
10. Agreement for Sale of Land—Title—Objection to—Land Vested in Synod of Church—Power of Synod to Convey—Devisee under Will—Validity of Exercise of Power of Appointment—Application under Vendors and Purchasers Act. *Re Great War Veterans Association of Thorold and Synod of the Diocese of Niagara*, 18 O.W.N. 162.—LOGIE, J.
11. Agreement for Sale of Land—Title—Objection to—Previous Agreement for Sale—Registration of Assignment thereof—Application under Vendors and Purchasers Act—Earlier Vendee and Assignee Served with Notice—Rule 602—Earlier Agreement Properly Terminated for Default—Failure to Establish Waiver—Order Barring Claims of First Vendee and Assignee—Costs. *Re Howard and Jacobs*, 18 O.W.N. 222.—MIDDLETON, J.
12. Agreement for Sale of Land—Title—Objection to—Requisitions as to Unregistered Deeds Necessary to Shew Right to Dis-

VENDOR AND PURCHASER—(*Continued*).

charge Mortgage—Evidence—Satisfaction of Requisitions.
Re Craik and Kestle, 18 O.W.N. 398.—KELLY, J.

13. Agreement for Sale of Land—Title—Objection to—Sale and Conveyance of Lots Shewn on Plan of Subdivision—Building Restrictions — Covenants — Release — Sufficiency — Failure to Establish Requisites of Building Scheme. *Re Peters and Waddington*, 18 O.W.N. 115.—KELLY, J.
14. Agreement for Sale of Land—Title—Objection to—Tenant in Possession—Monthly Tenant—Notice to Quit—Assertion of Lease for a Year—Refusal to Quit—Time Made of Essence of Agreement—Application under Vendors and Purchasers Act—Tenant Served with Notice under Rule 602—Disclaimer of Yearly Tenancy by Tenant upon Hearing of Motion—Order Declaring Objection to Title Invalid and Requiring Tenant to Give up Possession—Costs. *Re Abramovitch and Gulofsky*, 18 O.W.N. 140.—ORDE, J.

See Contract, 1, 10, 11, 12—Deed, 6—Fraud and Misrepresentation, 1, 5—Principal and Agent, 2, 3—Sale of Land.

VENDORS AND PURCHASERS ACT.

See Deed, 6—Vendor and Purchaser, 8-14.

VENUE.

See Trial.

VEXATIOUS ACTION.

See Malicious Prosecution.

VOLUNTARY CONVEYANCE.

See Fraudulent Conveyance.

VOLUNTARY PASSENGER.

See Negligence, 4.

WAGES.

See Contract, 16.

WAIVER.

See Contract, 3, 20—Covenant, 2—Criminal Law, 3—Promissory Notes, 2—Sale of Goods, 4, 8—Vendor and Purchaser, 5, 11.

WAR MEASURES ACT.

See Criminal Law, 2.

WAREHOUSEMEN.

See Railway, 2, 4.

WARNING.

See Railway, 7.

WARRANTY.

See Sale of Goods, 4.

WASTE.

See Contract, 19.

WATER.

1. Interference with Natural Flow of Stream into Pond by Municipal System of Drainage—Lowering of Level of Pond—Defilement of Water—Nuisance—Powers of City Corporation—Compensation—Claim for Mandatory Injunction and Damages. *Corrigan v. City of Toronto, Lee v. City of Toronto*, 18 O.W.N. 228.—MIDDLETON, J.
2. Obstruction of Flow of Natural Watercourse by Building of Tunnel—Flooding of Neighbour's land—Cause of—Evidence—Onus—Finding of Trial Judge—Appeal—Future Damage—Reasonable Apprehension. *Elliott v. Hewitson*, 18 O.W.N. 168.—APP. DIV.

See Covenant, 3—Ice—Municipal Corporations, 6—Patent for Land.

WAY.

