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DIVORCE.

"The stability of the family," says Mr. Lecky, "is more essential than any other single element to the moral, social, and even political well-being of a nation. It is of vital importance to the education of the young. It is the special seed-plot and condition of the best virtues of the community, the foundation stone on which the whole social system must rest. Few greater misfortunes can happen to a nation than that the domestic virtues should have ceased to be prized; that family life, with all its momentous interests, should have become the sport of passion and of caprice" (*a*).

IN THE UNITED STATES.—The importance of uniformity and certainty in the marriage relation, and the disastrous results from relaxation of the rules which govern it, have been well pointed out by Mr. Woodrow Wilson in dealing with the conflict of laws in the United States, where each State of the Union has the power to grant divorces: "Above all things else, it has touched the marriage relation, that tap-root of all social growth, with a deadly corruption.

Not only has the marriage tie been very greatly relaxed in some of the States, while in others it retains its old-time tightness, so that the conservative rules which jealously guarded the family, as the heart of the State, promise amid the confusion to be almost forgotten; but diversities between State and State have made possible the most scandalous processes of collusive divorce and fraudulent marriage" (*b*).

Mr. Justice David McAdam, of the New York Supreme Court, has lately said: "The present condition of affairs with regard to divorce is deplorable. We have now forty-five States, all of which (excepting South Carolina, in which divorces are not granted)

(*a*) Democracy and Liberty, p. 191.

(*b*) The State, p. 905.

have legislated differently upon this branch of the law of domestic relations" (*c*).

The following newspaper clipping gives point to the foregoing statements: "Justice Andrews, of the Supreme Court of New York, has broken the record in divorce cases. He has divorced thirty-one couples in three hundred and thirty minutes. The greatest number previously disposed of in a day was twenty-eight. Judge Andrews got through his cases at the rate of a fraction over ten minutes each. The Court, we are told, was crowded with women and children, who no doubt went away imbued with respect for marriage and impressed with the value of domestic affection."

IN CANADA.—Under the British North America Act, the subject of marriage and divorce is within the exclusive jurisdiction of the Dominion. In some of the Provinces, as will be shewn presently, the Courts had power before the Union, for certain well-defined and limited causes, to grant a divorce, and by virtue of sec. 129 this power still exists until "repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the authority of the Parliament or of that Legislature."

It enacts: "Except as otherwise provided by this Act, all laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of civil and criminal jurisdiction, and all legal commissions, powers and authorities, and all officers, judicial, administrative, and ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be repealed, abolished or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the authority of the Parliament or of that Legislature under this Act."

To the general Government there has been given power to legislate as to "Marriage and Divorce," that is, to determine what shall constitute a legal marriage, and what marriages shall be forbidden as unlawful; likewise to determine what shall constitute

(*c*) Albany Law Journal, vol. 63, p. 30.

valid grounds of divorce (*d*). On the other hand the power to make laws in regard to "The solemnization of marriage in the Province" (*e*) is within the exclusive powers of Provincial Legislatures.

"Under the former power there is, in the opinion of the Law Officers of the Crown, reserved to the Parliament of the Dominion, all matters relating to the status of marriage, between what persons and under what circumstances it shall be created and (if at all) destroyed," (*f*).

"There are many reasons of convenience and sense why one law as to the status of marriage should exist throughout the Dominion, which have no application as regards the uniformity of the procedure whereby that status is created or evidenced" (*g*).

Mr. Todd puts it thus: "The formal mode of contracting marriages is no doubt a fit subject for the discretion of the local Legislatures, because, as a general rule, no difference of mere form can invalidate a marriage lawfully contracted in any part of the Queen's dominions. It is very different in regard to the essential conditions of marriage. In this respect it is of vital importance that a uniform law should prevail throughout the realm, and that marriages legally contracted in one colony should not be inoperative for all legal purposes in another. It is for this reason that legislation upon the essentials of marriage and divorce is conferred, in Canada, exclusively upon the Dominion Parliament" (*h*).

"Solemnization of Marriage," that is to say, the power of regulating the form of the ceremony—the mode of its celebration—is a particular subject expressly placed under the jurisdiction of the Local Legislatures as a matter which has always been considered to be purely of a local character. It was a matter purely of provincial importance whether the ceremony should take place before the civil magistrate, or whether it should be a religious ceremony; this was a matter in which the inhabitants of the different Provinces might take a different view. It was, therefore, a matter essentially

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(*d*) Todd's Parliamentary Govt. (2nd) p. 594.

(*e*) Sec. 92 (12).

(*f*) Doutre, p. 238.

(*g*) Ib.

(*h*) Todd, p. 595.

to be regarded as "local," and as such to be placed under the jurisdiction of the Local Legislatures (*i*).

NOVA SCOTIA AND NEW BRUNSWICK.—Divorce Courts were in existence in these Provinces at the time of Confederation; these Courts had and still have power to declare any marriage null and void on the ground of impotency, cruelty, adultery, or kindred within the prohibited degrees (*j*).

PRINCE EDWARD ISLAND.—In this Province, by 5 Wm. IV. (1836) c. 10, all matters touching marriage and divorce are directed to be heard by the Lieutenant-Governor and his Council, and the Lieutenant-Governor and any five or more of the Council are thereby constituted a Court, with the Lieutenant-Governor as president. The causes for which relief is granted are similar to those in Nova Scotia and New Brunswick.

QUEBEC.—In consequence of the views of the Roman Catholic religion, no Court can grant a divorce a vinculo. By Article 185 of the Code, marriage is declared indissoluble. But Provincial Courts have power to *annul* a marriage for impotency existing at time of marriage, but only if such impotency be apparent and manifest (*k*). Also for absence of consent, or of consent of parents, (where a minor) or error, or prohibited degrees (*l*). Separation may be granted for specific causes (*m*); e. g. husband for wife's adultery, wife for husband's, if he keeps concubine in the common habitation (*n*).

ONTARIO.—At the time of Confederation, the Courts in the then Province of Upper Canada (now Ontario), had no power to grant a divorce a vinculo matrimonii; this power not having been conferred upon them by the Legislature (*o*). They have, however, asserted jurisdiction to deal with the validity of the marriage contract on the ground of its being a civil contract, and have entertained

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(*i*) *City of Fredericton* v. *The Queen*, 3 S.C.R., p. 569.

(*j*) Gemmill, p. 34.

(*k*) Gemmill, p. 43; Art. 117.

(*l*) Art. 116.

(*m*) Art. 186.

(*n*) Art. 187.

(*o*) Gemmill, p. 39

actions to declare marriages null and void on the ground of insanity, duress, and of intoxication at the time of the ceremony (*p*).

BRITISH COLUMBIA.—In November 1866, Vancouver Island and the mainland of British Columbia, which had theretofore been two separate colonies, were united, and an ordinance dated 6th of March, 1867, was passed by the Legislature of British Columbia, the new Colony, which enacted that the civil and criminal laws of England, as the same existed on the 19th of November, 1858, and so far as the same from local circumstances were not inapplicable, were and should be in force in all parts of British Columbia, save so far as modified by legislation on the subject between 1858 and 1867. Under this ordinance, jurisdiction to exercise all the relief and powers given under the English "Divorce and Matrimonial Causes Act" (*q*), as amended by 21 & 22 Vict., c. 108, has been claimed and exercised by the Supreme Court, although not without dissent on the part of some Judges as to the right to do so (*r*). This law was in existence at the time when the Province of British Columbia entered Confederation in 1871.

Inasmuch as there are no tribunals with power to decree divorces in the provinces of Ontario, Quebec, Manitoba and the North-West Territories, a divorce can only be obtained in each case from the Dominion Parliament by a legislative Act, irrespective of the precedents or practice of other tribunals, (*s*) originating in the Senate, and requiring the concurrence of the Commons; all divorce bills are assented to with other bills by the Governor-General at the close of a session of Parliament (*t*). The Senate acts in such cases not only in a quasi judicial, but also in a legislative character.

It has been said that: "Parliament may, and ought always, to have in regard, not merely the question as it affects the parties, but the effect in relation to morals and good order—the effect which the passing a particular law might have upon the well-being of the community" (*u*).

(*p*) *Roblin* v. *Roblin*, 28 Gr. 439, and cases referred to by Gemmill on Divorce, pp. 39-40.

(*q*) 20 & 21 Vict., c. 85 (1857); Gemmill, p. 37.

(*r*) 32 Can. Law Journal, p. 139, 319.

(*s*) Gemmill, p. VI.

(*t*) Gemmill, p. 31.

(*u*) p. 734, Senate Debates, 1888.

The immoral and unjust distinction which prevails in England where a wife cannot obtain a dissolution of the marriage tie for the mere adultery of the husband, and where that adultery must be committed under specially aggravated circumstances, or else must be coupled with cruelty or desertion, while adultery on the part of the wife is a sufficient ground for divorce on the petition of the husband, is not recognized in Canada; the adultery of either spouse is a sufficient ground for granting this relief; and adultery is the sole ground for a dissolution. As to this difference Mr. Lecky says: "The difference which English law establishes between adultery in a man and adultery in a woman is not widely adopted. It does not exist in Scotland. It is not recognized by the Canon law, and it is not in accordance with the general tenor of modern legislation" (*v*).

The following figures are interesting as shewing that a very low divorce rate prevails in Canada, and that the marriage tie is not lightly broken there: "Ottawa, Dec. 11.—During last year bills of divorce as follows were granted in Canada: Ontario, two; Quebec, one; Manitoba, nil; North-West Territories, one; Nova Scotia, five; New Brunswick, five; Prince Edward Island, nil; British Columbia, two. In the thirty-two years since Confederation there have been granted by Parliament and the Courts two hundred and seventy-one divorces in the whole Dominion of Canada. In Ontario, population 2,114,321, there have been granted forty-five divorces; in Quebec, population 1,488,335, sixteen divorces; in North-West Territories, population 98,400, two divorces; in Manitoba, population 152,500, one divorce; in Nova Scotia, population 450,000, ninety-one divorces; in New Brunswick, population 321,300, seventy-three divorces; in British Columbia, population 80,200, forty-three divorces. There has not been a divorce in Prince Edward Island, population 100,000, in thirty years, and the comparatively small number in Quebec is due to the fact that the great majority of the population is of Roman Catholic faith." This low rate, it must be admitted, may be partly the result of the difficulty in the way of obtaining a dissolution. "Non cuivis contingit adire Corinthum"; and it is not everyone who can obtain a special Act of Parliament.

