Canada Law Journal.

VOL. XLVIII. TORONTO, DECEMBER 2. No. 22.

SUNDAY LAW RESPECTING PROVINCIAL RAILWAYS.

In the recent case of *Kerley* v. *London & Lake Erie Transportation Co.*, 26 O.L.R. 588, Boyd, C., had to deal with the difficult question, as to the effect of Dominion and Provincial Legislation regarding the operation on Sunday of railways situate wholly within one province. Starting with the decision of the judicial committee of the Privy Council in *Attorney-General* v. *Hamilton Street Ry.* (1903), A.C. 524, that Provincial Legislatures have no power to prohibit work on Sundays, and that such legislation is a matter of criminal law and therefore within the exclusive jurisdiction of the Dominion Parliament; we find it has been attempted by a somewhat circuitous process to give provincial legislatures a power which the judicial committee determined they did not possess under the Constitutional Act.

And the way this has been done is by a provision in the Dominion Railway Act (R.S.C. c. 37, s. 9). This section provides (1) that every railway or tramway wholly within one province, even though declared to be a work for the general advantage of Canada and its employees, "shall be subject to any Act of the legislature of the province in which such railway or tramway is situate, which "was in force" on the 10th August, 1904, "in so far as such Act prohibits or regulates work, business or labour upon the first day of the week commonly called Sunday." It may here be noted that no such provincial Act could have been "in force," because any such Act according to the decision of the judicial committee of the Privy Council would be ultra vires, and therefore, a nullity.

The section goes on to provide, "(2) every such Act in so far as it purports to prohibit within the legislative authority of the province, work, business or labour upon the first day of the

the Privy Council. At the same time it is not the business of courts to revise the legislation of Parliament and under pretence of interpreting, practically make new enactments. Parliament may no doubt give a statutory validity to subsidiary enactments of inferior tribunals. We have instances of that, where rules of court made by judges are given the force of a statute, so also where orders in council are given a statutory effect; but where Parliament thus legislates as it were by reference, it is quite obvious that the enactments of judges and governors have no statutory effect beyond what is expressly ascribed to them by Parliament. With regard to the provincial Acts purported to be ratified and confirmed, they are not as we have seen, unqualifiedly ratified and confirmed, but only so far as they are "within the legislative authority" of the provinces enacting them—or in regard to provincial Acts made prior to the 10th August, 1904, the ratification is limited to those that "were in force." Can an Act which is ultra vires, be said to be "in force?" Can Acts which provinces have no power to pass, be fairly said to be Acts "within the legislative authority" of the provinces. Then it may be remarked the Acts are only confirmed in so far as they "purport to prohibit" Sunday labour on railways and tramways; and it may be a question, does confirmation of the prohibition include confirmation of the imposition of penalties for disobedience of such provincial Acts?

And that is a point by no means clear. It may be that the Dominion Parliament intended to confirm the prohibition so as to make an infraction of the law a misdemeanour, but that it did not intend to adopt or confirm the penal clauses of the Provincial Acts. The learned Chancellor, we observe, dissents from the judgment of the Supreme Court, *In re Legislation respecting Sunday,* 35 S.C.R. 581, to the effect that Provincial legislatures have no power to restrict the operation of companies of their own creation to six days a week. He thinks a Provincial Legislature may as a condition of incorporating a company limit its operation to six days in the week, and he

the Privy Council. At the same time it is not the business of courts to revise the legislation of Parliament and under pretence of interpreting, practically make new enactments. Parliament may no doubt give a statutory validity to subsidiary enactments of inferior tribunals. We have instances of that, where rules of court made by judges are given the force of a statute, so also where orders in council are given a statutory effect; but where Parliament thus legislates as it were by reference, it is quite obvious that the enactments of judges and governors have no statutory effect beyond what is expressly ascribed to them by Parliament. With regard to the provincial Acts purported to be ratified and confirmed, they are not as we have seen, unqualifiedly ratified and confirmed, but only so far as they are "within the legislative authority" of the provinces enacting them—or in regard to provincial Acts made prior to the 10th August, 1904, the ratification is limited to those that "were in force." Can an Act which is ultra vires, be said to be "in force?" Can Acts which provinces have no power to pass, be fairly said to be Acts "within the legislative authority" of the provinces. Then it may be remarked the Acts are only confirmed in so far as they "purport to prohibit" Sunday labour on railways and tramways; and it may be a question, does confirmation of the prohibition include confirmation of the imposition of penalties for disobedience of such provincial Acts?

And that is a point by no means clear. It may be that the Dominion Parliament intended to confirm the prohibition so as to make an infraction of the law a misdemeanour, but that it did not intend to adopt or confirm the penal clauses of the Provincial Acts. The learned Chancellor, we observe, dissents from the judgment of the Supreme Court, *In re Legislation respecting Sunday*, 35 S.C.R. 581, to the effect that Provincial legislatures have no power to restrict the operation of companies of their own creation to six days a week. He thinks a Provincial Legislature may as a condition of incorporating a company limit its operation to six days in the week, and he

thinks such a limitation of its power would not savour of the criminal law; but if the legislature not only limits the right of operation to six days, and at the same time, imposes penalties for breach of the limitation, it is rather difficult to see how the legislation differs from that in question in the *Attorney-General* v. *Hamilton St. Ry.* (1903), A.C. 524, which was held to be *ultra vires*.

The Chancellor holds that the scheme of two-fold legislation which the Dominion Parliament has adopted is not to be regarded "as a delegation of legislative power in a matter of criminal law to a body having no capacity to legislate criminally, but rather the designation by the Dominion of a legislative agency to decide whether it is expedient to enact a law for the regulation of the Lord's Day in its secular aspect, as to railways entirely within the province; and a legislative report being made by an appropriate enactment, then to give full legal force and efficiency to such provincial action by accepting it and assuming responsibility for it as if it were a Dominion Statute." This is an ingenious way of putting the matter.

But, it may be asked, is it constitutionally competent for the Dominion Parliament to designate such "a legislative agency?" We should be inclined to think it has no power to confer on Provincial Legislatures a jurisdiction which the B.N.A. Act assigns exclusively to the Dominion. Could it, for instance, give Provincial Legislatures a general legislative jurisdiction to deal with matters which the B.N.A. Act provides shall be exclusively reserved for the Dominion Parliament? The learned Chancellor seems to concede that this could not be done. Such a delegation or abrogation of its own legislative powers would, we are inclined to think, be *ultra vires* of the Dominion Parliament. If any such alteration in the relative powers of the Dominion and Provincial Parliaments is desired we should think it must be sought by an amendment of the B.N.A. Act. To alter that Act directly or indirectly is, we take it, in view of the Colonial Laws Validity Act (28-29 Vict. c. 63) beyond the power of the Dominion Parliament.

If we are correct in this, it seems to follow that the method which has been followed in the legislation regarding Sunday labour on provincial railways and tramways seems to be questionable from a constitutional point of view. If the legislative power to forbid labour on the Lord's Day be vested in the Dominion Parliament, as the Privy Council has determined, then that Parliament should deal with the matter directly, and not indirectly by reference to the Acts of provincial legislatures which have really no jurisdiction in the matter. Such a method of legislation, as has been adopted, seems to be an attempt to enable a local Legislature to do indirectly what it cannot do directly, and it tends to introduce confusion into the legislative arena.

The sections in question in *Attorney-General* v. *Hamilton St. Ry.* (1903), A.C. 524, and held to be *ultra vires* were ss. 8 and 10, and read as follows—

8. (1) No street car company, or tramway company, or any electric railway company, except where it is necessary for the purpose of keeping the track clear of snow, or for other acts of necessity or charity, shall run cars or trains upon Sunday.

[Sub-section 2 exempted certain companies from the operation of sub-section 1.]

"Section 10. Any person convicted before a justice of the peace of any act hereinbefore declared not to be lawful, upon the oath or affirmation of one or more than one credible witness, or upon view had of the offence by the said justice himself shall for every such offence be fined in a sum not exceeding $40 nor less than $1, together with the costs and charges attending the proceedings and conviction."

The Provincial Act in question in the *Kerley* case was 6 Edw. VII. c. 30, s. 193, and provides:—

"193 (1). No company or municipal corporation operating a street railway, tramway or electric railway, shall operate the same or employ any person thereon on the first day of the week commonly called Sunday, except for the purposes of keep-

ing the track clear of snow or ice, or for the purpose of doing other work of necessity."

The provisions of this sub-section it will be seen are substantially identical with those of R.S.O. c. 246, s. 8 (1).

[Sub-section 2 makes certain exceptions.]

Sub-section 3, provides: "For every train or car run or operated in violation of this section, the company shall forfeit and pay the sum of $400 to be recovered in any court having jurisdiction in civil cases for the amount, by any person suing for the same, and for the purpose thereof. The action for the recovery of the said sum shall be brought before a court having jurisdiction as aforesaid in the place from which such train or car started, or through which it passed, or at which it stopped in the course of such operation."

Sub-section 3, provides that a moiety of the penalty shall belong to the plaintiff and the other to the municipality from which the train started.

Sub-section 4, provides that the conductor or person in charge of the train run in violation of the Act is to be liable for every such offence to a penalty not exceeding $40 nor less than $1, besides costs to be recoverable on "summary conviction."

It will be seen that the only substantial difference between 6 Edw. VII. c. 30, s. 193 (3) and R.S.O. c. 246, s. 10, is that the former renders the offender liable to a penal action for the recovery of the penalty, and the latter makes the penalty recoverable on summary conviction.

But this distinction can hardly be deemed to make the provisions of s. 193 any less a part of the criminal law, than R.S.O. 246, s. 10. The mere substitution of a civil action for the recovery of the penalty for a summary proceeding before a magistrate cannot alter the nature of the offence for which the penalty is imposed, which is the breach, not of a mere private right, but of a public law, and therefore a criminal act. That being so, we are unable to understand how s. 193 can be within the legislative authority of the Province, having due regard to the

decision of the Privy Council that R.S.O. c. 246, ss. 8 and 10 are *ultra vires*.

The difficulty in the way of the Dominion Parliament legislating on the subject is no doubt due to the fact, that in some Provinces stricter views regarding Sunday observance prevail than in others, and the Dominion Parliament would probably not see its way to passing particular criminal laws for particular Provinces directly; but it has endeavoured to do so indirectly by the legislation to which we have referred, whereby it probably intended to give validity to invalid provincial laws, whereas it has so framed the Act as to validate only those provincial laws on the subject in question which are already valid—and as there are none such, whatever the intention of the Dominion Parliament may have been, it seems to us, it has failed to express them so as to enable any one to say that any valid prohibition against Sunday labour on Ontario provincial railways exists.

It must, of course, be conceded that in the area of subjects allotted to the Dominion, it has plenary power. It may, for instance, make any criminal laws it sees fit; but can the Dominion Parliament be said to make a law when it merely confirms a law which some other Parliament has made, or may thereafter make? Is that an exercise of the legislative power committed to the Dominion? It seems rather like a delegation to some other body of the power to make laws. It is certain that a law so made does not receive that Parliamentary consideration which laws made by the Dominion receive and which it may reasonably be presumed it was the intention of the B.N.A. Act that they should receive. It is virtually saying to some other body "you make any criminal laws you please, and we will sanction them as if they were made by us." But the fact remains, such laws are not made by the Parliament of Canada, and though the Dominion Parliament may have the power to make similar laws to those so made by the delegated body, yet in fact it has not made them. The question therefore seems to narrow itself down to this. Can the Dominion Parliament

give a legal sanction to laws made by a body having no right to make such laws? If it purports to do so, does it not merely confirm a nullity? But the confirmation of a nullity can hardly make a nullity anything else than a nullity.

DISREGARDING FINDINGS OF FACT BY A JURY.

On a former page (p. 41) we offered some observations on the case of *King* v. *Northern Navigation Co.*, 24 O.L.R. 643. The case has since been heard, and disposed of by the Court of Appeal, and the judgment of the Divisional Court has been affirmed. It may be remembered that the action was to recover damages for the death of the plaintiff's husband caused by his falling through an unfenced hatchway on the defendants' vessel. The jury found that the defendants were guilty of negligence in leaving the hatchway unfenced, and in answer to the question, "Was the deceased returning to the ship *Ionic* in the course of his duty and employment when he received the injuries complained of?" they answered "Yes." Notwithstanding these findings of fact, both the Divisional Court and the Court of Appeal found as a fact, and based their decision on the finding, that the deceased was not on the *Ionic* in the course of his duty or employment when he received the injuries complained of, and that the defendants in leaving the hatchway unprotected were not guilty of negligence. It may be that the jury, in making the finding they did, acted perversely and against the weight of evidence; but in such a case, if there was any evidence from which the jury might draw the inference they did we fail to see by what right the Court wholly disregarded the findings, and found the facts to be exactly the opposite of what the jury had found. The only legitimate way of getting rid of such a finding, if there was any evidence on the point, would be by granting a new trial. The observations of Lord Halsbury, L.C., in *Watt* v. *Watt* (1905), A.C. 115 on the question of damages, seem equally appropriate to questions of fact. He said "Has not a defendant a right to say, I refuse to have judgment (dam-

ages?) assessed against me by a Court? The law gives me a right to a jury, and because a jury have already found a verdict against me which you decide cannot be allowed to stand because it is unreasonable and excessive, how does that displace my right to have the verdict of the jury upon the question? . . . I have come to the conclusion that there is no power in the Court to alter the verdict, except by ordering a new trial," and in this the House of Lords agreed. But is not the converse of this proposition equally true? May not a plaintiff say "The law gives me a right to a jury on all material questions of fact, and because a jury have already found certain material facts in my favour, which finding you decide cannot be allowed to stand because it is unreasonable, how does that displace my right to have the verdict of the jury upon the question?"

