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Some of the long-expected appointments to the new Exchequer Division of the High Court of Justice of Ontario have been made. Mr. John Idington, K.C., of Stratford, and Mr. F. A. Anglin, K.C., of Toronto, are to be the puisne judges; the Chief Justice has not yet been appointed, and presumably cannot be until the resignation of Mr. Justice Robertson has been accepted, as there are still the statutory number of twelve judges on the roll of the High Court Bench. There are several excellent names mentioned for the position of Chief Justice, but as yet there is no indication as to who will be nominated.

The appointments that have already been made meet with general acceptance by the Bar. Mr. Idington and Mr. Anglin are both good lawyers and stand well in the opinion of their professional brethren. The former has long been a leader of the Bar in his own county, holding an honorable position both as a professional man and as a citizen. Mr. Anglin is a much younger man—in the prime of life—and has in the ordinary course of events a long life of usefulness before him. Though he has not been one of the leaders of the Bar, he has had a good legal training and a sufficient experience. He is painstaking, industrious and clear headed, with an ambition to fulfil any duties entrusted to him to the best of his ability. We look for excellent judicial work from both of them.

Mr. Idington was born near Morriston, in the Province of Ontario, on October 14th, 1840. Graduating at the University of Toronto in 1864, he was called to the Bar in 1864. Since then he has practised law in the town of Stratford, where he soon acquired a large business. In 1876 he was made a Q.C. for Ontario, and in 1885 for the Dominion. He was appointed County Crown Attorney for the County of Perth in 1879. He

has been for many years a Bencher of the Law Society of Upper Canada. Mr. Anglin comes from St. John, N.B., where he was born in April, 1865. He was educated at Ottawa, and called to the Bar in Hilary Term 1888, taking honors and a medal in his final examination. He was appointed Q.C. in 1902. He is not unknown as an author, having in 1900 published a very useful book on the limitation of actions against trustees and relief from liability for technical breaches of trust.

It is with feelings of pleasure that we record from time to time the appointment of able lawyers to non-legal positions. Among the most recent of these are of the late Speaker of the House of Commons, Hon. L. P. Brodeur, K.C., to be Minister of Inland Revenue, and Mr. N. A. Belcourt, K.C., to be Speaker, in place of Mr. Brodeur. The Hon. Mr. Belcourt, who is now the First Commoner, is well known as an able lawyer, versed in both French and English law, and commands equally the respect and confidence not only of his confrères but also of the public, whether of English or French descent. We believe that he will be a worthy successor to the capable men who have usually filled that high office, and that his decisions will be judicial and given with the fair-mindedness which has characterized his career.

From a variety of sources we gather that our remarks as to the Alaska Boundary Commission have been received with commendation and approval. The *Law Notes*, one of the most readable and thoughtful of the legal periodicals of the United States, makes some comments on the case which evince a breadth of view and a generous spirit of fair play which we thoroughly appreciate and gladly acknowledge. The writer says: "It may do us no harm but much good to try as an honourable people to see the matter as the Canadians see it. The man who can honestly put himself in his opponent's place generally gets a good deal of light upon the questions at issue."

The charges contained in the articles which appeared in this Journal, and in the papers from the pen of Mr. Thomas Hodgins, K.C., are then referred to, and a very fair presentation given of

the points taken on the Canadian side. The editor concludes as follows: "The facts as set forth by the Canadian papers and journals above named seem to lend colour to these charges. So far as the accusation affects Lord Alverstone and the British government, it is a matter personal to them. But so far as it affects the honour of our commissioners and our government, it is personal to every American citizen. If the foregoing charges are based upon facts, which we are not in a position to decide, they deprive us of that moral support which we have a right to demand that our rulers furnish in matters so grave. Are these charges against our commissioners true? If not, their falsity should be easily proved. If true, they utterly disqualified them to act, since 'no man should be a judge in his own cause, and no man should be allowed to be a juror in any case who has treated of the matter in dispute or who has declared his opinion in the matter beforehand.' The award of the Boundary Tribunal may be final in the sense that there is no appeal to a higher tribunal. But if our Canadian neighbours feel that they have been wronged, no other court of appeal than our honour should be needed. Canada can afford to lose what she has lost far better than we can afford to keep what we have gained, if gained unfairly and at the expense of national honour. An award that does not bear upon its face the indicia of absolute fairness would not be accepted as final by an honourable contestant, and an honourable nation should indignantly refuse to accept the fruits of such."

In a recent case of *Fitzgerald* v. *Wallace*, 6 O.L.R. 634, an application to the Master in Chambers at Osgoode Hall for increased security for costs in a case pending in the Court of Appeal was dismissed because of a supposed want of jurisdiction to hear the motion. It would have been more satisfactory if the learned Master had in disposing of the case considered the effect of sec. 131 of the Judicature Act from which it appears that the Master in Chambers is an officer of the Supreme Court, and as such he is as much an officer of the Court of Appeal as of the High Court. Rule 42 which defines his jurisdiction however serves to limit it to cases pending in the High Court, and it may perhaps be worth the consideration of the judges whether a jurisdiction in Chambers in matters pending in the Court of Appeal should not

also be conferred on him. But assuming the Master to have been correct in his view that at present he has no such jurisdiction, it may be asked what was the object in expressly making him an officer of the Supreme Court if it was not that he should have jurisdiction in both divisions of the Supreme Court. But in any case should the motion have been dismissed, having regard to Rule 784 which requires that motion made to a wrong court shall be transferred to the right one. Rule 3 would seem to require that, by analogy, that Rule should apply not only to motion to the court but also to judicial officers.

Some of our legal contemporaries in the United States are not unnaturally exercised over the condition of things connected with the condition of judicial matters in Montana. One writer remarks: "It is doubtful whether any body of judicial officers since the world began has been so persistently involved in charges of corruption as have the judges of Montana;" and that the ownership of every member of the judiciary by one or other of certain large corporations is a subject of common conversation and report. The State legislature also comes in for well merited rebuke for the enactment of a provision which, as an aid to the perversion of justice, it would be difficult to duplicate. It entitles either party to a suit, whether there is a bona fide defence or not, to file an affidavit that he has reason to believe that he cannot have a fair and impartial trial before the district judge by reason of the bias or prejudice of such judge. This affidavit may be made by the party or his attorney or agent. Upon the filing of the affidavit the judge shall be without authority to act. The case must then go to some other judge, and the dodge can be again and again repeated, provided, however, that no more than five judges can be disqualified for bias or prejudice at the instance of a plaintiff and no more than five at the instance of the defendant. Montana must certainly be a paradise for debtors, and it is not surprising that creditors occasionally "take it out of their hides" in an unlawful fashion.

AN "AMERICAN" LAW BOOK.

There was a time when we felt distinctly aggrieved at the usurpation by the people of the United States of the exclusive use of the term "Americans;" but that was before the Dominion of Canada had begun to loom so largely in the eyes of the nations as it does to-day. Primarily, of course, we citizens of Canada have just as good a right to the term as our cousins across the border; but the name "American" at the beginning of the twentieth century is not the symbol of

"the New World's best
In doing and in character,"

that it was at the beginning of the nineteenth century, and, therefore, we are not loath to let Dr. Murray in his monumental work the new Oxford dictionary, finally deliver up this adjective with its fine flavor of "shirt sleeve" ethics, to the exclusive use and occupation of the denizens of the neighbouring republic. "Canadian" is a good enough name for us with which to confront a future big with promise of achievement, a future of which the present is a sure pledge or token.

The foregoing reflections have been induced by our happening upon an "American" law-book entitled: "A Treatise on Commercial Law and Business Customs, by Andrew M. Hargis, of Grand Island, Nebraska." If such a book had to be written at all, we are glad the Fates decreed that it should be the product of an "American" author—but that is the only cause for gladness we find in it. True the Canadian output of legal literature is small, but this book would not have enriched it, although there's "richness in it," as Mr. Squeers would say. In one respect the book is especially notable. In his preface the learned author says, with a modesty that is the only "un-American" thing in the whole volume, "No particular claim is laid to originality in this work;" yet it is the most original alleged law-book that ever was written. There never was anything like it from the day of the beginning of the world until the day of the date thereof.

We have only space for one or two quotations, but it is a case where the sage's counsel: "Ab uno disce omnes" applies with singular force. Take this from the first chapter:—"Law may be divided into four separate classes: Moral Law, Natural Law, International Law and Municipal Law (*Mu-nis'-i-pal*)" (sic). From this it will be gleaned that Grand Island, Nebraska, has not only given to "America" a philosopher of the law, but an orthoepist as well. As the book is avowedly written as "a text-book for use in schools and

colleges," the author feels it necessary to laboriously instruct the students in "American" halls of learning how to pronounce English words in common use. But let us hasten on to our author's definition of the Moral Law. "Moral Law has reference to that portion of the Old Testament which relates to moral principles, especially the ten commandments." Really, after this deliverance we dislike to refer to the learned author as plain "Mister Hargis." As he is not a professional humorist, he doubtless holds a doctor's honorary degree in philosophy, or medicine, or law—it doesn't matter which—from some one of those "schools or colleges" in Grand Island, Nebraska, "America," for the students of which this interesting treatise was avowedly written.