It was said some time since by an eminent writer that "divorce by the Senate is preposterous and belongs to a by-gone age," and

(*v*) Democracy and Civilization, II., 212. See *Quick* v. *Church*, 23 O.R. p. 262.

there are others who think that it is not an ideal tribunal in divorce cases. These would prefer to have a Court specially charged with such causes, which, whilst not relaxing the strictness that ought to prevail where it is sought to disturb the marriage relation, might yet be accessible to all persons rightly entitled to relief. It must, however, be remembered that in recent years great changes have been made in the Senate procedure, simplifying it and reducing the expense, largely owing to the exertions of Senator Gowan, whose long judicial experience eminently qualified him for the task. The tribunal for divorce in the Senate is now a Committee composed of the learned gentleman above referred to (as Chairman) and eight others, all of whom with one exception are professional men. The examination of witnesses and the general procedure is the same as in an ordinary Court of Justice, and the report of this Committee practically settles all questions for the Senate. Mr. Gemmill in his work on divorce enters into the question of the relative merits of legislative and judicial tribunals, and those interested in that branch of the subject will there see the arguments pro and con.

One important decision of the Senate on an application for divorce should be noticed here, as dealing with the effect of divorces of Canadian marriages granted by United States Courts. A petition for a divorce was presented to the Senate in 1887 by one Susan Ash. The petitioner was married to one M. in Kingston, Ontario, in 1868. She lived with him there only six weeks and then with his consent went to visit her father in Montreal. After spending six weeks in Montreal, she returned home to Kingston, when she found that during her absence her husband had sold his property and given up house-keeping. After living with him for a short time in a boarding house, she left him on account of his intemperate habits, which rendered living with him intolerable, and returned to her father in Montreal, where she continued to reside at the time of the proceedings in the Senate for a divorce. In the meantime her husband had gone to the United States, and in 1874 obtained from a Massachusetts Court a divorce from his wife on the ground of desertion by her. The decree of divorce contained a recital that M. had resided in Boston for five consecutive years immediately prior to his application for divorce, but no evidence was given before Parliament to support the truth of this recital. In 1874 after obtaining this divorce, M. married another woman in

Sterling, Ontario, and at once removed to Boston where they lived together and had a family. The petition of Susan Ash for a divorce was based upon bigamy and adultery of M., alleging that M.'s divorce was not valid in Canada, and should not be recognized here, because it was granted for a cause not recognized here, namely, desertion by the wife of the matrimonial home. This objection would appear to have been founded upon the doctrine in what is known as *Lolley's case* (*w*), in which case all the judges were "unanimously of opinion that no sentence or act of any country or state could dissolve an English marriage (i.e. the marriage of a man domiciled in England), a vinculo matrimonii, for ground on which it was not liable to be dissolved a vinculo matrimonii in England." This decision has been in England dissented from and overruled (*x*), and is no longer recognized as law in English Courts. But in the discussion which took place in the Senate, the Massachusetts' divorce seems to have been assailed on the broader ground, that inasmuch as the Parliament of Canada had not entrusted any Court with the granting of divorce, it was not called upon to recognize a divorce granted by the Court of any other country for *any* cause, and *Lolley's case* was cited, as it has been at different times cited before the English Courts for this broader proposition as well as for the narrower one.

Mr. Gemmill (in his book on "The Practice of the Parliament of Canada upon Bills of Divorce") thus states the result: "It was here clearly settled that under no circumstances would Parliament recognize an American divorce as valid and conclusive in Canada. The opponents of the Bill argued that as a matter of international comity we were bound to give effect to decrees of a foreign Court but the leader of the House (Senator Abbott) stated the principle, which was ultimately sustained by both Houses, to be, that as the Parliament of Canada has not yet recognized the power of any Court to deal with the subject of divorce, there is nothing binding in the argument which claims by the comity between nations, for a judgment by a foreign Court, that kind of consideration and recognition by the Senate which that judgment would have before an ordinary tribunal, upon a matter the subject matter of which

(*w*) *Rex* v. *Lolley*, Russ. & Ry. 237.

(*x*) *Harvey* v. *Farnie*, 5 P.D. 153; 6 P.D. 35; 8 A.C. 43.

was common to both. The principle involved in the term "Comity of Nations" is that as the jurisdiction over the subject matter of the judgment is common to the Courts of both countries, we give it by courtesy that consideration and weight involved in regarding it as primâ facie a correct judgment" (*y*).

Whatever may be the true view to be taken of the Susan Ash case, it is clear that the decision of Parliament can have no weight with ordinary courts of justice. These Courts, when the question of the validity of American divorces has been discussed before them, uniformly give effect to them (a) when the Court whose decree is in question had jurisdiction over the parties (which would seem to be only when the husband was domiciled in the State where the proceedings were taken at the time when they were begun); (*z*) or (b) when the respondent had appeared or submitted to the jurisdiction of the foreign tribunal.

The recent notorious Russell case has brought the subject of divorce prominently forward, and has excited, from the position of the parties, an attention which it did not in itself merit. The law in the case was perfectly plain. A domiciled Englishman could not legally obtain a dissolution of a marriage contracted in England, from an American court. The decision in *LeMesurier* v. *LeMesurier* (above referred to) has made it clear that for a divorce a vinculo matrimonii, whatever may be the rule in regard to separation or other remedies not involving an absolute severance of the marriage tie, a domicile within the jurisdiction of the court assuming to grant the divorce is required by English courts. Earl Russell had therefore no defence upon the merits, and was wisely advised to plead guilty to the criminal charge. The case does not therefore give any fresh light on the subject of divorce, as newspaper items would have us believe.

(*y*) Page 27.

(*z*) *LeMesurier* v. *LeMesurier* (1895) A.C. 517; *Magurn* v. *Magurn*, 3 O.R. 570: 11 A.R. 178; *Guest* v. *Guest*, 3 O.R. 344.

N. W. HOYLES.

COPYRIGHT IN CERTAIN ARTISTIC WORKS.

The Imperial Legislation on the subject of artistic copyright is very voluminous. One finds no less than ten statutes, covering a period extending from 1734 to 1886. As Lord Thring observes in his memorandum to the Monkswell Bill, "the statutes are so confusing that it is useless to enter into their details," and accordingly, he summarizes the result of the legislation by dividing artistic copyright into three classes: (1) Engravings and prints; (2) Sculpture; (3) Paintings and photographs.

In respect of these classes, the question arises as to the application of the Imperial legislation to Canada. Mr. S. E. Dawson makes a remark (*b*) which throws some light on this matter. He says that the publishers of engravings and prints were so well satisfied with the state of the law as it was that they declined any interest in Imperial legislation so far as Canada is concerned, and consequently, engravings and prints are not protected from republication in Canada. Mr. Dawson does not further consider or explain his statement, however, and so it appears necessary to study the authorities on the point.

From the preamble to the Act, 25 & 26 Vict., c. 68, entitled an Act for amending the law relating to Copyright in Works of Fine Art, etc., we learn that "by law as now established (1862) the authors of paintings, drawings and photographs have no copyright in their works, and it is expedient that the laws should in that respect be amended."

The first section of the Act then proceeds to provide for the reservation, by agreement in writing, of the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting, drawing, and the design thereof.

In the action of *Graves* v. *Gorrie*, 32 O.R. 266 (now pending in the Court of Appeal), our Courts have been called upon to determine whether the copyright conferred by the Act we are considering is confined to Great Britain, or whether it extended throughout the British Dominions. Briefly, the facts of that case are as follows:—

Henry Graves & Co., Limited, art publishers of London, England, moved for an injunction to restrain one George T. Gorrie

(*b*) Law of Copyright in Books, p. 15.

from making, printing, publishing, selling or exposing to view any copies, prints, reproductions or representations of a certain picture known as "What we have we'll hold," in breach of the plaintiff's copyright therein. An entry was proved in the register of proprietors of copyright in paintings, drawings and photographs kept at the Hall of the Stationers' Company pursuant to 25 & 26 Vict, c. 68 (Imp.), shewing the plaintiffs to be holders of the Imperial copyright, the date of such entry being November 30th, 1896; and the material shewed that the plaintiffs had granted no rights of reproduction of the picture, but that the defendants had nevertheless distributed and sold in Canada large numbers of printed copies of it.

There is a remarkable dearth of Canadian case law in the arguments of the counsel in this case; tending to prove, it seems to me, the correctness of the already quoted remark of Mr. S. E. Dawson that the publishers of engravings and prints were so well satisfied with the state of the (Canadian) law as it was that they declined any interest in the Imperial legislation, and never invoked its aid to prevent admittedly frequent republication here.

Mr. Justice Rose, in his judgment, quotes the words of Lord Cranworth (*c*) to the effect that the present Parliament must be taken, prima facie to legislate only for the United Kingdom; and the following words of Vankoughnet, C., (*d*) seem to have strongly impressed Mr. Justice Rose: "While I admit the power of the Imperial Legislature to apply by express words their enactments to this country, I will never admit that without express words they do apply or are intended to so apply." After considering the language of the Act of 1862, his Lordship concludes (*e*): "Looking at the Act itself and comparing it with 5 & 6 Vict., c. 45 (Imp.) I have come to the conclusion that there is nothing on its face to indicate that the copyright thereby conferred extended beyond the United Kingdom."

But it was further urged by counsel for the plaintiffs that the effect of the International Copyright Act of 1886 was to extend the provisions of the Act of 1862 to all parts of the British

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(*c*) *Routledge* v. *Low*, L.R. 5 H.L. p. 113.

(*d*) *Penley* v. *Beacon Assurance Co.*, 10 Gr. p. 428.

