

Canada Law Journal.

VOL. XXXVII.

DECEMBER 1, 1901.

NO. 22.

Further changes have taken place in the English bench. Lord Justice Rigby has retired from the Court of Appeal and is replaced by Sir H. H. Cozens-Hardy, one of the judges of the Chancery Division. The retirement of Lord Justice Rigby will, it is said, be much regretted, although his successor is an able lawyer, a rapid worker, and with a courtesy and geniality which has much commended him to the bar. Sir Swinfen Eady, K.C., has been appointed to the vacancy caused by the promotion of Mr Justice Cozens-Hardy. This appointment is also spoken of as an excellent one.

An Irish judge recently commented on the ridiculous method at present adopted for ascertaining children's knowledge of the nature of an oath. He termed it "a ghastly farce," asking a child whether he knew what would happen to him if he told a lie, and accepting as satisfactory the invariable reply, "I would go to hell." There is truth in what the learned judge said, but all such criticism is useless unless accompanied by a suggestion of some better way. The time at trials is generally too precious to admit of a more extended theological examination of the witness. The "invariable reply" is no doubt largely due to the fact of previous coaching on the subject, and may or may not be the child's real opinion or belief or indication as to whether he or she has any opinion or belief on the subject.

STATUTE MAKING.

The time for making and amending statutes is at hand. Our attention has been called to the matter by some observations which appear in a recent number of *The Law Times* (England). We are not aware whether the Archbishop of Canterbury has any special knowledge of the subject, but when recently presenting prizes to the pupils of the Royal Grammar School, at Sheffield, he said: "What a gain it would be if our legislatures knew grammar enough to make laws perfectly intelligible. As it was, legislators made

laws, and then we employed a highly trained body of men—and highly paid too—to say what these laws meant.” There is unfortunately too much truth in the above. His Lordship, however, apparently did not know where the difficulty lay.

Sir Henry Fowler, President of the Incorporated Law Society, after his opening address at Oxford last month, referring to the same subject, explained it in the following remarks: “It has been for many years my privilege to take a share in legislation, and while as a member of Parliament I resent (and that is not too strong a word to use) the sneers with which some judges (both of superior and inferior Courts) criticise the drafting of Acts of Parliament, I am ready to admit that our present system is capable of improvement. Bills drawn by the eminent lawyers who are the permanent, impartial and able servants of the Government for the time being are often marred and muddled by badly drawn amendments adopted in a hurry by the committee to whom such bills are referred.” The result of all this is of course confusion, inconsistencies and difficulties of construction, and the “highly trained body of men” above referred to have to be called in to try and find out what the legislature meant.

Some curious illustrations of the result of these ill-considered alterations are given by our cotemporary, which we may here reproduce: “A good instance was cited by Lord Stanhope, of the House of Lords, in 1816. A statute enacted the punishment of fourteen years’ transportation for a particular offence, and upon conviction *‘one half thereof* should go to the King and one half to the informer.’ Mr. Sergeant Robinson in his Reminiscences of Bench and Bar alludes to the celebrated instance of the statute for the rebuilding of the Chelmsford Gaol. An early clause prescribed that prisoners should be confined in the old gaol until the new one was built, but at the last moment a section was added to the effect that the new prison should be constructed out of materials of the old one, and the bill passed for the time without the detection of the glaring inconsistency.”

In the address above referred to, Sir Henry Fowler makes a suggestion which is worthy of the consideration of the legislatures in this Dominion: “Bills in Parliament, after they have passed the gauntlet of Parliamentary discussion, should be referred back to the official Parliamentary counsel for their report as to the wording of such bills after they have passed through committee, so that an

opportunity should be afforded of amending any error of language and any confusion of meaning."

That something should be done to remedy the evil is manifest, and there does not seem to be any way to do it other than in some such way as above suggested. In the Dominion Houses bills should be referred to the Law Clerks after they have passed through the special committee to which they were referred. It is exceedingly strange that at this the most important stage of a bill the officer who is supposed to see that it is in proper shape has no power to correct even an obvious error or prevent an absurdity. After the bill has passed the committee of the whole House it should then be again referred to the law clerk for a final revision before its third reading.

Time should certainly be taken to have bills revised *before* they are finally disposed of by the House, instead of rushing them through their last stages as is usually done. Where there are two Houses there is fortunately an opportunity for the Law Clerks (to whom each bill is sent for its passage for the purpose of being put in shape for the transmission to the other House) to call attention to errors which may be corrected in such other House. But even then, when the rush takes place, little can be done in the way of revision. The difficulty is, of course, much greater when there is only one House. With so many lawyers in our legislatures surely some one could be found who would draw attention to the evil and urge a remedy.

VENUE.

So many points in the practice respecting venue have been decided of late, that a review of the cases may be useful.

Several decisions shed considerable light on the following opening clauses of the Consolidated Rule of the High Court of Justice of Ontario regulating this subject:

" 529. (1) Subject to any special statutory provisions the place of trial of an action shall be regulated as follows:

(a) The plaintiff shall, in his statement of claim, name the county town at which he proposes that the action shall be tried.

(b) Where the cause of action arose, and the parties reside in the same county, the place so to be named shall be the county town of that county."

The specially endorsed writ of summons in *Segsworth v. McKinnon*, 19 P.R. 178, shewed the venue to be laid at Toronto, while the plaintiff in his statement of claim assumed to name Stratford as the place of trial. On behalf of the defendant a motion was made to strike out that part of the statement of claim which named Stratford as the place of trial, on the ground that where the plaintiff in a specially indorsed writ of summons lays the venue he is not at liberty to change by naming another place in his statement of claim. The Master in Chambers held that it was improper to so change, without first obtaining an order, in the event of the writ of summons not having been served, or upon notice to defendant in the case where the writ had been served. The venue was directed to remain at Toronto, as originally laid in the writ of summons.

In dismissing an appeal from the Master's order, Meredith, C.J., held that laying the venue in a specially indorsed writ of summons was an election binding on the plaintiff, and that clause (a), above quoted, must be read with Con. R. 138, sub-s. 2, which requires the indorsement to contain a statement as to the place of trial, and must be read subject to that provision. In the course of his judgment, Meredith, C.J., noted that where in a special indorsement the defendant intimates that he does not require a statement of claim to be delivered, it was clear that the place of trial must be that named in the indorsement on the writ of summons. It seemed to him to be a necessary result that the election thus made was a conclusive election for the purpose of the action.

The above noted peculiarity in special indorsement cases serves to distinguish them from others. Subsequently, on its being contended in the libel action of *Blackwood v. Gourlay*, (a) that the plaintiff had made a binding election when he laid the venue in a writ of summons not required to be specially indorsed, Moss, J.A., pointed out that in such a case the defendant was not prejudiced, for the plaintiff could not get on without a statement of claim, even though the defendant had dispensed with one. In that action a motion was made on the defendant's behalf to set aside the statement of claim as irregular, on the ground that the plaintiff had therein assumed to change the place of trial from the place named in the writ of summons, or for an order requiring the

(a) Judgment dated October 2nd, 1901, (unreported).

plaintiff to amend the statement of claim by naming the place stated in the indorsement on the writ. It appeared on the argument that there had recently sprung up a practice of making an addition to the forms for writs of summons not specially indorsed contained in sec. 1 of Part I. of the Appendix to the Consolidated Rules of Practice, by adding at the foot of the forms the words "Place of trial"

As already stated, it was urged for the defendants that the plaintiff by filling in the blank space with the word "Brampton" had made a binding election; and *Segsworth v. McKinnon* was cited in support of that argument. The application was dismissed by the Master in Chambers, he being of opinion that *Segsworth v. McKinnon* applied only to special endorsement cases. Moss, J.A., took the same view, holding that a plaintiff was under no obligation to state a place of trial as part of the indorsement on a writ of summons not required to be specially indorsed. The fact that the plaintiff complied with the unauthorized recent practice of adding to the appendix form, could not operate as an election, binding him to state no other place of trial in his statement of claim. *Segsworth v. McKinnon*, did not appear to Moss, J.A., to govern the practice in any but special indorsement cases under Con. R. 138, s. 2 of Part II. of the forms in the Appendix for the reason that in all other cases the plaintiff's power under Con. R. 529, of selecting and naming in the statement of claim the place of trial is not in any manner controlled by Con. R. 138.

Another new point in the interpretation of the above quoted clauses of Con. R. 529 was brought out in *Edsall v. Wray*, 19 P.R. 245. Being an action for slander, no venue was laid until the city of London appeared in the statement of claim as the place of trial. An application was made on behalf of the defendant to change the venue to Stratford, on the grounds: (1.) That the cause of action (if any) arose there. (2.) That both plaintiff and defendant resided in Stratford on the day of the issue of the writ of summons. (3.) And since such was the date to be considered for fixing the rights of the parties to the action, it was therefore the time referred to in the foregoing clause *i. b.* of Con. R. 529.

In answer, the plaintiff swore that he had been previous to the delivery of the statement of claim a resident of London, having been only temporarily employed in Stratford, his wife and family's home being in London. The Master in Chambers held

that the residence of the plaintiff at the time of the delivery of the statement of claim, and not at the time of the issue of the writ of summons, is the time referred to in Rule 529 *l.b.* Rose, J., after a conference with the Chief Justice of the Common Pleas, dismissed with costs an appeal from the Master's order.

Among the most important of recent decisions on practice are those settling the former uncertain procedure in respect of applications for change of venue. So "extremely unsatisfactory" had the practice become,—one view at one time seeming to prevail, and another at another time,—that Boyd, C., deemed it best (*b*) not to change the venue at all, and to leave it to the trial judge to apportion the costs so as to do justice, if it appeared to him that the expense had been increased by the plaintiff's choice of a place of trial. MacMahon, J., subsequently adopted the same course (*c*).

The conflict of authority seems to have resulted mainly from the different views of our High Court judges as to the weight to be given under the Judicature Act system, to the place where the cause of action arose in determining which is the most convenient place for the trial of an action. On its being urged in *Greey v. Siddall*, 12 P.R. 557, that the Judicature Act gave the plaintiff the right to lay the venue where he saw fit, and that the plaintiff's choice would not be lightly interfered with Armour, C.J., expressed the opinion that the Judicature Act was never intended to give the plaintiff a paramount right to have the cause of action tried where he pleased, but that an action should be tried in the county where the cause of action arose. Falconbridge, J., did not concur. The place where the cause of action arose was prominently considered in connection with the question of changing the venue in *Mulligan v. Sills*, 13 P.R. 350, and other cases.

In the course of his judgment dismissing an appeal from the order of the Master in Chambers changing the place of trial in *Croil v. Russell*, 14 P.R. 185, Street, J., said: "The cause of action arose in the County of Renfrew, the breaches alleged by both parties took place there, if at all. It may be doubted whether it will be necessary to call upon either side all the

(b) *McArthur v. Michigan C. R.W. Co.*, 15 P.R., 77.

(c) *McAllister v. Cole*, 16 P.R., 105.

witnesses who are stated at the present stage to be material, but, after making all reasonable allowances, I think the balance of convenience is in favour of the trial at Pembroke rather than at Cornwall; and were the scales even more evenly balanced than they are, I think the fact that the cause of action arose in Renfrew, should decide the question in favour of Pembroke, the county town of that county."

A little later came the case of *Peer v. North-West Transportation Co.*, 14 P.R. 381. The defendants moved before the Master in Chambers to change the venue from Toronto to Sarnia, alleging that the cause of action arose at Sarnia, and that the defendants would require at the trial ten witnesses, seven of whom resided in Sarnia or near there, one at Thorald, one in Winnipeg, and one in Detroit, and that the defendants would save themselves \$103.50 in expenses of witnesses by having the action tried at Sarnia. In answer, the plaintiffs swore that they would require to call as witnesses ten persons residing in Toronto, one at Oakville, one at Terra Cotta, Ontario, one at Montreal, and one at Valleyfield, Quebec. The plaintiffs also objected to Sarnia, on the ground that they could not get a fair trial there. The Master's order changing the venue to Sarnia was successively affirmed by Galt, C.J., and the Queen's Bench Divisional Court. The plaintiffs then moved before the Court of Appeal for leave to appeal. In delivering the judgment of the Court of Appeal, Osler, J.A., did not lay much stress on the fact of where the cause of action arose. The only one of the several authorities followed which says anything about that matter is *Brident v. Duncan*, 7 Times L.R. 515. There, the venue was changed at the defendant's instance, on its being shewn that the cause of action arose in a different county and that very great extra expense would be incurred by having the trial take place in the venue laid by the plaintiff.

Mr. Justice Osler did not think that he should have made the order to change the venue had he heard the application in the first instance; and doubtful if he should have been satisfied that there was that overwhelming preponderance of convenience in favour of a change which the English Court of Appeal insisted upon in *Shroder v. Myers*, 34 W.R. 261; *Power v. Moore*, 5 Times L.R. 586, and *Brident v. Duncan*, 7 Times L.R. 515, as being necessary to be proved by the party seeking to change the venue. Still

there must be a wide discretion in dealing with such cases upon the facts. The leave to appeal was refused.

Subsequently the defendant in *Berlin Piano Co. v. Truaisch*, 15 P.R. 68, moved to change the venue from Berlin to Belleville, shewing that the saving of expense to him, if the case were tried at Belleville, would be about \$40, and that there were two or three more witnesses at Belleville than at Berlin, and that the cause of action arose at Berlin. In the course of his judgment the Master in Chambers said, "The cause of action arose in Belleville, and the preponderance of convenience is in favour of Belleville. It is true that the preponderance is not very great; but it is, I consider, sufficient, taking it in connection with the fact of the place where the cause of action arose."

Rose, J., on appeal, dissented strongly from the above remarks of the Master; and held that in none of the above-named cases did the decision turn on the question of where the cause of action arose. His Lordship considered that every argument in support of the order was answered by the cases cited in *Walton v. Wideman*, 10 P.R. 228; *Ross v. C.P. Ry. Co.*, 12 P.R. 220; and *Peer v. North-West Transportation Co.*, 14 P.R. 281; and that in no case are those decisions dissented from.

In *Chadwick v. Brown* (*dd*) the defendant moved to change the venue from Toronto to London, upon the grounds that the cause of action arose in London, and that there was a great preponderance of convenience in favor of the trial at London. The question at issue in the action was as to whether or not the plaintiff was entitled to fifty shares of stock in The Garcia Gold Co., of London, Ontario. The material shewed that the head office of the company was in London, and that the books were there. It was alleged that the books of the company, particularly the stock book, would be required on the trial, and that it would be necessary to call as witnesses on the defendant's behalf the President and Directors of the company, residing in London, and very probably some of the shareholders, all or nearly all of whom also resided in or near London. The plaintiff replied that he had laid the venue where he resided, and that the place of trial should not be changed unless serious injury to the defendant would be caused by a trial at Toronto, or it could be shewn that there was an "overwhelming" preponderance of convenience in favour of a trial at London. The

(*dd*) April 1898, Master in Chambers, (unreported).

plaintiff contended that the additional expense of a trial at Toronto was not enough to justify the expense of a motion to change the venue, the return fare from London to Toronto being then only \$1.75. It was objected that the defendant, who resided in Arizona, did not make an affidavit on the motion, and it was submitted that the cross-examination of the defendant's agent revealed that the witnesses mentioned in the agent's affidavit, other than the President of the company, were not necessary or material witnesses for the defence.

The Master refused to change the venue, but his order was set aside by Armour, C.J., on appeal (*d*). The Chancery Divisional Court dismissed an appeal from the judgment of Armour, C.J., holding (*e*) that the place where the cause of action arose should be the place of trial of an action where there was little or no difference between the number of witnesses to be called by the parties. Thus, the view expressed by the Master in Chambers in *Berlin Piano Co. v. Truatsch*, above quoted, was sustained.

Meredith, C.J., stated in *Standard Pipe Co. v. Town of Fort William*, 16 P.R. 404, that he believed with Armour, C.J., it would be a better practice to require that prima facie an action should be tried at the place where the cause of action arose, leaving the onus upon the plaintiff to shew a preponderance in favour of the place selected by him; but considered that he was not at liberty to give effect to his belief, seeing that there were so many authorities both in this Province and England in favour of the view that the Judicature Act has given to the plaintiff the right of selecting the place of the trial, and that the onus is upon the defendant to shew that the preponderance of convenience is against the place so selected.

MacMahon, J., also formerly entertained the same view as Armour, C.J., but in his judgment in *Campbell v. Doherty*, 18 P.R. 243, said that the practice was as stated in *Peer v. North-West Transportation Co.*; *Berlin Piano Co. v. Truatsch*; *Standard Drain Pipe Co. v. Fort William*, and *Madigan v. Ferland*, 17 P.R. 124.

On the appeal from the Master-in-Chambers' order dismissing

(*d*) Judgment dated 23th April, 1898 (unreported).

(*e*) Judgment dated 3rd May, 1898 (unreported).

the application for change of venue in *Ludlow v. The Board of Hospital Trustees of the City of London* (ee), counsel for the appellant urged as a reason for changing the place of the trial to London the fact that the cause of action arose there. Armour, C.J., however, stated that the practice as defined by the decisions above referred to, was too well established for him to interfere; and dismissed the appeal with costs to the respondent in any event.

