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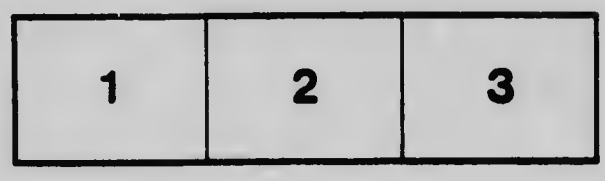

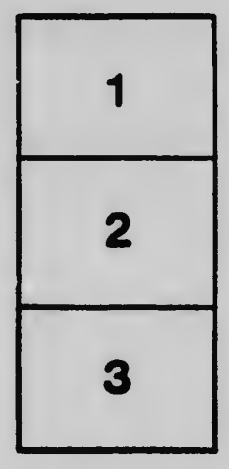

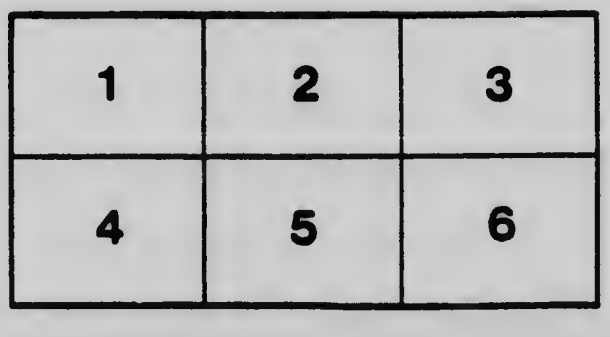

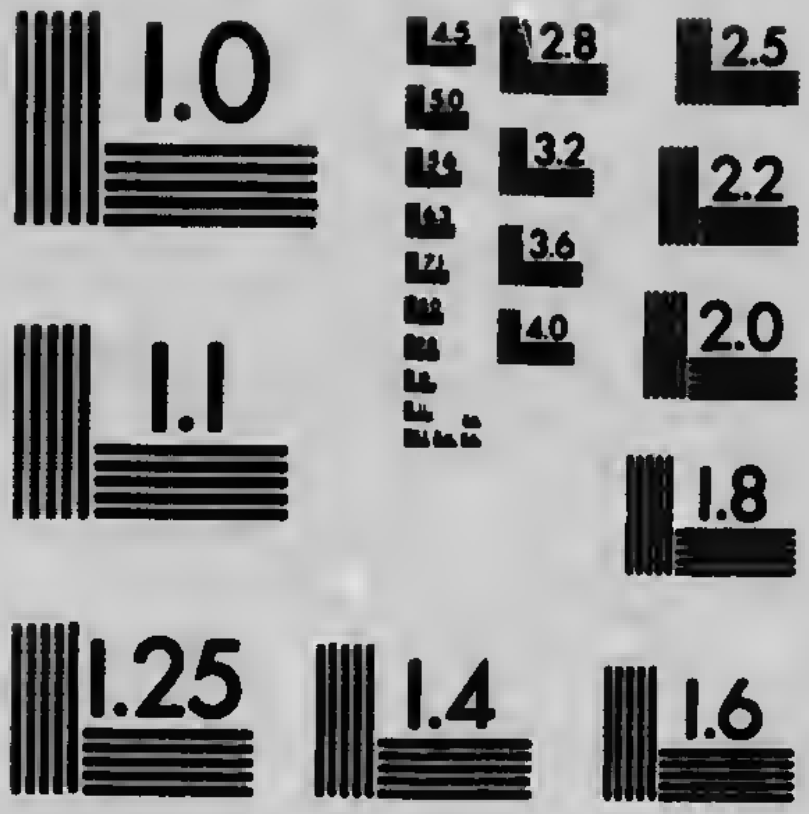

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139

ONTARIO BAR ASSOCIATION.

REPORT AND RECOMMENDATIONS OF THE COMMITTEE ON LAW REFORM.

1916.

TO THE PRESIDENT AND MEMBERS OF THE ONTARIO BAR ASSOCIATION:

1. Year after year your Committee has suggested and recommended legislation to improve the law, but very few of these suggestions or recommendations have found their way into the Statutes.

Your Committee has almost come to the conclusion that it is useless to recommend further amendments to the law if these are to meet with the same fate as former ones.

Many of your Committee's former recommendations were given a place in the report only after careful study and consideration, and your Committee believes that much of the legislation recommended in prior reports deserved a better fate than it got.