(*e*) Page 210.

dominions, and, if not, that the language of sections 8 and 9 amounted to a declaration by the Imperial Parliament that the provisions of 25 & 26 Vict., c. 68, did so extend. But the judgment points out that the Act of 1886 was passed to extend to authors of literature and artistic works first published in a foreign country copyright in Great Britain in return for copyright extended to British authors in such foreign country, and was not intended to extend the copyright conferred by any previous Act. Rose, J.'s decision was unanimously affirmed by the King's Bench Divisional Court.

There seems, therefore, abundant authority for saying that the law of copyright in artistic works is, at present, governed by the provisions of the Canadian Copyright Act of 1875; which includes original paintings, drawings, statues, sculpture and photographs (*f*); and the British copyright owner who has not brought himself within our Act cannot restrain republication in Canada.

The law is not, however, likely to long remain as above, for sec. 3 of the Monkswell Bill provides: "Save as in this (artistic) Act mentioned, the author of any artistic work *to which this Act applies*, wherever made, whether he is or is not a subject of Her Majesty, shall be entitled throughout Her Majesty's dominions to the copyright of such work for a term beginning with the making thereof and lasting for the life of the author and thirty years after the end of the year in which he dies, and no longer." And s. 15 of that Artistic Bill defines its application as follows: "This Act shall not apply to the artistic works following: Designs as defined by the Patents, Designs and Trade Marks Act, 1883. Save as aforesaid, the expression 'artistic work' means: (1) Any work of painting, drawing, or sculpture, or other artistic process, and (2) Any engraving, etching, print, lithograph, wood cut, photograph, or other work of art produced by any process, mechanical or otherwise, by which impressions or representations of such works can be taken or multiplied."

(*f*) R.S.C. (1886) c 62.

ALEXANDER MACGREGOR.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

LIBEL—PRIVILEGED COMMUNICATION—POST-CARD PUBLICATION—NOTICE.

Sadgrove v. *Hole*, (1901) 2 K.B. 1, was an action of libel for defamatory language on a post card sent by the defendant to a third person. The post card was a privileged communication as between the defendant and the person to whom it was sent. The plaintiff's name was not mentioned on the post card, and there was no evidence that any person who saw the post card, other than the person to whom it was sent, knew that it referred to the plaintiff. Under these circumstances it was held that the plaintiff had failed to shew a libel on him, other than on a privileged occasion, and that though the fact that a communication is sent by post card instead of by closed letter would generally be evidence of malice, yet as the communication would not be understood by those through whose hands it passed as referring to the plaintiff, there was no evidence of express malice to avoid the privilege. Ridley, J., had held the occasion was not privileged, and had entered judgment for the plaintiff, but this judgment was reversed and the action dismissed by the Court of Appeal. (Smith, M.R., and Collins and Romer, L.JJ.).

COSTS—SCALE OF COSTS—JUDGMENT AGAINST TWO DEFENDANTS FOR DIFFERENT AMOUNTS—(ONT. RULE 1132).

In *Duxbury* v. *Barlow* (1901) 2 K.B. 23, two defendants were sued on a joint and several bond given for the fidelity of one of the defendants, who was also sued for a sum in respect of which he had made default. Judgment was recovered against both defendants for £50, the amount of the bond, and against the defaulting defendant for a further sum of £90. It was held by the Court of Appeal (Smith, M.R., and Collins and Romer, L.JJ.) that the defendant, as to whom only £50 had been recovered, was liable to pay only County Court costs. See Ont. Rule 1132.

PRINCIPAL AND AGENT—BROKER—LIABILITY OF PRINCIPAL.

Levitt v. *Hamblet* (1901) 2 K.B. 53, is a decision of the Court of Appeal (Smith, M.R., and Collins and Romer, L.JJ.) on appeal

from Matthew, J. The defendant had employed a broker to purchase shares for him on the stock exchange; the broker bought the shares from the plaintiffs in his own name; they were not paid for, and the defendant directed his broker to carry them over to the next account, which he did. The defendant's name was not disclosed. Before the next settling day the defendant's broker was declared a defaulter, and in accordance with the rules of the stock exchange, his contract with the plaintiffs was closed at a fixed price by the official assignee of the stock exchange. The plaintiffs, having discovered that the broker was acting for the defendant, called upon him to take up the shares, which he refused to do, disclaiming all responsibility for them, and the plaintiffs, on the settling day, tendered the shares to the defendant, and on his refusing to accept them then, sold them for the best price then obtainable, and now sued the defendant for the difference between the price at which they had been carried over and the amount realized therefor. The Court of Appeal affirmed Matthew, J., in holding that the defendant was liable.

Beckhuson v. *Hamblet* (1901) 2 K.B. 73, is another case on a similar point, but in this case the broker had lumped together several orders in one contract, and in that case Kennedy, J., held that one of the principals could not be sued by the person with whom the broker had made the contract (1900) 2 Q.B. 18, (noted ante vol. 36, p. 441) and this judgment the Court of Appeal (Smith, M.R., and Collins and Romer, L.JJ.) have affirmed.

EXPROPRIATION OF LANDS—COMPENSATION — INTEREST IN LAND EXPROPRIATED—RIGHT TO SINK SHAFT.

In re Masters & Great Western Ry. Co. (1901) 2 K.B. 84, the Court of Appeal (Smith, M.R., and Collins and Romer, L.JJ.) have affirmed the judgment of Darling and Bucknill, JJ. (1900) 2 Q.B. 677, (noted ante p. 94).

STATUTE OF LIMITATIONS—REAL PROPERTY—MORTGAGE — REAL PROPERTY LIMITATION ACT 1837 (7 WM. 4 & 1 VICT. C. 28)—(R.S.O. C. 133, S. 22).

Ludbrook v. *Ludbrook* (1901) 2 Q.B. 96, is an important decision under the Real Property Limitation Act, 1837, (see R.S.O. c. 133, s. 22). The reporter notes that the case is only reported for the purpose of shewing that the case of *Doe* v. *Eyre* (1851) 17 Q.B. 366 is now settled law. The result of the decision of the Court of

Appeal (Smith, M.R., and Collins and Romer, L.JJ.) is simply this, that a mortgagee cannot be barred under the Statute of Limitations, until the lapse of the statutory period after the last payment of principal or interest secured by his mortgage by any person liable to pay the same, notwithstanding that a third person may have acquired a title by possession as against the mortgagor under a possession commenced subsequent to the mortgage. Of course if the adverse possession commenced prior to the mortgage it might then defeat both the title of the mortgagee and mortgagor, though the mortgage might never have been in default. It is therefore necessary, as we have before pointed out, for a mortgagee to be careful to see that his mortgagor is in possession when the mortgage is made.

PROBATE—PRACTICE—CLERICAL ERROR IN WILL—CORRECTION OF MISTAKE IN WILL.

In *Re Schott* (1901) P. 190, an application was made to Jeune, P.P.D., to rectify an alleged clerical error in the residuary clause of a will, by substituting the word "residue" for "revenue." The learned President granted an order striking out the word "revenue," but refused to insert the word "residue," holding that the late Sir Chas. Butt was "heretical" on this point of probate law, and that his decisions in *Re Bushnell*, 13 P.D. 7, and *Re Huddleston*, 63 L.T. 255, were not to be followed. It would perhaps be worth while to inquire upon what foundation the right to make even the order granted by the learned President rests. Is it possible that he too can be "heretical"?

COMPANY — DIRECTOR—FIDUCIARY CHARACTER—CONTRACT WITH COMPANY—COLLATERAL PROFITS MADE BY DIRECTOR.

Costa Rica Ry. Co. v. *Forwood* (1901) 1 Ch. 746, is a decision on appeal from Byrne, J. (1900) 1 Ch. 756 (noted ante vol. 36, p. 484). The facts are set out in our former note, and it is only necessary here to say, that the point involved was the liability of a deceased director's estate to account for profits made by the director out of contracts made by the company of which he was director with another concern in which the deceased director was also interested. Byrne, J., held the estate was not liable, and his decision was affirmed by the Court of Appeal (Rigby, Williams and Stirling, L.JJ.), principally on the ground that the company's other directors

knew that the deceased director was interested in the other concern when the contracts in question were made, and that the articles expressly provided that "no director shall vacate his office by reason of his being a member of any corporation, company or partnership, which has entered into or done any work for the company."

PRACTICE — COMPROMISE — ABSENT PARTIES, JURISDICTION OF COURT TO BIND — JURISDICTION — RULE 131A.

In *Collingham* v. *Soper* (1901) 1 Ch. 769, the action was brought on behalf of bondholders of a railway company against the trustees for the bondholders, to enforce their claims under the bonds. A compromise was agreed to which was sanctioned by the Court in 1894 on behalf of bondholders who were not parties. The Court, acting under Rule 131*a*, which expressly enables it to sanction a compromise so as to bind absent parties where other persons in the same interest are parties to the proceedings. By the compromise the trustees were to pay out of funds in their hands £2 10s. on each bond within fourteen days after presentation of same for payment. After this order most of the bondholders surrendered their bonds on payment of the £2 10s. for each bond surrendered, but ultimately there remained 1700 bonds outstanding, the holders of which could not, after every effort by means of advertisement and otherwise, be found. The company liable on the bonds now applied to the Court to limit a time within which the holders of the outstanding bonds should come in to take the benefit of the compromise order, and in default that they should be excluded from the benefit of the compromise. But the majority of the Court of Appeal (Rigby and Stirling, L.JJ.) held that the Court, notwithstanding the Rule above referred to, had no jurisdiction to make such an order, Williams, L.J., dissented. The case would seem to shew that in Ontario, a fortiori, no such order could be made, as Rule 131*a* has no counterpart in the Ontario Rules.

PRACTICE — INJUNCTION AGAINST PLAINTIFF — MOTION BY DEFENDANT FOR INJUNCTION BEFORE DEFENCE — INTERLOCUTORY MANDATORY INJUNCTION.