We have room for only one more passage, and we quote it as the author wrote it: "Natural Law has been defined as an unwritten law depending upon an instinct of the human race, universal conscience and common sense. [Shades of Grotius, and his jus naturale!] It may also be said to be the law which regulates the forces and processes of the material world." This "definition" would be reliable but for two objections. In the first place, no legal writer has ever yet defined the "law of nature" as Andrew M. Hargis here defines it. There has been some misty talk in the books about the law of nature being a sort of common morality; but from Cicero down to Prof. Holland we find that the term, when used correctly, is synonymous with the term "jus gentium," and that, apart from affording a sanction to the rules of international law, morality has no place in jurisprudence. In the second place, to the physicist the term "natural law" does not mean something that "regulates forces and processes," but something that is uniformly observed in their operations,—i.e., to him "natural law" connotes method and not government, much less causation. However, "natural law" in Grand Island, Nebraska, may be as original as the law-books that emerge therefrom

In addition to these interesting features, at the end of the volume the orthoepist rises superior to the legal philosopher and a glossary is appended, teaching us how to understand and to pronounce (incorrectly, wherever it is possible to err) such words as "affidavit," "ambiguous," "ejectment," "judgment," "protest," etc.

Now, there have been a number of excellent law-books written in the United States upon the lines of English models; but they are not the product of the pundit, Andrew M. Hargis, nor were they issued from the press of Grand Island, Nebraska, "America."

NEGLIGENCE OF RAILWAY COMPANIES IN CANADA.

RAILWAY ACT OF 1903.

I. **The Operation of Railways.**
   1. *Their Equipment.*
   2. *Speed of Trains.*
   3. *Fires from Engines.*
   4. *Injury to Persons.*
   5. *Injury to Animals.*

II. **The Carriage of Goods.**

III. **The Carriage of Passengers.**

In a former article on this subject I dealt with the liability of railway companies under the common law, and tried to show how far, by the decision of our courts, that law still remains in force or is superseded by legislation. As a logical sequel to that article the law embodied in the latest Act of Parliament on the subject, the Railway Act of 1903, will now be considered with a view to pointing out the changes from previous legislation contained therein respecting the negligence of railway companies.

The subject may be divided into three main heads, namely: I. The operation of railways; II. The carriage of goods; and III. The carriage of passengers.

A railway company may be charged with negligence in respect to matters not coming within any of these branches, such as in the construction and maintenance of its road and rolling stock, but these depend merely on the application of the general law to the exercises of powers conferred by the Act and not on the statutory provisions themselves.

I. THE OPERATION OF RAILWAYS.

1. *Equipment.*—By s. 243 of the Railway Act, 1888, every railway company was required to provide and cause to be used on its trains "such known apparatus and arrangements as best afford good and sufficient means of immediate communication between the conductors and engine drivers on such trains while the trains are in motion, and good and sufficient means of applying, by the power of the steam engine or otherwise at the will of the engine

driver or other person appointed to such duty, the brakes to the wheels of the locomotive or tender, or both," and to any car, and of disconnecting the locomotive, tender or cars from each other.

This provision was not in any of the previous Railway Acts, but it was not new law, as the company under the common law was always obliged to furnish the most effective means for stopping a train either to avoid accident or to comply with the requirements of the Act as to stopping at certain places. Thus in 1879 the case of *Brown* v. *G. W. R. Co.*, 2 App. R. 64, was before the courts, the material question being the liability of the company for failure to comply with the statutory provision for stopping three minutes before crossing another line. The failure to stop was caused by the air-brakes (the best apparatus known) not working and there not being time to use the hand-brakes effectively. The Supreme Court of Canada held (3 S.C.R. 159) that the company was bound to provide for the possible failure of the air-brakes to work properly and was liable to the injury caused by not stopping.

The Railway Act 1903, s. 211, likewise provides that every company shall provide and cause to be used "modern and efficient apparatus, appliances and means" for communication and stopping the train as above, but adds to this that after the 1st January, 1906, the same shall include specified braking apparatus and that trains must also have efficient apparatus for coupling cars automatically.

Why a railway company should be obliged, two years hence, to adopt and use on their trains a specific system for braking is not easy to understand. By that time there must be discovered a much more efficient means for doing that necessary work, but the prescribed apparatus must still be used or the company failing to do so will be liable to the penalty imposed by the said section. It is true that the Act calls for the use of "modern and efficient apparatus," but not the most modern and most efficient, and as the legislation stands the latter may be prohibited. The public were given better protection (and protection to the public is the object of this provision) by the former statute, which required "such known apparatus and arrangements as best afford good and sufficient means" of applying the brakes.

This section also makes a new provision for the security of employees by requiring after January 1, 1906, attachments to be placed on box freight cars and hand grips on ladders to assist persons in

climbing on the roof; and as to these, the Board of Railway Commissioners, etablished by the Act to take the place of the Railway Committee, is empowered, if at any time there is any other improved side attachment which, in their opinion, is better calculated to promote the safety of the train hands, to require the same to be attached to cars not already fitted with the attachments prescribed. The Act might well have authorized the improvements to be attached to all cars if the legislators were anxious to provide to the fullest possible extent for the safety of the employees.

It may be observed that no power is given to the Board to require the adoption of any improved braking system.

By s. 214 a railway company must furnish at the place of starting, at its junction with other railways and at all stopping places established for the purpose, adequate and suitable accommodation for receiving and loading all traffic offered for carriage and for carrying, loading and delivering the same. This is substantially the same as s. 246 of the Act of 1888, which, however, included the carriage of passengers as well as goods.

By s. 213, as in s. 244 of the former Act, every engine must have a bell of at least thirty pounds weight and a steam whistle.

By s. 262, sub-s. 3, of the Act of 1888, "the spaces behind and in front of every railway frog or crossing, and between the fixed rails of every switch where such spaces are less than five inches in width, shall be filled with packing up to the under side of the head of the rail." Sub-s. 2 defines "packing," and sub-s. 4 provides for packing between any wing rail and any railway frog, and between any guard rail and the track rail alongside of it. The only change made by the Act of 1903, s. 230, is in substituting four for five inches in the width of the spaces between the rails.

Sub-s. 4 also contained a proviso authorizing the Railway Committee to allow such filling to be left out between the months of December and April, both included, in each year, and in the case of *Washington* v. *G. T. R. Co.*, 28 S.C.R. 184, the Supreme Court of Canada held that the proviso only applied to the packing provided for in that sub-section and not to that required by sub-s. 3. This was affirmed by the Judicial Committee ([1899] A.C. 275). In the Act of 1903 the proviso is worded so as to empower the Board of Commissioners to leave out any of the required packing between said periods or at such other times as it

sees fit. The *Washington* case will, therefore, not apply to cases arising under the new Act.

In addition to these specific provisions, s. 25 of the Act of 1903 empowers the Board to make orders and regulations, including the following:—(1) With respect to the means of passing from one car to another, inside or overhead, and for the safety of employees while doing so, and for coupling cars. (2) Requiring proper shelter for employees on duty. (3) For use on any engine of nettings, screens, etc., and as to use of any fireguard or works to prevent fires. (4) With respect to the rolling stock, etc., to be used for protection of property, employees and the public.

By s. 40 the Board may make general rules for carrying the Act into effect, and such rules, when published in the *Canada Gazette*, shall be judicially noticed and have effect as if enacted in the Act. Rules made under s. 25 could be published as general rules and have statutory force, and in either case a railway company for refusing to obey them would be subject to the penalty imposed by the Act or the Board. By s. 294 the company or employee in case of disobedience would be liable in damages to any person injured thereby. But see observations on s. 227 post.

2. *Speed of Trains.*—Sec. 223. In passing over any navigable water or canal by means of a draw or swing bridge a train must be brought to a stop before coming on or crossing the bridge, and not proceed until a proper signal has been given. This is an amendment to s. 255 of the Act of 1888, which required the train to stop at least one minute to ascertain if it was passable.

At a bridge where there is an interlocking switch and signal system, or other device which in the opinion of the Board renders it safe to pass without stopping, it may by order permit the same under proper regulations: 55 & 56 Vict. c. 27, s. 7, re-enacted. See *Brown* v. *G. W. R. Co.*, 3 S.C.R. 159, cited above as to failure to stop owing to non-working of brakes and remarks thereon.

Sec. 225. A crossing where two main lines cross each other at rail level cannot be passed over until the conductor or engineer receives a signal from a competent person in charge that the way is clear. The conductor of an electric street railway company must go forward and see that the track is clear: 56 Vict. c. 27, s. 2, re-enacted in part.

The Act of 1888 required the stopping of one minute.

By s. 226 a train before passing over such crossing must be brought to a full stop except where an interlocking switch and signal system is in use, as to which there is a provision similar to that in sec. 223.

Sec. 227. "No train shall pass in or through any thickly peopled portion of any city, town or village at a speed greater than ten miles an hour, unless the track is fenced or properly protected in the manner prescribed by this Act, or unless permission is given by some regulation or order of the Board. The Board may limit such speed in any case to any rate which it deems expedient."

This provision or the corresponding one in 55 & 56 Vict. c. 27, s. 8, was in question in *McKay* v. *G. T. R. Co.*, referred to in my former article and since reported 34 S.C.R. 81. By s. 259 of the Act of 1888 the speed was limited to six miles an hour "unless the track is properly fenced." By the amendment in 1892 it was "unless the track is fenced in the manner prescribed by this Act." By the present Act the minimum speed is ten miles an hour, "unless the track is fenced or properly protected" as prescribed.