So much for the practice in High Court actions. Notwithstanding present Con. R. 1219 (similar for our purposes to former Con. R. 1260) providing that the place of trial in all actions brought in a County Court may be changed according to the practice in force in the High Court, a uniform practice was long followed in dealing with the question of venue in County Court cases of attaching special importance to the question of the place where the cause of action arose on the ground that the policy of the law in County Court matters was to make each county bear its own part in the expense of administering justice. Mr. Cartwright, sitting for the Master-in-Chambers, noted in his judgment in *Noble v. Stoutenberg* (f) that in the County Court cases of *Mulligan v. Sills*, 13 P.R. 350, and *McAllister v. Cole*, 16 P.R. 105, the venue was according to the place where the cause of action arose, and deduced therefrom the principle that the venue in County Court actions should be laid in the county where the cause of action arose. The same principle was followed in the subsequent action of *Cunningham v. Bell Organ and Piano Co.* (g). But in allowing an appeal from the order of the Master-in-Chambers, changing the place of trial in the later County Court case of *Hicks v. Mills*, Street, J., held (h) that the same practice should be applied on motions for change of venue in both High Court and County Court actions. Street, J.'s order was subsequently affirmed by the Chancery Divisional Court (i).

It is submitted that in determining the place which is most convenient for the trial of either a High Court or a County Court

(ee) Jan. 7th, 1899, (unreported).

(f) Judgment dated 17th Sept., 1895 (unreported).

(g) Judgment dated Sept., 1895 (unreported).

(h) Judgment dated 4th March, 1898 (unreported).

(i) Judgment dated 12th May, 1898 (unreported).

action slight preference will now be given to the place where the cause of action arose, except in such cases as *Chadwick v. Brozen*, ubi sup. The question of convenience will be determined by a consideration of the expense, and the witnesses' facilities for travelling.

As was said by Osler, J.A., in the late and leading case of *Campbell v. Doherty*, 18 P.R. 243, "it is quite clear that the plaintiff has the right to name the place of trial, and his choice will not be interfered with except upon substantial grounds."

Toronto.

ALEXANDER MACGREGOR.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

(Registered in accordance with the Copyright Act.)

WILL—LIMITATION OF ESTATE—"HEIRS" AND "ASSIGNS" OF SURVIVOR.

Milman v. Lane (1901) 2 K.B. 745, is a case which may well be cited by the advocates of the Torrens system of registration of title, as illustrating the hardship which purchasers under the common law system are subject to. In this case a testator, seized in fee of land, devised it to the use of his nephew for the term of 99 years, if he should so long live, and from and after the determination of such term and estate to the use (in succession) of the nephew's four sons, for a term of 99 years each, if they should so long live, with an ultimate devise on the death of the survivor of the sons upon trust to, and for the use of, the heirs and assigns of the survivor of the four sons. The surviving son, assuming that he had power to convey the fee, in his lifetime purported to convey it to a purchaser for value; on the death of the surviving son without issue, however, his heirs claimed to be entitled to the land under the will, and brought the present action to recover possession against the purchaser. Lawrance, J., who tried the action, gave judgment for the plaintiff, and the Court of Appeal affirmed his decision. Romer, L.J., delivered the judgment of the Court, but who the other members of the Court were, strange to

say, is not stated (probably Smith, M.R., and Williams, L.J.). It was argued in the Court of Appeal that the word "assigns" imported a power of appointment in favour of the surviving son, but the Court of Appeal refused to accede to that contention, and held that the limitation in favour of the heirs and assigns of the survivor, must be construed as a limitation to the heirs of the survivor, and the assigns of such heirs. Under the Torrens system of registration, the will would have been authoritatively considered before the purchaser had paid his money. The beauty of the common law system is that it leaves the purchaser to take his chances, and, after perhaps living for years in a fool's paradise, he is suddenly waked up to find that he has purchased a shadow.

EXPROPRIATION OF LAND—NOTICE TO TREAT—ACQUISITION OF INTEREST IN OTHER LAND INJURIOUSLY AFFECTED—COMPENSATION.

In *Mercer v. Liverpool, St. Helen's, and S. L. R.W. Co.* (1901) 2 K.B. 753, it was held by Lord Alverstone, C.J., that although it is well settled that after a notice to treat has been served with the view to the expropriation of land under the Land Clauses Act, interests subsequently created in such land are not the subject of compensation, yet that rule does not preclude a person subsequently acquiring an interest in lands adjoining those which are the subject of the notice to treat, and which are injuriously affected, from recovering compensation in respect of the injury to such adjoining lands.

ADMINISTRATION—TRANSFER OF LAND BY EXECUTOR TO DEVISEE—PURCHASER FROM DEVISEE—DEBTS OF TESTATOR—LIABILITY OF PERSONAL REPRESENTATIVE FOR UNKNOWN DEBTS—LAND TRANSFER ACT, 1897 (60 & 61 VICT., c. 65), s. 2, s.-ss. 2-3; s. 3, s.-s. 1—(R.S.O. c. 127, s. 4)—LAW OF PROPERTY AMENDMENT ACT, 1859 (22 & 23 VICT., c. 35), s. 29—(R.S.O. c. 129, s. 38).

In re Cary and Lott (1901) 2 Ch. 463, is an important decision under the English Land Transfer Act, 1897, which introduced similar provisions to those contained in the Ontario Devolution of Estates Act (R.S.O. c. 127, s. 4). A testator had died in 1898, having by his will devised the land in question upon certain trusts. His executors duly advertised for creditors under the provisions of the Law of Property Amendment Act, 1859, s. 29 (see R.S.O. c. 129, s. 38), and paid all debts of which they had notice, and, after the lapse of a year from the testator's death, conveyed the land in question to the devisees in trust named in the will. The executors

in their deed provided that the property was granted "subject to a charge for the payment of any money which the personal representatives of the testator are liable to pay." The devisees having sold the property, the purchaser claimed that he was entitled to an indemnity from the vendors against the above mentioned charge, and the question was accordingly submitted to Kekewich, J., under the Vendors and Purchasers Act, and he held that the purchaser was not entitled to any indemnity, on the ground that a purchaser from the devisees for value, and without notice of debts, would take the land free from any liability for the debts of the testator.

FRIENDLY SOCIETY—POLICY OF FRIENDLY SOCIETY NOT ASSIGNABLE OTHERWISE THAN BY WAY OF NOMINATION.

In re Redman, Warton v. Redman (1901) 2 Ch. 471, the right to a policy issued by a friendly society was in question. It was claimed on the one hand by a person with whom it had been deposited by the insured, as security for a loan, and on the other by the executrix of the insured. No nomination had been made by the insured in favour of the alleged assignee, and Kekewich, J., held, following *Caddick v. Highton*, reported in a note to this case, that the alleged assignment was inoperative, and that the executrix was entitled to the fund: see R.S.O. c. 20, s. 151 (3), 1 Ed. 7, c. 21, s. 2 (5).

CORPORATION SOLE—RECTOR—POWER TO HOLD PERSONALTY—MORTMAIN—IRREGULAR INVESTMENT OF FUND BELONGING TO CHURCH IN LAND—13 ELIZ., c. 10, s. 3—NOTICE—TRUST.

Power v. Banks (1901) 2 Ch. 487, may be briefly noticed. The facts were as follows: A sum of money invested in stock was by Act of Parliament appropriated for the maintenance of the rector of a church. The stock was subsequently redeemed, and the redemption money paid to the rector of the church for the time being. He, without the concurrence of his bishop, and without obtaining any license to hold in mortmain, invested the money in the purchase of ground rents. He resigned, and transferred the property to his successor, one Hare, his heirs and assigns. Hare subsequently, with his grantor's concurrence, sold the land, and received the purchase money, which he misappropriated; his successor, the present plaintiff, claimed to be still entitled to the land so sold, notwithstanding the sale. Cozens-Hardy, J., however, held that he was not entitled to succeed, on the ground that

the investment of the money in the ground rents was, under the circumstances, unauthorized, and a technical breach of trust, and that there was consequently a right to re-sell the land for the purpose of replacing the fund, and that as the purchaser had purchased even with notice of the trust character of the property, he was nevertheless protected, as the purchase money reached the hand of the person entitled to receive it, and he was not accountable for his subsequent misapplication of it.

WATERCOURSE—ARTIFICIAL CHANNEL—TEMPORARY PURPOSE.

In *Burrows v. Lang* (1901) 2 Ch. 502, the plaintiff claimed to restrain the defendant from interfering with his enjoyment of a watercourse in which he claimed an easement. The facts were that the owner of two adjoining properties, on one of which was a mill, and on the other a farm, had diverted a stream so as to form a pond on, and for the purposes of, the mill property, and the cattle on the farm were usually watered at this pond. He sold the farm property to the plaintiff in 1886, without any reference to any right in the pond, and the mill property to the defendant in 1893, without any exception or reservation. The defendant put a fence fencing off the pond, which was altogether on his land, so as to prevent the access of the plaintiff's cattle thereto, and had cut off the water at the intake. The plaintiff claimed that under his conveyance all watercourses passed, including the easement of user of the pond in question, but Farwell, J., held that the diverting of the stream was for a "temporary" purpose only, viz., the user of the mill, and that under the plaintiff's deed no right had been conveyed in the mill pond, or any easement therein, and consequently the action failed.

COMPANY—NAME OF COMPANY—FRAUD—TRADE NAME—FOREIGN FIRM—INJUNCTION.

La Societe Anonyme, etc., v. Panhard L. M. Co. (1901) 2 Ch. 513, was an action by a foreign firm, which had no agency in England, but whose goods were in fact frequently imported into England, to restrain the defendant company from using as its trade name a fraudulent imitation of the name of the plaintiff company. Farwell, J., held that the fraudulent purpose of the defendants was established, and that the plaintiffs were entitled to an injunction both as against the defendant company, and the defendants who had signed the memorandum of association, and who were restrained from allowing the defendant company to remain registered under the name in question.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

EXCHEQUER COURT OF CANADA.

Burbidge, J.] McDONALD v. THE KING. [Nov. 2.

Government railway—Accident to the person—Negligence of Crown's servants—Action by parent of deceased—Pecuniary benefit—Damages.

Petition of right in the case of death resulting from negligence, and an action taken by the party entitled to bring the same under the provisions of Revised Statutes of Nova Scotia, 1900, c. 178, s. 5, the damages should be calculated in reference to a reasonable expectation of pecuniary benefit, as of right or otherwise, from the continuance of the life.

Such party is not to be compensated for any pain or suffering arising from the loss of the deceased; or for the expenses of medical treatment of the deceased or for his burial expenses, or for family mourning.

Osborn v. Gillett, L.R. 8 Ex. 88, distinguished.

McInnis, for suppliant. *Mellish*, for respondent.

Province of Ontario.

COURT OF APPEAL.

From Rose, J.] [Nov. 11.
AGRICULTURAL SAVINGS AND LOAN CO. v. LIVERPOOL AND LONDON AND
GLOBE INS. CO.

Fire insurance—Renewal—Prior insurance—Action—Parties—Mortgage.

The renewal, as it is commonly called, of a contract of insurance is not a renewal or extension of the original contract, but a new contract based as far as applicable upon the original application and in accordance with the policy issued in pursuance thereof. Where, therefore, at the time of such a new contract by way of renewal no prior insurance is in force, the insurance is not avoided although when the original contract was entered into a prior insurance was in force, and this fact was not disclosed.

Judgment of ROSE, J., 32 O.R. 369; ante p. 11, reversed.

Mortgagees to whom loss is made payable "as their interest may appear" have a right of action upon the policy in their own name against the insurers, and are entitled to enforce payment to the extent of their interest.

Aylesworth, K.C., and *Bayly*, K.C., for appellants. *A. Hoskin*, K.C., and *A. E. Hoskin*, for respondents.

From Street, J.] BANQUE PROVINCIALE v. ARNOLDI.

[Nov. 11.]

Bills and notes—Alteration—Joint and several liability—Principal and surety—Judgment.

The insertion by the holder of a promissory note signed by several persons, some of whom are sureties for the others, of the words "jointly and severally" before the words "promise to pay" is a material alteration which avoids the note, and the subsequent cancellation of the words by the holder does not do away with the effect of the alteration, even though the makers of the note do not know of the alteration until after the cancellation.

A promissory note given to the holder after the alteration and cancellation in renewal of the original promissory note and in ignorance thereof, cannot be enforced, there being no consideration to support it.

Accepting in renewal of a promissory note, some of the makers of which are to the knowledge of the holder sureties, of a promissory note not signed by one surety discharges the co-sureties.

A judgment recovered against debtors in their firm name for the amount of the debt is not a bar to the recovery of judgment against them individually upon a promissory note, given by them as collateral security for the same debt.

Judgment of STREET, J., varied.

J. F. Orde, for appellants Kirby, et al. *R. G. Code*, for the appellants Arnoldi, et al. *Aylesworth*, K.C., and *W. H. Barry*, for respondents.

From Ferguson, J.]

[Nov. 15.]

MCHUGH v. GRAND TRUNK R. W. Co.

Executors and administrators—Fatal Accidents Act—Death of beneficiary—Survival of action.

Upon the death of the beneficiary on whose behalf an administrator is bringing an action under the Fatal Accidents Act, R.S.O. 1897, c. 166, the action comes to an end. It cannot be continued for the benefit of the beneficiary's estate, nor can a new action be brought by the beneficiary's personal representative. Judgment of FERGUSON, J., 32 O.R. 234; 36 C.L.J. 711 reversed.

W. M. Douglas, K.C., and *D. L. McCarthy*, for appellants. *Mabee*, K.C., and *Middleton*, for respondent.

HIGH COURT OF JUSTICE.

Street, J.] MILLER v. SARNIA GAS AND ELECTRIC Co. [Oct. 12.]

Parties—Third party procedure—Relief over—Identity of claims.

The owner and occupant of a house in a town sued a gas company for damages alleged to have been sustained by reason of an escape of gas from the defendants' pipes upon the highway into the plaintiff's premises. The defendants served a third party notice upon the town corporation, alleging that the break in the pipes was caused by the negligence of the corporation in the course of construction of a sewer in the same highway.

Held, that there was no right to indemnity or relief over, within the meaning of Rule 209, as the damages which might be recovered by the plaintiff against the defendants were not the measure of the damages which might be recovered by the defendants against the third parties.

Gamble, for plaintiff. *J. H. Moss*, for defendants. *Middleton*, for third parties.

Street, J.] FARMER v. ELLIS. [Nov. 1.]

Summary judgment—Promissory note—Holder for value—Fraud—Onus.

Where the maker and one of the endorsers of the promissory note sued on, in answer to a motion by the plaintiff for summary judgment under Rule 603, swore that they were induced to become parties to the note by certain fraudulent misrepresentations made by their co-defendants, whereof they had reason to believe the plaintiff had notice.

Held, having regard to s. 30, sub-s. 2, of the Bills of Exchange Act, that they were entitled to unconditional leave to defend, notwithstanding the plaintiff's affidavit that he was a holder for value. *Fuller v. Alexander*, 47 L.T.N.S. 443, followed.

Middleton, for plaintiff. *O'Heir*, for defendant Ellis. *J. W. Nesbitt*, K.C., for defendant Smith.

Street, J., Britton, J.] REX v. KEEFER. [Nov. 4.]

Criminal Law—Trial—County Judge's Criminal Court—Election of prisoner to be tried without jury—Motion for leave to withdraw—Mandamus.

An appeal by the defendants from an order of ROBERTSON, J., in Chambers, refusing an order in the nature of a mandamus directing the County Judge of Wentworth to hear the application of the defendant, who, on being brought before the County Judge's Criminal Court charged with stealing, elected to be tried summarily by the Judge, to be allowed to withdraw their election.

Sections 762 and 781 of the Criminal Code and 63 & 64 Vict., c. 46, s. 3, amending s. 767; *Regina v. Ballard*, 28 O.R. 489; *Regina v.*

Provost, 4 B.C.L.R. 326; *Regina v. Burke*, 24 O.R. 64, and Shortt on Information and Mandamus, pp. 262, 301, 310, were referred to.

Held, that the provisions in ss. 762 et seq. are explicit, and without any provision as to applications to withdraw an election to be tried before a Judge, and that such having been once made could not be withdrawn. It is a matter for legislative enactment, as in the amendment to s. 767 with regard to elections to be tried by jury. Appeal dismissed without costs.

J. V. Teetzel, K.C., for defendants. *J. R. Cartwright*, K.C., for Crown.

Street, J., Britton, J.]

REX v. ALLAN.

[Nov. 4.

Municipal corporations — By-law — Transient traders — Conviction — Negating exception — Evidence before magistrate — Certiorari.

An appeal by the defendant from an order of MEREDITH, C.J., in Chambers, refusing a writ of certiorari to remove a conviction of the defendant under by-law 267 of the town of Mitchell, respecting transient traders. The by-law was in the terms of R.S.O. c. 224, s. 31. The defendant was convicted because he, not being entered on the assessment roll, offered goods for sale without having paid a license fee.

Held, that the by-law in the terms of the section was *intra vires*, and the use of the word "effect" instead of "affect" was immaterial; (2) that since 1 Edw. VII., c. 13, s. 1, it is not necessary to negative an exception; and *Regina v. Smith*, 31 O.R. 224, is no longer useful; (3) that the objection that the evidence shewed that the defendant was managing the business of his wife, and was not a transient trader nor occupant of the premises, was not open upon certiorari. Appeal dismissed with costs.

