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SUPREME COURT OF CANADA.

OTTAWA, February 20, 1894.

Quebec.]

HARBOUR COMMISSIONERS OF MONTREAL v. GUARANTEE CO. OF NORTH AMERICA.

Insurance—Guarantee—Notice to insurer of defalcation—Diligence.

By the conditions of a guarantee policy insuring the honesty of W., an employee, it was stipulated that the policies were granted upon the express conditions (1) that the answers contained in the application contained a true statement of the manner in which the business was conducted and accounts kept, and that they would be so kept, and (2) that the employers should immediately upon its becoming known to them, give notice to the guarantors that the employee had become guilty of any criminal offence entailing or likely to entail loss to the employers and for which a claim was liable to be made under the policy. There was a defalcation in W's accounts, no supervision was exercised over W's books as represented they would, and when the guarantors were notified over a week after employers had full knowledge of the defalcation, W. had left the country.

Held, affirming the judgment of the court below, (R.J.Q., 2 B.R. 6) that as the employers had not exercised the stipulated supervision over W., and had not given immediate notice of the defalcation they were not entitled to recover under the policy.

Appeal dismissed with costs.

H. Abbott, Q.C., for appellant.

Cross, Q.C., & Geoffrion, Q.C., for respondent.

February 20, 1894.

HOLLIDAY v. HOGAN.

Ontario.]

Surety—Discharge of—Endorser of note—Release of maker—Reservation of rights.

The plaintiff H., and the defendants J. & H., were both creditors of the other defendant, a hotel-keeper. The debtor borrowed $600 from H., giving a note endorsed by J. & H., who also assigned to H. to the extent of $600 a chattel mortgage on the debtor's property. The debtor not being able to pay the claim against him sold out his business to a third party who was accepted by both creditors as their debtor, and an agreement was entered into between the plaintiff and the new debtor by which time was given to the latter to pay his debt, but in all the negotiations that took place no mention was made of the $600 note. An action was brought against both maker and indorser of said note, which, on the trial, was dismissed as against the indorser, the trial judge holding that plaintiff had reserved his rights as against the indorser. This decision against the indorser was affirmed by a Divisional Court (22 O.R. 235), but reversed by the Court of Appeal (20 Ont. App. R. 298).

Held, affirming the judgment of the Court of Appeal, that the indorser was relieved from liability by the release of the maker.

Appeal dismissed with costs.

Johnson, Q.C., for appellant.

Moss, Q.C., for the respondent.

February 20, 1894.

GRAND TRUNK RY. CO. v. BEAVER.

Ontario.]

Railway Company—Purchase of ticket by passenger—Refusal to deliver to conductor—Ejectment from train—Contract between passenger and company—Railway Act, 51 *Vic. c.* 29, *s.* 248 (*D*).

By Sec. 248 of the Railway Act (51 Vic. c. 29, s. 248 (D) any person travelling on a railway who refuses to pay his fare to a conductor on demand may be put off the train. B. purchased a ticket to travel on the G. T. Ry., from Caledonia to Detroit, but had mislaid it when the conductor took up the fares, and was put off the train for refusal to pay the fare in money or produce the ticket.

Held, reversing the decision of the Court of Appeal (20 Ont. App. R. 476) which affirmed the judgment of the Divisional Court (22 O.R. 667), that the contract between the purchaser of a railway ticket and the company implies that the ticket will be delivered up when demanded by the conductor, and that B. could not maintain an action for being ejected on refusal to so deliver.

Appeal allowed with costs.

McCarthy, Q.C. & Nesbitt for the appellants.

Du Vernet for the respondent.

February 20, 1894.

NORTHCOTE v. VIGEON.

Ontario.]

Specific performance—Agreement to convey land—Defect of title—Will—Devise of fee with restriction against selling—Special legislation—Compliance with provisions of.