It is not easy to follow the working of the parliamentary mind in this legislation. The provision was evidently intended to protect the public in crowded districts, and the Act of 1888, in requiring the track to be "properly fenced" meant that it should be fenced so as to accomplish that purpose. But the amendment in 1892 only protected the public by keeping cattle off the track in places where cattle are not likely to be found, and the latest amendment changing the wording to "fenced or properly protected" as prescribed is no amendment at all, since proper protection is not prescribed. It is true that the Act of 1903 re-enacts the provision in the former Act that the Railway Committee (now the Board of Commissioners) may order gates to be erected across highways, or other proper precautions to be taken, but it cannot be said that these are prescribed by the Act. It is also true that under either statute a company or employee who disobeys such order of the Board or Committee is liable in damages to any person injured in consequence of such disobedience: Sec. 259 Act of 1888. Sec. 294 Act of 1903. But in such case it would be a serious question, in view of the Supreme Court decisions, whether the fact that the company had done all that the Act really prescribed would not be a good answer to an action founded

on failure to comply with such order, notwithstanding that the court in McKay's Case held that the Railway Committee was the proper body to see that adequate protection is provided.

The provision in s. 227, that "the Board may limit such speed in any case to any rate which it deems expedient," was not in the former Acts. It can have no effect so long as the prescribed fencing is maintained. By s. 25 the Board may make rules and regulations "limiting the rate of speed at which railway trains and locomotives may be run in any city, town or village, or in any class of cities, towns or villages described in any regulation; and if the Board thinks fit the rate of speed within certain described portions of any city, town or village and allowing another rate of speed in other portions thereof." The same provision in the Act of 1888 concluded with "which rate of speed shall not in any case exceed six miles an hour unless the track is properly fenced."

As already pointed out, rules and regulations made under this section have not the effect of statutory enactments, and those made under the authority quoted could not be general rules under s. 40. Moreover, as I have said, what might be ordered by them would not be prescribed by the Act.

By s. 243 "the company may, subject to the provisions and restrictions in this and the special Act contained, make by-laws, rules and regulations respecting: (*a*) The mode by which, and the speed at which, any rolling stock used on the railway is to be moved."

In *G. T. R. Co.* v. *McKay*, Sedgewick, J., was of opinion that as the train was travelling at the rate fixed by by-law the jury were not justified in their finding that the speed was excessive.

3. *Fires from Engines.*—Prior to the Act of 1903 there was no direct legislation on the liability of a railway company for injury to property caused by fire from a passing train, but such liability when established by the courts has been based on violation of the common law duty to provide the most efficient means for preventing the escape of sparks from an engine or on some other negligence on the part of the servants of the company. In Quebec the courts have attempted to make a company liable in every such case irrespective of any question of neglect to take proper precautions. Thus in *Roy* v. *C. P. R. Co.*, Q.R. 9 Q.B. 551, the company was held liable under the provisions of the Civil Code, though no

such negligence was proved, but that judgment was overruled by the Privy Council: [1902] A.C. 220. Now Parliament has apparently made a radical change in the law by enacting in s. 239, sub-s. 2 that: "Whenever damage is caused to crops, lands, fences, plantations, or buildings and their contents, by a fire started by a railway locomotive, the company making use of such locomotive, whether guilty of negligence or not, shall be liable for such damage and may be sued for the recovery of the amount of such damage in any court of competent jurisdiction." The sub-section contains a proviso limiting the amount of damages recoverable if the company has used modern and efficient appliances and has not otherwise been guilty of negligence, and sub-s. 3 gives a company an insurable interest in property along its route.

This legislation has one peculiar feature. Sec. 239 begins as follows: "The company shall at all times maintain and keep its right of way free from dead or dry grass, weeds and other unnecessary combustible matter," and then follows sub-s. 2, quoted above. It might be said that the sub-sections are merely complementary of the opening or main provision and that only fires caused by the presence of combustible matter on the track are contemplated, otherwise there is not the slightest connection between the first and subsequent paragraphs which is opposed to every principle of drafting statutes. On the other hand, a company is made liable for damage by fire "whether guilty of negligence or not." Now, a company is always guilty of negligence if a fire is communicated to adjoining property through the medium of combustible matter on the track: *G. T. R. Co.* v. *Rainville*, 29 S.C.R. 201; so that a fire could never be so caused without negligence.

In addition to this specific section the Board is empowered, by s. 25, to make rules and regulations: "With respect to the use on any engine of nettings, screens, grates and other devices, and the use on any engine or car of any appliances and precautions, and generally in connection with the railway respecting the construction, use and maintenance of any fireguard or works which may be deemed by the Board necessary and most suitable to prevent, as far as possible, fires from being started, or occurring, upon, along or near the right of way of the railway." This is new, the Railway Committee of the Privy Council not having had such powers. Neglect to comply with such rules or regulations makes

a company or employee liable to damages as well as to a penalty: Sec. 25 (3).

4. *Injury to Persons.*—While the Railway Act contains no direct provisions respecting injury to individuals, there are several sections requiring precautions to be taken for its prevention. Some of these have already been referred to in dealing with other branches of our subject. Thus the provisions relating to equipment, stopping before crossing highways and bridges, the rate of speed through thickly peopled districts and the packing of railway frogs, are all intended for the protection of the public or of railway employees, as are also the rules and regulations which the Board may make under s. 25.

Sec. 224. "When any train is approaching a highway crossing at rail-level (except within the limits of cities or towns where the municipal authorities may pass by-laws prohibiting the same) the engine whistle shall be sounded at least eighty rods before reaching such crossing, and then the bell shall be rung continuously until the engine has crossed such highway; and the company shall for each neglect to comply with the provisions of this section incur a penalty of eight dollars, and shall also be liable for all damage sustained by any person by reason of such neglect; and every employee of the company who neglects to comply with this section shall for each offence be subject to a like penalty."

The portion in brackets as to crossings in cities and towns is new, and so is that at the end respecting employees. The Act of 1888, sec. 256, provided that "A moiety of such penalty and damages shall be chargeable to, and collected by the company from, the engineer who has charge of such engine and who neglects to sound the whistle or ring the bell as aforesaid." Now the employee is only liable to a pecuniary penalty.

This warning must be given on approaching a highway during shunting operations: *C. A. R. Co.* v. *Henderson*, 29 S.C.R. 632; but it is not required at a siding or any place other than a highway crossing: *N.B.R. Co.* v. *Vanwart*, 17 S.C.R. 35.

Secs. 225, 226 and 227 have already been dealt with.

Sec. 228. "Whenever in any city, town or village any train is passing over or along a highway at rail-level, and is not headed by an engine moving forward in the ordinary manner, the company shall station on the then foremost part of the train, or of the tender

if that is in front, a person who shall warn persons standing on, or crossing, or about to cross, the track of such railway," on pain of a penalty. Though worded differently, this is substantially a re-enactment of 55 & 56 Vict. c. 27, s. 9.

Electric street railway cars always run in one direction only on each side of a double track. In *Balfour* v. *Toronto Ry. Co.*, 32 S.C.R. 239, a car was running in the wrong direction and a person injured recovered damages. The case is not in the Ontario Reports, and in the Supreme Court the law as to the liability of the company was not discussed. The report shews, however, that the jury found as one ground of negligence that the car was on the wrong side, and it would appear that the liability was established independently of any statute indicating that the above section is merely declaratory of the common law.

Sec. 230 provides for packing of frogs.

By s. 235 a company is obliged to notify the Board, immediately on itself receiving notice, of any accident on its railway attended with serious personal injury. Sec. 267 of the Act of 1888 is the same, except that it required notice to be given by the company within forty-eight hours, and by section 268 a commissioner could be appointed by order in council to inquire into the causes of and circumstances connected with any accident or casualty to life or property on any railway. This provision is re-enacted by the Act of 1903 (sec. 236), which also empowers the Board to order an enquiry into all matters likely to cause or prevent accidents.

5. *Injury to Animals.*—Most of the sections heretofore dealt with are intended for the protection of animals as well as of persons. There are, besides, specific provisions in regard to the former.

Sec. 198 provides that "every company shall make crossings for persons across whose lands the railway is carried, convenient and proper for the crossing of the railway for farm purposes." Sec. 191 of the Act of 1888 was in the same term, but the last Act adds this new provision: "In crossing with live stock the same shall be in charge of some competent person, who shall use all reasonable care and precaution to avoid accidents." This was not in the statute before.

Sec 199. "The company shall erect and maintain upon the railway fences, gates and cattleguards, as follows: "(*a*) Fences of a minimum height of four feet six inches, on each side of the railway. (*b*) Swing gates in such fences, of the minimum height aforesaid, with proper hinges and fastenings, at farm crossings; provided that sliding or hurdle gates, already constructed, may be maintained. (*c*) Cattleguards, on each side of the highway, at every highway crossing at rail-level by the railway. The railway fences at every such crossing shall be turned into the respective cattleguards on each side of the highway. 2. Such fences, gates and cattleguards shall be suitable and sufficient to prevent cattle and other animals from getting on the railway. 3. Whenever the railway passes through any locality in which the lands on either side of the railway are not improved or settled, and inclosed, the company shall not be required to erect and maintain such fences, gates and cattleguards unless the Board otherwise orders or directs."

There is little or no difference in substance between this and s. 194 of the Act of 1888. Sub-s. 3 of the latter section, making a company liable for damages caused by want of fences and cattleguards, was repealed by 53 Vict. c. 28 (see s. 237 (4) Act of 1903, post), and s. 196 is not in the present Act. It provided that while the fences and cattleguards are maintained the company should not be liable for such damages unless caused wilfully or negligently. The former Act did not fix the minimum height of fences. The provision in sub-s. (*c*) is 55 & 56 Vict. c. 27, s. 6, re-enacted.

Sec. 200. "The persons for whose use farm crossings are furnished shall keep the gates at each side of the railway closed when not in use; and no person, any of whose cattle are killed or injured by any train, owing to the non-observance of this section, shall have any right of action against any company in respect to the same being so killed or injured." Sec. 198 of the Act of 1888 was the same.

