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THE RAILWAY BOARD AND ITS LATE CHAIRMAN.

Hon. James P. Mabee, Chairman of the Board of Railway Commissioners died on the 6th inst. from heart failure, the result of an operation for appendicitis.

It will be remembered that under the Railway Act of 1903 there was constituted a Board of three commissioners to be known as the "Board of Railway Commissioners for Canada." In 1908, the Board was reconstructed by increasing the number of these members to six, and in September of that year these were appointed, Mr. Mabee being named as the Chief Commissioner.

The Board has been fortunate in having had as its head from time to time men of great ability and force of character, who have done excellent work for the country, and built up the reputation of this most useful court. Whilst this has happily been so, it has been unfortunate that none of those who have presided over its deliberations have been permitted to hold their positions for any lengthened period. Mr. Blair, Mr. Killam, and now Mr. Mabee, have all passed away within the comparatively short life of the commission. It is sincerely to be hoped that the man to be chosen to fill the vacant place, whoever he may be, will follow in the footsteps of that splendid administrator who died just nine days ago.

Mr. Mabee, who was of U. E. Loyalist stock, was born at Port Rowen, Ontario, November 5th, 1858. In 1882, he was called to the Bar, and given silk in 1889. He practised first in Listowel, afterwards in Stratford, and later on in Toronto. In November, 1905, he was called to the Ontario High Court Bench. He remained there less than three years, for on March 28th, 1908, on the death of Hon. Mr. Killam, then at the head of the

Board, he was appointed its chairman. Although Mr. Mabee gave ample promise of being a great success as a judge, it was in connection with the Railway Commission that he is best known. He was an ideal chairman, and his administration of the many important and complicated problems which came before the Board for consideration and adjudication was marked by a masterly grasp of the situation followed by a prompt and intelligent decision which, as a rule, carried conviction, by its wisdom and righteousness, even to those whose claims were refused or modified.

Mr. Mabee's death is a distinct loss to the country, and it will be hard to find one as competent as he was for the position he occupied.

DEDUCTION OF INSURANCES IN THE COMPUTATION OF DAMAGES PAYABLE UNDER LORD CAMPBELL'S ACT.

The provisions of Lord Campbell's Act, 9 & 10 Vict. c. 93, reproduced in 10 Vict. c. 6, and in the Civil Code of the Province of Quebec, article 1056, are well known. But we are not considering, at present, the rights granted to certain relatives by the above Act, as representatives of the deceased.

The victim of an accident, of course, would not have the right to claim as extensive damages as his wife or children would have after his death. Although the deceased may have received an indemnity representing the prejudice personally suffered by him, his children and wife can nevertheless claim damages for loss sustained by his death, which is an ulterior consequence of the accident: Dalloz, Jurisprudence Generale, 1872, 2 p. 97.*

*This does not appear to be the law in Ontario. If the deceased recovered damages in his lifetime in respect of injuries from which he subsequently died his representatives would, in that case, have no right of action: See Holmested's Workmen's Compensation Act, pp. 126 and 129-30; *Read* v. *The Great Eastern Ry. Co.*, E.B.K.E. 728, and see supra.—Ed. C.L.J.

At common law everybody is responsible, stating the general rule, for injury caused to another by his fault. Taking into consideration, however, the fact that the wrongful causing the death of a person necessarily entails damage on certain other persons with whom the deceased person is connected by filiation or marriage the statute Code gave to such persons a special remedy.

In determining the extent of the damages, it becomes necessary to consider what, but for the accident, would have been the reasonable prospects of life, work and remuneration of the deceased; and also how far these, if realized, would have conduced to the benefit of those claiming compensation: *Grand Trunk Ry. Co.* v. *Jennings*, per Lord Watson, 13 A.C. 304.

The rather embarrassing question arises here as to whether the insurance received by the deceased person's parents should be taken into consideration, in whole or in part, in the assessment of damages. What is the damage caused to these relatives if it is not the want or diminution of pecuniary aid, which the law deems they would have received from the deceased? For sorrow of the mind, "solatium doloris," or moral advantages lost, are not to be considered. Is it not reasonable to consider the insurance received by the parents an equivalent for such absence or diminution of pecuniary aid? Is it true that the person committing the wrong would then benefit by an indemnity paid by a third party; but it must be observed that the person liable is so liable only to the extent of the pecuniary loss sustained, and only on account of an accident, which itself brought about the acceleration of the payment.

The Courts in the Province of Quebec, after some hesitation and controversy, have laid down the rule that insurance should be taken into consideration. The application of the rule, however, seems rather difficult; as it appears to be a complex problem to establish the extent to which deduction is to be made for insurance money received.

With respect to insurance against accidents the whole

amount must be deducted as no insurance would have been paid but for the accident. Life insurance, however, is not to be looked at in the same light. Such insurance is not necessarily connected with the accident. Its maturity has merely been accelerated. If, for instance, the insurance is effected by the deceased, payable to his wife at his death, the wife by reason of the husband's premature death enjoys the interest of a certain sum for ten or twenty years more than she would otherwise have done. An amount equivalent to such interest should be deducted from the damages.

This line of reasoning can be applied to all kinds of insurance, whether, for example, on the endowment plan, or twenty premium payments; the criterion being whether the accident is the real cause of the benefit being received.

If the insurance were effected by a son in favour of his next of kin, and the next of kin happened to be, at the time of the accident, the father and mother, it is a question for the judge to estimate the chances these parents would have had of obtaining the insurance, if the insured had died a natural death.

Is it not to be presumed and foreseen, that the son would at some time have changed his policy in favour of his wife and children; should not, therefore, some diminution of damages be allowed for the benefit derived from a rather uncertain and changeable insurance policy? It may be said that the right of the parents to receive the insurance money might not have existed but for the accident.

In suits under the Workmen's Compensation Acts the question does not present itself.

The law of the Province of Quebec provides that the representatives of the deceased cannot ask for the payment of medical and funeral expenses if the deceased belonged to an association which provides for such charges. The French law concerning employer's liability, of 9th April, 1898, contains more adequate and extended dispositions. Article 5 says that employers can be relieved from their responsibility for medical and funeral expenses if they shew, (1) That they have affiliated

their employees with mutual companies and paid a share of the agreed contribution, which should not be less than one third; (2) That these mutual companies assure to the working men a partial indemnity and the necessary medical and pharmaceutical services. The Imperial Workmen's Compensation Act, 6 Edw. VII. c. 88, does not contain such provisions.

In conclusion, it would seem that there should be deducted from the pecuniary losses sustained by the relatives, the amount with which they are benefited by the fact that the accident, of which they complain, has brought about the payment of insurance, or other indemnity. In other words insurances are an element in the appraisement of damages claimed by the family, by virtue of Lord Campbell's Act: see *Beckett* v. *Grand Trunk Ry. Co.*, 16 S.C.R. 713; *Bouchard* v. *Gauthier*, 20 B.R. 491; *Grand Trunk Ry. Co.* v. *Jenning*, A.C. 800; *Kamuweketasion* v. *Dominion Bridge Co.*, 7 R.P. 232; Laurent, vol. 20 Civil Code.

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INTERNATIONAL RIGHTS.

It would seem to be a patriotic duty to follow the example of other journals, and refer to the publication intituled "Papers Relating to the Diversion of Waters from Lake Michigan, by the Sanitary District of Chicago," issued recently by the Minister of Marine and Fisheries.

It appears that on February 5, 1912, the Sanitary District applied to the United States Secretary of War for permission to increase the amount of water diverted from Lake Michigan, to dilute Chicago's sewage, from the amount allowed, viz., 4,167 cubic feet per second to 10,000 cubic feet per second. At the first hearing in Washington on February 29th, after the applicants had preferred their arguments in favour of the granting of the application, the navigation and other interests in the United States opposing the application were heard.

At the request of Ambassador Bryce, the Canadian Government and Canadian navigation interests were allowed four weeks in which to prepare memorials of protest against the application. At this hearing, on March 27th last, the case for the Canadian Government was argued by Daniel Mullin, K.C., of St. John, N.B. Protests were also filed by the Commission of Conservation, Dominion Marine Association, Shipping Federation, Montreal and Toronto Harbour Commissioners and Montreal, Toronto and Kingston Boards of Trade.

These were the first comprehensive presentations of the case that had been made and counsel for Chicago acknowledged that it was a very strong indictment. In the Reply, filed by the Chicago Sanitary District with the Secretary of War, seven days later, they attempted, but without success, to meet the arguments that had been preferred by the Canadians. The second statement of the Canadian Government traverses the various points raised in the Reply of Counsel for Chicago and is a sweeping arraignment of that city for its endeavour to abstract from the basin of the St. Lawrence an enormous volume of water, ostensibly to purify its sewage, but really to generate enormously valuable water-powers in the Desplaines river.

The "Conclusions" as set forth in the Second Statement on behalf of the Canadian Government are as follows:—

1. That there is no imperative necessity for such a large diversion of water from Lake Michigan for sanitary purposes, as is requested in the application.

2. That the historical facts presented in this brief shew conclusively that the Sanitary canal cannot be considered as the outgrowth and development of a scheme which has received recognition by the United States Government or that of the Dominion of Canada.

3. That the claim that the Sanitary District is entitled, as a matter of right, to the use of so much of the waters of Lake Michigan as may be necessary for sanitary and domestic purposes, cannot be entertained in so far as it relates to the extraordinary and wasteful use proposed.

4. It has been shewn that very substantial injuries have been,

and are being, suffered by navigation interests. Fears for future and more extensive damages, by reason of increased diversion, are exceedingly well founded, and justify the demand that some improved method of sewage disposal, which shall not require the abstraction of any considerable quantity of water from Lake Michigan nor the diversion of other outlets of waters which would naturally flow into it, be adopted.

5. That the Dominion of Canada has the right to a voice in the disposition of the waters of Lake Michigan for sanitary purposes in so far as such diversion injuriously affects navigation, because her citizens are accorded, by treaty, the right of free navigation in that lake, and in that no diversion can be made without injuriously affecting her harbours, channels and canals.