F. J. Roche, for defendant. *F. H. Thompson*, for magistrate and informant.

Street, J., Britton J.]

IN RE JOHN EATON CO.

[Nov. 5.

Company — Winding-up — Creditor — Compromise with liquidator — Account — Jurisdiction of Master.

An appeal by the Bank of Toronto from an order of the Master in Ordinary, in proceedings under the Winding-up Act, directing the bank to furnish the liquidator with an account of all moneys received from the proceeds of the insurance moneys referred to in an agreement between the bank and the liquidator, and an account of all expenditures, and directing the bank to credit and allow the liquidator the amount of the counsel fees taxed in the bills of costs in certain actions brought for the recovery of insurance moneys. The agreement provided that the bank should pay over to the liquidator ten per cent. of the net proceeds from all insurance policies; that the liquidator was not to question the validity of the assignment of the policies to the bank; and that the liquidator was to instruct

counsel to appear for the bank and as formally representing the bank, but in the interest of the creditors, and assist to the fullest extent possible the recovery of the claims.

R. McKay, for the appellants, contended that the Master had no jurisdiction under the Act to make his order, no writ having been issued nor action instituted, nor process served, to bring the bank before the Court; and that in any event the bank had, so far as shewn, fully accounted to the liquidator, and the Master had not properly construed the agreement.

C. H. Ritchie, K.C., for the liquidator, contended that the making of the agreement to which the bank, a creditor setting up a claim, though not filing it, was a party, conferred jurisdiction: R.S.C. ch. 129, ss. 33, 61. Moreover the bank, after seeking to prove their claim, had voted at meetings of creditors. At all events there was jurisdiction to order an account of the moneys agreed to be paid to the liquidator. He referred to *Ex p. Clark*, 14 W.R. 856; *Ontario Bolt Co. v. Livingstone*, 14 O.R. 211, 16 A.R. 397; *Re Sun Lithographing Co.*, 22 O.R. 57; *Hart v. Ontario Express Co.*, 25 O.R. 247; *Re Hawkins*, L.R. 3 Ch. 787; and *Re Essex Centre Mfg. Co.*, 19 A.R. 125.

Held that the agreement was a mere compromise between two persons at arms' length. The bank was simply an outsider compromising with the liquidator, and upon the facts nothing had occurred to confer any jurisdiction upon the Master.

Appeal allowed with costs, and order set aside with costs. Leave to liquidator to commence an action.

Armour, C.J., Falconbridge, C.J.]

[Nov. 6.

DENNY v. CAREY.

High Court of Justice—Local Judge—Barrister sitting as deputy of—Jurisdiction.

An appeal by the plaintiff from an order of *Boyd, C.*, in Chambers, affirming an order of Mr. Elliott, a barrister, acting for and in the place of the local Judge of the High Court at Milton, by request of such local Judge, requiring the plaintiff to give security for the costs of the defendant Page, a peace officer.

Raney, for appellant.

The Court raised the point that Mr. Elliott had no jurisdiction to make any order in a High Court action.

D. L. McCarthy, for the defendant Page, admitted that the barrister had no jurisdiction unless by consent under Rule 767, but contended that the Chancellor's order was in effect a substantive order, and should not be set aside merely because the original order was without jurisdiction.

The Court allowed the appeal with costs and set aside both orders with costs, upon the ground that the original order was made without jurisdiction.

Boyd, C.] WEBB v. NICKEL COPPER CO. OF ONTARIO. [Nov. 7.
High Court of Justice—Local Judge—Barrister sitting as deputy of—
Jurisdiction.

Motion by the plaintiff to continue an injunction granted by a barrister acting as local Judge of the High Court at Hamilton, in the absence of, and at the request of the local Judge.

W. Bell, for plaintiff.

W. W. Osborne, for defendants, objected that the barrister in question had no jurisdiction to act in the place of the local Judge.

Held, following *Denny v. Car*, ante p. , that the barrister had no jurisdiction. Motion treated as one for a new injunction, and injunction granted.

Boyd, C.] IN RE THOMAS. [Nov. 11.
Will—Construction—Devise—Charge of debts and legacies—Bequest of
rents—Estate in land—Rule in Shelley's case—Bequest of proceeds of
sale—Principal and interest—Administration expenses—Apportionment.

A testator devised land to his son, and in his will directed the son to pay debts and legacies.

Held, that the effect of this was to charge the payment of both debts and legacies upon the land devised. *Robson v. Jardine*, 22 Gr. 420, followed. *McMillan v. McMillan*, 21 Gr. 594, distinguished.

The testator by his will gave a house and lot to his daughter, but by a codicil purported to revoke the gift, and directed as follows:—"I will that the said house and lot be held by my daughter . . . who shall receive all rents and benefits therefor during her natural life, and at her decease that all rents shall be invested for the benefit of her heirs on their coming of age."

Held, that by the rule in Shelley's case the daughter took an estate in fee simple in the lands. *VanGrutten v. Foxwell* (1897) A.C. 658, and *Veulam v. Bathurst*, 13 Sim. 374, followed.

With reference to another parcel of land the codicil directed that all rents derived from it were to be divided between the testator's wife and daughter equally, and that on the death of a life-tenant the property should be sold and one-half the proceeds given to his wife or her heirs, and the other half invested, the principal for the benefit of the heirs of his daughter, and interest to go to his daughter during her life.

Held, that as to one-half of this land also, the daughter took an estate in fee simple.

The testator did not provide for the payment of administration expenses, though he directed that his debts and funeral expenses should be paid by his son.

Held, that the estate as a whole should defray the expenses of administration, and if there was a different disposition of the real and personal

parts, there should be ratable apportionment according to the respective values of the real and personal estate.

J. V. Teetsel, K.C., and *J. W. Elliott*, for various parties. *Harcourt*, for plaintiffs.

Meredith, C.J., MacMahon, J., Lount, J.]

[Nov. 12.

STAUNTON v. McLEAN.

Fi. fa. lands—Sheriff's sale—Irregularities—Division Court judgment—Transcript—Advertisement—Return—Inadequacy of price—New trial—Affidavits.

Appeal by the defendants from the judgment of FALCONBRIDGE, C.J., in favour of the plaintiff in an action by a purchaser at a sheriff's sale to recover possession of the land purchased.

Held, 1. It is not an objection to the sheriff's sale that no execution was issued from the Division Court in which the judgment was recovered before the issue of the transcript to the County Court in 1893. According to *Jones v. Paxton*, 19 A.R. 163, *Burgess v. Tully*, 24 C.P. 549, is no longer applicable.

2. Although the execution was issued against two defendants, while the transcript shewed a judgment against only one, and although the execution recited the wrong date for the judgment, these were mere irregularities which did not vitiate the sale.

3. It was not necessary to the validity of the sheriff's deed that there should be an advertisement in the Gazette. The absence of an advertisement was a mere irregularity.

4. The fact that there was no return to the *fi. fa.* goods did not invalidate the sale, but was a mere irregularity. *Ross v. Malone*, 7 O.R. 397, followed.

5. The inadequacy of the price for which the lands were sold to the plaintiff might have been a ground for declaring that the deed should stand merely as security for the amount paid, but in this case there were other circumstances, and the trial judge had made a finding of fact, viz., that the defendants authorized the sale, which made it impossible to so declare, there being evidence to support such finding.

6. The affidavits filed for the purpose of obtaining a new trial did not make out a case which would justify the Court in exercising its discretion to grant a new trial.

Appeal dismissed with costs.

Mabee, K.C., for defendants. *T. H. Lennox* and *S. B. Woods*, for plaintiff.

Boyd, C.] IN RE MAPLE LEAF DAIRY CO. [Nov. 15.
Company — Winding-up — Application for order — Previous voluntary assignment — Creditors — Discretion.

The Court has a discretion to grant or withhold a winding-up order under s. 9 of R.S.C. c. 129. *Re William Lamb Manufacturing Co. of Ottawa*, 32 O.R. 243, dissented from.

Where the assets of the company were small, and the creditors had almost unanimously entered upon a voluntary liquidation under the Ontario Assignments Act, a petition for a compulsory winding-up order was refused.

H. A. Burbidge, for petitioning creditor. *A. Haydon*, for the company, the assignee, and other creditors.

Boyd C.] [Nov. 15.
 IN RE STURGEON FALLS ELECTRIC LIGHT CO. AND TOWN OF
 STURGEON FALLS.

Arbitration — Municipal corporation — Purchase of electric light plant — Appointment of sole arbitrator — Notice.

By an agreement between the town corporation and the assignor of the company for the establishment and operation for ten years of an electric light plant in the town, it was provided that the town might at any time during the ten years purchase the plant at a valuation fixed by three arbitrators, appointed by each party choosing an arbitrator and they two a third in case of dispute, or by a majority of them.

Where a submission provides that the reference shall be to two arbitrators, the Act, R.S.O. 1897, c. 62, s. 8 (*b*), gives power to the party who has appointed an arbitrator (if the other makes default as specified) to appoint that arbitrator as sole arbitrator; and it is provided that the Court or Judge may set aside any such appointment.

Held, that notice of the appointment of the sole arbitrator should be given to the party in default, who, if not notified, is not called upon to move against the appointment.

Held, also, that the agreement was not to be read as suspending the choice of a third arbitrator till there should be a dispute, but it imported that the three arbitrators should act from the outset, and therefore s. 8 (*b*) did not apply. *Exce for Life Ins. Co. v. Employers' Liability Assurance Corporation*, 2 O.L.R. 301, and *Gumm v. Hallett*, I.R. 14 Eq. 555, considered.

Semle, that the arbitration was under the Municipal Act, and s. 8 of the Arbitration Act was not applicable; R.S.O. 1897, c. 223, s. 467.

L. G. McCarthy, for the company. *R. A. Grant*, for the town corporation.

ASSESSMENT CASES.

IN RE APPEALS OF THE BELL TELEPHONE COMPANY, TORONTO RAILWAY COMPANY, INCANDESCENT LIGHT COMPANY AND TORONTO ELECTRIC LIGHT COMPANY.

Assessment of poles, wires, conduits, etc., of companies—Mode of estimating values—R.S.O. c. 264, s. 28 (1)—1 Edw. VII. c. 29.

Held, that the above statute, which provides that the real property of a company situated in a city divided into wards shall be valued as a whole or as an integral part of the whole, does not change the method of estimating the assessable value of the poles, wires, conduits, etc., of the companies from the basis of the valuation laid down by s. 28 (1) of the Assessment Act, as interpreted in *Bell Telephone Co. v. Hamilton*, 25 O.A.R. 301; *In re London Street R. W. Co.*, 27 O.A.R. 83, and *Queenston Heights Bridge Case*, 1 O.L.R. 114.

Held also, following *Kirkpatrick v. Cornwall Street R. W. Co.*, 2 O.L.R. 113, that the cars used on an electric street railway are, along with the rails, poles and wires, liable to assessment as realty, and their value must be ascertained in the same manner as the value of such rails, etc.

[Toronto, Nov. 2—McDougall, McGibbon, McCrimmon. Co.]J.

The above cases were four appeals from the decision of the Court of Revision of the City of Toronto confirming the assessment by the Assessment Department of the poles, wires, conduits, cables, etc., of the said companies, and, in the case of the Toronto Railway Company, in addition to the other property, their rails and rolling stock or cars.

Lynch Staunton, K.C., for the Bell Telephone Company.

Jas. Bicknell, for the Toronto Railway Company.

H. O'Brien, K.C., for the Electric Light Companies.

McDOUGALL, Co. J.—The principal point to be decided is whether the basis of the valuation adopted by the Assessment department is a correct one, in the light of the amendment to the Assessment Act made at the last session of the Ontario Legislature and embodied in chap. 29 of 1 Edw. VII. (1901) of the statutes of Ontario. This amendment relating to incorporated companies is in the following words: 18 a. "Real property belonging to or in the possession of any person or incorporated company, and extending over more than one ward in any city or town, or situate in any township, may be assessed together in any one of such wards at the option of the assessor, or the assessment of the property may be apportioned amongst two or more of such wards in such manner as he may deem convenient, and in either case the property shall be valued as a whole or as an integral part of the whole."

At the date of this enactment the Legislature had before it three cases in which the Court of Appeal for this Province had discussed and laid down the basis or correct method of arriving at the value for assessment

purposes of the different classes of property involved in the present appeals. These cases were determined under the various provisions of the Assessment Act as that Act stood prior to the amending Act of 1901. The first of these cases was the *Bell Telephone Co. v. City of Hamilton*, 25 O.A.R. 351. The Court of Appeal held in that case:

(1). That the poles, wires, conduits and cables of the Telephone Company must be valued in distinct units as they happened to be located in the several wards of the city, the portion of the poles, wires, etc., in each ward by itself and not as a part of a going concern.

(2). That these poles, wires, etc., must be valued at the price they would bring if sold as so much material to be removed or taken away by a purchaser.

(3). If the material was not actually sold the assessment value would be the sum at which such material would be taken by a creditor in payment of a just debt from a solvent debtor.

The Court was unanimous upon the point that this class of property could not be valued as a whole or as an integral part of a whole, nor as if it were a going concern; in other words, as put by Burton, C.J., the value of the portion in each ward must be arrived at separately apart from the rest of the work. He held that the assessment value could not be arrived at by ascertaining the value of the whole as a going concern in good repair and first-class condition, and making what the evidence probably established, a fair allowance for wear and tear, and then estimating what proportion of the works, poles and wires were in that particular ward. He concludes his judgment as follows: "I am of opinion that as real property the poles, etc., are to be valued as they would sell irrespective of the fact that they form part of a going concern."

Osler, J.A., held that s. 28 of the Assessment Act provided the basis of valuation, namely, their actual cash value as they would be appraised in payment of a just debt by a solvent debtor. He, therefore, held that to assess them as a 'line,' a going concern in good repair and first-class condition, was erroneous, because to do it would "introduce elements of value quite inadmissible and improper to be considered, such as their value regarded in connection with the exercise of the company's franchise or in connection with the value of the whole line operated by the company throughout the different wards of the city or even outside of it, the value of the line regarded as a complete system, and the business value of the articles to the company itself as a part of the means whereby they exercise their franchise or their income producing value." He agreed with the view of the Chief Justice that the portion of the system located in each ward must be assessed as a separate unit and "the value must be such as the material or articles would bring if sold to be removed by the purchaser. It was the property itself, real or personal, which was to bear the burden of taxation; any adventitious value it possessed to the possessor only, and which did not follow it into the hands of a purchaser could not be con-

sidered in valuing it for assessment purposes under s. 28 of the Assessment Act."

Moss, J.A., besides agreeing with the opinion that the portions in each ward must be assessed by themselves, stated that in arriving at an assessment or value the only elements to be considered were "what a purchaser buying or a creditor taking the property for or on account of his claim is to get, and the value it will be to him when he gets it, either for his own use or as a saleable commodity. Such purchaser or creditor," he adds, "cannot expect to acquire the property as part of and connected with other property which is not disposed of to him." The learned judge later states that, "To treat it for assessment purposes as part of a going concern is to give it a character not ascribed to it by the Assessment Act."

The next case relating to this subject was a street railway case *In re London Street Railway Company*, 27 O.A.R. 83. In that case also the Court held that the ward division must be followed and each portion of what was in fact a continuous system could only be assessed in separate units in each ward and that the several parts could not be considered as part of a going concern operated in the several wards; and the Bell Telephone case was followed as to the basis of valuation for the various ward units.

The last case was the *Queenston Heights Bridge Assessment*, 1. O.L.R. 114. In that case which did not involve the ward divisions the Court of Appeal also adopted the same basis of valuation to determine the assessable value of the Canadian half of an international bridge, the whole bridge being the property of one company. The so called "scrap valuation" was applied, and the assessment value of the half of the bridge on Canadian soil was placed at the value of the material to a purchaser who would have to remove and take the same away.

The Legislature, therefore, was fully possessed of the conclusions of the highest Court of this Province as to the inadequacy of the machinery for assessing this peculiar class of property under the existing law, a class of property which had come into existence subsequent to the date of the enactment of s. 28 of the Assessment Act. Burton, C.J., had stated in the Bell Telephone case (page 352) that the Court had found considerable difficulty in applying to modern railways, gas and water companies and electric telegraph companies provisions of the law which were doubtless amply sufficient for the much more simple state of assessable property in the days when the assessment laws were first introduced. In another part of his judgment he expressed regret that the Legislature had not provided proper machinery for assessing under the altered circumstances such new classes of property: (p. 354). Similar views had been expressed by other Judges of the Court of Appeal. It had also been stated that it was extremely difficult to ascertain the true value of such property, and one learned Judge (Osler, J., *Queenston Bridge case*, at page 117) had said that

if any injustice resulted from the decisions of the Courts in dealing with these perplexing problems the remedy rested with the Legislature.

In 1901 an amendment of the Assessment Act was made and the point to be determined in these appeals is as to the extent that the new law varies or qualifies the decisions above referred to.