Sec. 201. "Every person who wilfully leaves any such gate open without some person being at or near it to prevent animals from passing through it on to the railway, or who takes down any part of a railway fence, or turns any horse, cattle or other animal, upon or within the inclosure of such railway (except for the purpose of, and while, taking the same across the railway in the manner pro-

vided in s. 198 of this Act, or who, without the consent of the company, or except as authorized by this Act, rides leads or drives any horse or other animal, or suffers any such horse or animal to enter, upon such railway and within the fences and guards), is liable, on summary conviction, to a penalty of twenty dollars for each offence, and is also liable to the railway company for any damage to the property of the company or for which the company may be responsible by reason of such gate being so left open, or by reason of such fence being so taken down, or by the turning (riding, leading, driving or suffering to enter) upon or within the inclosure of such railway in violation of this section of any horse, cattle or other animal; and no person, any of whose cattle are killed or injured by any train owing to the non-observance of this section shall have any right of action against any company in respect to the same being so killed or injured. Every person violating the provisions of this section shall, in addition to the penalty herein provided, be liable to pay any person injured by reason of such violation all damages sustained thereby." The portion between brackets was not in the corresponding section (199) of the Act of 1888. The last clause of the section was in s. 272 of the former Act.

Sec. 237. "No horses, sheep, swine or other cattle shall be permitted to be at large upon any highway within half a mile of the intersection of such highway with any railway at rail-level, unless such cattle are in charge of some competent person or persons, to prevent their loitering or stopping on such highway at such intersection or straying upon the railway.

"2. All cattle found at large contrary to the provisions of this section may, by any person who finds the same at large, be impounded in the pound nearest to the place where the same are so found, and the pound-keeper with whom the same are impounded shall detain the same in the like manner, and subject to like regulations as to the care and disposal thereof, as in the case of cattle impounded for trespass on private property.

"3. If the cattle of any person, which are at large contrary to the provisions of this section, are killed or injured by any train, at such point of intersection, he shall not have any right of action against any company in respect of the same being so killed or injured.

"4. When any cattle or other animals at large upon a highway or otherwise get upon the property of the company and are killed or injured by a train, the owner of any such animal so killed or injured shall be entitled to recover the amount of such loss or injury against the company in any action in any court of competent jurisdiction, unless the company, in the opinion of the court or jury trying the case, establishes that such animal got at large through the negligence or wilful act or omission of the owner or his agent, or the custodian of such animal or his agent; but the fact that such animal was not in charge of such competent person or persons shall not for the purposes of this sub-section deprive the owner of his right to recover." Sub. for 53 Vict. c. 28, s. 2. The first paragraph is the same as s. 271 (1) of the Act of 1888, with the addition of the word "competent" before "person" and of the final words "or straying upon the railway." Paragraphs 2 and 3 are identical with s. 271 (2) and (3).

Paragraph 4 is substituted for s. 2 of 53 Vict. c. 28, which made the company liable for damage to any animal in consequence of omission to erect or maintain fences and cattleguards, and repealed and replaced sub-s. 3 of s. 194 of the Act of 1888.

It will probably puzzle our lawyers and judges to reconcile the provisions of paragraphs 3 and 4 of this section 237. Paragraph 3 takes away all right of action from the owner of an animal killed at the point of intersection of two railways if it is at large contrary to the provisions of the section. Paragraph 4 gives a right of action in case of an animal at large getting on the railway at any point and being killed unless it was at large through the negligence or wilful act of the owner. By paragraph 3 the fact that the animal was not in charge of a competent person deprives the owner of his right to recover damages. Under paragraph 4 he is not deprived of his right to recover by want of competent oversight. It does not appear that very great care was taken in the preparation of this section, and especially in drafting paragraph 4, which is substituted for an entirely different provision. It was apparently intended to provide for the case of an animal being killed elsewhere than at the point of intersection of two railways, but unless it can be said that such point of intersection is not the property of the railway company whose train caused the injury it does not express that idea.

II. THE CARRIAGE OF GOODS.

Sec. 214. "The company shall, according to its powers, furnish, at the place of starting, and at the junction of the railway with other railways, and at all stopping places established for such purpose, adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage upon the railway,—and shall furnish adequate and suitable accommodation for the carrying, unloading and delivering of all such traffic,—and shall, without delay, and with due care and diligence, receive, carry and deliver all such traffic, and shall furnish and use all proper appliances, accommodation and means necessary therefor.

"2. Such traffic shall be taken, carried to and from, and delivered at such places, on the due payment of the toll lawfully payable therefor.

"3. Every person aggrieved by any neglect or refusal in the premises shall, subject to this Act, have an action therefor against the company, from which action the company shall not be relieved by any notice, condition or declaration, if the damage arises from any negligence or omission of the company or of its servant.

"4. If in any case such accommodation is not, in the opinion of the Board, furnished by the company, the Board may order the company to furnish the same within such time or during such period as the Board deems expedient, having regard to all proper interests."

Sec. 215. "All regular trains shall be started and run, as near as practicable, at regular hours, fixed by public notice."

These sections are a substantial re-enactment of s. 246 of the Act of 1888 with the addition of the provision contained in s. 214 (4). As before pointed out, the former act also provided for carriage of passengers in this section.

Sec. 214 only expresses what were the common law duties and obligations of common carriers, though as interpreted in *G.T. Ry. Co.* v. *Vogel*, 11 S.C.R. 612, par 3, went beyond the common law. The Court in that case held that the words "notice, condition or declaration" included a special contract and that a railway company could not, in consideration of a reduced rate of freight, be relieved from an action founded on negligence by a stipulation to that effect in the shipping receipt. In *Robertson* v. *G.T.Ry. Co.*,

24 S.C.R. 611, however, the force of this decision was somewhat weakened by the Court holding that a stipulation limiting the liability to a nominal sum was valid, and since *The Queen* v. *Grenier*, 30 S.C.R 42, Vogel's case may be regarded as no longer expressing the law.

Secs. 221 and 222 deal with the carriage of dangerous articles and are the same as ss. 253-4 of the Act of 1888.

Sec. 243. "The company may make by-laws, rules and regulations respecting (*b*) The hours of the arrival and departure of trains; (*c*) The loading or unloading of cars and the weights which they are respectively to carry; (*d*) The receipt and delivery of traffic. These were in the former Act.

Sec. 251 authorizes by-laws respecting tolls for traffic and s. 252 prohibits discrimination amending ss. 223 to 232 inclusive of the Act of 1888.

Sec. 253. "All companies shall according to their respective powers afford to all persons and companies all reasonable and proper facilities for the receiving, forwarding and delivering of traffic upon and from their several railways, for the interchange of traffic between their respective railways, and for the return of rolling stock; and no company shall make or give any undue or unreasonable preference or advantage to, or in favor of, any particular person, or company, or any particular description of traffic, in any respect whatsoever,—nor shall any company by any unreasonable delay or otherwise howsoever, make any difference in treatment in the receiving, loading, forwarding, unloading or delivery of the goods of a similar character in favor of or against any particular person, or company, nor subject any particular person or company, or any particular description of traffic, to any undue, or unreasonable, prejudice or disadvantage, in any respect whatsoever; nor shall any company so distribute or allot its freight cars as to discriminate unjustly against any locality or industry, or against any traffic which may originate on its railway destined to a point on another railway in Canada with which it connects; and every company which has or works a railway forming part of a continuous line of railway with, or which intersects, any other railway, or which has any terminus, station or wharf near to any terminus, station or wharf of any other railway, shall afford all due and reasonable facilities for delivering to such other railway, or for receiving from and for-

warding by its railway, all the traffic arriving by such other railway without any unreasonable delay, and without any such preference or advantage, or prejudice or disadvantage, as aforesaid, and so that no obstruction is offered to the public desirous of using such railways as a continuous line of communication, and so that all reasonable accommodation, by means of the railways of the several companies, is, at all times, afforded to the public in that behalf; and any agreement made between any two or more companies contrary to this section shall be unlawful and null and void: 51 Vict., c. 29, s. 240, am. by 61 Vict., c. 22, s. 1, and 1 Edw. VII., c. 32, am.

"2. The Board may determine, as questions of fact, whether or not traffic is or has been carried under substantially similar circumstances and conditions, and whether there has, in any case, been unjust discrimination, or undue or unreasonable preference or advantage, or prejudice or disadvantage, within the meaning of this Act, or whether in any case the company has, or has not, complied with the provisions of this and the last preceding section; and may, by regulation, declare what shall constitute substantially similar circumstances and conditions, or unjust or unreasonable preferences, advantages, prejudices, or disadvantages within the meaning of this Act, or what shall constitute compliance or non-compliance with the provisions of this and the last preceding section. (New)."

As to carriage of goods beyond the terminus of the railway by which they are shipped, see *G. T. R. Co.* v. *McMillan*, 16 S.C.R. 543; *Nor. Pac. R. Co.* v. *Grant*, 24 S.C.R. 546.

Sec. 254 deals with burden of proof as to discrimination and apportioning rates for land and water carriage amending 61 Vict., c. 22, s. 2.

Sec. 255 gives the Board authority to classify tariffs, s. 226 Act of 1888 amended.

Secs. 256 to 274 inclusive deal further with tariffs, and are all new provisions, except s. 258, which amends s. 229 Act of 1888; sec. 271 amending 1 Edw. VII., c. 32, s. 1, and s. 274, sub-s. 4 amending s. 230 Act of 1888.

