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In another column we publish an interesting account by Sir Charles Hibbert Tupper of the proceedings before the recent Commission of Enquiry into the damages from wrongful arrest suffered by British sealing vessels in the North Pacific and Behring Sea. The following *mot* in connection with the Commission deserves to be recorded. The story runs in this wise: A certain member of the legal fraternity in Ottawa, who is something of a wag, met one of the eminent counsel engaged in the Arbitration proceedings immediately after the latter's return from the Pacific Coast. "I am glad to see you back again," said the Ottawa man, "did they treat you well in Victoria?" "Most hospitably," replied the eminent counsel, "but the proceedings were tedious and we were really stuck there too long!" "I don't wonder at that," rejoined he of Ottawa, "the *locus sigilli* has always been regarded as a very proper place to *stick* at, you know!"

The Law Society of British Columbia recently adopted the report of a committee appointed to arrange a redistribution of the sessions of the Courts of that Province by which appeals are to be heard at Vancouver as well as at Victoria, as follows: A full court of two judges to sit at Vancouver, for hearing interlocutory appeals in cases commenced by a writ of summons issued out of Vancouver or Westminster registry, also appeals from County Courts of Westminster and Vancover, such court to sit five days prior to sittings of Full court at Victoria. Circuits to be rearranged in such a way that all judges can attend at the full court at Victoria, that no judge shall be away from his place of residence for a

greater period than three weeks. As far as consistent with this, assizes should be arranged so as to enable counsel to attend as many Courts as possible. But the committee think that assizes might be held at Nanaimo and Victoria concurrently with those at Vancouver and Westminster.

The *Albany Law Journal* alludes to the message of the Governor to the Legislature, urging the propriety of biennial sessions, wherein he refers to the fact that in other States the Legislature convenes only once in two years, and that there has been no disposition to return to the yearly meeting. He thus continues: "This is a large State and its interests are enormous and diverse, but these do not justify or even excuse the large number of confusing, expensive and unnecessary laws passed at every session. They serve no proper purpose whatever, and their tendency is to unsettle and mislead, even if they contain nothing more objectionable. The legitimate needs of this State can be provided for in a shorter time than is generally consumed, and the chief hope arising from protracted sessions and the passage of unnecessary laws is that the people may in their next constitution conclude to correct both with biennial sessions." Our contemporary says the profession there will say "Amen" to these declarations, and that the trend of public opinion all over the Union is unmistakably in favor of fewer Legislative sessions. We commend these remarks to the powers that be in this country.

"Of the making of books there is no end," sighs the much-canvassed and long-suffering lawyer. We predict, however, that he will not grumble on being asked to purchase the newly announced Annual Digest of Canadian Cases, by Mr. C. H. Masters and Mr. Charles Morse. This Digest will mark a new era for Canada, and indicates an important forward movement in the unification of the laws in the various provinces of the Dominion. It will, in this connection, be the most important law book that has yet been announced

in this country. We are glad that this work has been undertaken by two gentlemen so well qualified for the task.

Mr. Masters, who is a Nova Scotian, took his degree of M.A. at Acadia College in 1876, was called to the Bar in 1877, and, having practised in St. John for some years, was in 1886 appointed assistant reporter of the Supreme Court, and in October, 1895, became chief reporter. He assisted Mr. Justice Burbidge in his preparation of the Digest of the Criminal Law of Canada, in 1890, as also Mr. Justice Taschereau in the preparation of his work on the Criminal Law of Canada. Mr. Morse, also from Nova Scotia, is the son of Charles Morse, Q.C., Judge of Probate for the County of Queens, N.S. He graduated in law at Dalhousie University, being prize man in 1885, in which year he was called to the Bar of Nova Scotia. In 1888 he was appointed reporter of the Exchequer Court by Sir John Thompson, then Minister of Justice. Mr. Masters has shown his capacity as a book maker in connection with the works already referred to. As to Mr. Morse, it is not necessary that we should say much as to his ability. Those who have from time to time read his "Causerie" in this journal have already formed a very high opinion of his legal attainments, his research, his extensive reading, his scholarship and marked ability as a writer.

We have no doubt but that the forthcoming work will add largely to the reputation of both these gentlemen. Having every reason to be proud of the judges of the Dominion, we shall all be glad to see the result of their labors collected and arranged by members of the professsion so well qualified for the task. The Digest, which will be published annually by the Canada Law Journal Company, Toronto, will be modelled on "Mew's Annual Digest," and no expense will be spared in making it a credit to the publishers as well as the editors.

BEHRING SEA CLAIMS COMMISSION.

A return furnished the U.S. House of Representatives in 1896 gives a statement of the number of seals taken for all purposes on the seal islands during the years 1870 to 1889, both inclusive, together with the respective amounts paid by the lessees each year as rental and tax for the privilege; * as also the number of seals taken by the lessees of said islands since 1890, the amounts received by the Government from the said lessees in return for the privilege of taking seals on the islands, and the amounts which remain due to the Government and unpaid by the lessees on account of this privilege during the same years.†

The figures showing the catch of seals on the part of pelagic sealers sailing from British Columbia, and contained in the last report of the Canadian Department of Marine and Fisheries, are: in 1889, 35,310: 1890, 43,325; 1891, 52,365; 1892, 49,743; 1893, 70,592; 1894, 95,048; 1895, 73,614.

It was in 1886 that the United States attempted to assert

* Year.	Seals taken.	Rental and tax.	Year.	Seals taken.	Rental and Tax.
1870	23,773	$101,080 00	1880	105,718	$317,594 50
1871	102,960	322,863 38	1881	105,063	316,885 75
1872	108,819	307,181 12	1882	99,812	317,295 25
1873	109,177	327,081 25	1883	79,509	251,875 00
1874	110,585	317,494 75	1884	105,434	317,400 25
1875	106,460	317,584 00	1885	105,024	317,489 50
1876	94,657	291,155 50	1886	104,521	317 452 75
1877	84,310	253,255 75	1887	105,760	317,500 00
1878	109,323	317,447 50	1888	103,304	317,500 00
1879	110,511	317,400 25	1889	102,617	317,500 00

† Year.	Seals taken.	Amounts paid.	Amounts due and unpaid.
1890	20,995	$269,673 88	$ 47,403 00
1891	13,482	46,749 23	133,628 64
1892	7,549	23,972 60	108,686 52
1893	7,500	.....	132,187 50
1894	16,031	.....	214,298 37
1895	15,000	.....	204,375 00

exclusive jurisdiction over the eastern portion of Behring Sea, and so to prevent any competition in the sealing business on the part of pelagic sealers (those who hunt on the waters) with the United States lessees of the Pribilov Islands.

Sealing vessels from British Columbia were consequently in 1886, and subsequently in 1887-1889, seized by United States revenue cutters, when found sealing in these waters, though at great distances from land.

The result of the Behring Sea Arbitration under the treaty of 1892, was an award in 1893 prescribing regulations respecting the hunting of fur seals in the Pacific, and a decision on the part of a tribunal of jurists that the United States of America, by interfering with British ships outside of the three-mile limit in Behring Sea, had violated the principles of international law.

In answer to specific questions submitted the Award declared that :—

By the Ukase of 1821, Russia claimed jurisdiction in the sea now known as the Behring Sea, to the extent of one hundred Italian miles from the coasts and islands belonging to her, but in the course of the negotiations which led to the conclusion of the treaty of 1824 with the United States, and of 1825 with Great Britain, Russia admitted that her jurisdiction in the said sea should be restricted to the reach of cannon shot from shore, and it appears that, from that time up to the time of the cession of Alaska to the United States, Russia never asserted in fact or exercised any exclusive jurisdiction in Behring Sea, or any exclusive right to the seal fisheries therein, beyond the ordinary limit of territorial waters. That Great Britain did not recognize or concede any claim, upon the part of Russia, to exclusive jurisdiction as to the seal-fisheries in Behring Sea, outside of ordinary territorial waters ; that the body of water now known as the Behring Sea, was included in the phrase " Pacific Ocean," as used in the treaty of 1825 between Great Britain and Russia ; that no exclusive rights of jurisdiction in Behring Sea and no exclusive rights as to the seal fisheries therein, were held or exercised by

Russia outside of ordinary territorial waters after the treaty of 1825, and that the United States has not any right of protection or property in the fur-seals frequenting the islands of the United States in the Behring Sea, when such seals are found outside the ordinary 3-mile limit.

Article VIII. of the treaty was as follows: "The high contracting parties having found themselves unable to agree upon a reference which shall include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims presented and urged by it, and, being solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions, do agree that either may submit to the arbitrators any question of fact involved in said claims and ask for a finding thereon, the question of the liability of either government upon the facts found to be the subject of further negotiation."

The following among other facts were found in pursuance of this provision:

"(1) That the several searches and seizures, and the several arrests of masters and crews, were made by the authority of the United States Government. The questions as to the value of the said vessels, or their contents, or either of them, and the question as to whether the vessels mentioned in the schedule to the British case, or any of them, were wholly or in part the actual property of citizens of the United States, have been withdrawn from, and have not been considered by the tribunal, it being understood that it is open to the United States to raise these questions, or any of them, if they think fit in any future negotiations as to the liability of the United States government to pay the amounts mentioned in the schedule to the British case.

"(2) That the seizures were made in Behring Sea at the distances from shore mentioned in the schedule annexed.

"(3) That the said several searches and seizures of vessels were made by public armed vessels of the United States. (A.) That in all the instances in which proceedings were had in the district courts of the United States resulting in condemnation, such proceedings were begun by the filing

of libels; that the fines and imprisonments were for alleged breaches of the municipal laws of the United States.

Following the award it was subsequently decided in California, in the case of the Schooner "La Ninfa" (Mr. Justice Hawley), that the statutes of the United States, under the provisions of which the seizures took place, apply only to the waters within three miles of United States territory.

In 1894 negotiations led to a lump sum offer of $425,000 on the part of the Executive of the United States, subject to approval of Congress, by way of damages for the seizures mentioned.

The United States Secretary of State on the 13th day of February, 1895, wrote as follows to the Secretary of the Treasury:—

SIR,—"In the annual message of the President, transmitted to Congress at the opening of the current session, appears a statement that an understanding had been reached with Great Britain 'for the payment by the United States of $425,000 in full satisfaction of all claims which may be made by Great Britain for damages growing out of the controversy as to fur seals in Behring Sea, or the seizure of British vessels engaged in taking seal in those waters.'

The message adds: 'I am convinced that a settlement upon the terms mentioned would be an equitable and advantageous one, and I recommend that provision be made for the prompt payment of the stated sum.'

The correspondence in regard to that understanding, and a report of the undersigned in support of the President's recommendation, were transmitted to the Speaker of the House of Representatives, on December 21, 1894, pursuant to a resolution of that body dated December 15. Copy thereof is annexed.

I have now the honor to request that you submit to the Speaker of the House of Representatives, as soon as may conveniently be, an estimate for the appropriation of the sum recommended by the President for the purpose stated, the same to be included in the Deficiency Appropriation Bill.

I have the honor to be, etc."

A discussion in the House of Representatives took place, of which there was prepared at the British Embassy at Washington a precis dated Feb. 25, 1895, which is here re-produced:

PRECIS OF DEBATE IN HOUSE OF REPRESENTATIVES, FEBRUARY 25, 1895.

The House being in Committee of the whole for the consideration of the General Deficiency Bill:—

Mr. Breckenridge moved an amendment, providing for the payment of $425,000 to Great Britain in full satisfaction of all demands for damages growing out of the controversy between the two Governments as to the fur-seals in Behring Sea.