The first change clearly made is to abolish the ward divisions in considering the value of these new classes of constructive real property, where the operation of such enterprises and the plant essential to their useful equipment extends territorially beyond the limits of one ward. As a corollary to this abolition of ward divisions the assessor is allowed to value the real property of the owners or possessors of such concerns as a whole in one ward, or he is at liberty to value it in more than one ward, but in such latter case each ward unit is to be valued as an integral part of the whole. I interpret this to mean that having ascertained the value as a whole he can if he wishes apportion to each ward the proportionate part of the whole value which appertains to the property lying within its boundaries, but it must be at the same values. The Legislature has made proper the method suggested by Boyd, C., in the *Consumers' Gas Co. v. Toronto*, 26 O.R., p. 731, but disapproved of in the same case in appeal by the Supreme Court. (See *Consumers' Gas v. Toronto*, 27 S.C., and judgments of Sir Henry Strong, C.J., at page 458, and Gwynne, J., at page 460.) Boyd, C., said in his opinion "the correct method would be to value the concern as a whole and then apportion ratably to the wards or the municipality as much of the value as falls to that part of the concern territorially situate in each locality."

The next most important consideration will be, has the Legislature established any new basis of valuation from that laid down in the decided cases? Has the standard or test prescribed by s. 28 of the Assessment Act been altered, namely, that the property, whether real or personal, is to be estimated at its "actual cash value, as it would be appraised in payment of a just debt from a solvent debtor?"

The Court of Appeal has distinctly laid down that rails, poles, wires, etc., must be valued only as material to be removed or taken away by a purchaser without regard to any adventitious value it possesses to the possessor or owners only—any special value due to franchise or income producing qualities do not follow the property into the hands of the purchasers, and, according to Osler, J.A., cannot be considered in valuing it for assessment purposes under s. 28 of the Assessment Act. This principle is equally applicable to the whole line of rails, poles, wires, etc., whether they are to be considered as a whole or as composed of separate parts lying in different municipal wards of a city, but forming one continuous system. In Toronto where there are six wards six separate scrap heaps under the former law may now be treated, if the assessor wills, as one scrap heap of poles, rails, wires, etc., removed from their connection with the operating system of which they are constituent parts. They are not to be treated as

parts of a going concern in good condition of repair, nor are they to be valued at the estimated or ascertained cost of reproduction less any reasonable allowance for wear and tear due to their having been in use for any definite period since their installation. In very truth, the only apparent change affected by the recent legislation is to permit a different method of municipal bookkeeping whereby as to this special class of assessable property the whole value may be attributed to one ward if the assessment department desire to so ascertain it, or, if they do not so elect, they can distribute the total value amongst several wards in proper proportions. As I have before remarked, s. 28 of the Assessment Act still applies to all assessments, and its force, as applied to rails, poles, wires, etc., I am of opinion must still continue to be interpreted according to the principles laid down by the Court of Appeal. So far as the method of estimating the assessment value of the classes of property involved in the present appeals is concerned I am of opinion that the amendment enacted at the last Session has effected no change whatever."

The parties to the present appeals have informed the Board that they have agreed upon the values which should be entered on the roll should it be determined that the assessment is still to be made upon the same principle as that laid down by the Court of Appeal before the enactment of the amendment above discussed. I am of opinion that the appeals should therefore be allowed, and the amounts of the several assessments be reduced to the figures agreed upon between the city and the appellants.

There remains, however, a further question to be disposed of in addition to the value of the rails, poles and wires of the Toronto Railway Company. The Assessment department have added to their assessment the value of their rolling stock or cars, and the company contend that these articles are not assessable as realty. The Assessment department has, doubtless, been led to include the railway company's rolling stock as realty owing to the recent decision of the Court of Appeal in the case of *Kirkpatrick v. Cornwall Street R. W. Co.*, 2 O.L.R., at pp. 122, 123. The Court held that the rolling stock of an electric railway should be regarded as against an execution creditor as part of the corpus of the entire machine (electric plant), and, therefore, in the nature of a fixture, and passing with the land over which it runs. The whole doctrine of constructive annexation to land of articles ordinarily treated as chattels so as to constitute them realty has in modern times received an extended application.

I had occasion in 1898 to consider the question in appeal of the C. P. R. Telegraph Co. against the assessment of their switchboard and telegraph instruments. My written opinion is reported in 34 C.L.J. 789, and upon the facts of that case I held the switchboard and telegraph instruments in use in the office of the appellants to be liable to assessment as realty. I venture to repeat here the extract I made in the C. P. R. Telegraph Co. case from *Ewell on Fixtures* (p. 34) as the best definition of the doctrine of con-

structive annexation, and its limitations, that I have been able to find in any of the legal text books: "In order to constitute a constructive annexation to realty the article in question though not physically connected therewith must not only be appropriate or adapted and necessary to the fit and beneficial use of the principal thing, the realty, and not to a matter of a mere personal nature, but must also be such as goes to complete the buildings, machinery, etc., constituting the principal thing which is affixed to the land, and must be such as if removed would leave the principal thing incomplete and unfit for use, and would not itself alone be equally useful and adapted for general use elsewhere. In respect of all things of constructive annexation there exists both adaptation to the enjoyment of the land and localization in use as obvious elements of distinction from mere chattels personal."

"The rolling stock of an electric R. R.," says Osler, J.A., (*Kirkpatrick v. Cornwall Street R. W. Co.*, p. 123), really constitutes, as was argued, part of one great machine confined to a particular locality for which it is especially constructed and fitted, operated by means of a continuous current of electricity, generated in part of the fixed plant in the power house and passing through the trolley pole of the car, which is fitted to the overhead wire, through the car to the unbroken line of rails back to the generator. Of the entire machine thus operated the important part, the rails and the power house, are unquestionably realty, and the rolling stock forms part of it in a much more intimate and connected manner than does the rolling stock of a steam railway. Detached from the rails it is incapable of use, and upon the principles laid down in *Place v. Fagg* (1829) 4 M. & Ry. 277; *Fisher v. Dixon* (1845) 12 Cl. & Finnelly, 312, and *Mather v. Fraser* (1856) 2 R. & J. 536, I am of opinion that as regards its liability to be taken in execution it may be properly regarded as part of the corpus of the entire machine, and, therefore, in the nature of a fixture and passing with the land over which it runs."

This decision was made in reference to an interpleader issue between an execution creditor trustees and debenture holders. If the rolling stock was chattel property the creditors (plaintiffs) would succeed, there being no duly registered chattel mortgage covering chattel property; if the rolling stock like the poles and wires was to be considered realty and to form part of the land then the defendants were entitled to succeed. In disposing of the interpleader issue nothing turned upon the language of the mortgage purporting to cover the land, franchises and rolling stock. If the rolling stock was chattel property the instrument purporting to mortgage it did not comply with the Chattel Mortgage Act, and it was not registered as a chattel mortgage. The question to be determined there was, Is the rolling stock of an electric railway company personal property or realty? The Court held it was realty, and was not seizable under an execution against goods.

It appears to me for the purpose of disposing of the question of the right to assess the rolling stock or cars of an electric road as realty I must look upon that question as settled by the Court of Appeal in the case above referred to. Mr. Bicknell in his able argument against the proposition that the cars of an electric railway are to be considered for the purposes of assessment realty cited a number of cases and pointed out many reasons why such a conclusion should not be reached, but unless I have failed to properly appreciate the force of the judgment in *Kirkpatrick v. Cornwall*, the question is not open to consideration or decision by an inferior court. I am of the opinion that the cars used by the Toronto Railway Company on their electric road are, along with the rails, poles and wires, liable to assessment as realty, and that the value must be ascertained in the same manner as the value of the rails, poles and wires themselves. I have been given to understand that the parties can agree upon the amounts to be inserted in the assessment roll relating to this portion of the assessable property of the company, and upon handing in to this Board these figures the same can be embodied in the order.

The Toronto Railway Company's appeal upon this branch of the case will be dismissed.

McGIBBON and McCRIMMON, Co. JJ., concurred.

Province of Nova Scotia.

SUPREME COURT.

Meagher, J.]

ANDERSON v. HICKS.

[Sept. 13.

Dominion elections—Residence—Right to vote—Refusal of ballot to voter.

This was an action brought against a Deputy Returning Officer who had charge of the polling sub-division at Dalhousie, in the County of Annapolis, Nova Scotia, at the last Dominion Election. The plaintiff was on the voters' list at Dalhousie, but he resided in St. John, New Brunswick, and was on the voters' list there also. The plaintiff demanded a ballot from the Deputy Returning Officer at Dalhousie, but was refused on the ground that he was by law required to vote in the county in which he resided and not elsewhere; that he had a right to vote in St. John, New Brunswick, and could not therefore vote at Dalhousie. The plaintiff, having declined to take the oath, the defendant refused to give him a ballot.

Held, that the action of the Deputy Returning Officer was illegal and that the plaintiff was entitled to vote at Dalhousie. Damages were assessed at \$350.

J. J. Ritchie, K.C., and *Mills*, K.C., for plaintiff. *Wade*, K.C., for defendant.

NOTE:—An order for appeal to the full Bench of Nova Scotia has been taken out.

THE KING v. KEEPING.

Keeping a bawdy house—Summary trial—When consent required—Form of information under vagrancy clauses—Describing offences under Code, s. 783—Habeas corpus in Nova Scotia—Order of protection to jailer only—Cr. Code, ss. 198, 207 (j), 208, 783 (f), 785.

1. An information charging the accused, for that she was "the keeper of a disorderly house, that is to say, a common bawdy house," is a charge under s. 198 of the Code, for the indictable offence of keeping a common bawdy house, and is not cognizable under the special jurisdiction given to magistrates by s. 783 (f), because not laid in the exact language of the latter section.

2. Such charge could not be summarily tried by a city stipendiary magistrate without the consent of the accused under Code, s. 785 (amendment of 1900).

3. To give jurisdiction to a justice to punish on summary conviction the keeper of a disorderly house under the vagrancy clauses of the Code (ss. 207 and 208), the information must charge that the accused is a loose, idle or disorderly person or vagrant (s. 208), and it is not sufficient to charge simply that the person is a keeper of a disorderly house, although that fact constitutes the person a loose, idle or disorderly person or vagrant, by virtue of Code, s. 207.

4. A conviction for that the accused was on April 21 "and on divers other days and times during the month of April" the keeper of a disorderly house, based upon an information in the like terms, laid on April 29, is bad, because it may be read as inclusive of an offence committed subsequently to the laying of the information, and including the date of the conviction, as to which the prisoner was not charged on her trial before the convicting magistrate.

5. In discharging a prisoner in habeas corpus proceedings under c. 181, R.S.N.S., an order of protection in respect of a civil action by the prisoner, can be made only in favour of the jailer and not in favour of the magistrate and prosecutor.

[Halifax, June 4. Weatherbe. J.]

Motion in Chambers, under R.S.N.S. c. 181, 1900, on the return of a habeas corpus and a certiorari in aid thereof, for the discharge from custody of Mary Keeping, the defendant, a prisoner in the common jail at Halifax, under a warrant of commitment reciting a conviction which was as follows:

"Be it remembered, that on the 30th day of April, in the year one thousand nine hundred and one, in the police court in the city of Halifax, Mary Keeping being charged before me, the undersigned stipendiary magistrate, and one of His Majesty's justices of the peace in and for the said city of Halifax, for that she, the said Mary Keeping, in the said city of Halifax, on the 21st day of April, A. D. 1901, and on divers other days and times during the month of April, A. D. 1901, was the keeper of a disorderly house, that is to say, a common bawdy house at No. 18 Maitland Street, in the said city of Halifax, and being tried this day is convicted before me of the said offence. I find the costs of the prosecution to be four dollars, but I do not award costs. And I adjudge the said Mary Keeping for her said offence to forfeit and pay a fine of fifty-four dollars, to be paid and apphed according to law; and if the said sum be not paid forthwith, I

adjudge the said Mary Keeping to be imprisoned in the County jail, at the said city of Halifax, and there kept at hard labour for the term of four months, unless the said sum be sooner paid."

The information on which this conviction was based was laid before the stipendiary magistrate at Halifax on the 29th of April, 1901, charging in identical terms on that date the offence set out in the above conviction, and the prisoner having been brought before him on a warrant on the following day, was summarily tried on the information under Part LV. of the Code, after a plea of "not guilty," and without her consent being obtained to such trial. She was convicted on the same day, and on that conviction was committed to jail as aforesaid.

J. J. Power, for the prisoner, referred to *R. v. Hogarth*, 24 O.R. 60; *R. v. Cockshot* (1898), 1 Q.B. 582; *Ex parte Kennedy*, 27 N.B.R. 493; *The Queen v. France*, 1 Can. Cr. Cas. 321; *In re Moore*, 33 C.L.J. 400.

Blackadar, for the Crown, cited *Ex parte Cook*, 3 Can. Cr. Cas. 72, and *The Queen v. Bougie*, Ib. 487.

WEATHERBE, J.—I am of opinion that the prisoner must be discharged from custody on both the grounds urged on her behalf. She was clearly notified that she was charged with the indictable offence provided for in s. 198 of the Code, and while the magistrate could hold a preliminary examination and commit her for trial, if he thought fit to do so, he could not try her without her consent, as provided for in s. 785 of the Code, as recently amended: (1900, 63 Vict. (Can.), c. 46). The conviction on that ground is, therefore, absolutely without jurisdiction. 207 (j) of the Code does not help the matter, as that sub-section creates no offence, but only indicates one of the many ways how a person may be a "loose, idle or disorderly person, or a vagrant," and that is the proper way to charge an offence under that section.

I am also of an opinion that this matter is not covered by s. 783 (f) of the Code; that refers to distinct offences mentioned there, and which are not necessarily the same as those mentioned in s. 198. At all events, this person was not charged under 783 (f).

As to the other point, I think that the conviction might be understood as covering an offence committed up to the 30th. She was not tried for that, yet she is convicted for it. I quite agree with the New Brunswick authority cited on the argument.

In ordering her discharge I will protect from the consequences of any civil action arising out of the prisoner's detention every person whom I lawfully can under the statute. I suppose I might discharge the prisoner and hear this point argued afterwards. I agree with Mr. Justice Ritchie's views in the *Moore case*, but at present, in view of Mr. Power's statement that no action will be brought, it might be stated in the order that the prisoner consents to bring no action, but it can also be stated that I refrained from imposing any such term upon her, except in relation to the jailer.

Prisoner discharged.

Province of British Columbia.

SUPREME COURT.

Full Court. |

MANLEY v. COLLOM.

[Oct. 16.]

*Mining law—Miner's license—Location—Approximate compass bearing—
Re-location—Permission of Gold Commissioner—Mineral in place—
Defects cured by certificates of work—Mistakes of officials—Mineral
Act, secs. 28, 29, 32 and 34.*

In November, 1897, Cooper having already a claim on the same lode, located the Native Silver claim in the name of Haplin, who transferred in December, 1897, one-half to Cooper and the other half to Heller, who sold to plaintiff in July, 1900, the usual certificates of work having been obtained in the interim. Defendant knew of the error in the description of the compass bearing and of the issue of such certificates, on failing to effect a purchase of the claim from Cooper and Heller located the same ground as the Arlington Fraction, and on obtaining the usual certificate of work applied for Crown grants. Two of the mining licenses on which the plaintiff's title depended were issued by a constable at Sandon, who acting on instructions from the Government Agent at Nelson, obtained the blank forms from the Mining Recorder at New Denver, and on issuing licenses he accounted to the Government.

Held, in adverse proceedings, affirming WALKEM, J. (DRAKE, J., dissenting), that the defendant not being misled, the irregularities in the plaintiff's title were cured by s. 28 of the Mineral Act.

Callahan v. Copen (1899), 30 S.C.R. 555. and *Gelinas v. Clark* (1901), 8 B.C. 42, specially considered.

Davis, K.C., (*W. A. Macdonald*, K.C., with him), for appellant.
Duff, K.C., (*J. H. Lawson, Jr.*, with him), for respondent.

Performance of contract:—Inevitable accident is held, in *Board of Education v. Townsend* (Ohio), 52 L.R.A. 868, not to excuse the performance of a contract where its essential purposes are still capable of substantial accomplishment, though literal performance has become physically impossible.

Wage clause in city contracts:—The legislature is held, in *People ex rel. Rodgers v. Color* (N. Y.), 52 L.R.A. 814, to have no power to fix by statute the compensation which a city must pay for labour or other services, when such regulations increase the costs of the work beyond what it would be obliged to pay in the ordinary course of business, and the constitution limits municipal expenditures of money to city purposes.

ANALYTICAL INDEX

Of the Contents of this Volume.

Acceleration clause—

See Landlord and tenant—Mortgage.

Accident—

Voluntarily incurring risk, 164

Unauthorized act of volunteer causing, 327

See Fatal Accidents Act—Negligence—Public works—Railway.

Accident insurance—

See Insurance.

Accumulation—

See Thelusson Act.

Accretion—

Re-formation of land—Title to, 676

Acknowledgment in writing—

Power of attorney—Limitation of action, 108

Action—

See Fatal Accidents Act—Mortgage—Money had and received—Order—
Trade name.

Administration—

Deficiency of assets—Voluntary creditors, 144, 185

Grant to person other than to next of kin, 263

Distribution of assets—Administrator, 268

Insufficiency of general assets—Residuary estate—Trust declared by ex parte
instrument, 781

Transfer of land by executor to devisee—Purchaser from devisee, 840

Debts of testator—Liability of personal representative—Unknown debts, 840

Payment of costs of, 848

See Executor and administrator—Fatal Accidents Act.

Administration of justice—

Proposed changes in Ontario, 50, 85, 136, 138, 156, 173, 212, 257

Admissions—

Withdrawal of—Leave—Motion for judgment, 78

Adulteration of beer—

Liability of innocent vendor—Certificate of analyst, 685

Affidavit

On information—Not stating grounds, 53

Agency—

See Principal and agent.