Sec. 275. "No contract, condition, by-law, regulation, declaration or notice, made or given by the company, impairing, restricting or limiting its liability in respect of the carriage of any traffic shall

relieve the company from such liability, except as hereinafter provided, unless such class of contract, condition, by-law, regulation, declaration or notice shall have been first authorized or approved by order or regulation of the Board.

"2. The Board may, in any case, or by regulation, determine the extent to which the liability of the company may be so impaired, restricted or limited, and may by regulation prescribe the terms and conditions under which any traffic may be carried by the company."

This is new and a much more extensive provision than that contained in s. 214, under which Vogel's case was decided, and would seem to render the latter unnecessary, except that it is complete in itself, and cannot be controlled by action of the Board.

Sub-s. 3 of s. 275 authorizes reduced rates being given by the company in special cases and (4) by order of the Board.

Sec. 276. "When the company owns, charters, uses, maintains, or works, or is a party to any arrangement for using, maintaining or working vessels for carrying traffic, by sea or by inland water, between any places or ports in Canada, the provisions of this Act in respect of toll shall, so far as they are applicable, extend to the traffic carried thereby." The former Act did not contain this though some of its provisions were made applicable to carriage by water, s. 223.

Sec. 277. "When any company has power under any special Act to construct, maintain and operate any bridge or tunnel for railway purposes, or for railway and traffic purposes, and to charge tolls for traffic carried over, upon or through such structure by any railway, the provisions of this Act, in respect of tolls, shall, so far as they are applicable, extend to such company and the traffic so carried." (New.)

Sec. 278. "Every company which grants any facilities for the carriage of goods by express to any incorporated express company or person, shall grant equal facilities, on equal terms and conditions, to any other incorporated express company which demands the same": 51 Vict., c. 29, s. 242.

Sec. 279, amending s. 241 of the Act of 1888, provides penalties for fraudulent transactions in respect of the shipping of goods.

Sec. 280, deals with the consequences of non-payment of freight. Secs. 234-237, Act of 1888, inclusive amended.

Sec. 284 authorizes agreement for interchange of traffic between railway companies. Sec. 239 Act of 1888 amended.

III. THE CARRIAGE OF PASSENGERS

Some of the sections, already referred to, respecting the equipment and speed of trains, have in view the safety of passengers, as well as the public. There are also a few specific provisions on the subject.

Sec. 216. "Every employee of the company employed in a passenger train, or at a passenger station, shall wear upon his hat or cap a badge, which shall indicate his office, and he shall not, without such badge, be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office, or to interfere with any passenger or his baggage or property": 51 Vict., c. 29, s. 247.

Sec. 217. "Every passenger who refuses to pay his fare may, by the conductor of the train, and the train servants of the company, be expelled from and put out of the train, with his baggage, at any usual stopping place, or near any dwelling house, as the conductor elects, the conductor first stopping the train and using no unnecessary force": 51 Vict., c. 29, s. 248.

Sec. 218. "No person injured while on the platform of the car, or on any baggage, or freight car, in violation of the printed regulations posted up at the time, shall have any claim in respect of the injury, if room inside of the passenger cars, sufficient for the proper accommodation of the passengers, was furnished at the time": 51 Vict., c. 29, s. 249.

Sec. 219. "No passenger train shall have any freight, merchandise or lumber car in the rear of any passenger car in which any passenger is carried": 51 Vict., c. 29, s. 245 am. The amendment is only verbal.

"2. Every officer or employee of any company who directs or knowingly permits any freight, merchandise or lumber car to be so placed is guilty of an indictable offence: 51 Vict., c. 29, s. 291, am. The word "baggage" before freight in s. 291 is omitted."

Sec. 220. "A check shall be affixed by the company to every parcel of baggage, having a handle, loop or suitable means for attaching a check thereupon, delivered by a passenger to the company for transport, and a duplicate of such check shall be given to

the passenger delivering the same: 51 Vict., c. 29, s. 250, am. in form.

"2. In the case of excessive baggage the company shall be entitled to collect from the passenger, before affixing any such check the toll authorized under this Act. (New.)

"3. If such check is improperly refused on demand, the company shall be liable to such passenger for the sum of eight dollars, which shall be recoverable in a civil action." Sec. 251 of the Act of 1888 also relieved the passenger from payment of fare in such case, and obliged the company to refund it, if paid. This has been omitted.

The conductor of a train is responsible for the maintenance of order and preservation of the peace thereon. If a passenger is assaulted on the train and the conductor, on being informed of it, takes no measures to prevent its repetitition, the company is liable to the passenger if assaulted again: *C. P. R. Co.* v. *Blain*, 34 S.C.R. 74.

In conclusion, it may be remarked that the Railway Act, 1903, repeals all former legislation except s. 2 of 59 Vict., c. 9, which confirms resolutions made under s. 58 Act of 1888 re-enacted by s. 80 Act of 1903.

Ottawa. C. H. MASTERS.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

PRACTICE—ADMINISTRATION—SECURED CREDITOR—LEAVE TO PROVE CLAIM AFTER TIME FOR DOING SO EXPIRED—FUND IN COURT.

Harrison v. *Kirk* (1904) A.C. 1, was an appeal from the Irish Court of Appeal on a point of practice. The fact that the appellant appealed in person may probably account for the matter being brought before the House of Lords, as we doubt if any practitioner in his senses would have ventured the experiment. The respondent was a secured creditor of an estate which was being administered; the usual notice to creditors had been issued and the respondent had neglected to prove his claim within the prescribed time, it being supposed at that time the lands mortgaged were a sufficient security for the claims upon it. Subsequently he applied for leave to prove against the personal estate, it not having been distributed. His application was refused by the Master of the Rolls, but on appeal was granted by the Court of Appeal. The appellant was a residuary legatee and devisee of the estate, and contended that the respondent not having filed his claim in time was peremptorily excluded and could not be let in to prove. The House of Lords (Lords Halsbury, L.C., and Lords Shand, Davey and Robertson) affirmed the order appealed from, holding that so long as there is a fund in court a creditor may be allowed in to prove, and that the notice of peremptory exclusion in default of proving within the time limited is merely in terrorem. (See Ont. Rule, Form 79).

HUSBAND AND WIFE—AUTHORITY OF WIFE TO PLEDGE HUSBAND'S CREDIT—GOODS SUPPLIED ON WIFE'S ORDER—JOINT LIABILITY—PRESUMPTION OF AGENCY ARISING FROM COHABITATION—REBUTTAL OF PRESUMPTION—ALTERNATIVE LIABILITY—JUDGMENT AGAINST ONE OF TWO DEFENDANTS CLAIMED TO BE ALTERNATIVELY LIABLE.

In *Morel* v. *Westmoreland* (1904) A.C. 11, the House of Lords (Lords Halsbury, L.C., and Lords Shand, Davey and Robertson) have affirmed the decision of the Court of Appeal (1903) 1 K.B. 64 (noted ante vol. 39, p. 189). The action was brought against a

husband and wife for goods supplied for the use of the household on the order of the wife. The plaintiffs claimed that one or other of the defendants were liable, but did not allege any joint liability. Judgment was signed against the wife under Rule 115 (Ont. Rule 603) and the defendant proceeded with the action against the husband under Rule 119 (Ont. Rule 605) who proved that he had after July, 1899, given his wife an allowance for providing for the household expenses. Part of the plaintiff's claim was for goods supplied before and part after July, 1899. The Court of Appeal dismissed the action against the husband as to the goods supplied before July, 1899, on the ground that there was no evidence of any joint liability, and as to the goods supplied after July, 1899, because the presumption of the wife's agency was rebutted by proof of the allowance. The House of Lords affirmed the judgment on the ground that the plaintiff having taken judgment against the agent could not thereafter recover for the same debt against the principal. Rule 119 (Ont. Rule 605) being held not to apply to the case of a claim of alternative liability; in such a case the doctrine of election established by *Scarf* v. *Jardine*, 7 App. Cas. 345, applies, and the plaintiff taking judgment against one of the parties alleged to be alternatively liable is deemed to have elected to take his remedy against that one, and cannot afterwards sue the other.

COPYRIGHT—ARTICLE IN ENCYCLOPÆDIA—AUTHOR AND PUBLISHER—COPYRIGHT IN CONTRIBUTIONS—COPYRIGHT ACT, 1842 (5 & 6 VICT., c. 45) SS. 2, 3, 18.

Laurence v. *Aflalo* (1904) A.C. 17, is the case known as *Aflalo* v. *Laurence* (1903) 1 Ch. 318 (noted ante vol. 39, p. 354). The plaintiffs, in pursuance of a contract with the defendants, were the writers of certain articles in an encyclopædia of sport published by the defendants. After the publication of the encyclopædia the defendants published another work in which they included the articles written by the plaintiffs for the encyclopædia, this the plaintiffs claimed was an infringement of their copyright in such articles and the Court of Appeal so held. The House of Lords (Lord Halsbury, L.C., and Lords Shand, Davey and Robertson) have unanimously reversed that decision, holding on the evidence that under the contract between the plaintiffs and the defendants, the defendants became the absolute owners of the articles, and that

they and not the plaintiffs were entitled to the copyright thereof. Their Lordships adopt the view expressed in *Sweet* v. *Benning*, 16 C.B. 459, that it may be inferred from the facts of a case that the copyright was intended to belong to the publisher, though there was no express contract on the point.

LESSOR AND LESSEE—RENEWAL LEASE—"AT THE COSTS OF THE LESSEE"—COSTS OF REFERENCE AND AWARD AS TO AMOUNT OF FINE FOR RENEWAL.

