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BRITTON, J. AUGUST 7TH, 1912.

CITY OF TORONTO v. WILLIAMS.

Municipal Corporations—Prohibition of Erection of Apartment House—By-law—2 Geo. V. ch. 40, sec. 10—Permit for Erection—Revocation—Bona Fides—"Location" before Statute—Vested Rights.

Motion by the plaintiffs to continue an interim injunction restraining the defendant from erecting an apartment house upon her lot on Brunswick avenue. By consent of counsel, the motion was turned into a motion for judgment.

Irving S. Fairty, for the plaintiffs.
G. C. Campbell, for the defendant.

BRITTON, J.:—The defendant purchased the land upon Brunswick avenue in May, 1911. In an affidavit of the father of the defendant it is stated, and I have no doubt of the truth of the statement, that this lot was purchased by the defendant for the purpose of erecting an apartment house thereon.

Shortly after the purchase, proceedings were taken for expropriating part of that lot, having in view the straightening of Brunswick avenue and enlarging Kendall square. The defendant naturally halted as to then going on with the contemplated building. Subsequently, the project or proposal, as to Brunswick avenue, was not gone on with; and the defendant then proposed to proceed with her apartment house.

In the latter part of 1911, the defendant applied to the city Architect and Superintendent of Building for permission to build, and submitted plans and specifications. The City Architect and Superintendent of Building knew that these plans and specifications were those of an apartment house; and on the 31st January, 1912, permission was granted to the defendant, in

terms, "to erect a two-storey brick *apartment*, near Wells street, on Brunswick avenue, in Limit B., in accordance with plans and specifications approved by this department."

Water service was applied for, and granted by the plaintiffs, and paid for by the defendant.

The work has not been rapidly proceeded with, but some work has been done; and there is nothing before me to indicate bad faith on the part of the defendant.

On the 16th day of April, 1912, an amendment to the Municipal Act was made (2 Geo. V. ch. 40, sec. 10), by which the following clause was added as clause (*c*) to sec. 541a of the Municipal Act, 1903, as enacted by sec. 19 of the Municipal Amendment Act, 1904: "In the case of cities having a population of not less than 100,000, to prohibit, regulate, and control the erection on certain streets to be named in the by-law of apartment or tenement houses and garages to be used for hire or gain."

The plaintiffs contend that there has been no location of this contemplated apartment house; and so it can, under the recent amendment, be prohibited.

I am of opinion that what was done amounts to a "locating" of this house and a consent by the plaintiffs to its location.

The plaintiffs have assumed to revoke the permission given; and they say that power is given to do so by sec. 6 of the city building by-law, No. 4861. The alleged attempt at revocation was not for any of the causes mentioned in sec. 6.

The case, as presented to me, seems quite like City of Toronto v. Wheeler, ante 1424. I agree with the decision and reasons for decision given by Mr. Justice Middleton. It would be manifestly unfair to the defendant—it would be rank injustice to her—after granting the permit, which, in my opinion, amounts to location, within the meaning of the statute, to step in now and stop the work, leaving upon her hands the lot she bought, the plans and estimates prepared, and the work, much or little, already done—of no value to her other than for the house she desires to erect.

The action will be dismissed with costs.

DIVISIONAL COURT. AUGUST 9TH, 1912.

*RE CLARKSON AND WISHART.

Execution—Interest of Certificated Holder of Mining Claim before Patent—Seizure and Sale by Sheriff under Fi. Fa. Goods—Mining Act of Ontario, 1908—Licensee—Tenant at Will—Profit à Prendre—Fi. Fa. Lands—Position of Execution Creditor and Purchaser at Sheriff's Sale—Application for Record.

An appeal from the judgment of the Mining Commissioner in three cases in which the same points arose for decision.

Wishart was the holder of an undivided interest in a mining claim, for which a certificate of record had issued, but which had not been patented, nor was the patent applied for nor the purchase-money paid. Judgment having been obtained against him by Clarkson and a writ of fi. fa. issued, the judgment creditor took proceedings before the Mining Commissioner to be declared entitled to the interest of Wishart in the mining claim (Mining Act of Ontario, 1908, sec. 72(2)). This application the Mining Commissioner refused.

Then the Sheriff proceeded to sell, as goods, the said interest, made a deed, and the purchaser, Forgie, who held a miner's license, endeavoured to have the deed recorded. The Recorder refused, and Forgie appealed to the Mining Commissioner, who dismissed his appeal.

In the meantime, Wishart had transferred his interest to one Myers, pursuant to the Act, and this transfer was recorded. Forgie took proceedings to have this set aside. The Mining Commissioner refused.

The execution creditor, Clarkson, and the purchaser at the Sheriff's sale, Forgie, appealed.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

J. W. Bain, K.C., and M. L. Gordon, for the appellants.

J. M. Godfrey, for Wishart.

RIDDELL, J.:—The real question to be decided is, whether the interest of one in the position of Wishart is exigible—or rather was exigible before the recent Act 2 Geo. V. ch. 8, sec. 7.

*To be reported in the Ontario Law Reports.

The position of licensee under the Mining Act is rather anomalous. He may (sec. 34) prospect on certain Crown lands without being or being considered a trespasser: if he discover valuable mineral, he may (sec. 35) stake out a claim in a certain specified form, but not more than three in any one division during a license year (sec. 53)—then he may (sec. 59) apply to have the claim recorded; and on certain conditions he may (sec. 64) receive a certificate of record. Up to this time he has no right, title, interest, or claim in or to the mining claim other than the right to proceed to obtain a certificate of record and ultimately a patent (sec. 68), and he is a mere licensee of the Crown; but, after the issue of the certificate, he is a tenant at will of the Crown until he procures his patent (sec. 68).

He may transfer his interest in the claim to another licensee, or may work the claim subject to the other provisions of the Act (sec. 35). This transfer *may* be in form 11, but it *shall* be signed by the transferor or his agent authorised by instrument in writing (sec. 72); and (sec. 73), "except as in this Act otherwise expressly provided, no transfer . . affecting a mining claim or any recorded right or interest acquired under the provisions of this Act, shall be entered on the record or received by a Recorder unless the same purports to be signed by the recorded holder of the claim or right or interest affected or by his agent authorised by recorded instrument in writing, nor shall any such instrument be recorded without an affidavit (form 12) attached to or endorsed thereon, made by a subscribing witness to the instrument." But, after the issue of the certificate of record, "the mining claim shall not, in the absence of mistake or fraud, be liable to impeachment or forfeiture except as expressly provided by this Act" (sec. 65); though, if issued in mistake or obtained by fraud, "the Commissioner shall have power to revoke and cancel it . . ." (sec. 66).

To the application of the execution creditor to be recorded, I think sec. 73 is an effective answer; and that part of the appeal should be dismissed with costs.

And the same considerations apply to the application of Forgie to have his deed from the Sheriff recorded. . . .

Was the interest of Wishart exigible, and, if so, whether as "lands" or as "goods?" . . .

[Reference to Bl. Com. II., p. 145; Co. Litt. 55; James v. Dean, 11 Ves. at p. 341; Scobie v. Collins, [1895] 1 Q.B. 375, 377; Turner v. Barnes, 2 B. & S. 435, 452; Doe Stanway v. Rock, 1 Car. & M. 549, 6 Jur. 266; Doe Kemp v. Garner, 1 U.C.R. 39;

Doe v. Thomas, 6 Ex. 854; Jarman v. Hale, [1899] 1 Q.B. 994; Dinsdale v. Isles, 2 Lev. 88; Hogan v. Hand, 14 Moo. P.C. 310; Co. Litt. 57(a); Pinhorn v. Sonster, 8 Ex. 763, 772, 773; Carpenter v. Cobus, Yelv. 73.]

While leaseholds are exigible at the common law as chattels, no instance has been cited, and I can find none, in which it was held that a tenancy at will was such a leasehold. It does not seem to have been the subject of any English or Ontario decision; and, consequently, there is no express authority. . . .

[Reference to 17 Cyc. 954; Bigelow v. Finch, 11 Barb. 498, 17 Barb. 394; Colvin v. Baker, 2 Barb. 206; Waggoner v. Speck, 3 Ohio 292; Wildey v. Barnes, 26 Miss. 35; Freeman on Executions, 3rd ed., secs. 119, 177; Reinmuller v. Skidmore, 7 Lans. 161; Williams v. McGrade, 13 Minn. 174; Kile v. Giebner, 114 Pa. St. 381.]

It seems, in the only case in England which I can find at all bearing on the matter, to have been taken for granted that such an estate could not be taken in execution. . . .

[Reference to Doe v. Smith, 1 Man. & Ry. 137; Playfair v. Musgrove, 14 M. & W. 239; Taylor v. Cole, 3 T.R. 292; Rex v. Deane, 2 Show. 85; Doe v. Murless, 6 M. & S. 110; Martin v. Lovejoy, 1 Ry. & Moo. 355; Hamerton v. Stead, 3 B. & C. 478.]

When we consider that a Sheriff cannot seize what he cannot sell: Com. Dig., tit. "Execution" (C. 4); Legg v. Evans, 6 M. & W. 36; Universal Skirt Manufacturing Co. v. Gormley, 17 O.L.R. 114, 136: I think it quite clear that at the common law a tenancy at will is not exigible.

And this particular interest has not been covered by legislation—none of the amendments applying to such a chattel interest. The history of the legislation is to be found in Universal Skirt Manufacturing Co. v. Gormley, 17 O.L.R. at p. 136. The present Act is 9 Edw. VII. ch. 47.

Legislation extending the classes of property to which execution will attach is always construed strictly. See, for example, . . . Morton v. Cowan, 25 O.R. 529, 534, 535.

Nor could it be considered "land," within the meaning of the Execution Act. . . .

[Reference to sec. 32(1).]

It is argued, however, that the position of a holder of a certificate of location is different from that of a mere tenant at will, and that his interest is exigible. . . .

[Reference to Reilly v. Doucette, 2 O.W.N. 1053.]

In my view, the appeal can be disposed of on the short ground that no transfer by the Sheriff could be effective (sec.

73 of the Mining Act), as he could not be "the secured holder of the claim." Not being able to transfer effectively, he could not sell; and, as we have seen, he cannot seize what he cannot sell.

But there are other and valid reasons for this view.

Is this a chattel interest exigible under a fi. fa. goods? The argument is that sec. 65 of the Mining Act makes the mining claim free from liability to impeachment or forfeiture except as expressly provided by the Act; and that, consequently, there is a term not liable to be put an end to by the Crown.

But the forfeiture is such a forfeiture as is contemplated by secs. 84, 85, 86, 190, 191, by reason of loss of status of licensee or doing or leaving undone something. If the provisions of sec. 65 are inconsistent with those of sec. 68, they must give way, the later section speaking "the last intention of the makers:" Attorney-General v. Chelsea Water Co., Fitzg. 195; Wood v. Riley, L.R. 3 C.P. 27; Maxwell on Statutes, 3rd ed., p. 215; and "leges posteriores priores contrarias abrogant:" (1614), 11 Co. Rep. 62 C.; Garnett v. Bradley, 3 App. Cas. 944, at p. 965.

There is, however, to my mind, no inconsistency—no necessary repugnancy. The intention of the Act is to leave the paramount power of dealing with the land in the Crown until the issue of the patent; and it, consequently, makes the certificate-holder a tenant at will. So long as the Crown does not exercise its paramount power, the certificate-holder is not liable to have his position attacked. So, too, while he has the right to work the mine, this right is subject to the same limitation—and I see nothing in this inconsistent with a tenancy at will. . . .

Nor is there any necessary inconsistency in the right given to transfer an interest to another—that, at the very most, would make the transferee a tenant at will in lieu of the original licensee: this is not such a transfer as is covered by R.S.O. 1897 ch. 119, sec. 8.

It is argued, however, that this is an instance of profits à prendre; and it is argued that a fi. fa. lands will attach. . . .

[Reference to McLeod v. Lawson, 7 O.W.R. 521, 8 O.W.R. 213, 220, 221.]

It is then urged that a profit à prendre is decided to be exigible, by Canadian Railway Accident Co. v. Williams, 21 O.L.R. 472, a case of an oil lease like that in question in McIntosh v. Leckie, 13 O.L.R. 54. But in that case there were leases for a certain fixed time; and it was on such leases that the decision . . . was given. That is no authority for saying that a

profit à prendre (so to speak) at the will of the Crown is likewise exigible.

A strong argument for the conclusion I have arrived at is the recent statute 2 Geo. V. ch. 8, sec. 7 (adding new sub-sections to sec. 77 of the Mining Act of Ontario, 1908) . . . .

I am of opinion that the appeal should be dismissed with costs. . . .

FALCONBRIDGE, C.J., and BRITTON, J., agreed in the result.

DIVISIONAL COURT. AUGUST 20TH, 1912.

*RENAUD v. THIBERT.

Division Courts—Increased Jurisdiction—Division Courts Act, 10 Edw. VII. ch. 32, sec. 62—Ascertainment of Amount—Proof of Document—Proof of Ownership of—"Other and Extrinsic Evidence."

Appeal by the defendant Thibert from the judgment of the Junior Judge of the County Court of the County of Essex, in favour of the plaintiff, for the recovery of $260, in a Division Court action upon a covenant in a mortgage made by the defendant Thibert to the plaintiff.

The mortgage had been assigned by the plaintiff to one Meloche, by an assignment absolute in form, but which, as the Judge found, was not intended to be absolute, but a collateral security only for an advance by Meloche, who was made a defendant in the action.

At the trial, the plaintiff produced a document purporting to be a re-assignment of the mortgage from Meloche to the plaintiff, but failed to prove that it was executed by Meloche or under his authority.

The only question upon which judgment was reserved at the argument of the appeal was, whether the learned Judge had jurisdiction to try the action under sec. 62 of the Division Courts Act, 10 Edw. VII. ch. 32.

The appeal was heard by MEREDITH, C.J.C.P., TEETZEL and KELLY, JJ.

J. H. Rodd, for the appellant.

F. D. Davis, for the plaintiff.

*To be reported in the Ontario Law Reports.

TEETZEL, J. (after setting out the facts as above), referred to 43 Vict. ch. 8, sec. 2, extending the jurisdiction of Division Courts; 56 Vict. ch. 15, sec. 2, amending the earlier statute; Kreutziger v. Brox (1900), 32 O.R. 418; 4 Edw. VII. ch. 12, sec. 1, adding sec. 72*a* to the Division Courts Act, R.S.O. 1897, ch. 60; and proceeded:—

The effect of this section is, apparently, to declare the law to be as laid down in Kreutziger v. Brox; but it clearly, I think, was not intended to narrow the jurisdiction already conferred.

In sec. 62 of the revised Division Courts Act, 10 Edw. VII. ch. 32, the language of sec. 72*a* (added by the Act of 1904) is altered by omitting the words "in order to establish the claim of the plaintiff or the amount which he is entitled to recover," and it now reads: "An amount shall not be deemed to be so ascertained where it is necessary for the plaintiff to give other and extrinsic evidence beyond the production of a document and proof of his signature to it." . . .

[Reference to Slater v. Laboree (1905), 9 O.L.R. 545, 547.]

Now in this case it is plain that, upon the production of the mortgage signed by the defendant, the time for payment thereunder having passed, the defendant is primâ facie liable to the owner of the mortgage, and it would not be necessary for the plaintiff to give other or extrinsic evidence, beyond the production of the mortgage and the proof of the defendant's signature, in order that the amount of such liability might be said to be "ascertained."

The question in this case is: does the fact that, in order to establish the plaintiff's right to sue in his own name on the covenant, he must establish by evidence other than documentary that the assignment was only by way of collateral security, oust the jurisdiction of the Division Court? I am of opinion that it does not.

It seems to me that, in making the provision as to proof, it was the ascertainment of the defendant's liability under a document, and the amount of such liability, that the Legislature had in view, and not the matter of the plaintiff's interest in or right to the document by which the same are ascertained. . . .

Once the production of the document and proof of its execution establish the liability of the defendant to the owner thereof, and ascertain the amount of such liability without the necessity of other and extrinsic evidence to establish either, I think there is nothing in the statute or in any of the cases decided upon it which suggests that evidence to establish the plaintiff's title would be "other and extrinsic evidence" in contemplation of the statute."

KELLY, J., gave reasons in writing for the same conclusion.

MEREDITH, C.J.:—I agree in the conclusion to which my learned brothers have come.

Appeal dismissed with costs.

DIVISIONAL COURT. AUGUST 20TH, 1912.

*TRAVIS v. COATES.

Principal and Agent—Agent's Commission on Sale of Land—Purchaser Found by Agent—Abandonment of Purchase—Subsequent Purchase through another Agent — Causa Causans or Causa sine qua non.

Appeal by the defendant from the judgment of DENTON, JUN. Co. C.J., in favour of the plaintiff, in an action in the County Court of the County of York, brought to recover a commission on the sale of land.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL and KELLY, JJ.

C. A. Moss, for the defendant.

T. N. Phelan, for the plaintiff.

The judgment of the Court was delivered by RIDDELL, J.:—

. . . The defendant owned a house known as No. 116 Curzon street, in Toronto, which was heavily incumbered. Mr. Ponton, a real estate agent, was acting for the mortgagee, and foreclosure was imminent. The defendant then put the property into Ponton's hands as sole agent for sale; Ponton seems to have made some attempt to sell, but did not succeed.

The plaintiff is a real estate agent; and, some time in August, 1911, got into communication with one J. J. Jerou, a prospective purchaser on behalf of his wife. The plaintiff went to the defendant and asked her if she would sell her house, and, if so, upon what terms, as he had a purchaser in view. The defendant then authorised the plaintiff to obtain a purchaser at the usual terms as to commission. The price first asked was $5,000. Jerou at first offered $4,200; and finally the parties came together, and

*To be reported in the Ontario Law Reports.

the defendant agreed to sell and Jerou to buy at $4,600, on terms of $3,000 cash and the balance on mortgage. Jerou was in a rented house and had to move, and one of the conditions of the sale by the defendant was that he should get possession by the 15th September, 1911. Jerou signed nothing, and could not, therefore, be compelled to carry out the contract.

Jerou took the matter of getting possession into his own hands; he was attending to the matter of obtaining possession himself, and he told his solicitor that, if he could not get possession by the 19th September, he would not take the property. Jerou went to the property, and it was arranged that he should get possession on the 19th; and, at the cost of considerable inconvenience, everything was out of the house and the property ready for him by that day. But Jerou did not take possession; he made some complaint about the title, which was absolutely groundless, as appears by his own solicitor's evidence. He suggested taking the house for a month as tenant, and, if he thought it was fit, he would take and buy the house. The defendant saw the plaintiff about the matter, as did her son; to the son he said, "There is a flaw in the sale;" to the defendant, "Well, the sale is off for some flaw in the title."

The solicitor for Jerou was waiting to be put in funds by Jerou, and was in a position to close the sale if he had received the funds. He had been instructed not to carry out the transaction unless possession was given by the 19th September. On being called upon by the vendor's solicitor on the 19th to close the sale, he replied that he had no funds; and the next day Jerou telephoned him not to carry it out; not to close; he was not going on with the deal. The defendant did not let the house to Jerou; but, thinking, and justifiably thinking, that the deal was off, she went again to Mr. Ponton and reappointed him, instructed him to try and sell it again, as he puts it.

About the 27th December, Mrs. Jerou, apparently without the knowledge of her husband, came into Ponton's office and made inquiry about the property—she said she had seen it—and it was arranged that Ponton's representative, Dunlop, should call and see Mr. Jerou in the evening. He did so: and negotiations commenced, Dunlop asking a rather high price. The Jerous then said that they had been offered the property for $4,600: and Dunlop agreed to submit that figure. He saw the defendant, the terms were accepted, and a contract signed, without much, if any, delay. The sale was carried out on practically the same terms as had been arranged through the plaintiff.

The plaintiff had, on the 27th September, rendered his bill to the defendant for $115, and her solicitors had, the next day, written an answer, "You are, no doubt, aware that Mr. Jerou declined to purchase;" and no reply was made by the plaintiff.

After the sale in December, the defendant paid Ponton a commission for the sale; on the 15th February, 1912, the plaintiff issued his writ; the trial Judge has given him judgment for $115 and costs; and the defendant now appeals.

The trial Judge finds that Jerou never abandoned his intention to buy. That may be so; I doubt it; but certainly he gave his solicitor to understand that the sale was off; the plaintiff gave the defendant to understand that the sale was off. No intimation was given to any one by Jerou that the sale was not off—and, if he had still the intention to buy, he carried that around in his head without making any external or visible manifestation of its existence; and "de non apparentibus et de non existentibus eadem est ratio." The plaintiff cannot set up that the sale was not off, that Jerou had not refused to purchase; he told the defendant that the sale was off; and the defendant acted accordingly.

It cannot, in any event, I think, be considered that the intention, if any, which Jerou had in reference to this property was to buy on the basis of the arrangement made through the plaintiff, but to enter into new negotiations and buy if he could make satisfactory terms.

It is, to my mind, in every respect as though he had no intention in the matter: but had simply refused to carry out his purchase.

So far as the facts before December go, there can be no doubt that the plaintiff could not recover. But it is contended that the subsequent sale, through Ponton, to the same purchaser, entitled the plaintiff to his commission. It may be at once admitted that the sale to Jerou would probably not have been effected had it not been for the plaintiff's retainer by the defendant and his efforts. No doubt, the plaintiff's services were a cause sine qua non (to use the time-honoured terminology): but that is not enough—the services must be a causa causans. . . .

[Reference to Imrie v. Wilson (1912), ante 1145, 1378; Barnett v. Isaacson (1888), 4 Times L.R. 645; Green v. Bartlett (1863), 14 C.B.N.S. 681; Steere v. Smith (1885), 2 Times L.R. 131; Wilkinson v. Martin (1837), 8 C. & P. 1; Lumley v. Nicholson (1885), 2 Times L.R. 118, 119; Gillow v. Aberdare (1892), 8 Times L.R. 676, 9 Times L.R. 12; Taplin v. Barrett (1889), 6 Times L.R. 30.]

