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Lord Alverstone is the eighth Lord Chief Justice who has been appointed during the present century; the others being Lords Ellenborough, Tenterden, Denman, Campbell, Cockburn, Coleridge and Russell. Like many other eminent judges in England Lord Alverstone was not less known as an athlete than as a scholar. Sir A. L. Smith, whilst at the Bar, though not possessing many of the qualities of an advocate, acquired by his more solid gifts a very large practice, and was promoted to a judgeship without taking silk.

The appointment of Lord Alverstone (Sir Richard Webster) as Lord Chief Justice of England, and of Lord Justice A. L. Smith to the Mastership of the Rolls, vacated by Lord Alverstone receive the hearty commendation of the English legal journals Both of these judges are said to possess judicial gifts of a very high order, having both proved their qualifications for the positions to which they have been appointed, and eminent for their learning, their industry and their courtesy. Such commendations must be pleasant reading for both profession and public in England, and are not without their lesson to those who are responsible for judicial appointments in other countries, including our own Dominion.

Mr. Justice Stirling has been taken from the Chancery Division of the High Court of Justice in England to fill the vacancy occasioned by Lord Alverstone's promotion. Mr. Matthew Ingle Joyce succeeds Mr. Justice Stirling in the Chancery Division. It is delightful to read the commendations of the English periodicals on these appointments. The *Law Times* says of Mr. Justice Stirling: "A perfect temper and a judicial temperament accompanied with great clearness of intellect and a large knowledge of law combine in Mr. Justice Stirling, to make an admirable judge." The *Law Journal* says of Mr. Joyce that "His elevation to the bench has long been expected, and will be very popular. His wide experience and sound legal knowledge should make him an ideal

judge." Why do not those in authority in this country seek so to make their judicial appointments that they may receive similar congratulations from the profession?

It may as well be said plainly that at the present time there is something approaching a dread in the professional mind, that an appointment may be made to the vacancy in the Ontario High Court which will not meet the requirements of the situation. Certain it is that some of those whose names have been referred to in the public press as possible appointees, are not entitled either from their attainments or experience to the distinction, and of some others it may be said that they do not possess the judicial qualities which would seem to be necessary. Appointments to the bench are on a plane different to any others. Any serviceable political hack may become a useful employee in the customs, post office or other branch of the civil service. But judges should be selected from the very best available material quite apart from political obligations, class feelings or religious faith. The profession generally feel that much depends on the appointment to the present vacancy, as it will indicate the principle on which future judges will be selected by the Government. Happy the country that possesses rulers who are sufficiently free from political bias and so far above all prejudices or considerations as to appoint the best available men to the highest judicial positions.

A recent decision in the Province of Ontario, in the case of *Graves* v. *Gorrie*, will come somewhat as a surprise to many publishers of literary and artistic works in the Dominion. It has generally been supposed that all the Copyright Acts of the Imperial Parliament were in force in all the colonies. This is so as to literary works, the Imperial Act 5 & 6 Vict., giving copyright in such cases, being expressly made applicable to the colonies. But there appears to be a wide difference as to copyright in works of art, such as paintings, photographs and pictures. In this case the plaintiffs, an English house, were the owners of the copyright in the famous picture by Maud Earle, "What we have we'll hold." The copyright was duly registered at Stationers' Hall under the Imperial Act, 25 & 26 Vict., relating to artistic copyright.

It was contended that this gives them copyright throughout all the colonies. The defendant, who lives in Toronto and is a manufacturer of embossed cards and various advertising devices, had been using the picture, making copies of it and adapting it in different forms in connection with his business. The plaintiffs upon hearing of this applied for an injunction to restrain the defendant from making copies of or using the picture. Mr. Justice Rose who heard the case, in an elaborate judgment reviews the whole question and comes to the conclusion that the Imperial Act 25 & 26 Vict., giving copyright in artistic works, is limited to the United Kingdom and does not extend to Canada. This decision is of great importance, especially at this time, as the whole copyright question is now being considered by the British Parliament, and this view of the law will doubtless be taken into consideration in the framing of their new Copyright Act.

A SOLICITOR'S RETAINER.