Your Committee is of opinion and recommend that a Committee of six should be named by the president which should be charged with the duty of taking the necessary steps to have the legislation heretofore proposed become law.

2. In last year's report your Committee recommended that a Judge be assigned to write the reasons for a judgment of an appellate court, and that such judgment only should be printed in the authorized reports. After further considering the matter your Committee has no reason to change its view on this point. Your Committee desires to go further. In its opinion far too many cases find their way into the reports which should not be there at all. The constant reporting of decisions which lay down no new principle should be discouraged.

Your Committee heartily approves of what was said by Baron Reading, Lord Chief Justice of England, in an address to the New York Bar during his recent visit to America, namely:—

> "Speaking for myself, I am strongly impressed day by day with the undesirability of the constant reporting of decisions which lay down no new principle, but only report the application of old principles to new facts. I think that I recognize a feeling of satisfaction which the members of the bar would have in getting rid of their thousands of volumes of decisions so that they might base themselves on the solid principles of the law."

3. Sub-section (a) of section 38 of the Patent Act (Revised Statutes of Canada, 1906, chapter 69), is as follows:—

"38. Every patent shall, unless otherwise ordered by the Commissioner as hereinafter provided, be subject, and expressed to be subject, to the following conditions:—

(a) Such patent and all the rights and privileges thereby granted shall cease and determine, and the patent shall be null and void at the end of two years from the date thereof, unless the patentee or his legal representatives, within that period or an authorized extension thereof, commence, and after such commencement, continuously carry on in Canada, the construction or manufacture of the invention patented, in such a manner that any person desiring to use it may obtain it, or cause it to be made for him at a reasonable price, at some manufactory or establishment for making or constructing it in Canada."

In Power v. Griffin (1902), 33 S. C. R. 39, it was held that the patentee must, within the two-year period mentioned in the section, commence and thereafter continuously carry on in Canada the construction or manufacture of his invention whether there is a demand for it or not.

In an earlier case (Barter v. Smith, 2 Ex. C. R. 455), which was overruled by Power v. Griffin (1902), S. C. R. 39, it was held that a patent was kept alive after the two years had expired if the patentee was always ready to furnish the subject matter of the invention or license the use of it to any person desiring to use it if he had not commenced to manufacture in Canada.

The section appears to require the patentee to manufacture the invention or cause it to be made for him even though no one wants it and if made can only be made at a loss.

If he asks a price for the invention which a Court should hold is more than a "reasonable price," the patent is null and void.

There are no Canadian decisions as to what would be deemed a "reasonable price," and every patentee therefore runs the risk of having his patent declared null and void should it be held that the price demanded for the invention was not reasonable.

The section presents the further difficulty, namely:—

The section requires the patentee or his legal representatives to construct or manufacture "the invention patented." Does this apply to an art or process? This question has not yet been determined. The section says "every patent" shall be subject to the conditions mentioned in the section. This would seem to include a process patent. But one does not construct or manufacture a process, and no one can obtain a process or cause it to be made for him at some manufactory or establishment. (See Hambly v. Wilson (1902), 7 Ex. C. R. 363, Burbidge, J., at p. 386).

It will be seen that what is required by the section to keep a patent in force is far from clear.

The section quoted should be amended in the following respects:—

(1) The word "continuously" should be stricken out.

(2) If in any action or proceeding a Court of competent jurisdiction should hold that a patentee has demanded or charged more than "a reasonable price" for his patented invention, the Court should declare what is "a reasonable price," and if the patentee after final judgment in such action or proceeding refuse to sell such patented invention at the price found by the Court to be "a reasonable price" to any person desiring to use it, then such patented invention should be null and void.

(3) If a patent of an art or process is to be subject to the conditions mentioned in the said section, this should be made plain by apt and clear words.

4. The law should be amended giving the Court power in its discretion to refuse an injunction to restrain a breach of a service contract in cases where, in the opinion of the Court, the covenant entered into by the employee is harsh.