It would seem to us there is but one answer to that proposition, and that is that the Court cannot lawfully deprive a plaintiff of the right to have the verdict of the jury on all material questions of fact, and that the only proper remedy where the court thinks the verdict is perverse or contrary to the weight of evidence on a question of fact is to order a new trial. The only ground on which the court may properly disregard the finding of a jury on a question of fact, is where it can say that there was no evidence on which the jury could find as they did, and that the question ought not to have been submitted to them, and that the defendant was entitled to a nonsuit. But that there was some evidence in this case seems hardly to be denied. The deceased had undoubtedly been in the defendants' employ —as a mechanical engineer, on one of the defendants' vessels. On the 12th December, 1910, a letter was addressed to him by the defendants' manager in which it was said "You will please take notice that it is the intention of the company this year to outfit the engine on your steamer as soon as the vessels are laid up. With the close of your contract this year, *you will be allowed regular wages until such time as your boat is outfitted.*" About New Year's day, 1911, the deceased was told by a foreman "to lay the boat up and then start to fit her out at the

same rate of pay per day as you are getting per month." The deceased laid up the boat and commenced the work of outfitting the boat, and continued at it until the 17th February, 1911, when the foreman said "I think you are about done now. . . . you will start on the 1st April *again to fit out*. . . . *to do the rest of the work*." The deceased and the assistants he had with him, then ceased the work of outfitting, and the accident which occasioned his death took place on the 6th March following. Might the jury not reasonably infer from the letter of the 12th December above referred to, that notwithstanding the work of outfitting was suspended on Feb. 17, yet the deceased continued in the defendants' employ, and was entitled to his regular wages until such time as the outfitting should be completed, which it apparently was not on Feb. 17. At all events, whatever view may be taken of this evidence, can it reasonably be said that it constituted no evidence of a continuance of the deceased in the defendants' employment after Feb. 17, 1911? We should think not. This was clearly a question of fact and not of law. Garrow, J.A., seems to think a suspension from work was equivalent to a dismissal from employment, but that also would seem to be a fact on which the jury should be asked to pass. It may be that for some special reason it was in the interest of the defendants to keep the deceased in its employ, even while he was not working. Eminent lawyers are known to receive very handsome retainers for doing absolutely nothing. The fee is paid in order that the services of the payee may be available if required, and the same sort of thing may induce employers to secure the services of skilled workmen.

The Court of Appeal may have been of the opinion that the defendants were entitled to a nonsuit, but they do not put it in that way. They rather leave the impression that on their view of the evidence the finding of the jury was wrong. If the finding of the jury had any evidence to warrant it, then the plaintiff ought to have succeeded as appears by the judgment of Garrow, J.A., when he says, "The law, both at common law, and under the statute, has wisely surrounded the servant with certain safe-

guards for his safety, and protection. He may, for instance, claim *a safe place to work in*, etc. It seems to us for the reasons above stated that it cannot be said that there was no evidence on the questions submitted to the jury; the deceased had undoubtedly been in the defendants' employ, and there was some evidence from which the jury might infer that although work was suspended, the deceased did, and had a right to, regard himself as still in the employ of the defendants; and as such entitled to be upon the vessel on which he lost his life. Mr. Justice Meredith appears to have attached some weight to the fact that the deceased, on the morning of his death, was said to have asked his wife for a tin in which to bring back from the boat a little white lead for painting purposes at his house and which he was to ask "Mike" for, and that a tin was in fact found by his corpse. But this evidence would appear to have been inadmissible: see *Rex* v. *Thomson* (1912), 2 K.B. 19, ante, p. 543.

We are inclined to think that in setting aside the finding of the jury and dismissing the action, the Divisional Court exceeded its powers.

ENGLISH LAW REFORM.

For some time a Royal Commission has been sitting on the subject of the laws of divorce, and it is understood that the report of the Commission is now ready for presentation. The Commissioners were not unanimous in their finding, and a minority report will be given.

The majority, it is understood, will report upon giving greater facilities for divorce, especially for those who are unable to bear the cost of the present procedure. This will be accomplished by giving jurisdiction to certain of the lower and local courts.

The minority are opposed to any such relaxation of the present methods, and do not favour making divorce more easy than at present. What they will recommend has not appeared. On one important point, however, both parties are agreed. As the law now stands the husband has only to prove infidelity by the

wife, while the wife has to prove not only infidelity on the part of the husband, but cruelty and desertion also. This injustice will very properly be done away with, and both parties placed upon the same footing.

While on this subject we may remark that in the United States where, in many of the States, as in Nevada, for instance, divorce is so easily obtained as to be a national disgrace, public opinion is being aroused in condemnation of it, and there is a growing desire that some uniform system should be adopted for the whole Union. Well will it be for this country if we are not led into any weakening of the marriage tie, which could cause such demoralization as we see prevailing to the south of us.

An amendment to the criminal law of the mother country has been brought about in respect to what is spoken of as the white slave traffic. Public attention has been called to this subject by recent investigations, shewing how great the evil has become, and that there is a necessity for stringent measures to cope with it. By an Act recently passed greater powers are given to the police to deal summarily with those charged with procuration, and the punishment of flogging will be inflicted in addition to any other punishment imposed for this offence. It was at first proposed to inflict this only for the second offence, but by a small majority it was made imperative for every such offence. It is believed that this mode of punishment will be especially deterrent to the class of persons engaged in this most vile of all criminal pursuits.

This prompt action on the part of the British Legislature will be generally approved of and be an example which may well be followed in other quarters.

POSSESSION BY MORTGAGEE.

(KIRBY v. COWDEROY, 1912, A.C. 599.)

In the note of this case, see ante, p. 505, it was suggested that it was to some extent in conflict with *Re Jarvis and Cook*, 29 Gr. 303, but further consideration would seem to lead to the conclusion that such is not the case.

The question was really whether an actual visible occupation by a mortgagee is necessary to extinguish the title of a mortgagor under R.S.B.C. (1897), c. 123, which is similar in terms to 10 Edw. VII. c. 34, s. 20, Ont. The Judicial Committee decided that the possession being vacant, the payment of taxes by the mortgagee for twenty years constituted a sufficient possession by the mortgagee to bar the mortgagor.

It must be remembered that this was the case of a mortgagee having a legal title to the land in question and according to the well-known decision, *Agency Commissioners* v. *Short*, 13 App. Cas. 793, in the case of a vacant possession the legal owner is always presumed to be in possession, and see *Delaney* v. *Can. Pac. Ry.*, 27 Ont. 11; and although, ordinarily, to enable a person to acquire a title by possession under the statute, an actual visible and continuous possession for the required period is necessary: see *Kay* v. *Wilson*, 2 App. R. 133; yet it was held in that case that such an actual visible occupation is not necessary in the case of a mortgagee whose mortgage is in default, in order to bar his mortgagor's right to redeem, where the mortgaged estate is vacant. Quite apart from the payment of taxes by the mortgagee, therefore, the right of the mortgagor in *Kirby* v. *Cowderoy* appears to have been barred.

PRISONER'S RIGHT OF CROSS-EXAMINATION.

The Court of Criminal Appeal (England) quashed the conviction of an appellant charged with burglary, on the ground that the chairman of quarter sessions, before whom he was tried, after the cases for the defence and prosecution were closed, called and asked questions of a police witness prior to the summing up. The objection taken to this course, which was upheld by the Court of Criminal Appeal, was that such evidence should not have been admitted at a stage when there could be no cross-examination of the witness on behalf of the defence. One of

the reasons for the jealous exclusion, with certain exceptions, of hearsay evidence in both civil and criminal trials is the fact that the admission thereof would entail the introduction by the one side of evidence which the other side could not test by cross-examination. The importance of guarding with care the right of a party to cross-examine the witnesses, and so test the evidence of the other party, is obvious, and to relax this precaution would mean that a step would be gained towards making hearsay evidence admissible in our courts, and so encourage a procedure which often exposes the criminal jurisdictions of foreign countries to our criticism. All the exceptions to the rule which makes hearsay evidence inadmissible are founded upon necessity. The impossibility of limiting the rule was insisted upon by the Court for Crown Cases Reserved in *Reg.* v. *Saunders*, 80 L.T. Rep. 28, in which case Lord Russell of Killowen points out the rigid adherence to the exclusion of hearsay evidence which has always obtained in both civil and criminal trials.—*Law Times.*

THE SAD STORY OF GOOD DAME HOUGHTON.

(HOUGHTON v. PILKINGTON, 1912, 3 K.B. 308.)

No day looked fairer at the start
When Heaps and Hogarth sallied out
In master Pilkington's good cart
His milk so pure, to vend about.

But Hogarth was a clumsy lad,
And from the cart did tumble out
And suffer'd bumps both sore and bad
And blood besmeared the careless lout.

Then good dame Houghton, grieving sair
At such a sad calamity,
Did hasten to give aid and care
For sake of poor humanity.

With tender hands she helped young Heaps
To lift poor Hogarth whence he'd come,
And then into the cart she leaps,
With Heap's consent, to see him home.

While upright in the cart she stood,
Heaps in his eager haste to go
Flicked up his steed, and then more blood
And bruises sore, and still more woe.

For Houghton though an upright dame,
Had not her balance quite secure,
And with the jolt, why down she came
And from the cart she toppled o'er.

There, on mother Earth outstretched,
The form of poor dame Houghton see
All broken up and bruiséd sore,
With wounds on head, and bumps on knee.

For all this cruel misery
Relief she sought in court of law,
And in the County Court gained she
A fitting plaster for her sore.

But Pilkington, cold hearted man,
The thirty sovereigns would not pay,
But straightway to the High Court ran
And said "I'm wronged, what do you say?"

Then Bray and Bankes, the learned two,
Did cogitate the case anew,
And said "Poor Houghton, this won't do,
To Pilkington the judgment's due."

—G. S. H.

REVIEW OF CURRENT ENGLISH CASES.

ADMIRALTY — COLLISION — DAMAGE — CONSEQUENTIAL DAMAGE —CONTRIBTORY NEGLIGENCE—ADMIRALTY AND COMMON LAW RULE.

The Blow Boat (1912) P. 217, was an action for damages arising out of a collision between two boats. The facts were that through the negligence of both plaintiffs, the vessels, one a steam launch, and the other a dredge came into collision, the plaintiff's boat (the steam launch) was thereupon hauled to the other side of the river where the collision took place and laid on the mud, and a crane was there brought into requisition to lift her on to the quay. Owing, probably to a person of seventeen stone weight remaining in the launch while it was being lifted, one of the ropes broke and the vessel fell and broke her back. Bargrave Deane, J., who tried the action, held that it was a common law action, and subject to the common law and not the admiralty rule as to damages, and that as for the original collision both parties were to blame; yet for the consequential damage neither party was blamable, so that instead of the whole loss being divisible between the plaintiff and defendant as in the simple case of a collision under the admiralty rule, where both parties were to blame, the common law rule applied, and that as the plaintiff had been guilty of contributory negligence in respect of the collision, he could not recover any part of the consequential damages from the defendant.

WILL—CONSTRUCTION — EQUITA LE LIMITATIONS—FEE SIMPLE DETERMINABLE ON BANKRUPTCY, ETC.—EXECUTORY DEVISE—MALE HEIR OF THE BODY—FAILURE OF ISSUE.

In re Leach, Leach v. *Leach* (1912) 2 Ch. 422. This was a case for the construction of a will whereby the testator devised real estate to trustees on trust to pay to his nephew, Albert Leach, the income "until he shall assign, charge, or otherwise dispose of the same or some part thereof, or become bankrupt, or do something whereby the annual income would become payable to, or vested in some other person, which of the events shall first happen, and if the trusts hereinbefore declared shall determine in the lifetime of Robert Leach to accumulate at compound in-

terest for the benefit of the male heir of his body until he attains the age of twenty-one years and should he die without having a male heir then I direct my trustees to pay the annual income to my nephews (three named) and the respective male heirs of their bodies successively according to seniority in tail" with remainder to Robert Leach's sisters as tenants in common. On an application by Robert Leach to which his infant son, and the heiress at law of the testator were parties, for the construction of the will, Joyce, J., held, but without prejudice to any claim which after Robert Leach's death his heir male or the heir male of his body might make, that Robert Leach took an equitable estate in fee simple determinable on the happening of any of the specified events, which estate would, on his death, before the happening of any of those events be absolute, but subject to the executory limitations over in remainder, if the plaintiff should die without leaving any male heir, or male heir of his body at the time of his decease.

WILL — CONSTRUCTION — REALTY — DEVISE — LIFE ESTATE — REMAINDER "TO MY NEAREST MALE HEIR"—NO MALE HEIR —HEIRESS AT LAW—INTESTACY.