Land was devised to N., with a provision in the will that he should not sell or mortgage it during his life, but might devise it to his children. N. agreed, in writing, to sell the land to V., who, not being satisfied of N's power to give a good title, petitioned, under the Vendors and Purchasers Act, for a declaration of the Court thereon. The Court held that the will gave N. the land in fee with a valid restriction against selling. N. then asked V. to wait until he could apply for special legislation to enable him to sell, to which V. agreed and thenceforth paid to N. interest on the proposed purchase money. N. applied for a special act which was passed giving him power notwithstanding the restriction in the will to sell the land, and directing that the purchase money should be paid to a trust company. Prior to the passing of this act, N., in order to obtain a loan on the land, had leased it to a third party and the lease was mortgaged, and N. afterwards assigned his reversion in the land.

In an action by V. for specific performance of the contract to sell the land defendant claimed that the contract was at an end when the judgment on the petition was given; that he could give no title under the will; and that if performance were decreed the amount received on the sale of the land should be paid to him, and only the balance to the trust company.

Held, affirming the decision of the Court of Appeal, that the contract was kept alive by N., after the judgment as to title; that V. was entitled to her decree for performance; and that

the whole purchase money must be paid to the trust company.

Marsh, Q.C., and *Roaf* for the appellants.

McPherson and *Clarke* for the respondents.

February 20, 1894.

CLARKE v. HAGAR.

Ontario.]

Contract—Illegal or immoral consideration—Transfer of property—Intention of transferor—Knowledge of intended use—Pleading.

H. sold a house to a person who had occupied it as a house of ill-fame, taking a mortgage for part of the purchase money. The equity of redemption was assigned to C., and to an action of foreclosure C. set up the defence that the price paid for the house was in excess of its value, and a part of it was for the good will of the premises as a brothel. On the trial it was found as a fact that H., when selling, knew the character of the buyer and the kind of place she had been keeping, but that the house was not sold for the purpose of being used as a place of prostitution. Judgment was given against C. in all the Courts below.

Held, affirming the decision of the Court of Appeal, Taschereau, J., dissenting, that the particular facts relied on as constituting the illegal or the immoral consideration should have been set out in the statement of defence; that if the house had been sold by H. with the intention that it should be used for an immoral or illegal purpose, the contract of sale would have been void and incapable of being enforced, but mere knowledge by C. of the buyer's intention so to use it would not avoid the contract.

Appeal dismissed with costs.

R. Clarke, appellant, in person.

Armour, Q.C., for the respondent.

February 20, 1894.

FARWELL v. THE QUEEN.

Exchequer.]

Information of intrusion—Subsequent action—Res Judicata—Jurisdiction of the Exchequer Court—B.N.A. Act, Sec. 101.

In a former action by information of intrusion to recover possession of land in British Columbia, the title to such land was directly in issue and determined (See 14 Can. S.C.R. 392).

On an information of the Attorney General for the Dominion of Canada, praying for an order of the Court directing the defendant to execute to the Queen in right of Canada, a surrender or conveyance of the same land, the defendant in answer to the information, set up the provincial grant relied on in the first action, and contended further, that the Parliament of Canada had no power to give to the Exchequer Court original jurisdiction.

Held, affirming the judgment of the Court below, that there was *res judicata* as to the title sought to be relied on by defendant. *Atty. Gen. of British Columbia* v. *Atty. Gen. of Canada* (14 App. Cas. 295) distinguished.

Held, also, that the Parliament of Canada had power to give jurisdiction to the Exchequer Court of Canada in all actions and suits of a civil nature at common law or equity in which the Crown in right of the Dominion, is plaintiff or defendant. B.N. A. Act, sec. 101. Taschereau, J., *dubitante*.

Appeal dismissed with costs.

D. McCarthy, Q.C., for appellant.

Hogg, Q.C., for respondent.

February 20, 1894.

THE QUEEN v. DEMERS.

Exchequer.]

Title to lands in railway belt in British Columbia—Unsurveyed lands held under pre-emption record prior to statutory conveyance to Dominion Government—Federal and provincial rights—British Columbia Lands Acts of 1873 *and* 1879—47 *Vic. ch.* 6 (*D*).