There was no question, he said, that under the decision of the Arbitrators the United States should pay something. It was objected that the amount agreed on was excessive, in view of the fact that the claims were in part based on consequential damages, which in the case of the "Alabama," were not admitted. But there was a clear difference between the cases. In the case of the "Alabama" the wrong was the indirect act of the Government, and in the present case it was the direct act. And further, in the present case, a rule was agreed on which allowed consequential damages. Judgment had been given against the United States, and the only question left was the assessment of damages. Leaving out the consequential damages, there would remain a claim, practically undisputed, for $227,000, on which interest would have to be paid for seven years, if the matter was referred to a Commission, and in addition there would be the expense of having Arbitrators. The bargain was not a bad one, and, on broader grounds, it did not become the United States to go down to the tavern and denounce the Judge, as litigants sometimes do who have lost their case. The right course was to settle the matter at once, and remove it as a cause of disagreement between the two peoples.

Mr. Cannon (Republican) was not opposed to the payment unless it reversed a principle already settled. The Arbitrators only decided the question of fact as to seizure and warning out; the question of the amount of damage and the ownership of the vessel was left open for future negotiation. As to prospective damages, it had been decided in the case of the "Alabama" that they could not properly be made subject of compensation. As to the question of ownership, it was clear from the evidence (Mr. Foster's statement, published in the last Senate Document, p. 164) that the great majority of the vessels seized were owned by Americans. The most that could fairly be conceded was $103,000.

Mr. Hooker (Democrat) denied that the analogy with the "Alabama" case held good. The vessels were equipped in Canadian waters for the purpose of prosecuting what was now conceded by both parties to have been a lawful act, and the United States was responsible for whatever damages ensued from their seizure. It was not improbable that if the matter were referred to a Commission, the United States would have to pay a million dollars instead of less than half that sum.

Mr. Henderson (Republican) quoted from Mr. Foster's statement, and

asked how in the face of it the Secretary of State could have made such an agreement. This large sum should not be paid when there was high authority for the statement that most of the claims were unwarranted and unjust. He advocated the Commission provided for in the Treaty, in order that if there were any Americans masquerading under British auspices they might be smoked out.

Mr. McCreary (Democrat) said that of the two alternatives he thought the payment of a lump sum would be the most economical, and that promptness in paying the claims was in the line of economy, justice and honor.

Mr. Hitt (Republican) said that in the case of ten out of twenty ships seized the real owners were Americans. These men were not engaged in a "lawful occupation," but one forbidden by the laws of their own country. They were entitled to fine and imprisonment, not to compensation. He quoted the case of Boscowitz, an American, who lent money to a Canadian, named Warren, on the security of certain ships; foreclosed, and then sold the ships, which thus passed into his hands, to a Canadian named Cooper, for the sum of $1. This man Cooper now appeared among the claimants for the sum of $225,000 for the seizure of ships which really belonged to Boscowitz. Cooper had testified that he did not even know the number or names of the ships, and that he had nothing to do with them. Of the total amount of $542,000 claimed, $360,000 represented the interests of Americans. As to the character of the claims, the great mass was for an estimated catch – $377,000 out of $542,000. It had been decided at Geneva that compensation was not to be paid for prospective earnings. As to the argument that the two Governments had agreed to pay compensation for such losses, it referred only to the claim for damages under the modus vivendi. That portion of the claim had been formerly abandoned by the two Governments. As to the fear expressed that more claims would be presented in case of the appointment of a Commission, it was clear from the words of the British Ambassador that the claims presented in June, 1894, included all the claims. A Commission, as proposed by Sir Julian Pauncefote, would probably cost about $15,000, and would result, perhaps, in the payment by the United States of $50,000, which is about what was due.

Mr. Dingley (Republican) would not say with certainty that the claim for prospective damages would be disallowed by the Commisson. He quoted the case of the Halifax Award. It was a case of a choice of two evils, and it was impossible to foresee what would be the decision of a foreign umpire.

Mr. Breckenridge, in reply, said that he agreed with the last speaker. The claims would grow enormously if the payment was put off, and an immediate settlement was preferable.

Mr. Livingston asked if Congress would not have the supervision of the payments made under the decision of the Commission?

Mr. Breckenridge said that, if Congress refused to make the payment prescribed by a legally-constituted tribunal, it would be a delinquent at the international bar of public honesty and universal integrity. It was not true that Sir Julian Pauncefote had debarred himself from presenting additional claims. Take the case of a man who had died from the effects of imprisonment.

Mr. Hitt denied that that claim could go before the Commission.

Mr. Breckenridge maintained that it could. He pointed out that these ships had sailed from a British port under a British flag, and the burden was on the United States to overthrow the presumption arising from that fact. He predicted that this could never be accomplished. The United States had gone into the Arbitration on the ground that the Behring Sea was United States' property, and had lost. They ought now to take the consequences like men. As to the damages claimed, he thought that the prospective catch ought to be paid for. The real capital of these men was their sweat, their risk, their danger, their time. When they were seized, and put in Alaskan prisons, without right and without justice, what better criterion of damage was there than what they might have caught, and what everyone but themselves did catch during that year? These were not remote damages. There was a vast difference between remote damages and consequential damages. There are innumerable cases where consequential damages are given where they are the immediate and not the remote consequences of the act. He quoted the statemen of Sir E. Grey in Parliament as to the probable payment of the damages, and hoped that the United States would not be posted before the world like a delinquent at a club. He did not advocate this measure because it had been proposed by a Democratic President, but because on the floor of the House of Representatives he represented the entire Imperial Republic of America, and he did not wish the United States to stand before the nations as a nation which did not keep faith.

He appended to his speech, as printed, a calculation showing under several hypotheses the saving to the United States effected by the payment of a lump sum.

On a division there were for the amendment 94, against 86.

The Committee rose, and the House then voted on the Appropriation Bill as passed by the Committee.

A separate vote was taken on the Behring Sea clause, when it appeared that there were—Yeas 113, Nays 142.

The majority comprised Republicans, Populists, and 48 Democrats.

This proposal was rejected by Congress, and a Commission was finally approved in 1895 for an assessment of the damages.

Article I of this treaty reads: "The high contracting parties agree that all claims on account of injuries sustained by persons in whose behalf Great Britain is entitled to claim compensation from the United States, and arising by virtue of the treaty aforesaid, the award and the findings of the said tribunal of arbitration, as also the additional claims specified in the fifth paragraph of the preamble hereto, shall be referred to two Commissioners, one of whom shall be appointed by Her Britannic Majesty, and the other by the Pre-

sident of the United States, and each of whom shall be learned in law." Appended to this convention is a list of claims intended to be referred.*

Article 3 is as follows: "The said Commissioners shall determine the liability of the United States, if any, in respect of each claim, and assess the amount of compensation, if any, to be paid on account thereof—so far as they shall be able to agree thereon—and their decision shall be accepted by the two governments as final.

They shall be authorized to hear and examine, on oath or

*APPENDIX OF CLAIMS.

Claims submitted to the Tribunal of Arbitration at Paris.

Name of vessel.	Date of seizure.	Approximate distance from land when seized.	United States vessel making seizures.
		Miles.	
Carolena	Aug. 1, '86	75	Corwin.
Thornton	do 1, '86	70	do
Onward	do 2, '86	115	do
Favourite	do 2, '86	.....	Warned by Corwin in about same position as Onward
Anna Beck	July 2, '87	66	Rush.
W. P. Sayward	do 9, '87	59	do
Dolphin	do 12, '87	40	do
Grace	do 17, '87	96	do
Alfred Adams	Aug. 10, '87	62	do
Ada	do 25, '87	15	Bear.
Triumph	do 4, '87	.....	Warned by Rush not to enter Behring Sea
Juanita	July 31, '89	66	Rush.
Pathfinder	do 27, '89	50	do
Triumph	do 11, '89	.....	Ordered out of Behring Sea by Rush. Query as to position when warned.
Black Diamond	do 11, '89	35	Rush.
Lily	Aug. 6, '89	66	do
Ariel	July 30, '89	.....	Ordered out of Behring Sea by Rush.
Kate	Aug 13, '89	.....	do do
Minnie	July 15, '89	65	Rush.
Pathfinder	Mar. 27, '90	Seized in Neah Bay	Corwin.

ADDITIONAL CLAIMS.

Wanderer	1887-89
Winnifred	1891
Henrietta	1892
Oscar and Hattie	1892

affirmation, which each of said Commissioners is hereby empowered to administer to receive, every question of fact not found by the tribunal of arbitration, and to receive all suitable authentic testimony concerning the same and the Government of the United States shall have the right to raise the question of its liability before the Commissioners in any case where it shall be proved that the vessel was wholly or in part the actual property of a citizen of the United States.

A Commission has been sitting in Victoria, British Columbia, since the middle of November, composed of Hon. W. L. Putnam, one of the judges of the Federal Circuit Court, and Hon. G. E. King, of the Supreme Court of Canada. The umpire, in case of diagreement, is a person to be nominated by the President of the Swiss Republic.

The cases dealt with by this Commission involve many important questions. In the first place there is to be considered, in the construction of the last Treaty, the exact jurisdiction of the present Commission.

Then, "on whose behalf" has Great Britain "the right to claim" damages? Some of the claimants, or parties directly or indirectly interested, it is alleged, were not British subjects at the time of the seizures. Others are dead. Can the Queen claim damages for the wrongs done in such cases?

Again, the Treaty is said by the United States to limit the liability wherever it appears that the ownership was in reality in part or in whole vested in American citizens. This is not admitted by the British Government, since, among other facts, in every case the vessel interfered with carried the British flag and was duly registered as a British ship. Can the United States go behind the flag and the register in times of peace to justify interference?

Again, how far may foreigners be interested in a British ship and the business of a British ship, without affecting the immunity from foreign interference such a vessel is otherwise entitled to?

Questions connected with citizenship are also before the Commission.

Primarily, the subject involved is the value of the ships and cargo. There is the claim for the loss of the season's catch, and whether the possible catch for two seasons ought to be paid for in some cases. Also, shall interest be paid on the claims established, and if so, at what rate?

The Treaty required "suitable authentic testimony" to be produced, and many questions arising out of these words are yet to be considered.

The rules adopted for procedure were as follows:

1. The counsel for Great Britain shall forthwith present to the Commissioners separate statements of the several claims of Her Britannic Majesty's Government, by delivering to the Secretary of the Commissioners twenty copies of such statements of claims, and the said counsel shall also deliver to the counsel for the United States of America twenty copies of such statements of claims.

2 Within three days after the filing of any statement of claim, the counsel for the United States of America shall deliver to the Secretary of the Commissioners twenty copies of their answer to such claim, and shall also deliver to the counsel for Her Britannic Majesty twenty copies of such answer.

3. Within one day after the delivery of any answer, the counsel on behalf of Her Britannic Majesty shall elect, by notice on the docket, whether they desire to deliver any statement of reply; and if they so elect, the same shall be filed and delivered in the same manner as the statements of claims within one additional day thereafter; and, at the expiration of two days from the delivery of the answer, they shall cause to be entered, by notice on the docket, a statement of the order in which the several claims shall be presented to the Commissioners, provided that the counsel for Great Britain shall be at liberty to enter them in groups of not less than four.

4. Each claim shall be proceeded with separately, and the evidence thereon on both sides closed, before the proceedings on any other claim are begun, except such evidence as may, by the consent of either Commissioner, be adduced later.