In re Watkins, Maybery v. *Lightfoot* (1912) 2 Ch. 430. This case was also for the construction of a will. The testator, a bachelor, devised real estate to a trustee in fee, in trust to pay the income to his brother Herbert Maybery for life, and after his death to convey the same to "my nearest male heir and should there be two or more in equal degrees of consanguinity to me" then he directed the trustee "to convey the same unto the eldest of my male kindred for the term of his natural life, with remainder to the heirs of the body of my eldest male relative." Herbert died and Mrs. Williams was the testator's heiress at law both at his death and at the death of the testator. The nearest male relative of the testator at the time of his death, was the son of a female first cousin, and at the time of Herbert's death was the son of a daughter of the same cousin. Joyce, J., who tried the case, held that the person entitled on Herbert's death must be (1) a male, and (2) the testator's nearest male heir, and he held that the son of the daughter of the cousin did not fulfil the second condition inasmuch as he was not the testator's heir; that in devising to his nearest male heir, the testator, in the circumstances could not have contemplated any heir of his own body, and must be taken to have meant his

heir general, which meant a gift to his heir being a male, and that as neither at the testator's death, nor at the death of Herbert, the tenant for life, was the testator's heir a male, the devise failed, and the testator's heiress at law was entitled as upon an intestacy.

MUNICIPAL CORPORATION—AGREEMENT TO TAKE OVER STREET—CONTRACT NOT UNDER SEAL—EXECUTION OF CONTRACT BY ONE OF PARTIES—STATUTE OF FRAUDS—PART PERFORMANCE—ESTOPPEL—ULTRA VIRES.

Hoare v. *Kingsbury Council* (1912) 2 Ch. 452. The defendants in this case were a municipal corporation, and by statute contracts made by it for over £50 in value were required to be under seal. The plaintiff entered into a contract with the defendants whereby he agreed to surrender a piece of land for widening a street, and the defendants agreed to take it over and make it up and maintain it as a highway. The contract was over £50 in value and was not under seal. The plaintiff performed the contract on his part and the defendants took possession of the land but did not make it up or adopt it as a highway. The action was for specific performance and the defendants pleaded that the contract was ultra vires for want of a seal; they also set up the Statute of Frauds. The plaintiff contended that the defendants were estopped from setting up the invalidity of the contract after it had been executed by the plaintiff. Neville, J., held that the defence of want of seal was an answer to the action, and that the defendants were not estopped from setting up that defence, and that if the case had turned on the Statute of Frauds only, the part performance was sufficient to take the case out of the Statute. In dismissing the action he did so without costs, having regard to the character of the defence.

WILL — CONSTRUCTION—GIFT TO NEXT OF KIN OF DECEASED HUSBAND AND HIS FORMER WIFE.

In re Soper, Naylor v. *Kettle* (1912) 2 Ch. 467. The questions which testators are able to raise are many and various. In this case, the testatrix was the widow of William Soper who had been previously married to Sarah Soper, and by her will property was in a certain event given "to the nearest of kin of my late husband William Soper, and of Sarah Soper his former wife deceased, in equal proportions." As far as known, William and Sarah were not related before marriage. This will, simple

as it seems, involved sundry knotty questions. Did the gift to the next of kin of William and Sarah mean (*a*) such of the nearest blood relations of *both* William and Sarah as were living at the death of the testatrix, or (*b*) such of the nearest blood relations of *each* of them as were living at that date, and (*c*) whether in either case such persons took per capita or stirpes, and in what degree of relationship, or (*d*) such of the next of kin of both, according to the Statute of Distribution, or of each of them as were living at that date, or (*e*) what other person or persons. Parker, J., held that the gift was to a class consisting of the next of kin of William and the next of kin of Sarah, and not to a class consisting of persons who were nearest of kin to both of them. Whether the members of the class took per capita or per stirpes, he does not say, that point being reserved until after the parties composing the class should be ascertained.

WILL — CONSTRUCTION — CONDITION SUBSEQUENT — PUBLIC POLICY—FORFEITURE IF CHILDREN LIVED WITH OF UNDER CONTROL OF THEIR FATHER.

In re Sandbrook, Noel v. *Sandbrook* (1912) 2 Ch. 471. This number of the Law Reports is fruitful in will cases. This being another case for construction of a will. By the will in question the testatrix gave three-fourths of her residuary estate in trust to pay the income to her two grandchildren up to 31st December, 1927, and then to divide the corpus between them. If either died before that date without leaving lawful issue there was a gift over to other persons; and the will then declared that if at any time before December 31, 1927, either one or both of the grandchildren should "live with or be or continue under the custody, guardianship, or control of their father . . . or be in any way directly under his control" all benefits given by the will to both or either of them, as the case might be, should cease, and the will further provided that it was to be at all times an absolute condition of either one or both receiving any benefit under the will that he or she or both should live free from the direct influence and control of their father. In case of forfeiture there was a gift over to those who would take if the grandchildren should die before 31st December, 1927, without issue. The question, Parker, J., was called on to decide, was whether or not this condition was valid, and he held that it was a condition in defeasance of an interest previously given, and that it was void as being contrary to public policy as being an

effort to deter the father from performing his parential duty, and also as being a attempt to interfere with the discretion of the court as to the custody and maintenance of its wards, and he also held the condition bad for uncertainty because it was not clear what "living with their father" really meant and whether or not it would include a temporary residence in the same house with him, as for instance, for the purpose of nursing him in case of sickness.

WILL — CONSTRUCTION — CHARGE ON INCOME OR CAPITAL — TRUST TO PAY OUT OF INCOME—GIFT OF CORPUS "SUBJECT TO THE SAID ANNUITIES."

In re Young, Brown v. *Hodgson* (1912) 2 Ch. 479. This also is a case for construction of a will. By the will in question the testator gave his real and personal estate to trustees upon trust for sale and investment, and to hold the investments in trust out of the income thereof to pay two life annuities, and to accumulate the residue of the income until the testator's youngest child of his brother John should attain 21, or until the expiration of 21 years from the testator's death whichever should first happen, and thereafter the trustees were directed to hold the trust fund and accumulation "subject nevertheless to the said annuities" in trust for the children of his brother John then living and the children of any deceased child per stirpes. The will also authorized the trustees to apply the income of a share of a child or grandchild of John in the trust fund or accumulations thereof, towards the maintenance of the child or grandchild and "subject to providing for the said annuities" to raise a part of the expectant presumptive or vested share of the child or grandchild and apply the same for his benefit. The question was whether the annuities were a charge on the corpus or merely a charge on the income only, and if a charge on the income whether they were a continual charge on the income or only on the income from year to year Parker, J., held that the annuities were a charge on the corpus.

WILL—CONSTRUCTION—CHARITABLE LEGACY — LAPSE — SCHEME — AMALGAMATION OF CHARITY WITH OTHER CHARITIES — ALTERATION OF OBJECTS OF CHARITY—PARTIES—ATTORNEY-GENERAL.

In re Faraker, Faraker v. *Durell* (1912) 2 Ch. 488, is still another will case. Here the testatrix, who died in 1911, gave a

legacy of £200 to "Mrs. Bailey's Charity, Rotherhithe." There was a charity at Rotherhithe known as "Hannah Baily's Charity," founded in 1756, by a Mrs. Baily for the benefit of poor widows resident in and parishioners of St. Mary, Rotherhithe. In 1905, the Charity Commissioners sealed a scheme in the matter of this charity and thirteen others, whereby the endowments of all were consolidated, trustees were appointed and trusts declared for the poor of Rotherhithe, but there was no mention of widows in the scheme. On an application by the executors of the will, Neville, J., declared that the legacy to Bailey's Charity had lapsed on the ground that it had been so altered by the new scheme that it must be taken to be no longer in existence. The Attorney-General was not a party to the application, but the trustees of the consolidated charities were, and claimed to be entitled to the legacy. At the instance of the Charity Commissioners, the Attorney-General applied for leave to appeal from the order of Neville, J., and special leave so to do was given by the Court of Appeal (Cozens-Hardy, M.R., and Farwell, and Kennedy, L.JJ.), who, on the hearing of the appeal reversed the order on the ground that Hannah Bailey's charity could not be destroyed and was not extinct, although its objects had been changed in accordance with law, and therefore that the consolidated charities were entitled to the legacy. The court also expressed the opinion that an application should be made to amend the scheme so as to make provision for the relief of widows, which the court thought should not have been omitted from the scheme as sealed. We may note that no question as to the different spelling of the name "Baily" in the will was raised.

RECEIVER—APPOINTMENT OF RECEIVER IN SECOND MORTGAGEES' ACTION—FIRST MORTGAGEES NOT PARTIES—CLAIM BY FIRST MORTGAGEES FOR POSSESSION—NOTICE BY FIRST MORTGAGEE TO RECEIVER AND TENANTS—RENTS COLLECTED AFTER NOTICE BUT PRIOR TO APPLICATION TO COURT.

In re Metropolitan, Fairweather v. *Metropolitan* (1912) 2 Ch. 497. In this case first mortgagees on 1st February, appointed a receiver of the mortgaged premises under their statutory power, but did not give immediate notice to the tenants or to the mortgagor or to the subsequent incumbrancers; the following day, a second mortgagee in an action to which the first mortgagees were not parties obtained the appointment of a receiver who collected rents. On February 8th, the first mortgagees gave notice to the tenants and the receiver appointed in the

action and on 27th February, applied to the court for liberty to take possession, notwithstanding the appointment of the receiver at the instance of the second mortgagees, and on March 1st, the latter were ordered to give up possession and then the question arose whether the first mortgagees were entitled to the rents collected by the second receiver between his receipt of notice of the first mortgagees' claim and the order for possession, and Eady, J., held that they were not, but that the first mortgagees were entitled to all rents received after the return of their notice of motion for possession.

LANDLORD AND TENANT—POWER TO DETERMINE LEASE—NOTICE TO TERMINATE, BY WHOM TO BE GIVEN—OUTSTANDING LEGAL ESTATE—NOTICE BY EQUITABLE OWNER—SALE OF LEASE—CONDITION EXONERATING VENDOR FROM GETTING IN BARE LEGAL TITLE—NON-INCORPORATION OF CONDITION IN CONVEYANCE—RECTIFICATION.

Stait v. *Fenner* (1912) 2 Ch. 504. This was an action to obtain a declaration that a notice to terminate a lease was ineffectual, and that the lease was still subsisting. The lessee claimed relief over against his vendor for breach of covenant for title, and the latter claimed rectification of the conveyance. The lease in question was for twenty-one years, but contained a provision that the last quarter's rent should be paid one month in advance, before the termination of the tenancy, and that the lessee might terminate the lease at the end of the first seven or fourteen years, and that on giving six months' previous notice, and paying all rent and observing the covenants up to such termination, the lease should cease. One of the defendants being equitable owner of the lease gave notice to terminate the lease at the end of the first seven years, the lessee had not kept the premises in repair, or paid the last month's rent in advance. Neville, J., who tried the action, held that the notice was invalid, the conditions of the proviso being conditions precedent and their non-observance invalidated the notice. He also held that the notice was also invalid because not given by the person in whom the legal title was vested. It appeared that on the lessee purchasing the lease it was expressly agreed that his vendor on whom a third party notice was served, should not be required to get in the outstanding bare legal estate in the lease; but that this provision had not been incorporated in the conveyance, which,

by statutory implication, contained the usual covenants for title, under which the assignee claimed relief against his vendor; but the Court held that the vendor was entitled to a rectification of the deed so as to incorporate that provision, and therefore, that he was not liable for the defect in title.

NEGLIGENCE—SAVAGE ANIMAL—LIABILITY OF OWNER — DUTY TOWARDS LICENSEES—REMOTENESS OF DAMAGE.

Clinton v. *Lyons* (1912) 3 K.B. 198, is a case involving a chapter of accidents of a curious kind. The action was brought to recover damages for injuries sustained by the plaintiff from the bite of the defendant's cat in the following circumstances. The plaintiff and her husband entered defendant's tea-shop carrying a pet dog, as the jury found with the defendant's permission. On the premises the defendants had a cat which had kittens. It had been shut up in a storeroom but had escaped. The plaintiff put her dog on the floor and the cat sprang at and bit it. The plaintiff then picked up the dog and handed it to her husband, the cat then sprang at the plaintiff and bit her arm. Evidence was given to the effect that cats rearing kittens are inclined to be savage with regard to dogs, even though otherwise gentle, and that if such a cat smelt the clothing of a person who had been carrying a dog it might attack that person. The case was tried in a County Court and the jury found that the defendants knew of the cat's disposition and had not taken sufficient care to protect their customers, and judgment was given for the plaintiff for £100. The Divisional Court (Ridley, and Bray, JJ.), however, held, that the defendants were not liable, either (1) as keepers of an animal *ferœ naturæ*, or of an animal *mansuetæ naturæ* but known to be vicious to mankind, or (2) as licensors, and that the defendants were not bound to anticipate such injuries as the plaintiff sustained as a possible consequence of their keeping a cat. The jury's finding of knowledge by the defendants was held not to be warranted by the evidence. This case looks something like an extension to cats of the old common law rule applicable to dogs, viz., that they are entitled to have one bite without involving their owners in liability. This case has been "done into verse" very successfully by a legal wit: see ante, p. 668.

DISTRESS FOR RENT—EXEMPTION—GOODS COMPRISED ON HIRE PURCHASE AGREEMENT—AGREEMENT IN DEFAULT—NOTICE BY VENDOR OF RESUMPTION OF POSSESSION OF GOODS HIRED—DISTRESS AMENDMENT ACT, 1908 (8 EDW. VII. c. 53), s. 4—(1 GEO. V. c. 37, s. 31, ONT.).