6. It having been shewn that the sewage of Chicago can be so treated and disposed of by other means than the present dilution methods, by which great quantities of water are withdrawn from Lake Michigan and discharged through the drainage canal into the Illinois river, it is contended, on behalf of Canada, that the abstraction of water from Lake Michigan shall be limited to such quantity as shall not injuriously affect navigation interests on the Canadian side of the boundary, and, that such limitations shall take effect at the end of such time, as, in your judgment, may be reasonably necessary for the Sanitary District to install, and put into use, the works which may be required for disposing of the sewage by other means than by the dilution method now in use.

7. That, in view of the fact that the Sanitary District claims that permits hitherto issued deal only with the flow through the lower portion of the Chicago river, and that it has the right to take any amount of water, without permission, through the canal, provided it is supplied through other feeders, it is respectfully requested that all permits be only for such limited quantity of water as shall not injuriously affect navigation on the lakes and St. Lawrence river, and be so worded as to state the total quantity which the Sanitary District of Chicago may be permitted to withdraw for domestic and sanitary purposes from the drainage basin of Lake Michigan.

MISCONDUCT OF JURIES.

In a recent appeal to the Criminal Appeal Court a conviction was quashed on the ground that the jury might have decided the case upon other considerations than those offered by the evidence which was before it. The foreman of the jury, during the course of the trial, had asked the prisoner's counsel whether it was intended to call evidence of character on behalf of the prisoner, with the object, as it afterwards transpired, of inducing certain of his fellow jurymen to concur in a verdict of guilty, which was the verdict eventually returned. This case serves to recall the powers possessed by the court to deal with verdicts given by juries which have been guilty of misconduct. It will be remembered that sec. 20 (1) of the Criminal Appeal Act, 1907, abolished writs of error and the powers and practice of the High Court in respect of motions for new trials and the granting thereof in criminal cases. Under the former practice, the King's Bench Division had power to order a new trial, after a general verdict for the Crown, upon indictments or informations for misdemeanour tried in that court, or on a record of that court: (Archbold's Criminal Pleadings, 23 ed., p. 291). Misconduct of the jury could be made the ground of an application to the court for a new trial in such cases. Although this power has been abolished, the Criminal Appeal Act, 1907, has not affected the right of the court to grant a writ of venire facias de novo juratores. Thus before verdict, the judge at the trial may, if a necessity for so doing becomes apparent, discharge the jury and order a fresh trial to be had before a new jury. For example, in the course of a trial, one of the jurors, without leave, left the jury box and also the court, whereupon the judge discharged the jury and ordered a fresh jury to be empanelled. This was held to be the only course that could have been with propriety adopted: (*Reg.* v. *Ward*, 10 Cox C.C. 573). If the case had proceeded to its end and the jury in question had given a verdict, the court would in its discretion have refused to order a venire de novo. So in *Hill* v. *Yates* (12 East. 229), where a new trial was asked for after verdict on the ground that a juror who had

served had not been summoned, Lord Ellenborough is reported to have said: "If we listen to such an objection, we might set aside the verdicts given at every assize, where the same thing might happen from accident and inadvertence, and possibly sometimes from design, especially in criminal cases." The defect, if any, in the trial in that case was probably such as would be cured by the verdict under sec. 21 of the Criminal Law Act 1826. It was formerly thought that in cases of treason, felony, and misdemeanour the court had power to order a venire de novo, even after verdict and judgment, on the ground of the misconduct of the jury: (see 2 Tidd's Practice, 922). On *Reg.* v. *Murphy*, sub nom. *Attorney-General for New South Wales* v. *Murphy*, 21 L.T. Rep. 598; L. Rep. 2 P.C. 535, the Privy Council held that in a case of felony, where the indictment is good, and before a competent tribunal the prisoner has been given in charge to a jury, in due form of law, empanelled, chosen, and sworn, and a verdict of conviction or acquittal has been returned, such verdict is final, and the court has no power to order a venire de novo. This decision was given in a case where the prisoner had been tried and convicted in New South Wales upon a charge of murder, and application had been made after verdict to the court for a rule for a venire de novo on an affidavit which stated that one of the jury had informed the deponent that the jury pending the trial had had access to newspapers which contained a report of the trial with comments thereon. Apparently, the power of the court, in its discretion to grant a rule for a venire de novo or new trial on the ground of misconduct of the jury, was assumed still to remain in cases of misdemeanour. The Privy Council, in *Murphy's* case, followed their previous decision in *Reg.* v. *Bertrand*, 16 L.T. Rep. 752; L. Rep. 1 P.C. 520, and the judgment of Mr. Justice Blackburn, in *Reg.* v. *Winsor*, 14 L.T. Rep. 195; L. Rep. 1 Q.B. 289. It would seem, therefore that the Criminal Appeal Act, 1907, has not affected the right of the court to grant a writ of venire de novo in cases of misdemeanour, where there has been misconduct on the part of

the jury, except in such cases as were cognisable formerly by a court of error alone. The Court of Criminal Appeal has, of course, the power, which it has occasionally exercised, of quashing a conviction where misconduct of the jury may have resulted in a miscarriage of justice. In view of the rarity in recent years of trials in the King's Bench Division for misdemeanours, the right to grant a new trial for misconduct of the jury, or upon other grounds, has seldom to be inquired into. It should be observed that in criminal as well as in civil cases the court has always refused to order a new trial on the ground of the misconduct of the jury where such misconduct is suggested or proved only by evidence from one or more of the jurymen themselves. If power were given to the Court of Criminal Appeal to order a new trial in cases where they now have power merely to quash the conviction, these academic distinctions would probably soon be lost sight of, and become relegated to the back-shelf like many of the old legal fictions of the past.—*Law Times.*

APPOINTMENT OF NEW TRUSTEES.

It may be well to remove one or two erroneous impressions which seem to prevail with regard to the appointment of new trustees. One which is sometimes met with is that a trustee can retire without a new one being appointed in his place; but that is not so, except where there are more than two trustees, and one retires by deed with the consent of his co-trustees, and the person having power to appoint new trustees, under sec. 11 of the Trustee Act, 1893, or except by leave of the court, or of all the cestuis que trust if sui juris. Another mistaken idea which prevails with some practitioners is that a new or additional trustee can be appointed under the statutory or ordinary power to appoint new trustees although there is no vacancy in the office. That, again, can only be done by the court: (see sec. 25 of the Trustee Act, 1893). A further erroneous impression is that a trustee can never be removed against his will, except in an ac-

tion for that purpose commenced by writ in the Chancery Division. It is true that this is the general rule, but if a trustee remains out of the United Kingdom for more than twelve months a new trustee can be appointed in his place under the statutory power (sec. 10 of the Trustee Act, 1893), or, if that Act does not apply, the court could appoint a new trustee upon originating summons under Order LV., r. 13*a*, and in many cases it would not be necessary to serve the trustee who is residing abroad with the summons: (see *Re Bignold's Settlement Trusts*, 26 L.T. Rep. 176; L. Rep. 7 Ch. 223). Further, although a trustee cannot, as a rule, be removed against his will upon originating summons, if a trustee will neither act in the trusts or retire, and an originating summons is issued for the appointment of a new trustee in his place, he will sometimes retire at the suggestion of the judge rather than risk the cost of an action commenced by writ to remove him. Formerly the rule that all the cestuis que trust ought to be parties to an application to the court for the appointment of new trustees was strictly observed; but that is not so now. The judge will exercise his discretion according to the circumstances of each case, and there need not be an express order dispensing with service on certain beneficiaries; the court will proceed in their absence: (1901) W.N. 85).—*Law Times.*

WHAT IS BEING DONE BY PUBLIC UTILITY COMMISSIONS.

The Legal Status of Utility Regulation.—In the broad, equitable principles that are, fortunately, being more and more recognized in the application of law to public questions, we may say that this power of the State to regulate public utilities is based on three fundamental conceptions. First, that a public utility is a monopoly; second, that it performs a public service, is favoured with especial privileges and must yield a special obedience to the State's control; third, that its franchise value and any increase in value of its securities, come solely from the

growth of the city and not from any act or activity on the part of the utility company.

It was, of course, in the early phase of their development, a principle earnestly contended for by the public service companies, that they were simple commercial enterprises, operated for private gain and in no wise to be differentiated from any other business or manufacturing concern. This contention was admitted by the public generally, and was, in fact, sanctioned by judicial authority. Thus we find the Supreme Court of Connecticut declaring in the sixties, 30 Conn. 523, that a gas company was a manufacturing corporation engaged in a private business and could sell at such price as it pleased and to whom it pleased. The court said that no reason could be seen "for subjecting the maker of gas to duties or liabilities beyond those to which the manufacturers and venders of other commodities are subjected by the rules of law."

We would probably be justified in saying that the case of *Munn* v. *Illinois*, 94 U.S. 113, decided in 1876, marked the end of the "Public be damned" policy, and the birth of the new order of things. That case was the enunciation by the Supreme Court of the United States, of the modern application of the common-law principle that any business or trade that constitutes a monopoly is subject to government regulation and control in the interest of the public at large. And the court held that an elevator, the services of which are a practical necessity to every shipper from that port, must submit to enactments requiring it to grant fair and reasonable rates to all. After this decision there followed with irresistible logic, legislative enactments particularly directed at common-carriers and resulting in the Interstate Commerce Act. The different States gradually awakened to the situation and enacted rate legislation applicable to all shipments arising and ending within their respective borders. From this it was but a step to place under the control of commissions, the remaining utilities of the state.

The Growth of the Movement.—We must not jump to the conclusion that all states have gone this far. On the contrary,

the states that have progressed in such degree as this, are in a noticeable minority. Missouri is with the minority. Massachusetts was the pioneer state in public utility regulation. She passed a law in 1885, of limited benefit, but it was the initial step. She stopped with that step, however, and not even the hard two year's fight made in that state by the progressives under Governor Foss has been able to move her to further action.

In 1905, New York established a commission to regulate gas and electric rates. And the same year, LaFollette's fight of several years in Wisconsin, resulted in the establishment of a railroad commission.

In 1907, both New York and Wisconsin took a long step forward and placed the full control of all public utilities in the commissions already established. In Wisconsin, the commission retained its title of the "railroad commission" and we have the anomaly of finding control of gas, water and electric companies, telegraph and telephone companies vested in a railroad commission.