The proposed sale to Jerou fell through; the owner of the property put the property into the hands of another agent; the previous agent did nothing more; and the new agents effected a sale. The "intention" of Jerou to buy the property some day if it suited him—if that intention did in fact exist—probably shared his mind with the "intention" to buy any other property if it suited him; and, were it even less vague than it is, is no more effective than the expressed intention of T. in the case of Gillow v. Aberdare. Nor is the fact that in the present case the purchaser went herself to the new agent of any more significance than that T. went to the new agent in that case. . . .

[Reference to Wilkinson v. Alston (1879), 41 L.T.R. 394, 48 L.J. Q.B. 733, explaining it.]

I think the appeal should be allowed and the action dismissed, both with costs.

DIVISIONAL COURT. AUGUST 20TH, 1912.

RE VILLAGE OF CALEDONIA AND COUNTY OF HALDIMAND.

Municipal Corporations—Bridge—Duty of County Council to Build, Maintain, and Repair—Municipal Act, 1903, *sec.* 616 *—Width of Stream—Measurement at High Water.*

Appeal by the Corporation of the County of Haldimand from the decision of the Judge of the County Court of the County of Haldimand, dated the 14th May, 1912, declaring that Black creek, where it is crossed by a bridge on the main highway passing through the Village of Caledonia, is more than 100 feet in width, within the meaning of sec. 616 of the Consolidated Municipal Act, 1903 (3 Edw. VII. ch. 19), and that such bridge should be built, kept, and maintained in repair by the Municipal Council of the County of Haldimand.

The appeal was heard by MEREDITH, C.J.C.P., TEETZEL and KELLY, JJ.

T. A. Snider, K.C., for the appellants.

H. Arrell, for the Corporation of the Village of Caledonia, respondents.

The judgment of the Court was delivered by KELLY, J.:—

Black creek is a stream emptying into the Grand river, within

the Village of Caledonia. Just above this point it is crossed by a bridge connecting a main highway leading through the county. The land, both to the east and the west ends of the bridge, is low-lying.

The evidence shews that in the springtime of every year, and at other times as well, the water in the creek at the bridge rises to such an extent as to be more than 100 feet in width; at such times the water overflows the road for a considerable distance at either end of the bridge.

The conditions are such as, in my opinion, justify the finding of the learned Judge of the County Court, and bring the case within the authority of Village of New Hamburg v. County of Waterloo, 22 S.C.R. 296, in which it was laid down by Gwynne, J. (at p. 299), that, "after heavy rains and during freshets, which are ordinary occurrences in this country, the waters of the streams and rivers are accustomed to be much swollen and raised to a great height; and a bridge, therefore, which is designed to be the means of connecting the parts of a main highway leading through a county which are separated by a river, must necessarily be so constructed as to be above the waters of the rivers at such periods; and the width of the rivers at such periods must, therefore, in my opinion, be taken into consideration in every case in which a question arises like this which has arisen in the present case under the sections of the Act under consideration."

The appeal will, therefore, be dismissed; there will be no order as to costs.

BRITTON, J. AUGUST 23RD, 1912.

GALBRAITH v. McDOUGALL.
McDOUGALL v. GALBRAITH.

Partnership—Dealings in Land—Agreement—Construction—Division of Profits—Expenses—Advances.

The first action was for a declaration that the plaintiff Galbraith was entitled to one-quarter of the profits arising from the sale of any part of lot No. 12 in the 2nd concession of the township of Whitney, in the district of Sudbury, and to an undivided one-quarter of the part of that lot not sold; and for

an account, on the basis of a partnership between the plaintiff and defendant as to this land, as to which the plaintiff claimed to be entitled to one-fourth of the net profits arising thereout.

In the second action, McDougall, the plaintiff therein, alleged that Galbraith could only be entitled to anything out of the proceeds of sales of town-site lots, part of lot 12, upon payment to him, McDougall, of one-half of all the expenses of surveying, developing, marketing, and selling the said lots. McDougall also asked to have a caution, registered by Galbraith, released.

By an order of the Master in Chambers of the 2nd May, 1912, the two actions were consolidated.

The consolidated action was tried before BRITTON, J., without a jury, at Cornwall.

G. I. Gogo, for Galbraith.

F. E. Hodgins, K.C., and T. E. Godson, K.C., for McDougall.

BRITTON, J.:—McDougall was the owner of lot 12 in the 2nd concession of Whitney, containing 160 acres. This lot was known as and called "the McDougall Veteran claim." On the 11th February, 1911, the parties to this action made an agreement in writing by which McDougall purported to transfer to Galbraith one-fourth interest in the 160 acres. This transfer was to cover all surface, mineral, and other rights in the property. Galbraith was to provide funds for surveying and laying out the property into town lots, and other incidental expenses, preparatory to offering the lots for sale. These expenses were to be equally shared by each when the property should be disposed of, or when a sufficient sum should be realised.

This agreement was subject only to this, that the Temiskaming and Northern Ontario Railway Commission would locate a station upon some part of the 160 acres. In due course the station was located as expected. The parties then apparently thought it necessary to have a more formal agreement. It was not suggested by either party to this litigation or by any one that there was need for further negotiation—or that any new terms would be introduced. It was simlpy that an agreement should be drawn up by a lawyer. On the 28th March, 1911, the more formal agreement was prepared by a solicitor and executed by the parties. The agreement recites the facts—there McDougall agreed to advance from time to time as might be necessary or to become liable for one-half of all the expenses incurred through the expedient (sic) laying out of the said lots or any part thereof into a town-site, the survey, filing a plan and adver-

tisement of the same, and the costs and expenses of clearing, grading, and laying out the streets of timber from the same lot, and all other necessary and expedient expenses or outlays in connection with the development of the said town-site and the exploration of all mineral rights thereon.

Galbraith was to devote a reasonable amount of his time and attention to the affairs of the town-site and to assist in the laying out and improvement of the same and the sale thereof.

In consideration of this, McDougall was to give to Galbraith an undivided one-fourth share or interest in the proceeds arising from the sale of the said town-site, in lots or otherwise, the timber and mining rights thereon, and in all profits or benefits arising therefrom in any respect whatever.

Then it was provided that proper books of account should be kept of the receipts and expenditures in connection with the said townsite, and an audit of the same should be made at the expiration of every six months or oftener; a division of the profits was to be made every six months until the whole of the interests of the parties should be disposed of.

According to the agreement, it was the duty of McDougall to devote his time and attention to the requirements of the said town-site, and act in conjunction with Galbraith, etc.

This venture seemed to prosper and it ripened fast. McDougall did most of the work and made by far the greater part of all necessary expenditure. Money seems to have come in from sales of property, so that, for that reason or some other, Galbraith was not called upon to furnish money in terms of the agreement; when he was called upon, it was only because of the interpretation McDougall placed upon the agreement, viz., that Galbraith was to pay, as a certain sum, one-half of the total expenses for one-fourth of the gross proceeds of sales of the town-site property. I interpret these agreements as, virtually, one agreement, and as particularly set out in the writing dated the 28th March, 1911; and the agreement is to all intents and purposes a partnership agreement.

McDougall was the owner of this property, which promised to become and which actually became very valuable, as town-site property. He approached the plaintiff and made the offer of a quarter interest in it, if the plaintiff would agree to finance the undertaking, that is to say, if the plaintiff would agree to advance and pay from time to time, as might become necessary, or if the plaintiff would become liable for, one-half of all expenses. When the advances were being made, and money was being expended for purposes

mentioned, the plaintiff was not asked to furnish money. Unquestionably he was liable. If advances were obtained from outsiders, the plaintiff was liable with the defendant to such persons. If the defendant furnished the money, the plaintiff is liable to the defendant for one-half upon the settlement between the plaintiff and defendant. The clauses in the agreement by which McDougall agrees to give Galbraith not only the one-quarter interest in the proceeds arising from the sale of the town-site, but in all profits or benefits arising therefrom in any respect whatever, and that the division of profits, if any, should be made every six months, seem to me conclusive in Galbraith's favour as to the interpretation of the contract. If the plaintiff was to get an undivided quarter interest in the land, it necessarily follows, in the absence of any agreement to the contrary, that he would be entitled to one-quarter of the profits. Books of account were to be kept to ascertain what profits were made. I think the plaintiff's contention as to how the profits are to be arrived at is correct. According to the defendant's contention, it might so happen that, although the defendant would make a large amount of money, in the transaction, the plaintiff would be a loser. For example, suppose the gross proceeds of sales to be $10,000, the plaintiff's quarter would be $2,500, and the defendant's expenses $5,000. If the plaintiff were obliged to pay half of these, his one-fourth would be absorbed. That might go on from time to time and the plaintiff get nothing. That could not have been the intention of the parties. No such result was contemplated, and the agreement will not bear that construction.

The argument of counsel for the defendant is, that, if the agreement was that Galbraith should pay $6,000 and be entitled to a one-quarter interest in the proceeds, no question could arise, as he would be liable for the $6,000 as the purchase-price of his interest, irrespective of what that interest amounted to. That is quite true, but the agreement did not end where counsel leaves it. If the agreement ended with payment, it would make no difference whether payment was of a definite sum—say $6,000—or a sum to be ascertained as half of the expenses McDougall should incur in doing something.

The first agreement, the one of the 11th February, 1911, was not, as I have already stated, merely for the transfer to Galbraith of one-fourth the lot in question "with its surface, mineral, and other rights," but it is a conditional agreement—the condition being that "the Temiskaming and Northern Ontario Rail-

way Commission locate their station on said lot.'' This shews that a speculation was being entered upon. Then the agreement goes on to say that Galbraith should provide the funds for surveying, etc., preparatory to offering the property for sale—these expenses to be equally shared by each when the property is disposed of or when a sufficient sum is realised. The plain meaning of that is that if, by a sale of lots, a sufficient sum is realised to pay expenses, expenses are to be paid out of the money so realised. Then, coming to the more full and complete agreement of the 28th March, 1911, the recitals are full and consistent with what the plaintiff contends was his real position in this transaction.

Galbraith agreed to advance or become liable for one-half of all expenses incurred, etc., as above stated. The venture became a joint one—perhaps through the generosity of the defendant—but it is too late now to make a new agreement.

I do not appreciate, to the extent urged, the expert evidence of accountants offered to prove the necessity, under the agreement in question, of setting aside some of the money to establish a capital account.

I find that there was and is a partnership between the plaintiff and defendant in reference to the land mentioned and the dealings with it; and there will be a declaration to that effect.

The plaintiff will be entitled to one-fourth of the profits arising from the sale of such part or parts of said land as have been sold, or arising in any way whatever out of the dealings by the defendant with the said lands since the making of the agreement; and, further, that the plaintiff is entitled to an undivided one-fourth of the unsold part of said land. As to most of the items it was stated at the time that there would be no dispute, once the principle is determined as to the mode of taking the account. So there will not be a necessity for much, if any, oral evidence; and the reference may well be to the Local Master at Cornwall.

There was not, in my opinion, any necessity for the second action. All the questions raised therein could well be disposed of in the first action.

As this second action has been consolidated with the first and so cannot now be further proceeded with as an independent action, and as the defendant McDougall must bring forward whatever he has by way of account or set-off or counterclaim, I do not formally dismiss the second action; and, if any formal disposition of it, other than above, be necessary, that can be made after the report, and on further directions. There will be judgment for the plaintiff directing a reference to the Local

Master at Cornwall to take the accounts and report. The judgment will be with costs to Galbraith against McDougall in both actions down to and including the trial. Costs of reference and further direction reserved.

The appointment of a receiver was asked for. That is not necessary at present. The plaintiff may, at his own risk as to costs, if he deems it necessary, apply later on. The accounts will be taken as partnership accounts, and not only the items brought forward by Galbraith, but also those asked for by McDougall in his second action, and those brought forward and claimed by him in the reference, will be included.

DIVISIONAL COURT. AUGUST 27TH, 1912

*PEARSON v. ADAMS.

Deed—Conveyance of Land—Building Restriction—"Detached Dwelling-house" — Apartment House — Construction of Deed—Covenant or Condition.

Appeal by the plaintiff from the judgment of MIDDLETON, J., ante 1205.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

J. H. Cooke, for the plaintiff.

J. M. Godfrey, for the defendant.

RIDDELL, J.:—The plaintiff, an architect, purchased one of the few vacant lots on Maynard avenue. He knew that there were building restrictions as to the class of building to be erected upon that street, and knew by personal inspection that the houses then on the street were private dwelling-houses and worth between $7,000 and $10,000 each. He himself built a house costing him about $14,000, which he would not have done had he not believed that there were building restrictions sufficient to prevent the erection of such a building as is proposed by the defendant.

In 1888, Miss Maynard and Mrs. Atkinson, the executrices and devisees of the previous owner of the land (who had laid out Maynard avenue), sold a lot (No. 32) on this avenue to one

*To be reported in the Ontario Law Reports.

Williamson, through whom the defendant claims—the husband of Mrs. Atkinson joining as grantor. The deed (which is numbered 4033) reads: "All and singular" (describing the land) "to be used only as a site for a detached brick or stone dwelling-house, to cost at least $2,000, to be of fair architectural appearance, and to be built at the same distance from the street line as the houses on the adjoining lots. To have and to hold," etc. After the usual covenants, the following covenant by the purchaser is found: "And the said party of the second part hereby, for himself, his heirs, executors, administrators, and assigns, covenants, promises, and agrees to and with the said parties of the first part, their heirs and assigns, that he, the said party of the second part, his heirs and assigns, or any person or persons claiming or deriving title or interest in the lands hereby conveyed or any part thereof through, under, or in trust for him, shall not nor will, at any time or times hereafter, erect or maintain or suffer or allow to be erected or maintained upon said land or any part thereof any building for manufacturing purposes, nor carry on or permit to be carried on on said lands or any part thereof any dangerous or noisy or offensive trade or business which would be a nuisance in the neighbourhood."

Miss Maynard swears that it was always her father's intention that Maynard avenue should be built up with a uniformly fine class of private detached dwelling-houses, and she had endeavoured to sell and convey the lands still unsold at his death in such a way as to carry out his wishes—and it was with a view that there should be erected on lot 32 a private detached dwelling-house, which would be in keeping with the houses on the other and adjoining lots that the condition already recited was put in the deed.

The defendant is proposing to erect an apartment house, a six-suite apartment house, upon lot 32. The plaintiff, having taken an assignment from Miss Maynard of "all and any right as grantor in the said conveyance" (i.e., that to Williamson) "to enforce the conditions imposed under the said conveyance," brings his action "for an injunction restraining the defendant from erecting an apartment house on lot number 32 plan 454 . . . and thereby violating the conditions and restrictions contained in deed . . . number 4033." . . .

My learned brother thought that he was bound, on the authority of Robertson v. Defoe, 25 O.L.R. 286, ante 431, to hold that an apartment house such as the defendant intended to build is a "detached dwelling-house."

With much respect, I do not think so: but think that the learned Judge was, notwithstanding Robertson v. Defoe, to

follow his own opinion—and hold, as he would have held in the absence of authority which he considered binding upon him, "that an apartment house such as the defendant contemplated erecting could not be described as 'a detached dwelling-house.'" In Robertson v. Defoe, there was a covenant that every residence erected on the land should be a detached house—the question (or one of the questions) was, was the erection of a "three suite dwelling-house" a breach of this covenant? The learned Chief Justice of the Common Pleas held that it was not—but that is quite a different thing from saying that all apartment houses are "detached dwelling-houses." "In order to ascertain the scope and effect of . . . covenants . . . regard must be had to the object which they were designed to accomplish: Ex p. Breull, In re Bowie, 16 Ch.D. 484; and the language used is to be read in an ordinary or popular and not in a legal and technical sense:" per Collins, L.J., in Rogers v. Hosegood, [1900] 2 Ch. 388, 409. . . . That is what James, L.J., in Hext v. Gill, L.R 7. Ch. 699, at p. 719, calls the "vernacular."

In the particular case the Chief Justice of the Common Pleas held that a certain apartment house was a detached house; and we are not called upon to consider whether his conclusion was what we should have arrived at. The learned Chief Justice does not, as I read the case, lay down any rule of law at all. If it be considered that the decision is such as to cover the present case, with much respect I should be unable to follow it. Within fairly wide limits the question is not one of law at all, but of fact.

Without at all saying that in some contracts, even in some statutes, under certain circumstances or at certain parts of the English-speaking world, an apartment house such as is contemplated might be called "a detached dwelling-house," I think it plain that it cannot be so called in Toronto and in this contract. No one using language here in its ordinary and popular vernacular sense would call an apartment house "a detached dwelling-house."

It is, to my mind, of none effect to say that a family, if large enough, might occupy the whole building—that might be said of the King Edward Hotel—or to say that there is just the one front door, etc.—that might be said of the Alexandra or the St. George Mansions. No one would, I think, call this apartment house even a dwelling-house except one who desired to build one where only a dwelling-house should be—or his architect or some one making an affidavit for him. And neither defendant, architect, nor neighbour ventures to call the proposed building "a detached dwelling-house."

The next question is: Is the provision in question a covenant? It is either a condition or a covenant—it is not simply a mere nullity.

[Reference to Rawson v. Inhabitants of School District No. 5 in Uxbridge, 89 Mass. (7 Allen) 125, and cases there referred to.]

"No particular form of words is necessary to create a covenant. It is sufficient if, from the construction of the whole deed, it appears that the party means to bind himself:" Elphinstone on the Interpretation of Deeds, p. 409, rule 151. "Wherever the intent of the parties can be collected out of a deed for the not doing or doing a thing, covenant will lie:" per Nottingham, C., Hill v. Carr, 1 Ca. Ch. 294, 2 Mod. 86, 3 Swans. 638. Lindley, J., points out in Brookes v. Drysdale, 3 C.P.D. 52, at p. 60, that a covenant may be "in the form of a condition, a proviso, or a stipulation." And Parke, B., says in Great Northern R.W. Co. v. Harrison, 12 C.B. 576, at p. 609: "No particular form of words is necessary to form a covenant: but, wherever the Court can collect from the instrument an engagement on the one side to do or not to do something, it amounts to a covenant, whether it is in the recital or in any other part of the instrument."

To my mind, there can be no doubt, taking the deed as it stands, that the words employed enable the Court to collect that the vendee was engaging not to put up any building but "a detached dwelling-house;" and, if that is so, although the words are more like a condition, there is a covenant.

Nor does the well-known rule expressio unius est exclusio alterius, or, as it is otherwise stated, expressum facit cessare tacitum, prevent this from operating as a covenant.

[Reference to Saunders v. Evans, 8 H.L.C. 721, at p. 729, per Lord Campbell; Colquhoun v. Brooks, 19 Q.B.D. 400, at p. 406, per Wills, J.; S.C., in appeal, 21 Q.B.D. 52, at p. 65, per Lopes, L.J.]

Finally, the maxim has never been applied to a case in which a covenant would have been held to have been created by the words which it is desired to exclude the effect of, and their covenants in the usual and regular form have been superadded. A covenant in the form of a condition is just as much expressum as one in the regular form of a covenant: and the whole of a deed must be given effect to, wherever possible.

That the plaintiff, who bought from the owners after the deed under which the defendant claims, can take advantage of

this covenant is decided by Rogers v. Hosegood, [1900] 2 Ch. 388: Formby v. Barker, [1903] 2 Ch. 539, at p. 551, and cases cited. This is not indeed contested, and I do not pursue the subject.

I am of opinion that the judgment below should be reversed, with costs of the motion and appeal.

FALCONBRIDGE, C.J., agreed in the result.

BRITTON, J., dissented, for reasons stated in writing.

Appeal allowed; BRITTON, J., *dissenting.*

BELL TELEPHONE CO. v. AVERY—FALCONBRIDGE, C.J.K.B.—AUGUST 31.

Injunction—Blasting in Streets of Town—Diligence, Skill, and Care—Addition of Parties.]—Motion by the plaintiffs to continue an injunction and for leave to add parties. The learned Chief Justice said that leave would be given to add A. Avery & Son as defendants if the plaintiffs were so advised. The interim injunction granted by the Local Judge was of most innocuous character; it restrained the defendants "from negligently and without due skill and care blasting upon the streets of North Bay in proximity to any portion of the plant of the plaintiffs so as to destroy or injure the said plant or any part thereof." The law holds the defendants to an application of diligence, skill, and care in carrying on their operations; and the injunction does not restrain the proper execution of this work. Injunction continued to the trial. Costs of the application to be costs in the cause unless the trial Judge shall otherwise order. R. McKay, K.C., for the plaintiffs. G. H. Kilmer, K.C., for the defendants.

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notify the third party of intention to ask any relief against it upon the hearing of the appeal. The plaintiff's appeal succeeded: the third party appeared upon the appeal and asked for costs:—*Held*, that the third party was "a party affected by the appeal," within the meaning of Con. Rules 799 (2) and 811; and the plaintiff properly served the third party with the notices provided for by these Rules; but there the plaintiff's duty ended; and it was for the defendants to take any further steps towards keeping the third party before the Court, if they so desired. The plaintiff, having kept the third party before the Court, should bear whatever costs might be properly taxable to the third party other than those properly incurred by reason of the service of the notices. In the circumstances, there should be no costs to or against the third party. *Stuart* v. *McMillan*, 3 O.W.N. 267.—C.A.

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4. Sale of Hotel Property—Valuation of Assets—Appointment of Third Arbitrator—Interference by Parties—Proceeding with Arbitration and Taking Chances—Award Drafted by Solicitor for one Party—Amount Left Blank—Allowance for Goodwill of Hotel Business—Motion to Set aside Award —Matter not to be Determined on Affidavits—Undertaking to Bring Action on Award—Motion to be Made in Action— R.S.O. 1897 ch. 62, sec. 45—Extension of Time for Moving —Special Circumstances—Terms—Costs — Estoppel—Contradictory Affidavits—Perjury—Investigation. *Re Zuber and Hollinger*, 3 O.W.N. 416, 25 O.L.R. 252.—D.C.