In *Fitzsimmons* v. *Mostyn* (1904) A.C. 46, the House of Lords (Lord Halsbury, LC., and Lords Shand, Davey, Robertson and Lindley) have affirmed the decision of the Court of Appeal (1903) 1 K.B. 349, holding that where by the terms of a lessee the lessee is entitled to a renewal of the lease "at the costs of the lessee" the costs of the reference and award to fix the amount of the fine payable for the renewal are part of the costs the lessee is bound to pay.

DOMINION LANDS ACT—(R.S.C. c. 54) s. 47—MINING REGULATIONS OF 1889, s. 17—RIGHTS OF PLACER MINER AS TO RENEWAL OF HIS GRANT—ROYALTY—TAX.

Chappelle v. *the King* (1904) A.C. 127, was an appeal and cross appeals from the Supreme Court of Canada in which the rights of placer miners under the Dominion Lands Act (R.S.C. c. 54) s. 47, and the Mining Regulations of 1889, s. 17, were in question. The Judicial Committee of the Privy Council (Lords Macnaghten, Davey, Robertson and Lindley, and Sir A. Wilson) dismissed both the appeal and cross appeals, holding that s. 17 of the Mining Regulations does not extend to the holder of a grant for placer mining the same privileges as to the renewal of his grant which the holder of a quartz mining grant is entitled to. The placer miner's right to a renewal is not absolute but merely preferential, and he holds under an annual grant in substitution for, but not in continuation of his original grant, and every renewal grant is subject to all such regulations as may be in force at the date when it comes into operation, whether or not they were made during the currency of an existing grant. The Judicial Committee holds therefore that the Governor General in Council has power to make regulations requiring the placer miner to pay a percentage of the proceeds realized from the grant, and that such an imposition called a royalty is not a tax but a reservation which an owner in fee is entitled to make out of his grant.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

B.C.] DOBERER *v.* MEGAW. [Nov. 10, 1903.

Arbitration—Setting aside award—Misconduct of arbitrator—Partiality—Evidence—Jurisdiction of majority—Decision in absence of third arbitrator—Judicial discretion.

A reference under the British Columbia Arbitration Act authorized two out of three arbitrators to make the award. After notice of the final meeting the third arbitrator failed to attend on account of personal inconvenience and private affairs, but both parties appeared at the time appointed and no objections were raised on account of the absence of the third arbitrator. The award was then made by the other two arbitrators present.

Held, reversing the judgment appealed from, that under the circumstances, there was cast upon the two arbitrators present the jurisdiction to decide whether or not, in the exercise of judicial discretion, the proceedings should be further delayed or the award made by them alone in the absence of the third arbitrator, and it was not inconsistent with natural justice that they should decide upon making the award without reference to the absent arbitrator.

Held, also, that although the third arbitrator had previously suggested some further audit of certain accounts that had already been examined by the arbitrators, there was nothing in this circumstance to impugn the good faith of the other two arbitrators in deciding that further delay was unnecessary.

Where it does not appear that an arbitrator is in a position with regard to the parties or the matter in dispute such as might cast suspicion upon his honour and impartiality, there must be proof of actual partiality or unfairness in order to justify the setting aside of the award. Appeal allowed with costs.

Sir C. H. Tupper, K.C., for appellant. *Davis*, K.C., for respondent.

B.C.] NORTH VANCOUVER *v.* TRACY. [Nov. 10, 1903.

Contract—Resolution by municipal corporation—Acceptance of offer to purchase—Evidence—Statute of frauds—Writing—Estoppel.

T. offered to purchase lands which the municipality had bid in at a tax sale and to pay therefor the amount of the arrears of taxes and costs. The council resolved to accept "the amount of taxes, costs and interest" against the lands and authorized the reeve and clerk to issue a deed at that price.

Held, reversing the judgment appealed from, that even if communicated to T. as an acceptance of his offer, this resolution would have raised no contract, on account of the variation made by the addition of interest.

An instrument, which was never delivered to T., was executed by the reeve and clerk of the municipality in the statutory form of conveyance upon a sale for taxes, reciting the above resolution but without a reference to any contract in pursuance of the resolution, and about two months after the passing of the resolution, upon receipt of another offer for the same lands, the council resolved to intimate to the person making the second offer "that the lot had been sold to T."

Held, that these circumstances could not be relied upon as an admission of a prior contract of sale.

Held, also, that, even if it could be inferred that contractual relations had been established between T. and the municipality, it did not appear that there had been any written communications in respect thereto made on behalf of the municipality and consequently the alleged admissions of a contract did not satisfy the Statute of frauds and could have no effect. Appeal allowed with costs.

Riddell, K.C., and *Rose*, for appellant. *Davis*, K.C., for respondent.

Que.] VEILLEUX *v.* ORDWAY. [Nov. 30, 1903.

Contract—Deceit and fraud—Rescission—Evidence—Concurrent findings of lower courts—Duty of second court to appeal.

A sale of timber limits to the plaintiff was effected through a broker for a price stated in the deed to be $112,500, but the vendor signed an acknowledgment that the true price, as far as he was concerned, was $75,000. At the time of the execution of the deed a statement was made shewing how the purchase money was to be paid and the vendor signed an agreement that out of the balance of the $112,500, viz., $46,502.02, the plaintiff was to get $37,500, i.e., the amount of the difference between the true price and that mentioned in the deed. The vendor refused to pay over this $37,500 on the ground that the plaintiff and the broker had conspired together to deceive him as to the actual price to be obtained for the limits, and that the sale was not in fact to the plaintiff for $75,000 but to the plaintiff's principals, the grantees in the deed, for the full consideration of $112,500, and that the plaintiff and the broker were acting fraudulently and seeking by deceit and artifice to deprive him of the full price at which the sale had been effected. In an action to recover the $37,500 from the vendor,

Held, affirming the judgments appealed from, that the acknowledgments signed by the vendor settled the rights of the parties unless there was very strong evidence to the contrary and, as there was no such evidence and as the circumstances as found by the courts below, tended to shew that

plaintiff was entitled to the money in dispute as the natural result of the transactions between the parties, the case was one in which a second court of appeal would not be justified in disturbing the concurrent findings at the trial and of the court appealed from. Appeal dismissed with costs.

Stuart, K.C., and *Pelletier*, K.C., for appellant. *Bedard*, K.C., and *Taschereau*, K.C., for respondent.

Que.] COGHLIN *v.* JOLIETTE. [Nov. 30, 1903.

Breach of contract—Damages—Evidence—Discretionary order by judge at trial—Interference by Court of Appeal.

The trial court condemned the defendant to pay $122.50 damages for breach of contract for the sale of goods, but in view of unnecessary expenditures caused in consequence of exaggerated demands by the plaintiffs, which were rejected, they were ordered to bear half the costs. On an appeal by the defendant the Court of King's Bench varied the trial court judgment by adding $100 exemplary damages to the condemnation and giving full costs against the defendants.

Held, reversing the judgment appealed from, that in the absence of any evidence of bad faith or wilful default on the part of the defendant, there was no justification for the addition of exemplary damages nor for interference with the judgment of the trial court. Appeal allowed with costs.

Beique, K.C., and *Lafleur*, K.C., for appellant. *Renaud*, K.C., for respondent.

B.C.] TURNER *v.* COWAN. [Nov. 30, 1903.

Company law—Payment for shares—Transfer of business assets—Debt due partnership—Set-off—Counterclaim—Accord and satisfaction—Liability on subscription for shares.

On the formation of a joint stock company to take over a partnership business, each partner received a proportionate number of fully paid-up shares at their par value in satisfaction of his interest in the partnership assets.

Held, reversing the judgment appealed from (9 B.C.R. 301.) DAVIES, J., dubitante, that the transaction did not amount to payment in cash for shares subscribed by the partners within the meaning of ss. 50, 51 of the Companies Act, R.S.B.C., c. 44, and that the debt owing to the shareholders as the price of the partnership business could not be set off nor counterclaimed by them against their individual liability upon their shares. *Fotherill's Case*, 8 Ch. App. 27, followed. Appeal allowed with costs.

Riddell, K.C., for appellant. *Davis*, K.C., for respondent.

B.C.] O'BRIEN *v.* MACKINTOSH. [Nov. 30, 1903.

Contract—Agreement in writing—Construction—Sale of timber—Terms of payment.

The appellant held rights in unpatented lands and agreed to sell the timber thereon to respondent, one of the conditions as to payment therefor being that, as soon as the Crown grant issued, the respondent should settle a judgment against the appellant which they both understood could at that time be purchased for $500. On the issue of the grant, about six months afterwards, the judgment creditor refused to accept $500 as full settlement at the latter date and he took proceedings to enforce execution for the full amount. The execution was opposed on behalf of the appellant, the respondent becoming surety for the costs and being also made a party to the proceedings.

Held, affirming the judgment appealed from (10 B.C.R. 84), that the agreement to settle the outstanding judgment was not made unconditionally by the respondent, but was limited to settling it for $500, after the issue of the Crown grant for the land.

Held, also, DAVIES, J., dissenting, that the costs incurred in unsuccessfully opposing the execution of the judgment, upon being paid by the respondent, were properly chargeable against the appellant. Appeal dismissed with costs.

Shepley, K.C., for appellants. *Davids*, K.C., for respondent.

B.C.] HASTINGS *v.* LE ROI, No. 2. [Nov. 30, 1903.

Negligence—Mining operations—Contract for special works—Engagement by contractor—Control and direction of mine owner—Defective machinery—Notice—Failure to remedy defect—Injury to miner.