In 1909, the agitation for state commissions was nationally general and was generally fruitless. Bills were introduced in most state legislatures and everywhere failed of passage. In Connecticut and New Jersey, the demand was especially insistent. In New York, the best efforts of Gov. Hughes only resulted in the appointment of a committee to consider the placing of telegraph and telephone companies under control of the commission and to report in 1910.

In 1910, New Jersey and Maryland fell into line, and New York extended the control of her commission to include the telegraph and telephone companies. The New Jersey law, as might be expected, was weak. The Maryland law, on the contrary, was carefully drawn to include the best of the New York and Wisconsin laws and is probably the best law on the subject that is on the statute books of any state to-day.

In 1911, the harvest was ripe. New Hampshire, Kansas, Ohio, Oregon and Washington all established commissions. And in Illinois, Iowa and Pennsylvania, the bills were intro-

duced and vigorously pushed, but failed of passage. In practically every other state the agitation was, at least, begun.

Analysis of the Maryland Law.—I wish that space permitted us to analyze the Maryland law. Let it suffice to say that the commissioners are appointed by the governor, as is the general counsel of the commission. Their salaries of $5,000 or $6,000 are borne in nearly equal measure by the state and the city of Baltimore. Public utility companies are required to furnish, to quote the language of the statute, "such service and facilities as shall be safe and adequate, and in all respects reasonable, and all charges shall be just and reasonable and not more than allowed by law or the orders of the commission." The commission can examine all records or properties of all utilities, must investigate all complaints, and must prescribe a uniform system of accounts. The commission alone can require, and alone can permit extensions and improvements. The commission must approve all issues of stocks and bonds, must approve all assignments of franchises or mergers of utility companies. These latter, of course, are very important provisions, but not more important than the provision which forbids the valuation of a franchise at any sum greater than the amount paid for the franchise. The commission must make and keep up-to-date an accurate valuation of the assets of the different utilities within its jurisdiction.

Methods and Powers of Utility Commissions.—Valuation of Properties.—Let us consider for one moment the method of operation by which, under the laws described, a public utility commission may accomplish the objects of its creation.

First as to valuation of properties. For the reasons and by the methods to which I have alluded, and which are familiar to every thinking man of to-day, we find almost all public utilities heavily overcapitalized. Their stock is "watered," to use the current phrase. As expressed by Mr. Roemer, of the Milwaukee Commission, in an address before the Bar Association of Wisconsin, in 1909:—

"Most public utility plants are owned and operated by pub-

lic service corporations, whose corporate securities, as a rule, bear no relation either to the actual investment in, or present value of, such plants. . . . In fact, the capital stock of a public service corporation often represents little more, if anything, than the capitalization of an image of the vivid imagination of some not overscrupulous promotor."

These securities having been issued, there must be considered on the one hand, the investors in the stocks and bonds who feel that they are entitled to a fair return on the prices they have paid for these securities, and on the other hand the public, which must bear the burden of the exacted income, whether it be reasonable or excessive. The only basis on which charges can be figured, of course, is the value of the property—the size of the investment.

It will be observed that in the valuation of the property, the law forbids that any value shall be given to the franchise other than such amount, if any, as shall actually have been paid for it. Under the further provisions of the law, the commission must inventory and appraise all of the physical property. This appraisal is taken with the greatest care and in great detail. To the sum total shewn as the correct valuation, must be added certain items. Thus the valuation must be taken as on a *going* concern. If the business were to end, it is conceivable that the machinery, rolling stock, etc., would only have the value that they would bring under the hammer. But if the plant is to continue in business, then the owners must figure on receiving a fair rate of interest on the sum which represents the expenditures which they made in the development period of the business, the depreciation that could not be protected because the income was not sufficient in that period, the interest on the investment unpaid, while the business was being fairly launched, the taxes, insurance, discounts on bond issues and all the initial expenses that have legitimately and necessarily gone into the business, and which must be recognized equally with the tangible, existing property. On the final aggregate valuation, the company must be permitted to earn a fair return. And this

aggregate valuation must be determinative of whether or not the utility may increase its capitalization, or may make other and further bond issues.

Indeterminate Permits.—Space is lacking for more than a hasty sketch of further features of the operation of these laws establishing commissions. But we ought to speak of the provisions for indeterminate permits. In Wisconsin, for example, the law provides, sec. 1797 m, Ch. 499-1907, that every franchise or license thereafter granted shall be in the form of an indeterminate permit. This amounts to a perpetual franchise so long as the conditions enjoined by the state and the rules of the commission are complied with. The law provides that utilities operating under a franchise, may surrender these for indeterminate permits. There are many details in this law, which I may not mention, but one provision is that the municipality may take over the utility at any time on paying the appraised valuation.

To the utility company there are obvious advantages in this arrangement. Thus it has freedom from competition. It has a perpetual franchise. It cannot be "sandbagged" by corrupt legislative bodies when renewals of the franchises become necessary, or when extensions must be made. The securities are placed on a plane of stability comparable to municipal bonds. On the part of the public too, there are no less desirable features. The permit may be revoked on bad behaviour. The utility may be acquired by the municipality whenever such acquisition may be desired.

It is interesting to note that while the utility companies in Wisconsin generally admitted the desirability of indeterminate permits, only a few surrendered their franchises in order to obtain them, and the reason for this was because of the fear that such surrender might operate as a matter of law to lessen the security of the bonds. Therefore, last winter, the Wisconsin legislature settled the matter by exercising the power reserved in the constitution to alter or repeal corporate franchises, and amended every franchise, making it an indeterminate permit.

So at present all utilities in Wisconsin are operating under this form of privilege. The description of indeterminate franchises is well set out by Wilcox, 1 Wilcox on Mun. Fran. 215, when he says:—

"The best kind of franchise is one that is indeterminate as to time, and one that reserves to the city the right of revocation at any time, upon condition that the city purchase the plant and the property of the company at a reasonable valuation, not including any franchise value, but with a provision for a bonus over cost, in cases where the franchise is made before the property has been fully developed as a paying enterprise."

Uniform System of Accounting.—One other provision incorporated into all of these statutes establishing commissions that makes for efficiency, is the requirement for an *uniform system of accounting.*

Recently I was in Milwaukee and the Commissioner of Public Works invited me to inspect the incineration plant built there a year ago. I had seen a report of the plant shewing a net ton cost of garbage disposition of about 75 cents. I questioned him about this and he shewed me a new report which they had gotten out under the new system of accounting. This shewed a cost of disposition nearly four times as great. The difference was that the first figure was not much more than a mere operating cost unit. They had omitted to charge the plant with such items as interest on the investment, depreciation of nearly 10 per cent. per year, insurance, taxes, etc. How could it be possible to compare results of two plants where one figures in its overhead and the other does not? Here we readily see the necessity of an uniform system of accounting. Inasmuch as the law places the municipal plants, along with all the privately owned plants, in the charge of the commission, the public is now able to compare the results obtained by different plants and by the separate departments of different plants and to place honour and blame where honour and blame are due.

If space afforded, I would like to consider such further features as the "sliding scale" provisions of the Wisconsin law

which was designed to encourage private initiative and energy. It is obvious that if the only reward of an able management which has, by new devices and careful training of employees, succeeded in operating at less cost than competitors and in accumulating a surplus—if the only reward to such a management is to cut its rates so that *all* the benefit passes to the public, then common-sense tells us that the system tends to discourage the getting of the best results. This is sought to be met in the Wisconsin laws by a sliding-scale provision which permits the commission to sanction profit-sharing devices when reasonable, so that the utility company can share in the results of its own superior management.

I would like to speak of the "invalidity clauses" in the Taylor ordinance that ended the nine years' street car fight in Cleveland under Tom Johnson and by which it is hoped that if any of the four important stipulations won for the public in that ordinance, are declared invalid, then that the benefits may still be retained under alternative provisions. I would particularly like to describe the wonders that have been worked under the commissions, in the way of securing uniformity of service, doing away with discriminations, in establishing standards of cost in gas and electric service, in improving fire protection, in standardizing meters, in special investigations of overcharges and of inefficient systems of management, in causing new installation of new machinery, and all the other work that has caused the utility commissions already established to be so respected and admired. Space, however, for further consideration is obviously lacking in a paper of this character.

That the mere taking of public utility companies out of politics is, by the establishment of commissions, practically assured, is, in itself, sufficient reason for their establishment. In the regulation of railroad rates, as in Winsconsin where in two years a saving to the people of that state of $1,970,000.00 in intrastate shipments was effected; in the control and guidance of the issue of utility securities, as in New York city in the reorganization of the metropolitan traction system after Ryan

and Whitney and Belmont and others had extracted their fortunes; in the saving of human life by installation of proper fenders, brakes and other appliances as in New York city, where, in one year, the fatalities were decreased by thirty per cent.; in all of these respects the dawn of a humane and reasonable era has crept in that causes glimpses of Paradise on earth to obtrude upon our wondering vision.—*Central Law Journal.*

They have peculiar methods of trying suspects in Bengal. One of these is called "trial by rice," says a writer in the *Wide World Magazine.* After a priest had been consulted as to an auspicious day, every person suspected and those who were usually near the place at night were ordered to be present at ten o'clock that morning. On that date all turned up. First, the people were made to sit in a semicircle, and a "plate" (a square of plantain leaf) was set before each. Then a priest walked up and down chanting and scattering flowers. These said flowers, by the way, must be picked by a Brahmin, and they must be those which are facing the sun. This ceremony over, one of the clerks went to each man, and gave him about two ounces of dry raw rice, and told him to chew it to a pulp. Then commenced what looked like a chewing match. After about ten minutes had elapsed, they were told to stop and eject it into the plantain leaf. All did so easily, with the exception of three men. In the case of these three the chewed rice had in two cases become slightly moistened, but not sufficiently so to allow of its being easily ejected, and they had much ado to get rid of it. The third man had chewed his into flour and it came out as such, perfectly dry. One of these three men promptly commenced to cry, and begged for mercy, confessing everything, and stating that man number three, who had acted as a kind of flour mill, was the chief instigator. It is a curious fact that fear, arising from an evil conscience, prevents saliva coming to the mouth, with the result described.—*Case and Comment.*

REPORTS AND NOTES OF CASES.

Province of Ontario.

HIGH COURT OF JUSTICE.

Middleton, J.] [March 12.