5. The evidence given in connection with any one claim may be used in connection with all subsequent claims, so far as the same might be considered by the Commissioners as suitable, authentic evidence, if originally offered in the case of such subsequent claim; provided that in the hearing of such subsequent claim, the purpose to so use such evidence shall be stated, and the evidence to be so used shall be indicated and identified by counsel, before the Government desiring to so use it shall close its case in chief, or its defence, as the case may be.

If either party thus transfers any part of the testimony of any one of its own witnesses, relating to any matter as to which such witness has not been cross-examined, such party, on the request of the other party, and by the direction of either Commissioner, shall produce such witness in the case to which such testimony is transferred, for cross-examination in reference thereto.

6. Within ten days after the evidence upon all the claims shall have been declared closed by the Commissioners, a printed argument with reference to each claim shall be presented and delivered on behalf of Her Britannic Majesty, in the same manner as the statements of claims hereinbefore referred to, and within seven days afterwards a printed argument shall in like manner be presented and delivered on behalf of the United States of America; and within four days afterwards a printed reply shall in like manner be presented and delivered on behalf of Her Britannic Majesty.

7. On such day as the Commissioners shall fix oral argument may be delivered on either side. The argument on behalf of Her Britannic Majesty shall be delivered first, and shall be followed by the argument on behalf of the United States of America, and closed by reply on behalf of Her Britannic Majesty.

8. The Secretary shall keep a record of the proceedings of the Commissioners each day of their session, which shall be signed by the Commissioners, counsel, and the Secretary.

9. The Secretary shall keep duplicate dockets relating to the several claims: and all entries in such dockets shall be due notice to counsel.

10. Stenographic minutes of the proceedings and evidence shall be kept under the direction of the Secretary, subject to the supervision of the Commissioners, and transcripts and copies shall from time to time be delivered by the Secretary to the counsel for each Government as soon as practicable.

11. One counsel only shall be allowed to examine a witness in chief, and one counsel only to cross-examine the same witness, unless otherwise authorized by the Commissioners.

12. The oral evidence shall be certified by the reporters taking the same, under the direction of the Secretary, subject to the supervision of the Commissioners.

13. The Secretary shall have charge of all the books and papers of the Commissioners, and no paper shall be taken from the files or withdrawn from the office without an order of the Commissioners. The counsel on either side, however, shall be allowed access to such books and papers for the purpose of reference. After the final award shall be made the books and papers filed shall be returned to the respective parties who may have produced them.

14. All summonses for the purpose of compelling the tendance of witnesses, or for the production of documents and things, issued under the provisions of section 2 of the Act entitled "An Act Respecting the Behring Sea Claims Convention," shall be substantially according to the form set out in "Schedule A" hereto annexed.

15. If the counsel on either side desire to inspect any book, paper or document in the possession of the other, they shall by writing describing the same, request its production, and thereupon, if the counsel to whom such request is made do not object to produce such book, paper or document, they shall state in writing the time and place at which the same may be inspected, and copies taken. If the counsel to whom such request is made object to produce any such book, paper or document for the inspection of the other, the matter shall be referred in a summary way to the Commissioners.

16. Official archives and records of, and documents on file in any department or public office of either Government,

mav be put in evidence by copy, duly certified by the head or chief of such department or office having the custody of such archives, records or documents, with the same force and effect as the originals, but subject to the same objections that might exist to the introduction of the originals. Nothing in this rule shall be held to restrict the power of the Commissioners as to the reception of any evidence admissible under the terms of the Convention.

17. The sittings of the Commissioners shall be deemed to be always open, and in case of formal adjournment may be resumed at any time during the continuance of such adjournment upon notice to counsel.

18. The Commissioners shall have the power to alter, amend, add to, suspend or annul any of the foregoing rules, as may seem to them expedient, during the course of the proceedings, and may in their discretion direct amendments of any pleadings or other matter, or enlarge any of the times named in these rules.

At the conclusion of the proceedings in Victoria it was found that the time herein limited was altogether inadequate for clearing out the mass of evidence taken and exhibits filed. The rule was, therefore, amended so as to extend the time for delivery of printed argument as follows: the argument of Great Britain to be ready by the 25th March, the United States to answer by the 10th May, and the reply to be delivered on the 10th June.

A sample of the pleadings may be interesting. I give it in the case of the "Carolena":

THE BEHRING SEA CLAIMS CONVENTION.

IN THE MATTER OF THE CLAIM OF HER BRITANNIC MAJESTY ARISING OUT OF THE SEIZURE OF THE SCHOONER "CAROLENA."

1. The "Carolena" was a British schooner registered at the port of Victoria, British Columbia.

2. On or about the 20th May, 1886, the "Carolena" sailed from Victoria, British Columbia, bound on a sealing voyage to the North Pacific Ocean and Behring Sea. Her master was James Ogilvie: her mate was James Blake. She carried

a crew of nine sailors and hunters, and was fully equipped for said voyage, and for the hunting and capture of seals.

3. On the 1st day of August, 1886, whilst in the Behring Sea, in North Latitude 55:50, West Longitude 168:53, and distant about 70 miles from the nearest land, the "Carolena" being then lawfully engaged in the taking of seals at that place, was seized by the United States revenue cutter "Corwin."

4. The "Carolena" was towed by said cutter to Ounalaska and there dismantled, and such proceedings were afterwards had and taken in the United States District Court of Alaska, at the instance of the Government of the United States of America, that the said schooner, her tackle, apparel, outfit and cargo were condemned for a violation of the municipal laws of the United States of America relating to seal fishing in the waters of Alaska, and detained under such condemnation until after the month of December, 1887, when the return of the said schooner was offered but not accepted on the ground that the vessel had been practically wrecked in the meantime.

5. By reason of the premises further prosecution of the said sealing voyage during the year 1886 was wholly prevented, and the owner of said schooner was also prevented from using her for the purposes of seal hunting during the year 1887, as he otherwise would have done; and finally the said schooner, her tackle, apparel, outfit and cargo were wholly lost to those interested in the same, and other loss, damage and expense were suffered and incurred by the persons so interested.

6. Under the facts as found in the award of the Paris Tribunal of Arbitration, the said seizure, condemnation and detention were without any warrant or right according to the principles of international law, and Her Britannic Majesty claims that full and complete compensation should be made by the Government of the United States of America to the Government of Her Britannic Majesty for all loss thereby sustained.

7. The claim made for the loss arising out of the premises

is the sum of $30,000, and interest thereon from the date of loss at the rate of seven per centum per annum.

8. In addition to the above, a further amount is claimed for the improper arrest, imprisonment and detention by the United States authorities, of James Ogilvie and James Blake, as master and mate respectively of the said schooner.

9. James Ogilvie, on the arrival of the schooner at Ounalaska, was placed under arrest, taken to Sitka, and there charged before the United States District Court of Alaska with a violation of the municipal laws of the United States of America relating to seal fishing in the waters of Alaska. Before the trial he was suffered to wander into the woods, where he was found dead.

10. James Blake, on the arrival of the "Carolena" at Ounalaska, was placed under arrest, taken to Sitka, and there charged before the said court with a similar violation of the municipal laws of the United States of America relating to seal fishing in the waters of Alaska, and on such charge was found guilty and condemned to pay a fine of $300, and to be imprisoned at Sitka for the space of thirty days, which term of imprisonment he underwent.

11. At the expiration of such term of imprisonment the said James Blake was released, but was then wholly without means of subsistence, and no provision was made by the said authorities for his return to his home. The said James Blake subsequently found his way back to Victoria after incurring great hardship and loss in so doing.

12. Under the above-mentioned finding of facts, the arrest, imprisonment and detention of the said James Ogilvie, and the arrest, imprisonment, detention and condemnation of the said James Blake, were illegal, and Her Britannic Majesty claims that full and complete compensation should be made in the premises by the Government of the United States of America to the Government of Her Britannic Majesty.

13. The claim made for the wrongs aforesaid to James Ogilvie is the sum of $2,500 with interest from 1st August, 1886, at seven per centum per annum.

14. The claim made for the wrongs aforesaid to James Blake is $2,500, with interest from the 1st August, 1886, at the rate of seven per centum per annum.

The United States answer as follows:

1. They admit that on or about August 1st, 1886, at a distance of about seventy-five miles from the nearest land, the said vessel, the "Carolena," was seized by the United States revenue cutter "Corwin," and that said seizure was made in Behring Sea, and was ratified and adopted by the Government of the United States.

But it is averred on the part of the United States that the seizure was made in good faith, by officers of the United States, within the line of their duty, under the authority and mandate of the municipal laws of the United States, for a violation of the statutes of the United States, and such seizure was ratified and adopted in good faith by the Government of the United States, as for a violation of their said statutes.

2. The United States aver that, before, at the time of, and after the seizure of the said vessel, the said vessel, her apparel, outfit and cargo, were wholly or in part the actual property of a citizen or citizens of the United States, and further that at the times aforesaid the beneficial interest in the whole or a part of the said vessel, her apparal, outfit and cargo, were possessed and owned by a citizen or citizens of the United States, and that her said voyage was entered upon and prosecuted, in whole or in part, for the benefit of a citizen or citizens of the United States.

3. As to some of the statements of detail and fact in paragraphs numbered 2, 3, 4 and 5 in the said claim of Her Britannic Majesty, the representatives of the United States have no sufficient knowledge, and as to such of them as may be held material the United States invite and require authentic and suitable proofs before the High Commissioners.

4. As to paragraph numbered 5 in said claim, the United States will submit to the High Commissioners and will insist that they are not liable for damages for the detention of such vessel when the seizure, as is alleged and shown in said

claim, resulted in the total loss to the owners of the vessel, her outfit, apparel and cargo, as of the time of said seizure; and that in any event the damages therein suggested and claimed are of the nature of prospective profits and speculative damages, so uncertain as to form no legal, equitable or suitable basis for a finding of fact upon which an assessment thereof can be predicated.

5. The United States will further insist that, so far as a proper claim for damages for total loss is concerned, the statement of the loss alleged in paragraph 7 as having arisen out of the said seizure is grossly excessive.

6. As to the further amount claimed for the alleged improper arrest, imprisonment and detention of James Ogilvie and James Blake, persons employed upon said vessel at the time of her seizure, the United States admit the arrests as stated, but deny the imprisonment and statements of fact incident thereto as detailed in the statement of the British claim; and they aver that such arrests and all subsequent proceedings thereon by the officials of the United States were made, entered upon and had, in good faith, under the mandate and authority of the municipal laws of the United States, for a violation of the statutes of the United States; and they aver that the only damages to be considered, in case of any liability on the part of the United States for such arrests and detentions, are those for actual pecuniary loss, and are not in their nature punitive or aggravated damages.

7. The United States do not admit any liability on this claim.

Reply of Her Britannic Majesty.

1. Her Britannic Majesty joins issue on paragraphs 1, 4, 5 and 6 of the reply of the United States, except in so far as they contain admissions.

2. In further answer to the second part of said paragraph 1, Her Britannic Majesty submits that the same constitutes no defence to Her Majesty's claim or any part thereof.

3. As to paragraph 2, Her Britannic Majesty says that the above-named schooner was found by the Tribunal of Arbitration at Paris to be a British vessel, and submits that it

is not open to the Commissioners, acting under the Behring Sea Claims Convention, to enquire as to her ownership; the said finding of facts being conclusive so far as this Commission is concerned.