Hackney Furnishing Co. v. *Watts* (1912) 3 K.B. 225. The plaintiffs in this case sued for money paid under protest, or by way of damages for a wrongful distress. The English Distress Amendment Act of 1908 (8 Edw. VII. c. 53) like the Ontario Act, 1 Geo. V. c. 37, s. 31, exempts from liability for distress for rent the goods of third persons on the demised premises, but excepts from such exemption goods on the premises under a hire purchase agreement. In this case the goods distrained were in the possession of the tenant under a hire purchase agreement made with the plaintiffs under which the plaintiffs were entitled to resume possession of the goods in case the tenant made default in payment of the instalments of purchase money as they became due. The tenant having fallen into arrear, the plaintiffs notified him that the agreement was terminated and requiring him to make an immediate appointment for the plaintiffs to send their men to remove the goods. Subsequently, and before the goods were removed the defendants distrained them for rent due by the tenant, which the plaintiffs paid under protest. The case was tried in a County Court and judgment was given against the plaintiffs on the ground that, notwithstanding the notice given by the plaintiffs to the tenant the hire purchase agreement was still in existence when the distress was made because the agreement contained a clause that if the vendors retook the goods, the hirer was to have the right to buy the articles within 28 days thereafter or to resume the hiring on certain terms. But the Divisional Court (Phillimore, and Bray, JJ.), held, quite apart from the proviso for re-purchase or re-hiring, that when the distress was made the goods were on the premises under a hire purchase agreement and as such were not exempt from distress.

DEBTOR AND CREDITOR—PROPOSED ASSIGNMENT FOR CREDITORS—ASSENT BY CREDITOR—WITHDRAWAL OF ASSENT—ESTOPPEL.

In re Jones (1912) 3 K.B. 234. This is a bankruptcy case which involves a point of general interest. A debtor being in difficulties presented a statement of his affairs to his creditors and asked them to assent to his making an assignment for cre-

ditors. Certain of his creditors gave this consent, but subsequently, and before execution of the assignment, withdrew it, and it was held by a Divisional Court (Phillimore, and Coleridge, JJ.), that they had a right so to do. Another point in the case was this: two separate creditors joined in a petition for a declaration of bankruptcy and a receiving order; one of these was estopped from setting up the alleged act of bankruptcy, the other was not, and it was held that in such circumstances the receiving order might be made, notwithstanding the estoppel as to one of the petitioners.

ARBITRATION—CONTRACT FOR WORK—PROVISION FOR REFERENCE OF DISPUTES UNDER CONTRACT — ACTION ON CONTRACT — AWARD MADE PENDENTE LITE—INVALIDITY OF AWARD—ARBITRATION ACT, 1889 (52-53 VICT. C. 49), SS. 1, 4—(9 EDW. VII. C. 35, S. 8).

Dolcman v. *Ossett* (1912) 3 K.B. 257. This was an action on a contract for the execution of certain works which contained a provision for reference to an arbitrator of any dispute arising thereunder. No application was made to stay the action, but, pending the action, the defendant's engineer, who was the person named to settle disputes, without giving notice to the parties, and without the knowledge or consent of the plaintiffs made an award purporting to decide the matters in question in the action, and the defendants pleaded the award in bar to the plaintiffs' claim in the action. Scrutton, J., held that it was a good defence, but the majority of the Court of Appeal (Moulton, and Farwell, L.JJ.), held that it was not competent after action brought, and no application made or granted to stay it under the provisions of the Arbitration Act, for the engineer to determine the matters in question, and that, therefore, his award was no bar. But from this, Williams, L.J., dissented, and yet practically arrived at the same conclusion as his colleagues, viz., that the action must be tried in the ordinary way. This, it may be observed, was an attempt to take advantage of one of the supposed "short cuts" provided by the Judicature Act, and the points were raised as preliminary questions, viz.—(1) whether it was a condition precedent to the action that the matters in question should be referred to, and decided by the engineer? which Scrutton, J., decided in the negative; and, (2) whether any decision of the engineer on the matters on which he is empowered to decide are binding on the parties though made without notice

and *pendente lite*? which Scrutton, J., answered in the affirmative. This second question, Williams, L.J., held could not be so answered, because it might be shewn that in the circumstances the engineer was not a proper person to decide and therefore the answer was too wide, and he appears to have thought the trial of the so-called preliminary questions was really a futile proceeding. The decision of the majority of the Court, however, is clear, that where a contract provides for arbitration, but an action is brought and not stayed under the provisions of the Arbitration Act, that then no proceedings can be effectively taken without the consent of both parties for arbitration pending the action. The case is an instructive commentary on the meaning and effect of 9 Edw. VII. c. 35, s. 8.

PRINCIPAL AND AGENT—AUTHORITY OF AGENT TO BORROW NOT LESS THAN A SPECIFIED AMOUNT — PLEDGE BY AGENT OF SHARES FOR LESSER SUM—BLANK TRANSFER—NOTICE OF LIMITATION OF AGENT'S AUTHORITY—LIABILITY OF PRINCIPAL.

Fry v. *Smellie* (1912) 3 K.B. 282. The plaintiffs were the owners of shares in a limited company, and they executed a transfer thereof in blank to the defendant, Taylor, and gave him authority to borrow on the security of the shares not less than £250. Taylor wrongfully pledged the shares with his co-defendant Smellie, for £100 which he used for his own purposes, and without obtaining the loan authorized by the plaintiffs. Smellie appears to have had no express notice of the limitation of Taylor's authority, but he had notice that the transfer he held was in blank, and Scrutton, J., held that the fact that the transfer was in blank was sufficient to put Smellie on inquiry as to Taylor's authority, and therefore he was not entitled to hold the shares as against the plaintiffs. But the Court of Appeal (Williams, Farwell, and Kennedy, L.JJ.), reversed his decision and held that Smellie was entitled to hold the shares as security for the amount advanced, following *Brocklesby* v. *Temperance Permanent Building Society* (1895) A.C. 173, which lays down the rule that where one of two innocent persons must suffer, the person who by trusting the agent, enables the fraud to be committed, is to suffer, rather than the person who has no such relation to the agent.

MASTER AND SERVANT—IMPLIED AUTHORITY OF SERVANT—NEGLIGENCE OF SERVANT—LIABILITY OF MASTER.

Houghton v. *Pilkington* (1912) 3 K.B. 308. This case is another instance of the singular course of events which often takes place in human affairs. The plaintiff, at the request of a servant of the defendant got into the defendant's cart which was in charge of the servant, in order to render assistance to a boy who was also a servant of the defendant who had been injured by being thrown out of the cart. The plaintiff had gone to the assistance of the boy and asked if she should assist to take him home to which the defendant's otner servant assented; she accordingly assisted to put the boy into the car, and got in herself. The other servant then negligently started the horse, and the plaintiff was thrown out and injured, and the question was, in such circumstances, is the master liable? The case was tried in a County Court, and judgment was given in favour of the plaintiff for £30, but the Divisional Court (Bray, and Bankes, JJ.), reversed the decision holding the case to be governed by *Cox* v. *Midland Counties Ry.*, 3 Ex. 268, on the ground that the existence of an emergency did not give the servant Hogarth any implied authority to invite the plaintiff to get into the cart, so as to render the defendant liable for the injury which resulted to her owing to Hogarth's negligence.

[Our readers will find on p. 690, a poetic version of this curious case—ED. *C.L.J.*]

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Ont.] SHAW *v.* MUTUAL LIFE INS. CO. [Oct. 7.

Life insurance—Endowment policy—Surrender—Cash value—Action for rescission — Representation by agent — Inducement to insure.

The life of S. was insured by a twenty year endowment policy, which provided that at the end of the term he could exercise one of three options, including that of surrender of the policy on receipt of a sum to be ascertained in a specified manner. About ten months before the policy expired he wrote to the company asking for the amount payable on surrender, which was promptly furnished, and more than a year later he brought action for a larger cash payment, and in the alternative for rescission of the contract for insurance and return of the premium paid with interest alleging that when he applied for the insurance he was informed by the agent of the company that the cash value of the policies surrendered would be the larger amount claimed. The trial judge directed rescission and return of the premiums as prayed. His judgment was reversed by the Court of Appeal.

Held, affirming the judgment of the Court of Appeal, 23 O.L.R. 559, that as S. did not swear, nor the evidence he adduced establish that he was induced to enter into the contract by the representations of the agent as to the sum payable on surrender, but it might fairly be inferred that had he been given the true figures he would still have taken the policy, his action must fail.

Appeal dismissed with costs.

Hellmuth, K.C., for appellant. *Nesbitt*, K.C., and *Arnoldi*, K.C., for respondents.

Alb.] EBERTS *v.* THE KING. [Oct. 7

Criminal law—Trial for murder—Charge to jury—Misdirection—Evidence.

On a trial for murder the prisoner gave evidence and swore that he was not out of his house on the night the crime was

committed. His evidence was not corroborated and was contradicted by two witnesses, one of whom swore that he went out that night with the prisoner to commit robbery; that they had broken into several buildings when they saw the shadow of a man apparently following them; that witness started to go home and prisoner took from him a gun that he had been carrying and said he would see who the person following was; that witness had gone a short distance towards his home when he heard a shot; and that the prisoner returned and went home with him and told him that he had shot a man who pointed a revolver at him. The other witness swore that prisoner told her on the following day that he had encountered a man who pointed a revolver at him when he levelled his gun and shot him. The trial judge directed the jury that in his opinion they could only convict the prisoner of murder or acquit him. He was convicted of murder and his conviction was affirmed by the full court. On appeal to the Supreme Court of Canada the prisoner claimed that the trial judge should not have directed the jury that they could not find a verdict of manslaughter.

Held, Duff ,J., dissenting, that the evidence justified the charge of the judge; that there was nothing on which a verdict of manslaughter could be based; and there was no substantial wrong or miscarriage shewn that would justify the court in ordering a new trial.

Appeal dismissed with costs.

J. M. McDonald and *Colin MacLeod*, for appellant. *Johnston*, K.C., and *N. M. Campbell*, for respondent.

Province of Ontario.

COURT OF APPEAL.

MERRITT *v.* CITY OF TORONTO.

Moss, C.J.O., Maclaren and Meredith, JJ.A., and Clute and Sutherland, JJ.] [June 28.

Waters—Right of riparian owner to access to navigable water—Marshy ground intervening.

One whose land is separated from navigable water by marshy ground is not a riparian proprietor in respect of the navigable water.

Ross v. *Village of Portsmouth*, 17 U.C.C.P. 195; and *Niles* v. *Cedar Point Club*, 175 U.S. 300, referred to; *Merritt* v. *City of Toronto*, 23 O.L.R. 365, affirmed on appeal.

H. M. Mowat, K.C., for plaintiff. *Drayton*, K.C., and *G. A. Urquhart*, for defendants.

HIGH COURT OF JUSTICE.

Britton, J.] MORRISON *v.* PERE MARQUETTE RY. CO. [Oct. 29.

Statutory duty—Railway — Neglect to furnish suitable accommodation for passengers at the station—Dominion Railway Act, s. 2 (31), 151, 167, 258, 284—*Damages.*

Action for damages for illness caused to plaintiff by reason of defendants not providing proper accommodation at one of their stations, there being no station-house. The plaintiff alleged that he caught a cold in relation to which he claimed damages. The jury found that the illness was caused by the absence of a station-house.

Held, under the above sections that the plaintiff had a right of action because of the breach of a statutory duty cast upon the defendants to furnish at all stopping places established for such purpose, adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage upon the railway; traffic including the traffic of passengers.

Quære, whether the plaintiff would have a right of action for compensation of such an injury on the ground that it was within the contemplation of the parties as the natural result of the breach by the defendants of their duty under a contract merely safely to receive and carry passengers.

Reference was made to *Hobbs* v. *London and South Western R. W. Co.*, L.R. 10 Q.B. 111; *McMahon* v. *Field*, 7 Q.B.D. 591; *Grinsted* v. *Toronto Ry. Co.*, 21 A.R. 578, 24 S.C.R. 570.

J. H. Rodd, and *W. G. Bartlett*, for plaintiff. *E. A. Cleary*, for defendants.

Falconbridge, C.J.K.B.; Britton, J.; Riddell, J.] [Nov. 6.

SMITH *v.* BARFF.

Principal and agent—Commission on sale of land—Meaning of "selling the property."

When a proposed vendor of a certain property tells an agent,

"we want to sell; of course, if we get our price we will sell," and a purchaser is brought and a bargain made, the right to the commission arises though the sale was never in fact carried out. The actual sale of the property is not essential; all that was meant by the words "selling the property" was the successful effort of the agent to procure a purchaser who signs a contract acceptable to the vendor.

Britton, J., dissented.

Reference made to *Peacock* v. *Freeman* (1888), 4 Times L.R. 541; *Regina* v. *Wyndham* (1862), 1 H. & C. 563, 574; *Robinson* v. *Reynolds* (1912), 3 O.W.N. 1262; *Donovan* v. *Hogan* (1887), 15 A.R. 432; *Sutherland* v. *Sutherland* (1912), 3 O.W.N. 1368; *Mackenzie* v. *Champion* (1885), 12 S.C.R. 649, 656, 659, 661.

L. C. Smith, for plaintiff. *D. Inglis Grant*, for defendant.

Boyd, C.] WILSON *v.* TAYLOR. [Nov. 7.