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1. Agreement between Municipal Corporation and Electric Railway and Lighting Company—Construction—Exemptions. *Re Sandwich Windsor and Amherstburg R.W. Co. and City of Windsor*, 3 O.W.N. 575.—C.A.

2. Exemption—Building Used for Purposes of Seminary of Learning—Letting of Rooms in Building. *Re Sisters of the Congregation of Notre Dame and City of Ottawa*, 3 O.W.N. 693.—C.A.

3. Railway Company—Assessment Act, 1904, secs. 44, 45—Construction—Actual Assessment—Quinquennial Assessment. *Re Town of Steelton and Canadian Pacific R.W. Co.*, 3 O.W.N. 1199.—MOSS, C.J.O. (Chrs.)

4. Tax Sale—Indian Lands—Indian Act, R.S.C. 1906 ch. 51, secs. 58, 59, 60—Approval of Tax-deed by Superintendent-

General—Right to Patent from Crown—Time-limit for Bringing Action to Set aside Tax Sale and Conveyance—Application of, where Approval not Given—Disability of Tax-purchaser—Infancy—Assignment—Recognition by Department of Indian Affairs—Invalidity of Tax Sale—Ontario Assessment Act, R.S.O. 1897 ch. 224, sec. 209—Lien of Purchaser for Improvements—Set-off of Profits. *Richards* v. *Collins*, 3 O.W.N. 1479.—BOYD, C.

5. Tax Sale—Irregularities—Advertisement of Lands for Sale—Insufficient Publication—Assessment Act, 4 Edw. VII. ch. 23, sec. 143—Time for Questioning Sale—Secs. 172, 173—Commencement of Statutory Period—Date of Tax Deed—"Opening and Fairly Conducted"—Costs—Damages. *Sutherland* v. *Sutherland*, 3 O.W.N. 1368.—RIDDELL, J.

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See Assignments and Preferences, 1, 3—Banks and Banking, 5—Costs, 10—Mortgage, 5—Pleading, 1—Will, 20.

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ASSIGNMENTS AND PREFERENCES.

1. Assignment by Insolvent Partnership for Benefit of Creditors—Assets of Firm—Action by Assignee to Make Available Lands Purchased by Wife of Partner—Fraudulent Conveyance—Evidence. *McPhie* v. *Tremblay*, 3 O.W.N. 605.—KELLY, J.

2. Chattel Mortgage—Assignment of Book-debts—Money Advanced to Insolvent Company to Pay one Creditor—Preference—Intent to Hinder and Delay—13 Eliz. ch. 5—Assignments and Preferences Act, sec. 2, sub-sec. 1. *Stecher Lithographic Co.* v. *Ontario Seed Co.*, 3 O.W.N. 34, 24 O.L.R. 503.—C.A.

3. *Chattel Mortgage Made by Insolvent—Security for Current Promissory Note and Moneys Advanced to Satisfy Execution—Assignment for Benefit of Creditors within one Month after Chattel Mortgage Given—Action by Assignee—Onus—Assignments Act, sec.* 5(4)*—Preferential Payment—Account of Proceeds of Goods Sold.*]—The defendant advanced $500 to his son, who was in business, and took a promissory note for the amount, dated the 10th January, 1910, and payable in a year. In November, 1910, a judgment was recovered against the son by a creditor, and execution placed in the Sheriff's hands, which was settled by $400 paid by the defendant for the son on the 4th November; and, on the same day, a chattel mortgage for the two sons was given by the son to the defendant, covering all the son's goods except about $136 worth. The son was then indebted to others to at least as much as $900. On the 6th December, the son assigned to the plaintiff (Sheriff) for the benefit of creditors:—*Held,* that the chattel mortgage could not be supported as to the part of it ($500) representing the amount of the current note.—*Held,* also, that the onus was upon the defendant as to the $400 paid to the execution creditor, by virtue of the Assignments and Preferences Act, 10 Edw. VII. ch. 64, sec. 5, sub-sec. 4; and it could not be found, upon the evidence, that there existed in either father or son a *bonâ fide* belief that the advance of $400 (all paid to one creditor) would enable the debtor to continue his business and pay all his debts in full. *D'Avignon* v. *Bomerito,* 3 O.W.N. 158, 438.—Boyd, C.—D.C.

ATTACHMENT OF DEBTS.

1. Discharge of Order—Costs of Garnishees—Salary of Judgment Debtor Paid in Advance. *Bartlett* v. *Bartlett Mines Limited,* 3 O.W.N. 1155.—Master in Chambers.

2. *Legacy—Share of Residuary Estate—Con. Rule* 911*—Practice—Unascertained Amount.*]—Under Con. Rule 911, a judgment creditor, by means of garnishee process, is entitled to reach "all debts owing or accruing" from the garnishee to the debtor.—The claim of the residuary legatee under a will against the executors is not a "debt," and the moneys are not attachable in the hands of the executors by a judgment creditor of the residuary legatee.—*McLean* v. *Bruce,* 14 P. R. 190, decided under the Rules of 1888, distinguished.—*Hunsberry* v. *Kratz,* 5 O.L.R. 635, applied.—Before an

order for payment by a garnishee can be made, the Court must find some definite sum either presently due or payable at a future time. *Gilroy* v. *Conn*, 3 O.W.N. 732.—MIDDLETON, J. (Chrs.)

3. Moneys Deposited in Canadian Chartered Bank at Branch out of Ontario—Service of Attaching Order on Bank at Head Office in Ontario—Con. Rules 911 et seq.—Garnishee out of Ontario—Con. Rule 162. *McMulkin* v. *Traders Bank of Canada*, 3 O.W.N. 787, 26 O.L.R. 1.—D.C.

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See Crown Lands, 2—Parties, 4—Water and Watercourses, 2.

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1. Contract—Work and Labour Expended on Boat—Loss of Boat—Negligence—Evidence Insufficient for Determination of Questions Raised—New Trial. *Polson Iron Works Limited* v. *Laurie—Laurie* v. *Polson Iron Works Limited*, 3 O.W.N. 213.—D.C.

2. Mandate—Negligence—Personal Trust—Delegation to Another—Liability for. *Wills* v. *Browne*, 3 O.W.N. 580.—D.C.

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BANKS AND BANKING.

1. Advances by Bank on Security of Raw Material—Bank Act, secs. 74, 88, 89—Substitution of Goods—Promissory Notes—Payment—Receipt of Proceeds of Manufactured Goods when Sold—Estoppel. *Quebec Bank* v. *Craig*, 3 O.W.N. 1635.—D.C.

2. Advances by Bank to Milling Company—Pledge of Timber—Antecedent Written Promise to Give Security—Validity—Bank Act, sec. 90—Winding-up of Company—Receiver Representing Bondholders—Claim to Timber—Description—"Logs on the Way to the Mill"—Lien. *Imperial Paper Mills of Canada Limited* v. *Quebec Bank*, 3 O.W.N. 1544, 26 O.L.R. 637.—C.A.

3. Bill of Exchange—Endorsement by Payee to Bank—Presentment for Payment through Clearing-house—Delay—Failure of Drawee Bank—Acceptance of, as Debtor—Rights against Endorser—Absence of Evidence to Render Endorser Subject to Usages of Clearing-house. *Sterling Bank of Canada* v. *Laughlin*, 3 O.W.N. 643.—D.C.

4. Cheque Drawn by Customer—Promise of Bank Manager to Pay—Consideration for—Acceptance by Drawee—Statute of Frauds—Exception as to "Property Cases". *Adams* v. *Craig and Ontario Bank*, 3 O.W.N. 41, 24 O.L.R. 490.—C.A.

5. Securities Taken by Bank under sec. 90 of Bank Act—Securities upon Lumber—Wholesale Dealer—"Product of the Forest"—Construction of sec. 88(1)—Assignment for Benefit of Creditors—Securities Given within Sixty Days—Continuation of Former Securities—Assignment of Building Contracts—Assignment of Book-debts. *Townsend* v. *Northern Crown Bank*, 3 O.W.N. 1105, 26 O.L.R. 291.—MEREDITH, C.J.C.P.

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Purchase by Customer of Shares on Margin—Contract—Terms—Failure to Keep up Margin—Resale by Broker. *Gray* v. *Buchan,* 3 O.W.N. 1620.—KELLY, J.

BUILDING CONTRACT.

See Banks and Banking, 5—Contract, 2-5—Mechanics' Liens.

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1. Encroachment on Neighbour's Land—Bonâ Fide Belief of Ownership—1 Geo. V. ch. 25, sec. 33—Retention of Land—Compensation—Amount of—Counterclaim—Amendment—Form of Judgment—Vesting Order—Rights of Mortgagee—Damages for Injury to Trees—Amount of. *Ward* v. *Sanderson,* 3 O.W.N. 802.—D.C.

2. Erection Close to Boundary Line of Lot—Injury to Adjacent Property—Water from Roof—Injunction—Damages—Destruction of Line Fence—Nuisance—Costs. *Huckell* v. *Pommerville,* 3 O.W.N. 845.—SUTHERLAND, J.

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Baddeley v. Earl Granville, 19 Q.B.D. 423, approved and followed.]—See MASTER AND SERVANT, 3.

Bailey v. Bailey, 14 Atl. R. 917, followed.]—See WILL, 60.

Baldwin v. Casella, L.R. 7 Ex. 325, applied and followed.]—See MASTER AND SERVANT, 19.

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Garland v. City of Toronto, 23 A.R. 238, distinguished.]—See MASTER AND SERVANT, 20.

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Ontario Bank v. Mitchell, 32 C.P. 73, 76, applied and followed.]—See JUDGMENT DEBTOR, 2.

Parke, Re, 30 O.R. 498, followed.]—See CRIMINAL LAW, 14.

Parker, In re, Morgan v. Hill, [1894] 3 Ch. 400, followed.]—See PRINCIPAL AND SURETY.

Potter v. Metropolitan R.W. Co., 28 L.T.N.S. 231, followed.]—See DISCOVERY, 2.

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Trethewey v. Trethewey, 10 O.W.R. 893, followed.]—See EVIDENCE, 2.

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1. Charge in Favour of Absentee—Sale Free from Charge, on Payment of Amount of Charge into Court—Will—Terms—Payment out. *Re Gallagher,* 3 O.W.N. 1302.—RIDDELL, J.

2. Registration—Absence of Interest in Creator of Charge—Cloud on Title—Removal—Damages. *Fee* v. *MacDonald Manufacturing Co.,* 3 O.W.N. 1378.—SUTHERLAND, J.

See Limitation of Actions, 1—Mortgage—Will.

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CHATTEL MORTGAGE.

See Assignments and Preferences, 2, 3—Bills of Sale and Chattel Mortgages—Company, 17—Parties, 1.

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Incorporated Club—Members' Cheques Payable to Club—Authority of Secretary to Endorse — Restrictions — Cheques Cashed by Banks and Proceeds Misapplied by Secretary—Cheques Deposited with Trusts Company to Credit of Secretary—Liability to Refund Club—Restitution Cheques—Reduction of Liability. *Toronto Club* v. *Dominion Bank, Toronto Club* v. *Imperial Bank of Canada, Toronto Club* v. *Imperial Trusts Co. of Canada,* 3 O.W.N. 460, 25 O.L.R. 330.—C.A.

See Banks and Banking, 4—Gift—Infant, 1.

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Property Rights—Religious Institutions Act—Construction—Right to Land and Meeting-house—Abandonment as Place of Public Worship—Purchase of New Site—Trust Deed—Construction—Breaches of Trust—Congregational Rights—Status of Minister. *Huegli* v. *Pauli,* 3 O.W.N. 915, 26 O.L.R. 94.—BOYD, C.

CLASS ACTION.

See Company, 3—Costs, 17—Municipal Corporations, 1—Parties, 4.

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Unincorporated Association—Liability of Members for Rent of Club Premises—Lease Signed by Chairman of Executive Committee—Members of Executive Made Defendants — Right to Contribution from other Members. *Pears* v. *Stormont,* 3 O.W.N. 56, 24 O.L.R. 508.—BOYD, C.

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See Criminal Law, 5.

COMPANY.

1. *Contract for Sale of Timber—Absence of Corporate Seal—Authority of Agent—Construction of Document—Right to Return of Timber Taken—Ratification—Estoppel.*]—An agent appointed by parol cannot bind his principal by deed. —S. was appointed and employed by the plaintiff company, by a writing not under seal, to "mine and explore" and "to act for and take such action or actions as he may con-

sider necessary in the interest of the company:''—*Held*, that the general words were limited by construction to the particular employment mentioned, and the appointment and employment did not justify S. in selling any part of the company's property.—*Held*, also, that the company were not estopped by conduct from denying the validity of a sale and conveyance by S. of the company's growing timber.—*Held*, also, that the company were entitled to follow the timber.—*Faulkner* v. *Greer*, 16 O.L.R. 123, *Greer* v. *Faulkner*, 40 S.C.R. 399, followed. *British North American Mining Co.* v. *Pigeon River Lumber Co.*, 3 O.W.N. 701.—C.A.

3. Directors—Secret Profits—Trust for Shareholders—Principanies Act, sec. 94—Unsatisfied Execution against Company—Sheriff's Return Made after Winding-up Order—''Proceeding'' against Company—Dominion Winding-up Act, sec. 22—Proof of Status of Directors—Travelling Expenses—Inclusion in Debt for Services—Costs of Second Writ of Execution. *Pukulski* v. *Jardine*, *Perryman* v. *Jardine*, 3 O.W.N. 1172, 26 O.L.R. 323.—D.C.

3. Directors—Secret Profits—Trust for Shareholders — Principal and Agent—Fiduciary Relationship—Transfers of Shares to Directors—Class Action by Certain Shareholders —Fraud—Account of Profits. *Hyatt* v. *Allen*, 3 O.W.N. 370, 1401.—D.C.—C.A.

4. Illegal Disposition of Assets—Acquisition by Shareholder of Shares in Another Company—Breach of Trust—Winding-up of Company—Right of Liquidator to Follow Assets—Estoppel—Form of Judgment. *Chandler & Massey Limited* v. *Irish*, 3 O.W.N. 61, 383, 24 O.L.R. 513, 25 O.L.R. 211. —Boyd, C.—D.C.

5. Shares—Agreement—Sale of Property to Company—Payment by Allotment of Shares—Action by Shareholders to Set aside—Directors—Fraud. *Bennett* v. *Havelock Electric Light Co.*, 3 O.W.N. 341, 25 O.L.R. 200.—C.A.

6. *Shares—Seizure and Sale under Execution—Illegality—Want of Proper Service of Notice—Execution Act*, 9 *Edw. VII. ch.* 47, *secs.* 10, 11—*Place of Head Office of Company — Place of Service—Situs of Shares—Collusion—Setting aside Sale.*]—*Held*, by a Divisional Court, affirming the judgment of Kelly, J., 3 O.W.N. 796, that no valid seizure of

company shares was made by a Sheriff under execution and no valid sale effected.—*Per* RIDDELL, J.:—Consideration of the authorities and the provisions of the Executions Act, 9 Edw. VII. ch. 47, secs. 10, 11, and history of the statute. *Malouf* v. *Labad*, 3 O.W.N. 1235.—D.C.

7. Shares—Transfer—Refusal to Register—Application for Mandamus Enlarged upon Undertaking of Company to Bring Action for Cancellation of Certificate Issued to Transferor. *Re Goldfields Limited*, 3 O.W.N. 928.—SUTHERLAND, J.

8. Shares—Transfer by Holder to Trustees—Refusal of Company to Register—Indebtedness of Transferor to Company Arising since Transfer—Companies Act, R.S.C. 1906 ch. 79, secs. 64, 67—Construction—Concurrent Ownership and Indebtedness—Agreement with Vendors of Shares—Notice to Trustees—Remedy—Mandamus. *Re Polson Iron Works Limited*, 3 O.W.N. 1269.—MIDDLETON, J.

9. *Unlicensed Foreign Company—Contract to Sell Land—Action for Purchase-money—Carrying on Business in Ontario—Extra-Provincial Corporations Licensing Act.*]—The plaintiffs, a foreign corporation, not licensed in Ontario, were *held*, not to be "carrying on business" in Ontario, within the meaning of the Extra-Provincial Corporations Licensing Act, 63 Vict. ch. 24 (O.), merely because an agent of the plaintiffs sold lands situated in a foreign country to the defendant at a place in Ontario, the action being for part of the purchase-price. *Securities Development Corporation of New York* v. *Brethour*, 3 O.W.N. 250.—D.C.

10. Winding-up—Commencement of—Day of Service of Notice of Petition—R.S.C. 1906 ch. 144, secs. 5, 22 — Consent Judgment—Authority to Consent after Service of Notice—Motion by Liquidator to Set aside Judgment—Necessity for Action—Leave of Referee. *Bank of Hamilton* v. *Kramer-Irwin Co.*, 3 O.W.N. 603.—MASTER IN CHAMBERS.

11. Winding-up—Contributory — Absence of Allotment and Notice — Estoppel — Recall of Bonus Shares—Intra Vires—Appeal—Costs. *Re Matthew Guy Carriage and Automobile Co., Thomas's Case*, 3 O.W.N. 902.—MIDDLETON, J.

12. Winding-up—Contributory—Application for Shares—Resolution of Directors—Allotment—Notice — Proof of —

Onus—Agreement—Re-allotment. *Re Port Hope Brewing and Malting Co., Johnson's Case,* 3 O.W.N. 1148.—SUTHERLAND, J.

13. Winding-up—Contributory—Conditional Subscriptions for Shares—Fulfilment of Condition by Subscription for a Certain Number of Shares by Others—Inquiry as to Other Subscriptions—Acceptance of Shares—Letters—Acquiescence. *Re Ontario Accident Insurance Co., Rolph & Clark's Case, Lawrence's Case,* 3 O.W.N. 140.—MIDDLETON, J.

14. Winding-up—Contributory—Shares Issued at a Discount—Ultra Vires—Liability of Allottee—Mistake of Fact or Law—Repudiation—Cancellation of Allotment—Ontario Companies Act, secs. 10, 33, 37—Company Treating Allottee as Shareholder—Knowledge and Acquiescence—Allotment of Half Share. *Re McGill Chair Co., Munro's Case,* 3 O.W.N. 1074, 26 O.L.R. 254.—MEREDITH, C.J.C.P.
(Leave to appeal granted by MIDDLETON, J., 3 O.W.N. 1326.)

15. Winding-up—Directors—Misfeasance—Payment for Services as Workmen and Clerks—Companies Act, sec. 88. *Re Matthew Guy Carriage and Automobile Co.,* 3 O.W.N. 1233, 1326, 26 O.L.R. 377.—MIDDLETON, J.

16. *Winding-up—Leave to Appeal to Court of Appeal from Order of Judge on Appeal from Master—Contributory—Payments to Directors—Policy as to Granting or Refusing Leave—Winding-up Act, R.S.C.* 1906 *ch.* 144, *sec.* 101.]—Section 101 of the Dominion Winding-up Act, R.S.C. 1906 ch. 144, indicates the policy of the Act, that the decision of a single Judge shall be final unless the question to be raised on the appeal involves future rights or is likely to affect other cases of a similar nature in the winding-up proceeding. Leave may also be granted if the amount involved exceeds $5,000. Leave to appeal to the Court of Appeal from the judgment of MEREDITH, C.J.C.P., 3 O.W.N. 1074, 26 O.L.R. 254, was granted; and leave to appeal from the judgment of MIDDLETON, J., 3 O.W.N. 1233, 26 O.L.R. 377, was refused. *Re McGill Chair Co., Munro's Case, Re Matthew Guy Carriage and Automobile Co.,* 3 O.W.N. 1326.—MIDDLETON, J. (Chrs.)

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2. Gold and Silver Marking Act, 1908 (D.)—Prosecution for Sale of Article in Breach of Provisions of Act—Construction of sec. 11—"Article"—"Composition." *Rex* v. *Austin*, 3 O.W.N. 225, 25 O.L.R. 69.—C.A.

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5. Keeping Common Betting House—Jurisdiction of Magistrate—Criminal Code, secs. 773, 774—Amending Act, 8 & 9 Edw. VII. ch. 9—"Absolute" Jurisdiction, not Dependent on Consent—Evidence—Articles Obtained by Trespass—Admissibility. *Rex* v. *Honan,* 3 O.W.N. 1412, 26 O.L.R. 484.—C.A.

6. Keeping Disorderly House—Indictment at Sessions—Conviction—Evidence to Sustain—Judge's Charge—Reference to Previous Conviction—Right of Prisoner, after Bill Found, but before Arraignment and Plea, to Elect Trial without Jury—Criminal Code, sec. 827. *Rex* v. *Sovereen,* 3 O.W.N. 779, 26 O.L.R. 16.—C.A.

7. Keeping Disorderly House—Magistrate's Conviction—Criminal Code, sec. 228—Evidence—Weight of—Penalty—Excess—Amendment. *Rex* v. *Marcinko,* 3 O.W.N. 1626.—KELLY, J. (Chrs.)

8. Keeping Disorderly House—Magistrate's Conviction—Evidence to Support—Criminal Code, sec. 238—Absence of Finding in Conviction that Defendant a "Loose, Idle, or Disorderly Person or Vagrant"—Uncertainty—Place of Offence—Amendment—Criminal Code, sec. 1124—Refusal to Quash Conviction—Leave to Appeal. *Rex* v. *Demetrio,* 3 O.W.N. 313, 602.—SUTHERLAND, J. (Chrs.)—MIDDLETON, J. (Chrs.)

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10. Murder—Insanity — Appreciation of Nature and Quality of Act—Irresistible Impulse. *Rex* v. *Jessamine,* 3 O.W.N. 753.—C.A.