YOULDON *v.* LONDON GUARANTEE AND ACCIDENT CO.

Accident insurance—Evidence—Admissibility of statement of deceased—Renewal receipt—Setting out conditions—Insurance Act, s. 144.

Held, 1. The statement of the deceased, prior to his death, that he had injured himself by lifting a heavy weight, was admissible; and such injury being a possible cause, and the only one of several possible causes shewn to have actually existed, was to be considered for the purposes of the claim, the real cause of death.

2. Where the original contract does not contemplate a renewal, being an insurance for one year only, the contract evidenced by the renewal receipt is a new contract.

3. The words "according to the tenor of policy No. ———" appearing in the terms of the renewal receipt make the terms of the original policy binding, being a sufficient compliance with the provisions of s. 144 of the Insurance Act as to the setting out of the terms and conditions of the contract of insurance.

Whiting, K.C., for plaintiff. *Tilley,* and *Swabey,* for defendant.

Boyd, C.] RE HUTCHINSON. [March 29.

Infants—Custody of—Rights of father against maternal grandparents—Agreement under seal—Welfare of child.

Motion by father of child of two years, upon the return of a writ of habeas corpus for an order for the delivery of the child to him, by the maternal grandparents.

Held, 1. Where an agreement has been made by the father in pursuance of an understanding that the child was to inherit the property of the grandparents, and the child has been brought up by them under that impression, and there is an actual deed

or will irrevocable to such effect, the court, acting on principles of equity will not, at the father's instance disturb that arrangement.

2. Apart from the agreement, the interests of the child would be better subserved by letting her custody remain in statu quo, the father having all reasonable access to the child.

W. N. Ferguson, K.C., for the applicant. *V. A. Sinclair*, for the respondents.

NOTE:—In an unreported case the father of a girl, about six years of age, applied for her custody. She had been living with her aunt in Ontario, who took good care of her. Her father was a widower living in Nova Scotia. Gwynne, J., considered that the interests of the child must prevail against the father's prima facie right to the custody of the child. He, therefore, had all the parties before him and told the child she could go either to her father, or to her aunt. She chose the later.—Ed. C.L.J.

Master in Chambers.] [April 6.

SCORLETT *v.* CANADIAN PACIFIC RY. CO.

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

Any person claiming to be beneficially entitled can bring an action immediately after the death, if there is no execution or administrator, but if a personal representative be appointed and an action be begun within six months of the death, the first action must be stayed.

W. A. Henderson, for plaintiff in first action. *H. R. Frost*, for plaintiff in second action. *C. W. Livingston*, for defendants.

Province of Manitoba.

KING'S BENCH

Macdonald, J.] ARCHDEKIN *v.* MCDONALD. [March 11.

Contract—Option—Consideration—Re-dating time limit—Specific performance—Deposit—Tender—Cheque.

Held, 1. Where an option is given for a consideration for a limited time from its date and is later amended, and re-dated

as of the date of the amendment without further payment, the amended option as to the time for which no consideration was paid is a new agreement without consideration, and is revocable at any time before acceptance.

2. When five dollars has been paid for an option for purchase of land under which a first payment of $1,000 is stipulated to be made if the option is exercised, a tender of $995 on the last day of the option is bad, unless the option stipulates that the consideration therefor shall in the event of sale be applied on the deposit.

3. To constitute a valid tender of money there must, in the absence of some act or condition which amounts to a waiver, be something more than a mere readiness and willingness to pay even though expressed; there must be an actual production of the money and not merely of a cheque therefor.

R. M. Dennistoun, K.C., and *H. N. Baker*, for plaintiffs. *H. A. Burbidge*, and *F. M. Burbidge*, for defendants.

Book Reviews.

An Analysis of Snell's Principles of Equity with Notes. By E. E. BLYTH, B.A., LL.D. Tenth edition. London: Stevens and Haynes. Bell Yard. 1912.

This analysis deals with the sixteenth edition of Mr. Snell's work, written, of course, for the use of students. It looks as if it would be a great help to them in their studies and doubtless many of them will "sample" it.

Comparative Legal Philosophy, applied to legal institutions. By LUIGI MIRAGLIA, Professor of the Philosophy of Law in the University of Naples. Translated from the Italian, with an introduction by Albert Kocourek, Lecturer on Jurisprudence in Northwestern University. Boston: The Boston Book Company. 1912.

This is one of the modern legal philosophy series edited by a committee of the Association of American Law Schools. The editors in their general introduction evidently feel that they are up against the proposition of convincing the public of the desirability or possibility of mixing philosophy and practical

legislation, quoting the saying of Socrates, "Until either philosophers becomes kings or kings philosophers, states will never succeed in remedying their shortcomings." Neither kings nor parliaments have in these days much interest in philosophy, and unless there is a combination little will be done by the learning displayed in these philosophical works. The Committee, however, have hopes for some such transformation, and think that the present generation may be expected to move in that direction. We trust it may be so; and if so, doubtless the books of this series, some thirteen of them to the present time, will be mines of information to these philosopher-kings, when they have time to digest and transform the spirit of them into practical legislation.

Goodeve's Modern Law of Personal Property. By JOHN HERBERT WILLIAMS, LL.M., and WILLIAM MORSE CROWDY, B.A., Barristers-at-law. Third edition. London: Sweet and Maxwell, Limited, 3 Chancery Lane. 1912.

This is a companion volume to the author's book on the Modern Law of Real Property, and has been carefully revised, and brought up to date. Many portions of the book have been re-written, as codifications and amending statutes have dealt with several of the subjects dealt with since the fourth edition in 1904. This book is probably better known in England than in this country, but is recognised there as being a valuable summary of the law of real property. Nowadays, almost all branches of law are specialized, so that books which deal generally with such a vast subject as personal property are not as much in demand as they were when Williams on Personal Property first appeared; every good library, however, should have Mr. Goodeve's book. It is produced by these eminent law publishers in their best style of paper and typography.

The Genius of the Common Law. By RIGHT HON. SIR FREDERICK POLLOCK, D.C.L., LL.D. New York: The Columbia University Press. 1912.

This is one of the Columbia University Carpentier lectures—most interesting and scholarly, worthy of the pen of this great master of law and expression. It begins with a chapter on "Our lady and her knights," referring to the common law, its continuity, origin and traditions. The history of this lady is

sketched with graphic touches throughout her vicissitudes and perils; and concludes with loyal expressions as to her vitality and forecast of future freshness. The writer "challenges any other system to shew principles of like generality better fitted to advance justice, capable of nicer discrimination in doubtful affairs, or applied with more scientific elegance." He also says that this lady of his love "is not a museum of antiquities, but a living and active law, and our purpose has been to exhibit in the light of their past effects the faculties, the operations and the perils which to-day as much as ever enter into that life." No more interesting reading for the vacation than this little book of 140 pages.

A Selection of Leading Cases illustrating the Criminal Law, for the Use of Students. By A. M. Wilshere, M.A., LL.B. London: Sweet & Maxwell, Limited, 3 Chancery Lane. 1912.

This is a companion volume to the "Elements of Criminal Law and Procedure," by the same author; a very useful book for the purpose intended. There is nothing, however, perfect in this world; and so we note in that regard that the case of *Beatty* v. *Gillbanks*, the well-known Salvation Army case, is given without reference to later cases, which, if not substituted for it, might well have been referred to, as they somewhat modify the law as stated in the earlier case.

LIVING AGE.—Archibald Hurd, who is one of the most eminent authorities upon naval questions, is the author of an important article on "The New Naval Crisis and the Over-sea Dominions" which *The Living Age* for May 11, reprints from *The Fortnightly Review*. Sydney Brooks, who recently wrote of "Roosevelt the Wrecker" in an article which *The Living Age* for March 30, reprinted from the *London Outlook*, writes in a more deliberate and friendly manner of "Mr. Roosevelt's Reappearance" in an article which *The Living Age* for May 18 reprints from *The Fortnightly Review*. The same number of *The Living Age* reprints from the *London Nation* an article on "The Breakdown of American Justice" which discusses some striking instances of legal delays and miscarriages of justice in this country.

RULES OF SUPREME COURT OF JUDICATURE FOR ONTARIO.

The profession in the Province of Ontario have experienced much inconvenience by not having in any complete and available form the numerous Rules which have been passed by the Judges of the Supreme Court from time to time since the consolidation in 1897. We have, therefore, collected these Rules, and now give them to our readers. They are as follows:—

PASSED SEPTEMBER 29, 1898.

1225. Rule 401 is repealed and the following substituted therefor:—

"The time allowed to a party served out of Ontario to apply to discharge the order shall be that limited by the order allowing the service to be effected."

56. (2) From and after the 1st day of October, 1898, interest shall not be credited in any action or matter in respect of moneys paid into Court (1) With a defence; (2) as security for costs of an action, or appeal; (3) as security for debt or costs, to stay execution; (4) as a deposit for sale in mortgage actions; (5) as a condition imposed by any injunction order; (6) as proceeds of sale in, or to abide the result of, interpleader proceedings; or (7) for any other merely temporary purpose unless or until after the same shall have been in Court for six months, and then only at the rate of 2 per cent. per annum, not compounded in any case; but the President, or in his absence the next senior Judge of the High Court, may, for special reasons, order that in any particular case, interest shall be allowed on such moneys at any higher rate not exceeding 3 1-2 per cent. per annum.

56 (3) From and after the 1st day of October, 1898, the interest to be credited on the Assurance Fund shall be at the rate of 2½ per cent. per annum, compounded as provided by Rule 57.

56 (4) The interest to be credited to suitors' accounts, on all moneys paid into Court after the said 1st October, 1898 (other than for the purposes above mentioned), shall until further or other order be at the rate of 3½ per cent. per annum from the date, and as provided by Con. Rule 57.

58 (2) All balances which are or shall hereafter be standing to the credit of any action or matter which have not been, or which hereafter shall not be claimed, before the lapse of ten

years from the time when the same became, or shall hereafter become payable out of Court, shall be transferred to the Suspense Account; and the account in such actions or matters, in respect of all moneys so transferred shall be closed, and no further interest shall thereafter be credited thereto in respect of the moneys so transferred; but such transfer is not to prejudice the claim of any person to the payment of any moneys so transferred. Interest shall not hereafter be credited to the Suspense Account in respect of moneys standing as its credit or authorized to be transferred thereto.