Mortgagor and mortgagee—Power of sale—Limits of mortgagee's responsibility to get the best available price—Want of due care and diligence.

Action for damages for sale of the plaintiff's property by the defendant, a mortgagee, under the power of sale in a mortgage.

BOYD, C.:—It has been said that in exercising the power of sale in a mortgage, the mortgagee is acting as a trustee, and in explanation of that relation it has been further said that he should act in the same way as a prudent man would act in the disposal of his own land. The highest courts, however, have held that the mortgagee is not acting as a trustee, but only in pursuance of the powers conferred by the mortgage, and that he may first consult his own interest before that of the mortgagor, especially, I would think, in a case where the security, though adequate, may be difficult of realization. The effect of this state of the law is to displace the test of the prudent man dealing with his own property, in favour of a somewhat lesser degree of responsibility. The point is adverted to by Mr. Justice Duff in *British Columbia Land and Investment Agency* v. *Ishitaka*, 45 S.C.R., at p. 317, and has a bearing on the present case.

A valuable rule as to the obligations of the mortgagee is to be found in an appeal from Victoria to the Privy Council; viz., that

a mortgagee may be chargeable with the full value of the mortgaged property sold if from want of due care and diligence it has been sold at an undervalue, and the reference in such an event would be to charge the mortgagee with what, but for his wilful negligence and default, might have been received: *National Bank of Australasia* v. *United Hand-in-Hand* (1879), 4 App. Cas., at pp. 392, 411. In other words: the inquiry is, has the mortgagee been culpable to the extent of wilful default in exercising his power of sale?

Hutcheson, K.C., for plaintiff. *Whiting*, K.C., for defendant.

Riddell, J.] RE SEATON. [Nov. 11.

Will—Construction—"Real estate at" No. 62 — 'At' and 'In' Distinguished—Adjoining land.

Motion by executors for an order construing a will.

RIDDELL, J.:—It is contended that the word "at" in a will is synonymous with "in"—sometimes it is, but more often not. For example a devise of "all the estate . . . I have . . . in any lands . . . at Coscomb in the county of Gloucester" could not cover lands the manor of Farmcott but only lands in Coscomb: *Doe* v. *Greening* (1814), 3 M. & S. 171: so "lands situate at Dormstone" does not mean anything but lands situate within the parish and manor of Dormstone, per Fry, J., in *Homer* v. *Homer* (1878), 8 Ch.D. 758, at p. 764. "At or near" may mean "in or near:" *Ottawa* v. *Canada Atlantic R.W. Co.*, 2 O.L.R. 336, 4 O.L.R. 56; 33 S.C.R. 376.

But it is common knowledge that "at" very frequently indeed is not synonymous with "in"—it is not precisely synonymous with "in" in the present instance, but even if the argument of the Deputy Attorney-General be adopted, it means "that is" or something of that sort. "At" means often "near" *e.g.*, in *Wood* v. *Stafford Springs*, 74 Com. 437; *Howard* v. *Fulton*, 79 Tex. 231; *Harris* v. *State*, 72 Miss. 960; *Annan* v. *Baker*, 49 N.H. 161; *O'Connor* v. *Nadel*, 117 Ala. 595; *Bartlett* v. *Jenkins*, 22 N.H. 53; *W.O. St. R. Co.* v. *Manning*, 70 Ill. App. 239. And its original meaning is rather "near" than "in."

J. H. Spence, *W. N. Tilley*, and *E. C. Cattanach*, for several parties. *Cartwright*, K.C., for the Attorney-General.

Province of Nova Scotia.

SUPREME COURT.

Meagher, J.] [Nov. 12.

IN RE APPLICATION OF C. S. PELTON.

Towns Incorporation Act, R.S.N.S. (1900) c. 71, *ss.* 121-124—*Stipendiary magistrate—Tenure of office—Not an officer of the town—Resolution of council reducing salary—Provisions of Act held not to apply.*

The stipendiary magistrate of an incorporated town is an independent judicial officer appointed by the Governor in Council, and in no wise subject to the control or direction of the town council, the only relation of which body towards the magistrate is that they are required to fix his salary at an amount from $150 upwards.

The stipendiary magistrate, although holding office during good behaviour, is not an "officer of the town" holding office during good behaviour, and the provisions of the Towns Incorporation Act (R.S.N.S. 1900, c. 71, ss. 121 to 124), empowering a judge of the Supreme Court to reinstate such officer when improperly removed, or to rescind a resolution reducing his salary where such resolution is not passed in the exercise of the bonâ fide discretion of the town council, do not apply.

Where, therefore, a resolution was passed by the town council reducing the salary of the stipendiary, not in the exercise of the bonâ fide discretion of the council, but for the purpose of forcing him to resign with the intention of securing the appointment of a successor whose decisions in connection with liquor license prosecutions would be more in accordance with the wishes of certain members of the council.

Held, that the court was powerless to interfere.

Mellish, K.C., and *Kenny*, for applicant. *Roscoe*, K.C., contra.

Townshend, C.J.] THE KING *v.* FRASER. [Nov. 13.

Intoxicating liquors—Nova Scotia Temperance Act, 1910, *as amended by Acts of* 1911, c. 33, *s.* 8—*Second offence—Punishment by imprisonment—Term of—Application for discharge under order in nature of habeas corpus—Affidavit of committing magistrate not received—Words "liable to imprisonment."*

An application for the discharge of defendant from gaol,

under an order in the nature of a habeas corpus, was based upon the one ground that the committing magistrate, in sentencing defendant for a second offence against the provisions of the Nova Scotia Temperance Act, 1910, as amended by Acts of 1911, c. 33, s. 8, was under a misapprehension as to his powers, and sentenced the defendant for a longer term (three months) than he would have done if he had any discretion in the matter. An affidavit to this effect from the magistrate was produced upon the hearing of the application.

Held, 1. It was not competent for the magistrate to make such an affidavit, or for the court to consider such a question, the only question being whether or not the defendant was legally detained in custody.

2. The gaoler having returned a good warrant, based upon a conviction which was not attacked, and which was apparently regular, and the law justifying the sentence imposed, the prisoner was legally detained.

3. The court could not, on this application, review the action of the magistrate on the merits, or send the prisoner back to the magistrate to impose a lighter sentence.

Obiter, as to the interpretation of the words "liable to imprisonment" in the amending Act (Acts of 1911, c. 33, s. 8) that the magistrate was right, the law is obligatory, and he had no discretion in the matter.

J. Philip Bell, for prisoner. *J. L. Ralston,* for prosecutor.

Full Bench.] THE KING *v.* ANNIE MCNUTT. [Nov. 19.

Intoxicating liquors—Nova Scotia Temperance Act, Acts 1910, *c. 2, s.* 44*—Second offence—Imprisonment for, imposed—Question as to previous conviction—Admissibility of evidence—Procedure—Motion for discharge of prisoner under habeas corpus refused.*

The Nova Scotia Temperance Act, 1910, Acts 1910, c. 2, s. 44, with respect to proceedings upon any information for committing an offence against the provisions of Part 1, in case of a previous conviction or convictions being charged enacts that, "(a). The magistrate shall, in the first instance, enquire concerning such subsequent offence only, and if the accused is found guilty thereof he shall then, and not before, enquire concerning such previous convictions, etc."

On the trial of defendant the prosecutor was called as a witness and was asked by the prosecuting counsel whether the accused had been convicted of keeping intoxicating liquor for sale during the last year and the prosecutor replied that she had.

Held, refusing an application for the discharge of the defendant under habeas corpus, that this was not an enquiry by the magistrate within the meaning of the statute.

R. v. *Passerini* (Chambers judgment of Russell, J.), distinguished.

Held, also, that the words of the statute are only directory as to the procedure to be adopted.

Power, K.C., for defendant. *Ralston,* for prosecutor, contra.

Province of Alberta.

SUPREME COURT.

Harvey, C.J., Simmons, and Walsh, JJ.] [Oct. 4.

ST. GERMAIN *v.* L'OISEAU.

Brokers—Commission of real estate agent—Causa causans essential—Sale of lands.

Held, 1. Although it is clearly the law that an agent may not be disentitled to the commission on a sale of lands, merely because the actual sale takes place without his knowledge, if his acts really brought about the relation of buyer and seller; yet, in a case which the agent fails to shew that some act of his was the *causa causans* or an efficient cause of the sale, he cannot recover.

Burchell v. *Gowrie,* [1910] A.C. 614, specially referred to.

2. Where an agent claims commission under a contract for negotiating the sale of lands, the determining principle is that he must have brought the vendor and purchaser together, not necessarily a personal introduction, but one through which the purchaser knew that the land of the vendor was for sale; and the absence of that element is fatal to the claim.

H. A. Mackie, for plaintiff, appellant. *H. L. Landry,* for defendant, respondent.

Book Reviews.

The Law of Misrepresentation in relation to limited liability companies. By A. MONTEFIORE BRICE, Barrister-at-law. London: Sweet & Maxwell, 3 Chancery Lane. 1912.

This is a short introduction to a large subject. The first part of this volume of 120 pages defines and explains the meaning of the term misrepresentation. The general law on the subject is then given by reference to the leading cases with notes thereon, followed by short chapters on the action of deceit; rescission; delay and acquiescence; estoppel; defence of misrepresentation to action for specific performance, concluding with a chapter on criminal liability, and prosecution of directors and other officers and agents of companies for offences connected with fraudulent misrepresentation. An excellent and readable summary.

The Law of Negotiable Securities. Six lectures delivered at the request of the Council of Legal Education. By WILLIAM WILLIS, K.C. Third edition, by JOSEPH HURST, Barrister-at-law. London: Stevens & Haynes, Bell Yard, Temple Bar. 1912.

These lectures were originally intended not only for students of the four Inns of Court, but also for practising barristers and solicitors, and the general public; the hope of the lecturer being, by a simple exposition of the law to enable men of business as well as students and practitioners to understand more clearly the principles underlying the subject without going into details or any general citation of authorities. The subject though legal is not treated in a manner which is legal, not too dry for a man of business nor yet too light for the members of the legal profession. The subject is of course of large proportions, and the birdseye view of it given by the original lecturer and by the last editor is very readable and illuminating.

The World's Legal Philosophies. By FRITZ BEROLZHEIMER, President of the International Society of Legal and Economic Philosophy, at Berlin. Boston: The Boston Book Company. 1912.

This is the second volume of a series known as the modern legal philosophy series, the first volume being entitled the

Science of Law, by Karl Gareis. The book before us is translated from the German, and comes with an introduction by Sir John Macdonell, Professor of Comparative Law in University College, London. We confess our inability to worthily review a book of this character. It is sufficient, perhaps, for most of our readers, to quote that "philosophies become effective through their practical issues; they form theoretical skirmishes in a political evolution revolution; they accomplish their purpose as a political influence." We necessarily deal, as do our readers, with the practical side and with the practical issues which sometimes become effective through theoretical philosophic skirmishes, but more generally through the practical needs of a practical people. This series, doubtless, has its useful place and law libraries should be supplied with it. The chapters giving the origin of oriental civilization from ancient Egypt downward, give interesting reading to the general readers as well as to professional men, though they may skip the hard places.

Principles of Civil Jurisdiction as applied in the Law of Scotland. By GEORGE DUNCAN, M.A., lecturer on International Law in the University of Aberdeen, and D. OSWALD DYKES, M.A., Advocate. Edinburgh: William Green & Sons, publishers.

The object of this work, as the preface tells us, is to set forth the principles of civil jurisdiction ratione personæ, primarily as they are recognized in the law of Scotland. It is in effect a very learned discussion on one of the leading questions of private international law, viz.: In what forum should actions involving a foreign relation be brought? It necessarily deals largely with Scotch law, but will be of much interest to students of international law. The value of the work has been fully recognized by that most distinguished writer, Professor Dicey in an article published in the *Law Quarterly*. He speaks of it as a remarkable treatise and "a very noteworthy contribution towards the systematic study of private international law, it being in truth an elaborate monograth on the limits of the jurisdiction of the Scottish Courts."

Bench and Bar.

RETIREMENT OF HIS HONOUR JUDGE ARDAGH.

The Senior Judge of the County Court of the County of Simcoe, John Anderson Ardagh, retired last month from the County Court Bench of which he had been a distinguished member for over forty years.

It is sad to have to record that a useful life or a brilliant career has been cut short by death, but far otherwise when the duty is to note that a public man who has done faithful service retires to enjoy a well earned rest from the work which has claimed and received his attention for a long period of years.

The county of Simcoe was exceptionally fortunate in that it had for its first County Court Judge the late James Robert Gowan, who, subsequently to his retirement was a senator of the Dominion, and was honoured by knighthood and the title of K.C.M.G. He occupied that position from January 1843 until October 1883, when he was succeeded by his brother-in-law, Mr. Ardagh, who had been junior judge of the county since 1872. Mr. Ardagh had, therefore, on his recent retirement from the bench also fulfilled the same long term of service as his predecessor. Certainly no county of this Dominion has been more fortunate in its judicial service during a period of nearly seventy years than has the county of Simcoe by the two judges who have dispensed justice therein. This interesting incident is, we think, unique, and worthy of note.

If, as has often been said, and is generally admitted, that Judge Gowan was facile princeps amongst our County Judges, it is equally true that his worthy successor, Judge Ardagh, has earned the esteem and respect of the bar and the public to an extent most gratifying to himself and to his many friends. We join with them in wishing him a long enjoyment of the leisure which cessation from judicial work will give him, having also, as he will have, the pleasant remembrance of a long, useful, and well-spent life.