Agreement—

See Contract.

Alimony—

Effect of decree for, 675

Wife becoming lunatic, 751, 823

See Writ of summons.

Allan, Hon. G. W.—

Obituary notice, 519

Amendment—*See Practice.***Anarchy—**

Lessons from murder of President McKinley, 678

Treatment of discussed, 717, 757

Appeal—

To Privy Council.

Opinion of court not a judgment, 510

Amount in controversy, 283, 510

To Supreme Court.

Jurisdiction—Withdrawal of defence raising constitutional question, 70

Expiration of time limit—Waiver, 272

Status of court—Appeal from Court of Review (Quebec), 273

Per saltum—Jurisdiction to grant, 411

Amount in controversy, 502

Printed case—Use on further appeal—Contribution to expense, 691

Conditional allowance—Reduction of damages, 748

To Court of Appeal, Ontario.

Dispensing with security for costs—Infant, 195

Leave—Special circumstances—Defamation, 195

Order for payment of costs—Discretion of High Court, 308

Extension of time, 196, 346

Settlement of book, 418

From Division Court to High Court.

Practice, 162, 275

Notice of—Stating grounds, 167

Amendment—New notice, 167

New evidence on, 76

In matters of practice, 166

From interlocutory order, 184

When liberty of the subject involved, 184

Effect of allowing—Non-appealing party—Costs, 228

*See Appeal, Court of—Assessment—Criminal law—Surrogate Court.***Appeal, Court of—**

Effect of certificate, 504

Power to stay proceedings, 504

*See Appeal.***Appearance—***See Practice.***Appropriation of payments—**

Time for making, 206

Settlement of mortgage accounts, 227

Arbitration—

Time for making award—Extension, 36

Arbitrator—Bias, 155, 704.

Functus officio, 184

Fees to, 42

Refusal to appoint, 62

Appointment of third by two—Objection—Evidence, 360

In insurance case, 755

Single judge—No jurisdiction on special case, 668

Time for statement of case by arbitrator—Remitting back, 693

*See Municipal law.***Architect—**

Right to commission when work not proceeded with, 82

Acts as arbitrator in giving certificates on building contracts, 341, 819.

Arrest—

Discharge—Order for—Terms—Restraining action, 163
Application for—Onus—Intent—Former absconding, 785
Bond to limits—Assignment—Court stenographer, 202

Assault—

Information for causing bodily harm—Common assault, 202

Assessment—

Improvement by drainage, 23
Bridge between Ontario and United States—Franchise, 103
Waterworks plant, 702
Poles and wires of telephone and electric plants, 790, 851
Cars of electric railway, 851
I Ed. VII., c. 29—Effect of, 702, 790, 851
Railway—Lands for right of way and stations, 791
Income from property vested in trustees, 814
Roll—Finality of—Drainage Act, 223
Appeal from—Judgment confirming—Payment under protest—Res
judicata, 411
Notice too late—Waiver, 790
Taxes—Exemption from—Property leased to Crown, 438
Collection of—Notice demanding, 230
Removal of goods—Magistrate's warrant, 230
Distress for—Goods not in possession of person assessed, 419
See Tax sale.

Assignment—

Parol—Of money payable under contract, 408

Assignments and preferences—

Settlement to delay future creditors, 16
Confession of judgment—Pressure—Collusion, 431
Collection of proceeds of property—Pressure, 671
Act respecting, as it relates to the valuation of negotiable instruments, 798
Extension agreement, but with secret advantage, 816
Presumption of invalidity, 819
Made to creditor—Pressure—Knowledge of insolvency, 825

Association

Action by or against unincorporated, 262

Attachment of debts—

Whether whole debt attached or only enough to satisfy claim, 184
Process of, not applicable to proceeding by information by Crown, 304
Salary of municipal officer, 349
Payment in advance—Set off—Assignment, 350
Before judgment—For damages and liquidated demand—Affidavit, 436
Trustees—Actually accrued income in hands of, 499
Affidavit for—Evidence, 706
See Division Courts.

Attorney—

See Solicitor.

Attorney-General—

When a necessary party, 224

Bail bond—

See Arrest.

Bailment—

Liability of loss from fire, 414

Banks and banking—

- Closing account—Mortgage to secure account—Power of sale—Notice, 267
- Bank Act—Security—Consideration, 322
- Passing of property—Chattel mortgage, 459
- Sight draft with bill of lading attached—Surrender of bill without acceptance of draft, 476
- Right to inspect goods—Perishable goods, 476
- See Trusts and trustees.

Barber—

- See Sunday observance.

Bawdy house—

- See Disorderly house.

Bench and Bar

- Changes in jurisdiction of Ontario courts—See Administration of justice
- Appointments to the Bench—Protest against objectionable ones, 50
- The Queen and the Bar, 137
- Exercise of judicial functions out of court, 181
- Rumoured changes in Supreme Court Bench, 209
- Increase of judicial salaries, 209
- Parristers' Benevolent Association, 289
- Oldest K.C. in Great Britain, 289
- Status of Colonial Bar before Privy Council, 290, 329
- The late Mr. Justice King, 330
- The Ontario Bench and the Government, 331
- Sir Thomas Galt, 441
- Hon. A. S. Hardy, K.C., 441
- Sleeping judges, 442
- Sir John Boyd, K.C.M.G., 667
- Mr. Justice Davies, 677
- Mr. Justice Britton, 677
- Anecdotes of late Chief Justice Draper, 681-761
- Selection and appointment of judges here and in United States, 758
- Decrease of legal business, 759
- New learning and old lawyers, 760
- Changes in English Bench, 797
- Judges as peace makers, 797
- Judicial robes, 797

Bicycle law—

- Rules of the road, 328

Bigamy—

- Second marriage abroad—Russell case, 805

Bill of lading—

- Description of goods—Mistake, 339
- See Banks and banking.

Bill of sale—

- Property remaining in possession of grantor, 364
- See Chattel mortgage.

Bills and notes—

- Bank marking cheque—Forgery, 29
- Accommodation acceptance by secretary of company, 39
- Accommodation maker—Conditional delivery—Agency, 472
- Presentation—Waiver—Pleading, 124
- Word "trustee" added to name of payee—Negotiability, 328
- Proof of holder, 509
- Addition by payee of name of co-maker, 676
- Bill or cheque—Construction—Equitable assignment, 753
- Notice of dishonour—Husband and wife, 824
- Alteration, 844
- Principal and surety—Renewal of joint note, 844
- See Banks and banking—Summary judgment.

Board of health—

Jurisdiction and powers, 203, 312, 402

Boer war—

Peace proposals, 211

Boyd, Sir John—

Made a K.C.M.G., 677

Building contract—

See Architect—Contract.

Building society—

Infant—Mortgage by, 189

Book Reviews—

Shareholders and Directors' Manual, by J. D. Warde, 48

A treatise on the law of real property, by E. D. Armour, K.C., 83

Atlas and epitome of diseases caused by accident, by Dr. Golebiewski, 172

Canadian Annual Digest, by Masters & Morse, 252

The Commonwealth, by Dr. Morse, 252

Practical Statutes, by Bicknell & Kappela, 286

The law relating to executors and administrators, by R. E. Kingsford, 325

Magistrates' Manual, by Charles Seager, 367

Leading cases in constitutional law, by E. C. Thomas, 368

Forgery, detection of, by D. F. Ames, 368

The devolution of real estate on death, by Robbins & Maw, 439

British and American diplomacy affecting Canada, by T. Hodgins, K.C., 517

Canadian Company Law, by C. A. Masten, 674

The Law of Costs, by J. A. C. Cameron, 714

Practice in Criminal Cases, by Charles Seager, 714

The Law Quarterly Review, 715

Bond—

Breach—Agreement to exchange land—Infant, 223

See Indemnity.

British North America Act—

See Constitutional law.

Britton, B. M.—

Appointed to Bench, 677

Broker—

See Principal and agent—Stock broker.

Canada Temperance Act—

Delivery of liquor, C.O.D., 43

Jurisdiction of magistrate—Power to adjourn, 427

Proof of service of summons, 427

Hearing two cases—Reserving judgment as to one, 510

Carrier—

Conditions on pass, waiving liability, 327

Delivery of goods—Penalty, 327

Licensed expressman—Damage by fire during delivery, 421

Interference with, by garnishment, 676

Cattle—

See Municipal law.

Chancery Division, H.C.J. Ontario—

Jurisdiction in criminal cases, 74

Charitable gift —

Uncertainty, 130

Secret trust for public, 300

Charitable uses—

Necessity for amendments considered, 291

Charity—

Voluntary association—Failure of object, 66
 Invalid gift followed by gift of residue—Mortmain, 456
 Extension of time for selling land devised to, 686

Charter party—

Renewal—Notice—Agency, 41

Chattel mortgage—

Agreement for—Affidavit of execution, 419
 To secure endorsee—Liability intended to be incurred, 413
 Renewal—Statement—Affidavit, 309
 Payments—Principal—Interest, 309
See Banks and banking.

Chinese Immigration Act—

Prostitute—General reputation, 712

Cheque—

Crossing of, 5, 804
 Alteration of marked—Payment by third party—Negligence, 458
See Banks and banking—Bills and notes.

Chose in action—

Assignment of—Notice to debtor, 199, 498
See Mortgage.

Church—

Expulsion of minister—Domestic forum, 27
 Investments by rector, 841
See Corporation sole.

Class action—

See Practice.

Club—

See Liquor license Act.

Coal mine—

See Negligence.

Collection Act, Nova Scotia—

Willful tort—Imprisonment, 669

Commission—

See Architect—Principal and agent—Solicitor.

Company—

President—Purchase by—Secret profits—Salary, 30
 Directors.
 Quorum—Articles of association, 264
 Remuneration—Yearly payment—Part of year, 340
 Waiving right to, 457
 Fiduciary character of—Contract with company—Profits, 495
 Interested personally in sale of company's property—Disclosure, 344
 Power to sell property of company, 347
 Promotor of—Loan to—Personal liability, 157
 Contract with—Agreement to assign to company—Privity, 267
 Secret profit, 344
 Fraud—Principal and agent, 690
 Stock—Calls—Time for payment—Forfeiture of stock, 111
 Interpleader as to certificate and transfer, 120
 Subscription for—Calls—Allotment, 698
 Shares purporting to be fully paid—Liability for calls, 133

Company—Cont.

- Purchase of forfeited shares, 266
- Calls paid by registered for beneficial owner—Indemnity, 270
- Transfer under forged power, 453
- Preference—Alteration of holders' rights, 775
- Equitable mortgage of, 775
- Re-construction—Application for shares—Withdrawal, 144
- Shareholders' meeting—Declaration of chairman, 19
- Voting at—Forfeited shares, 266
- Debenture—Floating charge—Sale of part of business, 143
- Charge on all property to secure—Rights of execution creditor, 451
- Unauthorized issue—Bona fide holder, 685
- Action by holder of—Deficient estate—Costs, 780, 781
- Reserve fund—Dissentient majority, 30
- Action for wrongful dismissal and slander—Joinder, 110
- Sale of business—Debenture holders—Floating charge, 299
- Power of president to bind, 328
- Liability of, on endorsement of promissory note, 708
- Surrender of shares—Dealings with shares, 773
- Register of members—Inspection—Copy, 808
- Name of—Fraud—Trade name—Foreign firm, 842
- Winding up.
 - Order for, notwithstanding voluntary assignment, 75, 850
 - Distress by landlord, 147
 - Affidavit in support of petition, 155
 - Discontinuance of action for calls—Costs, 190
 - Petitioning creditor—Debenture stockholder not competent, 302
 - Petition—Previous demand, 506
 - Order for appointment of liquidator, 665
 - Fraudulent circular to shareholders—Contempt of court, 803
 - Creditor—Compromise—Jurisdiction of master, 846
- See Association—Bills and Notes—Criminal law—Libel and slander—Street railway—Trade name.

Compromise—

- Setting aside—Procedure, 238
- Absent parties—Jurisdiction of court to bind, 496

Comity of goods—

- French law—Domicil—Marriage, 18

Conditional sale—

- Payment of instalments—Default—Received by, 206.

Conditions of sale—

- See Vendor and purchaser.

Confession—

- Requisites of, to make evidence, 474

Conflict of laws—

- Domicil—Marriage—Change of domicil, 18
- Settlement—Power of appointment, 343
- Foreign law restricting testamentary power, 343
- Foreign will disposing of leaseholds, 65

Constitutional law—

- Administration of justice and procedure—Jurisdiction of Provinces inter se., 233.
- Resident of one province sued in another, 233
- See Indian lands—Liquor License Act—Lottery.

Contempt of court—

- Interfering with litigation, 498, 803
- Unusual mode of purging, 810

Contract—

- Rectification of—Interest, 83
- Printed and written clauses, 105
- To erect sawmill—Defective performance, 126
- Promise favorably to consider a proposal, 149
- Written—Oral evidence as to, 248, 250
 - Parol agreement contemporaneous with, 250
 - By correspondence, 501
 - Offer in writing—Acceptance—Concluded agreement, 787
- Wrongful use of article manufactured, 254
- Sale of minerals—Place of delivery, 313
- Warranty—Deficiency—Damages, 313
- Evidence—Common carriers, 323
- Building—Specific performance, 338
 - Architect's certificate—Effect of, 341
 - Superintendent's certificate—Extras, 819
- Impossibility of performance—Implied condition, 682
- Statutory confirmation of, 687
- "First refusal" of land—Purchaser with notice, 687
- Agency—Vendor and purchaser, 769
- In restraint of trade, 774
- Dependent or independent covenant, 826
- See Assignment—Sale of goods—Vendor and purchaser.

Contributory negligence—

- See Master and servant—Negligence.

Conversion—

- Pleading—Defective plaintiff's service, 158

Conveyance—

- See Deed.

Conviction—

- See Summary conviction—Transient traders.

Covenant—

- Running with land, 17
- Restrictive, 17

Copyright—

- In its constitutional and international aspects, 370
- In certain artistic works, 490
- In books—Pleading—Particulars, 116
 - Application of, to colonies—Foreign reprints, 116
 - Assignment of proprietorship—Registration—Action, 116
 - "Printed or cause to be printed," 300
 - Unpublished manuscript, 676
- Newspaper report of speech, 148
- Works of fine art—Non-extension to colonies, 231

Correspondence—

- Undue influence, 20
- Examination on judgment summons, 21
- Solicitors and clients, 68
- Proposed changes in Ontario Courts, 156
- Unlicensed conveyancers, 180
- Drainage law and the Supreme Court, 221
- Labour unions, 713

Corporation sole—

- Rector—Power to hold personalty—Mortmain, 841

Costs—

- Scale of—Action which should have been commenced in County Court, 183
- Judgment against two different defendants for different amounts, 493
- Contract for sale—Counterclaim, 274
- Of unused depositions or proceedings, 684
- Solicitor acting for two parties, one entitled to costs and one not, 781
- Taxation—Solicitor and client—Third party—Obtaining order, 268
- At instance of cestui que trust, 298
- Bill paid by trustees more than twelve months, 298

Security for.

- Stay—Injunction, 32
- Two appeals included in one notice, 45
- Nominal plaintiff—Proof of want of interest—Inference, 119
- Administrator—Fatal Accidents Act, 201
- To Court of Appeal—Dispensing with, 195
- Police sergeant is a public officer and entitled to, 238
- Order for may be given at any stage of proceedings, 304
- Libel contained in newspaper, 315, 410
- Practice in Ontario as to, considered, 334
- Rival claimants, both out of jurisdiction, 404
- By foreign plaintiff—Appeal, 407
- Several defendants—Præcipe order, 504
- Against defendant out of jurisdiction refused, 788
- See Interpleader.

See Division courts—Drainage—Solicitor—Solicitor and client.

Counterclaim—

- For damages for defective performance, 126
- Plea of tender, 363

County Courts—

- Ontario—Changes in jurisdiction, 50, 85, 136, 138, 156, 173, 212
- Manitoba—Replevin—Resisting officer, 514
- Nova Scotia—Jurisdiction—Sale of land, 38
- Of judge acting in case of illness of another, 129
- Order for possession of land, 129
- British Columbia—Notice of trial—Power to abridge, 673

Crime—

- Suppression of, discussed, 717

Criminal code—

- Discussion of suggested amendments, 258
- Suspended sentences, 260
- Speedy trials act, 260

Crim. Con.—

- A continuing wrong—Damages—Statute of limitations, 26, 458

Criminal law—

- Reserving question for opinion of court—Theft, 36
- Provocation as a defence in homicide cases, 55
- Prohibition—Jurisdiction of judges of Chancery Division, H.C.J., Ont., 75
- False pretences—Evidence—guilty knowledge—Previous acquittal, 151
- Indictment of corporation—Endangering human life, 159
- Keeping house of ill fame—Mode of trial—Pleading guilty, 160
- Habeas corpus—Conviction, Certiorari, 160
- Procedure—Leave to appeal—Acquittal, 228
- Some matters in connection with the Sifton case, 719
- Trial for lesser offence after acquittal on greater, 242, 461
- Summary trial—acquittal—Further prosecution—Mandamus to police magistrate, 276
- Power of magistrate—Convicting person charged with theft—Offence of attempting to commit, 786
- Order for further detention, 786
- Election to be tried summarily—Right to withdraw election, 845

Criminal law—Cont.