In *Collinson* v. *Warren* (1901) 1 Ch. 812, a motion was made by a defendant before putting in his defence for a mandatory injunction against the plaintiff, under the following circumstances. The plaintiff Collinson, the proprietor of an hotel, executed a deed

of arrangement for the benefit of his creditors whereby he assigned to the defendant Warren all his property in the hotel business except the leasehold house in which the business was carried on, upon trust to carry on the business, so long as Warren should think fit, for the benefit of the creditors, with power to the trustee (with the consent of the holder of a bill of sale on the property) to sell all or any part of the trust estate, and in meantime to engage at a salary the services of the debtor, who, and whose family during such engagement were to be entitled to reside on the premises. The trustee accordingly engaged Collinson, but owing to his intemperate habits gave him notice on Feb. 11, 1901, of summary dismissal, giving him a month's pay in lieu of notice. Collinson refused to go, and on 16th February brought the action claiming a declaration (1) that he was entitled to be engaged as manager at the stipulated salary, (2) that the trusts of the deed might be carried out, (3) an injunction, (4) damages for breach of trust. On 23rd February the defendant, before putting in his defence, moved for a mandatory injunction to compel the plaintiff to deliver up possession of the hotel premises to the defendant. It was contended that the defendant had no right to move in this action, but that his remedy was by ejectment, but Buckley, J., held that as the claim of the defendant to an injunction arose out of the plaintiff's cause of action, he was entitled to move, and he granted the injunction, which was affirmed by the Court of Appeal (Rigby, Williams, and Stirling, L.JJ.).

WILL—CONSTRUCTION—"ELDEST SON ENTITLED TO POSSESSION"—SALE BY ELDEST SON.

In *Shuttleworth* v. *Murray* (1901) 1 Ch. 819, the Court of Appeal (Rigby, Williams and Stirling, L.JJ.) reversed the decision of Cozens-Hardy, J., (1900) 1 Ch. 795 (noted ante vol. 36, p. 487). By the terms of a will successive life estates in Blackacre were limited to the members of a class other than the eldest or only son, entitled to the possession or receipt of the rents of Whiteacre as tenant for life or a greater estate. A tenant in tail in remainder of Whiteacre joined with his father in a sale of Whiteacre. Cozens-Hardy, J., held he was nevertheless excluded from the devise of Blackacre, but the Court of Appeal held that he was not.

EASEMENT—LIGHT—DEROGATION FROM GRANT.

Pollard v. *Gare* (1901) 1 Ch. 834, should perhaps be noted notwithstanding R.S.O. c. 133, s. 36. That section, it is true, prevents the acquisition thereafter of an easement of light by prescription, but does it prevent its acquisition by implied grant? In this case a land owner contracted to grant a lease of a vacant piece of land when a house of a specified character should be built thereon; and accordingly a house was built and the lease granted, and it was held that if thereafter the lessor sells or lets adjoining lots, in the absence of evidence of any reservation of rights by the lessor, or of any building scheme, subject to which the first lessor acquired his title, the lessor cannot derogate from his grant, so as to confer a right on any subsequent purchaser or lessee to interfere with the light of the first lessee.

CONTEMPT—INJUNCTION—CIRCULARS TO PERSONS IN SAME INTEREST TOUCHING MATTER IN LITIGATION.

In re New Gold Coast Co. (1901) 1 Ch. 860, pending a motion by a shareholder to remove a liquidator, he issued a circular to other shareholders setting forth the matters contained in his affidavit, filed in support of his motion, and calling on them to support his application. The liquidator thereupon moved to restrain the shareholder from issuing the circulars, or in the alternative to commit him for contempt in having issued them. Cozens-Hardy, J., refused the application, being of opinion that the circular would in no way prejudice the fair trial of the matter, and was in no way to be regarded as a contempt of Court.

MORTGAGE—CHOSE IN ACTION—MORTGAGE OF HIS BENEFICIAL INTEREST BY ONE OF SEVERAL TRUSTEES—NOTICE—SUBSEQUENT MORTGAGE WITH NOTICE—PRIORITY.

Lloyd's Bank v. *Pearson* (1901) 1 Ch. 865, is a case which illustrates the importance of an assignee of a chose in action giving due notice of his assignment. In this case property was vested in three trustees upon trust to sell and divide the proceeds among the cestui que trustent, one of whom was one of the trustees. This trustee mortgaged his beneficial interest in the trust estate to one Greinger, who gave no notice of the mortgage to the two other trustees. Subsequently the mortgagor (concealing mortgage to Greinger) executed a second mortgage on his beneficial interest

to the plaintiffs, who had no notice of Greinger's mortgage, and who gave due notice of their mortgage to the other trustees. The object of the present action was to obtain a declaration that the plaintiffs' mortgage was entitled to priority over that of Greinger's, and Cozens-Hardy. J., held that the plaintiffs were entitled to the priority which they claimed.

WILL—FORFEITURE CLAUSE—GIFT FOR LIFE OR UNTIL ALIENATION—GARNISHEE ORDER.

In re Greenwood, Sutcliffe v. *Gledhill* (1901) 1 Ch. 887, Farwell J., held that where personalty was bequeathed in trust to pay the income to a man for life, "or until he attempts to alien, charge or anticipate the same . . or until any other event happens whereby if the same were payable to him absolutely for his life he would be deprived of the right to receive the same or any part thereof," and a judgment creditor of the tenant for life had served the trustees, who had accrued income in their hands, with a garnishee order attaching such fund; that that did not operate as a forfeiture of the life interest, and he declined to follow the decision of Pearson, J., in *Bates* v. *Bates*, W.N. (1884), 129, on the ground that the attaching order only operates on actually accrued income as to which the trustee has become a debtor to the cestui que trust.

PRACTICE—STATUTORY REMEDY—INJUNCTION—PROCEEDING IN LIEU OF DEMURRER—RIGHT TO BEGIN—RULE 287—(ONT. RULE 260).

In *Stevens* v. *Chown* (1901) 1 Ch. 894, an application was made for the judgment of the Court on a point of law in the nature of a demurrer to the statement of claim under Rule 287 (Ont. Rule 260). Two points were determined by Farwell, J.: first, the point of practice that in such a case the party raising the point of law has the right to begin; and second, on the merits, that though a statutory remedy may be provided for a wrongful act, the High Court is nevertheless not excluded from granting an injunction to restrain the perpetration of the wrong unless the statute expressly so provides.

VENDOR AND PURCHASER—CONDITIONS OF SALE—RESCISSION—PENDING LITIGATION—COSTS—JURISDICTION.

In re Spindler v. *Mears* (1901) 1 Ch. 908, was an application under the Vendors and Purchasers Act. The contract provided

that if the purchasers should insist on any requisition which the vendors should be unwilling or unable to remove, they should be at liberty to rescind the contract, and should thereupon return the deposit "without any interest, costs of investigating the title or other compensation, or payment whatsoever." Before the vendors had elected to rescind under this condition, the purchaser had commenced the proceedings under the Act, and the question was whether the condition ousted the jurisdiction of the Court over the costs of these proceedings, the vendors having, pending the application, elected to rescind. Farwell, J., held that it did not, and ordered the vendors to pay the costs.

VENDOR AND PURCHASER—PURCHASER'S LIEN FOR DEPOSIT—PURCHASER WITH NOTICE OF CONTRACT.

In *Whitehead* v. *Watt* (1901) 1 Ch. 911, a parcel of land was contracted to be sold subject to 300 houses being erected thereon, when the contract was to be completed. The purchaser, if the houses were not erected by a certain date, had the right to rescind. The vendor subsequently sold the estate to a third party with notice of the contract. The houses were not erected and the purchaser elected to rescind the contract and claimed a lien on the estate in the hands of the purchaser for his deposit. Farwell, J., held that he was entitled to a lien and gave judgment therefor in his favour.

TENANT FOR LIFE AND REMAINDERMAN—APPORTIONING OF LOSS.

In re Bird (1901) 1 Ch. 916, a partial loss had been made of a trust fund, through an improper investment in an unauthorized security, and the question to be determined was how the loss should be apportioned as between a deceased tenant for life's estate and the remainderman. Farwell, J., thought the authorities were in a perplexing condition, but held that the loss of income and capital must be apportioned, the tenant for life being entitled to such a proportion of the amount realized from the unauthorized investment plus the income he received therefrom during its continuance as the dividends he would have received from the authorized investment in the same period, bear to the capital value of the unauthorized investment plus those dividends, he being also liable to bring into account all income he received from the unauthorized investment, although not liable to refund any overpayment.

MERGER—TENANCY IN COMMON—JOINT TENANCY.

In re Selous, Thomson v. *Selous* (1901) 1 Ch. 921. Farwell, J., held that where an equitable estate as tenants in common vests in persons entitled to an equal and co-extensive legal estate as joint tenants, there is a merger of the equitable estate in the legal estate. "Two or more persons cannot be trustees for themselves for an estate co-extensive with their legal estate."

GIFT TO MAINTAIN TOMB "FOR THE LONGEST PERIOD ALLOWED BY LAW"—PERPETUITY—UNCERTAINTY.

In re Moore, Prior v. *Moore* (1901) 1 Ch. 936, is a case which has already been referred to (see ante, p. 258). As already stated there, a testatrix had bequeathed a sum of money to trustees upon trust to apply the dividends to maintaining a tomb "for the longest period allowed by law—that is to say, until the period of twenty-one years from the death of the last survivor of all persons who shall be living at my death," and as already stated, the bequest was held void for uncertainty as to its duration.

WILL—CONSTRUCTION—ABSOLUTE GIFT, OR ESTATE FOR LIFE WITH POWER TO APPOINT.

In re Sandford, Sandford v. *Sandford* (1901) 1 Ch. 939, a testator gave all his property to his wife "so that she may have full possession of it and entire power and control over it, to deal with it or act with regard to it as she may think proper." In the event of her dying "without having devised or appointed" then he made another disposition of it. Joyce, J., held that the wife only took an estate for life with a general power of appointment, and that she having died without making any disposition the gift over took effect.

CONVEYANCE—CONSTRUCTION—GRANT "IN FEE"—CONVEYANCING AND PROPERTY ACT, 1881 (44 & 45 VICT., C. 41), S. 51—(R.S.O. C. 119, S. 4).

In re Ethel & Mitchell (1901) 1 Ch. 945. In this case Joyce, J., appears to have put a somewhat narrow and technical construction upon the Conveyancing Act, 1881, s. 51, (see R.S.O. c. 119, s. 4 (1)). A deed had been made, habendum to the grantee "in fee," and he held that the absence of the word "simple" was a fatal omission, and that the deed did not pass the fee simple. One would have thought that s. 63 of the Act (see R.S.O. c. 119, s. 4 (3)) would

have, in any case, been sufficient to obviate the difficulty occasioned by the exact words prescribed by s. 51 not having been used, but that section does not appear to have been referred to, either by counsel or the Court.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Que.] BALL *v.* VIPOND. [March 8.