Flotsam and Jetsam.

NEW WAY TO MAKE LAWYERS.—Special Courts Proposed Where Students May Receive Year's Training. The college-trained young lawyer is now in the spotlight of educational controversy. It is admitted that a course in a school of law is indispensable, but it is also agreed that young men fresh from law classes lack something of importance which those who were graduated in the old days directly from a lawyer's office possessed. The educators are not very explicit in naming the "lacking qualities." Perhaps the student spends too much time with his books and not enough in the court-room. One facetious critic thinks the law schools ought to put in a course on Starvation, original research work to be required the first five years after graduation. As a substitute for this graduate work in Starvation, Chancellor Elmer Ellsworth Brown, of New York University, and some of his university associates, suggest a solution of the difficulty through statutory provisions under which law school graduates, fresh from their studies, might practice in certain courts under supervision analogous to that to which the hospital interne is subjected. It has even been suggested that a special court might be constituted for the purpose, in which such supervised practice might, in certain classes of cases, be provided gratuitously for clients who are unable to pay. Humanity has managed to struggle along with the medical interne. Why not give the young lawyer his chance at hospital practice?—*New York University (Department of Journalism)*.

FINGER PRINTS.—About one year ago it was announced that in the case of Indians who could not write their names an impression of their left thumb would be required by the United States authorities, instead of the old-time cross and "his mark." It was perhaps the most important innovation of the kind since the adoption of the Bertillon system in American police offices. The effect has been watched very closely by bankers throughout the country. The North Side Bank, in New York City, has adopted the finger-print system, and is said to be the third to do so, the other two being the Williamsburg Savings Bank and the Maiden Lane Bank. Instead of the thumb, the North Side Bank takes the imprint of three fingers of the right hand,—the tips of the index, middle, and third fingers.

One of the greatest difficulties with which banks have to contend pertains to identifications. A signature can be duplicated so closely as to be mistaken even by experts, especially during the rush of business and without a microscopical examination. But it is pretty generally admitted to-day that a man's finger prints cannot be forged, and that they are as characteristic of their owner as is his personality. Bankers believe that it is only a question of time before the system will be in general use.—*Case and Comment.*

Much has been said lately about the delays and uncertainties in connection with the criminal law in the United States, and the laudable efforts of those who seek some measure of reform. The simple method adopted by the child of nature spoken of in the following extract will doubtless meet with the approval of many. The story is as follows:—

Opie Reed says when he lived in the mountains of Eastern Tennessee a tall, old, gaunt hillsman came down from across the Kentucky border one day and told him this story:—

"Son," he said, "I've been having a right smart trouble lately with them dad-fetched Hensley boys. The whole passel of 'em live right up the creek a little piece above my place, and here lately they tuck a sort of a grudge ag'inst me. Every night when I went out to feed my stock they'd be hid in the brush fence at the lower end of my hoss-lot, and they'd shoot at me. "I got tired of it. I'm gittin' along in years and I can't see to aim a gun the way I could oncet, on account of my eyesight; but I jest made up my mind the other night that I wouldn't stand it no more. I'm peaceable, but there's a limit to everything; so that night when I went out to feed I taken my old gun along with me. Shore enough, they was ambushed in the same place, and they cut down on me jest as soon as I come into sight. "So I upped with my gun and I sort of sprayed them bushes with a few bullets. That seemed to quiet 'em down, and I went on with my feedin'; but in about an hour I felt sort of curious and I walked down to that there bush fence and taken a look. And, son, all them Hensleys was gone but three!"

ANALYTICAL INDEX

Accident—
Due to workman's disobedience, 449.
See Defective premises—Explosives—Municipal law—Mines and mining—Railway—Workmen's Compensation Act.

Accord and satisfaction—
Consideration, 398.

Account—
See Appeal.

Action—
The conduct of discussed, 47.
Settlement of by solicitors or counsel, 36.

Adjoining—
Meaning of, 255.

Administration—
Acknowledgment by executors of statute-barred debt, 257.
Assignment of equity of redemption—Right to follow assets, 382.
Bank advances for maintenance of lunatic's household, 257.
Costs in action based on default, 298.
See Annuity—Will.

Adulteration—
Purchase for analysis, 453.

Admiralty—
See Maritime law.

Admissions—
See Evidence.

Affidavits—
Humorous mistakes in, 103.

Agent—
See Principal and agent.

Agreement—
See Contract.

Alimony—
Amount of—Husband's income, 231.

Ancient lights—
Obstruction—Measure of damages, 497.
See Light.

Annuity—
Arrears—Interest—Administration action, 261.
See Bankruptcy.

Apartment house—
See Vendor and purchaser.

Appeal—
Our court of final appeal—Discussion, 205.
Stay of account pending appeal, 16.
See Arbitration.

Appearance—
See Practice

Arbitration—
Action of contract—Award made pendente lite—Invalidity, 701.
Appeal, 626.
Appointment of umpire, 500.
Lease—Application to stay action, 383.

Assessment—
See Railway.

Assignment—
Assent by creditor—Withdrawal of assent—Estoppel, 700.
To delay creditors—Chattel mortgage, 468.

Auctioneer—
Debt due from owner to purchaser—Set-off, 458.

Automobile—
See Motor car.

Bailment—
Possession as against a wrongdoer, 109.

Bank—
See Administration—Mortgage—Principal and agent.

Bankruptcy—
Broker—Sale of customer's securities, 219.
Debentures—Worthless—Accepted by mortgagee, 218.
Money advanced to bankrupt for specific purpose, 610.
Provable debt—Annuity subject to condition, 196
Receiver—Fraudulent receiver, 306.
Trustee—Right to recover preferential payment, 219.
See Composition with creditors—Fraudulent preference.

Becker verdict—
Discussion of, 645.

Bench and Bar—
Lawyers not layment should be public officers, 91.
Lawyers soliciting business, 256.
Shyster lawyers, 373.
Drayton, H. L., K.C., Chairman Dominion Railway Board, 473.
English law and lawyers, 493.
Hamilton Law Association, 117.
Nicol Kingsmill, K.C.—Sketch of his life, 529.
Henderson, Mr. James, Obituary notice, 39.
Judicial pensions, 600.
Judicial character as made by English judges, 418.
Judicial appointments in England, 447.
Law Society of Upper Canada, 312.
Mabee, Hon. James P., Obituary notice, 313.
Moss, Sir Charles, Obituary notice, 597.
Ontario Bar Association, 79.
Osgoode Hall, Toronto, 276.
Recent judicial changes and appointments, 637.
Retirement of Judge Ardagh, 714.
Robson, Lord, resignation of, 494.
Salaries of Superior Court judges, 644.
Taking the Bench out of party politics, 607.
Women—Admission of to bar, 159.
Judicial appointments and appointments to office, 80, 116, 160, 199, 278, 312, 471, 636, 675.
See Law Societies.

Bengal—
Trials in, discussed, 331.

Bigamy—
Evidence as to authority to perform ceremony—Bona fides, 397.

Bills and notes—
Obtained by fraud—Injunction, 108.
Signature—Blank note—Bona fide holder, 104.
President of proposed company, 35.

Bonds—
Redemption "at lowest price," 436.
See Forgery.

Book reviews—
Aiyor's Current English Decisions Appertaining to Indian law, 510.
Bentwich on the Practice of the Privy Council, 547.
Beralzheimer on the world's legal philosophies, 712.
Brice's law of Misrepresentation in relation to Limited Liability Company, 712.
Chitty's Statutes of Practical Utility, 311.
David's Law of Motor Vehicles, 114.
Duncan and Dykes on Principles of Civil Jurisdiction as applied in the Law of Scotland, 713.
Goodeve's Modern Law of Personal Property, 335.
Harris' Principles of the Criminal Law, 596.
Holmested's Sunday Law in Canada, 311.
Holmested and Langton's Forms and Precedents, 114

Book reviews—*Continued.*
Kingsford on Evidence, 113.
Law Magazine and Review, 160.
Law Quarterly Review, 160.
Lindley's law of partnership, 595.
Pollock, Sir Frederick, on the genius of the Common Law, 335.
Snell's Equity, 115-334.
Willis on the Law of Negotiable Securities, 712.
Wilshere's Elements of Criminal Law and Procedure, 38.
Wilshere's Selection of leading cases illustrating the Criminal Law, 336.

British North America Act—
See Constitutional law.

Broker—
See Insolvency.

Brougham, Lord—
Incidents in his life, 92.

Building restrictions—
Store or manufactory—Ladies' tailor, 672.
See Vendor and purchaser.

Building society—
Ultra vires acts—Winding-up—Surplus assets, 495.

By-law—
See Municipal law.

Caveat—
See Vendor and purchaser—Real Property Act, Manitoba.

Champerty—
See Solicitor.

Chattel mortgage—
Sale under powers—Offer to redeem, 149.
Assignment to delay creditors, 468.

Chose in action—
Assignment of—Fraud of assignor, 191.
Cause of action for injury, 109.

Commission—
See Principal and agent.

Commissions—
County Judges and Municipal Investigations, 97.
Investigation of Dominion Government administration, 12.
To act in absence of King, 20.
What is being done by Public Utility Commissions, 323.

Common law—
Remedy at, where statute gives right of action, 639.

Company—
Bondholders—Trustee for—Purchase of bonds at lowest price, 307.
Debentures—Action by debenture holders—Receiver, 498.
Floating charge on present and future property—Loan to effect subsequent purchase—Priority, 462.
Power of majority to bind minority, 466-540.
Remuneration of trustees, 14.
Majority binding minority—Lease, 502, 506.
Name of—Similarity to that of registered company—Mandamus, 543.
Receiver—Lien against for previously unsatisfied freight, 389.
Shares—Agreement to re-purchase—Seal, 112.
Illegal issue at discount, 270.
Officials signing certificates—Estoppel, 22.
Stock as distinguished from, 15.
Shareholder—Attending meeting—Estoppel, 270.
Solicitor—Authority of—Unorganized company, 634.
Becoming a director, 633.
Winding-up—Calls—Set-off, 298.
Bank—Transfer of shares after commencement—Estoppel, 633.
Evidence of directors in support of petition, 634.
See Building society—Costs—Directors.

Composition with creditors—
Consideration, 161.

Computation of time—
See Sunday.

Confessions—
Discussion as to, 648.

Consideration and compositions with creditors—
Discussed, 161.

Conspiracy—
See Pleading.

Constitutional history—
Address by Mr. Justice Riddell, 96.

Constitutional law—
Putting questions to courts under B.N.A. Act, 504-507.
Quebec Sunday Act, 439.
Recall of judges, 96.
See Justice of the Peace—Marriage.

Contempt—
Abuse of process, 435.
Hearing in camera—Publication of evidence, 99.

Contract—
Breach of—Liquidated damages or penalty, 436.
Measure of damages, 460.
Mitigation of damages, 626.
Building—Payment on completion to satisfaction of engineer, 235.
Employement requiring secrecy—Detective agency, 304.
Municipal corporation—Not under seal, 694.
Power of notification, 67.
Statute of Frauds—Not to be performed within one year, 18, 225, 413.
Sub-contract in identical terms—Assignment, 311.
Rescission of discussed, 70-647.
Waiver of right to rescind—Settlement of claim, 273.
See Vendor and purchaser.

Correspondence—
Modern collection methods, 262.
Police Commissioners, 670.

Costs—
Company—Winding-up—Delivery of bill, 467.
Not paid but payable, 394.
Power of court—To make real litigant pay, 23.
To remedy hardship, 112.
Security for—Action by bankrupt for personal earnings, 628.
Solicitor and client—Appeal—Bringing in objections, 198.
Delivery of bill by post—Date of delivery, 216.
Costs based on percentage of amount recovered, 238.
Trial before referee—Separate issues—No order as to costs of issue on which plaintiff succeeded, 627.
See Dominion Controverted Elections Act—Mortgage—Solicitor and client—Vendor and Purchaser—Will.

County court judge—
See Statutory officer.

Covenant—
See Landlord and tenant.

Creditors' Relief Act—
Preferential lien of parties to interpleader proceedings, 438.

Criminal law—
Accessory after the fact—Removal of incriminating articles, 103.
Bribe to procure office under the Crown—Indictment, 75.
Charge to jury—Misdirection, 704.
Double plea—Autrefois acquit—Not guilty, 19.
Evidence—Illegal operation—Statement by deceased, 543.
Oath of stenographer, 240-3[illegible]9.
Wife of person charged as witness, 433.
New trial—Right to re-elect—Use of evidence on second trial, 157.
Specific administration of, 290.
Speedy trial—Charge other than that for which committed, 439.
Uncompleted plea, 296.
Vagrancy—Money derived from begging, 24.
Venue—Change of—Publication of names of jurors—Newspaper comment, 509.

Criminal law—*Continued.*
Becker verdict discussed—Prompt trial, 645.
Wounding in self-defence, 667.
See Bigamy—Forgery—Gaming—Murder.

Cross-Examination—
As to character, 253.
Prisoner's right to, 689.

Crown and parliament—
Respective rights of, 489.

Crown grant—
Conflicting claims—Evidence—Trespass, 507.

Dame Haughton—
Sad story of—Poetic version, 690.

Damages—
Excessive verdict—Assessment by Court of Appeal, 79.
Injury caused by shock—Neurasthenia, 237.
See Contract—Eminent Domain—Negligence—Trustee—Vendor and purchaser.