11. Neglecting to Provide Necessaries for Wife — Foreign Divorce—Jurisdiction of Foreign Court—Domicile—Desertion—Likelihood of Permanent Injury to Wife's Health—Evidence—Findings of Jury. *Rex* v. *Wood,* 3 O.W.N. 227, 25 O.L.R. 63.—C.A.

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13. Offer of Bribe to Procure Office under the Crown—Indictment—Offence — Criminal Code, secs. 158 (*f*), 162 (*b*). *Rex* v. *Youngs*, 3 O.W.N. 411.—C.A.

14. *Police Magistrate—Information for Perjury—Refusal to Issue Summons—Criminal Code, sec.* 655*—Amending Act* 8 *&* 9 *Edw. VII. ch.* 9*—Application for Mandamus—Discretion of Magistrate.*]—It is the duty of a magistrate, upon receiving an information, to hear and consider the allegations of the informant, and (if the magistrate thinks proper) of the informant's witnesses: 8 & 9 Edw. VII. (D.) ch. 9, schedule; and, if the magistrate is of opinion that there is no case made for the issue of a summons or warrant, to refuse it; and the magistrate's discretion in issuing or refusing to issue a summons is not subject to review in the High Court.—*Rex* v. *Meehan No.* 2, 5 Can. Crim. Cas. 312, *Ex p. MacMahon*, 48 J.P. 70, and *Re Parke*, 30 O.R. 498, followed. *Re Broom*, 3 O.W.N. 51, 102.—MIDDLETON, J. (Chrs.).—D.C.

15. Procedure—Foreign Commission—Criminal Code, secs. 716, 997—Nature of Evidence—Materiality—Terms. *Rex* v. *Murray*, 3 O.W.N. 734.—MIDDLETON, J. (Chrs.)

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17. Supplying "Drug or other Noxious Thing"—Abortion — Criminal Code, sec. 305—Poison—Evidence—Conviction—Motion for Leave to Appeal. *Rex* v. *Scott*, 3 O.W.N. 1167. —C.A.

18. Vagrancy—Criminal Code, sec. 238 (*a*)—"Visible Means of Maintaining himself"—Money Derived from Begging — Previous Conviction for Begging in Public Places. *Rex* v. *Munroe*, 3 O.W.N. 353, 377, 25 O.L.R. 223.—BOYD, C. (Chrs.).—C.A.

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2. Patent—Misdescription—Application for same Lands—Dispute—Finding of Minister of Lands Forests and Mines—Patent for same Lands Issued to Second Applicant—Certificate of Title—Action by First Patentee to Establish Title—R.S.O. 1897 ch. 138, sec. 169—Parties—Attorney-General—Intervention. *Zock* v. *Clayton,* 3 O.W.N. 1611.—D.C.

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2. Breach of Contract for Delivery of Shares and Bonds—Ascertainment of Value at Fixed Date—Evidence—Report—Variation on Appeal—Further Appeal. *Nelles* v. *Hesseltine,* 3 O.W.N. 65.—C.A.

3. Breach of Contract to Take and Pay for Shares—Measure of Damages—Ascertainment of Market-price of Shares at Date

of Breach or Breaches—Difference between Contract-price and Market-price. *Sharpe* v. *White*, 3 O.W.N. 451, 25 O.L. R. 298.—C.A.

4. *Fatal Accidents Act—Quantum—Assessment by Judge—Reduction by Divisional Court.*]—In an action by the administrator of the estate of a workman, under the Workmen's Compensation for Injuries Act and the Fatal Accidents Act, to recover damages for his death, for the benefit of his father and mother, the trial Judge found in favour of the plaintiff, and assessed the damages at $1,300, which amount was reduced by a Divisional Court, upon appeal, to $950. *Stephens* v. *Toronto R.W. Co.*, 11 O.L.R. 19, and *London and Western Trusts Co.* v. *Grand Trunk R.W. Co.*, 22 O.L. R. 263, applied. *Delyea* v. *White Pine Lumber Co.*, 3 O. W.N. 823.—D.C.

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2. Conveyance of Land in Fee Simple—Exception or Reservation—Construction—"Mines of Minerals"—"Springs of Oil"—Rock or Coal Oil—Natural Gas—Powers of Canada Company—Mining Powers—License — Right of Entry — Statute of Limitations—Evidence—Trespass. *Farquharson* v. *Barnard Argue Roth Stearns Oil and Gas Co.*, 3 O.W.N. 239, 25 O.L.R. 93.—C.A.

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6. Reformation of Conveyance of Land—Description—Boundary Line—Mistake—Evidence — Trespass — Injunction. *Fraser* v. *Woods,* 3 O.W.N. 1194.—KELLY, J.

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1. Examination of Defendant—Action for Price of Goods — Counterclaim—Inferior Quality of Goods—Particulars of Sales and Return of Goods by Customers. *Canadian Oil Co.* v. *Clarkson,* 3 O.W.N. 1331.—MASTER IN CHAMBERS.

2. *Examination of Defendant—Disclosing Names of Witnesses—Collision—Driver of Motor-car—Passengers in Car—Scope of Discovery—Duty of Party to Inform himself—Dismissal of Driver—Reason for.*]—In an action for damages for injury sustained by a collision between the plaintiff's waggon and the defendant's automobile:—*Held,* that, upon examination for discovery, the defendant was bound to give the name and address of the driver of the automobile, but was not bound to give the names of the passengers.—*Caswell* v. *Toronto R.W. Co.,* 24 O.L.R. 339, 353, distinguished.—*Potter* v. *Metropolitan R.W. Co.,* 28 L.T.N.S. 231, followed.—The names of persons who may be witnesses are not to be disclosed unless material to the case intended to be set up. Discovery must be confined to the matters in issue in the action.—Upon the examination, the defendant was not bound to disclose his reason for dismissing the driver; though, on cross-examination at the trial, he might be.—It was the duty of the defendant to qualify himself for examination so as to give some intelligent statement of the case, by learning what his servants and agents knew. This duty is not confined to officers of corporations. *Vanhorn* v. *Verral,* 3 O.W.N. 337, 439.—MASTER IN CHAMBERS—MIDDLETON, J. (Chrs.)

3. Examination of Defendant—Libel — Question as to Similar Statements — Privilege—Malice. *Meyer* v. *Clarke,* 3 O.W.N. 893.—MASTER IN CHAMBERS.

4. Examination of Defendant—Place for Examination—Residence of Defendant—Con. Rules 447, 477. *Denneen* v. *Wallberg*, 3 O.W.N. 1511.—MASTER IN CHAMBERS.

5. Examination of Defendant—Production of Documents—Relevancy—Scope of Discovery—Information to be Procured. *Lindsey* v. *LeSueur*, 3 O.W.N. 486.—MASTER IN CHAMBERS

6. Examination of Defendant—Scope of Discovery—Relevancy only to Consequential Relief—Absence of Oppression or Hardship—Appeal from Master's Order—Discretion. *Patterson* v. *Neill*, 3 O.W.N. 516.—MIDDLETON, J. (Chrs.)

7. Examination of Defendants—Order for Particulars—Delivery after Examination of Defendants before Defence Filed—Attempt to Re-examine after Particulars Delivered and Defence Filed—Practice. *Crinkley* v. *Mooney*, 3 O.W.N. 105.—MIDDLETON, J. (Chrs.)

8. Examination of Manager of Plaintiff Company—Inadequacy of Information—Duty to Obtain Information—Examination of Former Agent of Company—Relevancy and Reasonableness of Information Sought. *Ontario and Western Co-operative Fruit Co.* v. *Hamilton Grimsby and Beamsville R.W. Co. and Canadian Pacific R.W. Co., Ontario and Western Co-operative Fruit Co.* v. *Grand Trunk R.W. Co.*, 3 O.W.N. 589.—CLUTE, J. (Chrs.)

9. Examination of Officer of Defendant Company—Production of Report of Accident—Privilege—Examination before Order for Production. *Yonhocus* v. *Canada Foundry Co.*, 3 O.W.N. 44.—MIDDLETON, J. (Chrs.)

10. Examination of Officer of Defendant Company—Scope of Examination—Production of Books—Evidence—Admissibility. *Canadian Knowles Co.* v. *Lovell-McConnell Co.*, 3 O.W.N. 690.—MASTER IN CHAMBERS.

11. *Examination of Officer of Defendant Railway Company—Production of Reports of Officers as to Railway Accident—Privilege—Contradicting Affidavit of Documents—Admissions of Officer not Binding on Defendants—Insufficiency of Affidavit—Identification of Documents—Claim of Privilege.*]—In an affidavit of documents made by an officer of the defendant company, privilege was claimed for "reports made for the information of the defendants' solicitor and his advice thereon"—the action being for injuries sus-

tained in a railway accident. Another officer of the company, upon examination for discovery, contradicted the affidavit, as the plaintiff contended:—*Held*, that the affidavit of documents was conclusive, as it had not been shewn, from the documents produced, or from admissions in the pleadings or by the defendant company itself, that the affidavit was untrue or had been made under a misapprehension of the legal position; and it was not competent for the plaintiff to use the examination for discovery of an officer of the corporation for the purpose of contradicting the affidavit.—*Held*, however, that the reports should be set forth more precisely and the claim of privilege more clearly and specifically stated in the affidavit of documents; and the defendant company was ordered to file a further and better affidavit. *Swaisland* v. *Grand Trunk R.W. Co.*, 3 O. W.N. 960.—MIDDLETON, J. (Chrs.)

12. Examination of Officers of Plaintiff Company—Unexecuted Order for Examination of President—Con. Rule 439 (*a*)—Production of Documents—Better Affidavit—Premature Application. *Ontario and Minnesota Power Co.* v. *Rat Portage Lumber Co.*, 3 O.W.N. 1284.—MASTER IN CHAMBERS.

13. Examination of Parties—Exclusion of Stranger from Examiner's Chamber—Discretion. *Pratt* v. *Pipe*, 3 O.W.N. 214.—MASTER IN CHAMBERS.

14. Examination of Plaintiff—Action on Life Insurance Policy—Issue as to Age of Assured—Production of Marriage Certificate—Relevancy—Indirect Method of Cross-examining upon Affidavit on Production—Contradictory Affidavit. *MacMahon* v. *Railway Passengers Assurance Co.*, 3 O.W.N. 1239, 1301, 26 O.L.R. 430.—MASTER IN CHAMBERS.—RIDDELL, J. (Chrs.)

15. Examination of Plaintiff—Order for Further Examination—Stay of Proceedings until Plaintiff's Return from Abroad. *MacMahon* v. *Railway Passengers Assurance Co.*, 3 O.W.N. 1514.—MASTER IN CHAMBERS.

16. Examination of Plaintiff—Relevancy of Questions—Slander—Unfitness for Public Office—Innuendo—Questions as to Character and Standing. *Brown* v. *Orde*, 3 O.W.N. 1230. —MIDDLETON, J. (Chrs.)

17. Medical Examination of Plaintiff—Action for Damages for Personal Injuries—Admission of Liability—Case Set down for Assessment of Damages only—Con. Rules 442, 462. *Kippen* v. *Baldwin*, 3 O.W.N. 121.—MASTER IN CHAMBERS.

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20. Production of Documents—Affidavit—Claim of Privilege—Confidential Documents—Preparation for Purpose of Obtaining Solicitor's Advice. *Imrie* v. *Wilson*, 3 O.W.N. 929. —MASTER IN CHAMBERS.

21. Production of Documents—Affidavit on Production—Claim of Privilege—Sufficiency—Railway Accident—Reports for Information of Solicitor—Absence of Special Direction—Reports Made to Board of Railway Commissioners—Examination of Servants of Company. *Shapter* v. *Grand Trunk R.W. Co.*, 3 O.W.N. 1334.—MASTER IN CHAMBERS.

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2. Mortgaged Land—Mortgage Given to Secure Purchase-money—Wife Joining to Bar Dower—Sale of Land by Administrators of Estate of Deceased Mortgagor with Concurrence of Widow—Extent of Widow's Claim on Purchase-money—42 Vict. ch. 22, secs. 1, 2—58 Vict. ch. 25, sec. 3. *Re Auger*, 3 O.W.N. 377, 1264, 26 O.L.R. 402.—MIDDLETON, J.—D.C.

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1. Appeal from Award—Examination of Arbitrator—Necessity for Leave of Court—Appointment Set aside—Practice. *Myles* v. *Grand Trunk R.W. Co.*, 3 O.W.N. 176.—MASTER IN CHAMBERS.

2. *Appeal from Award under Railway Act—Examination of Arbitrator—Reasons for Award—Scope of Examination—Appellate Forum—Divisional Court—Agreement of Parties—Judicature Act, sec.* 67 (1) (*f*).]—Upon an appeal to a Divisional Court from the award of arbitrators (the parties having agreed that the appeal should be heard by a Divisional Court):—*Held*, that the appellants were entitled to examine one of the arbitrators for the purpose of explaining the basis of the arbitrators' findings, and that the evidence to be taken was admissible evidence upon the appeal.—*Re Montreal and Ottawa R.W. Co. and Ogilvie*, 18 P.R. 120, and *Re Cavanagh and Canada Atlantic R.W. Co.*, 14 O.L.R. 523, followed.—*Semble*, if it were not, an order would not be made: *Rushton* v. *Grand Trunk R.W. Co.*, 6 O.L.R. 425.—*Held*, also, that the application for the order to examine the arbitrators must be made to the Divisional Court: *Trethewey* v. *Trethewey*, 10 O.W.R. 893; *Kendry* v. *Stratton*, 10th June, 1893, not reported. *Re Myles and Grand Trunk R.W. Co.*, 3 O.W.N. 259.—D.C.

3. Attachment of Debts—Cross-examination on Affidavit of Member of Garnishee Firm—Scope of Inquiry—Agreement between Master and Servant—Servant Sharing in Profits—Attempt to Inquire into Organisation of Partnership—Allegation of Fraud—Refusal to Answer Questions—Motion to Commit for Contempt—Capias ad Satisfaciendum. *Bartlett* v. *Bartlett Mines Limited*, 3 O.W.N. 958.—MIDDLETON, J. (Chrs.)

4. Examination of Party as Witness on "Pending" Motion—No Notice of Motion Served—Appointment for Examination Set aside. *McLaren* v. *Tew*, 3 O.W.N. 1376.—MASTER IN CHAMBERS.

5. Examination of Witness upon Pending Motion—Party Sought to be Added—Questions—Relevancy—Ruling of Examiner. *Clarke* v. *Bartram*, 3 O.W.N. 335.—MASTER IN CHAMBERS.

6. Examination of Witness upon Pending Motion for Injunction—Trade Union Label—Trade Mark—Unincorporated Association—Inquiry into Organisation of Union—Oppressive Inquiry—Fishing Expedition—Refusal to Order Witness to Answer Questions. *Rickart* v. *Britton Manufacturing Co.*, 3 O.W.N. 1272.—MIDDLETON, J. (Chrs.)

7. Examination of Witness upon Pending Motion for Particulars —Attempt to Obtain Discovery as to Matters in Question in Action—Irrelevancy—Abuse of Process of Court. *D.* v. *W.*, 3 O.W.N. 993.—MIDDLETON, J. (Chrs.)

8. Foreign Commission—Anticipated Motion for—Suggested Term—Premature Application. *MacMahon* v. *Railway Passengers Assurance Co.*, 3 O.W.N. 1238.—MASTER IN CHAMBERS.

9. Foreign Commission—Application for—Affidavit—Information and Belief—Rule 518—Unnecessary Testimony—Admission. *Macdonald* v. *Sovereign Bank of Canada*, 3 O.W.N. 849.—MASTER IN CHAMBERS.

10. Foreign Commission—Irrelevancy of Evidence Sought to Claim Made by Pleadings—Leave to Amend—Dismissal of Application, without Prejudice to Fresh Application after Amendment—Costs. *Hawes Gibson & Co.* v. *Hawes*, 3 O.W.N. 312.—D.C.

11. Foreign Commission—Doubt as to Necessity for Evidence—Terms—Security for Costs—Alternative Order. *Hawes Gibson & Co.* v. *Hawes*, 3 O.W.N. 1078, 1229.—MASTER IN CHAMBERS.—MIDDLETON, J. (Chrs.)

12. Foreign Commission—Inquiry as to Next of Kin of Deceased Intestate—Availability and Usefulness of Testimony Sought—Terms Imposed on Granting Commission—Security for Costs. *Re Corr*, 3 O.W.N. 1442.—RIDDELL, J. (Chrs.)

13. Foreign Commission — Order for — Terms — Prior Examination of Officers of Defendant Bank. *Campbell* v. *Sovereign Bank of Canada*, 3 O.W.N. 1285.—MASTER IN CHAMBERS.

14. Foreign Commission—Unnecessary Testimony—Admission —Order Refusing Commission Affirmed upon Terms. *Macdonald* v. *Sovereign Bank of Canada*, 3 O.W.N. 1006.—MIDDLETON, J. (Chrs.)

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Misrepresentation, 4—Gift—Highway, 9—Husband and Wife, 6, 12-15—Infant, 3—Insurance, 3, 10, 12, 17—Judgment, 2—Limitation of Actions, 2, 7—Liquor License Act, 2, 4-7—Lunatic, 2, 4, 5—Marriage, 3—Master and Servant, 9, 14—Medical Practitioner—Mines and Minerals, 3—Mortgage, 1, 5, 7—Municipal Corporations, 19, 22, 25—Negligence, 2, 5, 8, 9—Partnership, 5, 6—Practice, 7—Railway, 6, 7—Sale of Goods, 4, 8—Slander, 2—Street Railways, 6—Trial, 10—Vendor and Purchaser, 5, 7, 16—Way, 1—Will, 1, 8, 35, 36, 52, 61.

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Interest of Certificated Holder of Mining Claim before Patent—Seizure and Sale by Sheriff under Fi. Fa. Goods—Mining Act of Ontario, 1908—Licensee—Tenant at Will—Profit à Prendre—Fi. Fa. Lands—Position of Execution Creditor and Purchaser at Sheriff's Sale—Application for Record. *Re Clarkson and Wishart*, 3 O.W.N. 1645, 27 O.L.R. 70.—D.C.

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EXECUTORS.

1. Application for Advice—R.S.O. 1897 ch. 129, sec. 39 (1)—Con. Rule 938—Question whether Land or Proceeds Belongs to Estate of Testatrix—Practice—Substituted Service—Absentee. *Re Turner*, 3 O.W.N. 1438.—RIDDELL, J. (Chrs.)

2. Application for Advice—Trustee Act, sec. 65—Con. Rule 1269 (938)—Practice — Determination of Validity of Lease Made by Life-tenant—Course to be Pursued by Executor. *Re Gordon*, 3 O.W.N. 1458.—RIDDELL, J.

3. Compensation — Commission — Quantum — Appeal—Costs. *Re Griffin*, 3 O.W.N. 759, 1049.—MIDDLETON, J.—D.C.

4. Leave to Mortgage Lands of Testator—R.S.O. 1897 ch. 71—Powers of Court—Application Made in Action—Practice—Parties—Authority to Mortgage—Order Directing one Executor to Execute Mortgage—Disagreement of Executors—Costs. *Shepard* v. *Shepard*, 3 O.W.N. 469.—D.C.

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FRAUD AND MISREPRESENTATION.

1. Action to Rescind Executed Contract—Innocent Misrepresentation not Amounting to Fraud—Statements Inducing Subscription for Shares in Company—Finding of Trial Judge—Appeal. *Abrey* v. *Victoria Printing Co.*, 3 O.W.N. 868.—D.C.

2. Exchange of Lands—Collusion—Rescission — Reconveyance —Damages—Costs. *Gibbons* v. *Douglas*, 3 O.W.N. 119.—SUTHERLAND, J.

3. Sale of Farm—Completed Transaction—Reliance on Representations Made by Vendor—Inspection of Farm—Purchase Induced by Representations—Absence of Evidence of Affirmance or Waiver—Rescission—Damages — Findings of Fact of Trial Judge—Appeal. *Stocks* v. *Boulter*, 3 O. W.N. 277, 1397.—CLUTE, J.—C.A.

4. Sale of Shares—Action of Deceit—Evidence of Similar Misrepresentations in Making other Sales—Evidence of Statements of Deceased Person—Inadmissibility—Conflict of Evidence—Failure to Prove Representations Alleged—Delay in Bringing Action. *Allen* v. *Turk*, 3 O.W.N. 364.—SUTHERLAND, J.

5. Sale of Vehicle—Reliance on False Representation—Damages. *McCutcheon* v. *Penman*, 3 O.W.N. 1154.—LATCHFORD, J.

See Company, 3, 5—Contract, 19, 23, 27, 33, 36—Criminal Law, 12—Deed, 3—Evidence, 3—Insurance, 5, 8, 15—Judgment, 1—Landlord and Tenant, 2—Partnership, 5, 7—Principal and Agent, 8, 13—Promissory Notes, 1, 2—Release—Sale of Goods, 6—Vendor and Purchaser, 9, 10, 14, 16, 19.

FRAUDULENT CONVEYANCE.

1. Action by Execution Creditor to Set aside—Evidence—Finding of Fact—Goods seized under Execution—Interpleader Issue—Finding on. *Manley* v. *Young*, 3 O.W.N. 400.—SUTHERLAND, J.

2. Husband and Wife—Voluntary Settlement—Consideration—Assumption of Mortgage—Covenant—Bar of Dower—Solvency of Husband—Value of Assets—Goodwill of Business—Intent—13 Eliz. ch. 5. *Ottawa Wine Vaults Co.* v. *McGuire*, 3 O.W.N. 143, 24 O.L.R. 591.—D.C.

See Assignments and Preferences, 1.

FUNERAL EXPENSES.

See Will, 33.

FUTURE RIGHTS.

See Deed, 3.

GAME.