66 (2) Mortgages and other securities made to, or invested in the accountant, in any action or matter, are to be held by him subject to the order of the Court or a Judge; but no duty or liability (save as custodian of the instrument) is by reason of such mortgage or other security being made, given to or vested in him, imposed on the accountant in respect of such mortgage or security or any property thereby vested in the accountant.

PASSED OCTOBER 8, 1898.

1226. Rule 9 of the Consolidated Rules is hereby amended by inserting the words "and Ottawa" after "Toronto" in the 4th line.

PASSED DECEMBER 10, 1898.

1227. Rule 782 is repealed, and the following to be substituted therefor:—

"Where there has been a trial with a jury an application for a new trial, whether made for that relief alone or combined with or as an alternative of a motion under Rule 783, may be made to a Divisional Court, or to the Court of Appeal."

1228. The following is to be added to Rule 783:—

"3. The foregoing provision of Rule 782 and of this Rule are not to restrict or affect the power of the Court of Appeal to direct a new trial in any appeal where such relief appears just and proper."

PASSED JANUARY 14, 1899.

1229. Rule 412 is repealed and the following substituted therefor:—

"Money shall be paid out of Court upon the cheque of the Accountant, countersigned by the Registrar of the Court of Appeal, or in the case of his absence, by the Junior Registrar of the High Court of Justice, this Rule to take effect forthwith without being published in *The Gazette.*"

PASSED FEBRUARY 17, 1900.

1230. Clause 4 of Sub-section B of Rule 26, is amended by adding thereto the following:—

"When the same shall be transmitted to the Central Office, to be dealt with under Rule 340."

1231. Rule 341 is hereby amended by striking out the word "Toronto," and the words "or in a Divisional Court" in the second line thereof.

1232. Sub-section 2 of Rule 792 is repealed and the following substituted for it:—

(2) The party making the motion shall not be entitled, unless by leave of a Judge or of the Court, to set it down until the record and exhibits have been, and it shall be his duty to cause them to be transmitted to the Central Office.

PASSED JUNE 22, 1901.

1233. Consolidated Rules 95 and 96 are hereby repealed.

1234. That Rule 347 be repealed and the following substituted therefor:—

347. The time for delivering, amending or filing any pleading answer or other document may be enlarged by consent without application to the Court or a Judge.

PASSED MARCH 29, 1902.

1235. That all proceedings under the Mechanics Lien Act, R.S.O. Cap 153, shall be legibly endorsed as follows:—

"In the matter of the Mechanics' Lien Act"

"BETWEEN" A. B., Plaintiff, and C. D., Defendant.

PASSED MAY 10, 1902.

1236. Rule 56 is hereby further amended by adding thereto the following sub-section:—

5. (5) From and after the 1st day of April, 1902, the interest to be paid on any suitor's account which has been heretofore allowed at four per cent. per annum, is to be three and one-half per cent. per annum, but this rule is not to affect any payments of interest at four per cent. already made on such accounts.

1237. The Finance Committee may, subject to the approval of the Attorney-General of Ontario being first obtained, arrange for the investment of any moneys in Court in first mortgages on lands in the Province of Manitoba.

PASSED JUNE 7, 1902.

1238. The costs of and incidental to the proceedings in the Court of Appeal for Ontario and in the High Court of Justice for Ontario and in any Divisional Court thereof for or in relation to the quashing of convictions or orders shall be in the discretion of the Court, and the Court shall have power to determine and direct by whom and to what extent the same shall be paid, whether the conviction or order is affirmed or quashed in whole or in part.

1239. Consolidated Rule 117 is amended by adding to the proceedings and matters which it is thereby provided shall be heard and determined by the Divisional Courts the following: Proceedings for or in relation to the quashing of convictions or orders.

1240. Consolidated Rules 355 and 356 shall not extend or apply to proceedings for or in relation to the quashing of convictions or orders.

1241. Consolidated Rule 1130 shall apply to the costs of and incidental to proceedings for or in relation to the quashing of convictions or orders whether the conviction or order is affirmed or quashed in whole or in part.

PASSED JUNE 20, 1903.

1242. (47) Rule 47 is hereby repealed and the following substituted therefor:—

47. (1) A local Judge of the High Court shall in actions brought and proceedings taken in his county, possess the like powers of a Judge in the High Court, in Court of Chambers, for hearing, determining and disposing of the following proceedings and matters, that is to say:—

(*a*) Motions for judgment in undefended actions;

(*b*) Motions for the appointment of receivers after judgment by way of equitable execution;

(*c*) Application for leave to serve short notice of motion to be made before a Judge sitting in Court or in Chambers;

(*d*) Motions for judgment and all other motions, matters and applications (except: (i) trials of actions; (ii) applications for taxed or increased costs under Rule 1146; and (iii) motions for injunction other than those provided for by Rule 46) where all parties agree that the same shall be heard, determined or disposed of before such local Judge, or where the solicitors for all parties reside in his county.

Provided always that where an infant or lunatic or person of unsound mind is concerned in any such proceedings or mat-

ters, the powers conferred by this Rule shall not be exercised in case of an infant without the consent of the official guardian, and in the case of a lunatic or person of unsound mind without the consent of his committee or guardian, and provided also the like consent shall be requisite in the case of applications for payment of money out of Court and for dispensing with the payment of money into Court where an infant, lunatic or person of unsound mind is concerned.

(2) No order for the payment of money out of Court, or for dispensing with the payment of money into Court, shall be acted upon unless a Judge of the High Court has manifested his approval thereof in manner provided by Rule 414.

(3) The judgment or order of the local Judge in any of the proceedings or matters in this rule referred to shall be entered, signed, sealed and issued by the Deputy Clerk of the Crown, Deputy or Local Registrar of the County, as the case may require, and shall be and have the same force and effect, and be enforceable in the same manner as a judgment or order of the High Court in the like case.

1243. (48) Rule 48 is hereby amended by substituting the letter (*d*) for the letter (*c*) in the second line.

1244. (139) Rule 139 is repealed and the following substituted therefor:—

139. Where a plaintiff's claim is for or includes a debt or liquidated demand, the endorsement besides stating the nature of the claim shall state the amount claimed in respect of such debt or demand, and for costs respectively, and shall further state that upon payment thereof within the time allowed for appearance further proceedings will be stayed. Such statement may be according to Form No. 6. The defendant, notwithstanding that he makes such payment, may have the costs taxed, and if more than one-sixth be disallowed the plaintiff's solicitor shall pay the costs of taxation.

1245. Form No. 6 (section 3 of the Appendix) is amended by striking out the figure 8 and leaving a blank space between the words "within" and "days" in the third line, and omitting the words between brackets.

1246. (162) Clause (*e*) of Rule 162 is hereby repealed and the following substituted therefor:—

(*e*) The action is founded on a judgment or on a breach within Ontario of a contract wherever made which is to be performed within Ontario or on a tort committed therein.

1247. (300) Rule 300 is hereby repealed and the following substituted therefor:—

300. A plaintiff may, without leave, amend his statement of claim, whether endorsed on the writ or not, once, either before the statement of defence has been delivered, or after it has been delivered, and before the expiration of the time limited for reply, and before replying.

1248. (302) Rule 302 is hereby repealed and the following substituted therefor:—

302. Where a plaintiff has amended his statement of claim under Rule 300 the opposite party shall plead thereto or amend his pleading within the time he then has to plead, or within eight days from the delivery of the amendment, which ever shall last expire, and in case the opposite party has pleaded before the delivery of the amendment and does not plead again or amend within the time above mentioned, he shall be deemed to reply on his original pleading in answer to such amendment.

1249. (414) Rule 414 is hereby amended by adding thereto the following sub-section:—

(2) An order dispensing with the payment of money into Court unless it is made by a Judge of the Supreme Court shall not be acted on unless or until a Judge of the High Court has manifested his approval thereof in manner provided by sub-section 1.

1250. (439) Rule 439 is hereby repealed and the following substituted therefor:—

Rule 439. A party to an action or issue, whether plaintiff or defendant, may, without order, be orally examined before the trial touching the matter in question by any party adverse in interest, and may be compelled to attend and testify in the same manner, upon the same terms, and subject to the same rules of examination of a witness except as hereinafter provided.

439 (*a*) In the case of a corporation any officer or servant of such corporation may, without order, be orally examined before the trial touching the matters in question by any party adverse in interest to the corporation, and may be compelled to attend and testify in the same manner and upon the same terms and subject to the same rules of examination as a witness except as hereinafter provided; but such examination shall not be used as evidence at the trial.

(2) After the examination of an officer or servant of a corporation a party shall not be at liberty to examine any other officer or servant without an order of the Court or a Judge.

439 (*b*) An examination shall not take place during the long vacation without an order of the Court or a Judge.

1251. (461) Sub-sections 2 and 3 of Rule 461 are hereby repealed.

1252. (881) Rule 881 is hereby repealed and the following substituted therefor:—

881. Before the sale of lands under a writ of *fieri facias*, the sheriff shall publish once, not less than three months and not more than four months preceding the sale, an advertisement of sale in *The Ontario Gazette*, specifying:—

(*a*) The particular property to be sold;

(*b*) The name of the plaintiff and defendant;

(*c*) The time and place of the intended sale;

(*d*) The name of the debtor whose interest is to be sold;

and he shall in each week, for four weeks next preceding the sale, also publish such advertisement in a public newspaper of the county or district in which the lands lie; and he shall also for three months preceding the sale, put up and continue a notice of such sale in the office of the clerk of the peace, and on the door of the court house or place in which the General Sessions of the Peace of the county or district is usually holden; but nothing herein contained shall be taken to prevent an adjournment of the sale to a future day.

1253. (1146) Rule 1146 is hereby amended by adding thereto the following sub-section:—

(2) Where an order or judgment in any such action or proceeding by any form of words directs that the costs thereof be taxed, it shall be taken to mean the allowance of commission and disbursements, in accordance with sub-section 1, unless it is otherwise expressly provided by the order or judgment, or unless the Court or a Judge of the High Court otherwise directs.