Debentures—
See Company.

Deceit—
Action of—Fraudulent intent, 227.

Defective premises—
Liability for injuries caused by, 41.

Detective agency—
See Contract.

Democracy versus Republicanism—
Discussed, 241.

Deposit—
See Vendor and purchaser.

Directors—
Responsibility for amount of judgment against corporation in libel suit, 533.

Disallowance—
Discussion on, 178.

Discovery—.
Admission of possession of documents other than those produced—Further affidavit, 217.
Disclosing names of witnesses, 77.
Interrogatories—Particulars, 37.
Officers of company—Fire warden, 158.
Refusal of servant to produce—Action in foreign court, 102.
Refusal to answer questions, 34.
See Maritime Law.

Distress—
See Landlord and tenant.

Division courts—
Jurisdiction of, 545.

Divorce—
Acts of cruelty—Evidence, 275.
Statistics, 606.
Jewish—Discussion of, 248.

Document—
See Transmission.

Domicile—
Subject discussed, 474, 532.

Dominion elections—
See Elections.

Dominion legislation—
Discussion of, 117.

Drayton, H. L., K.C.—
Chairman Dominion Railway Board, 473.

Duress—
Money paid under compulsion of legal process, 535.

Easement—
Implied right of way—Plan on lease, 463.

Editorials—
School Reserves in British Columbia, 1.
The case of the McNamaras, 4.
The collected papers of F. W. Maitland, 6.
Lessee's covenants to repair, 8.
Liability for injuries caused by defects in premises, 41.
The Rule in Shelley's Case, 45.
The conduct of an action, 47.
Powers of notification in contracts, 67.
The Conveyancer, 70.
Ejusdem generis, 72.
The marriage question, 81.

Editorials—*Continued.*

The Ne Temere Decree and the Supreme Court, 84.
The marriage laws of Canada—Defects in and suggestions for improvements, 88.
Lord Brougham, 92.
Vendor and purchaser—Stipulations limiting the obligation of vendors of real property to shew a good title, 122.
Consideration and compositions with creditors, 161.
Disallowance, 178.
Journalistic etiquette, 180.
The liberty of the subject, 181.
Marriage with foreigners, 182.
Feigned issues, 201.
Our court of final appeal, 205.
Sterilization of the unfit, 207.
The law as to trade secrets, 208.
Democracy v. Republicanism, 241.
Negligence—Rule of the road, 245.
Jewish divorces, 248.
Ontario legislation, 249.
Does a will operate from death? 251.
Mechanics' Liens—Repairing property at instance of vendee in a conditional sale, 252.
Cross-examination as to character, 253.
The meaning of "adjoining," 255.
When the last day falls on a Sunday, 281.
In what cases can a trustee appoint an attorney, 288.
Scientific administration of Criminal Law, 290.
The Railway Board and its late Chairman, 313.
Deduction of insurances in th mputation of damages payable under Lord Campbell's Act, 314.
International rights, 317.
Misconduct of juries, 320.
Appointment of new trustees, 322.
What is being done by public utility commissions, 323.
Settlements by solicitors and counsel, 361.
Subject or citizen—Imperial naturalization, 370.
Exchequer Court, 372.
The shyster lawyer, 373.
International law—The spy mania, 378.
Seducing soldiers from their duty, 379.
Execution of works authorized by statute, 380.
The Ontario Bar Association and Osgoode Hall, 401.
The Fraser Case, 404.
Religious Institutions Act, 406.
The international regulation of ocean travel, 407.
Contracts not to be performed within one year, 413.
The judicial charact . as made by English judges, 418.
An electoral abuse, 441.
Juvenile delinquents, 442.
Solicitor acting for opponent of former client, 444.
Canadian marriages, 446.
Judicial appointments in England, 447.
The Titanic report, 448.
Accident due to workman's disobedience, 449.
Mr. H. L. Drayton, K.C., Chairman of the Railway Commission, 473.
Domicile, 474.
The Crown and Parliament, 489.

Editorials—*Continued.*

Liability of merchants as to articles of explosive character, 491.
Stories of English law and lawyers, 493.
Payment by a stranger, 513.
Living epistle for lawyers—The late Nicol Kingsmill, K.C., 529.
Domicile—Moorhouse v. Lord, 532.
Responsibility of directors for amount of judgment against corporation in libel suit, 533.
Money paid under compulsion of legal process, 535.
Osgoode Hall, Ontario, 536.
International Law Association, 537.
The late Sir Charles Moss, 597.
Judicial pensions, 600.
Workmen's Compensation for injuries, 602.
The divorce record of 1912, 606.
Taking the Bench out of party politics, 607.
Novel judicial procedure, 608.
Re McLeod and Amiro, 610.
Money advanced to bankrupt for specific purpose, 610.
Fraud by agent, 612.
Married woman's estate on her death intestate, 616.
Anomalies in the law of light, 617.
The law relating to real estate agents, 549.
The forcible recaption of chattels, 581.
Recent judicial changes and appointments, 637.
The new procedure in Ontario, 640.
Salaries of superior court judges, 644.
The Becker verdict, 645.
Rescission of executory contracts, 647.
Confessions, 648.
Judicial legislation in Egypt, 658.
Evidence of previous convictions, 665.
Wounding in self-defence, 667.
Clinton v. Lyons in verse—The cat case, 668.
Sunday law respecting provincial railways, 677.
Disregarding findings of fact by a jury, 684.
English law reform, 687.
Possession by mortgagee, 688.
Prisoner's right of cross examination, 689.
The sad story of good Dame Houghton, 690.

Egypt—

Judicial legislation discussed, 658.

Ejusdem generis—

Cases as to doctrine of, 72.

Elections—

Dominion—Practice—Time for filing preliminary objections, 111.
Security for costs—Affidavit verifying petition—Proof of list, 153.
Municipal—Affidavit before Commissioner appointed under Provincial Elections Act, 159.
Councillor—Qualification as mortgagee, 393.
Quo warranto—Municipal Act, R.S.M. 1902, ch. 116, 238.
Electoral abuses, 441.

Electric company—
Poles, erection of—Consent of municipality, 630.

Eminent domain—
Damages—Value for special use, 307.

Employers' Liability Act—
See Workmen's Compensation Act.

Encroachment—
Statutory power to make vesting order—Payment to mortgagee, 231.

English law and lawyers—
Stories of, 493.

English law reform—
Discussion of, 687.

Equity of redemption—
See Mortgage.

Estoppel—
Res judicata—Second action to recover rent under same agreement, 19.
See Assignment—Company.

Evidence—
Confessions and admissions, 310.
Of previous conviction—Discussion on, 665.
Translation of, 439.
Weight to be given to opinion of trial judge, 451.
See Bigamy—Criminal law—Divorce—Insurance—Practice—Summary conviction—Workmen's Compensation Act.

Exchequer court—
Appointment of Dr. Charles Morse as Registrar, 372.

Executor and administrator—
Judgment against de bonis propriis, 542.
Payment by executor to assignee to take assignment, 13.
Right to pledge chattels, 299.
See Will.

Execution—
Interest of certified holder of mining claim before issue of patent—Tenant-at-will, 545.

Explosives—
Liability for injuries caused by, 491.

Extradition—
Arrest on telegram—Sufficiency of information, 673.
Discharge from custody—Lapse of two months after arrest, 629.
Requisition for surrender, 500.

Fatal Accidents Act—
Action by mother and by widow as administratrix, 333.

Feigned issues—
Discussion as to, 201.

Flotsam and jetsam—
118. 199, 240, 278, 312, 399, 471, 511, 548, 596. 636, 576, 715.

Forcible reception of chattels—
Discussion as to. 581.

Foreclosure—
See Mortgage.

Foreign corporation—
See Practice.

Forgery—
Bill of exchange—Partner forging firm name, 222.

Fraser case—
Discussion on, 404.

Fraud—
By an agent, 612.

Fraudulent preference—
Assignment to delay creditors, 468.
See Bankruptcy.

Gaming—
Conviction for playing or looking on, 28.
Illegal consideration—Void debt, 16.
Lottery—Purchase of chance for prize, 499.
See Criminal law.

Gift—
Verbal—Delivery of possession, 197.

Grand Trunk Pacific Railway—
Guarantee by Dominion Government of bonds, 228.

Habeas corpus—
Vagrant—Common law and statutory powers, 309.
See Liquor license.

Hebert case, The—
See Marriage.

Henderson, Mr. James—
Obituary notice, 39.

Highway—
Power of railway to dedicate, 465.
See Municipal law.

Husband and wife—
See Alimony—Bigamy—Divorce—Marriage—Married woman—Separation deed.

Indictment—
See Criminal law.

Infant—
Custody of—Interest of child, 78, 332.

Injunction—
See Bills and notes—Solicitor and client—Sale of goods—Trade mark.

Injury—
Assignability of cause of action for, 109.

Insanity—
See Murder.

Insolvency—
See Bankruptcy.

Insurance—
Accident—Condition precedent, 220.
Evidence—Renewal receipt new contract, 332.
Life—Breach of condition—Subsequent acceptance of premiums, 193.
Deduction of in computation of damages, 314.
Misrepresentation by agent—Inducement to insure, 704.
Payable to wife—Loans to be made good from general estate—Will, 234.
See Maritime law.

Interest—
See Annuity—Mortgage.

International rights—
Discussion as to, 317.

International law—
The spy mania, 378.
See Extradition.

Journalistic etiquette—
Discussion of, 180.

Judgment—
Declaratory—Relief against Crown, 257.
Realizing on—Deed from judgment debtor, 110.
See Practice.

Judicial appointments—
See Bench and Bar.

Judicial character—
See Bench and Bar.

Jury—
Disregarding finding of fact by, 684.
Misconduct of, 320.

Jury notice—
See Practice.

Justice of the peace—
Stipendiary magistrate—Jurisdiction—Appointment — Constitutional law, 232.
Not officer of town under Nova Scotia Act, 709.
Power to state case, 217.

Juvenile delinquents—
Courts for, 442.

Kingsmill, Nicol, K.C.—
Sketch of his life, 529.

Landlord and tenant—
Assignment of reversion—Attornment, 628.
Construction of statute—Notice to be sent by post, 300.
Covenant running with land—Right of statutory assignee of reversion to sue, 257.
Demise—When terminable, 386.
Distress—Goods comprised on hire purchase agreement, 700.
Purchase of goods by landlord, 459.
Lease—Outstanding legal estate—Notice to determine by equitable owner, 698.
Contract for—Breach of agreement—Liquidated damages or penalty—Not to assign without leave, 227.
Covenant to pay for improvements, 468.
Covenant to repair, 8.
Liability of landlord for dangerous condition of premises, 233.
See Arbitration.

Law societies—
International Law Association, 537.
Ontario Bar Association and Osgoode Hall, 401.

Lease and leasehold—
See Landlord and tenant—Vendor and purchaser.

Legal Professions Act—
Construction of—Admission of women, 159.

Lennox, Hon. Mr. Justice—
Notice of appointment, 287.

Libel and slander—
Joinder of parties, 239-308.
Mercantile agency reports to subscribers, 99.
See Directors—Practice.

Liberty of the subject—
Discussion on, 181.

Lien—
Woodman's Lien for Wages Act, 25.
See Mechanics' Lien.

Liquor Act—
See Liquor license.

Liquor license—
Imprisonment for violation of Nova Scotia Temperance Act, 1910, as amended by Acts of 1911, habeas corpus, 709.
Under Nova Scotia Temperance Act, 1910, ch. 2, sec. 44—Evidence—Habeas corpus, 710.
Regulation of, by-law, 37.
Renewal—Trial, 508.
Sale during prohibited hours, 275.

Light—
Anomalies in law of, 617.
Ancient—Measure of damages, 497.

Local option—
See Municipal law.

Lottery—
See Gaming.

Lunacy—
Personal service on lunatic—No presumption against if in asylum, 33.
Power of Divisional Court to examine lunatic and to take fresh evidence, 631.

Mabee, Hon. James P.—
Obituary notice, 313.

Magistrate—
See Justice of the Peace.

Maitland, F. W.—
The collected papers of, 6.

Mandamus—
See Company.

Maritime law—
Charter party—Condition of—Party incorporated in bill of lading, 223.
Consequential damage—Admiralty and common law rule, 692.
Demurrage, 220.
Strike—Time charter, 224.
Collision—Foreign defendants—Voluntary appearance—personal liability, 99.
Launching vessel—Negligence, 433.
Tow in collision with third vessel, 230.
Value of sunken ship—Discovery, 538.
Fire—Caused by unseaworthiness—Liability, 195.
Foreign vessel—Fishing within three mile limit—Seizure, 158.
Insurance—Floating dock—Concealment—Unseaworthiness, 452.
Leak in hulk at moorings, 503-506.
Seaman—Desertion—Forfeiture of wages, 221.
Several carriers—Each responsible only for his own act, 226.

Marriage—
Canadian marriages discussed, 81, 84, 88, 147, 446.
Irish Marriage Act—Conflict of laws, 390.
With deceased wife's sister, 502.
With foreigners, 182.

Marriage Act—
An Act to amend, 117.

Married woman—
Estate of when died intestate, 616.
See Partition action.

Mason, Mr. J. Herbert—
Obituary notice, 40.

Master and servant—
Implied authority—Negligence—Liability of master, 703.