Ontario Game and Fisheries Act — Justices' Conviction for Hunting and Fishing in Enclosed Land—Jurisdiction of Justices—Bonâ Fide Assertion of Right—Title to Land—Jus Tertii—Land Covered by Water—Reasonable Claim of Right.]—Upon a motion to quash a magistrates' conviction for an offence against the Ontario Game and Fisheries Act, 7 Edw. VII. ch. 49, sec. 25, it appeared that the accused, for the purpose of hunting and fishing, entered upon lands which were enclosed in the manner pointed out by sub-sec. 5 of sec. 25, and upon which sign-boards forbidding hunting and shooting were placed, as required by sub-sec. 2 (*b*) and (*c*); but it was argued that the jurisdiction of the Justices was ousted by reason of what was done by the accused being a bonâ fide assertion of right, and the title to lands having been brought in question:—*Held*, that, apart from any statutory provision, the jurisdiction of the magis-

trate is ousted where there is shewn to be a *bonâ fide* claim or dispute, and the action of the accused is in assertion of a colourable right—but there must be some show of reason in the claim.—And *held,* that a defect in the prosecutor's title to the lands would not avail the accused; and, although part of the lands were covered with navigable water, that left the ownership absolute, subject only to the right of navigation, and did not imply any right to shoot.—Nor did the accused shew a reasonable claim by shewing that others had hunted and fished there for many years, and that he had also done so.—*Cornwall* v. *Saunders,* 2 B. & S. 206, followed. *Rex* v. *Harran,* 3 O.W.N. 1107.—MIDDLETON, J. (Chrs.)

GARAGE.

See Municipal Corporations, 4.

GARNISHMENT.

See Attachment of Debts—Division Courts, 2.

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GIFT.

Cheques on Banks—Presentment and Payment after Death of Donor—Notice of Death—Bills of Exchange Act, secs. 127, 167—Gift inter Vivos—Gift Mortis Causâ—Delivery of Bank Pass-books to Donee—Purpose of—Evidence—Trust—Forgery—Mental Competence of Donor—Action by Executors against Donee—Costs. *McLellan* v. *McLellan,* 3 O.W.N. 388, 25 O.L.R. 214.—D.C.

See Succession Duty—Surrogate Courts, 1—Will.

GOLD AND SILVER MARKING ACT.

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GOODWILL.

See Arbitration and Award, 4—Fraudulent Conveyance—Partnership, 1, 3.

GRAND JURY.

See Criminal Law, 4.

GROSS NEGLIGENCE.

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See Infant, 3—Liquor License Act, 6.

HIGH COURT OF JUSTICE.

See Appeal—Limitation of Actions, 6—Marriage, 1—Surrogate Courts, 3.

HIGH SCHOOLS.

See Schools, 1.

HIGHWAY.

1. Boundaries of Lots—Allowance for Road—Encroachment—Failure to Prove—Erection of Fence—Removal—Injunction Dedication—Estoppel. *Lake Erie Excursion Co.* v. *Township of Bertie*, 3 O.W.N. 1191.—KELLY, J.

2. Forced Road Substituted for Road Allowance—Right to Portion of Road Allowance in Lieu thereof. *Mills* v. *Freel*, 3 O.W.N. 1240.—RIDDELL, J.

3. Nonrepair—Injury to Traveller—Negligence of Municipal Corporation—Action—Three Months' Limitation—Notice of Accident—Omission to Give—Damages. *Brown* v. *City of Toronto*, 3 O.W.N. 84.—D.C.

4. Nonrepair — Injury to Traveller — Notice of Accident—Absence of Details — Sufficiency, in View of Knowledge of Council—Municipal Act, 1903, sec. 606(3). *Young* v. *Township of Bruce*, 3 O.W.N. 89, 24 O.L.R. 546.—D.C.

5. Nonrepair—Injury to Traveller—Snow and Ice—Gross Negligence — Damages. *Yates* v. *City of Windsor*, 3 O.W.N. 1513.— FALCONBRIDGE, C.J.K.B.

6. Obstruction—Injury to Traveller—Cause of Injury—Negligence of Municipality—Contributory Negligence—Weigh-scales Erected on Highway by Licensee—Injury not Caused by. *O'Neil* v. *Township of London*, 3 O.W.N. 345.—MIDDLETON, J.

7. Obstruction caused by Contractor Doing Work for City Corporation—Dangerous Condition of Street—Injury to Pedestrian—Negligence—Contributory Negligence—Findings of Jury—Duty of Contractor to Public. *Hawkins* v. *McGuigan*, 3 O.W.N. 1064.—D.C.

8. Telephone Pole Placed by Unauthorised Person on Highway —Resolution of Municipal Council—Invalidity—Liability of Municipal Corporation—Injury to Traveller—Misfeasance—Nonfeasance—Municipal Act, 1903, sec. 606—Stated Case. *Howse* v. *Township of Southwold*, 3 O.W.N. 1295, 1592.—MIDDLETON, J.—D.C.

9. Township Boundary Line—Deviation—Substituted Road—Assumption by County —Evidence—By-law—Plan—Dedication—Compulsory and Permissive Provisions—Municipal Act, 1903, secs. 617, 622-4, 641, 648-653. *County of Wentworth* v. *Township of West Flamborough*, 3 O.W.N. 1024, 26 O.L.R. 199.—C.A.

See Damages, 7—Injunction, 1—Limitation of Actions, 4—Motor Vehicles Act—Municipal Corporations, 3-6, 14—Negligence, 2, 5—Railway, 7, 16—Trial, 3—Water and Watercourses, 2.

HIRING.

See Master and Servant, 1.

HOSPITAL.

See Municipal Corporations, 21.

HUSBAND AND WIFE.

1. Action by Wife against Husband and Others for Conspiracy —Pleading—Statement of Claim—Depriving Wife of Consortium of Husband—Motion to Strike out Part of Pleading Containing Substance of Claim—Judgment—Con. Rule 261. *Ney* v. *Ney*, 3 O.W.N. 896.—MASTER IN CHAMBERS.

2. Alimony—Cruelty—Desertion—Quantum of Allowance. *Tanner* v. *Tanner*, 3 O.W.N. 1157.—KELLY, J.

3. Alimony—Desertion—Cause of—Custody of Children—Quantum of Allowance for Alimony. *Karch* v. *Karch*, 3 O.W.N. 1446.—KELLY, J.

4. *Alimony—Desertion—Quantum of Allowance—Income—Corpus—Earning Power.*]—*Held*, upon the evidence, in an action for alimony, that the plaintiff had nothing to disentitle her to her rights, and had a right to be maintained by the defendant. His conduct amounted to desertion; he had no right to take up his residence in a place where his wife could not go, and then tell her to maintain herself.—The general rule is, that the wife is entitled to one-third of the income of

the husband—income including earnings. If the wife has an independent income, it is to be taken into account in fixing her allowance; but the wife's share of the husband's income is not to be cut down by reason of her earning capacity.—Where the husband is by illness incapacitated from earning, the wife is not entitled to resort to the corpus of his estate for her maintenance. *Goodfriend* v. *Goodfriend*, 3 O.W.N. 784.

5. Alimony — Judgment — Enforcement by Sale — Executions. *Cowie* v. *Cowie*, 3 O.W.N. 1510.—RIDDELL, J. (Chrs.)

6. Alimony—Interim Order—Application for—Desertion—Admission of Marriage—Evidence—Examination of Parties—Inadmissibility—Quantum of Allowance — Disbursements. *Karch* v. *Karch*, 3 O.W.N. 1032.—RIDDELL, J. (Chrs.)

7. Alimony—Interim Order—Refusal of—Order for Payment of Disbursements. *White* v. *White*, 3 O.W.N. 929.—MASTER IN CHAMBERS.

8. *Alimony—Registered Judgment—Order for Enforcement by Sale of Land of Husband—Incumbrancers — Execution Creditors—Creditors' Relief Act—Inchoate Right of Dower —Costs.*]—A judgment for alimony, registered under sec. 35 of the Judicature Act, R.S.O. 1897 ch. 51, has the effect of "a charge by the defendant of a life annuity on his lands."—The charge may be enforced, without a separate action, by a petition in the original cause.—The order made upon the petition should be in form similar to the judgment in an action to enforce a charge, and should provide for sale of the land, subject to the claims of prior incumbrancers, etc. —The order should not provide for a sale free from the wife's (plaintiff's) inchoate right of dower and for an allowance to her of a lump sum in lieu thereof. The Partition Act, R.S.O. 1897 ch. 123, 49, has no application to the sale. —*Quære*, as to the priorities between the plaintiff and execution creditors. *Abbott* v. *Abbott*, 3 O.W.N. 683.—MIDDLETON, J.

9. Alimony—Separation Deed—Payment of Gross Sum—Absence of Provision for Maintenance—Misconduct of Husband Justifying Separation. *Frémont* v. *Frémont*, 3 O.W.N. 789, 26 O.L.R. 6.—D.C.

10. Alimony—Settlement of Former Action—Agreement—Con-

veyance of Land and Chattels—Effect on New Action—Quantum of Alimony—Reference. *Morgan* v. *Morgan*, 3 O.W.N. 1220.—RIDDELL, J.

11. Authority of Wife to Pledge Husband's Credit for Necessaries—Action by Executrix for Balance of Price of Goods Sold—Limitation of Authority—Instruction to Wife not to Buy on Credit—Evidence of—Want of Corroboration—Running Account—Payments—Statute of Limitations. *Scott* v. *Allen*, 3 O.W.N. 1484, 26 O.L.R. 571.—D.C.

12. Goods Seized under Execution against Husband—Claim by Wife—Interpleader Issue—Property Acquired by Wife in Separate Business—R.S.O. 1897 ch. 163, sec. 6(1)—Evidence—Finding of Judge—Appeal—Costs. *Kelly* v. *Macklem*, 3 O.W.N. 873.—D.C.

13. Land Acquired in Name of Wife—Contract—Evidence—Statute of Frauds—Resulting Trust—Work and Labour—Counterclaim—Injunction. *Burrows* v. *Burrows*, 3 O.W.N. 81.—BRITTON, J.

14. Mortgage by Wife to Secure Advances to Husband—Absence of Independent Advice—Undue Influence—Onus—Evidence—Validity of Mortgage — Misrepresentations — Foreign Banking Corporation—Authority to Take Security—License to Do Business in Ontario—63 Vict. ch. 24(O.)—Possession—Account—Redemption. *Euclid Avenue Trusts Co.* v. *Hohs*, 3 O.W.N. 3, 24 O.L.R. 447.—C.A.

15. Notes and Mortgage Given by Wife to Secure Debt of Husband—Absence of Independent Advice—Application for Leave to Adduce Fresh Evidence upon Appeal—Action upon Mortgage—Premature Action—Reference—Scope of—Accounts—Conflicting Evidence—Knowledge of Wife of Husband's Business—Findings of Referee—Appeals. *Union Bank* v. *Crate*, 3 O.W.N. 1018.—C.A.

16. "Oil Lease" of Wife's Lands Made by Husband—Confirmation by Wife—Alteration of Lease—Payments Received by Husband for Wife—Estoppel. *Maple City Oil and Gas Co.* v. *Charlton*, 3 O.W.N. 1629.—KELLY, J.

See Assignments and Preferences, 1—Criminal Law, 11—Fraudulent Conveyance, 2—Insurance, 14—Interpleader—Marriage—Parties, 5—Pleading, 8—Vendor and Purchaser, 2, 18.

ILLEGITIMATE CHILD.

See Infant, 4.

IMMIGRATION.

Attempt to Land Prohibited Alien in Canada—Immigration Act, 1910, sec. 33(2), (7), (8)—Misrepresentation of Citizenship —Offence—Conviction — Police Magistrate — Jurisdiction. *Rex* v. *Palangio*, 3 O.W.N. 1440.—RIDDELL, J. (Chrs.)

IMPRISONMENT.

See Contract, 26.

IMPROVEMENTS.

See Assessment and Taxes, 4—Mortgage, 9—Will, 14.

IMPROVIDENCE.

See Bills of Sale and Chattel Mortgages—Contract, 11—Release —Succession Duty.

INDECENT ASSAULT.

See Criminal Law, 3.

INDEMNITY.

See Costs, 22—Insurance—Judgment, 8—Parties, 10.

INDEPENDENT ADVICE.

See Contract, 36—Husband and Wife, 14, 15.

INDIAN ACT.

See Assessment and Taxes, 4.

INDIAN LANDS.

See Assessment and Taxes, 4.

INDICTMENT.

See Criminal Law, 4, 13.

INFANT.

1. Bank Deposit—Withdrawal by Cheque in Favour of Third Person—Liability of Bank for Amount beyond $500 —Bank Act, sec. 95—Benefit of Infant—Bills of Exchange Act, secs. 47, 48, 165—Delay in Bringing Action after Majority —Mistake as to Age—Bank's Want of Knowledge of Infancy. *Freeman* v. *Bank of Montreal*, 3 O.W.N. 1364, 26 O.L.R. 451.—MIDDLETON, J.

2. Custody—Rights of Father—Welfare of Child—Evidence— Custody Awarded to Aunt. *Re Hart*, 3 O.W.N. 1287.—MIDDLETON, J. (Chrs.)

3. Custody—Rights of Father against Maternal Grandparents—Welfare of Child—Agreement under Seal—Adoption—1 Geo. V. ch. 35, sec. 3—Application upon Habeas Corpus—Affidavits—Opinion Evidence—Costs. *Re Hutchinson*, 3 O.W.N. 933, 1552, 26 O.L.R. 113, 601.—BOYD, C. (Chrs.)—D.C.

4. Illegitimate Child—Custody—Rights of Mother and Putative Father. *Re C., An Infant*, 3 O.W.N. 391, 25 O.L.R. 218.—MIDDLETON, J. (Chrs.)

See Assessment and Taxes, 4—Husband and Wife, 3—Insurance, 10—Master and Servant, 4, 7—Negligence, 7, 8—Pleading, 8—Surrogate Courts, 2—Will, 5, 10, 32.

INFORMATION.

See Liquor License Act, 1, 5, 7.

INJUNCTION.

1. Blasting in Streets of Town—Diligence, Skill, and Care—Addition of Parties. *Bell Telephone Co.* v. *Avery*, 3 O.W.N. 1664.—FALCONBRIDGE, C.J.K.B.

2. Interim Order—Balance of Convenience—Bonâ Fide Dispute—Water Rights. *Minnesota and Ontario Power Co.* v. *Rat Portage Lumber Co.*, 3 O.W.N. 502.—MIDDLETON, J.

3. Interim Order—Claim to Hay—Remedy in Damages. *Hewitt Allen Co.* v. *Adams*, 3 O.W.N. 750.—MIDDLETON, J.

4. Interim Order—Landlord and Tenant—Trespass by Landlord on Demised Premises—Absence of Damage—Refusal to Continue Injunction. *Taylor* v. *Pelof*, 3 O.W.N. 571.—BRITTON, J.

5. *Interim Order—Trade Mark—Infringement—Notice to Customers—Ex Parte Injunction against, Granted by Local Judge—Motion to Continue—Dismissal—New ex Parte Injunction Granted by another Local Judge—Con. Rule* 46—*"Emergency"—Con. Rules* 355-357—*Non-disclosure—Appearance of Defendant—Merits of Case—Jurisdiction of Court over Foreign Company.*]—Under Con. Rule 46, read in the light of Con. Rules 355 *et seq.*, an *ex parte* injunction order can be made by a Local Judge of the High Court only where he is satisfied that the delay caused by proceeding by notice of motion might entail serious mischief, and where there is such a situation of emergency that a motion to a

Judge of the High Court will, by reason of the necessary delay, involve a failure of justice.—An injunction is rarely granted without hearing both sides.—Where an injunction has been obtained from a Local Judge, the local jurisdiction is exhausted. It is not contemplated that a Local Judge, whose power to restrain is limited to eight days, should be able to restrain indefinitely by granting a series of eight-day injunctions; nor that there should be an application to a second Local Judge for a second *ex parte injunction*.—The second injunction granted in this case was objectionable for the non-disclosure of the prior injunction and its fate; and it was not enough for counsel to disclose it to the Judge orally; it should appear upon the material recited in the order.—So, also, the fact that the defendants had appeared in the action should have been disclosed.—And *held*, upon the evidence, that no case for an injunction at all was shewn. —*Held*, also, that the Court had no jurisdiction over the acts of a foreign corporation in a foreign country.—Injunction dissolved. *Capital Manufacturing Co.* v. *Buffalo Specialty Co.*, 3 O.W.N. 553.—MIDDLETON, J.

6. Mining Rights—Terms—Mandamus. *Curry* v. *Wettlaufer*, 3 O.W.N. 1641.—KELLY, J.

7. *Municipal Corporation—Bonus By-law Approved by Ratepayers—Action to Restrain Passing by Council—Illegality —Municipal Act*, 1903, *sec.* 591 (12) (*e*)—*Injunction Refused—Remedy by Motion to Quash when By-law Passed—Costs.*]—An injunction should not be granted to restrain the passing of a by-law by a municipal council—the Court has no right to interfere with the action of the council before the by-law is passed. An injunction is an extraordinary remedy, and ought not to be resorted to when there is an appropriate remedy in a motion to quash. An injunction may be granted to prevent action upon an invalid by-law, but that is not the same.—*Quære*, whether a council can refuse to give a by-law its third reading where it has been submitted to and approved by the electors. *City of London* v. *Town of Newmarket*, 3 O.W.N. 565.—MIDDLETON, J.

See Buildings, 2—Contempt of Court—Copyright—Costs, 5—Deed, 6—Highway, 1—Husband and Wife, 13—Landlord and Tenant, 5—Municipal Corporations, 4, 5, 16, 24—Patent for Invention—Pleading, 15—Schools, 4—Timber, 1—Trespass, 1, 5—Water and Watercourses 1, 2, 3, 5, 7—Way, 2.

INNUENDO.

See Slander.

INSANE DELUSIONS.

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INSANITY.

See Criminal Law, 10.

INSOLVENCY.

See Assignments and Preferences—Fraudulent Conveyance.

INSPECTION.

See Fraud and Misrepresentation, 3—Negligence, 9.

INSPECTOR OF ASYLUMS.

See Lunatic, 3.

INSURANCE.

1. Accident Insurance—Claim for Disablement—Failure of Assured to Give Written Notice within Ten Days of Happening of Event Giving Rise to Claim—Bar to Action—Condition Precedent—Meaning of "Event" — Waiver — Inability to Give Notice—Costs of Action. *Evans* v. *Railway Passengers Assurance Co.*, 3 O.W.N. 881.—D.C.

2. Accident Insurance—Death Claim—Cause of Death—Burning of Building—Injuries Caused by Fire—Fire Resulting from Assured Having a "Fit"—Efficient Cause—Quantum of Indemnity—Terms of Policy—Construction. *Wadsworth* v. *Canadian Railway Accident Insurance Co.*, 3 O.W.N. 828, 26 O.L.R. 55.—D.C.

3. Accident Insurance—Death Claim—Cause of Death—Evidence—Statement of Deceased—Strain from Lifting Heavy Weight—Admissibility—Absence of other Causes—Provisions of Policy—Stipulations as to Notice not Complied with—Renewal Receipt—Fresh Contract—Necessity for Setting out Conditions—Insurance Act, sec. 144—Incorporation by Reference and Identification of Terms of Policy—Sufficiency of, as Compliance with Statute. *Youlden* v. *London Guarantee and Accident Co.*, 3 O.W.N. 832, 26 O.L.R. 75.—MIDDLETON, J.

4. Accident Insurance—Temporary Total Disability—Double Indemnity—"Riding as a Passenger"—Injury to Assured in

Alighting from Street Car. *Wallace* v. *Employers' Liability Assurance Corporation*, 3 O.W.N. 232, 778, 25 O.L.R. 80, 26 O.L.R. 10.—MEREDITH, C.J.C.P.—C.A.

5. Fire Insurance—Actions on Policies—Notice in Writing of Loss—Value of Goods Insured—Misrepresentation—Previous Fire in other Premises—Materiality—Additional Insurance—Delivery of Particulars of Loss—Proofs of Loss—Sufficiency—Time when Furnished—Further Proofs Required—Statutory Conditions—Actions Brought within Sixty Days after Last Proofs Supplied—Premature Actions—Insurance Act, 1912, sec. 158—Relief from Effect of Imperfect Compliance with Conditions—New Actions Brought—Consolidation with Premature Actions—Costs—Amendment of Defence at Trial—Appeal—New Trial. *Strong* v. *Crown Fire Insurance Co.*, 3 O.W.N. 481, 1534.—SUTHERLAND, J.—C.A. (See also 3 O.W.N. 1377.)

6. Fire Insurance—Goods on Described Premises—Transfer to other Premises—Re-transfer to Original Premises—Assent to—Form of Assent—Want of Authority of Clerk of Former Agent—Ratification after Fire—Invalidity. *Kline Brothers & Co.* v. *Dominion Fire Insurance Co.*, 3 O.W.N. 698, 25 O.L.R. 534.—C.A.

7. Fire Insurance—Interim Receipt—Issue by Agent of Insurance Company—Company not Declining Risk and not Issuing Policy—Insurance in Force until Determination of Head Office Notified—Loss Payable to Mortgagee—Assignment of Mortgagee's Claim—Negligence of Agent—Indemnity—Damages—Costs. *Stoness* v. *Anglo-American Insurance Co.*, 3 O.W.N. 494, 886.—RIDDELL, J.—D.C.

8. Fire Insurance—Proofs of Loss—Overvaluation — Fraud — Finding as to by Trial Judge—Quantum of Damage—Reference as to—Costs—Appeal. *Nassar* v. *Equity Fire Insurance Co.*, 3 O.W.N. 551.—D.C.

9. Life Insurance—Benefit Certificate—Apportionment of Benefit—Change of Beneficiaries by Will—Identification of Certificate—Sufficiency—Insurance Act, R.S.O. 1897 ch. 203, sec. 160. *Re Watson and Order of Canadian Home Circles*, 3 O.W.N. 1605.—KELLY, J. (Chrs.)