On 10th Sept., 1883, D. *et al.*, obtained a certificate of pre-emption under the B.C. Land Act 1875, and Land Amendment Act 1879, of 640 acres of unsurveyed lands within the 20 mile belt south of the C.P.R., reserved on the 29th Nov., 1883, under an agreement between the Governments of the Dominion and of the Province of British Columbia, and which was ratified by 47 Vic. c. 14 (B.C.) On 29th August, 1885, this certificate was cancelled, and on the same day a like certificate was issued to respondents, and on the 31st July, 1889, letters patent under the Great Seal of British Columbia were issued to respondent. By the agreement ratified by 47 Vic. c. 6 (D) it was also agreed

that three and a half millions additional acres in Peace River District should be conveyed to the Dominion Government in satisfaction of the right of the Dominion under the terms of union to have made good to it, from public lands contiguous to the railway belt, the quantity of land that might at the date of the conveyance be held under pre-emption right or by Crown grant.

On an information by the Attorney General for Canada to recover possession of the 640 acres:

Held, affirming the judgment of the Exchequer Court, that the land in question was exempt from the statutory conveyance to the Dominion Government, and that upon the pre-emption right granted to D., *et al.*, being subsequently abandoned or cancelled, the land became the property of the Crown in right of the province, and not in the right of the Dominion.

Appeal dismissed with costs.

Hogg, Q.C., for appellant.

McCarthy, Q.C., for respondents.

February 20, 1894.

OSCAR AND HATTIE v. THE QUEEN.

British Columbia.]

54-55 *Vic.* (*U. K.*) *c.* 19, *sec.* 1, *subsec.* 5—*Presence of a British Ship equipped for sealing in Behring Sea—Onus probandi—Lawful intention.*

On 30th August, 1891, the ship "Oscar and Hattie," a fully equipped sealer, was seized in Gotzleb Harbour, in Behring Sea. while taking in a supply of water.

Held, affirming the judgment of the Court below, that when a British ship is found in the prohibited waters of Behring Sea, the burthen of proof is upon the owner or master to rebut by positive evidence that the vessel is not there used or employed in contravention of the Seal Fishery Behring Sea Act, 1891, 54-55 Vic. c. 19, sec. 1, subsec. 5.

Held also, reversing the judgment of the Court below, that there was positive and clear evidence that the Oscar and Hattie had entered the prohibited waters at Gotzleb Harbour for the sole purpose of getting a supply of water on her return trip from Copper Island to Vancouver Island, and that she was not used or

employed at the time of her seizure in contravention to 54-54 Vic. ch. 19, sec. 1, subsec. 5.

Appeal allowed with costs.

McCarthy, *Q.C.*, & *Eberts*, *Q.C.*, for appellants.

Hogg, *Q.C.*, for respondent.

February 20, 1894.

THE CORPORATION OF THE CITY OF VANCOUVER v. THE CANADIAN PACIFIC RAILWAY COMPANY.

British Columbia.]

44 *Vic. c.* 1, *sec.* 18—*Powers of Canadian Pacific R'y Co. to take and use foreshore—B. C. Statutes*, 1886, 49 *Vic. c.* 32, *City of Vancouver—Right to extend streets to deep water—Crossing of railway—Jus publicum—Interference with—Injunction.*

By section 18, 44 Vic., c. 1, the Canadian Pacific Railway Co. "have the right to take, use and hold the beach and land below "high water mark, in any stream, lake, navigable water, gulf "or sea, in so far as the same shall be vested in the Crown, and "shall not be required by the Crown to such extent as shall be "required by the Company for its railway and other works as "shall be exhibited by a map or plan thereof deposited in the "office of the Minister of Railways."

By 51 Vic., c. 6, sec. 5, the location of the Company's line of railway on the foreshore of Burrand Inlet, at the foot of Gore Avenue, Vancouver City, was ratified and confirmed.

The Act of Incorporation of the City of Vancouver, vests in the city all streets, highways &c., and in 1892, the city began the construction of works extending from the foot of Gore Avenue, with the avowed object to cross the railroad track at a level and obtain access to the harbour at deep water.

On an application for an injunction to restrain the city corporation from proceeding with their work of construction and crossing the railway:

Held, affirming the judgment of the Court below, that the *jus publicum* of every riparian owner to get access to and from the water at his land, is subordinate to the rights given to the railroad company by statute on the foreshore in question, and therefore the injunction was properly granted.