4. And in the alternative and in further answer to said paragraph 2, Her Britannic Majesty submits that even if such inquiry can be entered upon, it should be limited to the question of the actual ownership of the said vessel only, and that as between nations, and should not in any event extend as to the beneficial interest in the whole or a part of the vessel, her apparel, outfit and cargo; or as to whether her voyage was entered upon and prosecuted in whole or in part for the benefit of a citizen or citizens of the United States.

5. In further answer to said paragraph 2, Her Britannic Majesty denies each and every of the allegations of fact therein contained.

6. Her Britannic Majesty further submits that according to the principles of international law, the practice obtaining among nations, and the terms of the Behring Sea Claims Convention, the allegations contained in the said Reply, even if proved, do not constitute any defence to the Claim for compensation set forth in the said Statement of Claim.

The number of claims presented to the Tribunal was 26. The sittings began on November 23rd, 1896, and ended February 2nd, 1897. The Court sat from 10.30 to 5 o'clock p.m., every day except Saturdays, Christmas Day, and New Year's Day, and sat on Saturdays from 10.30 to 1 p.m.

The counsel for Her Majesty are Hon. Fred Peters, Attorney-General for Prince Edward Island; F. L. Beique, Q.C., of Montreal, and E. V. Bodwell, Esq., of Victoria, B.C. The counsel for the United States are Hon. Don. M. Dickinson, of Detroit: Robert A. Lansing, Esq., of Watertown, N.Y., and C. B. Warren, Esq., of Detroit.

I was retained by some of the sealers, and Mr. Peters associated me with him as one of the counsel for the Crown. Under these circumstances I have refrained from giving more than an outline of the condition of the case and of the constitution and procedure of the tribunal.

The evidence, consisting of over 2,000 pages of printed matter, exclusive of exhibits, remains to be reviewed and discussed. Written arguments will be exchanged, and the case will come on for a final hearing in the summer.

CHARLES HIBBERT TUPPER.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

PROBATE—CONDITIONAL WILL.

Halford v. *Halford*, (1897) P. 36, is another case in which the President had to determine whether a testamentary document was a conditional will. The testator was a Scotchman residing in India, and had in 1880 made a formal will of his property and also a codicil thereto in 1889. In 1892, being about to start for England from Calcutta with his wife, he wrote a letter (the document in question) to his brother in England, which was a good testamentary paper in point of form, according to Scotch law, in which the following passage occurred: "If anything happens to us on the way my will has been accidentally packed away in a tin box, to which I cannot now get access, as I forget which box it has been put into. However, if we both come to grief, I appoint you my executor, if I alone, then in conjunction with Nan." The letter then proceeded to deal with the disposition of his estate after his wife's death in the event of her surviving him. The testator arrived safely in England and took a house in which he resided until his death in 1896. The Court held that the letter of 1892 was not conditional, and was entitled to probate as a second codicil to the testator's will.

PROBATE—WILL—REVOCATION—EVIDENCE—DECLARATION OF TESTATOR—ADMISSIBILITY OF—WILLS ACT, S. 20 (R.S.O. c. 109, s. 22).

Atkinson v. *Morris*, (1897) P. 40, is a case in which the Court of Appeal was very reluctantly compelled to declare that a will was entitled to probate, which it was clear that the testatrix had intended to revoke—but which she failed to revoke for want of compliance with the requisites of the Wills Act, s. 20 (R.S.O. c. 109, s. 22). The will as produced for probate showed that the signature of the testatrix had been erased by means of a line drawn through it, and that the signature of one of the attesting witnesses had been partially erased in the same way—and at the foot of the will in the handwriting of the testatrix was a memorandum, "null and void, A. K. A. Through injustice of Mrs. Emma Atkinson and family from time to time." Evidence was offered and rejected, of declarations made by the testatrix after the date of the will, to the effect that it had been executed in duplicate and that she had destroyed one of the parts with the intention of revoking the will, and the only question argued was whether this evidence should have been received, and the Court of Appeal (Lord Russell, C.J., and Lindley and Smith, L.J.J.) agreed with Barnes, J., that it was not admissible, and that notwithstanding the manifest intention of the testatrix to revoke the will, it must be admitted to probate.

PRACTICE - EJECTMENT - RECEIVER, APPOINTMENT OF, IN EJECTMENT ACTION—JUDICATURE ACT, 1873, S. 25, SUB-SEC. 8—(ONT. JUD. ACT, 1895, S. 53, SUB-SEC. 8).

In *Foxwell* v. *Van Grutten*, (1897) 1 Ch. 64, the Court of Appeal (Lord Russell, C.J., and Lindley and Smith, L.J.J.) although agreeing with Kekewich, J., that in a proper case the Court has now, under the Judicature Act, 1873, s. 25, sub-sec. 8 (Ont. Jud. Act., 1895, s. 53, sub-sec. 8), power in an action of ejectment to appoint a receiver, on the application of a plaintiff against a defendant in possession: yet reversed the order made by him, on the ground that on the facts disclosed in this case it was not a proper exercise of judicial discretion to grant the order. The grounds on which Keke-

wich, J., seems to have relied in granting the receiver, were that there had been other litigation between the parties as to other property, which had resulted partly in favor of the plaintiff, but concerning which an appeal and cross appeal to the House of Lords were pending, and also on the fact that the defendant was impecunious, and had not paid the whole of the sum he had been ordered to pay, as mesne profits in the other action. The defendant claimed title as, and was conceded to be in possession as, heir-at-law of a former owner who had died a lunatic. The Court of Appeal was of opinion that the existence of the other action formed no ground for appointing a receiver, inasmuch as it was not pretended that the adjudication in that action in any way settled the question of title at issue in this action; neither did the impecuniosity of the defendant, and the order for the receiver was therefore rescinded.

TRADE MARK—PORTRAIT OF MANUFACTURER AS A TRADE MARK.

Rowland v. *Mitchell*, (1897) 1 Ch. 71, was an action to restrain the defendant from infringing the plaintiff's trade mark, which consisted of a portrait of himself. It was contended that a portrait of the owner of the trade mark could not be registered as a trade mark, and the defendant made a cross application to rectify the register by removing therefrom the plaintiff's said trade mark. Romer, J., held the plaintiff entitled to relief, and dismissed the defendants' application; and upon the latter point an appeal was taken, but the Court of Appeal (Lord Russell, C.J., and Lindley and Smith, L.JJ.), agreed with Romer, J., that the portrait of the claimant of the trade mark may properly be registered as his trade mark, and dismissed the appeal.

WILL—CONSTRUCTION—CLASS—MISTAKE—UNCERTAINTY—LATENT AMBIGUITY.

In re Stephenson, Donaldson v. *Bamber*, (1897, 1 Ch. 75) one of those difficulties in the construction of a will for which the carelessness of testators is responsible, created a nice little legal puzzle, concerning which it is not surprising to find that there was a slight difference of judicial opinion. The point was this—a testator gave his residuary estate

"unto the children of the deceased son (named Bamber) of my father's sister, share and share alike." Unfortunately the testator's father's sister had married a man named Bamber, and had three sons, all of whom had died before the date of the will, having children, as the testator knew. Kekewich, J., solved the difficulty by reading the word son in the plural, and held the children of all three of the deceased sons were equally entitled: but the Court of Appeal (Russell, C.J., and Lindley and Smith, L.JJ.), thought there was no authority for thus adding a letter to the testator's will, but that it must be read as it was written, and being so read, the gift in question was void for uncertainty. *Hare* v. *Cartridge*, 13 Sim. 165, in which Shadwell, V.C., seems to have given a similar decision to that of Kekewich, J., in this case may, we think, be fairly noted as overruled.

ECCLESIASTICAL LAW—ANGLICAN CHURCH—BLACK GOWN AS A PREACHING VESTMENT, LEGALITY OF.

In re Robinson, Wright v. *Tugwell*, (1897) 1 Ch. 85, may prove of interest to some of our readers who are members of the Anglican Church, inasmuch as the Court of Appeal (Lord Russell, C.J., and Lindley and Smith, L.JJ.), decided that it is not illegal for a clergyman of the Church of England to wear the black academic gown when preaching.

PRACTICE—THIRD PARTY NOTICE—TRUSTEE—BREACH OF TRUST—CLAIM OVER, BY TRUSTEE AGAINST PARTNER OF DEFAULTING CO-TRUSTEE—ORD. XVI., R. 48—(ONT. RULE 1313 (328))—INDEMNITY.

In *Wynne* v. *Tempest*, (1897) 1 Ch. 110, Chitty, J., has decided that the claim of a trustee who is sued for moneys misapplied by a deceased co-trustee, to compel the surviving partners of the deceased co-trustee to make good the loss, is not a claim for indemnity, in respect of which the partners could properly be served with a third party notice under Ord. xvi, r. 48 (Ont. Rule 1313 (328)). Chitty, J., says, "The right of the defendant (if it exists) to recover from the surviving partners a sum equal to the lost trust fund is not a right depending on the liability of the defendant in the action; it is an independent right. It may be tested thus:

if the plaintiff fai'ed in the action, would the defendant's claim against the third parties be thereby defeated? It is clear that it would not."

PRACTICE—UNAUTHORIZED USE OF PLAINTIFF'S NAME—MOTION TO STRIKE OUT NAME—DISCONTINUANCE OF ACTION—JURISDICTION.

Gold Reefs of Western Australia v. *Dawson*, (1897) 1 Ch. 115, is a decision of North J., on a point of practice; the simple question being whether the Court had jurisdiction to entertain a motion to strike out the plaintiff's name as having been used without authority, the action having been discontinued after service of notice of such motion. The learned Judge held that the discontinuance was no bar to the motion, and being of opinion that the motion was well founded he ordered the applicants' name to be struck out, and ordered the solicitor who had improperly used their name as plaintiffs to pay their costs as between solicitor and client, and also the defendants' costs between party and party.

COMPANY—REGISTER OF COMPANY—RIGHT TO INSPECT—RIGHT TO TAKE COPY.

In *Nelson* v. *Anglo-American Mortgage Co.*, (1867) 1 Ch. 130, a creditor of a company who had. under the Companies Act, 1862 (25 & 26 Vict., c. 89, s. 43) a right to inspect the company's register of mortgages, proposed to make a copy of the contents, which the company's officers refused to permit, the action was brought to enforce the right, and Sterling, J., held that the right to inspect the register involved a right to make a copy of the entries therein.

JOINT TENANCY—INSURANCE—EFFECT OF MARRIAGE—LEASE BY HUSBAND OF ONE JOINT TENANT, AND THE OTHER JOINT TENANT.

Palmer v. *Rich* (1897) 1 Ch. 134, was a special case involving some questions of real property law. A woman and another person were joint tenants of freehold and leasehold lands. She married without a settlement and her husband and the other joint tenant executed a lease of the property which was the subject of the joint tenancy, reserving the rent to the lessors jointly. The questions argued were whether the marriage of the female joint tenant had the

effect of working a severance of the joint tenancy, and if not, whether the execution of the lease by the husband had had the effect of working a severance. Sterling, J., answered both of these questions in the negative. The fact that the husband, during the tenancy, had received his wife's share of the rents and applied them for their joint maintenance, was held to make no difference.

COMPANY—DEBENTURE HOLDER—RECEIVER AND MANAGER, APPOINTMENT OF, AT INSTANCE OF DEBENTURE HOLDER WHOSE DEBENTURE IS NOT DUE—JURISDICTION.