In all actions and suits the common law required the actual presence of the parties in propriâ personâ, and admitted only of the substitution of an attorney by grace and favour, it being deemed impracticable, as we are told, for a man to be substituted (attornée) for another, inasmuch as he could not receive the punishment pro alieno delicto, or pay the fine awarded pro falso clamore on being non-suited.

The Statute of Merton, (20 Hen. 3, c. 10) appears to be the first statute conferring the general right to substitute an attorney in lieu of personal attendance in civil actions. As the practice is now to prosecute and defend by solicitor, it may be of interest to glance at some of the authorities on the contract between the client and his solicitor.

I. Evidence of retainer.—As between solicitor and client, the appointment of a solicitor is governed by the general law applicable to ordinary agents; the act of the client by which he engages a solicitor to manage his cause or perform other services for him being termed a retainer. A solicitor can, generally, be appointed by parol, or the authority to act may be implied from the circumstances or the conduct of the parties. But a written retainer is always

advisable, and where it is dispensed with the solicitor runs the risk of having his authority to act disputed.

In *Allen* v. *Bone*, 4 Beav. 493, Lord Langdale, M.R., said: "It is the duty of a solicitor to obtain a written authority from his client before he commences a suit. If the circumstances are urgent, and he is obliged to commence proceedings without such authority, he should obtain it as soon afterwards as he can. An authority may however be implied where the client acquiesces in and adopts the proceedings; but if the solicitor's authority is disputed, it is for him to prove it, and if he has no written authority, and there is nothing but assertion against assertion, the court will treat him as unauthorized, and he must abide by the consequences of his neglect."

In *Tabbernor* v. *Tabbernor*, 2 Keen 679, the same judge said: "According to the strict practice, there ought to be a warrant in writing to authorize the solicitor to commence proceedings; it is sometimes, however, dispensed with at the peril of the solicitor; had the party here acquiesced, it would be another question."

And if the solicitor neglects the precaution of obtaining written evidence of his authority, and the parol evidence is conflicting, the court will give weight to the denial of the client as against the solicitor: *In re Eccles and Carroll*, 1 Chy. Ch. 263. *Scribner* v. *Parcells*, 20 O.R. 554.

The rule only applies where it is simply oath against oath. Where there is other evidence, direct or circumstantial, in support of the solicitor, there is no rule that prevents the court from acting on the testimony so supported. And the rule does not extend to facts arising after the retainer and during the progress of the litigation: *Re Kerr, Akers & Bull*, 29 Gr. 188.

Where a solicitor brings an action without a proper retainer he may (and usually will) be ordered to pay the defendant's costs between party and party, and the costs of the plaintiff between solicitor and client: *Scribner* v. *Parcells*, supra. Even if he acted bona fide, under the belief that the person instructing him had authority to instruct him: *Geilinger* v. *Gibbs*, 66 L.J. Chy. 230.

Where the defendant's father employed an attorney to defend an action brought against his son, and the son knew of the retainer and did not disapprove of it, he was held to be bound by the acts of the attorney in the same way as if he had himself employed

him : *Cameron* v. *Baker*, 1 C. & P. 268. See also *Kerr* v. *Malpus*, 2 P.R. 135.

Where the general solicitor of a client invested money on mortgage on her account, and soon afterwards discovering some defect in the title brought an action to recover back the money, the authority to commence the action was presumed : *Anderson* v. *Watson*, 3 C. & P. 214.

Tabram v. *Horn*, 1 M. & R. 228, was an action by an attorney against his client to recover the costs of an ejectment action commenced and abandoned. The client had delivered her papers to the attorney telling him "that she was entitled to an estate, and that she would pay him if she recovered it." The attorney took the papers, saying, "that he would do what he could for her," and, without communicating further with her commenced the action. The court held that he had no instructions to commence the action, but only to enquire into the defendant's title,

In *Herr* v. *Toms*, 32 U.C.R. 423, it was the solicitor who denied the retainer, but the court held the evidence established the retainer so as to make him liable for the negligence of his Toronto agents.

Although a solicitor has no right to institute proceedings without express authority, he may, in the exercise of a general authority given to him by his client, accept service and defend actions without a special retainer for the purpose : *Wright* v. *Castle*, 3 Mer. 12.

II. Authority to retain solicitor.—There is no doubt that one partner has authority to retain a solicitor to commence and prosecute actions for the firm in the firm name, subject to the right of the other partners, who object, to be indemnified against costs : *Whitehead* v. *Hughes*, 2 Cr. & M. 318.