McLean, A. F.—
Obituary notice, 116.

McLeod v. Amiro—
Discussion on case of, 610.

McNamaras, The—
The case of discussed, 4.

Medical adviser—
See Workmen's Compensation Act.

Mines and mining—
Accident—Negligence—Pentice, 197.
Construction of statute—What is a mineral, 226.
Reservation of pine timber—Trespass, 392.
Time for performance of work, 23.
See Mortgage—Execution.

Mistake—
Recovery of money paid by, 539.

Money Lenders Act—
Registered name—Misdescription, 452.
Security taken by unregistered money lender—Course of his business, 453.

Mortgage—
Equity of redemption—Clog on—Agreement dehors the mortgage, 225.
Grant of exclusive mining rights, 75.
Right to redeem in spite of restrictions, 504.
Assignment—Obligation to indemnify assignor, 250.
Opening foreclosure, 495.
Possession by mortgagee, 688.
Power of sale—Order absolute not taken out, 36.
Mortgagee responsible for best available price, 707
Priority—Leasehold, 405.
Receiver in second mortgagee's action—claim by first mortgagees for possession—rents, 697.
Security for money advanced by bank—Mortgaged property specifically devised, 497.
Tender by mortgagor—Stoppage of interest, 260.
See Administration—Practice.

Mortgagee—
See Encroachment—Real Property Act (Man.)—Title.

Moss, Sir Charles—
Obituary notice, 597.

Motor car—
User at night without light, 499.
See Negligence.

Moving picture show—
Danger of fire, 189.

Municipal law—
Accident to person using street, 101.
Closing streets—Time for appeal, 151.
Investigations by County Judges, 97.
Local option by-law—Ballot not in prescribed form, 107.
By-law—Summons to quash—Practice, 154.
Obligation to repair highways, 22.
Plan of sub-division—Refusal of approval, 37.
Purchase on credit of site beyond limits of municipality, 268.
See Contract—Elections—Practice.

Murder—
Plea of insanity, 105.

Naturalisation—
Imperial—Discussion, 370.

Negligence—
Bailment—Injury to horse kept for reward, 153.
Collision with street car—Duty of driver, 397.
Driving on wrong side of street, 109.
Fall of wall of damaged building, 272.
Motor vehicle—Duty of driver, 30.
Rule of the road, 245.
Savage animal—Liability of owner—Remoteness of damage, 699.
See Maritime law—Master and servant—Mines and mining—Railway—Postman.

Neurasthenia—
See Damages.

Ne Temere Decree—
See Marriage.

Notice—
See Contract—Landlord and tenant—Practice—Principal and agent—Real Property Act, Manitoba.

Novel judicial procedure—
Discussion of, 608.

Nuisance—
Abating—Trespass—Assault, 546.

Ocean travel—
International regulation as to, 407.

Ontario Bar Association—
See Law societies.

Ontario legislation—
Discussion as to Statute Law Amendment Act, sec. 12, 249.

Ontario, new procedure in—
Discussion as to, 640.

Optio. —
See Vendor and purchaser.

Partition action—
Conversion—Married woman, 497.

Partnership—
Premises owned by partner—Implied tenancy by partnership, 387.
See Forgery.

Patent of invention—
Threat of action as excuse for non-manufacture, 387.

Payment—
By a stranger—Discussion on, 513.

Pleading—
Statement of claim—Allegation of conspiracy, 309.
See Practice.

Postman—
Negligence—Liability, 394.

Practice—
Appearance under protest, 194.
Certiorari—Neglect of plaintiff to proceed, 306.
Interpleader summons—Issue after final judgment, 542.
Joinder—Cause of action not affecting a co-defendant, 270.
Judgment—Motion for—Trial without jury granted, 461.
Signed—Notice to proceed unnecessary, 194.
Summary—Affidavit of claim, 196.
Jury notice—Libel action—Extension of time, 38.
Striking out, 509.
New procedure in Ontario, 640.
Notice of trial, 271, 273, 274.
Pleading—Amendment when action at issue, 198.
Service—On foreign corporation, 195.
Out of jurisdiction—Action to perpetuate testimony, 461.
Statement of claim, 237.
Venue—Change of—Unprejudiced jury, 509.
See Company—Dominion Controverted Elections Act—Discovery—Lunacy.

Principal and agent—
Authority to borrow not less than specified amount—Pledge of share for less sum—Blank transfer—Notice, 702.
Bank account—Revocation of authority—Right of principal to undraw, 17.
Commission on sale of land, 107, 269, 440, 546, 706, 711.
Fraud by agent, 612.

Principal and surety—
Non-disclosure of previous dishonesty of servant, 388.

Probate—
Grant de bonis non, 538.
See Will.

Railway—
Accident—Gratuitous passenger—Liability, 152.
Negligence—Absence of eye-witness, 104.
Animals straying on track—Negligence, 155.
Children trespassing—Negligence—Invitation, 304.
Land subsidy—Assessment, 21.
Neglect to furnish station accommodation for passengers, 706.
Railway Act—Construction of, 150.
Sunday law, 677.
See Highway—Railway commissioners.

Railway commissioners—
Dominion Board of—Jurisdiction—Approval of location, 229.
Federal and Provincial railways, through traffic, 266, 434.
Private siding, 148.
Unjust discrimination, 150.
Railway commissioners discussed, 473.

Real Property Act, Manitoba—
Adverse possession by mortgagee—Power of sale—Transfer, 391.
Purchaser for value without notice—Trust—Caveat, 236.

Receiver.
See Bankruptcy—Company—Mortgage.

Registry Act, Manitoba—
Mere deposit not a registration, 396.

Religious Institutions Act, Ontario—
Discussion of, 406.

Res judicata—
Failure to plead defence open—No relief by subsequent proceedings, 634.
See Estoppel.

Rescission of contract—
See Contract.

Restraint of trade—
Covenant not to carry on business, 77

Right of way—
See Easement.

Robson, Lord—
Resignation of, 494.

Rules of court, Ontario—
Since consolidation in 1907, 337.

Salaries of Superior Court judges—
Discussion on, 644.

Sale of goods—
C.i.f. contract—Payment against shipping documents, 224.
Delivery of more than bought, 305.
Price to include cost, freight and insurance—Bill of lading for part only of transit, 451.
Sole agent—Imitation—Injunction, 543.
Stolen goods—Retinue, 18.
Warranty, 635.

School reserves—
In British Columbia, 1.

Seal—
See Company.

Separation deed—
Covenant controlled by recital, 218.

Settlement by solicitors and counsel—
Discussion, 36.

Settlement—
Investment in timber estate—Cuttings—Tenant for life and remainderman, 541.
See Action.

Shares—
See Company—Will.

Shelley's case—
The rule in—Discussion, 45.

Soldiers—
Seducing from their duty, 379.

Solicitor and client—
Champerty—Professional misconduct—Debt—Collecting agency, 216.
Costs—Charging order, 100.
Incurred on specific instructions—Municipal authority, 465.
Former solicitor acting for opposite party—Injunction, 456.
Lien for costs before and after liquidation, 15.
See Costs.

Specific performance—
See Vendor and purchaser.

Statute of frauds—
See Contract.

Statute, construction of—
See Creditors' Relief Act—Liquor license—Landlord and tenant—Legal Professions Act—Mines and mining—Railways.

Statutory officer—
County Court Judge—Jurisdiction, 674.

Stenographer—
See Criminal law.

Sterilization of the unfit—
Discussion as to, 207.

Stipendiary magistrate—
See Justice of the Peace.

Stock—
See Company.

Street railway—
Contract for special rate—Definiteness, 544.

Succession duty—
Bank deposit, 229.
Movable property out of province, 266.

Summary conviction—
Unsworn testimony—Rehearing, 459.

Sunday—
When the last day falls on—discussion as to, 281.
See Railway.

Surety—
See Principal and surety.

Tale of the tea house cat—
Clinton v. Lyons in verse, 668.

Telegraph wires—
User of for unauthorized purposes, 503.

Telephone company—
Charter duty—Reasonable hours, 544.

Tenant for life—
Damages recovered by trustees—Capital or income, 455.

Ticket of Leave Act—
Subsequent conviction in another province, 29.

Titanic—
Report on loss of discussed, 448.

Title—
Possessory title—Payment of taxes on wild land by mortgagee, 505.
See Vendor and purchaser.

Transmission—
Of documents—Date of, 102.

Trade mark—
Distinctive mark—Letters, 387.
Surname, 462.
Injunction against deceptive get-up, removal from register, 16.
Transfer to company of individual's name, 384.

Trade secrets—
The law as to, 208.

Trade union—
Action—Unlawful expulsion of member, 624.
Agreement to refund pecuniary benefit, 625.
Legality of at common law—Severability of purposes, legal and illegal, 501.

Trespass—
Abandonment—Erection of wall within boundary line, 382.
Preservation of trespasser's property, 222.
See Crown grants.

Trustee—
Appointment—Of attorney, 288.
Of new trustee, 322.
Damages recovered—Capital or income, 455.
Investment—Securities of British colony or dependency—Canadian Provinces not such, 190.
Unauthorized—Claim to excess interest, 190.

Ultra vires—
See Constitutional law.

Vagrancy—
Visible means of maintaining himself, 21.
See Habeas corpus.

Vendor and purchaser—
Agreement—Cancellation—Specific performance—Caveat, 32, 253.
Cancellation—Notice—Return of money, 148.
Deposit—Default—Forfeiture implied, 14.
Rescission—Retention of deposit, 70.
Building restrictions—Apartment house, 76, 545.
Consideration—Sale or exchange, 151.
...hold—Subsisting breaches of lessee's covenants—Liability of purchaser, 624.
Notice of terms of existing tenancies—Improvements, 300.
Option—Consideration, 333.
Plan to be approved by surveyor—Costs of approval, 463.
Specific performance, 34, 237, 259, 272.
Time as essence of contract, 233.
Title—Incumbrance—Caveat filed after certificate of title, 108.
Objections to, 385.
Possessory title, 100, 461.
Stipulations limiting obligations to shew good title, 121.
See Building restrictions—Executor and administrator.

Venue—
See Practice.

Waters—
Dam—Lower riparian owners—Injunction, 271.
Clandestine taking of—Presumption as to quantity, 395.
Right of riparian owner to access to navigable water—marshy ground intervening, 705.

Will—

Does it operate from death?—Discussion as to, 251.
Probate—Grant de bonis non, 538.

Will, construction—

Ademption, 584.
Annuities—Charge on income or capital, 696.
"At" and "In" distinguished, 708.
Charitable gift, 191, 261, 437, 496, 696.
Demonstrative legacy—Reversionary fund—Interest, 258.
Debt to be deducted from legacy, 301.
Devisee—Misnomer of, 299.
Equitable limitations—Fee simple determinable on bankruptcy—Executory devise, 692.
Forfeiture if children live with father—void as contrary to public policy, 695.
Legacy—Vested or contingent, 13, 301.
Life estate—Power of appointment amongst a 270.
Rents, issues and profits, 538.
Marshalling, 464.
Money at savings bank—Consols purchased with money on deposit, 297.
Nearest male heir—No male heir—Intestacy, 693.
Next of kin of deceased husband and his former wife, 694.
Operation from death, 15.
Presumed intention—"Or" read as "and," 541.
Remoteness, 388.
Residuary legatees—Power of executors to sell, 31.
Rule against perpetuities, 261, 302.
Specific legacy—Subsequent subdivision of shares, 100, 455.
Stock distinguished from shares, 15.
Substitutionary gift, 207, 438.
Survivorship—Implication of, 386.
Trustees—Power to enter during minority of tenant in tail, 261.
Unauthorized investments, 303.
Widow—Gift to person if widow—Death before period of distribution, 625.
See Insurance.

Words, Construction of—

After payment, 496.
Arising out of, 74.
As such trustees but not otherwise, 453.
Assurance shall be void and the premiums paid shall be forfeited, 193.
At, 708.
Bonds offered at lowest price, 307, 436.
Colony, 109.
Committed to prison, 629.
Course of his business, 453.
Dependency, 190.
Detached dwelling house, 545.
Event, 627.
For the good of religion, 437.
Freestone, 226.
Immediately following, 23.
In, 708.
In the meantime, 672.
Intestate, or childless or under twenty-one, 541.
Leasehold house, 385.
Liable to imprisonment, 709.
Mistake or other reasonable cause, 456.
Money, 297.
Money had and received, 151.
Net cash, 224.
Or read as an, 541.
Passage of by-law, 151.
Pentice, 197.
Purchaser, 13.

Words, Construction of—*Continued.*
Receive, harbour and maintain, 103.
Rents, issues and profits, 538.
Seaworthiness admitted, 452.
Selling the property, 706.
Subject to the said annuities, 696.
The Ormond home for nurses, 191.
The Home, 191.
To my nearest male heir, 693.
Two years certain and thereafter from year to year, 386.
Usual covenants, 227.
Visible means of maintaining himself, 24.
Where I now reside, 15.

Works authorized by statute—
Execution of discussed, 380.

Workmen's Compensation Act—
Discussion of law under, 602.
Evidence—Statement by deceased as to cause of injury, 457.
Examination—Right of workman to have own medical adviser present, 74.
Frostbite—Accident arising from employment, 74.
Non-applicability beyond territorial jurisdiction, 453.
Non-resident dependent on foreign workman, 504.
Notice of accident, 456.

Wounding in self-defence—
See Criminal law.