Per KING, J.—When any public right of navigation is interfered with, it should be maintained and protected by the Attorney General for the Crown. Appeal dismissed with costs.

D. McCarthy, *Q.C.*, & *Mr. Hammersley* for appellant.

Robinson, *Q.C.*, for respondent.

THE LATE MR. JUSTICE STEPHEN.

It is with deep regret that we record the death of Sir James Stephen, which took place on Sunday, March 11, at Redhouse Park, Ipswich. His health had been in a serious state for several months, and he had left his residence in De Vere Gardens, Kensington, and taken up his quarters in the country in the hope that the change of air and scene would improve his condition; but no favourable result followed, and he gradually succumbed to the illness which led to his retirement from the Bench nearly three years ago. He died at the age of sixty-five, after a life of arduous toil such as few men have been able to live. He came of a family of hard-workers, some of whom were distinguished as well as industrious. His grandfather, Mr. James Stephen, was a well-known Master in Chancery, and played a leading part in the anti-slavery movement, while his father, Sir James Stephen, was for a time Under Secretary of the Colonies, and was the author of 'Essays in Ecclesiastical Biography.' His only brother is Mr. Leslie Stephen, the eminent *littérateur.* Born at Kensington Gore on March 3, 1829, he was educated at Trinity College, Cambridge, where he graduated in 1852. The early part of his career, either at Cambridge or in the Temple, gave no indication of the eminence which belonged to his later years. He did not distinguish himself as a scholar at his University, and his rise at the Bar—to which he was called at the Inner Temple in 1854—was far from rapid. His qualities were not those of the advocate. His speeches were always models of lucidity; but his delivery was ponderous, and the accuracy of his views was not accompanied by rapidity of judgment. Five years after his call, however, he was appointed Recorder of Newark-on-Trent, and he obtained a moderate practice on circuit and at sessions. The first case to bring his name prominently before the public and the profession was the prosecution of the Rev. Roland Williams in the Court of Arches on a charge of heresy preferred against him by the Bishop of Salisbury. In this defence he obtained his first opportunity of displaying those extraordinary powers of research for which subsequently he became famous. The reputation he acquired in this ecclesiastical trial was strengthened by the part he played as one of the prosecuting counsel in the case of Governor Eyre. But it was in the fields of journalism and literature that his best work was done, during the fifteen years that elapsed between his call to

the Bar and his appointment as legal member of the Council of the Governor-General of India. He was a regular contributor to the *Saturday Review* and the *Cornhill Magazine*, and to several other of the leading periodicals of the day, the whole of his contributions being marked by a thoroughness of thought and lucidity of phrase which rendered them very acceptable reading even to those who did not share the conclusions at which he arrived. He was one of the earliest and most valued contributors to the *Pall Mall Gazette*. It is related that on many an occasion the editor would receive two articles on topical subjects from his pen before ten o'clock in the morning, and that their argumentative power and phraseology would not be inferior to his more studied contributions to the reviews. A number of his essays were gathered into a volume and published under the title of 'Essays by a Barrister.' His chief work of legal interest before he went to India was 'A General View of the Criminal Law,' which was published in 1863. It was in 1869 that he was appointed to succeed Sir Henry Maine as Legal Member of the Council of the Governor-General of India, and he remained in India some three years, during which his labors as a law reformer were sufficient to secure for his name an enduring place in the annals of the country. His activity knew no bounds, and doubtless the severe strain he imposed upon his mental and physical powers at this time was not unconnected with the sorrowful events that preceded the comparatively early death which every member of the legal profession now deplores. Taking up the work of codification begun by his predecessors, he prepared and passed through the council a code of criminal procedure and the Indian Evidence Act, 1872, both of which, though not beyond criticism in several respects, conferred lasting benefits upon the country, and in the preparation and passing of which Sir James Fitzjames Stephen exerted all the strength of which his massive frame and mind were capable. Having achieved such great success in his work of codification in India, he devoted himself to somewhat similar tasks in England on his return in 1872. At the instance of Lord Coleridge, then Attorney-General, he drafted a bill codifying the English law of evidence, and later on he prepared a bill for the codification of criminal law; but neither of his efforts, though each had involved an enormous amount of labor, met with success. The latter bill was submitted to a select committee, consisting of Lord Blackburn, Lord Justice