10. Life Insurance—Benefit Certificate—Beneficiary—Adopted Daughter—Death of—Claim by Children of—Rules of Bene-

fit Society—Classes of Beneficiaries—"Children by Legal Adoption"—Law of Ontario as to Adoption—1 Geo. V. ch. 35, sec. 3—Determination by Secretary of Society of Fact as to Adoption—"Other or Further Disposition"—Change of Beneficiary—4 Edw. VII. ch. 15—Endorsement in Favour of Beneficiary for Value—Validity—Evidence—Abandonment—Next Friend of Infants—Certificate Endorsed as Security for Advances—Reference as to Amount Advanced. *Fidelity Trust Co.* v. *Buchner*, 3 O.W.N. 1208, 26 O.L.R. 367.—RIDDELL, J.

11. Life Insurance—Benefit Certificate—Change of Apportionment—Person Benefitting by Change—Onus—Validity of Transaction—Agreement not to Change—Failure of Proof—Mental Capacity of Insured—Undue Influence—Surrounding Circumstances. *Clark* v. *Loftus*, 3 O.W.N. 1027, 26 O.L.R. 204.—C.A.

12. Life Insurance—Benefit Certificate in Favour of Granddaughter—Change to Brother—Preferred Class—Issue as to Relationship—Onus—Security for Costs. *Re Ancient Order of United Workmen and Riddell*, 3 O.W.N. 891.—MASTER IN CHAMBERS.

13. Life Insurance—Change in Terms of Insurance—Alteration in Written Policy—Figures Left Unaltered—Mistake—Claim for Larger Sum than Promised by Insurers—Rectification of Policy. *Harley* v. *Canada Life Assurance Co.*, 3 O.W.N. 67.—C.A.

14. Life Insurance—Designation in Favour of Wife Endorsed on Policy—Request to Issue Policy in Favour of Wife—Trust Created under Insurance Act—Incomplete Instrument—Expression of Intention. *Re Cunningham and Canadian Home Circles*, 3 O.W.N. 118.—MIDDLETON, J. (Chrs.)

15. Life Insurance—Misrepresentations as to Health of Assured—Knowledge and Participation of Beneficiary—Material Misrepresentations—Fraud—Evidence—Avoidance of Policy. *Strano* v. *Mutual Life Assurance Co.*, 3 O.W.N. 1372.—MULOCK, C.J.Ex.D.

16. Life Insurance—Policy—Condition—Breach—Assured Taking Employment on Railway without Permit—Knowledge of Agent of Insurance Company—Acceptance of Premiums by Company—Authority of Agent—Liability of Company—Absence of Notice or Knowledge. *Smith* v. *Excelsior Life Insurance Co.*, 3 O.W.N. 261, 1521.—BRITTON, J.—C.A.

17. Life Insurance—Policy on Semi-Tontine Investment Plan—Election by Insured at End of Period—Surrender Value of Policy—Evidence. *Labonté* v. *North American Life Assurance Co.*, 3 O.W.N. 595.—KELLY, J.

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2. Motion to Vary—Consolidation of Actions—Further Evidence —Erroneous Recital in Judgment Settled and Entered—Motion to Strike out, Made after Hearing of Appeal. *Strong* v. *Crown Fire Insurance Co.*, 3 O.W.N. 1377.—SUTHERLAND, J.

3. *Motion to Vary—Court of Appeal—Restoration of Judgment of Trial Judge—Variance as to Costs of Reference—Point not Raised in Appellate Courts—Jurisdiction.*]—After the judgment pronounced by the Court of Appeal (24 O.L.R. 503, 3 O.W.N. 34) varying the judgment of a Divisional Court (22 O.L.R. 577), the appellant sought to vary it by reversing the trial Judge's disposition of the costs of the reference directed—a matter which was not brought before the Divisional Court nor before the Court of Appeal until after judgment. The Court declined to interfere.—*Per* MOSS, C.J.O.:—The matter had not passed entirely beyond the power of the Court: Con. Rule 817.—*Per* MEREDITH, J.A.: —The Court had no power to grant the application. *Stecher Lithographic Co.* v. *Ontario Seed Co.*, 3 O.W.N. 409.—C.A.

4. Summary Judgment—Con. Rule 603—Action against Directors of Company for Wages—Companies Act, sec. 94—Affidavit of Solicitor's Agent—Claim of Plaintiff. *Rogers* v. *Wood*, 3 O.W.N. 1241.—MASTER IN CHAMBERS.

5. Summary Judgment—Con. Rule 603—Action by Solicitors for Costs—2 Geo. V. ch. 125, sec. 6—Sum Fixed as Solicitor and Client Costs—Solicitor's Lien—Taxation of Costs—Defence. *Gundy* v. *Johnston*, 3 O.W.N. 1601.—KELLY, J. (Chrs.)

6. Summary Judgment—Con. Rule 603—Action on Bills of Exchange—Defence—Reference under Con. Rule 607. *Charlebois* v. *Martin*, 3 O.W.N. 1155.—MASTER IN CHAMBERS.

7. Summary Judgment—Con. Rule 603—Action on Covenant in Mortgage—Defence—Release—Long Delay in Bringing Action. *Martin* v. *Clarke*, 3 O.W.N. 569.—MASTER IN CHAMBERS.

8. Summary Judgment—Con. Rule 603—Actions on Promissory Notes—Defence—Indemnity—Agreement — Enforcement — Leave to Proceed in Action. *Clarkson* v. *McNaught and Shaw*, *Clarkson* v. *McNaught and McNaught*, *Clarkson* v. *Shaw*, *Clarkson* v. *C. B. McNaught*, 3 O.W.N. 638, 670, 741. —MASTER IN CHAMBERS.—BRITTON, J. (Chrs.).—MIDDLETON, J. (Chrs.)

9. Summary Judgment—Con. Rule 603—Application by defendant for Reference under Con. Rule 607—Practice—Doubt as to Accuracy of Affidavit—Omission. *Union Bank of Canada* v. *Aymer*, 3 O.W.N. 771, 773.—MASTER IN CHAMBERS.

10. Summary Judgment—Con. Rule 603—Proper Sum to be Paid for Power Used. *Wilson* v. *National Electrotype Co.*, 3 O.W.N. 28.—MASTER IN CHAMBERS.

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1. Company—Existence of—Charter—Loan Corporations Act—Examination of Director—"Officer"—Con. Rule 902—Order for Examination Unnecessary—Practice—Order for Issue of Subpœna—Costs—Appeal. *Powell-Rees Limited* v. *Anglo-Canadian Mortgage Co.*, 3 O.W.N. 1375, 1444, 26 O.L.R. 490.—MASTER IN CHAMBERS.—RIDDELL, J. (Chrs.)

2. *Examination of—Con. Rule* 900—*Scope of Examination—Judgment for Costs—Inquiry as to Means of Debtor before Commencement of Action.*]—Where a judgment is for costs only, the judgment debtor may, under Con. Rule 900, be examined as to his means, etc., and the examination is to be as to the means he had "at the time of the commencement of the cause or matter:"—*Held*, that the same construction must be given to the part of the Rule (introduced by amendment) giving power to examine where the judgment is for costs only, as to the older part of the Rule; and the examination is not to be limited to the time of the beginning of the action. *Ontario Bank* v. *Mitchell*, 32 C.P. 73, 76, applied and followed. *Bartlett* v. *Bartlett Mines Limited*, 3 O.W.N. 328.—BOYD, C. (Chrs.)

3. Transferee—Transfer of Land in another Province—Con. Rule 903—Examination. *Crucible Steel Co.* v. *Ffolkes*, 3 O.W.N. 750.—MASTER IN CHAMBERS.

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2. Lease—Action to Set aside—Fraud and Misrepresentation—Right of Renewal—Term of Renewal—Indefiniteness—Agreement for Sale—Purchaser Affected with Notice of Lease—Estoppel—Res Judicata—Acceptance of Rent—Recognition of Tenancy—Act respecting Short Forms of Lease—Contract for Renewal not Binding on Assigns—Renewal in Perpetuity. *Alexander* v. *Herman*, 3 O.W.N. 755.—LATCHFORD, J.

3. Lease—Covenant — Renewal — Perpetuity — Construction—Acts of Parties. *Wilson* v. *Kerner*, 3 O.W.N. 769.—TEETZEL, J.

4. Lease—Provision for Forfeiture—Keeping Intoxicating Liquors for Sale—Failure of Proof—Possession—Use and Occupation—Wrongful Entry—Damages — Reduction on Appeal—Landlord and Tenant Act, 1 Geo. V. ch. 37, sec. 20 (2)—Necessity for Notice of Breach before Enforcement of Forfeiture. *Walters* v. *Wylie*, 3 O.W.N. 177, 567.—BRITTON, J.—D.C.

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3. Deed to Several Persons as Tenants in Common—Exclusive Possession by One—Pleading—Amendment. *Foisy* v. *Lord*, 3 O.W.N. 373.—D.C.

4. Possession of Land—Acts of Ownership — Insufficiency — Highway—Dedication—Plan — Informality in Registration—1 Geo. V. ch. 42, sec. 44. *Wright* v. *Olmstead*, 3 O.W. N. 434.—D.C.

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7. Title to Land—Patents from Crown—Description—Plans—Evidence—Possession—Limitations Act — Ownership, Acts of—Cultivation and Cropping. *Fox* v. *Ross*, 3 O.W.N. 1347. —MULOCK, C.J.Ex.D.

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1. Amending Act, 2 Geo. V. ch. 55, sec. 13 (O.)—Intra Vires—Conviction of Person Found Drunk in Local Option Municipality—Jurisdiction of Magistrates—Evidence—Two Offences—Information and Conviction Following Language of Statute. *Rex* v. *Riddell*, 3 O.W.N. 1628.—KELLY, J. (Chrs.)

2. *Intoxicating Liquor Sold on Unlicensed Premises—Liability of Landlord for Act of Tenant—Sec.* 112 (3) *of Act—"Occupant"—Presumption—Part of Hotel Premises not Leased—Permission to Tenant to Occupy—Conviction — Evidence — Onus — Finding of Magistrate — Motion to Quash.*]—Under the stringent provisions of sec. 112 (3) of the Liquor License Act, R.S.O. 1897 ch. 245, the owner of an unlicensed tavern, although he has let it to a tenant, himself lives at a distance from it, and has in no way authorised or been aware of a violation of the law, is nevertheless to be "conclusively held" guilty of an offence under the Act where intoxicating liquor has been sold upon the premises. —The hotel and all its outbuildings constitute the hotel "premises."—Although the stable in which the liquor was sold was said to be occupied by the tenant under a mere license, while there was a lease of the hotel building, a distinction could not be made for the purposes of the enactment; and the onus of proving the separate tenure was upon the accused.—Magistrate's conviction affirmed. *Rex* v. *Bradley,* 3 O.W.N. 58.—MIDDLETON, J. (Chrs.)

3. Justices' Conviction for Selling without License—Motion to Quash—Finding of Magistrate. *Rex* v. *Rossi,* 3 O.W.N. 121. —FALCONBRIDGE, C.J.K.B. (Chrs.)

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5. Justices' Conviction for Selling without License—Proof of Existence of Local Option By-law—Admission—Amendment—Proof of Sale—Receiving and Placing Order — Amendment of Information—New Offence Charged after Lapse of Thirty Days—Secs. 95 and 104 of Act. *Rex* v. *O'Connor,* 3 O.W.N. 840.—SUTHERLAND, J. (Chrs.)

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1. Committee—Sale of Land—Mortgage as Security for Part of Purchase-money—Mortgage to be Made to Accountant of Supreme Court—Principal and Interest to be Paid into Court—Duty of Committee. *Re Gibson*, 3 O.W.N. 1183.—BOYD, C.

2. Contract—Sale of Standing Timber—Action to Set aside—Proof of Mental Incompetence—Proof that Party Dealing

with Alleged Lunatic had Notice—Proof of Fair and Bona Fide Character of Transaction—Onus — Findings on Evidence. *Fyckes* v. *Chisholm*, 3 O.W.N. 21.—MULOCK, C.J. Ex.D.

3. Deed—Conveyance of Land—Trust—Statute of Limitations —Action by Administrator of Lunatic's Estate—Inspector of Asylums—Costs. *Hoover* v. *Nunn*, 3 O.W.N. 1223.—FALCONBRIDGE, C.J.K.B.

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1. Reasonable and Probable Cause—Belief of Defendant in Truth of Charge Laid—Question for Jury—New Trial. *Connors* v. *Reid*, 3 O.W.N. 209, 25 O.L.R. 44.—D.C.

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MARRIAGE.

1. Action by Husband for Declaration of Invalidity—Incapacity of Wife—Jurisdiction of High Court—Motion to Strike out Statement of Claim and Dismiss Action—Con. Rules 261, 617—Judgment. *Leakim* v. *Leakim*, 3 O.W.N. 994.—RIDDELL, J.

2. Action for Declaration of Invalidity—Consent Minutes of Judgment—Refusal of Court to Pronounce Judgment—Amendments to Marriage Act—7 Edw. VII. ch. 23, sec. 8 —9 Edw. VII. ch. 62. *Dilts* v. *Warden*, 3 O.W.N. 1319.—SUTHERLAND, J.

3. Evidence to Establish—Death of Husband—Claim of Alleged Widow—Marriage Ceremony—Reputation—Contract to Marry—Cohabitation — Foreign Law — Presumption. *Forbes* v. *Forbes*, 3 O.W.N. 557.—LATCHFORD, J.

See Husband and Wife.

MARSH LANDS.

See Water and Watercourses, 4.

MARSHALLING OF SECURITIES.

See Will, 4.

MASTER AND SERVANT.

1. Contract of Hiring—Salary—Interest—Shares in Company —Wrongful Dismissal—Termination of Contract—Notice

—Repurchase of Shares—Costs. *Dietrich* v. *Goderich Wheel Rigs Co.*, 3 O.W.N. 401.—TEETZEL, J.

2. Injury to Servant—Accident in Mine—Defective Condition of Works—"Pentice"—Proper Place for—Mining Act of Ontario, sec. 164, Rules 17, 31—Negligence—Findings of Jury. *Siven* v. *Temiskaming Mining Co.*, 3 O.W.N. 695, 25 O.L.R. 524.—C.A.

3. *Injury to Servant—Dangerous Machinery in Factory—Proper Guarding—Negligence—Contributory Negligence—Evidence for Jury—Findings—Factories Act—Statutory Duty—Voluntary Assumption of Risk.*]—In an action, under the Workmen's Compensation for Injuries Act, to recover damages for injury to the plaintiff, a workman employed by the defendants, the negligence relied upon was a breach of the Ontario Factories Act in not guarding dangerous machinery. The jury found that the defendants were guilty of a violation of the Factories Act; that the plaintiff was not guilty of contributory negligence; but that the plaintiff knew and appreciated the danger of the work and voluntarily undertook the risk:—*Held*, that the defence of *volenti non fit injuria* is not applicable where the injury arises from the breach of a statutory duty on the part of the employer.—*Baddeley* v. *Earl of Granville*, 19 Q.B.D. 423, approved and followed.—Summary of the cases.—*Butler* v. *Fife Coal Co.*, [1912] A.C. 149, specially referred to.—Judgment of BRITTON, J., 3 O.W.N. 446, affirmed. *McClemont* v. *Kilgour Manufacturing Co.*, 3 O.W.N. 999.—D.C.

4. Injury to Servant—Infant Employed in Factory—Dangerous Machine—Absence of Instruction and Warning—Employment of Competent Manager and Foreman—Appeal—Question not Raised at Trial. *Stokes* v. *Griffin Curled Hair Co.*, 3 O.W.N. 1414.—C.A.

5. Injury to Servant—Negligence—Act of Foreman—Personal Negligence of Master—Judge's Charge—Appeal—Objection not Taken at Trial—Findings of Jury—"Accident"—Non-direction—New Trial. *Magnussen* v. *L'Abbé*, 3 O.W.N. 301.—D.C.

6. Injury to Servant—Negligence—Absence of Proper Precautions—Act of Foreman—Findings of Trial Judge—Person Intrusted with Superintendence—Extended Meaning of—

Workmen's Compensation for Injuries Act, sec. 3, sub-sec. 2; sec. 2, sub-sec. 1—Scope of—Damages—Costs. *Magnussen* v. *L'Abbé*, 3 O.W.N. 864.—CLUTE, J.

7. Injury to Servant—Negligence—Condition of Premises — Dangerous Work—Infant—Absence of Warning—Contributory Negligence—Findings of Jury. *Crockford* v. *Grand Trunk R.W. Co.*, 3 O.W.N. 847.—FALCONBRIDGE, C.J.K.B.

8. Injury to Servant—Negligence—Contributory Negligence—Evidence—Findings of Jury—New Trial. *Simpson* v. *Tallman Brass and Metal Co.*, 3 O.W.N. 398.—D.C.

9. Injury to Servant—Negligence—Dangerous Machine—Findings of Jury—Want of Evidence to Support—View by Jury—Disobedience of Instructions—Inadvertence—New Trial. *Corea* v. *McClary Manufacturing Co.*, 3 O.W.N. 1071.—D.C.

10. Injury to Servant—Negligence—Defective Plant—Horse Used in Business—Vice of Bolting—Knowledge of Master—Workmen's Compensation for Injuries Act—Right to Use Horse at Time of Injury—Servant Acting in Discharge of Duty—Findings of Jury—Evidence to Support—Proximate Cause of Injury—Damages. *Veitch* v. *Linkert*, 3 O.W.N. 874.—D.C.

11. Injury to Servant—Negligence—Finding of Trial Judge. *Rawlings* v. *Tomiko Mills Limited*, 3 O.W.N. 1335.—BRITTON, J.

12. Injury to Servant—Negligence—Order of Foreman of Works—Use of Implements Insufficient for Purpose of Dangerous Work—Cause of Injury—Workmen's Compensation for Injuries Act—Appeal—Reversal of Judgment on Facts—Further Appeal. *Smith* v. *Hamilton Bridge Works Co.*, 3 O.W.N. 177, 1524.—D.C.—C.A.

13. Injury to Servant—Negligence—Use of Explosives—Unguarded Receptacle—Cause of Injury—Negligence of Servant—Findings of Fact of Trial Judge. *Davidson* v. *Peters Coal Co.*, 3 O.W.N. 1160.—MULOCK, C.J.Ex.D.

14. *Injury to Servant—Negligence of Fellow-servant — Workmen's Compensation for Injuries Act—Person not Intrusted with "Superintendence"—Findings of Jury — Evidence.*]—"Superintendence," in sec. 3, sub-sec. 2, of the Workmen's Compensation for Injuries Act, means such gen-

eral superintendence over workmen as is exercised by a foreman, or person in like position to a foreman, whether the person exercising superintendence is or is not ordinarily engaged in manual labour.—The plaintiff, a carpenter employed by the defendants, was injured by reason of the reckless driving of a teamster employed by the defendants, who was driving the plaintiff to his work:—*Held*, that the teamster was not a person having superintendence so as to render his employers liable to the plaintiff under the Act. —*Held*, also, that the defendants were not negligent in employing the teamster, as he was competent; and there was no liability at common law. *Demers* v. *Nova Scotia Silver Cobalt Mining Co.*, 3 O.W.N. 1206.—MIDDLETON, J.

15. Injury to Servant—Negligence of Person in Position of Superintendence—Amendment at Trial—Findings of Jury. *Melynk* v. *Canadian Northern Coal and Ore Dock Co.*, 3 O. W.N. 371.—BRITTON, J.

16. Injury to Servant—Negligence of Person in Position of Superintendence—Workmen's Compensation for Injuries Act, sec. 3, sub-secs. 1, 2—Defective System—Findings of Judge. *Plocks* v. *Canadian Northern Coal and Ore Docks Co.*, 3 O. W.N. 381.—BRITTON, J.

17. Injury to Servant—Railway—Liability—Negligence of Fellow-servant—Person in Position of Superintendence—Person in Control of Points or Switch—Workmen's Compensation for Injuries Act, sec. 3 (2), (5)—Findings of Jury. *Martin* v. *Grand Trunk R.W. Co.*, 3 O.W.N. 350.—MULOCK, C.J.Ex.D.

18. Injury to Servant—Workmen's Compensation for Injuries Act, sec. 3 (5)—Negligence of Fellow-servant—Person in Control of Machine upon Tramway—Findings of Jury. *Dunlop* v. *Canada Foundry Co.*, 3 O.W.N. 932.—TEETZEL, J.

19. *Injury to Servant by Kick of Master's Horse—Findings of Jury—Habit of Kicking—Scienter — Imputed Knowledge of Master—Incorporated Company — Negligence.*]—The plaintiff was employed by the defendants, an incorporated company; one of his duties was to take care of a horse. The horse kicked him; and he sued for damages on account of his injuries. The jury found that the plaintiff was guilty

of no negligence; that the horse was vicious, in that it was accustomed to kick; and that H., another employee of the defendants, who had charge of the animal before it was given into the plaintiff's care, was told of this habit before the injury to the plaintiff. Save in this way the defendants had no knowledge of the vice of the animal:—*Held*, that this was sufficient proof of *scienter*—H. being the person who had the care of the horse. *Baldwin* v. *Casella*, L.R. 7 Ex. 325, applied and followed. *Nadeau* v. *City of Cobalt Mining Co.*, 3 O.W.N. 1126, 1379.—MIDDLETON, J.—D.C.