1254. (406) (2) When money is required to be paid into Court to the credit of the Assurance Fund, established under the Land Titles Act, the direction to receive the money, if the same is payable into a bank in Toronto, shall be obtained from the Master of Titles, and if payable into a bank outside of Toronto the direction shall be obtained from the proper Local Master of Titles.

PASSED NOVEMBER 28, 1903.

1255. 818 (*a*) Upon the filing of the order of His Majesty in His Privy Council, made upon an appeal to His Majesty in Council, with the officer of the High Court with whom the judg-

ment or order appealed from was entered, he shall thereupon cause the same to be entered in the proper book, and all subsequent proceedings may be taken thereupon as if the decision had been given in the Court below.

818 (*b*) When the judgment of the Supreme Court of Canada in appeal has been certified by the Registrar of the Court to the proper officer of the High Court he shall thereupon make all proper and necessary entries thereof, and all subsequent proceedings may be taken thereupon as if the judgment had been given or pronounced in the High Court. See R.S.O., c. 135, sec. 67.

1256. 1157 (*a*) When the costs incurred in Canada of an appeal to His Majesty in his Privy Council have been awarded, and the same have not been taxed by the Registrar of the Privy Council, the same may be taxed by the senior taxing officer, and the taxation shall be according to the scale of the Privy Council.

1257. Rule 413 is hereby repealed and the following substituted therefor:—

(413) Cheques shall not be issued during the long vacation unless the praecipe therefor is lodged in the Accountant's Office on or before the 20th day of July, unless otherwise ordered by a Judge.

1258. 972 (*a*) Costs payable out of the proceeds of lands sold under the Devolution of Estates Act, with the approval of the official guardian, shall be taxed by the senior taxing officer.

972 (*b*) The Official Guardian shall deposit in the Accountant's Office a statement, certified by the proper officer, showing the distribution of the proceeds of lands sold or mortgaged with his approval, and proof of the dates of births of the infants interested.

972 (*c*) All moneys received by the Official Guardian on behalf of infants, lunatics, absentees, or other persons for whom he acts, shall, unless otherwise ordered by a Judge of the High Court in Chambers, be paid into Court.

972 (*d*) Moneys paid into Court under the next preceding rule to the credit of infants, shall be paid out to them when they attain their majority, or sooner if so ordered by a Judge of the High Court in Chambers.

1259. Rule 99 is repealed and the following is substituted therefor:—

99. The business of the Weekly Sittings shall be as follows: Tuesday and Friday, Chambers; Monday, Wednesday and Thursday, Court.

1260. Rule 1245 is repealed, and the following is substituted for form No. 6, section 3 of the Appendix:—

(Add to the above forms for money claims in Nos. 4 and 5), and the plaintiff claims $ for costs; and if the amount claimed be paid to the plaintiff or his solicitor within the time allowed for appearance, further proceedings will be stayed.

1261. 348 (*a*) Unless the Court or a Judge gives leave to the contrary there shall be at least six (6) clear days, computed as mentioned in Rule 348, between the service of notice of an application for a declaration of lunacy and the day for hearing.

PASSED JUNE 18, 1904.

1262. 635 (4). Every judgment and order by which a judgment is affirmed, reversed, set aside, varied, or in any way modified, shall also be entered in the office where the proceedings were commenced; and the fee for entry shall be payable only in the office where the proceedings were commenced.

1263. 750 (a) Where moneys are by any judgment, order or report directed to be paid for the purpose of redemption or any like purpose, the same may be directed to be paid into Court. (b) Moneys so paid into Court shall be paid out, together with any interest accrued thereon, to the party for whom the same was by the judgment, order or report directed to be paid into Court, without order, upon production to the accountant of the consent of the party by whom the money was paid into Court, duly verified, or of his solicitor, but otherwise, as the Court or a Judge may order.

1264. Rule 770 is hereby repealed and the following is enacted as Rule 768 (a):—

768 (a) The words "report or certificate" in Rules 769 and 771 shall include every order made by the Master in Ordinary, a Local Master, or an Official Referee, except an order made under the authority of Rule 767.

1265. Rules 802 and 803 are repealed and the following substituted therefor:—

802. (1) Unless otherwise ordered by the Court of Appeal or a Judge thereof as hereafter provided, the appeal books need not be printed in the following cases:—

(*a*) Appeals under sub-clauses (a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (n), and (o), of section 50 (2) of the Judicature Act, as amended by the Act 4 Edw. VII., Cap. 11, entitled "An Act to amend the Judicature Act."

(*b*) Appeals under sub-clauses (e) and (f) of section 76 (1) of the Judicature Act, as amended by the aforesaid Act.

802 (2). In cases of appeal under sub-clause (c) of the aforesaid section 50 (2) only so much of the evidence and exhibits shall be printed as pertain to the questions involved in the appeal; and in the event of difference between the parties as to what the book should contain the same shall be settled by the trial Judges, or one of them, on application, of which 2 clear days' notice shall be given to the opposite party.

803. The Court of Appeal or a Judge thereof may order the appeal book in any of the cases specified in Rule 802 (1) or any of the documents, proceedings or other papers therein to be printed; and may under special circumstances dispense with printing in a case in which printing would otherwise be necessary.

1266. 940 (*a*) The Judge may also exercise the powers conferred upon the Court by Rules 200 and 201.

1267. Rule 1136 (1) is hereby repealed and the following substituted therefor:—

1136. (1) The costs of every interlocutory *viva voce* examination and cross-examination shall be borne by the party who examines, unless, as to the whole or part thereof, it be otherwise directed, in actions in the High Court by the Senior Taxing Officer on his appointment served, and in actions in a County Court by a Judge thereof. In actions in the High Court, if more than $25.00 is claimed, besides the disbursements, in procuring the attendance of the person examined, the sum to be allowed for the examination or cross-examination shall be fixed by the Senior Taxing Officer on such appointment.

Any increase of costs occasioned by proceeding, without good reason, otherwise than as provided by Rule 447 (1) shall not be allowed.

PASSED DECEMBER 24, 1904.

1268. Ordered that Rule 881 as enacted by Rule 1252 be repealed and the following substituted therefor:—

881. Before the sale of lands under a writ of *fieri facias*, the Sheriff shall publish once, not less than three months and not more than four months preceding the sale, an advertisement of sale in *The Ontario Gazette*, specifying:—

(*a*) The particular property to be sold;

(*b*) The name of the plaintiff and defendant;

(*c*) The time and place of the intended sale;

(*d*) The name of the debtor whose interest is to be sold;

and he shall upon one day at least in each week, for four successive weeks next preceding the sale, also publish such advertisement in a public newspaper of the county or district in which the lands lie; and he shall also for three months preceding the sale, put up and continue a notice of such sale in the office of the Clerk of the Peace, and on the door of the Court House or place in which the General Sessions of the Peace of the county or district is usually holden; but nothing herein contained shall be taken to prevent an adjournment of the sale to a future day.

1269. Rule 938 is repealed and the following substituted therefor:—

(938) The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, or any person claiming to be interested in the relief sought as creditor, devisee, legatee, next-of-kin or heir-at-law of a deceased person, or as *cestui que* trust under the trusts of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may serve a notice of motion returnable in cases under clauses (a), (b), (e) and (h) hereof before a Judge of the High Court sitting in Weekly Court, and in other cases before a Judge of the High Court in Chambers for such relief of the nature or kind following, as may be specified in the notice, and as the circumstances of the case may require, that is to say, the determination without an administration of the estate or trust of any of the following questions or matters:—

(*a*) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next-of-kin or heir-at-law, or *cestui que* trust.

(*b*) The ascertainment of any class of creditors, legatees, devisees, next-of-kin, or others.

(*c*) The furnishing of any particular accounts by the executors or administrators or trustees and the vouching (where necessary) of such accounts.

(*d*) The payment into Court of any money in the hands of the executors or administrators or trustees.

(*e*) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees.

(*f*) The approval of any sale, purchase, compromise or other transaction.

(*g*) The opinion, advice or direction of a Judge pursuant to section 37 of the Act respecting Trustees and Executors and the Administration of Estates.

(*h*) The determination of any question arising in the administration of the estate or trust.

1270. Rule 1143 is repealed and the following substituted therefor:—

(1143) In cases not otherwise provided for, the Taxing Officer may allow a reasonable sum for the expense of a shorthand writer, on the certificate of the Judge, before whom the examination of any witness or witnesses in any such cause, matter or other proceeding, takes place; and also on the certificate of the Local Master in references before him when the parties agree to the employment of a shorthand writer.

1271. Rule 791 is repealed and the following substituted therefor:—

(791) On any motion for a new trial or by way of appeal from a judgment or order of the Court or a Judge of the High Court or to enter a different judgment, the applicant or appellant shall deliver to the proper Registrar, a copy of the written opinion (if any) unless it has been reported, of the Judge appealed from and of the judgment or order in question on the motion or appeal as the same has been settled or entered, before the motion or appeal is set down for argument; and in default, unless otherwise ordered, the motion or appeal shall be deemed to have been abandoned, and the opposite party shall be entitled to the costs thereof.

1272. Clause 2 of Rule 55 is hereby repealed.

1273. Rule 77 is hereby amended by striking out all the words after the word "matter" in the fourth line thereof.

1274. Rule 407 is hereby repealed and the following substituted therefor:—

(407) The person applying for the direction or cheque shall leave a praecipe therefor according to Form No. 42 or Form No. 43, and the judgment or order under which the money is payable, together with a copy thereof and of the report where necessary, which is to be on good paper of foolscap size, folded lengthwise and is to be verified by an officer in the accountant's office, and to be retained by the accountant.

In case the direction is obtained elsewhere than in Toronto, these papers with the necessary postage for the retransmission are to be sent to the accountant.

(2) The copy so verified shall be marked with a number cor-

responding with that of the account, and shall be bound and kept for reference in a book to be called the "Order Book."

PASSED MARCH 24, 1906.

1275. Notwithstanding the provisions of Rule 777, except in cases in which there is by Statute or by Rule of a Court a local venue, an order of a Judge of the High Court determining the place of trial, whether made upon an original motion, or upon appeal from the Master in Chambers, or from a Local Judge or Local Master, and whether it change or confirm the venue as laid by the plaintiff, shall not be subject to appeal.

PASSED SEPTEMBER 28, 1907.