Lush, and Mr. Justice Barry, and a report was published; but, despite many promises that the matter should be dealt with in Parliament, the Government allowed it to disappear from their programme. Henceforward, until his promotion to the Bench, his time was chiefly occupied with literary labours. He resumed with renewed energy his contributions to newspapers and magazines, and increased his reputation as an author by 'Liberty, Equality, and Fraternity,' a powerfully-reasoned reply to Mill's 'Liberty.' He was appointed to the Bench in 1879; but his literary labours did not cease with his promotion. Some of his most important works were written as relaxation from his judicial duties. Among them are his 'History of the Criminal Law of England' and his 'Digest of the Law of Criminal Procedure.' His letters to the *Times* on Mr. Gladstone's Home Rule Bill of 1886 will be remembered for the masterly manner in which he presented his case against that measure, though whether a judge should have entered the political arena is a matter which certainly admits of some doubt. He was far more successful in writing upon political subjects than he was in attempting to enter the House of Commons. He made two fruitless efforts in this direction—one at Harwich in 1865, the other at Dundee in 1873. It must not be supposed, however, that the literary interests of the distinguished jurist were confined to legal, political, and philosophic questions. He was a great novel reader, though he did on one occasion, while trying a theatrical case, attribute the authorship of 'East Lynne' to Miss Braddon. He was thoroughly familiar with all the standard novelists of England and France, his favourite works of fiction being those of Victor Hugo, upon which he was ever ready to discourse. Among the lighter works from his own pen may be mentioned published addresses on 'The Right Use of Books,' 'The Relation of Novels to Life,' and 'Desultory and Systematic Reading.' He occupied a seat on the Bench for twelve years, during which period he was distinguished, both in civil and criminal trials, for the conscientiousness with which he discharged his duties, and for the profound learning which marked his judgments. He retired in April, 1891, in consequence of certain statements that were made regarding his health. He bade the Bar 'good-bye' in the Lord Chief Justice's Court, which was crowded with members of both branches of the profession eager to witness his last appearance on the Bench, and

to hear his pathetic words of farewell. In recognition of his eminent services he was created a baronet. He is succeeded in the baronetcy by Mr. Herbert Stephen, who was called to the Bar at the Inner Temple in 1881, and is clerk of assize on the Northern Circuit.—*Law Journal (London)*.

MARRIAGE FOR A LIMITED TIME.

An interesting, yet extremely ridiculous, question has found its way into the California Courts. The problem to be solved in all seriousness by the Courts is this: 'Is a marriage on the European plan valid?' In other words, is a contract of marriage stipulated to expire at the end of six months or a year a valid document? If the document be valid, is the limitation good? Does the limitation invalidate the contract? Can the relations of the contracting parties be legally set aside at the end of the prescribed time? Would a child born after the limit has expired, and were the contract not renewed, be a legitimate child? It seems impossible that in this day such a question should be seriously raised; but, as a matter of fact, there has developed among the California lawyers some difference of opinion on the subject.

Six months ago Edward M. Elkus and Lillie Mabney, of San Francisco, entered into a contract 'to be married for a period of six months.' A few days ago they again repaired to a notary's office, and caused a second contract to be drawn up for another six months. The young couple maintained that they have the advice of good lawyers that the contract is good. The situation is such a novel one that several reputable lawyers have persuaded the young couple to permit the question to be submitted to a court of adjudication. Just how to get this before the court is the question. It can hardly be accomplished by divorce proceedings, neither could it be accomplished by criminal process. Lawyers, however, declare that they will find a way of bringing the matter to judicial notice, in order that the ridiculous proposition may be settled at once.

Some of the best lawyers in the State have taken an interest in the matter. Many prominent citizens declare that it is against public policy for such a question to be dignified by a doubt for any length of time. On the other hand, there are a few lawyers who consent to maintain the strict legality of the terms of the limited contract.