20. *Injury to and Death of Servant—Action under Workmen's Compensation for Injuries Act and Fatal Accidents Act—Negligence of Person Intrusted with Superintendence.*]—The deceased, a lad of sixteen, was employed by the defendants in their lumber camp as a teamster. R., the camp blacksmith, was ordered by the defendants to construct a machine. In completing the construction, it was necessary to raise a derrick. R. had the right to call upon men working at the camp to assist him in this operation; and, among others, he called upon the deceased, who responded, though he might have objected. The derrick fell and fatally injured the lad. In an action, under the Workmen's Compensation for Injuries Act and the Fatal Accidents Act, for damages for his death:—*Held*, that, as the deceased had undertaken to assist R., it became his duty to obey R.'s instructions; and R., *quoad* this job, was a person who had superintendence intrusted to him, and to whose orders the deceased, at the time of the injury, was bound to conform; and, therefore, the defendants were liable under sub-sec. 2 of sec. 3 of the Workmen's Compensation for Injuries Act. —*Held*, also, that the fact of R. allowing another man to assume the more prominent part did not relieve R. from the responsibility which was justly his.—*Shea* v. *John Inglis Co. Limited*, 11 O.L.R. 124, 12 O.L.R. 80, followed.—*Garland* v. *City of Toronto*, 23 A.R. 238, *Ferguson* v. *Galt Public School Board*, 27 A.R. 480, *McManus* v. *Hay*, 9 Rettie 425, and *Brow* v. *Furnival*, 23 Rettie 492, distinguished. *Delyea* v. *White Pine Lumber Co.*, 3 O.W.N. 823.—D.C.

21. Injury to and Death of Servant—Dangerous Work—Defect in Plant—Negligence—Foreman — Workmen's Compensation for Injuries Act—Absence of Contributory Negligence —Damages. *Wallberg* v. *A. C. Stewart & Co.*, 3 O.W.N. 402.—BRITTON, J.

22. *Injury to and Death of Servant—Dangerous Work—Warning—Negligence—Lack of Proper Appliances—Negligence of Servant—Findings of Jury—Prohibited Act—Inadvertence—Absence of Express Finding of Contributory Negligence.*]—In an action by the administrators of the estate of a deceased workman employed by the defendants in building a blast furnace, who was killed by a brick falling down the shaft in which he was working, to recover damages for his death, the jury found that warnings were given; that the deceased was not in his proper place; that he knew the danger; and that, had he been in his proper place, he would not have been injured:—*Held*, that it is not enough that a suggested appliance would have prevented the accident, if the absence of the appliance was not a defect.—2. Where the questions answered are sufficient to dispose of the case, there is no need of further proceedings.—*D'Aoust* v. *Bissett*, 13 O.W.R. 1115, followed.—3. There can be no recovery where the accident took place when the workman was doing a prohibited act.—*Barnes* v. *Nunnery Colliery Co.*, [1912] A.C. 44, followed.—4. And it makes no difference that the dangerous act, while in form prohibited, is really winked at.—*Robertson* v. *Allen*, 77 L.J.K.B. 1072, referred to.—5. Assuming that all the fault of the deceased was due to inadvertence, and there being no express finding of inadvertence, yet the plaintiffs could not recover.—*Laliberté* v. *Kennedy*, unreported decision of an Ontario Divisional Court, 13th December, 1904, followed. *Mercantile Trust Co.* v. *Canada Steel Co.*, 3 O.W.N. 980.—RIDDELL, J.—Affirmed, 3 O.W.N. 1467.—D.C.

23. *Injury to and Death of Servant—Liability—Negligence — Contributory Negligence—Findings of Jury—Evidence — Workmen's Compensation for Injuries Act, sec. 3, sub-sec. 2; sec. 2, sub-sec. 1—Person Intrusted with Superintendence —Extended Meaning of.*]—In an action for damages for injury to the plaintiff while working for the defendants in their electrical machine-shop:—*Held*, that there was evidence upon which the jury could properly find, as they did, that the injury was caused by the negligence of T., a fellow-servant, and that T. was a person having superintendence, within the meaning of sec. 3, sub-sec. 2, of the Workmen's Compensation for Injuries Act, R.S.O. 1897 ch. 160. Under that sub-section, as explained by sec. 2, sub-sec. 1, it is not necessary to shew that the person having superintendence

had superintendence over the person injured.—*Kearney* v. *Nicholls*, 76 L.T.J. 63, specially referred to. *Darke* v. *Canadian General Electric Co.*, 3 O.W.N. 368, 817.—MULOCK, C.J.Ex.D.—D.C. (See *Magnussen* v. *L'Abbé*, 3 O.W.N. 864.)

24. Injury to and Death of Servant—Negligence—Evidence—Findings of Jury. *Lefebvre* v. *Trethewey Silver Cobalt Mine Limited*, 3 O.W.N. 1535.—C.A.

See Company, 2—Contract, 25, 35—Evidence, 3—Motor Vehicles Act—Negligence, 7—Partnership, 7—Railway, 3, 10-15.

MASTER IN CHAMBERS.

See Mechanics' Liens, 4—Solicitor, 4—Trial, 7.

MECHANICS' LIENS.

1. Building Contract—Non-completion of Work—Substantial Performance—Costs. *Simpson* v. *Rubeck*, 3 O.W.N. 577.—D.C.

2. Liability of Owner to Material-man—Building Contract — Contractor Failing to Complete Work in Due Time—Provisions of Contract — Allowance for Delay — Penalty or Liquidated Damages—Extinguishment of Balance Due to Contractor—Claim of Lien—Disallowance of. *McManus* v. *Rothschild*, 3 O.W.N. 291, 25 O.L.R. 138.—D.C.

3. Motion to Dismiss Proceeding to Enforce Lien—Default of Plaintiff in Making Discovery—Rights of Other Lien-holders—Absence of Plaintiff—Opportunity to Proceed. *Ramsay* v. *Graham*, 3 O.W.N. 972.—MASTER IN CHAMBERS.

4. Proceeding to Enforce Lien—Defendant not Appearing — Judgment of Official Referee—Motion to Set aside—Jurisdiction of Master in Chambers—Con. Rules 42 (17) (*d*), 778—Jurisdiction of Referee. *Guest* v. *Linden*, 3 O.W.N. 750.—MASTER IN CHAMBERS.

5. Statement of Claim—Substituted Service—Motion by Defendant to Set aside—Effective Knowledge of Defendant — Time for Delivery of Defence—Extension—Time for Commencing Proceedings—Pleading—Date of Last Work Done—Defendant in Province when Statement of Claim Filed—No Necessity for Order under Con. Rule 162. *Restall* v. *Allen*, 3 O.W.N. 63.—MASTER IN CHAMBERS.

See Vendor and Purchaser, 19.

MEDICAL EXAMINATION.

See Discovery, 17.

MEDICAL PRACTITIONER.

Malpractice — Negligence — Evidence — Damages — Costs. *Rickley* v. *Stratton*, 3 O.W.N. 1341.—MIDDLETON, J.

See Public Health Act.

MERCANTILE LAW AMENDMENT ACT.

See Principal and Surety.

MILL PRIVILEGES.

See Water and Watercourses.

MINES AND MINERALS.

1. Mining Act, 1908, sec. 78—Time for Performance of Work on Mining Claim—"The Three Months Immediately Following the Recording"—Construction. *Burns* v. *Hall*, 3 O. W.N. 315, 25 O.L.R. 168.—D.C.

2. Mining Claim—Inchoate Property Right—Destruction of Value of Claim—Actionable Wrong—Damage by Flooding —Lease by Crown of Water Power Location—Erection of Dam—Cause of Flooding—Application for Lease Prior to Discovery of Minerals—Damages—Jury. *Bucknall* v. *British Canadian Power Co.*, 3 O.W.N. 1138.—MIDDLETON, J.

3. Prospecting and Discovery by Miner on Crown Lands after Expiry of License—Renewal after Discovery and Staking —"Special Renewal License"—Effect of—Mining Act of Ontario, secs. 22 (1), 84, 85 (1) (*a*), 176 (1), 181 (1)—Offence Punishable as Crime—Taking Advantage of Wrong— Mining Commissioner—Finding of Fact—Credibility of Witness—Appeal. *Re Sanderson and Saville*, 3 O.W.N. 1560, 26 O.L.R. 616.—D.C.

See Contract, 17, 18, 19, 27, 29, 30—Deed, 2—Execution—Injunction, 6—Master and Servant, 2—Principal and Agent, 13—Timber, 2—Vendor and Purchaser, 19.

MINING COMMISSIONER.

See Mines and Minerals, 3.

MISCONDUCT.

See Contract, 8, 32—Husband and Wife, 9—Partnership, 7.

MISDESCRIPTION.

See Crown Lands, 2.

MISDIRECTION.

See Criminal Law, 3—Railway, 13.

MISFEASANCE.

See Company, 15—Highway, 8—Slander, 2.

MISNOMER.

See Will, 54.

MISREPRESENTATIONS.

See Fraud and Misrepresentation.

MISTAKE.

See Company, 14—Deed, 4, 6—Infant, 1—Insurance, 13—Mortgage, 1—Succession Duty—Vendor and Purchaser, 11 — Will, 14.

MISTRIAL.

See Criminal Law, 9—Trial, 1.

MONEY IN COURT.

Payment out to Trustees—Investment of Trust Fund. *Becher* v. *Miller*, 3 O.W.N. 357.—TEETZEL, J. (Chrs.)

See Costs, 11—Will, 32.

MONEY LENDER.

See Bills of Sale and Chattel Mortgages.

MORTGAGE.

1. Action for Foreclosure—Subsequent Purchasers of Portions of Mortgaged Land Made Defendants—Failure to Prove Notice of Mortgage—Mistake in Land Titles Office—Mortgage not Recorded against Portions Bought—Costs—Scale of—9 Edw. VII. ch. 28, sec. 21 (*e*). *Ramsay* v. *Luck*, 3 O. W.N. 1053.—SUTHERLAND, J.

2. Action for Payment or Foreclosure—Tender after Action—Pleading—Right to Redeem—Lost Will—Costs. *Horswell* v. *Campbell*, 3 O.W.N. 28.—FALCONBRIDGE, C.J.K.B.

3. Construction of Mortgage-deed—Provision for Repayment of Principal and Interest—Rate of Interest—Alternative Privilege of Payment at Lower Rate—Failure of Mortgagor to

Take Advantage of—Default—Foreclosure—Mortgage Account—Monthly Rests. *Colonial Investment and Loan Co.* v. *McKinley*, 3 O.W.N. 949.—RIDDELL, J.

4. Covenant for Payment Implied in Instrument Creating Charge under Land Titles Act—Action for Mortgage Money—Instrument not under Seal—Effect of Provisions of Act—Limitation of Actions—Period of Limitation — Second Mortgagee — Release to First Mortgagee — Effect of, on Right to Sue — Inability to Reconvey — Reservation of Rights. *Beatty* v. *Bailey*, 3 O.W.N. 990, 26 O.L.R. 145.—D.C.

5. Equitable Mortgage—Deposit of Title Deeds as Security for Debt—Oral Evidence—Conflict—Finding of Trial Judge—Legal Estate not in Depositor—Assignee for Benefit of Creditors—Costs. *Zimmerman* v. *Sproat*, 3 O.W.N. 1361, 26 O.L.R. 448.—RIDDELL, J.

6. Judgment for Redemption or Sale—Final Order of Sale—Motion to Open up Master's Report—Assignees of Equity of Redemption—Parties. *Home Building and Savings Association* v. *Pringle*, 3 O.W.N. 1595.—SUTHERLAND, J.

7. Power of Sale—Duty of Mortgagee—Sale at Fair Value — Conduct of Sale—Conditions—Withdrawal of Bid—Collusion between Mortgagee and Purchaser—Slight Evidence of. *Kaiserhof Hotel Co.* v. *Zuber*, 3 O.W.N. 339, 25 O.L.R. 194.—C.A.

8. Redemption—Extension of Time for—Terms. *Brodie* v. *Patterson*, 3 O.W.N. 685.—MASTER IN CHAMBERS.

9. Redemption—Mortgagee in Possession—Account — Interest—Insurance Moneys—Expenditure for Rebuilding — Improvements — Lien — Agreement — Judgment. *Patterson* v. *Dart*, 3 O.W.N. 127, 24 O.L.R. 609.—C.A.

10. Security for Bonds of Railway Company—Interest in Arrear—Acceleration of Payment of Principal—Action for Principal and Interest—Claim for Foreclosure and Possession—Payment of Interest Pendente Lite—Right to Possession—Receiver—Breaches of Covenants—Default in Payment of Taxes—10 Edw. VII. ch. 51, sec. 6—Costs. *National Trust Co.* v. *Brantford Street R.W. Co.*, 3 O.W.N. 1615.—KELLY, J.

See Buildings, 1—Charge on Land—Company, 17, 18—Dower, 2—Executors, 4—Fraudulent Conveyance, 2—Husband and Wife, 14, 15—Insurance, 7—Judgment, 7—Limitation of Actions, 5—Lunatic, 1—Municipal Elections, 3—Trespass, 4—Vendor and Purchaser, 16.

MOTOR VEHICLES ACT.

Injury by Motor Vehicle on Highway—Excessive Speed—Liability of Owner—Vehicle Taken out by Servant for his own Purposes—Absence of Knowledge or Permission—Neglect of Precautions to Prevent Unauthorised Use of Vehicle—Provisions of Statute. *Verral* v. *Dominion Automobile Co.*, 3 O.W.N. 108, 24 O.L.R. 551.—D.C.

See Negligence, 2, 5—Particulars, 7.

MUNICIPAL CORPORATIONS.

1. Application of Funds in Payment of Costs of Constable of Action against him—Class Action by Alleged Ratepayer against Councillors to Recover Moneys Paid—Status of Plaintiff as Ratepayer—Tenant—Liability for Taxes—Breach of Trust—Trustee Act—Application of. *Rochford* v. *Brown*, 3 O.W.N. 343, 25 O.L.R. 206.—D.C.

2. Bridge—Duty of County Council to Build, Maintain, and Repair—Municipal Act, 1903, sec. 616—Width of Stream—Measurement at High Water. *Re Village of Caledonia and County of Haldimand*, 3 O.W.N. 1654.—D.C.

3. Buildings—Regulation—Buildings "Fronting" on Streets—By-law—Validity—4 Edw. VII. ch. 22, sec. 19—Compliance with—Apartment House—Application of By-law to Particular Case—Discrimination—Unreasonableness. *Re Dinnick and McCallum*, 3 O.W.N. 1061, 1463, 26 O.L.R. 551.—Riddell, J. (Chrs.).—D.C.

4. Buildings—Regulation—"Location" of Garages on City Streets—2 Geo. V. ch. 40, sec. 10—By-law—Permit for Erection of Garage before Statute—Vested Rights—Construction of Statutes—Injunction. *City of Toronto* v. *Wheeler*, 3 O.W.N. 1424.—Middleton, J.

5. Buildings—Regulation—Prevention of Use of Building as Store or Manufactory—Municipal Act, 1903, sec. 541*a*—4 Edw. VII. ch. 22, sec. 19—By-law—Ladies' Tailoring Business — "Store" — "Manufactory" — Injunction—Stay of Operation—Costs. *City of Toronto* v. *Foss*, 3 O.W.N. 1426. —Middleton, J.

6. Buildings—Regulation—Prohibition of Erection of Apartment House—By-law—2 Geo. V. ch. 40, sec. 10—Permit for Erection—Revocation—Bona Fides—"Location" before Statute—Vested Rights. *City of Toronto* v. *Williams*, 3 O.W.N. 1643.—BRITTON, J.

7. Closing of Shops during Certain Hours—By-law—Powers of Council—R.S.O. 1897 ch. 257, sec. 44—Power to Pass By-law without Petition under sub-sec. 2—Effect of Presenting Unnecessary Petitions—Refusal of Court to Interfere with Exercise of Constitutional Functions by Municipal Councils. *Re Simpson and Village of Caledonia*, 3 O.W.N. 503.—RIDDELL, J.

8. Contract for Construction of Municipal Works—Resolution of Council Authorising—Meeting of Council not Properly Called or Constituted—Absence of By-law—Unexecuted Contract—Dismissal of Action for Breach. *O'Donnell* v. *Township of Widdifield*, 3 O.W.N. 597.—KELLY, J.

9. Ditches—Construction of Road Ditch—Surface Water—Flooding Lands—Absence of Negligence. *Baldwin* v. *Township of Widdifield*, 3 O.W.N. 1348.—BRITTON, J.

10. Drainage—Construction of Drain—Action to Restrain—Dismissal—Costs. *Yelland* v. *Township of Oliver*, 3 O.W.N. 370.—BRITTON, J.

11. Drainage—Jurisdiction of Drainage Referee—Action in High Court—Transfer to Referee—Case within Municipal Drainage Act—Cause of Complaint, when Arising—Limitation of Actions—Building of Bridge—Damage to Lands by Flooding—Quantum of Damages—Depreciation in Selling Value of Lands—Action Brought after Sale—Other Items of Damage—Reduction on Appeal. *Wigle* v. *Township of Gosfield South*, 3 O.W.N. 708, 25 O.L.R. 646.—C.A.

12. Drainage—Outlet Liability—Injuring Liability—By-law—Jurisdiction of Township Council—Initiation of Proceedings—Report—Necessity for Petition—Benefit of Work to Adjoining Township—Municipal Drainage Act, sec. 3, subsecs. 3, 4; sec. 77—Natural Watercourses—Riparian Right of Drainage into—Insufficiency of Outlet. *Township of Orford* v. *Township of Aldborough*, 3 O.W.N. 1517, 27 O.L.R. 107.—C.A.

13. Drainage—Township By-law Authorising Raising of Money to Pay for Work already Done—Absence of Previous Report by Engineer—Work Done without Authority of By-law—Failure to Observe Directions of Municipal Drainage Act—Motion by Ratepayer to Quash By-law—Estoppel—Discretion. *Re Johnston and Township of Tilbury East*, 3 O.W.N. 405, 25 O.L.R. 242.—C.A.

14. Electric Power Company—Powers under Act of Incorporation, 2 Edw. VII. ch. 107 (D.)—Erection of Poles and Wires in Streets of Town—Permission of Municipality—"Construct, Maintain, and Operate"—Introduction of Provisions of Railway Act—51 Vict. ch. 19, sec. 90—Amendment by 62 & 63 Vict. ch. 37, sec. 1—Direction of Municipality—Effect of Reading secs. 12 and 13 of Act of Incorporation with sec. 90 as Amended. *Toronto and Niagara Power Co.* v. *Town of North Toronto*, 3 O.W.N. 77, 609, 24 O.L.R. 537, 25 O.L.R. 475.—Boyd, C.—C.A.

15. Expropriation—Powers of—Works and Property of Gas and Electric Light Company—Municipal Act, 1903, sec. 566, sub-secs. 3, 4—Stated Case—Costs. *Sarnia Gas and Electric Light Co.* v. *Town of Sarnia*, 3 O.W.N. 1455.—Riddell, J.

16. Liquor Licenses—By-law Reducing Number of—Submission to Electors—Motion for Injunction to Restrain—Petition for Submission—Signatures—Separate Sheets each Headed by Petition—Several Petitions—Attempted Withdrawals—Other Objections—Interim Injunction—Motion Turned into Motion for Judgment. *Casson* v. *City of Stratford*, 3 O.W.N. 443.—Middleton, J.

17. Local Option By-law—Motion to Quash—Ballot not in Prescribed Form—Misleading Effect—Municipal Act, 1903, sec. 204—Interpretation Act, 1907, sec. 7 (35). *Re Milne and Township of Thorold*, 3 O.W.N. 536, 25 O.L.R. 420.—C.A.

18. Local Option By-law—Petition for—Right of Petitioners to Withdraw Names after Date Fixed by Statute for Presentation, but before Consideration by Council—Liquor License Act, sec. 141, sub-secs. 2, 3—Mandamus to Corporation to Submit By-law to Electors. *Re Keeling and Township of Brant*, 3 O.W.N. 324, 25 O.L.R. 181.—Sutherland, J. (Chrs.)

19. Local Option By-law—Voting on—Irregularities in Conduct of Voting—Violation of Provisions as to Secrecy—Acquies-

cence by Agents of those Opposed to By-law—Municipal Act, 1903, sec. 204—Onus. *Re Quigley and Townships of Bastard and Burgess*, 3 O.W.N. 170, 24 O.L.R. 622.—D.C.

20. Local Option By-law—Voting on—Scrutiny—Powers of County Court Judge—Votes of Tenants — Residence — Finality of Voters' Lists—Voters' Lists Act, 7 Edw. VII. ch. 4, sec. 24(2)—Votes of Persons Disentitled by Non-residence—Inquiry as to how Ballots Marked—Municipal Act, 1903, sec. 200. *Re West Lorne Scrutiny*, 3 O.W.N. 25, 422, 1163, 25 O.L.R. 267, 26 O.L.R. 339.—D.C.—C.A.

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titled to the commission.—*Stratton* v. *Vachon*, 44 S.C.R. 395, distinguished.—Action dismissed without costs. *Imrie* v. *Wilson*, 3 O.W.N. 1145, 1378.—CLUTE, J.—D.C.

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5. *"Retainer"—Agreement — Law Reform Act, 9 Edw. VII. ch. 28, sec. 22 et seq.—Payment for Services of Solicitor—Obligation of Solicitor to Account—Delivery and Taxation of Bill of Costs.*]—"I hereby retain" (the solicitor) "to make application for my release from gaol; and herewith deliver to him cheque for $300 as retainer:"—*Held,* not an agreement in writing with the client respecting the "amount and manner of payment for the services of the solicitor in respect of the business done or to be done by him," within the meaning of sec. 22 of the Law Reform Act, 9 Edw. VII. ch. 28.—*Held,* also, that the solicitor could not retain the $300, under the guise of a retaining fee, without accounting for it. A retainer is a gift by the client to the solicitor. Its true nature must be known to and understood by the client; and that was not the case here; the $300 was paid either as a security to the solicitor for his remuneration or as a payment of the remuneration; and in either case the solicitor was bound to deliver a bill and to account for the $300. *Re Solicitor,* 3 O.W.N. 1274.—MIDDLETON, J.

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45 Vict. ch. 95 (D.) (Amending Bell Telephone Company's Act)—See MUNICIPAL CORPORATIONS, 24.

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7 Edw. VII. ch. 2, sec. 7 (35) (O.) (Interpretation Act)—See MUNICIPAL CORPORATIONS, 17.