Appeal—Amount in controversy—Reddition de compte—Contestation.

An action en reddition de compte concluded with a demand for $1,000. Defendant filed an account for over $8,000 and by his pleas claimed a small balance as due him. Plaintiff replied by contesting several items of the account filed, and abandoning his former conclusions, claimed whatever should be found due him on the contestation. He recovered $2,200 in the Superior Court, which the Court of Queen's Bench affirmed. On appeal to the Supreme Court of Canada.

Held, that more than $2,000 was in controversy, and the appeal would lie.

Motion for approval of security granted with costs.

Brooke for the motion. *Markey*, contra.

Que.] MAGANN *v.* AUGER. [March 18.

Contract by correspondence—Acceptance—Mailing—Indication of place of payment—Delivery of goods sold—Declinatory exception—Incompatible pleas—Waiver—Cause of action—Jurisdiction—Domicile—Procedure—Opposition to judgment.

An offer was made by letter dated and mailed at Quebec, the defendant's acceptance being by letter dated and mailed at Toronto. In a suit upon the contract in the Superior Court at Quebec, the defendant, who was served substitutionally, opposed a judgment entered against him by default by petition in revocation of judgment, first by preliminary objection taking exception to the jurisdiction of the court over the cause of action and then, constituting himself incidental plaintiff, making a cross demand for damages to be set off against plaintiff's claim.

Held, that in the Province of Quebec, as in the rest of Canada, in negotiations carried on by correspondence, it is not necessary for the completion of the contract that the letter accepting an offer should have

actually reached the party making it, but the mailing in the general post office of such letter completes the contract, subject, however, to revocation of the offer by the party making it before receipt by him of such letter of acceptance. *Underwood* v. *Maguire*, Q.R. 6 Q.B.B. 237, was overruled. Article 85 of the Civil Code, as amended by 52 Vict., c. 48 (Que.), providing that the indication of a place of payment in any note or writing should be equivalent to election of domicile at the place so indicated, requires that such place should be actually designated in the contract.

In forming an opposition or petition in revocation of judgment the defendant, in order to comply with art. 1164 C.P.Q. is obliged to include therein any cross demand he may have by way of set-off or in compensation of the plaintiff's claim, and unless he does so, he cannot afterwards be permitted to file it, as of right.

A cross demand, so filed with a petition for revision of judgment is not a waiver of a delinatory exception previously pleaded therein, nor an acceptance of the jurisdiction of the court.

In order to take advantage of waiver of a preliminary exception to the competence of the tribunal over the cause of action on account of subsequent incompatible pleadings, the plaintiff must invoke the alleged waiver of the objection in his answers.

The judgment appealed from, affirming the decision of the Superior Court, District of Quebec (Q.R. 16 S.C. 22), was reversed.

Appeal allowed with costs.

Fitzpatrick, K.C. and *Brodeur*, K.C., for appellant. *Hogg*, K.C. and *Taschereau*, K.C., for respondents.

Province of Ontario.

COURT OF APPEAL.

From McDougall, Co. J.] [June 6.

REX *v.* MARCOTT.

Criminal law—Fortune telling—Criminal Code, s. 396.

Deception is an essential element of the offence of "undertaking to tell fortunes" under s. 396 of the Criminal Code, and to render a person liable to conviction for that offence there must be evidence upon which it may be reasonably found that the person charged was, in so undertaking, asserting or representing, with the intention that such assertion or representation should be believed, that he had the power to tell fortunes, with the intent in so asserting or representing of deluding and defrauding others. In this case the evidence set out in the report was held to be sufficient. Judgment of McDOUGALL, Co. J., affirmed.

Du Vernet, for appellant. *Cartwright*, K.C., for Crown.

From Robertson, J.] [June 20.

WINTERBOTTOM *v.* LONDON POLICE COMMISSIONERS.

An appeal from the judgment of ROBERTSON, J., reported 1 O.L.R. 549; ante p. 314, was argued before ARMOUR, C.J.O., MACLENNAN, MOSS, and LISTER, JJ.A., on the 11th of June, 1901, and on the 20th of June, 1901, was dismissed with costs.

Hellmuth, for appellant. *T. G. Meredith*, for respondent.

Moss, J.A.] HARGROVE *v.* ROYAL TEMPLARS OF TEMPERANCE. [July 8.

Court of Appeal—Judgment—Certificate—Power to stay proceedings.

After the decision of the Court of Appeal has been certified by the registrar, the case is no longer pending in the Court of Appeal, and, by Rule 818, the subsequent proceedings are to be taken as if the decision had been given in the court below.

A judge of the Court of Appeal has therefore no power, under the Judicature Act, R.S.O. 1897, c. 51, s. 54, or 60 & 61 Vict. c. 34, s. 1 (D.), or otherwise, after certificate, to make an order staying proceedings upon the judgment of the Court of Appeal pending an application for leave to appeal therefrom to the Supreme Court of Canada.

H. H. Macrae, for plaintiff. *Z. Gallagher*, for defendants.

HIGH COURT OF JUSTICE.

Meredith, C.J.] WILSON *v.* POSTLE. [June 1.

Division Courts—Attachment of debts—Foreign garnishee jurisdiction.

Held, that where the garnishee neither resides nor carries on business in Ontario a Divisional Court has no jurisdiction. Also that the garnishee appearing by his agent does not confer jurisdiction. *McCabe* v. *Middleton*, 27 O.R. 170 distinguished.

Creswicke, for plaintiff. *D. L. McCarthy*, for defendant.

Meredith, C.J.] SYRACUSE SMELTING WORKS *v.* STEVENS. [July 17.

Costs—Security for—Several defendants—Præcipe orders—Practice.

One of the defendants having obtained on præcipe an order for security for costs, the plaintiffs complied with it by paying $200 into Court, after which another defendant, without notice of the previous order or of the payment into Court thereunder, obtained an order on præcipe for security for costs on his own behalf.

Held, that the plaintiffs were entitled to obtain an order providing that

the security given by them should stand as security for the costs of all the defendants, but were not entitled to have the second order for security set aside as irregular.

W. E. Middleton, for plaintiffs. *J. H. Moss*, for defendant.

Meredith, C.J., MacMahon, J., Lount, J.] [July 17.

HENNING *v.* MACLEAN.

Will—Construction—Alternative disposition—Death of testator and wife "at the same time"—Executors—Breaches of trust—Limitation of actions—Technical breach—Trustees acting honestly and reasonably.

The testator by his will bequeathed to his wife all his estate and appointed her his executrix; he then proceeded: "In case both my wife and myself should, by accident or otherwise, be deprived of life at the same time I request the following disposition to be made of my property"—disposing of his estate and appointing executors. The will made no provision for any other event. The testator and his wife shortly after the will was made went to Europe, and both of them died in Italy, the wife on the 11th December, 1888, and the testator on the 27th of the same month.

Held, that the testator and his wife were not deprived of life at the same time, the deaths not being the result of a common accident or other catastrophe, but due to ordinary disease; and, as the actual event was not provided for, there was an intestacy.

There is nothing irrational or absurd in the provision that the alternative dispositions of the will should take effect only in the event of the testator and his wife being deprived of life at the same time, even if the words "at the same time" be read as meaning, without any interval of time elapsing between the death of one and that of the other.

Held, also, that, although the appointment of executors to carry out the alternative provisions of the will never took effect, the persons named as executors, having applied for and obtained probate, became trustees for the persons entitled upon an intestacy; payments made by them to those who would have been beneficially entitled if the alternative provisions had taken effect were breaches of trust; but the statute of limitations was a bar to a recovery in respect of any of those breaches which occurred more than six years before the action was brought: R.S.O. 1897, c. 129, s. 32.

Held, moreover, that the executors were entitled to be relieved from personal liability for all breaches of trust committed by them under 62 Vict., 2nd sess., c. 15, they having acted honestly and reasonably, in view of the facts that the construction of the will was doubtful, the trial Judge took the same views of its effect as they did, and for twelve years everybody interested in the estate acquiesced in that view.

Robinson, K.C., *H. J. Scott*, K.C., and *H. O'Brien*, K.C., for plaintiffs.

W. T. J. Lee, for defendant Clara Dean.

W. M. Clark, K.C., for defendants Knox College and the Presbyterian Church in Canada.

Aylesworth, K.C., *A. S. Ball*, Woodstock, and *T. T. Rolph*, for other defendants.

Meredith, C.J.] [July 18.

IN RE ABBOTT-MITCHELL IRON AND STEEL CO.

Company—Winding-up—Petition for order—Previous demand—Service of writ of summons—Notice of application.

Service of the specially indorsed writ of summons in an action against the company to recover the amount of a creditor's claim is not a sufficient demand in writing, within the meaning of s. 6 of the Winding-up Act, R.S.C. c. 129, to serve as the foundation for a petition by the creditor for a winding-up order.

Semble, that, as s. 8 of the Act requires the petitioner to give four days notice of his application, effect could not be given to a ground of which the company had not that notice.

D. W. Saunders, for petitioners. *D. E. Thomson*, K.C., for company.

GENERAL SESSIONS OF THE PEACE, COUNTY OF YORK.

McDougall, Co. J., Chairman.] [October 10, 1900

GRAY, APPELLANT, *v.* GILLMAN, RESPONDENT.

Summary conviction—Appeal—Security by money deposit in lieu of recognizances—Criminal Code, ss. 880 (c), 888.

The appellant, who had been convicted by Peter Ellis, Police Magistrate, of Toronto Junction, for violating a by-law of the municipality, gave notice of appeal from his conviction to the sittings of the court entitled to consider the appeal. In addition to this, he deposited with the convicting magistrate a sum of money sufficient to cover the fine and costs, and costs of appeal, should he be unsuccessful. No further action by either followed this step. On the appeal being reached, appellant's counsel endeavoured to shew the making of the deposit by affidavit of the solicitor's clerk who paid the money.