1. Easement—Interference with Right of Way—Fire-escape Overhanging Lane—Absence of Present Inconvenience—Apprehended Inconvenience in Future—Damages—Injunction. *Devaney v. McNab*, 18 O.W.N. 188.—ROSE, J.
2. Easement—Right of Way over Strip of Land—Unlimited Right Created by Grant—Obstruction of Way by Building—Mandatory Injunction Granted to Compel Removal of Obstruction—Discretion—Costs. *Battle v. Quillinan*, 18 O.W.N. 375.—LATCHFORD, J.
3. Easement—Strip of Land Set apart by Owner of Block for Use of Lots into which Block Subdivided—Effect of Conveyance—Extension of Easement—Appurtenance—Estate of Grantee in Dominant Tenement—Equitable Right—Estoppel. **Adamson v. Bell Telephone Co. of Canada, Bell Telephone Co. of Canada v. Adamson*, 18 O.W.N. 325.—APP. DIV.

See Costs, 3—Covenant, 3—Highway—Vendor and Purchaser, 8.

WILL.

1. Construction—Absolute Gift of whole Estate to Widow—Subsequent Direction to Executors as to Division among Children—Effect—Absolute Gift not Cut down—Remainder—Trust—Right of Widow to Dispose of whole Estate by Will. *Re Brenner*, 18 O.W.N. 406.—SUTHERLAND, J.
2. Construction—Charitable Bequest—Determination of Object of Testator's Bounty—Home for Aged and Infirm Persons of Protestant Faith. *Re McConaghy*, 18 O.W.N. 223.—KELLY, J.
3. Construction—Devise—Life-estate—Estate during Widowhood—Remainder. *Re Venn*, 18 O.W.N. 221.—MIDDLETON, J.
4. Construction—Devise and Bequest of Residue of Estate, "Including my Life Insurances," to Widow—Substitution of Sons in Event of Remarriage of Widow—Absolute Gift to Widow, Subject to be Divested upon Remarriage—Effect of Will as Declaration under Insurance Act, R.S.O. 1914 ch. 183, sec. 171 (5)—Power of Insured to Deprive Widow of Interest in Favour of others of Preferred Class upon Happening of Future Event—Investment of Proceeds of Sale of Real Estate—Wish of Testator—Inoperative Provision—Duties of Executors. *Re Dillon*, 18 O.W.N. 121.—LOGIE, J.
5. Construction—Devise and Bequest to Widow—Absolute Gifts, Liable to be Divested upon Remarriage—Disposition of Residue—"Heirs"—Legatees—Distribution. *Re Boyle*, 18 O.W.N. 87.—KELLY, J.
6. Construction—Devise of Dwelling-house—Bequest to Devisee of all Testator's Furniture and other Articles of Household Use—Articles in House other than one Devised, Included—Motor-boat Used in Connection with other House not Included—Boat not Necessary for Occupation of House Devised—Residuary Clause—Costs. *Re Small*, 18 O.W.N. 184.—MIDDLETON, J.
7. Construction—Devise of Land to Son "and at his Decease to his Surviving Children as he may Devise"—Gift over in Event of Death of Son without Issue—Issue of Son Living—Estate Tail in Son. *Re Smith and Love*, 18 O.W.N. 181.—MIDDLETON, J.
8. Construction—Distribution of Estate among Children and Grandchildren—Several Periods for Distribution Fixed by Will—Grandchildren Surviving their Parents—Vested Estates—Right of Executors of Grandchild—Power of Appointment. *Re Wilson*, 18 O.W.N. 179.—MIDDLETON, J.

WILL—(Continued).