7 Edw. VII. ch. 4, sec. 24 (2) (O.) (Voters' Lists Act)—See MUNICIPAL CORPORATION, 20.

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7 Edw. VII. ch. 23, sec. 8 (O.) (Amending Marriage Act)—See MARRIAGE, 2.

7 Edw. VII. ch. 34, secs. 10, 33, 37 (O.) (Companies Act)—See COMPANY, 14.

7 Edw. VII. ch. 34, sec. 88 (O.)—See COMPANY, 15.

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7 Edw. VII. ch. 34, sec. 131 (5), (6) (O.)—See PENALTY.

7 Edw. VII. ch. 36, sec. 1 (O.) (Amending Insurance Act)—See WILL, 32, 34.

7 Edw. VII. ch. 37, sec. 7 (O.) (Lunacy Act)—See LUNATIC, 4, 5.

7 Edw. VII. ch. 49, sec. 25 (O.) (Game and Fisheries Act)—See GAME.

8 Edw. VII. ch. 21 (O.) (Mining Act)—See EXECUTION.

8 Edw. VII. ch. 21, sec. 78 (O.)—See MINES AND MINERALS, 1.

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8 Edw. VII. ch. 21, sec. 81 (O.)—See CONTRACT, 18.

8 & 9 Edw. VII. ch. 9 (D.) (Amending Criminal Code)—See CRIMINAL LAW, 5, 14.

8 & 9 Edw. VII. ch. 30, sec. 11 (D.) (Gold and Silver Marking Act)—See CRIMINAL LAW, 2.

9 Edw. VII. ch. 12, sec. 6 (2) (O.) (Succession Duty Act)—See WILL, 7.

9 Edw. VII. ch. 28, sec. 21 (*e*) (O.) (Law Reform Act)—See MORTGAGE, 1.

9 Edw. VII. ch. 28, sec. 22 et seq. (O.)—See SOLICITOR, 4, 5.

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9 Edw. VII. ch. 47, secs. 10, 11 (O.) (Execution Act)—See COMPANY, 6.

9 Edw. VII. ch. 62 (O.) (Amending Marriage Act)—See MARRIAGE, 2.

9 Edw. VII. ch. 90, sec. 9 (O.) (Continuation Schools Act)—See SCHOOLS, 1, 2.

9 Edw. VII. ch. 91, sec. 4 (O.) (High Schools Act)—See SCHOOLS, 1.

9 Edw. VII. ch. 93 (O.) (School Sites Act)—See SCHOOLS, 4.

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10 Edw. VII. ch. 64, sec. 5, sub-sec. 4 (O.)—See ASSIGNMENTS AND PREFERENCES, 3.

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1 Geo. V. ch. 37, sec. 20 (2) (O.) (Landlord and Tenant Act)—See LANDLORD AND TENANT, 4.

1 Geo. V. ch. 42, sec. 44 (O.) (Surveys Act)—See LIMITATION OF ACTIONS, 4.

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2 Geo. V. ch. 40, sec. 10 (O.) (Amending Municipal Act)—See MUNICIPAL CORPORATIONS, 4, 6.

2 Geo. V. ch. 55, sec. 13 (O.) (Amending Liquor License Act)—See LIQUOR LICENSE ACT, 1.

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1. Dedication—Evidence—User — Interruption — Prescription—Easement. *Plummer* v. *Davies*, 3 O.W.N. 466.—MIDDLETON, J.

2. Private Place or Way—Dedication—Municipal Corporation—Assessment—User — Prescription — Limitations Act — Deeds—Construction—Injunction—Damages. *Sinclair* v. *Peters*, 3 O.W.N. 1045.—SUTHERLAND, J.

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4. Construction—Annuities Charged on Income—Insufficiency of Income—Right to Encroach upon Corpus—Priority of Annuities—Increase of Annual Income by Realisation of Unproductive Property—Method of Dealing with Deficiency and Surplus before Period of Distribution—Apportionment of Proceeds of Non-productive Properties upon Realisation—Rights of Life-tenants—Fund Subject to Trust Settlements—"Family"—Grandchildren—Income from Trust Fund—Marshalling of Securities—Insurance Moneys—Apportionment—Declarations by Will in Favour of Classes—Validity—Predecease of Preferred Beneficiary—Distribution of Share among Survivors—Insurance Act, R.S.O. 1897 ch. 203, sec. 159(8). *Re Irwin*, 3 O.W.N. 936.—MIDDLETON, J.

5. Construction—Annuity—"Residue"—"Remainder"—Maintenance of Infant Children—Powers of Trustees under Will—Payments for Medical Attendance and Education—"If they Deem Proper"—Right of Married Daughter—Resort to Particular Funds—Gift of Income of Fund to Children during Life—Gift of Principal to Grandchildren—Distribution per Stirpes or per Capita—Postponement of Payment of Shares beyond Majority—Invalidity—Period of Distribu-

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6. Construction—Bequest of Residue—Death of One of Several Legatees before Death of Testator—Lapse—Intestacy—Vested Shares of Survivors—Distribution of Estate. *Re Quimby*, 3 O.W.N. 97.—MIDDLETON, J. (Chrs.)

7. Construction—Bequest of Sum of Money—"Free of Legacy Duty"—Foreign Charity—9 Edw. VII. ch. 12, sec. 6(2)—"To be Carried out in Ontario"—Succession Duty—Right of Executors to Deduct from Amount of Legacy. *Re Gwynne*, 3 O.W.N. 1428.—MIDDLETON, J.

8. Construction—Bequests to Children—Deduction of Advances—Apparent Inconsistency in Clauses of Will—Reconciliation — Oral Evidence — Inadmissibility — Intention. *Re Boehmer*, 3 O.W.N. 1353.—KELLY, J.

9. Construction—Bequest "to the Party at whose House I Die"—Occupant or Owner. *Re Woeffle*, 3 O.W.N. 518.—MIDDLETON, J.

10. Construction—Codicil—Revocation of Clause of Will—Division of Residue among Infant Grandchildren—Shares Payable at Majority—Gift over on Failure to Attain Majority—Express Direction to Pay Fund into Bank—Application of Income for Maintenance of Children—Executors—Right to Disregard Direction—Investment of Fund—R.S.O. 1897 ch. 130, sec. 2—Discretion—Summary Application to Court—Form of—Petition—Originating Notice—Con. Rule 938—Costs. *Re Richardson*, 3 O.W.N. 1473.—RIDDELL, J. (Chrs.)

11. Construction—Conditional Bequests—Revocation upon Non-fulfilment of Condition—Distribution among other Legatees Named in Will—Legatee Named in Codicil—Status of, to Question Fulfilment of Condition—Evidence as to Fulfilment—Condition contra Bonos Mores — Substantial Performance of Condition—Cy-près Doctrine. *Adams* v. *Gourlay*, 3 O.W.N. 909, 26 O.L.R. 87.—BOYD, C.

12. Construction—Devise—General Residuary Gift—Description of Land Owned by Testator—Sale of that Land and Acquisition of other Land—After-acquired Land Passing under Residuary Devise. *Re Thornton*, 3 O.W.N. 1371.—MIDDLETON, J.

13. Construction—Devise—Life Estate—Intestacy as to Remainder—Time at which Heirs of Intestate to be Ascertained. *Re Crowe*, 3 O.W.N. 906.—SUTHERLAND, J.

14. Construction—Devise—Life Estate—Remainder in Fee to Children of Life Tenant—"Issue"—Title to Land—Ejectment—Improvements under Mistake of Title—Compensation. *Montreuil* v. *Walker*, 3 O.W.N. 166.—BOYD, C.

15. Construction—Devise—Life Estate—Remainder to Sons in Equal Shares—Vested Estates or Interests. *Re Shattuck*, 3 O.W.N. 593.—CLUTE, J.

16. Construction—Devise—Life Estate with Power of Appointment—Title to Land—Description—Vendor and Purchaser. *Re Wolfe and Holland*, 3 O.W.N. 900.—LATCHFORD, J.

17. Construction—Devise—Power to "Dispose of" Land in Interest of Family—Power to Sell and Pass Fee to Purchaser—Trust—Vendor and Purchaser—Objection to Title. *Re Smith and Patterson*, 3 O.W.N. 1324.—MIDDLETON, J.

18. Construction—Devise of "Real Estate"—Land Subject to Contract of Sale not Included. *Re Snetsinger*, 3 O.W.N. 1569.—BRITTON, J.

19. Construction—Devises of Different Parcels of Land to Daughters of Testator — Division of Residuary Estate — Equalization of Values of Parcels Devised—Powers Personal to Executors—Death of Executors—Duty Devolving on Court—Method of Equalization—Valuation of Parcels—Principle of Valuation. *Re Drummond*, 3 O.W.N. 1459.—MIDDLETON, J.

20. Construction—Direct Devises—Devises in Trust—Implication—Modification—Administration—Assignee for Creditors of Devisee—Costs. *Re Jones*, 3 O.W.N. 672.—RIDDELL, J.

21. Construction—Disposition of Residue—Codicils—Inconsistency—Revocation — "Balance" — Annuities — Income — Expenses of Obtaining Probate—Absolute Gift of Company-shares. *Re Farrell*, 3 O.W.N. 1099.—TEETZEL, J.

22. Construction—Division of Residue—Maintenance of Children—Sale of Residence—Costs—Allocation. *Re Corkett*, 3 O.W.N. 761, 1134.—CLUTE, J.—D.C.

23. Construction—Gift for Maintenance of Residence—Perpetuity—Void Gift—Sale of Land—Charge of Annuity—Deed Poll—Bona Fides—Costs. *Kennedy* v. *Kennedy*, 3 O.W.N. 924, 26 O.L.R. 105.—TEETZEL, J.

24. Construction—Gift of Income of Fund for Life—Maintenance of Sisters of Testator—Interest to be Paid from Date of Death—Executors—Power to Set apart Interest-bearing Securities—Absolute or Conditional Gift. *Re K.*, 3 O.W.N. 883.—MIDDLETON, J.

25. Construction—Gift to Class—Period of Distribution. *Re McLaren*, 3 O.W.N. 84.—MIDDLETON, J.

26. Construction—Gift to Deceased Daughter—Children of Daughter Standing in her Place. *Re Reuber*, 3 O.W.N. 102.—FALCONBRIDGE, C.J.K.B.

27. Construction—Legacies—Death of Legatees before Period of Payment—Vested or Lapsed Legacies—Charge on Personalty as well as Land—Originating Notice—Costs. *Re Craig*, 3 O.W.N. 870.—MIDDLETON, J.

28. Construction—Legacy—Annuity for Limited Period—Sale of Homestead—Deferred Legacy—Hypothetical Questions—Devolution of Estate in Possible Events—Policy of Court. *Re Galbreaith*, 3 O.W.N. 869.—MIDDLETON, J.

29. Construction—Legacy—Postponement of Time for Payment—Death of Legatee before Payment—Vested Legacy—Residuary Clause. *Re Hay*, 3 O.W.N. 735.—BRITTON, J.

30. Construction—Legacy of Specific Sum of Money in Hands of Third Person—Debt Owing to Testatrix—Payment of Debt before Death of Testatrix—Lapse of Legacy—Petition for Advice of Court—R.S.O. 1897 ch. 129, sec. 39(1)—Scope of—Petition Changed into Motion under Con. Rule 938 (*a*)—Practice. *Re Rally*, 3 O.W.N. 273, 25 O.L.R. 112.—RIDDELL, J.

31. Construction—Legatee Predeceasing Testatrix—Claim by Children of Legatee—Provision for Lapse of Legacies where Legatees Died without Issue—Effect of—Legacy Falling into Residue. *Re McNeill*, 3 O.W.N. 160.—TEETZEL, J.

32. Construction—Life Insurance Policy Payable to "Heirs according to Will"—Bequest of Residue to Nephews—Power

of Appointment—Wills Act, sec. 30—Ontario Insurance Act, sec. 2, sub-sec. 36—Amendment by 7 Edw. VII. ch. 36, sec. 1—Moneys of Infants—Retention in Court—Costs. *Re Sawdon*, 3 O.W.N. 136.—MIDDLETON, J.

33. Construction—Maintenance of Widow—Income of Estate—Corpus—Death of Widow—Debts—Funeral Expenses—Residuary Bequest—Religious Society—Identification. *Re Swayzie*, 3 O.W.N. 621.—RIDDELL, J.

34. Construction—"My Life Insurance"—Policy Payable to "Legal Heirs"—Limited Control—Words of Will Confined to Insurance with which Testator had Power to Deal—Payment to Widow and Children in Equal Shares—Insurance Act, sec. 2, sub-sec. 36—Amendment by 7 Edw. VII. ch. 36, sec. 1. *Re Beam*, 3 O.W.N. 138.—MIDDLETON, J. (Chrs.)

35. Construction—Omission of Necessary Words—Ambiguity—Devise of Land—Reservation of House and Grounds for Use of Wife and Daughters—Affidavits as to Intention of Testator—Inadmissibility—Carelessness of Draftsman—Costs. *Re Kenny*, 3 O.W.N. 317.—MIDDLETON, J.

36. Construction—Part of Estate Undisposed of—Distribution of, as upon Intestacy—Residuary Clause—Intention—Evidence of Conveyancer—Rejection of. *Re Piper*, 3 O.W.N. 912, 1243.—MIDDLETON, J.—D.C.

37. Construction—Payment of Debts—Resort to Undisposed of Personalty—Costs. *Re Piper*, 3 O.W.N. 1377.—MIDDLETON, J.

38. Construction—Residuary Clause—Division of Residue among Children in Proportion to Legacies—Alterations in Amounts by Codicil—Second Codicil—Revocation of Bequest. *Re Hunter*, 3 O.W.N. 529, 25 O.L.R. 400.—C.A.

39. Construction—Restraint upon Alienation—Invalidity—Hypothetical Question—Contingent Event. *Re McKinnon*, 3 O.W.N. 890.—MIDDLETON, J.

40. Construction—Sale of Land—Order Authorising—Terms—Disposition of Purchase-money—Payment into Court—Maintenance of Beneficiary. *Re Krueger*, 3 O.W.N. 1285.—MEREDITH, C.J.C.P.

41. Construction—Secured Debts—Postponement of Payment—Payment out of Accumulated Income—Rights of Creditors

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42. Construction—Specific Legacy—Annuity—Legatee Predeceasing Testator—Failure of Gift—Bequest of Annuity during Lifetime of Widow—Death of Annuitant after Testator's Death, but before Widow's—Personal Representative Entitled—Specific Legacy—Vested Gift—Substitutionary Gift to Children of Legatee—Legatee Predeceasing Testator—Grandchildren of Legatees not Taking in Competition with Children. *Re Denton*, 3 O.W.N. 678, 1109, 25 O.L.R 505, 26 O.L.R. 294.—RIDDELL, J.—D.C.

43. Construction — "Survivor" — Period of Ascertainment — Death of Testator. *Re Johnson*, 3 O.W.N. 1571.—BRITTON, J.

44. Construction—Trust for Benefit and Advancement of Legatee—Directions Given to Trustee as to Application—Sole Discretion of Trustee—Death of Beneficiary—Intestacy as to Undisposed of Residue—Next of Kin of Testator Entitled. *Re Rispin*, 3 O.W.N. 706, 25 O.L.R. 633.—C.A.

45. Construction—Trust for Investment—Direction as to Nature of Investments—Powers of Trustees—"Securities"—Company-shares—Second Mortgages—Land—Building Used in Business. *Re J. H.*, 3 O.W.N. 283, 25 O.L.R. 132.—RIDDELL, J.

46. Construction—"Trustee of his Heirs"—Heirs of Living Person—Legal Estate for Life—Equitable Estate in Remainder—Contingent Remainder—Rule in Shelley's Case. *Re McAllister*, 3 O.W.N. 184, 25 O.L.R. 17.—C.A.

47. Construction—Wills Act, sec. 26(1)—Will Speaking from Death—Legacies Payable out of Specific Fund—Destruction of Fund in Lifetime of Testator—Direction to Sell Land and Divide Proceeds among Persons Named—Sale of Land in Lifetime of Testator—Administration of Estate—Payment of Debts and Costs out of Particular Funds. *Re Atkins*, 3 O.W.N. 665.—RIDDELL, J.

48. Devise—Complete Restraint upon Alienation—Invalidity, in Spite of Time-limit—Conditions—Absence of Demand of Fulfilment—Absence of Gift over. *Cheff* v. *Martin*, 3 O.W.N. 475.—FALCONBRIDGE, C.J.K.B.

49. Devise—Vested Estate in Interest—Restraint on Alienation—Repugnancy—Invalidity. *Hutt* v. *Hutt*, 3 O.W.N. 131, 24 O.L.R. 574.—C.A.

50. Devise—Precatory Trust—Injunction to "Take Care of" Brother of Devisee—Death of Devisee—Claim of Brother on Land Devised. *Re Pringle*, 3 O.W.N. 231.—MIDDLETON, J.

51. Devise of Land and Houses for Home for Friendless Women—Charitable Gift—Sale of Land in Lifetime of Testatrix—Part of Proceeds Undisposed of Retaining Character of Realty—Application in Furtherance of Wishes of Testatrix—Cy-près Doctrine. *Re Trenhaile*, 3 O.W.N. 355.—BOYD, C.

52. Devise of Land not Owned by Testator—Misdescription—Intention—Evidence—Vendor and Purchaser. *Re Coutts* and *Lebœuf*, 3 O.W.N. 1352.—KELLY, J.

53. *Legacies Payable out of Income of Estate—Investment in Shares of Trading Company—Profits of Business of Company—Apportionment between Income and Capital—Dividends Paid not Representing Income.*]—The action of the directors of a company binds those claiming under the shareholders. The dividends declared upon the stock are income and the only income from the stock: *Bouch* v. *Sproule*, 12 App. Cas. 385. But, when the executors of a shareholder delay realising so as to nurse a doubtful asset, and this operates to deprive the life-tenant of his income in the meantime, the whole loss cannot be thrown another upon capital or income, but must be distributed between capital and income: *In re Atkinson*, [1904] 2 Ch. 160; *Hibbert* v. *Cooke*, 1 Sim. & Stu. 552; *In re Bird*, [1901] 1 Ch. 916.—This rule was applied upon a petition for a direction with respect to the division of an estate under a will. *Re Leys*, 3 O.W.N. 330.—MIDDLETON, J.

54. Legacy—Misnomer of Legatee—Proof of Identity—Interest—Costs. *Re Gordon*, 3 O.W.N. 316.—MIDDLETON, J. (Chrs.)

55. Power of Appointment—Exercise by Will—Lack of Power in Court to Authorise Appointment in Lifetime of Donee of Power. *Re Newton*, 3 O.W.N. 948.—MIDDLETON, J.

56. Redemption Moneys Received by Executors—Loss on Realization of Security—Apportionment between Capital and Income—Effect of Agreements—Amounts Advanced by Executors—Interest—"Legal Charges and Expenses"—Account. *Leadlay* v. *Leadlay*, 3 O.W.N. 1218.—SUTHERLAND, J.

57. Testamentary Capacity—Absence of Undue Influence—Proof of Will in Solemn Form in Surrogate Court—Action in High Court to Set aside Will—Failure to Impeach—Costs. *Mosier* v. *Rigney*, 3 O.W.N. 1564.—BRITTON, J.

58. Testamentary Capacity—Claim by Daughter to Moneys Deposited in Bank—Trust—Evidence—Joint Account—Survivorship—Conduct of Bankers. *Everly* v. *Dunkley*, 3 O.W.N. 1607.—KELLY, J.

59. Testamentary Capacity—Insane Delusions—Findings of Surrogate Court Judge—Appeal. *Thamer* v. *Jundt*, 3 O.W.N. 1307.—D.C.

60. *Trust—Advancement of Adult—Beneficiary—Application of Capital of Estate—Powers of Trustee—Deed of Appointment—Meaning of "Advancement."*]—The testator devised and bequeathed all his estate to his son and his son's wife upon trust for their support and maintenance during their joint lives and the life of the survivor, and for the support and education of their children in their discretion, and upon their death to be divided among their surviving children and the heirs of such as died. The testator's son and his wife, or the survivor, were given power to make any other disposition of the estate among the children and their heirs, and to "convey and make over to any of them by way of advancement any portion of the same" (the estate) "to become theirs absolutely from thenceforth forever." The surviving wife of the testator's son appointed a sum of money in Court in favour of one of her sons, and he applied for payment out:—*Held*, that he must satisfy the Court that the money was to be paid to him "by way of advancement," in the narrow and restricted sense of the words.—*Bailey* v. *Bailey*, 14 Atl. R. 917, and *Molyneux* v. *Fletcher*, [1898] 1 Q.B. 648, followed. *Brooke* v. *Brooke*, 3 O.W.N. 52.—MIDDLETON, J. (Chrs.)

61. Validity—Absence of Undue Influence—Testamentary Capacity—Proof of Due Execution—Evidence—Statements of Testatrix. *Toal* v. *Ryan*, 3 O.W.N. 1267.—RIDDELL, J.

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1. Failure to Serve in Twelve Months—Order for Renewal Set aside—Absence of Valid Excuse for Delay—Statute of Limitations—Abuse of Process of Court. *Appleyard* v. *Mulligan*, 3 O.W.N. 943.—MIDDLETON, J. (Chrs.)

2. Foreign Corporation Defendant—Service on Person in Ontario—Motion by Person Served to Set aside—Affidavit Denying Connection with Company—Insufficiency—Practice. *Powell-Rees Limited* v. *Anglo-Canadian Mortgage Corporation*, 3 O.W.N. 844.—MASTER IN CHAMBERS.

3. Service on Foreign Company—Motion to Set aside—Assets in Ontario—Necessary Party to Action—Con. Rule 162—Leave to Enter Conditional Appearance. *Rainy River Navigation Co.* v. *Ontario and Minnesota Power Co.*, 3 O.W.N. 1314.—MASTER IN CHAMBERS.

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