In re Victoria Steamboats, Smith v. *Wilkinson*, (1897) 1 Ch. 158, an application was made to Kekewich, J., by the plaintiff, a debenture holder whose debenture was not payable, to continue the appointment of a receiver and manager of the company issuing the debenture. The debenture was a charge on the property and undertaking of the company, and the security was in jeopardy, by reason of the fact that the company was practically insolvent, and a petition for winding it up was pending. The learned judge held that the Court had jurisdiction to appoint a receiver and manager under the circumstances, notwithstanding that the plaintiffs' debenture was not yet payable, it being apparent that the appointment was necessary, not only for the protection of the debenture holders, but also for the ultimate realization of what was due to them. He therefore continued the appointment for a fortnight.

EVIDENCE—PRESUMPTION—DEED MORE THAN THIRTY YEARS OLD—DEED EXECUTED BY ATTORNEY—POWER OF ATTORNEY, NON-PRODUCTION OF.

In re Airey, Airey v. *Stapleton*, (1897) 1 Ch. 164, in order to make out the plaintiffs title to certain property it became necessary for them to rely on a deed more than thirty years old; the deed in question purported to be executed by two of the parties, by their attorney; the power of attorney authorizing the execution of the deed was not forthcoming; the question was whether there was any presumption in favor of the fact that the person who had purported to act as attorney, had been duly authorized to so act. Kekewich, J.,

held that there was no such presumption, that the only presumption in the matter was that the person who had purported to act as attorney had in fact executed the deed, but that he had any authority so to act could not be presumed.

TENDER, VALIDITY OF—CHEQUE TENDERED—SOLICITOR, AUTHORITY OF

Blumberg v. *Life Interests Corporation*, (1897) 1 Ch. 171, is a case which turns on the question of the validity of a tender of a sum of money by a cheque to the managing clerk of a solicitor of a mortgagee who was authorized to receive the money. Part of the amount tendered was in cash and part was represented by a cheque. The tender was made under protest. The clerk to whom the tender was made made no objection to the cheque, but expressed himself willing to accept it, but he refused to receive the amount "under protest," and on this ground only the tender was rejected. The tender having been rejected and a sale of the mortgaged property having been proceeded with, the plaintiff moved for an injunction to restrain the completion of the sale on the ground that there had been a valid tender of the amount due, but Kekewich, J., refused the motion, holding that the tender of a cheque does not constitute a valid legal tender of the amount of such cheque, and that a solicitor authorized to receive money has no power to accept a cheque, except at his own risk, and that a tender of a cheque to him is not a good tender as against his client.

The *Albany Law Journal* states that a bill is about to be introduced in the Legislature of New York State providing for the acceptance of a verdict of ten members of a jury in civil actions. It is proposed to enact that it will be sufficient if ten jurors concur, unless when the case is called for trial, and before a jury is empanelled, any of the parties to the trial demand in writing the unanimous verdict of the jury. This is much the same legislation as that which took place in this country under 58 Vict., c. 16.

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Quebec.] [Jan. 25.

KEARNEY *v.* LETELLIER.

Contract—Sale of goods by sample—Price—Delivery of invoice—Presumption—Evidence.

Letellier agreed to buy from Kearney a job lot of tea of which he had samples. Before the tea was delivered Letellier received an invoice charging a uniform rate per lb. for the lot. Some five months after he was asked to accept a draft for the balance claimed by Kearney on the sale (Letellier had accepted for part of the price before), but refused on the ground that the amount was too large, alleging for the first time that the sale was according to the prices marked on the respective samples, and not one rate for the lot. In an action to compel acceptance, or in default, for payment of the amount, Kearney swore to the uniform rate and Letellier to the rate per sample, the latter supporting his evidence by that of his son, who testified that Kearney first applied to him to buy the tea at the sample prices, and was referred to his father; and that of a broker present when the bargain was made, who was very vague in his recollection of the actual terms. The Superior Court gave judgment in favor of Kearney, which was reversed by the Court of Queen's Bench.

Held, reversing the decision of the Queen's Bench, Gwynne, J., dissenting, that the receipt of the invoice by Letellier and its retention without objection for five months, raised a presumption that the price therein stated was that agreed upon, and that Letellier had not produced the clear and absolute evidence necessary to rebut such presumption.

Held, per GWYNNE, J., that the appeal depended on matters of fact as to which the court should not interfere.

Appeal allowed with costs.

Fitzpatrick, Q.C., for the appellant.

Languedoc, Q.C., and *Dorion*, for the respondent.

British Columbia.] [Jan. 25.

ADAMS *v.* MCBEATH.

Will—Undue influence—Evidence.

Adams brought an action in the Supreme Court of British Columbia to set aside the will of his uncle in favor of McBeath, a stranger in blood to the testator, alleging that its execution was obtained by undue influence of McBeath at a time when the testator was mentally incapable of knowing what he was doing. The evidence at the trial showed that Adams and the testator corres-

ponded at intervals between 1878 and 1891, and the earlier letters of the latter expressed his clear intention to leave his property to Adams, while in the latter that intention seemed to be modified if not abandoned.

The circumstances attending the testator's last illness, and the execution of his will, were as follows: He was 84 years old and lived entirely alone. A neighbor not having seen him go out for two or three days notified one of his friends, who got into the house, and found him lying on the floor where he had fallen in a fit, and lain for three days. He sent for a doctor, and meanwhile did what he could to aid him. When the doctor came he pronounced the testator to be nearing his end, and McBeath, who was notified, or heard of the matter, came and had him conveyed to his own house. The next day McBeath, according to his own testimony, at the testator's request, went to a solicitor, whom he instructed to draw a will for the testator in his (McBeath's) favor. The solicitor prepared the will, brought it to the house where the testator was, read it over to him, and asked him if he understood it, and having answered that he did, the testator executed the will, which the solicitor and McBeath's brother-in-law witnessed. McBeath was present all the time the solicitor was in the house. The doctor who attended the testator swore at the trial that he was, though very weak and low, mentally capable of attending to business, and of understanding what was said to him. It was proved also that a short time before his seizure he had had drafted a will in favor of Adams, his nephew, but did not execute it He died a week after executing the will attacked in the action.

Held, affirming the judgment of the Supreme Court of British Columbia (3 B.C. Rep. 513), that it was not sufficient for Adams to prove merely circumstances attending the execution of the will consistent with the hypothesis that it might have been obtained by undue influence; they must be inconsistent with a contrary hypothesis, and what was proved in this case did not fulfil this condition.

GWYNNE, J., dissenting, held that the facts proved were sufficient to justify the Court in setting aside the will.

Appeal dismissed with costs.

Moss, Q C., for appellant.

S. H. Blake, Q.C., for the respondent.

Province of Ontario.

COURT OF APPEAL.

Practice.] [March 17.

RUSSELL *v.* FRENCH.

Appeal—Court of Appeal—Mechanics' liens—Amount involved—59 Vict., c. 35, ss. 38, 39, 40.

In an action to enforce a mechanics' lien, the plaintiff was awarded by the judgment of the referee who tried the action $126.80, but upon appeal to a Divisional Court this amount was increased to more than $300.

Held, having regard to the provisions of ss. 38, 39 and 40, of the Mechanics' and Wage Earners' Lien Act, 1896, that no appeal lay to the Court of Appeal from the order of the Divisional Court.

J. H. Denton, for the plaintiff.

Snow, for the defendants Carroll and others.

COURT OF APPEAL.

(SECOND DIVISION.)

ARMOUR, C.J., MACMAHON, J., ROSE, J. [March 1.

FAIRBANKS *v.* TOWNSHIP OF YARMOUTH AND MICHIGAN CENTRAL R. W. CO.

Railways—Municipal corporations—Overhead bridge—Approaches thereto—Unlawful incline—Accident—Liability.

The defendant railway company having obtained the sanction of the defendant municipality to erect an overhead bridge across a highway, made the approaches thereto at a greater incline than required by the Railway Act, 51 Vict., c. 29, D., and afterwards further increased the incline by raising the bridge. An accumulation of snow resulted from this action of the railway company, against which the plaintiff's cutter was upset, and the plaintiff sustained injuries for which she brought this action.

Held, that the accumulation of snow under the circumstances amounted to a want of repair, and whatever might be the obligation of the railway company, as between it and the municipality, it was the duty of the latter under section 531 of the Municipal Act, to keep the approaches and the bridge in repair, and the municipality was liable to the plaintiff.

Held, also, that the railway company was also liable to the plaintiff for a misfeasance, having been guilty of an unlawful act in constructing and maintaining the bridge and approaches in direct contravention of the Railway Act, thus causing the obstruction which caused the accident.

Held, further, per MACMAHON, J., that although the Railway Act is wanting in explicitness in prescribing the duties of a railway company in respect to repairing and maintaining bridges over highways, it was the apparent intention of the Act that the railway company should keep in repair not only the bridge, but also the approaches to it made necessary by its erection, and the railway company was liable here to the plaintiff for the nonfeasance.

D. W. Saunders, for the defendant, the railway company.

McLean, for the defendant, the municipality.

Nesbitt, for the plaintiff.

HIGH COURT OF JUSTICE.

MEREDITH, C.J.] [Feb. 24.

IN RE MACKENZIE TRUSTS.

Trusts and trustees—Settlement—Power of revocation—Defective execution of —Direction to trustee—Breach of trust.

By the terms of a settlement in which the trustee was empowered to invest the funds in "Dominion, provincial and municipal bonds and debentures or first mortgages upon real estate," there was a power of revocation by deed in favor of the settlor with the consent of the trustee.

The trustee invested some of the trust moneys in the stock of a loan company under instructions by letter from the settlor.

Held, that the case came within the principle on which *Re MacKenzie Trusts*, 13 Ch. D. 750, was decided, and that what was done amounted to a defective execution of the power which should be aided by the Court and that there was no breach of trust by the trustee.

Dr. Hoskin, Q.C., for the infants.

Moss, Q.C., for the trustee.

BOYD, C.] [March 4.

REGINA EX REL. MASSON *v.* BUTLER.

Municipal elections—Quo warranto—Withdrawal of relator—Intervention—Substitution.

Where the relator in a proceeding in the nature of a quo warranto under the Consolidated Municipal Act, 1892, desires to withdraw, the Court has no power, under the statute or otherwise, to compel him to go on against his will, nor to substitute a new relator.

The power given by s. 196 is to substitute a new defendant, not a relator.

R. J. Wicksteed, for the intervenor.

O'Gara, Q.C., for the defendant.

FERGUSON, J.] [March 5.

FISHER & CO. *v.* LINTON.

Partnership—Individual debt of partner—Payment out of partnership funds —Authority—Action—Rule 317.

The defendants were indebted to the plaintiffs' firm, consisting of two partners, and one partner was individually indebted to the defendants. This partner wrote two letters to the defendants, one over his own signature and the other over the firm name, stating that he had paid certain sums due by him to the defendants by giving the defendants credit in the books of his firm. This was done without the authority of the other partner, but the entries were actually made in the books of the firm, to which the other partner had access, though he did not, in fact, know of the entries until after the firm had been dissolved. Accounts were afterwards rendered to the defendants without any claim being made in respect to the sums credited. This action was brought after the dissolution, in the name of the firm, for the price of goods sold.

Held, that the defendants were not entitled to credit for the sums referred to.

Leverson v. *Lane*, 13 C.B.N.S. at p. 285; *In re Riches*, 4 DeG. J. & S. at p. 585, and *Kendal* v. *Wood*, L.R. 6 Ex. 243, applied and followed.