The sinking of a winze in a mine belonging to the defendants was let to contractors who used the hoisting apparatus which the defendants maintained, and operated by their servants, in the excavation, raising and dumping of materials, in working the mine under the direction of their foreman. The winze was to be sunk according to directions from defendants' engineer, and the contractors' employees were subject to the approval and direction of the defendants' superintendent, who also fixed the employees' wages and hours of labour. The plaintiff, a miner, was employed by the contractors under these conditions and was paid by them through the defendants. While at his work in the winze the plaintiff was injured by the fall of a hoisting bucket which happened in consequence of a defect in the hoisting gear, which had been reported to the defendants' master-mechanic and had not been remedied.

Held, affirming the judgment appealed from (10 B.C.R. 9), TASCHEREAU, C.J., dissenting, that the plaintiff was in common employ with the

defendants' servants engaged in the operation of the mine and that even if there was a neglect of the duty imposed by statute, in respect to inspection of the machinery, as the accident occurred in consequence of the negligence of one of his fellow-servants, the defendants were excused from liability on the ground of common employment. Appeal dismissed with costs.

Shepley, K.C., for appellant. *Davis*, K.C., for respondent.

Man.] WHITLA *v.* MANITOBA ASSURANCE CO. [Nov. 30, 1903.

WHITLA *v.* ROYAL INSURANCE CO.

Fire insurance—Condition of policy—Double insurance—Application—Representation—Substituted insurance—Condition precedent—Lapse of policy—Statutory conditions—Estoppel.

B., desiring to abandon his insurance against fire with the Manitoba Assurance Co. and in lieu thereof to effect insurance on the same property with the Royal Insurance Co., wrote the local agent of the latter company stating his intention and asking to have a policy in the "Royal" in substitution for his existing insurance in the "Manitoba." On receiving an application and payment of the premium, the agent issued an interim receipt to B. insuring the property pending issue of a policy and forwarded the application and the premium with his report to the company's head office in Montreal where the enclosures were received and retained. The interim receipt contained a condition for non-liability in case of prior insurance unless with the company's written assent, but it did not in any way refer to the existing insurance with the Manitoba Assurance Co. Before receipt of a policy from the Royal, and while the interim receipt was still in force the property insured was destroyed by fire and B. had not in the meantime formally abandoned his policy with the Manitoba Assurance Co. The latter policy was conditioned to lapse in case of subsequent additional insurance without the consent of the company. B. filed claims with both companies which were resisted and he subsequently assigned his rights to the plaintiffs by whom actions were taken against both companies.

Held, reversing both judgments appealed from (14 Man. L. R. 90), that as the Royal Insurance Company had been informed, through their agent, of the prior insurance by B. when effecting the substituted insurance, they must be assumed to have undertaken the risk notwithstanding that such prior insurance had not been formally abandoned and that the Manitoba Assurance Co. were relieved from liability by reason of such substituted insurance being taken without their consent.

Held, further, that, under the circumstances, the fact that B. had made claims upon both companies did not deprive him or his assignees of the right to recover against the company liable upon the risk.

The Chief Justice dissented from the opinion of the majority of the

court which held the Royal Insurance Company liable and considered that under the circumstances B could not recover against either company.

Appeal allowed with costs.

J. S. Tupper, K.C., *Haggart*, K.C., *Munson*, K.C., *Lewis* and *Phippen*, for various parties.

EXCHEQUER COURT OF CANADA.

Burbidge, J.] GORHAM MANUFACTURING CO. *v.* ELLIS & CO. [Mar. 7.

Trade mark—Infringement—Sterling silver "hall mark"—Right to register goods bearing mark on Canadian market.

If by the laws of any country the makers of certain goods are required to put thereon certain prescribed marks to denote the standard or character of such goods, and goods bearing the prescribed marks are exported to Canada and put upon the market here, it is not possible thereafter, and while such goods are to be found in the Canadian market, for any one to acquire in Canada a right to the exclusive use of such prescribed marks to be applied to the same class of goods, or to the exclusive use of any mark so closely resembling the prescribed marks as to be calculated to deceive or mislead the public.

Quaere: Whether any one would, in such a case, be precluded from acquiring a right in Canada to the exclusive use of such a trade mark where there was no importation into Canada of goods bearing the prescribed foreign marks.

The plaintiffs brought an action for the infringement of their registered specific trade mark to be applied to goods manufactured by them from sterling silver which it was thought so resembled the Birmingham Hall-mark or a hall-mark, as to be calculated to deceive or mislead the public, and it appeared that during the time that the plaintiff's goods, bearing such mark, were upon the Canadian market, goods bearing the Birmingham Hall-mark, were also upon the market here.

Held, that the plaintiff could not, under the circumstances, acquire the exclusive right to the use as a trade mark of the mark that he had been so using.

Aylesworth, K.C., for plaintiffs. *Blackstock*, K.C., for defendants.

Province of Ontario.

COURT OF APPEAL.

Moss, C.J.O., Maclennan, Garrow, JJ.A.] [Nov. 16, 1903.

CENTAUR CYCLE CO. *v.* HILL.

Sale of goods—Action for contract price—Defence and set off—Substitution of castings for forgings in manufacture—Condition precedent—Warranty—Resale with similar warranty—Right of vendee complete without resale—Measure of damage—Delay.

In an action for the contract price for goods sold and delivered in which it was shewn that the goods delivered were not manufactured as agreed upon, the vendors having substituted castings for forgings.

Held, 1. The defendants were entitled to have their damages applied in reduction of the plaintiff's claim.

2. As soon as the vendee discovers the defect he may bring an action on the warranty and recover the value of the article he should have received, and that the right of action is complete without a resale and that the measure of damages is the same whether the goods are in his warehouse or in the hands of persons to whom he may afterwards have pledged or sold them.

3. Where credit is given or where the goods have been paid for, the vendee may sue at once, or in the case of credit, if vendee so elects, he may await an action for the price and set off or counterclaim for his damages by reason of the defective material or other breach of warranty.

4. Where there had been delay in the delivery of the samples as well as the bulk of the goods ordered for a particular season which arrived late for the season, and, in consequence, were sold at a loss, the measure of the damages is the difference between the value of the goods at the time at which they were to have been delivered according to the contract and their value for the purpose of resale, as the plaintiffs well knew, at the time when they were actually delivered. *Wilson* v. *Lancashire and Yorkshire R. W. Co.* (1861) 9 C.B.N.S. 632, and *Schulze* v. *Great Eastern R.W. Co.* (1887) 19 Q.B.D. 30, followed.

Pyckman and *C. W. Kerr*, for the defendants E. C. Hill and E. C. Hill & Co., on appeal and cross-appeal. *Rowell*, K.C., and *Casey Wood*, for the plaintiffs' contra and on cross appeal.

Police Magistrate, Hamilton.] [Jan. 5.

REX *v.* WALSH.

Criminal law—Summary trial—Police Magistrate—Neglect to inform prisoner of next Court for jury trial—Election—Adding to indictment.

The prisoner was charged with an offence which was not triable summarily by the Police Magistrate, except upon consent. The Magi-

strate asked the prisoner as to whether he elected to be tried by him or before a jury, but did not state at what Court his case would be tried. The prisoner was represented by counsel.

Held, Maclaren, J.A., dissenting, that,

1. The Police Magistrate had no jurisdiction to try the case, as he had not named the Court at which the prisoner would be soonest tried.

2. The Magistrate having entered upon the trial he had no power to amend the indictment by making a further charge, unless the prisoner should be again put to his election and consent to such trial.

Conviction quashed and new trial ordered.

Counsell and *E. N. Armour*, for prisoner. *Cartwright*, K.C., for the Crown.

Teetzel, J.] KEENAN *v.* OSBORNE. [Jan. 29.

Interpleader—Mortgage to execution creditor—Assignment of, before seizure—Attack by action.

The right of a sheriff to an interpleader order depends upon either having the subject matter of the interpleader in his possession, or having the right under an execution accompanied with an intention to take possession.

And when an execution debtor, who was a mortgagee of lands, had assigned the mortgage even although the assignment was not registered:

Held, that the mortgage could not be seized under the provisions of the Execution Act, R.S.O. 1897, c. 77, s. 23 et seq, and that the sheriff could not proceed until the execution creditors had in an action obtained a declaration of the Court that the assignment was void and that he could not interplead.

Middleton, for claimant. *F. A. Anglin*, K.C., and *Raney*, for the sheriff and execution creditors.

Full Court.] REX *v.* SHAND. [Feb. 2.

Criminal law—Obstructing officer—Seizure of chattel—Sale of goods—Conditional sale.

The retaking of possession of a chattel by the vendors thereof under the provisions of a conditional sale agreement, is not a seizure within the meaning of the Criminal Code, s. 144, sub-s. 2 (b), so as to subject the purchaser of the chattel, who in good faith disputes the right to retake it, to the penalty prescribed in that sub-section. Conviction quashed.

W. H. Wright, for prisoner. *Cartwright*, K.C., for Crown.

HIGH COURT OF JUSTICE.

Britton, J.] POPE *v.* PEATE. [Feb. 18.

Injunction—Teaching music—Noise—Nuisance.

Defendant hired rooms in a business part of a city for the purpose of giving music lessons, put up his sign and gave lessons on the mandolin to over 200 pupils between the hours of 9 a.m. and 10 p.m. On a motion for an injunction by an occupier of rooms on the opposite side of the hall in the same building, who had taken his rooms subsequently, to restrain the defendant from giving lessons on the ground that the noise was a nuisance. It was

Held, on the evidence that the noise to which objection was taken was reasonably connected with and incidental to the teaching, that the defendant's use of the premises was not an unreasonable use; and that to offend against the law the teaching of music lessons in such premises must be done in a manner which beyond fair controversy ought to be regarded as unreasonable; that an injunction would break up his business and it would be better that the plaintiff should be compensated in damages if he was entitled to recover and the injunction was refused.