Sec. 880(c), so far as it is in point, enacts that "the appellant, if the appeal is against any conviction or order whereby only a penalty or sum of money is adjudged to be paid, may deposit with the justice convicting, or making the order, such sum of money as such justice deems sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction, or order, and the costs of the appeal." Sec. 888 provides that "if

the conviction or order has been appealed against, and a deposit of money made, such justice shall return the deposit into the said court; and the conviction or order shall be presumed not to have been appealed against until the contrary is shewn."

Held, on preliminary objection, that the appeal had not been properly lodged. Without deciding whether or not the scheme of furnishing security by a deposit of money applied to a conviction made under an Ontario statute, or under a by-law founded on such—that the obligation laid on an appellant by the Code extends beyond the mere leaving of the money with the justice; its return by him into court, before the time for hearing the appeal, must, in some way, have been secured; and that even if what was done had been sufficient, it could not be established by affidavit.

Maclaren, Q.C., for appellant. *Du Vernet*, for respondent.

McDougall, Co. J., Chairman.] [April 3.

LEE, APPELLANT, *v.* ROSE, RESPONDENT.

Summary conviction — Medical Act, R.S.O. c. 176, s. 49 — Practising medicine—Single act of prescribing—Variance in terms of punishment between adjudication and conviction—Inability to amend.

The appellant, with several other druggists, had been convicted by the Police Magistrate of the city of Toronto, on the evidence of one Minnie Warring and an associate employed by the Medical College, to entrap him into the commission of an offence of practising medicine in contravention of R.S.O. c. 176, s. 49, and was fined $25 and costs. The visitors called once at the appellant's shop, and the chief witness, Minnie Warring, pleading temporary illness, was furnished by him with some preparation, for which the sum of fifty cents was paid. The conviction, which was made in February, directed the appellant, in default of payment of the fine and costs, to be imprisoned for one month, whereas the adjudication imposed 30 days.

Held, that a single act of prescribing for, or attending on, a patient did not constitute practising; and, further, that the award of 30 days' imprisonment exceeded the maximum one month provided by the statute, and could not, on the authority of *Reg.* v. *Brady*, 12 O.R. 358, and *Reg.* v. *Hartley*, 20 O.R. 481, be amended, since, to do so, would be formulating a new judgment.

Du Vernet, for appellant. *J. W. Curry*, K.C., for respondent.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] POWER *v.* FOSTER. [May 4.

Foreclosure—Form of order and advertisement for sale—Specific performance—Administration proceedings—Title of tenant for life purchasing at as against party entitled to remainder.

A lot of land was devised by her husband to M. for the term of her natural life, and after her death to any child or children that she might have by the devisor. At the time of the devisor's death the property was subject to a mortgage, and there was one child by the marriage, who subsequently married. M. instituted an administration suit in the Chancery Court for the settlement of the estate as the result of which a sale was ordered. M. became the purchaser at the sale, and the Master's deed was made out to her. Subsequent to the purchase M. executed a paper by which she agreed to convey the property in question to her daughter K. for her life, subject to the life interest of M., then to go to the children of K. in fee simple.

Held, 1. Notwithstanding the fact that the Master's deed was absolute in its form, that M. took the property in question, subject to the life interest in herself, in trust for her daughter K.

2. As against the title of K. the instrument executed by M. purporting to give K. a life estate only had no effect.

3. K. had a good title to the land, and that as against defendant purchased at a sheriff's sale, on proceedings to foreclose a mortgage made by K. and her husband, and who refused to complete the purchase, plaintiff, the holder of the mortgage, was entitled to a decree for specific performance.

The advertisement of sale was in the following form: "All the estate, right, title, interest and equity of redemption of K. and of all persons claiming or entitled from or under the said K. of, in, to or out of all that lot, piece or parcel of land, etc.," and the form of the order was that "the said land and premises be sold, etc."

Held, 1. This form was sufficient to cover all the estate, right, title, interest and equity of redemption of the defendant at the time of giving the mortgage.

2. The deed was given by virtue of the statute (Acts 1890, c. 14, secs. 5, 6) and by virtues of the provisions of the statute the land ordered to be sold by virtue of the sheriff's deed was vested in the grantee.

Semble, that the form of words in use in this province was adopted in consequence of the practice of not settling conditions of sale and offering a specific title: *Diocesan Synod of Nova Scotia* v. *O'Brien*, Ritchie's

Equity Decisions, p. 352, and that the form is suitable for a good title or a limited one, and a more specific reference to the title is not made.

T. J. Wallace, for appellant. *H. McInnes* and *J. A. Kenny*, for respondents.

Province of New Brunswick.

SUPREME COURT.

En Banc.] SUNBURY AND QUEENS ELECTION CASE. [June 14.

Election petition—Service—Order extending time.

An order may be made extending time for personal service of an election petition after the expiration of the ten days prescribed by s. 10 of the Dominion Controverted Elections Act. Motion to rescind order refused.

J. D. Hazen, K.C., and *L. A. Currey*, K.C., for petitioner. *A. O. Earle*, K.C., and *W. Pugsley*, Attorney-General, for respondent.

En Banc.] JACK v. BONNELL. [June 14.

Action on limit bond—Proof of jurisdiction of inferior court.

In an action on a limit bond given by the defendants in a suit in the city of Saint John Civil Court the plaintiff relied upon the record of the proceedings in the inferior court to prove its jurisdiction.

Held, on motion to reverse the verdict or for a new trial that the record of the inferior court was not admissible for the purpose, and that proof of the jurisdiction of the court must be made independently of the proceedings in the inferior court. Judgment for defendant.

C. J. Coster, for plaintiff. *W. B. Wallace*, K.C., for defendant.

En Banc.] JACK v. JOHNSTON. [June 14.

Action against married woman—Whether necessary to prove separate property.

It is not necessary in an action against a married woman under the Married Woman's Property Act, 58 Vict., c. 24, to allege or prove that she has separate property. Appeal from St. John County Court dismissed with costs.

Scott E. Morrill, for appellant. *D. Earle*, K.C., contra.

En Banc.] POTTER v. MORRISSY. [June 14.

Action on promissory note—Production—Proof of holder.

Production at the trial of a promissory note in the hands of the plaintiff so that he may deliver it up is sufficient proof of his being the holder. Appeal from St. John County Court allowed with costs.

C. J. Coster, for appellant. *W. C. Winslow*, contra.

En Banc.] RECEIVER GENERAL OF N.B. v. HAYWARD. [June 14.

"Aggregate value" in The Succession Duties Act, 1896, means net value after deducting debts Judgment for defendant on special case.

Pugsley, K.C., Attorney-General, for plaintiff. *E. R. Chapman*, and *A. I. Trueman*, K.C., for defendant.

En Banc.] EX PARTE QUIRK. [June 14.

Canada Temperance Act—Conviction—Hearing two cases against same party and reserving judgment in the first until after hearing both.

A magistrate, before whom two informations were pending for offences against the Canada Temperance Act, after hearing the evidence in the first case, reserved judgment until after the hearing in the second case, and then convicted in both.

Held, on motion for certiorari, that the conviction was not invalidated thereby. Rule refused.

Tweedie, for applicant.

En Banc.] EX PARTE SIMPSON. [June 14.

Service of process—Defendant absent from province.

Service of process made at the defendant's domicile during his absence from the province is insufficient. Rule for certiorari.

Jonah, for applicant.

Province of Manitoba.

KING'S BENCH.

Full Court.] IN RE THE LIQUOR ACT. [May 6.

Appeal to Privy Council—Opinion of court rendered under R.S.M. c. 28, not a judgment—Amount in controversy—Imperial order in Council of November 26, 1892, relating to appeals from the Court of Queen's Bench for Manitoba—Leave to appeal.

This was an application for leave to appeal to His Majesty in Council from the judgment of the court, noted ante p. 283. The Attorney-General relied on the terms of the Imperial Order-in-Council, dated 26th November, 1892, relating to appeals to Her Majesty in Council from the Court of Queen's Bench for Manitoba, which provides that any person feeling aggrieved by any judgment, decree, order or sentence of that court given or pronounced for or in respect of any sum or matter at issue above the

amount or value of £300, or involving directly or indirectly any claim, demand or question to or respecting property or any civil right amounting to or of the value of £300 may, within fourteen days after the same shall have been pronounced, made or given, apply to the said court by motion or petition for leave to appeal therefrom to Her Majesty, her heirs or successors, in her or their Privy Council. Affidavits were filed shewing that an amount far exceeding £300 was annually paid to the Provincial Government for licenses for the sale of liquor, which would be done away with if The Liquor Act were held to be constitutional; also that a large amount had been invested by persons engaged in the liquor traffic, which investments would be affected very seriously by the success of the proposed appeal.

Held, 1, following *Union Colliery Co.* v. *Attorney-General of British Columbia*, 27 S.C.R. 637, that the decision sought to be appealed from was not a judgment, decree, order or sentence within the meaning of the Imperial Order-in-Council, and that the court had no jurisdiction to entertain the application.

2. There was not sufficient evidence to shew that any questions respecting property or civil rights to the value of £300 were involved in the decision. Application refused without costs.

Campbell, K.C., Attorney-General, and *Aikins*, K.C., for the Government of Manitoba. *Phippen*, for the License Holders' Association.

Killam, C.J.] [April 24.

GLOBE SAVINGS AND LOAN CO. *v.* EMPLOYERS' LIABILITY ASSURANCE CORPORATION.

Principal and surety—Guarantee insurance—Conditions of insurance—Construction of stipulation that insured shall furnish proof to the satisfaction of insurer—Claim for expenses of prosecuting employee at request of insurers—Notice of loss—Waiver of conditions.

This was an action upon a guarantee bond or policy of the defendants insuring the plaintiff against loss by the fraud or dishonesty of their local agent at Winnipeg, Frederick Smith Young. One of the conditions of the policy was that "on the discovery of such fraud or dishonesty the employer shall immediately give notice thereof in writing to the corporation at its chief office in Montreal stating the number of policy, cause, nature and extent of loss, and the address, if known, of the employed." Apparently no formal notice, fully complying with this condition, was ever sent by plaintiffs to the chief office of the defendants at Montreal; but information of the loss was communicated to the defendants and they took steps themselves to ascertain fully the facts connected with the loss, and the Judge found as a fact that the chief officer of the defendants at Montreal had power to waive, and that he did waive, strict performance of such condition.