Held, also, that Rule 317 authorized the bringing and sustaining of the action in the name of the partnership existing at the time the goods were furnished to the defendants.

W. A. J. Bell, for the plaintiffs.

Gibbons, Q.C., for the defendants.

BOYD, C.] [March 6.

MAIL PRINTING CO. *v.* CLARKSON.

Insolvency—Right to prove on insolvent estate—R.S.O., c. 124, s. 20, sub-sec. 4—Claim "not accrued due"—Construction of contract.

In an action for a declaration of the plaintiff's right to rank upon an insolvent estate in the hands of the defendant, as assignee under R.S.O. c. 124, in respect of a claim for $1,000 upon an advertising contract, by which the insolvents agreed that, should they not avail themselves of the right to occupy a certain space in the plaintiffs' newspapers within a year, such failure should not relieve them from the obligation to pay the plaintiffs, at the expiration of the year, the sum of $1,000, it appeared that the insolvents had assigned to the defendant before the expiration of the year.

Held, that the plaintiffs' "claim had not accrued due" at the time of the assignment, within the meaning of R.S.O., c. 124, s. 20, sub-sec. 4, but did accrue due by mere effluxion of time at the end of a year from the date of the contract, and they were therefore entitled to prove.

C. J. Holman, for the plaintiffs.

Thomson, Q.C., for the defendant.

FERGUSON, J.] [March 9.

IN RE CENTRAL BANK OF CANADA.

Appeal—Leave—Order for leave to appeal.

An order giving leave to appeal is an order from which an appeal does not lie; and therefore leave to appeal from such an order will not be granted.

Re Sarnia Oil Co., 15 P.R. 347; *Ex parte Stevenson*, (1892) 1 Q.B. 394, 609; and *Kay* v. *Briggs*, 22 Q.B.D. 345, followed.

S. H. Blake, Q.C., and *W. R. Smyth*, for the applicants.

Moss, Q.C., and *F. E. Hodgins*, contra.

FERGUSON, J.] [March 9.

BELAIR *v.* BUCHANAN.

Security for costs—Plaintiff out of the jurisdiction—Property in the jurisdiction.

Where the plaintiff lived out of the jurisdiction but had real property in the jurisdiction, encumbered, but of the value of $510 over and above all incumbrances and all debts that it was shown or suggested that he owed, a præcipe order for security for costs was set aside.

W. Read, for the plaintiff.

J. Bicknell, for the defendant.

ARMOUR, C.J., FALCONBRIDGE, J., STREET, J. [March 12.

MONES *v.* MCCALLUM.

Equitable execution—Receiver—Right to bring actions—Parties—Judgment debtor.

A receiver appointed by the Court to aid a judgment creditor in recovering his claim, by receiving the judgment debtor's share in an estate which cannot be reached by execution, is to get in the estate for the benefit of those who may be found entitled, and if it be necessary to bring actions for the recovery of any of the assets, the Court will from time to time authorize him to bring such actions in the name of the proper parties, whether they be plaintiffs or defendants, and whether they be willing or unwilling; but the receiver himself should not be a party to any such action.

Decision of BOYD, C., 17 P.R. 356, reversed.

Idington, Q.C., for the plaintiffs.

E. R. Cameron, for the defendant, W. A. McCallum.

Province of Quebec.

SUPERIOR COURT.

ANDREWS, J.]

LÉGARÉ *v.* ARCAND.

Bills of exchange Act—Presentment of cheque within reasonable time—Anticipated suspension of bank—Effect of certification.

The defendant, a money broker, warned the plaintiff, who was one of his customers, that in consequence of a run upon the bank at which the plaintiff dealt, it might suspend payment, and that it would be prudent for him to withdraw his deposit without delay. The plaintiff thereupon gave defendant a cheque for the amount of his deposit, and took defendants' due bill (*bon*) in return. The cheque was immediately sent to the bank and was certified, but it was not presented for payment until the following day. Meanwhile the bank suspended payment.

Held, 1. That the particular facts of the case required special vigilance and celerity, and that in this case the cheque had not been "presented for payment within a reasonable time," within the meaning of s. 73 of the Bills of exchange Act, 1890.

2. That when the defendant procured the bank's acceptance on the cheque, the plaintiff ipso facto at once ceased to be the creditor of the bank as regards the money against which the cheque was drawn, and the defendant, as holder, took his place as creditor, and, as between the plaintiff and defendant, the cheque had accomplished the purpose for which it was drawn, and the plaintiff

had no further power over it, or liability in connection therewith, and such cheque cannot be set up against the plaintiff's right to recover on the *bon.*

Miller and *Dorion*, for plaintiff.

F. X. Drouin, Q.C., for defendant.

SUPERIOR COURT.

(IN REVIEW.)

TAIT, C.J., TASCHEREAU and GILL JJ.

ST. JULIEN *v.* MONTREAL STREET RY. CO.

Street railway—Sale of tickets—City by-law—Expulsion of traveller for refusal to pay fare in money—Damages.

By a by-law of the City of Montreal the defendants were obliged to sell, in all their cars, six passage tickets for twenty-five cents. On the occasion in question the plaintiff requested the proper official on the car to sell him six of such tickets. This official refused to sell them, stating that he had none, and demanded a cash fare, which the plaintiff refused to pay, and was thereupon expelled from the car. In an action for damages therefor, it was

Held, reversing the judgment of the Superior Court at Montreal, R.J.Q. 7 C.S. p. 463, that the plaintiff was entitled to the amount of damage sustained, and this notwithstanding a section of the by-law in question which imposed a penalty of $25 for its infraction.

J. Chaffers, for the plaintiff.

Prefontaine, for the defendants.

COURT OF REVISION.

ROUTHIER, ANDREWS and LARUE, JJ.

PAQUIN *v.* GRAND TRUNK RY. CO.

Railway company—Accident—Medical attendance to injured—Action in rem against company.

On the occasion of a railway accident, the plaintiff, a doctor, attended some of the injured persons, but without being requested by an agent of the company to do so.

Held, that the company having benefited by the plaintiff's services, was bound, even in the absence of a contractual obligation, to pay the value of the benefit derived.

Robitaille and *Roy*, for plaintiff.

Pentland, Q.C., and *Stuart*, Q.C., for defendants.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] [Dec. 19, 1896.

HART, Assignee, *v.* MAGUIRE ET AL.

Assignment for the benefit of creditors—Preferences—Protection of drawers and indorsers of bills, notes, etc—Discretion of assignee as to time of distribution of assets—Arbitration clause—Provisions of deed sustained as not unreasonable.

A deed of assignment for the benefit of creditors from L.E.H. and E.F.H. to the plaintiff, was made in trust, after paying expenses and three creditors, to whom first preferences were given; (3) to pay certain persons named, being creditors of the assignors, all sums that should thereafter become due to them in consequence of the retirement or payment by them of any bills of exchange or promissory notes, upon which the said parties, at the date of the assignment, were directly or contingently liable with the assignors as drawers, makers, acceptors or indorsers; (4) to divide and distribute the residue among the remaining creditors of the assignors who should have executed the assignment, "at such time or times as the assignee should find convenient," and to pay the surplus to the remaining creditors of the assignors, who should not have executed the deed. The deed also contained a clause under which all disputes and matters of difference existing between the executing creditors and the assignee, were required to be submitted to arbitration.

Held, per TOWNSHEND, J., GRAHAM, Eq.J., and HENRY, J. (MEAGHER, J., dissenting), affirming the judgment of RITCHIE, J., that the provisions of the deed were not of an unreasonable character.

Borden, Q.C., and *Allison*, for plaintiff.
McInnes, for defendants.

RITCHIE, J., In Chambers. [March 11.

DOMINION COTTON MILLS CO. *v.* PROVINCIAL EXHIBITION COMMISSION.

Provincial exhibition—Expropriation of lands for—Interim injunction granted, conditions precedent prescribed by Act not having been observed—Acts of 1896, c. 3—Acts of 1891, c. 58, ss. 432 to 437.

Plaintiff applied at Chambers for an interim injunction in an action to set aside proceedings commenced by the defendant to expropriate lands of the plaintiff, and for an injunction to restrain the defendant from entering into said lands and taking possession thereof, and from proceeding further in the said expropriation proceedings.

Defendant's rights depended upon the N.S. Acts of 1896, c. 3, entitled "An Act to provide for an Annual Provincial Exhibition," which, among other

powers, conferred upon the defendant "the same power and authority as respects the expropriation of lands" that was possessed by the City of Halifax under the City Charter, Acts of 1891, c. 68, ss. 432 to 437. S. 437, referred to, provided that no property should be taken or expropriated until a duplicate plan of the lands proposed to be taken had been submitted to the Governor in Council, together with an application supported by affidavit, referring to the plan and stating that the land therein was "necessary" for the purpose, etc.

Held, that compliance with the provisions of this section, except where an agreement was made with owners, was a condition precedent to the expropriation of land, that the application must be in writing and must indicate that the land described was "necessary" for the purpose of carrying out the objects of the Act, and that an affidavit setting out that the land was "required," etc., was insufficient.

Held, also, that the case was within the principles laid down in Kerr on Injunctions, pp. 118, 119, and that there was sufficient ground for granting the injunction applied for.

Order granted, costs to be costs in the cause.

Harrington, Q.C., for the plaintiff.

MacCoy, Q.C., for defendant.

RITCHIE, J., In Chambers. } [March 16.

MCHATTIE ET AL. *v.* SLAYTER.

Mortgagor and mortgagee—Action for balance due—Plea declining to admit held equivalent to a denial—Paragraphs disclosing no reasonable defence set aside.

Action by personal representatives of McHattie for a balance due on a mortgage and bond alleged to have been made by defendant to deceased. Plaintiffs declared on the bond, or, in the alternative, on the covenant in the mortgage.

Par. 1 of the defence was as follows: "The defendant does not admit that he made the said bond." This was attacked on the ground (1) that as the action was brought on a specially indorsed writ for a liquidated amount in money, the defendant must deny specifically that he made the bond, (2) that if the plea was a denial in fact it was false.

Defendant also, by his defence, raised points of law alleging that the statement of claim did not disclose a cause of action. The following were among the exceptions taken: 1. No specific allegation that the testator ever made or published any last will. 2. No allegation that the plaintiffs were interested in the subject matter of the suit. 3. No specific allegation that the plaintiffs had any title or interest in the bond or mortgage sued on.

These paragraphs were attacked by plaintiffs as disclosing no reasonable defence or answer to the action.

Defendant contended that the paragraphs could not be struck out at Chambers, but must be set down for argument under Rule 2 of Order 25.

Held, with regard to par. 1 that when the defendant in his defence declined to admit a fact alleged, it was equivalent to a denial, and must be treated as such. Also that plaintiff's evidence as to the falsity of the plea was insufficient to set it aside.

Held, also, that the remaining paragraphs of the defence, alleging points of law, disclosed no reasonable answer to plaintiff's action, and must be set aside.

Judgment setting aside the whole of the defence except par. 1.

Fram, for plaintiffs.

Boak, for defendants.

RITCHIE, J., In Chambers. [March 16.

SCOTT ET AL. *v.* SCOTT ET AL.

Executors—Settlement where not final held not conclusive—Citation of parties—R.S. 5th series, c. 100, s. 63.