- Statistics of crime in United States, 287
- Ticket of Leave Act considered, 292
- Warrant not stating where prisoner to be confined, 317
- Conveyance of prisoner to jail, 317
- Safeguarding of criminals, 409
- Confession—Evidence, 474
- Suspended sentence—Extricating recognizance, 693
- Appeal by way of stated case, 762
- New treatise on, by Mr. Tremear, 760
- See Assault—Criminal code—False pretences—Fortune telling—Summary conviction—Th

Crown—

- Information by—Remedy by writ of extent, 304
- Action for monies paid Crown by mistake, 304
- Contract for public works—Delay—Taking work out of contractor's hands, 305
- See Assessment—Public domain—Public works.

Crown lands—

- Improvements by locatee—Patent, 111
- Grant made in error—Adverse claim—Cancellation, 345

Cuba—

- Constitutional convention as to, 443

Damages—

- Measure of—Death of child, 27
- Taking work out of hands of contractor, 305
- Mitigation of, 118
- Recovery of, for injury caused by fright, 329
- Assessing, by taking average of estimates of witnesses, 345
- See Interest—Negligence—Public works.

Davies, Sir L. H.—

- Appointed to Supreme Court, 677

Deceit—

- Passing off goods as those of third party, 769
- See Fraud—Practice.

Debenture—

- See Company.

Deed—

- Quit claim—Priorities, 130
- Construction, 228, 501, 749
- Description—Ambiguity 473, 749
- Slips and blanks in—Law as to discussed, 477
- Oral evidence as to consideration, 796
- See Patent—Registry Act.

Defamation—

- See Libel and slander.

Delpit case—

- Marriage law in Quebec, 91, 209

Devolution of Estates Act—

- Partial intestacy, 692
- Gift of property belonging to wife, 752
- See Administration.

Dibbs, Sir George—

- Sketch of his life, 810

Discovery—

- Examination—Appointment—Service—Default, 33
- Nature of—Cross-examination, 45
- Of plaintiff resident abroad—Place of examination, 167
- Abortive trial—new trial, 201
- Production—Privilege—Solicitor and client, 241, 746
- Documents relating to plaintiff's life, 349
- Patent action—Account of profits—Names of customers, 96
- Issue of fraud on record—Admission, 241
- Action of maintenance—Criminating answers, 401

Disorderly house—

- Summary trial—Consent—Conviction, 858
- Offence of keeping, implies continuous offence, 430

Divisional Court, Ontario—

- Or single judge—Jurisdiction, 668

Division Courts, Ontario—

- Jurisdiction—Husband and wife, 114
- Contract signed by defendant—Costs, 160
- Title to land, 232
- Amount beyond—Mandamus—Appeal, 275
- Attachment of debts—Foreign garnishee, 504
- Judgment debt is a simple contract debt only, not one ascertained by signature, 692
- Examination on judgment summons, 21
- Garnishable debt—Question as to jurisdiction, 161, 504
- Friendly garnishee, 161
- Action by bailiff—Where to be brought—"Debt due" or damages, 245
- Transfer of action, 750
- Appeal to High Court—Practice, 162, 275

Divorce—

- Law of, in Canada, discussed, 481

Domestic forum—

- See Church.

Domestic servants—

- Union of, 713

Domicil—

- Change of—Marriage, 18
- Intention—Proof—Residence—Permanency, 700
- Of origin—Choice—Abandonment—Husband and wife, 400, 701
- See Conflict of laws—Marriage.

Donatio mortis causa—

- Gift of mortgage, 105
- Savings bank deposit book, 133
- Nuncupative will, 154

Dower—

- Admeasurement of—Procedure, 431

Drainage—

- Assessment—Improvement of natural watercourse, 23-221
- Embankment—Benefit and injury—Outlets, 23, 221
- Alteration of report and plans, 104
- Qualification of petitioners—Last revised assessment roll, 105
- Notice—Mandamus, 108
- View by referee, 108
- Damages—Compensation, 108
- Unfair criticism of Supreme Court decision as to, 221

Drainage—Cont.

- Status of petitioner—Assessment roll—Farmer's sons, 223
- Township drain Division of township, 224
- Artificial obstruction— Failure of scheme—New report, 416
- Costs on appeal from judgment of referee, 418
- Artificial—Repairs—Outlet, 815
- See Dyke land—Watercourse.

Drugs—

- Unauthorized sale of, 70

Dyke land—

- Liability for necessary repairs, 405

Easement—

- Implied reservation—Right to support, 774
- See Light—Right of Way.

Editorials—

- The jury system, 1
- Administration of justice in the Yukon, 2
- The law of crossed cheques, 5
- General Sessions of the Peace, origin and history of, 10
- THE QUEEN. In memoriam, 47a
- The death of Mr. Justice Rose, 49
- Administration of justice in Ontario—Suggested changes, 50, 138, 212, 257
- Appointments to the Bench criticised, 50
- Married women's property, 51
- Married women as next friends, 53
- Provocation as a defence in homicide cases, 55
- Appointment of Mr. Justice Lount, 89
- The late Mr. R. B. Osler, K.C., 90
- Marriage laws in Quebec, 91
- Unlicensed Conveyancers, 92, 180
- The Queen and the Bar, 137
- Trusts and combinations, 139
- Changes in the Ontario Reports, 177
- Law Society of Upper Canada—Election of Benchers, 177
- Changes in the Supreme Court Bench, 209
- The Delpit marriage case, 209
- Undesirable immigration, 210
- Peace-at-any-price in South Africa, 211
- County Courts and legal procedure in Ontario, 212, 257
- The legal status of our militia, 214
- The Manitoba Liquor Act Case, 217
- The Thellusson Act, 258
- Some points in the Criminal Code, 258
- Barristers' Benevolent Association, 282
- Unanimity of Juries, 289
- Status of Colonial Bar before the Privy Council, 290, 329
- The law of charitable uses, 291
- The ticket of leave Act, 292
- Injuries resulting from fright, 329
- The late Mr. Justice King, 330
- The Ontario Bench and the Government, 331
- Security for costs when ordered, 334, 410
- The King's titles, 369
- The Canadian Copyright in its constitutional and international aspects, 370
- Careless guarding of prisoners, 409
- Practice in pleading, 410
- The death of Sir Thomas Galt, 441
- The death of Hon. A. S. Hardy, K.C., 441
- Sleeping judges, 442
- Maitre Labori and the English Bar, 442

Editorials—Cont.

- The Cuban constitution, 443
- Medical expert evidence, 444
- The law of divorce in Canada, 481
- Copyright in certain artistic articles, 490
- Treatise on tenants' obligation to repair, 521
- Sir John Boyd, K.C., 677
- Appointment of Sir L. H. Davies, K.C., to Supreme Court, 677
- Appointment of Mr. B. M. Britton to Ontario Bench, 677
- Anarchy and its victim, 678
- Re-print of English reports, 680
- Anecdotes of the late Chief Justice Draper, 681, 761
- The suppression of anarchy, 717, 757
- Legal maxims, 718
- Criminal procedure. The Sifton case, 719,
- The Married Women's Property Act, 720
- Elective judges, 758
- Decrease in legal business, 759
- Physicians' liabilities, 759
- Coke and Blackstone and the new learning, 760
- Criminal appeals by way of stated case, 762
- Individual suing in assumed trade name, 763
- Union labour and strikes, 766
- Judicial appointments in England, 797, 829
- Bench and Bar in Ontario, 797
- The Act respecting assignments as it relates to the valuation of negotiable securities, 798
- Evidence of children, 829
- Statute making, 829
- The law and practice as to venue, 831

Ejusdem generis—

- Construction of power to buy goods, 269
- Public Health Act, 312

Elections—**Dominion—**

- Service of petition—Extending time, 204, 509
- Preliminary objection—Copy of petition—Filing, 285
- Status of petitioner, 321
- Franchise Act—List of voters, 321
- No nominations—Petition against returning officer, 355
- Parties to petition, 396
- Time for particulars—Extension of, 439
- Evidence to disqualify—Trivial offence—Payment of agents' expenses, 710
- Residence—Right to vote—Refusal of ballot to voter, 857

Provincial—

- Rights of naturalized Japanese to register, 47, 516.
- Corrupt practices—Treating—Intent—Habit, 71
- Voting without right, 72
- Bribery—Evidence, 72
- Providing money for betting—Loan, 72
- Agency—Evidence—Party association, 72, 350
- Outside agents, 350
- Evidence of, 462
- Bogus election list Certiorari, 250
- Tampering with ballots—Switching and spoiling, 462
- Inspection of ballots, 462
- See Voters' lists.

Municipal—

- Evidence to be taken viva voce, 234
- Disqualification—Contract with council—Release, 450

Electrical law—

Failure to insulate wires, 328
See Assessment—Municipal law.

Electric railway—

See Street railway.

English Reports—

Reprint of, 68c

Equitable execution—

See Receiver.

Estoppel—

Conduct conducing to fraud, 809
See Landlord and tenant.

Evidence—

Right to contradict one's own witness, 76, 698
 Admissibility of, 232
 Of medical experts, 442, 444
 Oral, as to written agreement, 248, 250
See Libel and slander—Master and servant.

Examination—

See Judgment debtor.

Execution—

Goods—Exemption from—Right of widow to, 752
 Lands—Sheriff's sale—Irregularities, 849
See Equitable execution—Sheriff.

Executor and administrator—

Appropriation of specific assets to payment of legacy, 455
 Duty as to accounts, 817
 Power to sell land, 822
See Administration—Surrogate court—Trusts and trustee.

Exemptions—

See Homestead Act—Execution.

Expressman—

See Carrier.

Expropriation of land—

Compensation—Mining purposes, 94, 494
 Acquisition of interest in other lands injuriously affected, 840
See Municipal law—Railway company—Will, construction of.

Factories Act—

Elevator cabs—Approved device, 81
 Omission to provide statutory safeguards, 81
 Necessity of proof of negligence, 62
 Young girl—Negligence, 162—814
 Ventilation—Dust, 296
 Neglect to comply with directions of inspector, 296

False pretences—

Athletic sports—False statements as to name and performances, 60

Fatal Accidents Act—

Voluntary settlement by deceased precludes action by widow, 327
 Rights of administrator and relatives, 397
 Time limit—Stay of proceedings, 397
 High seas—Death of alien—Compensation, 805
 Death of beneficiary—Survival of action, 844

Fences—

Obligation as to—Trespass—Possession, 475

Fi. fa.—writ of—

See Execution.

Fire—

See Railway company—Sale of goods.

Fixtures—

“Plant”—Moulding patterns—Temporary absence from factory, 197

Made part of realty by mortgage, 197

Mortgage—Improvement of inheritance, 263

Plant of electro-plating factory, 413

Tapestry affixed to wall—Removal by tenant for life, 342

Of street railway company, 417

Flotsam and Jetsam—

135, 176, 255, 287, 447, 477, 674, 716, 795

Food—

See Adulteration.

Forcible entry—

See Overholding tenancy.

Foreclosure—

See Mortgage.

Foreign judgment—

Action on—Original consideration, 157

On promissory note—Effect of, 692

Forfeiture—

See Landlord and tenant.

Fortune telling—

Deception an essential element in offence of, 503

Franchise Act—

See Elections.

Fraud—

Coloured covering for fruit, 328

Two innocent persons—Fraud of third, 809

See Arrest—Discovery—Summary judgment—Mortgage—Trade mark.

Fraudulent conveyance—

Post-nuptial settlement—Ante-nuptial agreement for, 745

Fraudulent preference—

See Assignments and preferences.

Fright—

Damages for injury caused by, 329

Friendly society—

Where and how policy assignable, 841

See Benefit Society—Benevolent Society.

Galt, Sir Thomas—

Death of, 441

Gaming—

Office used for betting—Coupon competition, 262

Garnishee

See Attachment of debts.

General Sessions—

Historical review of, 10

Gift—*See* Donatio mortis causâ—Mortgage, 105**Going concern—**

Meaning of, 305

Goodwill—*See* Partnership.**Growing crops—**

Chattel mortgage on—Severance, 255

Guarantee—

Duration of, 111

Default of principal—Liability of surety, 206

Representation as to credit, 779

Guarantee insurance—*See* Insurance (Guarantee).**Guardian—***See* Surrogate Court**Habeas corpus—**

Order by County Court judge, 127

County Court judge, when no jurisdiction in, 431

See Theft.**Hardy, Hon. A. S.—**

Death of, 441

High Court of Justice, Ontario—

Jurisdiction—Foreign law, 817

Barrister sitting as local judge, 847, 848

Highway—

Easement—Dedication—Right of ingress and regress, 311

Prescription—311

See Municipal law—Negligence—Railway.**Holiday—**

Thanksgiving day is a, 202

Homestead Act, Manitoba—

Exemptions, 322, 670

Hospital

For consumptives—Public Health Act, 312

Expropriation of land for—Taken from park—Board of Health, 402

Husband and wife—

Undue influence, 20, 27

Loan by wife's trustee to husband—Statute of limitations, 96

Tort of wife—Liability of husband, 97

Judgment against—Form of, 114

Division Court jurisdiction, 114

Authority of wife to carry on business—Husband's debts, 128

Action for alienation of affections, 796

See Crim. Con.—Criminal law—Division Courts—Domicil—Principal and surety.**Ice on sidewalk—***See* Municipal law—Negligence.

Ignorantia juris—*See* Wills.**Improvements in land—***See* Crown Lands.**Indemnity—**

Bond of—Future payments, 819

Indians—

Lands of—Treaty—Surrender—Precious metals, 78

Selling liquor to, 252

Infant—

Custody of—Right of father as to religious education, 34

Examination of infant by court—Conditions, 34

See Bond—Building society.**Injunction—**

Stay of proceedings—Security for costs, 32

Against plaintiff before defence—Interlocutory, 496

See Nuisance—Practice.**Innkeeper—**

Moneys received by—Liability, 113

Insolvency—*See* Assignments and preferences.**Insurance—****Accident—**

Hazardous occupation—Voluntary exposure, 74

Cause of—"Immediately," meaning of, 115

"Riding" in public conveyance, 168

Change in occupation—exposure, 818

Fire—

Prior insurance—No statement of, 111

Effect of renewal of policy, 111

Form of policy—Co-insurance clause, 159

Apprehension of incendiarism, 113

Application filled in by local agent—Untrue answers, 113

Insurable interest—Unpaid vendor, 271

Conditions—Variations from statutory, 433

Sole and unconditional owner—Mortgage—Estoppel, 460

Proof of loss—Interest—Value of property, 433

Loss payable to mortgagee—Release of equity of redemption, 754

Renewal—Prior insurance—Parties—Mortgagee, 843

Guarantee—

Conditions—Construction—Proof, 511

Expense of prosecution of employee, 511

Life—

Mistake—Revision of contract—Repayment, 26

Change of beneficiary, 106, 200

Premium note—Condition as to non-payment not endorsed on policy 129

Insolvent company—Proof of claim of policy holder creditor, 231

Note for premium—Part payment—Forfeiture—Waiver—Assignee 247

Directions as to mode of payment of proceeds of policy, 403

Payment by instalments—Beneficiaries, 403

For benefit of wife, and in case of her death, to children, 796

Wager policy—Cancellation—Repayment of premiums, 813

See Benefit Society—Benevolent Society—Friendly Society.

Insurance—Cont.**Marine—**

Policy on hull and freight—Repairs—Total loss, 357
 Abandonment—Acceptance—Estoppel, 357
 Authority of master—Revocation by coming of special agent, 357
 Amounts recoverable—Master, servant and special agent, 357
 Capture by alien enemy—Belligerent rights, 712

Mutual—

Assessment on premium note, 44

Interest—

When time begins to run, 83
 On money secured by bond—Damages, 96

Interpleader—

Security for goods—Bond of chartered bank, 238
 Execution creditor ordered to give, 314
 Issue—Party plaintiff—Sheriff in possession—Place of trial, 314
See Assignment.

Irregularity—

See Practice.

Japanese—

Right to register as a voter, 47

Joinder—

Of causes of action—Partnership accounts—Conspiracy, 399
 Class action—*See* Practice.
 Of parties—*See* Parties—Practice.

Joint tenant—

See Tenant in common.

Judge in Chambers—

Discretion of—Appeal, 81

Judgment—

Action on—General rules, 76
 Judgment on confession, 76
 Period of limitations, 75
 Renewal of writ, 75
See Foreign judgment—Practice.

Judgment debt—

See Division Courts.

Judgment debtor—

Examination of—Fraud, 207
 Finality of order dismissing motion to commit, 420

Jurisdiction—

See Chancery Division, H.C.J., Ont.—Division Court—Divisional Court—
 High Court of Justice, Ontario—Habeas corpus—Judge in chambers
 —Justice of the Peace—Master in Ordinary—Probate Court, Nova
 Scotia—Quarter Sessions—Surrogate Court.

Jury—

Cost and usefulness of, 1
 Verdict of not proven, 2
 Appeal from, in Quarter Sessions cases, 10
 Cases involving title to land should be tried without, 749

Justice of the Peace

Action against, for causing arrest—Jurisdiction—Notice, 169
 Protection of, in habeas corpus order, 838
See Summary conviction—Summary trial.