Has one partner authority to instruct a solicitor to enter an appearance for the firm ? If *Mason* v. *Cooper* (1893) 15 P.R. 418, be correctly decided, he has not. In Lindley on Partnership, 5th ed. 271, it is said : "One partner may defend an action brought against the firm, indemnifying the firm against the consequences of so doing, if he acts against the will of the other partners." It is submitted that this is a correct statement of the law notwithstanding *Mason* v. *Cooper*.

Let us look at the authorities cited in support of the decision. *Joyce* v. *Murray*, R. & J. Dig. 672 ; *Holme* v. *Allan*, Tay. 348, and *Auff* v. *Cameron*, 1 P.R. 255, are all cases where one partner gave a cognovit actionem against the firm. *Massey* v. *Kapelje*, 5

C.P. 134, was not a case of partnership at all. As far as the report shews, the defendant who instructed the attorney had no authority, implied or otherwise, to so instruct for the defendant who had not been served. The same remark applies to *Bayley* v. *Buckland*, 1 Ex. 1. *Roissier* v. *Westbrook*, 24 C.P. 91, was an action of ejectment against three defendants. There was no partnership or other connection between these defendants. They may have had distinct and even conflicting defences. Unless the same rule applies to a cognovit and an appearance, none of these cases seem to me to have any bearing upon the question. On page 272 of Lindley, almost immediately following the citation I have given, he says one partner cannot give a cognovit; thus drawing a distinction between the authority of one partner to enter an appearance and to give a cognovit. Surely there is a difference in principle between a cognovit, where one partner confesses judgment against all the partners, and an appearance, where he takes the first step towards defending the action on behalf of all the partners.

In *Mason* v. *Cooper* it was admitted that the service on the one partner was sufficient to maintain a judgment by default against the firm. It certainly is a peculiar result if a valid judgment can be obtained against a firm because the partner served neglects to enter an appearance, but the judgment can be set aside if the same partner enters an appearance to the action. Since *Mason* v. *Cooper* was decided, the same question came before the Court of Appeal in England in *Tomlinson* v. *Broadsmith* (1896) 1 Q.B. 386, and it was held that a managing partner had implied authority to direct a solicitor to enter an appearance in an action brought against the partnership. Rigby, L.J. went so far as to say that he did not think it would have made any difference if the other partner had objected, and so informed the solicitor. Lord Esher, M.R., said: "*Goodman* v. *DeBeauvoir*, 12 Jur. 989, 1037 is a direct and clear authority that one of a number of persons in the position of partners has authority to enter an appearance in an action against the partners." *Goodman* v. *DeBeauvoir*, does not appear to have been brought to the attention of the court in *Mason* v. *Cooper*.

One trustee or executor, unless authorized to do so, cannot pledge to a solicitor the credit of his co-trustee or co-executor, although the latter may by his acts or conduct ratify such appointment: Cordery on Solicitors, 65. But in *Simpson* v. *Gutteridge*, 1 Madd. 609, it was stated that one of several executors has power to

confess judgment. A landlord has no authority to retain a solicitor to enter an appearance for his tenant in an action of ejectment against the tenant: *Moran* v. *Schiermerhorn*, 2 P.R. 261.

Although, as a general rule, a corporation must appoint a solicitor under its corporate seal, yet where the Act incorporating a company gave the directors power to appoint officers and agents, and the by-laws of the company authorized the general manager to compromise claims and do other acts which generally require legal advice, it was held that a retainer by the general manager, though not under the corporate seal, was binding on the company: *Clarke* v. *Union Fire Ins. Co. Caston's case*, 10 P.R. 339. And where the solicitor had instructions to defend a suit, which was discontinued and a new one for the same cause of action commenced, it was held that the original retainer to defend continued in the new suit. Ib. But the fact that a solicitor has acted for a trustee does not authorize the solicitor to enter an appearance for the trustee in an action in relation to the trust without any further retainer: *Re Gray*, 65 L.T. 743.

In England a solicitor has no implied authority to pledge his client's credit for the payment of fees to counsel, *Mostyn* v. *Mostyn*, L.R. 5 Ch. 457. But in Ontario solicitors have such implied authority, and a legal privity exists between counsel and client so as to enable the counsel to recover his fees from the client. *Armour* v. *Kilmer*, 28 O.R. 619.