9. Construction—Division of Estate among Children—Provision for Case of Child Dying without Issue—"My other Children"—Ascertainment of Class as at Death of Testator. *Re Smith*, 18 O.W.N. 407.—SUTHERLAND, J.
10. Construction—Effect of Codicils—Harmonising Varying Dispositions Made by Will and Codicils. *Re Attwood*, 18 O.W.N. 377.—KELLY, J.
11. Construction—Inconsistent Clauses—Disposition of Insurance Moneys—Supplying Word to Make Sensible Reading—Intention of Testator. *Re Lennox*, 18 O.W.N. 268.—KELLY, J.
12. Construction—Inconsistent Clauses—Reconciliation—Later Clause Explanatory of Earlier. *Re Storey*, 18 O.W.N. 55.—RIDDELL, J.
13. Construction—Moneys Payable under Mortgage—Husband and Wife—Part Payable to Executors of Wife—Appropriation to Bequest Made in Will of Wife—Evidence as to Intention of Husband—Inadmissibility. *Re Sprowl*, 18 O.W.N. 431.—SUTHERLAND, J.
14. Construction—Power of Appointment as to Corpus of Fund Vested in two Persons—Joint Power not Exercisable by Survivor—Donees of Power Having no Interest in Corpus. **Re Simonton*, 18 O.W.N. 9, 331.—ORDE, J.—APP. DIV.
15. Construction—Provision for Benefit of Creditors of Son of Testator—Assignment by Son for Benefit of Creditors—Provision Limited to Creditors Entitled to be Paid out of Moneys Coming to Hands of Assignee—Application to Claims Barred by Limitations Act—Effect of Act on Claims Filed with Assignee—Debts Incurred by Son after Assignment. *Re Maclaren*, 18 O.W.N. 89.—ORDE, J.
16. Construction—Specific Devise of Land Described by Metes and Bounds—General Residuary Devise—Possession Taken after Date of Will of Parcel Adjoining Land Described—Will Speaking from Immediately before Death—Wills Act, sec. 27—General Words Controlled by Particular Description—Appurtenance—Conveyancing and Law of Property Act—Easement. *Re Rogers*, 17 O.W.N. 441, 47 O.L.R. 82.—MIDDLETON, J.
17. Devise of Land to Widow for Life—Devise of Remainder to such "Person or Persons" as Wife should Appoint—Appoint-

WILL—(Continued).

- ment by Will of Incorporated Synod of Church for Use and Occupation of Rector for Time being of Parish—"Person" Including Corporation—Interpretation Act, sec. 29 (x)—Religious and Charitable Gift not Affected by Rule against Perpetuities—Devise for Advancement of Religion—Mortmain and Charitable Uses Act, sec. 10—Power of Synod to Hold Lands—Devise to Individual—Vested Interest—Lapse—Absolute Gift—Attempted Forfeiture—Ineffectiveness—Remuneration of Executrix Provided for by Will—Renunciation of Co-executors—Increased Allowance—Death of Beneficiaries with Vested Estates in Remainder—Rights of Representatives. *Re McDonagh*, 18 O.W.N. 154.—LOGIE, J.
18. Discretion of Executors—Specific Legacy to Daughter Reducible in Discretion of Executors at Date for Distribution of Estate—Death of Daughter Intestate before Date for Distribution—Failure of Trust—Absolute Gift—Direction for Sale of Estate—Conversion of Realty into Personalty—Conveyance of land by Surviving Executor without Providing for Payment of Legacy—Breach of Trust—Knowledge of Grantee—Constructive Trustee—Action by Personal Representative of Legatee—Limitations Act, R.S.O. 1914 ch. 75, secs. 24, 47—Statutory Period not Commencing until Appointment of Representative—Following Trust-assets—Trustee Act, R.S.O. 1914 ch. 121, sec. 37—Rights of Surviving Husband of Legatee—Accounting by Grantee of Land. *Ankorn v. Stewart*, 18 O.W.N. 204, 47 O.L.R. 478.—APP. DIV.
19. Jurisdiction of Supreme Court of Ontario—Action to Establish Later Will than one Admitted to Probate—Judicature Act, R.S.O. 1897 ch. 51, sec. 38—Preservation by Force of sec. 12 of Judicature Act, R.S.O. 1914 ch. 56. *Giffin v. Simonton*, 17 O.W.N. 419, 47 O.L.R. 49.—MIDDLETON, J.
- See Husband and Wife, 8—Lunatic, 2—Settlement—Trusts and Trustees, 5, 8, 13—Vendor and Purchaser, 10.