1276. Rule 999 is repealed and the following substituted therefor:—

Upon the filing of the petition it shall stand referred, and shall be delivered or posted by the proper officer to the Referee named for that purpose.

1277. Rule 806 (1) is amended by adding:—

"Where evidence is printed there shall be a headline on each page giving name of witness and stating whether the evidence is examination-in-chief, cross-examination, or as the case may be."

"All exhibits shall be grouped together and printed in chronological order."

And by adding to Rule 806 as sub-section (1a):—

"(1a) Provided that in a case in which an appeal lies to His Majesty in His Privy Council, the appeal book may, by consent or by direction of a Judge on such terms as may seem just, be printed according to the regulations as to form and type in appeals to His Majesty in Council."

PASSED MARCH 27, 1908.

1278. (1) Consolidated Rules 777 and 1275 are repealed and the following substituted therefor:—

777. (1) A person affected by an order or judgment pronounced by a Judge in Chambers which finally disposes of an action may appeal therefrom to a Divisional Court without leave, by notice of motion to be served within four days, and made returnable within seven days after the order or judgment has been pronounced. The motion shall be set down at least one day before the same is made returnable.

(2) Except in cases in which a right of appeal is specially conferred by Statute or by Rule of Court, no appeal shall lie

from any judgment or order of a Judge in Chambers, which does not finally dispose of the action unless by special leave of a Judge of the High Court other than the Judge by whom the judgment or order was pronounced.

(3) Such special leave shall not be given unless

(*a*) There are conflicting decisions by Judges of the High Court upon the matter involved in the proposed appeal, and it is in the opinion of the Judge desirable that an appeal should be allowed; or

(*b*) There appears to the Judge to be good reason to doubt the correctness of the judgment or order from which the applicant seeks leave to appeal, and the appeal would involve matters of such importance that in the opinion of the Judge leave to appeal should be given.

(4) The application for leave to appeal shall be upon notice served within four days and returnable within seven days from the judgment or order, or within such further time as a Judge of the High Court may allow.

(5) If leave be given, the appeal shall be forthwith set down by the applicant upon the Divisional Court list and shall be heard by the Court without further notices.

(6) No appeal under this Rule shall be a stay of proceedings unless so ordered by a Judge of the High Court.

(7) These Rules shall come into force forthwith upon promulgation thereof.

PASSED MARCH 27, 1908, UNDER THE CRIMINAL CODE.

1279. In all cases in which it is desired to move to quash a conviction, order, warrant or inquisition, the proceeding shall be by a notice of motion in the first instance instead of by *certiorari*, or by rule or order *nisi*.

1280. The notice of motion shall be served at least six days before the return day thereof, upon the Magistrate, Justice or Justices making the conviction or order, or issuing the warrant, or the coroner making the inquisition, and also upon the prosecutor or informant (if any), and upon the Clerk of the Peace if the proceedings have been returned to his office, and it shall specify the objections intended to be raised.

1281. Upon the notice of motion shall be endorsed a copy of Rule Number 1282 together with a notice in the following form, addressed to the Magistrate, Justice or Justices, Coroner or Clerk of the Peace, as the case may be:—

"You are hereby required forthwith after service hereof to

return to the Central Office at Osgoode Hall, Toronto, the conviction (or as the case may be) herein referred to, together with the information and evidence, if any, and all things touching the matter, as fully and as entirely as they remain in your custody, together with this notice.

Dated

To A. B., Magistrate at (*or as the case may be*).

C. D., Solicitor for the applicant."

1282. Upon receiving the notice so endorsed, the Magistrate, Justice or Justices, Coroner or Clerk of the Peace, shall forthwith return to the Central Office at Osgoode Hall, Toronto, the conviction, order, warrant or inquisition, together with the information and evidence, if any, and all things touching the matter, and the notice served upon him with a certificate endorsed thereupon in the following form:—

"Pursuant to the accompanying notice, I herewith return to this Honourable Court the following papers and documents, that is to say:—

"1. The conviction (*or as the case may be*);

"2. The information and the warrant issued thereon;

"3. The evidence taken at the hearing;

"4. (*Any other papers or documents touching the matter*)."

"And I hereby certify to this Honourable Court that I have above truly set forth all the papers and documents in my custody or power relating to the matter set forth in the said notice of motion."

1283. The certificate shall have the same effect as a return to a writ of *certiorari*.

1284. The notice shall be returnable before a Judge of the High Court of Justice for Ontario sitting in Chambers.

1285. The motion shall not be entertained unless the return day thereof be within six months after the conviction, order, warrant or inquisition, or unless the applicant is shown to have entered into a recognizance with one or more sufficient sureties in the sum of $100 before a Justice or Justices of the County within which the conviction, order or inquisition was made or the warrant issued or before a Judge of the County Court of the said County or before a Judge of the High Court, and which recognizance with an affidavit of the due execution thereof shall be filed with the Registrar of the Court in which such motion is made or is pending, or unless the applicant is shewn to have made the deposit of the like sum of $100, with the Registrar of the Court in which such motion is made with or upon the con-

dition that he will prosecute such application at his own costs and charges without any wilful or affected delay and that he will pay the person in whose favour the conviction, order or other proceeding is affirmed his full costs and charges to be taxed according to the course of the Court in case the conviction, order or other proceeding is affirmed.

1286. The Judge shall have all the powers of the Court in the like matters and may order the production of papers and documents as he may deem necessary.

1287. An appeal shall lie from the order of the Judge to a Divisional Court if leave be granted by a Judge of the High Court.

1288. The Rule passed by the High Court on the 17th day of November, 1886, under the authority of 49 V., c. 49, s. 6 (D), and all Rules and parts of Rules inconsistent with the next preceding nine Rules are hereby repealed.

These Rules shall come into force on the first day of September next.

PASSED MAY 2, 1908.

1299. Rules 1289 to 1298 inclusive, relating to *certiorari* proceedings passed on Friday, the 27th day of March, 1908, and which were published in the issue of *The Ontario Gazette*, of 4th April, 1908, are hereby declared to be superseded and inoperative by reason of the Act of the Ontario Legislature passed at its last Session embodying said Rules.

1300. Rule 1237 is hereby amended by adding thereto the words "and also in the Provinces of Alberta and Saskatchewan."

1301. Rule 168 is hereby repealed and the following substituted therefor:—

1301. (1) When a defendant is served within Ontario elsewhere than in a Provisional Judicial District, he shall appear within ten days, including the day of service.

(2) If served within a Provisional Judicial District, unless otherwise ordered under Rule 353, he shall appear within twenty days, including the day of service.

PASSED DECEMBER 19, 1908.

Rule 412, as enacted by Rule 1229 is hereby repealed, and the following substituted therefor:—

1302. (1) Money shall be paid out of Court upon the cheque of the accountant, countersigned by the Registrar of the Court of Appeal, or by one of the Junior Registrars of the High Court of Justice, and the Finance Committee of the Supreme Court

shall regulate the times during which such officers shall respectively perform that duty, and may make regulations as to the manner in which it shall be performed.

(2) This Rule shall take effect forthwith without being published in *The Ontario Gazette*.

1303. Ordered that Rule 806 be amended by striking out the words "and in demy quarto form" in the third line, and the word "small" in the fourth line.

PASSED APRIL 23, 1910.

1304. Any condition precedent the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be, and subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case by the plaintiff or defendant shall be implied in his pleading.

PASSED DECEMBER 24, 1910.

1305. Rule 806, as amended by Rules 1277 and 1303, is hereby repealed, and the following substituted therefor:—

(1) The Appeal Book shall, when a printed book is necessary, be printed in accordance with the rules in Schedule A hereto, and, unless these rules are complied with, shall not be received without the leave of a Judge.

(2) If the press has not been carefully corrected, the Court in its discretion may (*a*) disallow the cost of printing; (*b*) decline to hear the appeal; or (*c*) make such order as to postponement and payment of costs as may seem just.

(3) In the Appeal Book there shall not be any unnecessary repetition of headings and documents; and parts of documents that are not relevant to the subject matter of the appeal, or are merely formal, shall not be printed at length, but any document not printed shall be referred to in its appropriate place in the book.

(4) When one party objects to the printing of any document, or part of document, upon the ground that it is not necessary, and the other party insists upon it being printed, it shall be printed with a note indicating that it is printed at the instance of that party, and if upon taxation it is found that the printing was unnecessary, the cost of such printing shall be disallowed to, and in any event shall be paid by the party at whose instance it was printed.

(5) When a book is printed in form suitable for use upon an appeal to His Majesty in Council, 50 copies, and in all other

cases 30 copies, in sheet form unbound, shall be deposited with the Registrar for use upon any further appeal, in addition to eleven bound copies for the use of the Court.

Schedule A.—Rules as to Printing.

1. The book shall be printed upon both sides of the paper, which shall be of good quality, not less than 60 pounds to the ream.

2. The sheet when folded and trimmed shall be 11 inches long and 8½ inches wide.

3. The type in the text shall be pica, but long primer shall be used in printing accounts, tabular matter and notes.

4. The number of lines on each page shall be 47, as nearly as may be, exclusive of headlines, each line to be 5¾ inches in length, exclusive of marginal notes, and every tenth line on each page shall be numbered in the margin, and the other margins shall be one and one-half inches wide.

5. The books shall be bound in paper, not less than 65 pounds to the ream, and the backs shall be reinforced with cloth.

6. In cases in which an appeal lies to His Majesty in Council, and in any other case in which the parties so agree or a Judge upon the application of either party so directs, marginal notes, such as are required upon an appeal to His Majesty in Council, shall be printed.

7. In other cases there shall be a headline on each page of evidence, giving the name of the witness and stating whether the evidence is on examination-in-chief, cross-examination, or as the case may be, and answers shall follow the questions immediately and not commence a separate line.

8. All exhibits shall be grouped, and be printed in chronological order.

9. At the beginning of the book there shall be an index setting out in detail the contents of the book in four parts, as follows:—

Part 1. A statement of the case and each pleading, order or other document in chronological order, with its date.

Part 2. Each witness by name, stating whether for plaintiff or defendant, examination-in-chief or cross-examination, or as the case may be.

Part 3. Each exhibit, with its description, date and number in the order of filing.

Part 4. All judgments in the Courts below, with the reasons for judgment, and the name of the Judge delivering the same, and the reasons for and against appeal.