III. Extent of retainer.—Although a solicitor has complete authority over an action, and all that is incident to it, he has not by virtue of his retainer in an action any power over matters which are collateral to it: *Swinfin* v. *Lord Chelmsford*, 26 L.J. C.P. 97. A solicitor retained to collect a debt is not entitled to interplead without a further retainer. Proceedings in interpleader are substantially a second action: *Hackett* v. *Bible*, 12 P.R. 482; *James* v. *Bicknell*, 20 Q.B.D. 164.

The retainer in an action continues until the judgment is worked out. Until that time the solicitor on the record must be taken, as between him and the opposite party, to represent the client, unless the client not only discharges him, but substitutes another solicitor on the record: *De la Pole* v. *Dick*, 29 Ch. D. 351. The solicitor of a party has not, as such, any authority to enter into a contract for the sale of the client's lands: *Cameron* v. *Brooke*, 15 Gr. 693.

The common retainer to collect a debt imposes upon the

solicitor no duty to pursue any collateral remedies, such as to examine the defendant, or to attach debts due to him: *Darling* v. *Weller*, 22 U.C.R. 363.

According to Coke the authority of the solicitor in an action extends to the suing out execution on the judgment. *Searson* v. *Small*, 5 U.C.R. 259, is sometimes cited as an authority in support of the statement that the solicitor in the action is not supposed to issue execution without special directions. That, however, was an action against a solicitor for delaying to issue an execution under a retainer to prosecute and defend the action, and on demurrer the declaration was held bad in that it did not shew any request to issue execution or that the debtor had any goods from which the money could have been made. Robinson, C.J. said: "We know that the practice constantly is for the plaintiff's attorney not merely to carry on the suit to judgment, but to enforce the judgment by execution; and this he considers part of his duty without any new or special authority or instructions."

An attorney ad litem has no authority to bind his client not to appeal by an agreement with the opposing attorney that no appeal would be taken: *La Societe Canadienne-Francaise* v. *Daveluy*, 20 S.C.R. 449. But see *Wilson* v. *Huron*, 11 C.P. 548.

Where a client has disappeared the solicitor is still bound to accept service; and there appears to be no process by which a solicitor can of his own motion remove his own name from the record, notwithstanding that he has ceased to act: Cordery, 100.

IV. Client entitled to personal services of solicitor.—A client who retains a solicitor is entitled to the personal services of the solicitor. Where the solicitor had an office in the country where he carried on business by means of an articled clerk, it was held he could not recover in respect of business transacted there by the clerk alone: *Hopkinson* v. *Smith*, 3 Starkie, 75. So where a firm of solicitors is retained and the partnership is dissolved, the dissolution terminates the retainer, as the client is deemed to have contracted for the united exertions of all, and is entitled to treat the solicitors as having discharged themselves: Lindley on Partnership, 439; *Cholmondeley* v. *Clinton*, 19 Ves. 261.

In the case of *Cook* v. *Rhodes*, 1815, in an action to dissolve an injunction, upon disputes between partners as attorneys and solicitors, the Lord Chancellor laid it down as clear that they could

not, without the consent of their client, who confided to their joint skill, dissolve their partnership and turn him over to one of them; though they might give him notice that they would not be any longer concerned for him, and have their bill to that time settled. See notes p. 190, 13 R.R.

If a firm of solicitors is retained and one dies, the retainer continues to the surviving partner or partners: *Alchin* v. *Buffalo Ry. Co.*, 2 Chy. Ch. 45. But the mere successor in business of a deceased solicitor cannot be treated as a solicitor in the cause without a new appointment: *Collins* v. *Arnold*, 1 B.C.R. 217.

V. Retainer constitutes an entire contract.—The employment of a solicitor to conduct or defend an action constitutes an entire contract; and a solicitor who withdraws before its termination cannot sue for the costs he has incurred, unless his withdrawal was for good reason and upon reasonable notice: *Underwood* v. *Lewis*, 1894, 2 Q.B. 306.