Your Committee takes the liberty of quoting the views expressed in regard to the above suggested recommendation by Neville, J., in Goldsoll v. Goldman (1914), 2 Ch. 603, and humbly approves of the remarks made by the learned Judge in that case:—

> "In my humble opinion the whole of the law in this particular matter is a blot upon what I consider to be in other respects an admirable system of jurisprudence. . . . During my connection with the law I have seen more undeserved suffering inflicted by this branch than by all the rest put together. I am aware the question is a thorny one, but there are two comparatively small amendments of the law which I think would go far to remedy what at present I consider its harshness. Men in want of employment, or, to a less degree, in want of money, are more likely to be induced to sign any document to get it, and there are cases where men on a few shillings a week, for which they give ample consideration in other ways, are induced to sign contracts which make it exceedingly difficult for them to obtain employment elsewhere, and I think it might well be left to the discretion of the Court to refuse any injunction in cases which it considers harsh. In most of such cases the damage caused by the breach of contract is either nil or quite inconsiderable." At pp. 612, 613.

5. (1) By Statute (R. S. O. chapter 96), almost every person who renders any service at or after a criminal investigation or trial—the Judge or Magistrate, the Sheriff, Constables, Criers, Clerk, Crown Attorney and others—except the witness, is entitled as of right to a fixed remuneration for such service. The witness, no matter how poor or how ill he can afford to leave his work, or how far he may live from the place of investigation or trial, must attend on a criminal subpœna without previous payment of his railway fare or his expenses for attending and remaining whilst the investigation or trial takes place.

In a civil case a witness cannot be compelled to attend a trial unless at the time he is served with a subpœna he is paid his proper transportation charges and witness fees. A witness called to attend an inquest or a criminal investigation or criminal trial should be paid when served with a subpœna the same fees as a witness in a civil case.

(2) Section 3 of the Crown Witness Act (R. S. O. chapter 97), should be repealed and a section substituted expressly giving a witness required to attend on a criminal matter the same fees as are allowed to a witness attending in a civil matter, and these fees should be paid when served with a subpœna.

(3) Provision should also be made by Statute for the payment by the Crown of counsel and witness fees of an impecunious prisoner in capital cases.

(4) The Tariff of Fees provides for a special fee to engineers, surveyors and architects. Under this tariff anyone who calls himself an engineer may claim expert witness fees. The tariff should be amended so as to restrict the fees to civil engineers, graduates from a University or recognized Technical School, and to persons holding a certificate from a recognized institution authorized to grant such certificate. Surveyors should be defined as Dominion and Provincial Surveyors only.

(5) Not only physicians and surgeons, but also graduate nurses should be entitled to professional witness fees.

6. Section 10 of The Evidence Act (R. S. O. chapter 76), limits the number of expert witnesses to three on either side unless the Judge give leave to call more.

A case may have, say, four or more branches, each of which may require a different class of expert witnesses. It is evident in such a case a party may require more than three expert witnesses.

This section should be amended so as to provide that three expert witnesses may be called on any one branch of a case.

7. In the opinion of your Committee a system of mounted police for our rural districts would prevent much crime in those districts and drive may undesirables out of the country. Such a system should be inaugurated.

8. It has been deemed necessary and advisable to regulate by legislation the number of animals that may be confined in a car or other given space.

So far our legislators have not deemed similar legislation necessary for human beings.

A law should be passed,—

(1) Limiting the number of passengers for a street car, passenger coach or any other conveyance.

(2) Compelling a minimum of decency in the home, at least in so far as sleeping accommodation is concerned.

In rural districts this could be carried out by empowering a system of mounted police to enter any house and enforce the observance of right conditions of living in regard to the matter mentioned.

Your Committee believes that much crime and immorality would be avoided by adopting a system of inspection and regulation as above indicated.

9. The law respecting the custody of apparently insane persons is far from satisfactory.

In this report your Committee will deal only with sections 14 and 15 of The Hospitals for the Insane Act (R. S. O. chapter 295). These sections are as follows:—

"14. Any person apparently insane and conducting himself in a manner which in a sane person would be disorderly may be apprehended without warrant by any constable or peace officer and detained in some safe and comfortable place, not being a gaol, lock-up, prison or reformatory, until the question of his sanity is determined as prescribed by section 19.

15. Where the person alleged to be insane has been apprehended under a warrant or in the manner provided in the next preceding section, he shall be brought before a justice having jurisdiction in the locality in which such person was apprehended, and the justice may thereupon by his order, Form 3, direct that such alleged insane person be confined in some such safe and comfortable place, or in the custody of the constable or other person who apprehended him, or such other safe custody as the justice deems fit until the question of his sanity is determined; but in no case shall such alleged insane person be committed to any gaol, lock-up, prison or reformatory."