WINDING-UP.

See Company, 1, 6-10—Sale of Goods, 8—Vendor and Purchaser, 3.

WITNESSES.

See Appeal, 5—Evidence, 1.

WORDS.

"Abrogation"—See CONTRACT, 26.

"Admitted to Make his Full Answer and Defence"—See ONTARIO TEMPERANCE ACT, 1.

WORDS—(Continued).

- "All Parties Concerned"—See CONTRACT, 6.
 "All Reasonable Speed"—See SALE OF LAND.
 "And at his Decease to his Surviving Children as he may Devise"
 —See WILL, 7.
 "Any Disputes Arising under this Contract"—See ARBITRATION
 AND AWARD.
 "Approximately"—See CONTRACT, 28.
 "Banking Institution"—See CONTRACT, 29.
 "Building"—See LANDLORD AND TENANT, 2.
 "Buildings and Improvements"—See LANDLORD AND TENANT, 5.
 "Business"—See COMPANY, 4.
 "Call"—See COMPANY, 6.
 "Collateral"—See PRINCIPAL AND SURETY, 1.
 "Foreign Bills"—See PROMISSORY NOTES, 2.
 "Healing"—See COVENANT, 2.
 "Heirs"—See WILL, 5.
 "Including my Life Insurances"—See WILL, 4.
 "Income"—See ASSESSMENT AND TAXES, 2.
 "Initiative Plan"—See ASSESSMENT AND TAXES, 4.
 "Just and Convenient"—See DISCOVERY, 1.
 "Lasting Improvements"—See IMPROVEMENTS.
 "Marshalling"—See MORTGAGE, 6.
 "Matter Pertaining to or Affecting the Interests of the Corpo-
 ration"—See MUNICIPAL CORPORATIONS, 1.
 "Mine or Mineral Work"—See ASSESSMENT AND TAXES, 2.
 "Mutual Debts"—See CONTRACT, 17.
 "My other Children"—See WILL, 9.
 "Objectionable Matter"—See CRIMINAL LAW, 2.
 "On Consignment"—See SALE OF GOODS, 8.
 "Or thereabouts"—See CONTRACT, 17.
 "Payments of Money"—See ASSIGNMENTS AND PREFERENCES.
 "Person"—See ASSESSMENT AND TAXES, 1.
 "Person or Persons"—See WILL, 18.
 "Personal Baggage"—See RAILWAY, 5.
 "Persons Entitled"—See CONTRACT, 17.
 "Persons in Control"—See NEGLIGENCE, 1.
 "Physician"—See COVENANT, 2.
 "Preliminary Proceedings"—See COSTS, 2.
 "Pretends"—See CRIMINAL LAW, 4.
 "Prohibited Literature"—See CRIMINAL LAW, 2.
 "Proper Place"—See PROMISSORY NOTES, 2.
 "Property"—See ASSESSMENT AND TAXES, 1.
 "Reasonable Excuse"—See HIGHWAY, 5.
 "Ship"—See SHIP.

WORDS—(Continued).

- “Skill and Knowledge in an Occult Craft or Science” — See
CRIMINAL LAW, 4.
- “Subscribe for”—See CONTRACT, 29.
- “Suspension”—See CONTRACT, 26.
- “Taking”—See RAILWAY, 6.
- “Terms”—See SALE OF GOODS, 9.
- “Those in Charge”—See NEGLIGENCE, 1.
- “Urgency”—See PRACTICE, 2.
- “Usual Contingency Clause”—See SALE OF GOODS, 6.
- “Whole of the Purchaser’s Requirements”—See CONTRACT, 28.

WORK AND LABOUR.

See Contract, 24.

WORKMEN’S COMPENSATION ACT.

See Negligence, 6.

WRIT OF SUMMONS.

See Judgment, 4—Practice, 1.

WRONGFUL DISMISSAL.

See Master and Servant.