In *Harris* v. *Osbourn*, 2 C. & M. 629, Lord Lyndhurst says: "I consider that when an attorney is retained to prosecute or defend a cause, he enters into a special contract to carry it on to its termination;" and Baron Parke in *Whitehead* v. *Lord*, 7 Ex. 691, says: "The rule was correctly laid down in *Harris* v. *Osbourn* that an attorney under a retainer to conduct a suit undertakes to conduct the suit to its final termination, and he cannot sue for his bill until that time has arrived."

This rule was modified, if not somewhat impaired, by the decision of Jessel, M.R., in *In re Hall & Barker*, 9 Ch. D. 538, where he says: "I cannot see any reason for assuming that a solicitor undertaking a business of this complicated nature, such as the administration, whether of a dead man's estate or an insolvent man's estate, which may give rise to a score of suits, and may occupy a score of years, before it is finally wound up, should be held to do a single and entire thing, and not be entitled to be paid any remuneration until the single and entire thing is done. I think it is reasonable that a solicitor should not be held to have entered into such a contract." And further on he says: "The transaction amounts to this in my opinion. We have done so much work; there is a convenient break in the business, up to which time we have made up our bill of costs; please pay us up to that time, and

when the outstanding matters are concluded, which we hope will be shortly, we will send in a further bill."

Some of the judges have tried to confine the principles of a "convenient break in the business" to such actions as were formerly purely Chancery actions, and to exclude it altogether from common law actions; but in *In re Romer & Haslam* (1893) 2 Q.B. 286, Kay, L.J., said: "But when we apply that doctrine (of an entire contract) to a long and complicated litigation which may not be completed for years, and may involve questions of difficulty, I care not in what tribunal the litigation is, it may be unreasonable to treat it as an entire contract in the sense that a solicitor is to have no right to send in his bill of costs until the whole matter is finally concluded. Accordingly, the courts, without infringing upon the old rule, have said that the proper mode of applying the rule is that in such a case the solicitor may at any reasonable break in the litigation send in his bill of costs up to that time and demand payment."

In *Underwood* v. *Lewis*, supra, it was argued that the strict rule of an entire contract laid down by the old cases had been so materially modified that all that is necessary to entitle a solicitor to withdraw and sue for his costs, is that he should give his client reasonable notice of his intention to do so. Lord Esher, M.R., dissented from that view very vigourously, and said that if the decision in *In re Hall & Barker* were to be so read, he should be of opinion it must be over-ruled. In fact Lord Esher seemed inclined to push the doctrine to an unreasonable length against the solicitor, when he says: "As to the nature of reasonable ground, I am not quite clear, and I doubt whether anything which may happen to the solicitor himself would be sufficient. It has been suggested, that if a great misfortune, such as a severe illness, happened to him, or if his death occurred, that would put an end to his obligation under the contract while not depriving him of a right to sue for what had in fact been done. If the captain of a ship who has contracted to navigate the ship from one port to another, dies in the middle of the voyage, his executors cannot say that his death has altered the contract and that he ought to be paid wages from week to week or month to month. It may be that death or illness would form a good ground why nothing should be charged against a solicitor, but it cannot be said that it has altered the contract from an entire contract to a contract to pay on a quantum meruit before the end of the suit." It must be remembered, however, that this was a

mere dictum, and not necessary to the decision of the point involved in the case at bar. And Davey, L.J., referring to this, adds to his judgment: "I only desire to say I express no opinion as to the effect of the death or illness of the solicitor." There is some comfort to the solicitor to know that in case of his death, although he may not be paid for work he has done on unfinished actions, he will not be liable to his client in damages for dying at such an inconvenient time.

This brings us to the question, what will justify a solicitor in refusing to proceed in the action after reasonable notice? Or, as the Master of the Rolls puts it in the case I have just quoted from: "What are the exceptions which judges have added to Lord Eldon's rule?" and he answers: "One of them is this: since a solicitor cannot reasonably be asked to pay disbursements out of his own pocket, the contract implies a provision that he may withdraw if his client refuses to supply him, because every person of sense would come to the conclusion that the parties had contracted with the knowledge of such implication."

In *Steele* v. *Scott*, 2 Hogan, 141, it was held that where a client by his conduct makes it impossible for his solicitor to continue longer with him, the solicitor is justified in refusing to continue the proceedings. It is not stated what the conduct of the client was, but apparently it consisted of imputations cast upon the character or conduct of the solicitor. The Master of the Rolls considered that the client had substantially discharged the solicitor.