The principal condition of the policy as to proofs of claim was as follows: "The employer shall furnish his claim, with such full particulars thereof as shall prove to the satisfaction of the corporation, the cause, nature and extent of the loss he has sustained and the correctness of his claim;" to which was added the following clause: "On condition, also, that the particulars furnished by the employer in proof of his claim shall include all reasonable verification of the statements made in his written proposal or statement above mentioned (referring to the answers given in the employee's application for the insurance), and of the compliance therewith, and shall be all or any of them verified by affidavits duly certified if required by the corporation." The written proposal or application of the plaintiffs for the insurance consisted partly of certain questions and answers and was closed with the following: "I declare that the above statements are true, and I consent that the above replies shall be taken as the basis of the contract between us and the above named corporation," and was signed "Globe Savings & Loan Co., E. W. Day, Man.," and the policy on the face of it stated that it was granted in consideration of a certain payment of money and "of the statements, representations and agreements made by the employer in his written proposal or statement which is hereby made a part of this agreement." The policy also contained the condition that: "if any suppression, misstatement or material omission shall have been made by the employer in his proposal, or at any other time whatever, of any fact affecting the risk of the corporation or in any claim made under this agreement, or if the employer has entrusted, or shall continue to entrust, the employed with money, securities or other evidences of value after having discovered any act of dishonesty or fraud, this agreement shall be null and void, and all premiums paid thereon forfeited to the corporation."

Among the questions and answers in the application were the following: Q. "Is he required to give printed receipts from a book with counterfoils? If so, how often will the counterfoils be examined and checked? A. Receipt pass-book when money is paid him; checked monthly by head office list." (This apparently referred to pass-books furnished to borrowers and subscribers to shares in which their periodical payments to the agent for the company were to be entered and initialed by him).

Q. "Are moneys to be paid into the bank by applicant? If so, how often will the bank book be inspected and checked? A. Yes; monthly by head office."

After the discovery of the defalcations of Young the plaintiffs furnished certain proofs of the loss, and in response to demands made on behalf of the defendants the plaintiffs' manager sent several declarations intended to verify the correctness of the answers set forth in the proposal and of the compliance therewith, and of the claim made on the defendants.

The evidence shewed, however, and the Judge found as a fact that the proofs furnished were inaccurate and untrue in the following respects:

(1) The answer as to the course of business with respect to the receipt

pass-books was incorrect as there was no such existing or intended course of business.

(2) The statement that the bank statements were forwarded monthly from Winnipeg to the head office was incorrect.

Held,—1. The condition requiring "all reasonable verification of the statements in the proposal and of the compliance therewith" was binding, and that "compliance therewith" meant subsequent compliance with the indicated future course of conducting the business.

2. As to the answers relating to the course of business to be followed by the plaintiffs in the future, it would be but an inadequate protection of the surety, if the Court were to hold that they indicated only the intention of the company and its officers at the time of signing them; and, whether or not the incorporation of the application in the policy should be construed as creating a warranty by the company that it would adhere to the course indicated by the answers, upon principles of equity, the surety should be considered as discharged by a departure from that course materially contributing to a loss insured against. Such a case would seem to come within the principle of *Lawrence* v. *Walmseley*, 12 C.B.N.S 799, as a failure to use the checks and safeguards set out as intended to be used would seem to be as injurious as parting with a more definite security.

3. The condition requiring the furnishing of proof to the satisfaction of the defendants should not be so construed as to compel the employer to establish to the satisfaction of the guarantor the absolute liability of the latter and the absence of any defense, as this would be to make the guarantor almost an absolute judge in his own cause on all points, a position in which the guarantor is not entitled to be put to any greater extent than the language of the contract distinctly calls for.

4. The defendants were entitled to rely on the two statements in the answers as to the receipt pass-books and the monthly examination of the bank books as indicating and promising the existence of safeguards against loss by embezzlement which in fact never existed; that the plaintiffs had failed to furnish "reasonable verification" of the statements made in the application or of "the compliance therewith" in respect to matters which were conditions of the liability of defendants under the policy; that the answer as to the receipt pass-books was absolutely untrue though given, as it probably was, carelessly and without intention to misrepresent; that the plaintiffs had failed to pursue the course of business indicated by the answers, and that, therefore, the plaintiffs could not recover for the loss sustained by them.

The learned Judge also found as a fact that the company continued Young in its employment and entrusted him with money after having discovered acts of dishonesty and fraud on his part, but the judgment is not apparently based on that finding.

The plaintiffs also claimed that the defendants should pay all the expenses of the prosecution to conviction of Young for the crimes he had

committed. This prosecution was undertaken on the demand of defendants pursuant to a condition of the policy which provided also that such prosecution should be at the expense of the corporation.

Held, that defendants were liable for the costs and expenses of such prosecution so far as it related to offences committed prior to 10th February, 1898, when the plaintiffs' manager first gave notice of Young's shortage, but not in respect of offences committed after that date and that the liability of defendants to pay such expenses was not dependent upon their liability under the policy.

As to costs, defendants were ordered to pay such as were occasioned by the claims for the expenses of the prosecution, and the plaintiffs to pay the costs of the defence against their claim for the loss insured against.

Howell, K.C., and *Mulock*, K.C., for plaintiffs. *Wilson* and *Bradshaw*, for defendants.

Full Court.] KING *v.* FINLAY. [June 1.

County Courts Act, R.S.M. c. 33, ss. 72, 74, 204—Replevin in County Court—Jurisdiction—Officer—Resisting officer in execution of his duty—Criminal Code, 1892, s. 144.

The defendants were convicted in an indictment framed under s. 144 of the Criminal Code, 1892, for unlawfully resisting and obstructing a bailiff in his attempt to execute a writ of replevin issued out of the County Court of Winnipeg, by order of the County Court Judge, for the recovery of possession of a team of horses which were at the time in the adjoining County Court Division of West Selkirk. In making the order the judge relied on the wording of s. 204 of "the County Courts Act," R.S.M. c. 33, which provides that before any writ of replevin shall issue, an affidavit shall be filed with the clerk of the court out of which the writ is to issue (which said court is to be the one for the judicial division in which the property to be replevied is situated and in which the action shall be tried, unless otherwise ordered) containing a description, etc., and upon s. 74 of the Act which provides that a judge may order that a suit may be brought in some county court other than that for the judicial division in which the cause of action arose, or the defendant or one of the defendants resides or carries on business.

Of the words within the brackets in s. 204, the following, that is, "and in which the action shall be tried, unless otherwise ordered" were added after the word "situated" by an amendment of s. 152 of the County Courts Act, 1887, made by 54 Vict., c. 2, s. 18, and s. 204 as it now stands is the result of the revision of the statutes made in 1891.

Held, DUBUC, J., dissenting.

1. That, for the true construction of the words within the brackets in s. 204, it is proper to look at the prior statutes from which they were consolidated, and that they should be interpreted as providing only for an

order for the change of the place of trial of a replevin suit already commenced, and not for an order allowing such a suit to be commenced in any other judicial division than that in which the goods to be replvied are situated, and that the writ of replevin relied on in this case and the order therefore were wholly ultra vires and void.

2. That said order and writ, being processes of a court of inferior jurisdiction, afforded no protection to the officer executing them, and he could not be said to have been acting in the execution of his duty in attempting to replevy the animals under them.

Morse v. *James*, Willis 122, followed: *Parsons* v. *Lloyd*, 2 W. Bl. 841, *Collet* v. *Foster*, 2 H. & W. 360, and *Regina* v. *Monkman*, 8 M.R. 509, distinguished.

Patterson, for Crown. *Phippen*, for defendants.

Bain, J.] CANADIAN MOLINE PLOW CO. *v.* COOK. [June 11.

Summary judgment — King's Bench Act, R. 593 — Leave to defend — Allegations of fraud — Costs, refusal of.

Appeal by defendants Marshall and Fitzpatrick from an order of the Referee allowing plaintiff to sign final judgment under Rule 593 of "The King's Bench Act" against the three defendants who were partners. The promissory note sued on was signed by the defendant Cook in the firm name, but the other defendants in their affidavits filed on the plaintiffs' motion stated that Cook had signed the note for his own private debt without their knowledge or authority and that the plaintiffs had taken the note with full knowledge of these facts. To this it was shewn in reply that the articles of partnership contained a provision authorizing Cook to sign the note in the firm name and to pledge the credit of the firm for the payment of his debt to the plaintiffs.

On the argument of the appeal the only ground urged by defendants was that when they signed the articles of partnership they did not know that they contained such a provision, and that they had been induced to sign the articles by fraud on the part of Cook, but this ground was not set up either in the statements of defence or in the affidavits filed in opposition to the motion, and it was not distinctly mentioned in the notice of appeal as one of the grounds of appeal. The only evidence in support of this assertion consisted of some general statements of defendants in their examinations on their affidavits filed to the effect that they had signed the articles of partnership at Cook's request without having read them over, in the belief that they were the same as those they had previously signed.

Held, that, if defendants had intended to rely on the defence of fraud, they should have set it up definitely in their statement of defence, and should have filed affidavits in reply to the plaintiffs' motion shewing such

definite facts pointing to the fraud as to satisfy the judge that it would be reasonable that they should be allowed to raise such defence, and that they had failed to disclose any facts sufficient to entitle them to defend the action. *Wallingford* v. *Mutual Society*, 5 A.C. 685, followed. Appeal dismissed without costs, partly on account of the great mass of material heaped up by the plaintiffs, including long examinations on affidavits.

Metcalfe, for plaintiffs. *Minty*, for defendants.

Province of British Columbia.

SUPREME COURT.

Full Court.] [March 9.

PROVINCIAL ELECTIONS ACT AND TOMEY HOMMA.

Provincial Elections Act, R.S.B.C. 1897, c. 67, s. 8—Validity of—Right of naturalized Japanese to be registered as voters.