What must undoubtedly be the law on the subject was expounded by Henry S. Foster, one of the lawyers interested. Mr. Foster says :—'In the first place, the law in this State is never to dissolve a marriage agreement when to do such would be against the public policy. Surely no one will contend that it would be good policy for the State to permit limited marriages. "Once married, always married" is a good maxim. If the contracting parties have assumed marital relations, they are man and wife, though the contract read "for a day." The only question is, to my mind : Did the parties assume, willingly and honestly, the positions of husband and wife toward each other? The limitation clause is simply null.'—*Omaha World-Herald.*

ONTARIO DECISIONS.

Negligence—Injury to buyer in shop—Invitation—Child of tender years—Accident—Active interference—Contributory negligence.

A woman went with a child two and a half years old to defendants' shop to buy clothing for both. While there, a mirror fell on the child and injured him.

Held, in an action for negligence, that it was a question for the jury whether the mirror fell without any active interference on the child's part or not; if it fell without such interference, that in itself was evidence of negligence; but if it fell by reason of such interference, the question for the jury would be whether the defendants were guilty of negligence in having the mirror so insecurely placed that it could be overturned by a child; and if that question were answered in the affirmative, the child, having come upon the defendants' premises by their invitation and for their benefit, would not be debarred from recovering by reason of his having directly brought the injury on himself.

Hughes v. *Macfie*, 2 H. and C. 744; *Mangan* v. *Atherton*, 4 H. and C. 388; and *Bailey* v. *Neal*, 5 Times L. R. 20, commented on and distinguished.

Semble, that the doctrine of contributory negligence is not applicable to a child of tender years.

Gardner v. *Grace*, 1 F. and F. 359, followed.

Semble, also, that if the mother was not taking reasonably proper care of the child at the time of the accident, her negligence in this respect would not prevent the recovery by the child.—*Sangster* v. *Eaton*, Queen's Bench division, March 3, 1894.

Arbitration and award—Interest of arbitrator—Employment as counsel—Bias—Disqualification.

Upon a motion to set aside an award of two out of three arbitrators, it was objected that one of the two, a Queen's Counsel, was disqualified by reason of interest. It appeared that, for some years prior to the arbitration, he had from time to time acted as chamber counsel for the standing solicitor of a corporation, one of the parties to the arbitration, and had advised him with respect to matters affecting thec orporation. It did not appear that he was the standing counsel for the corporation, nor for the solicitor in matters affecting the corporation, nor that he had advised or acted for the corporation or the solicitor after his appointment as arbitrator, nor that there was any business connection between him and the corporation.

Held, that there was no such relation between him and the corporation as might give rise to bias or show an interest which would invalidate the award.

Vineberg v. *Guardian Fire and Life Assurance Co.*, 19 A. R 293, distinguished.—*In re Christie and Town of Toronto Junction.* Rose, J., Jan. 29, 1894.

Partnership—Promissory note—Action against indorser—Action against same person, as maker—Res judicata—Judgment against firm—Action upon judgment against members—Conduct—Election—Estoppel.

The defendant was sued by the same plaintiffs in a former action as indorser of a promissory note, and judgment was entered in his favor upon the defence that he endorsed it for the accommodation of the plaintiffs without consideration. In this action he was sued upon the same note and others, as a partner in the firm who were the makers of the notes, along with the other partner.

Held, that the fact of his establishing his defence in the former action had no effect upon the question of his liability in this. Nor were the plaintiffs debarred by the recovery of a judgment against the partnership from bringing an action upon the judgment against the individual members of it.

Clarke v. *Cullen*, 9 Q. B. D. 355, followed.

The defendant set up that the plaintiffs had elected to treat the other member of the firm as their sole debtor, by reason of

their having proved their claim with and purchased the assets of the partnership from the assignee thereof under an assignment for the benefit of creditors, in which it was recited that the other was the only person composing the firm, and that the defendant had relied and acted upon their conduct and election, and they were therefore estopped from suing him as a partner.

Held, that, even if there was evidence that the defendant had acted in any way by reason of the plaintiffs' action, no estoppel arose, because the plaintiffs did nothing showing an election not to look to him, and he had no right to assume an election from what they did, nor to act as if such an election had been made. *Ray* v. *Isbister*, Street, J., Jan. 4, 1894.

Trespass—Arrest and imprisonment before indorsement of warrant—Detention—Subsequent indorsement—Damages—Measure of.