10. The name of the Court, Judge or Official appealed from shall be stated on the cover and title page.

11. The book shall contain the date of the first proceeding and of the delivery of the several pleadings, but the style of the cause shall not be repeated.

12. Disbursements reasonably and properly incurred for printing Appeal Books in the form prescribed by these Rules shall be allowed.

1306. Rule 748 and Form 78 are hereby repealed and the following enacted in lieu thereof:—

748. The Master before he proceeds to hear and determine shall require an appointment according to Form No. 78 to be served upon all persons made parties before the judgment appearing to have any lien, charge or incumbrance upon the lands in question, subject to the plaintiff's mortgage, and shall in the notice to the other parties interested, required by Rule 658, state the names and nature of the claims of those so notified, and of those added under the provisions of Rule 746 as appearing to have a lien, charge or incumbrance upon the said lands. Such notice may be in the Form 78a.

Form 78. Notice to parties by writ having incumbrances.

(Court and Cause.)

Having been directed by the judgment in this action to inquire whether any person other than the plaintiff has any lien, charge or incumbrance upon the lands in question in this action subsequent to the plaintiff's claim, and to take an account of the amount due to the plaintiff and any such person. And it having been made to appear that you may have some lien, charge or incumbrance thereon, you are hereby notified that I have appointed day, the day of next at my chambers in the Court House at at o'clock to proceed with the said inquiry and to determine the amount of the claim of the plaintiff, and of such incumbrancers as may come in and prove their claims before me.

If you fail to attend upon such appointment, and to prove your claim, the reference may proceed in your absence, and you will receive no further notice of the proceedings in this action, and you will be treated as disclaiming any lien, charge or incumbrance upon the said lands, and will stand foreclosed from any such claim.

Dated this day of 19 .

W. L., Master.

Form 78a. Notice to original defendants other than incumbrancers.

(Court and Cause.)

Having been directed by the judgment in this action to inquire whether any person other than the plaintiff has any lien, charge or incumbrance upon the lands in question in this action subject to the plaintiff's claim thereon.

You are hereby notified that it has been made to appear to me that the persons named in the schedule hereto may have some lien, charge or incumbrance thereon, and I have, therefore, caused such of them as are not already parties thereto to be added as parties in my office, and have appointed day, the day of next at my chambers in the Court House at at o'clock, to inquire and determine whether the said parties have any such lien, charge or incumbrance, and to fix and ascertain the amount thereof, and the amount of the plaintiff's claim upon his security.

If you do not then and there attend, the reference will be proceeded with in your absence, and you will receive no further notice of the proceedings in this action.

Dated this day of 19 .

W. L., Master.

Schedule.

Incumbrancer.		Nature of claim.
E.g.	A. B.	Mortgage dated.
	C. D.	Execution.
	E. F.	Mechanics' Lien.

1307. Rule 777, as amended by Rule 1278, is further amended by adding the words "or matter" after the word "action," where it first occurs in sub-section (1) of Rule 777.

PASSED MARCH 4, 1911.

1308. Rule 42 is hereby amended by striking out paragraph 11 and substituting therefor the following:—

11. Application respecting the guardianship of the person of infants and for the sale, lease or mortgage of the property of infants.

1309. Rule 960 is hereby repealed and the following substituted therefor:—

960. All applications for the sale, mortgage or lease of an infant's estate shall be made to a Judge in Chambers.

1310. Rule 965 is amended by striking out the words "or the Master in Chambers or other Officer" in the first and second lines.

1311. Rule 966 (1) is amended by striking out the words "Master in Chambers or other Officer."

Rule 966 (2) is amended by striking out the words "or Officer."

1312. Rule 968 is amended by striking out the words "or Officer."

1313. All judgments and orders directing payment of costs shall direct payment to the party entitled to receive the same and not to his Solicitor.

1314. When costs are directed to be paid out of money in Court, the Solicitor of the party entitled to receive the same shall be entitled to have the cheque drawn in his favour upon filing with the Accountant an affidavit stating: (*a*) That he is the party entitled to receive such costs, and (*b*) That he has not been paid his costs or any part thereof, and that the costs, payment of which is sought, are justly due to him. If the Solicitor has been changed in the course of the litigation this fact shall be shown in the affidavit, and the consent of both Solicitors shall be filed.

1315. When money to which an infant is entitled is paid into a County Court, the Clerk of the said County Court shall forthwith cause the same to be transmitted to the Accountant with a statement showing when the money was so paid in, and a copy (certified by the said Clerk) of all judgments or orders affecting the same, and the said money shall thereupon be placed to the credit of the said infant and shall be paid out to him with accrued interest on his attaining his majority without further order, unless in the meantime a Judge of the High Court shall otherwise order.

1316. When money is paid into Court under the order of a Surrogate Judge to the credit of an infant it shall be paid out of Court to him with accrued interest without further order upon his attaining his majority.

1317. Rule 695 is amended by adding the following:—

(3) When money is paid to the joint credit of the Accountant and the party entitled, the Accountant shall sign the cheque for payment out upon the production of the consent of the party paying in, duly verified, or of his Solicitor, or in the absence of such consent upon the order of a Judge.

1318. Sub-sections (*a*) and (*b*) of Rule 750, as enacted by Rule 1263, are hereby repealed.

1319. Rule 824 is amended by inserting after the word "Can-

ada" in the first line the words "or to His Majesty in His Privy Council."

PASSED SEPTEMBER 23, 1911.

1320. Where in any civil or commercial matter, pending before a Court or Tribunal of a foreign country, a letter of request from such Court or Tribunal for service on any person in Ontario of any process or citation in such matter, is transmitted to the Supreme Court of Judicature for Ontario, the following procedure shall be adopted:—

(1) The letter of Request for service shall be accompanied by a translation thereof in the English language, and by two copies of the process or citation to be served, and two copies thereof in the English language.

(2) Service of the process or citation shall by a direction of any Judge of the Supreme Court of Judicature for Ontario be effected by any Sheriff or his authorized agent.

(3) Such service shall be effected by delivering to and leaving with the person to be served one copy of the process to be served and one copy of the translation thereof, or may be effected in such other manner as may be directed by the Letter of Request.

(4) After service has been effected the process shall be returned to the Clerk of the Supreme Court, together with the evidence of service by affidavit of the person effecting the service sworn before a Notary Public, and verified by his seal, and particulars of charges for the cost of effecting such service.

(5) The Clerk of the Supreme Court of Judicature for Ontario shall return the Letter of Request for service, together with the evidence of service, with a certificate appended thereto duly sealed with the seal of the said Court. Such certificate shall be in the form in the Schedule to this Rule.

(6) Nothing in this rule shall prevent service from being effected in any other manner in which it may now be made.

Schedule.

Certificate of Service of foreign process:—

I, Clerk of the Supreme Court of Judicature for Ontario, hereby certify that the documents annexed hereto are as follows:—

(1) The original letter of request for service of process received from the Court of Tribunal at in the of in the matter of versus , and

(2) The process received with such letter of request, and

(3) The evidence of service upon the person named in such letter of request duly sworn to before and verified by a Notary Public duly appointed for Ontario under his hand and official seal;

And I certify that such service so proved, and the proof thereof are such as are required by the law and practice of the Supreme Court of Judicature for Ontario, regulating the service of legal process in Ontario, and the proof thereof.

And I certify that the cost of effecting such service amounts to the sum of $.

Dated this day of 191 .

1321. The Court or Judge may order the examination for discovery at such place and in such manner as may be deemed just and convenient of an officer residing out of Ontario of any Corporation party to any action. Service of the order and of all other papers necessary to obtain such examination may be made upon the Solicitor for such party, and if the officer to be examined fails to attend and submit to examination pursuant to such order, the Corporation shall be liable, if a plaintiff, to have its action dismissed, and if a defendant, to have its defence struck out and to be placed in the same position as if it had not defended.

PASSED DECEMBER 23, 1911.

1322. (1) When an application is made to a Judge in Chambers, under section 110 of the Ontario Judicature Act, and it appears to him that the action is one which ought to be tried without a jury, he shall direct that the issues shall be tried, and the damages assessed without a jury, and in case the action has been entered for trial, shall direct the action to be transferred to the non-jury list.

(2) The refusal of such an order by the Judge in Chambers shall not interfere with the right of the Judge presiding at the trial to try the action without a jury. Nor shall an order made in Chambers striking out a jury notice interfere with the right of the Judge presiding at the trial to direct a trial by jury.

(3) The Judge presiding at a jury sittings, or a jury and non-jury sittings, in Toronto, may in his discretion strike out the jury notice and transfer the action for trial to a non-jury sittings, and this power may be exercised, notwithstanding that the case is not on the peremptory list for trial before the said Judge.

1323. Rule 56 is hereby further amended by adding thereto the following sub-sections:—

56 (6) From and after the 31st of March, 1912, the interest on the accounts mentioned in sub-section 4 shall be increased to 4½ per cent. per annum, and shall be payable at the said rate, so long as the state of the funds in the hands of the Court justifies the continuance thereof.

1324. (1) When money is in Court to the credit of an infant or lunatic, it may be paid out upon the fiat of a Judge in Chambers without formal Order. Such fiat shall be prepared by the Official Guardian and shall be entered at length in the Order Book of the Clerk in Chambers and shall be deposited with the Accountant.

No law stamp shall be required upon such fiat. The Judge may in his discretion fix and direct payment of the costs of the application to the Solicitor, and dispense with the affidavit required by Rule 1314.

The fiat may be signed either by the Judge or the Clerk in Chambers.

(2) When an Order has been made for payment of maintenance out of money in Court to which an infant is entitled, the cheque shall, upon application to the Official Guardian, be obtained and forwarded by him without expense to the applicant. A notice to that effect shall be stamped upon all cheques issued for maintenance.

(3) No law-stamp shall be required upon any such cheque.

1325. (*a*) Where land has been sold under the provisions of the Devolution of Estates Act, and money has been paid into Court to the credit of non-concurring heirs and devisees, the same shall be paid out to them upon application to the Accountant without order.

(*b*) When money has been paid into Court under the said Act to the credit of an absentee, it shall be paid out to him upon the fiat of a Judge to be obtained upon proof of identity, after notice to the Official Guardian.