King, Mr. Justice—

Notice of his death, 330

Labour Union—

Injunction against threats of, 675
 And strikes discussed, 766
 The servant girl question, 713.

Landlord and tenant—

Mortgagor in possession subject to lease—Enforcing forfeiture, 59
 Lease to company—Assignments and preferences—Forfeiture—Waiver—
 Estoppel, 107
 Owner of reversion accepting surrender of lease—Liabilities, 107
 Agreement to let for a year—Verbal acceptance—Specific performance, 342
 Tenant's obligation to repair—Treatise on, 521
 Right of tenant to remove fixtures, 782
 Lease—Covenants—Quiet enjoyment—Breach, 62
 Against assignment—Assignment subject to breach, 62
 To pay "impositions" charged on premises, 683
 Use of hay on premises by feeding—Right of landlord against execution
 creditor of tenant, 161
 Conditional covenant for renewal of underlease, 187
 Personal covenant—Running with the land—Assignee of rever-
 sion, 187
 Acceleration clause, 230, 231
 Surrender by operation of law—Custody of title deeds, 269
 Collateral agreement—Parol warranty of drains, 684
 Underlease under power of sale invalid, 782
 Distress—Excessive—Goods destroyed by fire, 123
 Tenant at will—Mortgage—Valuation, 200
 Sale of patented chattel—Right to use, 454
 Exemptions—Two months in arrear, 793
 Overholding—Forcibly entry—Costs, 81
See Conflict of laws.

Law Associations—

County of York, annual meeting, 135

Law Society of Upper Canada—

Election of benchers, 177, 257, 288

Legal procedure, Ontario—

See Administration of Justice.

Libel and slander—

Publication—Dictation to typewriter, 31
 New trial, 285
 By post card—Notice, 293
 Privilege—Malice, 40, 118, 205, 225, 273, 493, 691, 698
 By incorporated company through its servants, 110
 Evidence—Admissibility—Two libels, 118
 Mitigation of damages, 118
 Solicitor—Privilege, 205
 Pleading—Striking out defence—Embarrassment, 240
 Innuendo—"Blackmailing"—Onus of proof, 691
 Examination to credit—Contradiction, 698
 Imputation of insolvency—Words not actionable per se, 772
 Dictating letter to stenographer, 795
 Justification—Particulars—*Res judicata*, 821
See Company—Costs (Security for).

License—

Revocation—Repairs by licensee, 246
 Notice—Advertising station, 343

Light—

Maliciously erecting fence to obstruct, 254
 Enjoyment of—Vendor and purchaser—Specific performance, 775
 Right by prescription—Derogation from grant, 498

Limitation of actions—

Municipal corporation—Special statute, 37
 Possession, 104
 Acknowledgement in writing—Agent, 108
 Death of tenant in common—Adverse possession, 122
 Concealed fraud—Possession by person having notice of fraud—265
 New beginning to statute—Easement—Street, 311
 Annuity—Will—Charge on land—Arrears—Lunatic, 416
 As to mortgagee of land, 494
 Grant to user—Deed of appointment—Intervening adverse possession, 817
See Crim. Con.—Husband and wife—Judgment—Mortgage—Municipal law
 —Right of way—Sheriff.

Liquor License Act—

Manitoba.
 Provincial jurisdiction—Prohibitory legislation, 217, 283
 Nova Scotia.
 Wholesale license, 39
 Attendance of witnesses—Payment of fees, 429
 Ontario.
 Unincorporated and unlicensed club—278
 Evidence of sale of liquor, 278
 Transfer—Powers of commissioners—701
 Ratepayers petition—701

Local Judge—

See High Court.

Lord Campbell's Act—

See Fatal accidents Act.

Lottery—

Power of Provincial Legislatures as to, 23
 Legality of, 23

Lount, Mr. Justice—

Appointment of, 89

Lunatic—

Death of—Confirmation of report—Discharge of committee, 277
 Pauper—Maintenance, 341
 Foreign committee, 454
See Limitation of actions—Alimony.

McKinley, President—

Murder of, 678

Machinery—

See Mortgage—Factories Act—Fixtures.

Magistrate—

See Justice of the Peace.

Maintenance—

See Discovery.

Malice—

See Libel and slander.

Malicious prosecution—

Reasonable and probable cause, 32

Mandamus—

Public body required to perform statutory duty, 115
 Prerogative writ—Summary application—Entitling affidavits, 115
 Does not lie when nothing pending in court below, 276
 To Police Magistrate, 276
See Municipal law.

Manslaughter—

Provocation as a defence, 55

Maritime Law—

Ship to be discharged with all reasonable despatch—Delay, 94
 Charter party—Ballast—Obligation to furnish, 147
 Necessaries supplied to ship—Owner domiciled in Canada, 305
 Supreme Court in Equity, N.B.—Jurisdiction in account between co-owners, 366
 Persuading seamen to desert, 779
 Collision—"Overtaken" vessel, 783
 Careless navigation, 783.
See Charter party—Insurance (Marine).

Marriage—

Domiciled British subject—Prohibited degrees, 64
 Law of, in Quebec, 91, 209
See Husband and wife.

Marriage settlement—

Mistake—Rectification, 185
See Fraudulent conveyance.

Married women—

Property Act discussed, 720
 As next friends, 53
 Separate property—Defect in law of, 51
 Settlement by infant—Repudiation, 67
 Proof of, 509
 Terms of judgment and execution against, 437
 Contract of—Property liable to execution against, 151
 Restraint on anticipation, 151, 688
 Presumption as to child bearing, 343
 Power of appointment—Release of, 688
 Before passing of act—Income, 765
See Husband and wife—Marriage settlement.

Master and servant—

Share of profits—Sale of business, 226
 False imprisonment by servant—Master's liability—Implied authority, 296
 Wages by the year—Service for part of year, 340
 Agreement to employ servant—Refusal to provide work—Dismissal, 807
 Dual employment—Profits, 818.
 Negligence—Workmen's Compensation Act—Foreman, 26
 Licensee, not trespasser, 27
 Defendant's servant—Unauthorized act—Evidence of authority, 58
 Fellow servant—Machine sufficient, but failure to manage, 80
 Superintendent, 80
 Evidence, 428
 Dangerous machine—Absence of guard—Contributory negligence, 226
 Defective plant, 415
 Failure to fence or inspect unused place, 428
 Notice of injury—Excuse for, 699
 Evidence—Statement of deceased—Cause of injury, 699
 Negligence of servant of one person lent to another, 779
 "Young girl"—*See* Factories Act.
See Damages—Factories Act.

Master in ordinary—

Jurisdiction—Writ of proceedings, 846

Master's report—*See Practice.***Maxims, legal—**

Nature and value of, discussed, 718

Meat—

Conviction for selling unwholesome, 667

Mechanics' lien—

Notice in writing, 27

Service out of jurisdiction, 117

Delivering statement of defence—Time, 117

Trial—Appointment in writing—Notice of trial, 117

One, against owners of different properties, 670

Medical Act—

Single act of prescribing is not practising, 507

Use of title "Doctor," 824

Liability of druggist for act of salaried clerk, 824

Punishment in excess of statute—Amendment refused, 507

Medical experts—

Evidence of, discussed, 442, 444

Medical practitioner—

Their position in time of Henry VIII., 176

Rights as to treatment of patients, 675

Refusal to attend patient—Liabilities, 759

Mi. tia—

Legal status of, 214

Mining law—

Recorded description—Error—Certificate of work, 24, 251

Subsidence of mine—Injury to adjoining lands, 65

Description—Contesting applicants, 124

Assessment work—Certificate—Omission to file notice, 251

Abandonment of location—Evidence, 324

Defect in title cured by certificate of work, 324

Water records—Joint application—Gold commissioner, 672

Improvement certificate—Co-owner, 673

License—Location—Mistake of official—Defects cured, 860

Misdirection—

When non direction amounts to, 40

Mistake—

Action for money paid by, not maintainable against Crown, 304

Joinder of parties—New trial—Practice, 319

*See Marriage settlement—Bill of lading.***Money had and received—**

Mixing of goods—Rights of parties, 282

Money in court—*See Payment out of court.***Mortgage—**

Machinery—Vendor's lien—Priorities, 25

Insurance—Subrogation, 25

Redemption—Closure, 63, 778

Of future acquired property, 417

Mortgage—Cont.

- Sale of interest under execution—Encumbrancers, 107
- Claim for balance due on, after foreclosure and sale, 160
- Chose in action—Shares in company—Power of sale, 188
- Creation of tenancy—Right of distress—Tenant at will, 200
- Rents and profits—Collateral indebtedness—Appropriation, 227
- Transfer of, without notice to mortgagor—Assignee—Payment—Fraud, 268
- Default in payment—Interest—Instalment, 271
- Judgment on—Subsequent settlement—Failure to carry out—Account, 277
- Claim on—Special endorsement, 324
- Payment to agent without possession of mortgage, 327
- Conveyance subject to, reserving life estate, 696
- Covenant by purchaser—Mortgagor does not become surety, 815
- Mortgages in trust, 745
- Payment to partner of one of two joint mortgagees, 745
- Redemption—Acceleration, 814
- Sale under power—Tender of payment, 112
 - Notice of—To whom—Service—Agent, 121
 - Registration of, 121
- Payment of arrears—Acceleration clause, 230
- Fraud—Pretended sale—Purchaser without notice, 694
 - Knowledge of agent—Redemption—Compensation, 694
 - Jurisdiction—Foreign defendant, 694
- Foreclosure by assignee—Subsequent advances, 170
 - Parties—Appeal from report, 238
 - And action on bond—Limitation of action, 428
 - Form of order of and of advertisement, 508
 - Opening up and further incumbrance, 786
 - Assignment pendente lite—Parties, 814
 - See Donatio mortis causa—Fixtures.

Mortmain—

- See Charity—Corporation sole—Will, construction of.

Municipal law—

- Board of commissioners—Statutory restriction, 30
- Street commissioners, Nova Scotia, 37
- Water commissioners—Statutory agent of city—Powers, 397
- Contract—Sub-letting—Consent of council, 70
- Bonus debentures for railway—Levy of rate, 225
- Action by ratepayers—Attorney-General intervening, 224
- Bonds for almshouse—Liability—Form of, 247
- License fee to cover expense of tags on animals, 312
 - Local improvements—Expropriation for widening street—Indemnity, 345
- When limitation of actions against municipality—Applies to mandamus, 436
 - Arbitration as to purchase of electric light plant, 850
- Illegality of compulsory wage clause in city contracts, 860
- Closing road allowance—By-law—Notice of intention to pass, 115
 - Necessary to provide other road—Time to petition against, 398
- Highway—Non repair of—Nuisance, 74.
 - Dangerous locality, 182
 - Removing protecting fence—Misfeasance, 182
 - Exhibition ground—Approach—Platform—Negligence, 230.
 - Public dock—Collapse—Negligence, 239
 - Invitation to use, 230, 239
 - Opening in sidewalk—Negligence—Relief over, 240
 - By-law permitting cattle to graze on, 312
 - Sinking of, through defective sewer, 339
 - Maintenance of—Accumulation of ice and snow, 247, 396, 413.
 - Gross negligence, 396
 - Street railway liable to remove snow, 413
 - Opening in—Accident—Nonfeasance—Limitation of action, 821
- See Elections—Limitation of actions—Mandamus—Nuisance—Police Commissioners—Public schools—Transient trader.

Navigation

Improvements in, 784

Negligence—

Onus of proof, 28

Accident to sick man supposed to be drunk, 48

Trial by judge without jury—Findings of fact—Evidence—Appeal, 69

Proximate cause—Telephone pole—Third party, 157

Liability—Lessee or licensee—Repairs, 230

Horse at large on highway, 233

Icy road—Evidence, 247, 396

Common employment, 255

Voluntary incurring risk to save life of another, 328

License—Invitation, 418

Explosion causing death of workman, 428

Passenger elevator—Operator disobeying master's orders,

Presentation of, 675

Person in charge, 676

User of steam roller, 796

Driving off trespasser resulting in his death, 796

Nervous shock resulting from fright, 808

Highway—Horse at large, 813

Damages to person—Mode of calculating, 843

Contributory—Nonsuit—Undisputed facts, 77

Crossing railway, 109

Master and servant, 226

Opening in sidewalk, 240

Form of question as to, for jury at trial, 414

Effect of finding of, 471

Unguarded cistern, 795

See Accident—Cheque—Electrical law—Factories Act—Master and servant
Municipal law—Public works—Railway company—Rifle range—
Street railway—Trial.**Newspaper—**

Libel—Security for costs, 315, 340

New trial—

Misdirection and non-direction, 40

Verdict against evidence, 127

See Practice.

Notice of meeting—

See Public schools.

Notice of trial—

See Practice—Mechanics' lien.

Novation—

See Sale of goods.

Noxious trade—

See Nuisance.

Nuisance—

Prosecution of municipal corporation for, must be by indictment, 74

Non-repair of streets—Preliminary enquiry, 74

Disturbance of church congregation, 255

Noxious trade—Injunction, 267

Public Health Act—Consumptive hospital, 312

Operations of street railway, 327

Vibration caused by engine, 666

Railway carrying animals, 820

Ontario Courts—

Proposed changes in—See Administration of justice.

Ontario Reports—

Change in mode of issue, 177

Order—

Action on, 150

Osgoode Hall—

Telephone required at, 176

Osler, B.B., Q.C.—

Notice of his death, 91, 134

Overholding tenant—

Forcible entry—Costs, 81

Parent and child—

Undue influence, 690

Illegitimate child—Contract by mother to give up, 771

See Infant.

Particulars—

Director's liability—Grounds of belief, 779

Parties—

Action by ratepayers—Attorney-General must sue, 224

Class action, 270

Addition of—Separate causes of action—Joinder, 278, 398

Contract for sale of land to different purchasers, 285

Joinder of causes of action—

See Attorney-General.

Partition—

Summary application—Question of title—Adjournment, 241

Partnership—

Loss of capital—Depreciation in machinery, 133

Covenant against, 145

Good-will—Use of firm name, 145

Dissolution—Action—Firm name, 150

Accounts, 227

Contract with—Death of partner, 182

Mortgage by partner of his share—Dissolution—Sale of shares by co-partner, 297

Conversion of, into company, 456

Books of—Right of inspection by partner's agent, 457, 687

Patent—

Charge on land before issue of, 473

See Crown lands.

Patent of invention—

Infringement—Delivering abroad within home jurisdiction, 143

Articles sent abroad—User—Possession, 265

Manufactured article imported from abroad, 301

Sale of patented chattel under distress warrant—Rights of purchaser, 454

Grant—License—Revocation, 697

Right to manufacture—Changes in article—Reinforcing contract, 697

Assignment for limited period, 754

Patentability—No inventive faculty, 812

See Summary judgment.

Payment—

Voluntary, 232

See Appropriation of payments—Mortgage.

Payment into court—

Conditions—Practice, 39

Payment out of court—

Life tenant—Lunatic—Foreign guardian, 79
 To wrong person—Stop order—Neglect to obtain, 302

Penalty—

Suit for joint penalties—Second offence, 71

Perpetuity—

See Thelluson act—Will, construction of.

Physician—

See Medical practitioner.

Pleading—

Statement of claim—Amendment—Conformity with writ, 110
 Stating section of act relied on, 166
 Claim for specific performance, also praying cancellation and possession, 239
 Reply—Departure—Written agreement, 420
 Title to land—Assignment of mortgage, 789

Nova Scotia—

Demurrer—Amendment—Waiver, 131
 See Libel and slander.

Plan—

Amendment of—"Party concerned," 106

Police Commissioners—

Constable on patrol waggon not a servant of, 314, 504

Police Magistrate—

See Criminal law.

Possession—

See Limitation of actions—Sale of goods—Sheriff—Trespass—Vendor and Purchaser.

Post card—

See Libel and slander.

Power of appointment—

Non-execution—Death of donee—Statute of frauds, 185
 Limited—Exercise by will, 455
 Document "purporting to be a will," 688

Power of attorney—

To receive surplus proceeds of mortgage sale—Death of grantor, 131
 See Principal and agent.

Practice—

Amendment—Style of cause—Irregularity or nullity, 46
 Appearance—Irregularity, 361
 Failure to complete trial—Death of judge—New trial, 168
 Service by posting Appearance—Waiver, 239
 Dismissal of summons—Costs—Whether payable forthwith, 211
 Action by or against unincorporated association, 262
 Action of deceit—Injunction evidence—View by judge, 265
 Class action—Joinder of plaintiffs, 270
 Joinder of several causes of action, 270
 Default judgment—Setting aside—Terms, 360
 Entry of—Equitable action, 361
 Notice of trial—Right of defendant to give, 361
 Interlocutory judgment—Assessment of damages, 401
 Closing pleadings against non-appearing defendants, 410
 Frivolous action—Striking out, 419
 Time for pleading pending summons to strike out appearance, 437.

Practice—Cont.