N. G. Guthrie, for plaintiff. *A. E. Fripp*, for defendant.

Cartwright—Master.] [Feb. 24.

AMERICAN ARISTOTYPE CO. *v.* EAKINS.

Security for costs—Money paid into court for—Tender by defendant before action and money paid into court in satisfaction of plaintiff's claim—Application for payment out in the alternative.

The plaintiffs, resident in the States, in compliance with an order for security for costs paid $200 into court. The defendants in their defence set up tender before action and paid into court $189.52 in full of plaintiffs' claim of $353.89 and costs. On an application by the plaintiffs for an order either for payment out of the money paid in by the defendants or for an order rescinding the order for security for costs and repayment of the $200 paid in by the plaintiffs. It was

Held, following *Griffiths* v. *School Board of Ystradyfodwg* (1890) 24 Q.B.D. 307, that if the plaintiffs elect to take out the money paid in with the plea of tender, they must take it out in full of their claim and the defendants would be entitled to their costs.

Held, also, that the order for security for costs having been regularly issued and acted on, it was too late to set it aside and the motion was dismissed.

W. R. Smyth, for the motion. *W. J. O'Neail*, contra.

Cartwright—Master.] ANDREWS *v.* FORSYTHE. [March 9.

Parties—Joinder of defendants—Independent claims.

In considering the propriety of the joinder of defendants, the nature of the action and of the relief asked must be considered. If that relief is of an equitable nature, all parties must be before the Court whose presence is necessary to give the plaintiff, if successful, the full measure of his rights —assuming that the action is not multifarious. On the other hand, the plaintiff cannot join two independent claims merely because they happen to relate to the same subject-matter, there being no connection otherwise between the parties.

In an action claiming as against one defendant rectification of a deed, and as against the other defendant cancellation as a cloud on the plaintiff's title of a deed from a third person to that defendant of part of the land, which as the plaintiff alleged, should have been included in the deed of which rectification was sought, an order was made as in *Chandler & Massey* v. *Grand Trunk R.W. Co.* (1903) 5 O. L. R. 589, requiring the plaintiff to elect as against which defendant he would proceed.

C. A. Moss, for defendant moving. *J. Grayson Smith*, for co-defendant. *W. M. Douglas*, K.C., for plaintiff.

Cartwright—Master.] [March 11.

HOCKLEY *v.* GRAND TRUNK R.W. CO.

Staying proceedings—Postponing trial—New trial—Appeal to Supreme Court.

A motion by the defendants to postpone until after the determination of an appeal by them to the Supreme Court, a new trial directed by a Divisional Court and by the Court of Appeal after a nonsuit at the first trial, was refused, the plaintiff in one of the actions, which had been consolidated, being a young widow suing under the Fatal Accidents Act on behalf of herself and her infant child, and the case having been withdrawn from the jury without an assessment of damages.

Rose, for defendants. *McCullough*, for plaintiffs.

Divisional Court.] [March 14.

IN RE MCKAIN AND CANADIAN BIRKBECK INVESTMENT CO.

Company - Share—Transfer—Certificate—Lien—By-laws.

A provision in a certificate of ownership of paid-up shares issued by a company incorporated by special Act, that "the articles of this company are part and parcel of this contract" is not sufficient to make applicable to a purchaser in good faith of the shares a by-law of the company purporting to give to the company a lien on all shares held by any shareholder for "any and all amounts that may be owing by the shareholder or his assigns

to the company," and the purchaser is, upon compliance with the necessary formalities, entitled to be registered as transferee. Judgment of FERGUSON, J., affirmed.

W. H. Blake, K.C., for company. *C. A. Moss*, for applicant.

Divisional Court.] [March 14.

ONTARIO POWER COMPANY *v.* WHATTLER.

Partition—Sale—Special value—Con. Rules, form No. 158.

The form of judgment for partition or sale (Con. Rules, No. 158) must be read in the light of the legislation by which the court has been given the right to order a partition instead of a sale, and its meaning is that a partition is to be made unless it is shewn by those who ask for a sale that a partition cannot be made without prejudice to the interests of the owners of the estate as a whole.

A report directing partition was therefore upheld where there was no physical difficulty in dividing the land and the plaintiffs had been allotted that portion of it adjoining other lands owned by them, the argument in favour of a sale being that the portion allotted to the plaintiffs was of special value to them, so that in the event of a sale it would have been necessary for them to purchase the whole of the land at whatever price it might have been bid up to, and thus have benefited the co-owners. Judgment of FALCONBRIDGE, C.J.K.B., affirmed.

Masten, for appellants. *Cassels*, K.C., and *F. W. Hill*, for respondents.

ELECTION CASES.

Moss, C.J.O.] IN RE NORTH RENFREW (PROVINCIAL). [March 7.

Petition—Qualification of petitioner—"Reside"—Ontario Controverted Elections Act.

The word "reside" in s. 3 of the Ontario Controverted Elections Act, R.S.O. 1897, c. 11, as amended by 62 Vict. (2) c. 6, s. 1, is intended to denote the place where the petitioner "eats, drinks and sleeps." And therefore, a petitioner who owned a farm assessed in all for more than one thousand dollars, and all in one electoral district, but the house and part of the land, assessed for less than that sum, being in one township, and the main part of the land in another township, was held to be unqualified, the assessment of the part with the house being alone regarded.

Hellmuth, K.C., for respondent. *R. A. Grant*, for petitioners.

Province of Manitoba.

KING'S BENCH.

Full Court.] CENTRE STAR *v.* ROSSLAND GREAT WESTERN. [Jan. 25.

Practice—Substituted service—Extra provincial company—Affidavit leading to order—New material on application to discharge order—Judge's discretion.

Appeal from an order of IRVING, J., setting aside an order for substituted service.

Held, that an affidavit leading to an order for substituted service is a jurisdictional affidavit.

An affidavit leading to an order for substituted service under s. 130 of the Companies Act on an extra-provincial company licensed to do business in British Columbia should shew clearly that the company is an extra-provincial one licensed to do business in the province.

On an application to set aside an order for substituted service it is discretional with the judge to allow plaintiffs to read further affidavits setting out facts omitted in the affidavit on which the order was made, and where, in the exercise of his discretion he refused leave, the court on appeal will not interfere.

Judgment of IRVING, J., affirmed, HUNTER, C.J., dissenting.

A. C. Galt, for appellant. *Davis*, K.C., for respondent.

Courts and Practice.

Frances Alexander Anglin, K.C., of the City of Toronto, and John Idington, K.C., of the City of Stratford, to be Judges of the Supreme Court of Judicature for Ontario, and Justices of the High Court of Ontario, and members of the Exchequer Division of the said High Court. (Gazetted March 19.)

John Joseph O'Meara, of Pembroke, Barrister, to be Judge of the County Court of Carlton, in the room of his Honour William Musgrove, deceased. (Gazetted March 12.)

Dennis Joseph Donahue, K.C., of the City of St. Thomas, to be Judge of the County Court of the County of Renfrew, in the room of His Honour John Deacon, retired.

His Honour Albert Constantineau, Junior Judge of the United Counties of Prescott and Russell, to be Judge thereof, in the room of His Honour Peter O'Brian, retired.

Talbot Macbeth, K.C., of the City of London, to be Judge of the County of Middlesex, in the room of His Honour William Elliott, retired.

John Lawrence Dowlin, of the City of Ottawa, Barrister-at-Law, to be Junior Judge of the County of Kent, in the room of His Honour Robert Stewart Woods, retired. (Gazetted March 19.)

Flotsam and Jetsam.

How the United States worked the Alaskan award.—There was published yesterday the full text of the letters that have passed between Great Britain, Canada and the United States, on the subject of the Alaskan dispute and the notorious award of the arbitrators. Full of significant facts that have not yet been made public, it reveals the extraordinary facility with which the United States succeeded in bluffing Great Britain into accepting the appeal to arbitration under their own conditions. After three years of unsatisfactory official correspondence, Mr. Hay, on October 17, 1902, on behalf of the United States, suggested that a tribunal of jurists should be appointed whose members should give a reasoned, but not a final opinion on the questions at issue. Having secured British and Canadian approval of this modest proposal, Mr. Hay then drew the bow wildly, and asked that the decision of a majority of this tribunal of jurists should be considered final. Great Britain fell an easy prey, and replied with a ready affirmative, suggesting faintly, however, that all American members of the tribunal in this case should be judges of the Supreme Court. Mr. Hay agreed with the excellence of this as a theory, but apologised for refusing to put it into practice. Matters were rushed forward and when the crucial time came Mr. Hay quietly nominated Mr. Root, U.S. Secretary for war, and two senators as the American members of the Commission. Canada angrily protested, and asked where the impartial jurists of repute were. Great Britain expressed mild surprise at their absence, but at once capitulated, saying that it was no use asking the United States to withdraw the names put forward. The end of this was the notorious award, which became inevitable after such a selection, and which surrendered the whole matter in dispute to the United States.—*London Daily Express, Feb. 3.*

A Worcester paper has unearthed a funny petition. In the reprint from the *Times* of August 26, 1803, a petition to Parliament is quoted, shewing that the number of attorneys had increased in two counties from eight to twenty-four, whereby the peace of those counties had been greatly interrupted by suits. The petitioners therefore prayed that the number be reduced, so that there should be no more than six each in Norfolk and Suffolk, and two for the city of Norwich. The petition was granted provided the judge thought it reasonable.—*Ex.*