After a person apparently insane is apprehended, under section 14, and until his case is dealt with under section 15, he is to be kept in "some safe and comfortable place" not being a gaol, lock-up, prison or reformatory, and even after he has been dealt with as provided by section 15 he cannot be sent to a gaol, lock-up, prison or reformatory, and cannot be taken to an asylum without notice from the Superintendent of such asylum that there is a vacancy. (See section 7).

As the asylums are all full the only place for the unfortunate is the "safe and comfortable place" mentioned in sections 14 and 15—that is the home of the justice mentioned in section 15, or the constable who caused the arrest under section 14.

Justices and constables very properly refuse to turn their homes into a "safe and comfortable place."

The result of all this not infrequently is, the lunatic brooding in his own home, or roaming about the country under no restraint, from time to time inflicts serious injuries upon himself or commits crimes which shock the whole community.

It is to be hoped the time is not far distant when the people of this Province will become fully alive to the urgency and necessity of making proper provision in homes for these unfortunates where they may receive intelligent care and be kept under proper supervision.

10. The Mechanics' and Wage Earners' Lien Act (R. S. O. chapter 140), gives a lien to a person who furnishes material for a building,

unless he signs an agreement waiving his right to a lien (section 6), but such lien ceases unless his claim for a lien is registered within thirty days after the furnishing or placing of the last of such material. (Section 22, sub-section (2)).

Your Committee recommends that sub-section (2) of section 22 of the above mentioned Act be amended so as to provide that a lien for material supplied may be filed within thirty days after the building in which the material was used has been completed.

11. Unless there is a direct contract between a bank and the holder of a cheque the bank is under no obligation to the holder to honor an uncertified cheque. A cheque does not operate as an assignment of funds in the hands of the drawee available for the payment thereof. (Section 127 of The Bank Act).

Your Committee recommends that section 127 of The Bank Act be repealed, and a section substituted to the effect that where the drawee of a bill or cheque has in his hands funds available for the payment thereof, such bill or cheque shall operate as an assignment of the sum for which it is drawn in favor of the holder from the time when the bill or cheque is presented to the drawee..

This is the law of Scotland, France and other European countries.

In Bank of British North America v. Standard Bank of Canada (1915), 9 O. W. N. 216, Mr. Justice Middleton puts this question: "When a customer draws a cheque upon his bank and there are funds to answer it when presented, why should the bank be at liberty to refuse to honor it, retaining the money to meet some demand of its own which has not yet matured, or to pay some other cheque drawn by the customer?"

Your Committee is of opinion that a bank should not have the right to refuse payment of such a cheque.

12. The rule in Tweddle v. Atkinson, 1 B. & S. 393, that only parties to a contract can take advantage of it, should be changed.

A third party in whose favor a contract is made should be entitled to a direct right to demand the performance of it. The parties to the contract should, however, have the right to take away or modify the right of the third party without his consent.

13. Women should be entitled to vote at elections for the Provincial Assembly and the Dominion House, and should also be qualified to be candidates at such elections.

14. Sub-section 4 of section 25 of The Assignments and Preferences Act (R. S. O. chapter 134), which deals with the valuing of securities by a creditor, is in part as follows:—

> "(4) Every creditor in his proof of claim shall state whether he holds any security for his claim . . . and . . . he shall put a specified value thereon and the assignee may . . . require from the creditor an assignment of the security at an advance of ten per cent. upon the specific value to *be paid out of the estate as soon as the assignee has realized such security.*"

In case a creditor for, say $20,000, holds security on shares in a Company which he is bound to value for which he could get $20,000 at the date of the assignment and the security is transferred to the assignee who subsequently is able to realize only $15,000 for the shares; can the creditor recover the difference from anyone and if so, from whom, in case the whole sum realized out of the insolvent estate, including the amount realized on the said shares, amounts to only $18,000?

It would seem that a secured creditor who has been compelled to assign his security to the assignee may be required to wait for payment of his claim against the estate a longer period of time than an unsecured creditor. The secured creditor must wait for his money until "the assignee has realized such security."

Your Committee suggests that the above sub-section should be amended in the following respects:

(1) The time within which the secured creditor must be paid should be fixed.

(2) The secured creditor who has been obliged to assign his security to the assignee should be protected against loss in case the estate is not able to pay the value placed by the creditor upon his security.

M. H. LUDWIG, *Chairman.*
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