Action by legatees under will to compel the defendant executors to give account of the trust estate. An order had previously been granted at Chambers calling on defendants to give such account. Testator died in 1874. In 1881 an account of the trust estate was allowed by the Judge of Probate for the county of Hants, in the Probate Court for that county. In pursuance of the above order the defendants filed an account beginning at the date of the accounting in the Probate Court, viz., 1881. This motion was to compel the defendants to file a supplementary account covering the period from 1874 to 1881 covered by the Probate Court account. Defendants contended that as a citation to parties interested had been issued for that settlement, and the plaintiffs had allowed that account to remain since 1881 unimpeached, it was conclusive against the parties. It was also contended that it was conclusive under the statute R.S. c. 100, s. 63.

Held, that the settlement in 1881 not being a final settlement of the estate, was not conclusive against the plaintiffs, and that the Act regulating procedure in the Probate Court authorized the citation of legatees to no settlement other than the final settlement, and that the plaintiffs were not bound by the partial account filed there.

Order made for supplementary account.

Frame, for plaintiffs.

Christie, for defendants.

Province of New Brunswick.

SUPREME COURT.

McLEOD, J.
In Chambers. [Feb. 25.

HAMILTON *v.* McINTYRE.

Practice—Appearance wrongly entitled—Signing judgment for want of appearance—Application to set aside—Affidavit of defence.

Where defendant in a common law action put in an appearance entitled in the Supreme Court in Equity, and the plaintiff treated it as a nullity and signed interlocutory judgment, the defendant was allowed to put in a new appearance on an affidavit that the mistake was a clerical one and that there was a good defence on the merits, though the affidavit did not disclose the defence.

Chapman, for the plaintiff.

Montgomery, for the defendant.

TUCK, C.J.
In Chambers. [March 16.

IN RE IRA CORNWALL CO.

Winding-up Act, c. 129 R.S., D.—Notice of application.

This was a notice of application under s. 8 of the Winding-up Act, c. 129 R.S., D. The notice was signed by the applying creditor by his solicitor.

Held, that the notice must be signed by the creditor.

C. A. Macdonald, for applicant.

J. J. Porter, for company.

BARKER, J.
In Equity. [March 16.

IN RE HELMS.

Practice—Advice to trustees—53 Vict., c. 4, s. 212.

This was an application by ex parte petition under s. 212 of 53 Vict., c. 4, by trustee, under a will for leave to sell land belonging to the estate, as there was a doubt as to his powers under the will.

The application was refused, as the section only enables the Court to advise trustees in matters of discretion vested in them.

M. N. Cockburn, for the applicant.

BARKER, J.
In Equity. [March 16.

SCHOFIELD *v.* WARNER.

Practice—Dismissal of bill—Delay—Bill not on file—Costs.

On an application made 16th of February, 1897, by the defendant to dismiss plaintiff's bill for want of prosecution, it appeared that on the 13th of January, 1893, the plaintiff gave notice of a motion for an injunction to be made on the 24th on bill and affidavit. On the 24th an adjournment was had

by consent until the 26th, when an order was made to summon a jury for the 1st of March. Another adjournment then took place, and no further reference to the suit appeared on the records. The bill was not on file with the clerk.

BARKER, J., said that there were great doubts whether there was really any suit or bill in existence to be dismissed. The motion for injunction was never proceeded with, and the fair inference to be drawn from the inaction of both parties for four years, was that the matter had been practically abandoned. He should not ordinarily make an order dismissing the bill without the bill being actually on file, so that the record would be complete. As there had been so much delay here, and some uncertainty existed as to which party was responsible for the adjournments, the interests of all parties would be best protected by putting an end to this proceeding, and affording plaintiff an opportunity of beginning de novo if he wished.

Motion dismissed without costs.

C. J. Coster, for motion.

Palmer, Q.C., contra.

BARKER, J.,
In Equity.

[March 19.

TOBIQUE VALLEY RY. CO. *v.* CANADIAN PACIFIC RY. CO.

Interrogatory—Answer—Putting answer in evidence.

Where defendant includes in his answer to an interrogatory statement seeking to qualify or explain the answer the plaintiff may put in as evidence the part of the answer called out by the interrogatory without reading the qualifying or explanatory part.

Palmer, Q.C., and *Stratton*, for plaintiff.

Earle, Q.C., and *H. H. McLean*, for defendant.

COUNTY COURT.

FORBES, J.,
In Chambers.

[Feb. 8.

DOHERTY *v.* PARLEE.

Practice—Evidence of jurisdiction—42 Vict., c. 13.

At the trial of the action before the Parish of Sussex Civil Court, objection was taken by the defendant after he had gone into his own evidence that the plaintiff had not proven the jurisdiction of the Court, and the plaintiff then offered evidence of it.

Held, that the evidence was admissible under 42 Vict., c. 13.

Byrne, for the plaintiff.

King, for the defendant.

Province of Prince Edward Island.

SUPREME COURT.

Full Court.]

MCINNIS *v.* CITY OF CHARLOTTETOWN.

Corporation—Non liability for non-feasance.

Action for injuries sustained by plaintiff on account of obstruction in front of a house on Dorchester street in Charlottetown.

The sidewalk on this place was properly constructed by the city in the usual way, and when complete it left an intervening space between the sidewalk and the lowest step of the stairs leading to the street door of the house in question. In order to cover this intervening space between the lowest step of the stair and the sidewalk, the owner of the house placed a plank over it, without the knowledge of the city authorities. This plank projected out about four inches on the sidewalk (which was narrow), and was certainly an obstruction on the sidewalk.

Plaintiff while passing along the street struck her foot against the projecting plank and received certain injuries.

Held, that the corporation was not liable for non-feasance.

A. A. McLean, Q.C., for plaintiff.

F. L. Hazzard, Q.C., for defendant.

Full Court.] [Jan. 25.

IN RE BARRON.

Certiorari—Proof of service—C. T. Act.

This was an application of Barron to quash a conviction of Stipendiary Magistrate Hagyard under the provisions of the Canada Temperance Act, on the ground of insufficient proof of service.

The evidence before the magistrate was that a copy of the summons was left with an adult person at the defendant's residence. There was no proof before the magistrate that this adult person was an inmate of the defendant's last or usual place of abode, or that any effort had been made to serve the defendant personally with a copy of the summons.

Held, that the service was insufficient. Conviction quashed.

The Court refused to admit evidence to supplement evidence given before the magistrate.

D. C. McLeod, and *J. J. Johnston*, for the applicant.

H. James Palmer, contra.

Province of Manitoba.

QUEEN'S BENCH.

Full Court.] [Feb. 27.

LAMBERT *v.* CLEMENT.

Landlord and tenant—Sheriff—Execution creditor—Rent—8 Anne, c .14, s. 1.

The plaintiff had an execution in the hands of the defendant, as sheriff, against the goods of one Murray, under which defendant seized a quantity of grain on Murray's farm, and realized the sum of $138.88 after payment of expenses. Before the sale, however, the sheriff received notice from the Imperial Loan & Investment Co., claiming under 8 Anne, c. 14, s. 1, $700 for a year's rent of the premises on which the grain had been seized. The sheriff having refused to pay over any money to the plaintiff, he then brought this action and recovered a verdict in the County Court. It appeared that there was some dispute between the sheriff and the loan company as to the validity of the lease under which the rent was claimed, and that the company had refused to accept the sum of $135 tendered to them by the defendant on account of their claim, and in point of fact the company had sued the defendant for damages for the seizure in question, but no evidence had been given in this action tending to impeach the validity of the lease between the loan company and Murray.

Held, on appeal from the County Court, that the sheriff might rely on the landlord's claim as a defence to this action, although he had not actually paid over the proceeds of the plaintiff's execution to the landlord.

Appeal allowed with costs, and verdict entered for defendant with costs.

W. A. Macdonald, Q.C., for the plaintiff.

Culver, Q.C., and *Hull*, for the defendant.

KILLAM, J.] [March 11.

BUCKNAM *v.* STEWART.

The Real Property Act—Practice—Plaintiff in issue—Issue under Real Property Act.

A mortgagee of land having applied to bring it under the The Real Property Act, a caveat was filed, and the caveator proceeded by petition for the purpose of establishing his claim, alleging that he had acquired a title from the mortgagor subsequent to the caveatee's mortgage, that the mortgagee's claim was barred by The Real Property Limitation Act, and that he himself was in possession of the property, which he verified by affidavit.

Held, that in the issue ordered to determine the question whether the mortgagee's rights had been barred under the statute, the onus of showing this was upon the petitioner, and he should be the plaintiff.

Haggart, Q.C., for the caveator.

Tupper, Q.C., for the caveatee.

KILLAM, J.] [March 11.

MCKENZIE *v.* FLETCHER.

Limitation of actions—The Real Property Limitation Act, R.S.M., c. 89, s. 24—Payment on account of judgment—Assignment in trust.

This was an application for leave to issue execution upon a judgment recovered in this Court by the plaintiff against defendant on Dec. 21, 1883.

Prior to that date the defendant had conveyed all his property in trust for creditors by a deed containing the usual provisions, and in 1888 the assignee had paid the plaintiff a dividend on his claim out of the proceeds on the assigned property.

Held, following *Harlock* v. *Ashbery*, 19 Ch. D. 539, that such payment was not sufficient to take the case out of the operation of the statute, not having been made by some person liable or entitled to make the payment, or his agent (see *Fisken* v. *Stewart*, ante, p. 41).

The learned judge considered that the payment by the assignee was made in the discharge of his duty to the creditors, and because he was liable to them for the due and proper execution of the trusts declared in the deed, and not as a satisfaction or partial satisfaction of the defendant's liability, and further that the assignee was not by the deed made an agent for the purpose of paying the creditors of the defendant, and even if the assignee did become such agent he was not authorized thereby to recognize the plaintiff's judgment, or to make any payments which would have the effect of an acknowledgment of such judgment, because the same was not recovered until after the trust deed was made. Application dismissed with costs.

Culver, Q.C., for the plaintiff.

Mathers, for defendant.

Province of British Columbia.

ADMIRALTY DISTRICT.

EXCHEQUER COURT.

REG. *v.* SHIP "AURORA."

Maritime law—Behring Sea Act, 1894—Evidence of offence.

Where a vessel had been arrested within the prohibited zone because she had certain skins on board with holes in them presumably made by guns, but which at the trial were shown not to have been made by those on board the arrested vessel, the Court held that there was sufficient reason for such arrest.

[VICTORIA, Oct. 7, 1896—DRAKE, Loc. J.

This vessel, a British schooner, had been sealing round Japan and arrived at Attu, in Behring Sea, on 20th July, 1896. She had arms and ammunition on board. The captain requested Lieutenant Barry, of the U.S. ship "Grant," to inspect the arms and ammunition and a record of all that was then produced was entered in the official log.

They commenced sealing in Behring Sea on 1st August. On 10th August

she was boarded by the "Rush," and the attention of the officer who boarded her was called to four skins which had been put aside as having holes caused by gaffs. He said he did this in pursuance of instructions from Lieutenant Barry, of Attu. The skins were sent on board of the "Rush," and after a careful examination by the officers of the "Rush" the conclusion arrived at was that these seals had been shot. The guns and ammunition were examined and checked, and some small discrepancy was discovered which was explained afterwards. This examination was as ineffective as the first one spoken of because there was no search of the vessel and no evidence to show that there was not other ammunition on board. The vessel was ordered to Unalaska and a further count of the ammunition made. While there two of the crew deserted and took away one of the ship's boats and some provisions—a claim for which was made against the Crown, by way of counter-claim.