Appeal from the judgment of McCOLL, C.J., reported ante p. 47 in which it was held that s. 8 of the Provincial Elections Act which purports to prohibit the registration of Japanese as Provincial voters is ultra vires. The appeal was dismissed.

Leave to appeal to the Judicial Committee of the Privy Council was granted, the Full Court (IRVING, J., dubitante), being of the opinion that if it were now before the Privy Council leave would be granted.

Wilson, K.C., for appellant. *Harris*, for respondent. *MacLean*, Deputy Attorney-General, applied for the leave to appeal to the Privy Council.

Full Court.] IN RE OLIVER. [June 18.

Revenue—Succession duty—Amount payable by half-sister of testator.

Appeal from judgment of MARTIN, J., reported ante p. 408.

Held, allowing the appeal, that the words "sister of the deceased" in sub-s. 4 of s. 2 of the Succession Duty Act Amendment Act of 1899, include a half-sister.

Hunter, K.C. and *Moresby*, for the appeal. *MacLean*, Deputy Attorney-General, contra.

Book Review.

British and American Diplomacy Affecting Canada from 1782 to 1899, a Chapter of Canadian History, by THOMAS HODGINS, Q.C., Toronto: The Publishers' Syndicate, Limited, 1900.

The substance of the earlier pages of this book appeared as an article in an English Review in 1898. Mr. Hodgins has now arranged the matter in a clear and systematic manner, adding largely to the original article, and making in effect a new work and one which is a condensed digest of diplomatic incidents, and useful to our public men as well as for the information given as for the manner of giving it. The accuracy of the statements made cannot be questioned, as the author refers in every case to the appropriate State papers and quotes largely from American standard authorities. The reader is thus enabled to realize how British and American diplomacy of past years has affected Canada and her original territory, and can see at a glance what have been her international relations with her adjoining neighbour, the United States, as one of the nation communities of Great Britain.

That there has been much political unfriendliness to Great Britain and her daughter nation Canada on the part of the United States cannot be denied. It was natural that at first this should be so; but it is also true that it has been largely nurtured by the slow poison daily imbibed by the American youth from school books, which incorrectly give what the writers called the history of the leading incidents connected with the early relations of Great Britain, Canada, and the United States—especially during the revolutionary period. Much harm has been done thereby. It was not, however, with the intention of saying anything that would aggravate this unfriendliness that the author took up his pen, but rather because there was a need to state the true facts in relation to the diplomatic relations between England and the United States affecting Canada, so that our statesmen and our people might be better able to realize their far-reaching responsibilities in future diplomatic negotiations, and be on their guard against any possible repetition of acts which in the past brought no credit to our neighbours, and which their present rulers would probably be as glad as ourselves to have buried in oblivion.

The writer commences by unfolding the preliminary negotiations for the Treaty of Independence of 1782, which, to use the words of an American writer was undoubtedly "a bargain struck on the American basis," whereby England endowed the Republic with gigantic boundaries and presented "an instance of apparent sacrifice of territory, of authority, of sovereignty and of political prestige unparalleled in the history of diplomacy": (Wharton, v. 3, p. 907). The astute men who acted for the United States had only to deal with a totally unfit and undiplomatic old gentleman named Oswald, Lord Shelburne's "pacifical man," whose appointment was suggested by Dr. Franklin, and whose opinion of the

Canadian territory handed over to the United States was that they (speaking of Ohio, Indiana, Illinois, Michigan, etc.), were "back lands of Canada hardly worth anything and of no importance." The result was, quoting from the book before us, that "Lord Shelburne's Government, to the astonishment of the European allies of the United States, surrendered to every demand, abandoned the Loyalists, and, after losing thirteen British colonies, in a fit of unintelligible, and—as Great Britain subsequently realized — unappreciated benevolence, gratuitously made the Thirteen United States a gigantic present of sufficient British and Canadian territory, which British arms had won from France, out of which to create nine additional States; thus endowing the revolted and lost colonies with an additional territorial empire of about 415,000 square miles, about equal to the present combined area of Germany and France; and thereby alienizing the British inhabitants who had their homes within its boundaries."

Lord Ashburton in 1842, by careless and criminal neglect of his diplomatic duty and ordinary watchfulness, permitted the American Government to capture more than four million acres lying between Connecticut and St. Lawrence rivers which, beyond question, belonged to Canada, among other things allowing himself to be deceived by the non-production of a map known as "Franklin's Red Line Map" (the existence of which was known to the American Government) which would have shewn the falsity of their position, and as to which Mr. Webster said: "I must confess that I did not think it a very urgent duty on my part to go to Lord Ashburton and tell him that I had found a bit of doubtful evidence in Paris out of which he might perhaps make something to the prejudice of our claims and from which he could set up higher claims for himself." A somewhat similar instance of "craft and dissimulation" (as characterised by John Adams, who, however, thought such things allowable), occurred recently in connection with documents produced as evidence by the representatives of the American Government before the Behring Sea Arbitration in Paris, the documents being subsequently withdrawn with apologies to the Commissioners when it was shewn they had been falsified, as they said, by some "faithless official" at Washington, but who was not dismissed from their public service.

Great Britain's diplomatic policy towards the United States has always been one of conciliation and generosity, but always at the expense of Canada. No one can read the State papers and treaties set forth by Mr. Hodgins without being impressed with the truth of this statement. In every case, with scarcely an exception, England has given away, without cause or equivalent, rights and territories most valuable to Canada and to the Empire, and it is only by the exertions of Canadian statesmen in recent days that further concessions have not been made. But we need not go further into details. The subject is not a pleasant one, and we can only hope that the time for these unnecessary, and to Canada, unjust concessions has gone by. We have still a vast territory; more than enough, perhaps, to govern well and wisely. We own the largest part of the North

American Continent, and happily the northern part of it, for the northern races are the sturdiest and the strongest and in the past have generally dominated the more southern ones. Our merchant marine grows apace. Our prairies are limitless in extent, and produce better wheat than can be grown south of the boundary line. Our forests are bounded only by the Atlantic and Pacific oceans and are the envy of two continents. Our fisheries, or rather those portions of which we have not been unjustly deprived, are rich and inexhaustible; and the vastness of our mineral wealth is only beginning to open the eyes and loose the purse strings of the capitalists of the world. With all this we can afford to become reconciled to the loss of our splendid territory in 1782 and all that we have since been deprived of, and forget and forgive the disingenuousness of some of the United States diplomats, the unfriendly treatment of Canada by that Government in trade and other interests, the baptisms of blood we have received by filibustering raids in 1775-6, 1812-14, 1837-38 and 1866, 1870, and 1871. ...me fostered, and all permitted, by the Government of the United States, as well as every other grievance or wrong of which we have had to complain, and for many of which our own mother country was largely to blame.

The growth of Imperial sentiment throughout the British dominions puts us in a very different position from what we have held in the ...st, and doubtless as the United States comes more and more into contact with other nations, and realizes that England is her best friend, a different tone will prevail among her people, so that we may, in the fu...re, expect that Canada, as part of a great Empire, and not an isolated dependency, will receive that fair international treatment to which nations desiring to live on friendly terms with one another are entitled.

The inhabitants of every country should be instructed in their national history. With us, as with every people, full knowledge of the history of all incid...nts connected with international relationships cannot but be helpful and desirable as part of the national education. To these ends Mr. Hodgins has done excellent service, and his book will take a prominent place in our country's historical literature.

Obituary.

HON. GEORGE WILLIAM ALLAN, SENATOR.

It is perhaps not known to many lawyers of the present day that the late Mr. Allan was a member of the legal profession. He was at the time of his death, on the 24th ult., in his eightieth year, having been born at York, now Toronto, Jan. 9, 1822, his father, Hon. William Allan, having been one of the pioneers of this country.

In Easter Term, 1839, Mr. Allan passed his examinations as a law

student in the senior class, and began his studies in the office of Messrs. Gamble & Boulton. In Hilary Term, 1846, he was called to the Bar, subsequently forming a partnership with his brother-in-law, the late Sir James Lukin Robinson, having in 1848 married the third daughter of the late Chief Justice, Sir John Beverly Robinson, Baronet. His second wife, daughter of Rev. Thomas Schreiber, of Bradwell, Essex, survives him. Though a member of this firm, Mr. Allan was only for a short time actively engaged in the practice of his profession, and being possessed at that time of considerable means, devoted most of his time, energy and talents to the service of the public and to the benefit of his fellow citizens. His name is identified with the history of Toronto. In 1849 he was one of its Aldermen, and in 1855 its Mayor. In 1858 he was elected to the York Division of the Legislative Council of Old Canada, holding for many years the office of Chairman of Private Bills Committee. In 1888 he was made Speaker of the Senate. He filled a number of positions connected with various monetary institutions of the country, possessing in a marked degree the confidence of the public.

His munificent gift to the city of the ground now composing the Horticultural Gardens in 1857 when President of the Horticultural Society, will be a lasting monument to his public-spirited generosity. Its name should now be "Allan Park," and some fitting memorial of the donor should be found there.

We have not space to tell of the many other positions of public trust and usefulness he filled. He was as well known in his connection with the encouragement of the fine arts, with philanthropic and religious works as with business affairs. He was a patron of that great Canadian painter, Paul Kane, becoming the principal owner of his works. He was President of the Ontario Society of Artists and connected with many literary and scientific bodies. He was also the well-known Chairman of the Upper Canada Bible Society, and Chancellor of the University of Trinity College.

Welcome always in business, social and literary circles, he was perhaps best known by the poor and needy of Toronto, who were unostentatiously helped and cheered by his kind and wise charity. His stately and handsome presence and high-bred courtesy was as well known in the cottages of the poor as in the mansions of the rich.

A native of Toronto, he has been, take him for all in all, its best and its most patriotic and most useful citizen. His name was synonymous with all that was high-minded, dignified and honourable. Loyal to Queen and country, he was essentially loyal in all the relations of life. A man of deep religious convictions, he daily lived his creed. The most unselfish of men, his busy, helpful life was largely lived for others; and he was more than most men under a deep sense of the responsibility of life, and this life he lived to the end, retaining his faculties to the last.

Though his large sphere of usefulness was not in connection with the legal profession, we are proud to remember that he belonged to us.