- Judgment—Amendment—Accidental error, 451
- Right to begin, 499
- Statutory remedy—Right to injunction, 499
- Master's report—Confirmation—Notice of filing, 700
- Functions of judge and witness, 769
- Order improperly made and not appealed from, 771
- Third party procedure—Indemnity—Appeal by third party, 788
- Parties—Relief over—Identity of claims, 845
- New Brunswick
 - Interrogatories—Answers—Ambiguity, 42
 - Security for costs, 43
 - Judgment quasi nonsuit, 44
 - Offer to suffer judgment by default, 83
 - Nolle prosequi Costs, 203
 - Striking out defence—Discretion, 249
 - Set off against judgment and costs in county court, 249
 - Proof of jurisdiction of court, 509
 - Service of process, 510
 - Referee's fees—When payable, 670
 - Execution against body, 704
 - Dower—Petition, 704
 - Referee's report, 705
 - Court of equity—Jurisdiction, 705
 - Review—Affidavit, 706
- See Admissions—Affidavit—Appeal—Attachment of debts—Compromise—Costs—Counterclaim—County courts—Discovery—Injunction—Mistake—Mortgage—Particulars—Partition—Pleading—Stay of proceedings—Summary judgment—Writ of summons—Yukon.

Prescription—

See Limitation of actions—Right of way.

Pressure—

See Assignments and preferences.

Principal and agent—

- Moneys received by hotel manager, 113
- Liability to account, 113
- Undisclosed principal—Sale of goods, 114
- Authority of agent—Consideration money from agent, 148
- Power of attorney—Ejusdem generis, 269
- Want of Personal liability of agent, 299
- Knowledge of, 299
- Goods disposed of in violation of, 406
- Implied, 453
- Attorney acting innocently under forged power, 453
- His liability to third party, 453
- Commission—Introduction of purchaser by one agent, sale by another, 672
- Payment to sub-agent—Mortgage, 327
- See Bills and notes—Contract—Stockbroker.

Principal and surety—

- Discharge of surety—Giving notice, 33
- Agreement to sell goods and account, 364
- Release of co-surety, 806
- See Guarantee—Sale of goods.

Privilege—

See Libel and slander.

Privy Council—

- Status of colonial bar before, 290
- See Appeal.

Probate court, Nova Scotia—

Jurisdiction—Parties—Evidence, 126

Production—*See* Discovery.**Prostitute—**

General reputation, 712

See Disorderly house.**Proximate cause—***See* Negligence.**Public domain—**

Contract for grant of—Breach of—Remedy—Declaration of right, 307

Public health Act—*See* Nuisance—Hospital.**Public officer—***See* Costs (Security for).**Public schools—**

Agreement with teacher—Seal, 197

Estimate of expenses for municipality, 234

Separate schools—Withdrawal of supporter—Continuance of liability, 347

Defective notice of meeting—Effect on acts done at, 756

Public works—

Contract for—Delay—Notice by engineer—Taking work from contractor—

Damages—Plant—Interest, 305

Damages to land—Liability, 307

To person—Mode of calculating, 843

Accident on—Crown's servants, 784, 843

Improvement of navigation, 784

See Rifle range.**Quarter sessions—**

Historical review of, 10

Records of, in hands of Clerk of Peace are public documents, 751

Record of acquittal, 751

Queen Victoria—

In memoriam, 48a, 137

Queen's counsel—

Historical reminiscences as to, 137

Oldest in England, 289

Quit claim—*See* Deed.**Railway company—**

Interference with watercourse, 28

Diversion of stream—Substituted bridge—Repairs, 109

Regulations as to charging fares, 48

Use of car of another company, 106

Bridge over highway—Height of—Accident, 164

Bonus to—Recital in bond—Effect of, 223

Farm crossing—Duty to provide, 237

Lease of line—Contract—Breach—Waiver—Injunction, 245

Not guilty by statute—Particulars of defence under, 667

Right to cross streets, 750

Negligence—Crossing highway—Neglect to give warning, 109

In running train, 171

Ordinary incident of travelling, 171

Railway company—Cont.

- Walking between rails, 196
- Inspection of trains, 254
- Loss of goods by fire, 313
- Defective car, 48
- Fence—Culvert—Animals on track, 104
- Spark from engine, 107
- Injury to passenger in sleeping berth, 458
 - On platform, 675
 - Closing of car door, 685
 - Explosives in car, 770
 - Piles ties—Children climbing on and killed, 795
- Expropriation—Award—Appeal from—Evidence, 235
 - Value—injury to land not taken, 235
 - Or compensation—Necessity for, 750
- Service of garnishee summons, 208
- See Accident—Assessment—Municipal law—Nuisance—Receiver—Street railways.

Receiver—

- Railway—Working expenses, 19
- Not open for traffic—Judgment creditor, 686
- Equitable execution—Trustees—Rents, 119
- Claim against crown—Voluntary payment, 123

Recital—

- In bond—Effect of, 223

Registry Act—

- Competing purchasers—Deed, 130, 132
- Some decisions of the Inspector of Registry Office, 827
- See Plan.

Replevin—

- See County Courts.

Representation as to credit—

- Signature of party to be charged, 779

Res judicata—

- See Assessment—Libel and slander.

Restraint of trade—

- See Trade union.

Restraint on anticipation—

- See Married woman.

Revenue tax—

- Canners—Tackle, 712

Rifle range—

- Is not a "public work"—Negligence, 345

Right to begin—

- See Practice.

Right of way—

- Users—Prescription, 272
- Of necessity—Parol grant—Prescription, 707
- Unity of possession—Interruption, 777

Riparian rights—

- See Watercourse.

River—

- See Watercourse.

Road allowance—*See* Municipal law.**Rose, Mr. Justice—**

Death of, 49, 134

Royal arms—

At Osgoode Hall, Toronto, 93, 409

Royal titles—

King or Emperor, 369

Sale of goods—

Undisclosed principal—Husband and wife, 114

Ratification, 747

Unascertained future goods—Delivery—Payment, 105

Appropriation to contract, 165

Destruction by fire—Risk of purchaser, 198

Written agreement—Oral evidence as to, 248

Possession of goods—Re sale by vendor—Novation, 316

Completion of contract, 322

Not according to contract, 339

Stipulation against rejection, 339

Conditional—Rescission of—Repairs and expenses attending, 432

Passing of property under unenforceable contract, 452

See Bailment.**Schools—***See* Public schools.**Separate schools—***See* Public schools.**Service—***See* Practice—Railway company—Writ of summons.**Settlement—***See* Marriage settlement.**Shares—***See* Company—Mortgage.**Shelley's case, rule in—**

Construction of, 456, 821, 848

Sheriff—

Sale of land by—Adverse possession—Statute of limitations, 359

See Execution.**Ship—***See* Maritime law.**Smallpox hospital—**

Compensation to adjoining land, 675

Solicitor—

Payment of fees—Practising without—Suspension, 74

Right of client to recover costs, 170

Agreement between, on both sides, to share profit costs, 253

Lien for costs—Infant—Compromise of action, 299

Right of solicitor trustee to costs as against trust estate, 794

See Solicitor and client—Trusts and trustee.**Solicitor and client—**

Arrangements between as to costs, 68

Privilege as to production of documents, 241

Communication in presence of opposite party, 254

Agreement respecting costs, 792

Commission on collection of moneys, 823

See Costs—Solicitor.

Special endorsement—

See Mortgage.

Specific performance—

See Contract—Landlord and tenant—Light—Vendor and purchaser.

Speedy trial—

See Criminal code—Criminal law—Summary trial.

Statute—

Construction of—Retroactive legislation, 71, 435

Ordinary meaning of words, 795

Evasion of, 30

Conflict between special and general enactments, 366

Statute of frauds—

Contract in alternative form—Specific performance, 343

See Fraudulent conveyance—Power of appointment—Representation as to credit.

Statute of limitations—

See Limitation of actions.

Stay of proceedings—

Action in foreign court, 694

See Costs, (Security for).

Stockbroker—

Liability of principal for act of, 494

Closing of customer's account—Dealing with his shares, 777

Including several orders in one contract with jobber—Default of broker—
—Liability, 809

Stream—

See Watercourse.

Street—

See Highway.

Street commissioner—

See Municipal law.

Street railway—

Operation of—Municipal by-law as to—Conviction—Uncertainty, 122

Conductor's position, 122

Right of ladies as to alighting from cars, 216

Contract to construct—Prevention by effect of legislation—Damages, 310

Motorman is a "person in charge," 346

Negligence—Horse frightened at car, 412

Signalling to stop—Subsequent accident, 676

Mortgage of future acquired property, 417

Fixtures—Rolling stock, 417

Assessment of plant and cars, 857

See Municipal law—Railway company.

Strikes—

See Labour union.

Subrogation—

Is part of law of Nova Scotia, 303

Essentials of—Volunteer—Evidence, 303

Succession duty—

Out of what fund, 142

Deposit in bank—Foreigner, 222

Deduction of debts, 274

Amount payable by half sister of testator, 408, 516

Aggregate value, 510

Double duty, 789

Summary convictions—

Right to jury on appeal from, 10
Prior conviction, 461
Appeal—Security by money deposit, 506

Summary judgment—

Promissory note for patent rights, 400
Leave to defend—Fraud—Costs, 515
Dismissal of action, or of motion, 823
Fraudulent representations to sign note, 845

Summary trial—

Trial for a lesser offence after acquittal on greater, 242
Acquittal of defendant—Further prosecution—Jurisdiction, 276
Magistrates changing charge to give themselves jurisdiction, 667
See Criminal code—Criminal law—Disorderly house.

Sunday observance—

Barber's work not a necessity, 675

Surrogate Court—

Appeal to Divisional court—Security—Affidavit, 237
Guardian passing accounts before, 755
Jurisdiction over executors, 816

Tapestry—

See Fixtures.

Taxes—

See Assessment—Tax sale.

Tax sale—

Failure to distrain - 110
List of lands—Non-delivery to assessor, 110
Omission to notify occupants, 110
Non-delivery to treasurer of certified list, 110
Taxes not legally imposed—Lien for purchase money, 755
See Assessment.

Telegraph company—

See Assessment—Negligence.

Telephone company—

See Assessment—Negligence.

Tenant for life—

Executors of Right to insurance money as against remainderman, 37
And remainderman—Apportioning loss, 500
See Vendor and purchaser.

Tenant in common—

Accounting for profits, 431
Merger—Joint tenant, 501
Title acquired by prescription by some—Effect of—Joint tenancy, 756

Tender—

Time and place of, 112

Theft—

Property stolen by wife from husband, 61
Receiving stolen goods, 61
In or from railway station—Habeas corpus, 320
Description of the crime of, 786

Thelluson Act—

Attempt to extend, 258
Direction to accumulate, 455

Third party procedure—

See Negligence—Practice.

Ticket-of-leave Act—

Consideration of, 292

Title deeds—

See Landlord and tenant.

Trade mark—

Infringement—Statement of claim—Pleading, 303

Name "perfection" is valid, 328

Descriptive letters standing for words, 668

Use of corporate name when conflicting with fraud, 784

Trade name—

Infringement of, 752

Individual suing in assumed, 763

See Company.

Trade union—

Expulsion of member—Legality of—By-law in restraint of trade, 79, 99

By-law contrary to Militia Act, 79

Right to sue in registered name, 805

Transient trader—

By-law as to conviction—Evidence, 846

Trespass—

Line fence—Point left undecided—New trial, 366

Fences as affecting possession, 475

Trial—

Judge refusing to put question to jury, 471

Trusts and trustee—

Remuneration to, 43

Investment unauthorized, 66

Shares in company—Conversion, 399

Securities payable to bearer—Custody of—Banker, 67

Breach of trust—Executor—Solicitor—Relief of trustee, 146

Evidence as to whether action "honest and reasonable," 275

Solicitor—Appropriation of securities, 772

Loan—Discharge, 747

Dealing with goods for one cestui que trust intended for another, 282

Passing accounts, 704

Costs—Same solicitor for two parties, 781

See Costs.

Trusts and combinations—

Formation and evils of, 139

Undue influence—

Husband and wife, 20, 27

Parent and child, 690

Unlicensed conveyancers—

Depravations of, 92, 180

Action of law society as to, 190

Vendor and purchaser—

- Mutual obligations—County court jurisdiction, N.S., 38
- Unpaid purchase money—Lien, 64
- Question arising out of contract, 98
- Charge on property sold—Outgoings, 101
- Conditions of sale—Disclosing material facts—Compensation—Rescission, 101
 - Mistake in—Verbal correction by auctioneer—Specific performance, 189
- Rescission—Costs, 499
- Misdescription—Compensation—Rescission, 689
- Specific performance—Purchase by trustee of settled estate—Entry by tenant for life, 152
- Misdirection—Condition excluding compensation, 185
- Possessor of title—Rescission, 185
- Adverse rights Notice of possession, 185
- Action by unpaid vendor for logs cut by sheriff on execution against vendee, 204
- Judgment for purchase money—Subsequent rescission by vendor, 226
- Derogation from grant, 498
- Purchaser's lien for deposit, 500
- Sale by court—Conditions, 689
- Restrictions in will against selling or mortgaging—Breach, 751
- Trust for sale—Leasehold interests, 782
- Improvements made under mistake of title, 815
- See Contract.*

Vendor's lien—

See Mortgage—Vendor and purchaser.

Voluntary conveyance—

Of land—Solvent vendor—Mortgagee's right to set aside, 158

Voluntary settlement—

See Assignment and preferences.

Voters' lists—

Parliamentary election—Appeal—Notice of complaint—Service, 102
Loss of—Parol evidence, 103

Waiver—

See Railway Company.

Watercourse—

Culvert of railway, 28
Harvesting ice through private water lots, 271
Ownership of, none apart from land, 675
Diversion of stream—Riparian owners, 705
Boundary—Medium filum aquæ—Ascertainment of centre line, 749
Artificial channel—Temporary purpose, 842
See Drainage—Railway Company.

Way—

See Right of way.

Will—

Widow's election under—Evidence—Ignorantia juris, 77
Undue influence—Spiritual adviser, 225
Ademption of legacy—Admissibility of evidence, 232
Execution—Discrepancy between attestation clause and affidavit of attesting witness, 264
Cancellation or, under erroneous impression, 264
Nuncupative will—Volunteer, soldier in action—Minor, 297
Attestation of, 676
Appointment of executor—Corporate or private capacity, 706
Probate—Foreign—Re-sealing in England, 63
Of cancelled will, 264
Clerical error in will corrected, 495
See Donatio mortis causa—Will, construction of.

Will, construction of—

- Lapse—Settlement of shares, 66
- Bequest to poor house—charity—Mortmain, 78
- Trust to accumulate interest' 95
- Hotchpot clause, 100
- Rent due testatrix on property of which child acquires possession of title, 100
- Legatee's right of selection, 100
- Evidence to explain will, 100-153
- Sale of land devised—Mortgage for purchase money, 120
- Gift of income to child—Condition as to marriage—Consent of executors, 122
- Mixed or massed fund, 122
- Legatee to perform condition, 125
- Investment—Charge on land—Future payments, 125
- Blank in will, 130
- Charitable gift—Uncertainty, 130
 - Secret trust for public, 300
- In exercise of power, 142
- Testamentary expenses, 142
- Uncertainty, 130, 258, 501
- Power to charge for professional and other services—Extent of, 147
- Life estate with power to devise in fee—Restriction on sale, 235
- Gift to illegitimate children—Presumption—Intention, 301
- Annuity to wife so long as unmarried, 301
- Expropriation—Gift over in event of death—Life estate, 306
- Purchase of annuities, 403
- Defeasible fee—Executory devise over, 404
- Tenant for life—Carrying on business—Profits, 412
- Specific clause—Residuary devise—Lapse, 452
- Rule in Shelley's case, 456, 821, 848
- "Eldest son entitled to possession," 497
- Forfeiture clause—Gift for life or until alienation, 490
- Absolute gift or for life with power to appoint, 501
- Alternative disposition—Death "at the same time," 505
- "Leaving no children"—Devise over—Intention, 695
- Lapse—Gifts to issue—Gift to class, 699, 746
- Gift to a class—Death of member of—Lapse, 746
- Bequest to voluntary association—Charity—Perpetuity, 744
 - Gift over on death "leaving issue," 776
- Ademption pro tanto, 776
- Gift of annuity to widow for children—Death of widow, 803
- Estate tail or for life—Improvements, 815
- Devise for life of man and wife, or to survivor, 820
- Heirs and assigns of survivor, 839
- Charge of debts and legacies—Rents—Proceeds of sale, 848
- See Administration—Executor and administrator—Thelluson Act—Vendor and purchaser.

Witness—

See Evidence.

Words—

- | | |
|-----------------------------|----------------------------|
| Aggregate value, 510 | Opinion of the court, 668 |
| Blackmail, 691 | Party concerned, 106 |
| Dog grate, 263 | Place, 128 |
| Dying at the same time, 505 | Private residence, 16 |
| Evasion, 746 | Purporting, 688 |
| Going concern, 305 | Reasonable despatch, 94 |
| Honest and reasonable, 275 | Riding, 168 |
| House, 16 | Testamentary expenses, 142 |
| Immediately, 115 | The place, 128 |
| Notice in writing, 27 | Young girl, 163 |

Workmen's Compensation Act—

See Master and servant.

Writ of extent—

See Crown.

Writ of summons—

Renewal, 34, 166

Special endorsement—Claim on mortgage, 324

Omitting words "statement of claim," 826

Ex juris—To rescind purchase of mining shares, 408

Service—Out of jurisdiction—Cause of action—Breach of contract, 348

Domicil of origin—Alimony, 400

Place of—Railway company—Conflict between special provision and
general enactment, 366

Yukon—

Administration of justice in, 2

Appeals from Court in—Practice, 46, 47

Mining regulations, 711

x.

End Of Text LLMC