Pooley, Q.C., for the Crown.

Helmcken, Q.C., for the ship.

DRAKE, Local Judge: From the evidence adduced, the conclusion I have arrived at is that the seals whose skins were in question had been shot. They had also been speared, but the evidence did not in my opinion establish the fact that the seals had been shot by those on board the schooner.

The reason for placing these skins on one side was difficult to appreciate. The captain said that the U.S. officer at Attu had asked him to place on one side all skins that had shot or gaff holes in them. As it appears that the majority of seals speared have to be brought to the boat by the gaff, it must follow that gaff holes, if carefully searched for, would be apparent in the majority of skins. The captain denied that these seals were shot; but stated the holes were only gaff holes, and that the holes which were in the skins when taken on board the "Rush," and which are apparent now, were made by rats. Without discussing the evidence in detail, there was, in my opinion, sufficient reason for the arrest of this vessel, and the burden of showing that firearms had not been used was imposed on the vessel. I therefore dismiss the claim with costs.

With regard to so much of the counter-claim as relates to a boat and provisions being stolen while the schooner was in charge of the authorities at Unalaska, it was shown that the master was in command and had full control of the crew, and that two of the crew deserted and stole a boat and some provisions. The seizure of the vessel, therefore, had nothing to do with the stealing of the boat. I dismiss the counter-claim but without costs.

REG. *v.* SHIP "BEATRICE."

Maritime law—Behring Sea Act, 1894—Infringement—Ignorance of locality by master.

Ignorance by the master of a ship of his locality will not excuse a breach of the Act by fishing within the prohibited zone.

[VICTORIA, Dec. 7, 1896—DRAKE, Loc. J.

This vessel was seized on the 5th August, 1896, by the United States ship "Perry" in very much the same neighborhood as the "Ainoko" (ante p. 252), *i.e.*, in latitude 55° 50′ N., longitude 170° 37′ W., some seven miles within the zone. While the seizing officer was on board the boat returned with 58 skins.

The defence was the same as that in *Reg.* v. "*Ainoko*" (ante p. 252). No observations had been made after August 2, and there was a strong south-west wind until the afternoon of the 4th, the position of the vessel being calculated by dead reckoning, but as the schooner had no log line by which to determine her speed, the calculation was more than usually inexact. The navigator of the schooner, Captain Pinckney, kept no ship's log, but had a memo. book in pencil, according to which he had an observation on the 3rd, of longitude 172° 8′, and according to him her position on the day of seizure was latitude 55° 11′ 11″, longitude 170° 39′ W.

Pooley, Q.C., for the Crown.

Helmcken, Q.C., for the ship.

DRAKE, Local Judge: The master's supposition of his locality was a mere estimate based on his idea of her speed from looking over the side, and his log book shows evident marks of alteration. If the vessel had been properly found with a log line of any description the error would have been greatly reduced and her position more nearly approximated to what it eventually turned out to be. In his evidence he says that he got his last observation on the 2nd, which differs from his log. A master takes upon himself the responsibility of his position, and if through error, want of care or inability to ascertain his true position, he drifts within the zone, and seals there, he thereby commits a breach of the regulations.

There appears to be a discrepancy in the position as given by the cutter "Perry" on the day of seizure, and that subsequently given as the correct locality, and it arose in this way: The position as given on first seizing was calculated from the last observation taken that morning, and allowing for dead reckoning up to the time of seizure. This was subsequently corrected after another observation had been taken in the afternoon, but in giving this correction, on working over the calculations again, a clerical error, which made a difference of some four to five miles, was discovered, and this error was communicated to the schooner, and the official log corrected afterwards. On arriving at Unalaska the "Perry's" chronometer was rated and the exact error ascertained, and the several positions were gone over again, and the result was that the exact position at the time of the seizure was latitude 55° 50′, longitude 170° 37′. This made the "Beatrice" seven miles within the prohibited limits; the previous calculations made the vessel within the zone, but not quite so far in—she was not, therefore, in any way prejudiced by the corrections made.

It was proved that there was a current running north which might vary from half a mile to two miles, depending on the wind and swell. The "Beatrice" had not allowed sufficiently for this, but that is not a sufficient excuse; no attempt to take seals should be made unless the master is certain of his position. I therefore declare the "Beatrice" and her equipment forfeited, but allow her to be redeemed on payment within thirty days of the sum of £400.

SUPREME COURT.

DAVIE, C.J.] [Feb. 24.

MAJOR *v.* MCCRANEY.

Bond to cover misappropriated funds—Stifling prosecution—Defence.

In 1895, McCraney, as manager of Major & Pearson's office in Vancouver, was arrested on a charge of fraudulently appropriating trust property to his own use. He was given a preliminary hearing in the District Court, and sent up for trial at the Fall Assizes. Pending the trial McCraney's friends came to the rescue, and entered into a bond or agreement to make restitution, etc., and the prosecution was to use its best endeavors to have proceedings stayed. Accordingly, when the case was called at the assizes, the Crown Attorney, with the consent of the presiding judge, withdrew the case, as, in his opinion at that time, there was not sufficient evidence to convict. Subsequently the defendant's bondsmen or trustees, of whom there were fourteen, made two payments, according to the agreement, and then refused to pay any more ; hence this action. The defendant claimed that the said agreement was void in law, having been made in consideration of stifling a criminal prosecution.

Held, that 20 & 21 Vict., c. 54, s. 13 (Imp.), applied, and that the defendants were liable on their bond.

McPhillips, Q.C., and *Corbould*, Q.C., for plaintiff.

Wilson, Q.C., and *Davis*, Q.C., for defendants.

MCCREIGHT, J.] [Feb. 25.

PARES *v.* BISHOP OF NEW WESTMINSTER.

Mortgage—Short form—Corporation sole—Right to bind successors.

This was an action brought by the plaintiff against the present Bishop of New Westminster to recover $350 and interest, alleged to be due on a covenant contained in a mortgage made by the late Bishop Sillitoe to plaintiff, of the parsonage house and premises at Lansdowne.

The mortgage was made on a "short form," under the Short Form of Mortgage Act.

Held, (1) That the covenant could not bind the defendant's successors on account of the form ; and (2) that even if the covenant should be held to be in form sufficient to bind successors, a corporation sole cannot by law bind its successors on a personal obligation.

Reid, for plaintiff.

Grey, for defendant.

MCCREIGHT, J.] [Feb. 27.

WHARTON *v.* MISSION CITY CORPORATION.

Municipal law—Expropriation of lands for roads—Exception.

This was an action brought under the Municipal Act of 1892, s. 266, which says that no expropriation of land for the purpose of making roads, etc., shall be made as to lands on which any building may have been erected, or which may be in use as gardens or otherwise, for the more convenient occu-

pation of any such buildings. The orchard which the plaintiff sought to bring within the words of s. 266 was 250 yards from the plaintiff's dwelling-house, and separated from it by one or two fences.

Held, that the orchard would not be within the Act and would not be exempted from expropriation for a public road.

DAVIE, C.J.] [Feb. 26.

MUNICIPALITY OF LANGLEY *v.* OAKES.

Municipal law—Opening road—Acquiescence of party affected—Dedication.

This was an action for obstructing a roadway running between lots 16 and 17, at the upper part of section 16. Section 16 was the property of the defendant, and he counter-claimed for the price of the land taken by the municipality for the purposes of the road. The highway in question was gazetted as a public road on February 4th, 1886, and has since been used as such. The corporation has on several occasions expended money in opening and repairing the roadway, and statute labor had been performed thereon, both by the defendant himself and the other settlers. The land whereon the road in question runs is part of what is known as the Hudson's Bay Farm at Langley, and the township and section lines intersecting the municipality are not produced through the farm. Latimer, the former owner of lot 17, in 1885, had a conversation with Oakes with a view to opening a highway, so that a settler named Norris might obtain an outlet to the trunk road, which he could only do by the opening of a road, either along where the section line would run, if produced through the farm, or by a roadway opened at the upper part of section 16, and carried through the boundary between lots 16 and 17. Norris then asked Oakes whether, if he, Norris, got out a petition to the council to this effect, he, Oakes, would sign it, and Oakes said he would, and afterwards did so. The petition was laid before the council in the year 1885, asking that the section line be cancelled, and that the roadway be opened where it now runs. The by-law was passed in accordance with the terms of the petition, but reduced the width of the roadway, and was afterwards published in the *Gazette*. Oakes voluntarily moved his fence back so as to give the fifteen feet between lots 16 and 17, and Latimer did the like, so as to contribute his twenty-five feet; and Oakes also put back his fence at the top so as to give the forty feet there. He also contracted with the corporation, and performed certain ditch work upon the road, for which he was paid. He was well aware that the corporation had given other contracts for works of construction and repair upon the roadway. The roadway had been in use as an outlet for several settlers for many years.

Held, that the publication in the *Gazette* was express notice to defendant, at the time, of what had happened, and he is barred by his acquiescence.

Held, that Oakes' defence failed, as he must be taken to have dedicated the road to the public, and his counter-claim for compensation was dismissed.

Book Reviews.

The Law of Divorce and Separation, by WILLIAM T. NELSON. Callaghan & Company, Chicago. Canada Law Journal Co., Toronto. Two volumes.

The subject matter has been exhaustively treated both from a theoretical and practical point of view, with particular attention to the latter, while not neglecting in any way the theoretical portion. The differences in procedure in the different States of the Union in marital cases are fully treated. The work is thoroughly up to date and includes the decisions of the English Courts in regard to divorce and alimony, and we confidently recommend it to all interested in the subject.

The Law of Trusts and Trustees, by ARTHUR UNDERHILL, M.A., LL.D., of Lincoln's Inn, Barrister-at-law. , 1st American edition by F. A. and A. Wislizenns, from the 4th English edition, 1896. St. Louis, F. H. Thomas Law Book Co. Canada Law Journal Co., Toronto.

It is hardly necessary to advert to the standing of such a well known author as Mr. Underhill, whose work on Torts, as well as the previous editions of the above, have familiarized him to the profession in Canada. The special features of the work, which is in one volume, are condensation of statement of legal propositions and the subjoining of the American notes, leaving the text of the English edition intact, a valuable feature for the Canadian reader who requires both, but in a readily distinguishable form.

Negligence—Rules, Decisions and Opinions, by EDWARD B. THOMAS, of the New York Bar. Albany, N.Y., Banks & Brothers. Canada Law Journal Co., Toronto, Canadian agents.

A new departure has been made in the method of arrangement in this work, by classifying the cases collected and discussed by reference to the facts or circumstances attending the negligence, rather than on a theoretical basis. We therefore find chapters on vessels, telegraph companies, private premises, railway crossings, etc., and at the beginning of each an abstract statement of the general rules applicable. This makes a decided improvement, and adds to the convenience for reference. Much care has evidently been expended in the preparation of the book, and it will no doubt reach a large sale. The indices are extremely well got up.

WATERCOURSES.—The protection of a spring brook used for domestic purposes by injunction against connecting with it a sewer under a cemetery is held, in *Barrett* v. *Mt. Greenwood Cem. Asso.* 159 Ill. 385, 31 L.R.A. 109, to be properly granted, although the water was already polluted to some extent from other sources.

CONDITIONAL SALE – FORFEITURE.—A promise to extend the time for payment of an instalment due on a conditional sale or lease of goods is held, in *Cole* v. *Hines* (Md.), 32 L.R.A. 455, to be a waiver of forfeiture for default which will prevent asserting it before the expiration of the extended time.