A warrant for the arrest of the plaintiff, who had made default in paying a fine under a summary conviction for an offence against the Liquor License Act, was sent from the county of Oxford to be executed in the city of Toronto. The plaintiff was arrested and imprisoned, professedly under the warrant, by peace officers of the city of Toronto, before it was indorsed by a magistrate for the city. Some hours after the arrest the warrant was indorsed. In an action for trespass, false arrest, etc., MacMahon, J., charged the jury that the only damages they could take into consideration were for the time between the arrest and the indorsement of the warrant, and that the subsequent detention was legal.

Held, that the officers who arrested the plaintiff were liable in trespass down to the time when the warrant was indorsed, and the damages were rightly limited according to the charge. *Southwick* v. *Hare*, Chancery division, Feb. 15, 1894.

Negligence—Landlord and tenant—Fall of verandah—Injury to daughter of lessee—Covenant to repair.

Where one had leased premises and had covenanted with the lessor to keep them in repair, and his daughter, living with him

at the time of the accident, was injured by the fall of a verandah attached to the building:—

Held, that the daughter had no right of action for damages, on account of the accident, against the lessor, nor could she be considered as standing in the position of a stranger. *Mehr* v. *McNab*, Chancery division, Feb. 22, 1894.

Principal and surety—Extension of time—Renewal of promissory note by some of the sureties—Payment—Right to contribution.

Three out of four sureties on a promissory note obtained from the holder an extension of time by a renewal during the absence and without the consent or approval of the fourth surety, the holder retaining the original note.

After payment of the renewal by the three who had obtained the extension, they brought an action against the fourth for contribution.

Held, that they could not recover.—*Worthington* v. *Peck*, Ferguson, J., Jan. 26, 1894.

Practising medicine—"Apothecary"—R. S. Q. c. 148, *s.* 45—*R. S. O. c.* 151—*Summary conviction.*

A person went into a druggist's shop, and stating he was ill, described his complaint, which the druggist said he understood to be diarrhœa. The druggist told him to live on milk diet, and gave him a bottle of medicine, for which he charged fifty cents. The druggist said he had several kinds of diarrhœa mixture, and sometimes had to inquire in order to decide what mixture to give.

Held, that this was practising medicine for gain within s. 45 of the Medical Act, R. S. O. c. 148.

Held, also, that the fact of the druggist being registered under the Pharmacy Act, R. S. O. c. 151, which entitled him to act as an apothecary as well as a druggist, did not authorize the practising of medicine.

Rule *nisi* to quash summary conviction discharged.—*Regina* v. *Howarth*, in Banc, Feb. 10, 1894.

Recognizance—Sufficiency of—Motion for certiorari— Criminal Code s. 892.

Where a recognizance filed on a motion for a *certiorari* to remove a conviction did not negative the fact of the sureties being sureties in any other matter, and omitted to state that the sureties were worth $100 over and above any amount for which they might be liable as sureties, it was held insufficient.

The rule in force as to recognizances prior to the passing of the Criminal Code, is still in force, and therefore there is no necessity for passing a rule under s. 892 of the code.—*Regina* v. *Robinet*, do., Feb. 12, 1894.

CHANCERY DIVISION.

LONDON, March 13, 1894.

Before NORTH, J.

In re ALDRIDGE.—ALDRIDGE v. ALDRIDGE.

Partnership—Death of partner—Business carried on by surviving partner at a loss—Remuneration for services.

This was a summons by the executors and trustees of a testator against his brother and the beneficiaries under his will, raising (amongst others) the question whether the brother was entitled to remuneration for his services in carrying on the business of the partnership after the death of the testator.

The brother, the surviving partner, had for nearly two years after the testator's death carried on the business, with the concurrence of the executors, with a view to its being sold as a going concern. Ultimately the brother withdrew from the business premises, and the executors realised the assets; but the sum realised was not sufficient to pay the capital due to the testator.

The brother had no capital of his own in the business.

He claimed remuneration for his services in carrying on the business after the death of the testator. The business had been carried on at a loss.

NORTH, J., held that, as the business had been carried on at a loss, the surviving partner was not entitled to any remuneration for his services.