The death of the client, as it terminates the solicitor's retainer, enables the solicitor to recover his costs before the action is terminated: *Whitehead* v. *Lord*, 7 Exch. 691. So also for other reasonable causes, as a dissolution of partnership, or his retirement from business, or the insolvency of his client, the attorney may throw up his employment, and may recover his costs for what he has done: Pulling, 327. But a solicitor cannot refuse to proceed on the ground of non-payment of disbursements if he has undertaken the action on the understanding that the plaintiff has no money to pay costs: *Harrington* v. *Binns*, 3 F. & F. 942.

What is reasonable notice must necessarily depend largely on the facts of each case. I have found only two cases where the point has been discussed. In *Wadsworth* v. *Marshall*, 2 Cr. & J. 665, the court refuses to compel an attorney, even after notice of trial, to carry the cause to court, unless the client supplied him with

funds. And where the commission day was on Thursday, and on the previous Saturday the attorney gave notice to his client that he would not deliver briefs to counsel unless he was furnished with funds, and the funds not being furnished, counsel was not instructed and a verdict was given against the client. In an action by the client against the solicitor for damages, the jury found that the client did not have sufficient notice, and the court held the finding was justified: *Hoby* v. *Built*, 3 B. & Ad. 350.

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ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

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FRAUDULENT PREFERENCE—MONEY LENT FOR SPECIFIC PURPOSE—REPAYMENT BY DEBTOR AFTER ACT OF BANKRUPTCY—INTENTION TO PREFER.

In re Vautin (1900) 2 Q.B. 325, involves a nice question under the law of bankruptcy. A debtor being in difficulties applied to a friend to lend him £1000 on the understanding that it would be sufficient, with other money the debtor was getting, to clear off all his liabilities and that it was to be so applied, and security was to be given for the £1000. On the same day he absconded, thereby committing an act of bankruptcy, and without giving the promised security, or applying the £1000 in payment of his debts. The debtor cashed the cheque for £1000, and in the evening of the day he absconded he posted a letter to the lender containing two £500 Bank of England notes and stating that he returned the money. There was no express agreement that the money should be returned if not applied in payment of debts, or if security was not given as promised. The trustee in bankruptcy claimed that the repayment of the £1000 was a fraudulent preference and that he was entitled to recover it from the lender. Wright, J., rejected the claim on three grounds, (1) that the money had been lent for a specific purpose which had not been carried out; and also (2) on the agreement that security should be given therefor, which had

not been done, and, even if the trustee were entitled to the money, he would be bound by the agreement that security was to be given therefor, and (3) that there was no preference because the debtor repaid the money, not with the intention of giving a preference, but because he bona fide believed he was bound by contract so to do.

INSURANCE (MARINE)—SEAWORTHINESS, IMPLIED WARRANTY OF.

Sleigh v. *Tyser* (1900) 2 Q.B. 333, was an action brought on a policy of marine insurance, in which the defence was that there was a breach of an implied warranty that the ship was seaworthy. The policy was on cattle and provided that the fittings of the ship were to be approved by Lloyd's surveyor. They were so approved. During the voyage, however, a large number of the cattle died, owing partly to the insufficiency of the appliances for ventilation, and partly to the insufficient number of cattlemen appointed to attend them. Bigham, J., held that in both these respects the ship was unseaworthy, and that the implied warranty of seaworthiness was not excluded by the express provision as to the fittings. With regard to the ventilation appliances he agreed that they might come within the term "fittings," but he was of opinion that the stipulation that the fittings should be approved by Lloyd's agent did not supersede the implied warranty of seaworthiness in respect of ventilation, and that that warranty extended to all matters necessary for the safe carriage of the cargo in question.

INSURANCE (MARINE)—CAPTURE—PROPERTY OF ALIEN ENEMY—INTENTION TO WAGE WAR—SEIZURE BY BELLIGERENT STATE OF PROPERTY OF ITS OWN SUBJECTS.

Driefontein Gold Mines v. *Janson* (1900) 2 Q.B. 339, was an action on a marine policy of insurance effected by the plaintiffs, a corporation doing business in the Transvaal, insuring a consignment of gold, inter alia, from capture while in transit from mines in the Transvaal to the United Kingdom. Shortly before hostilities broke out between the Transvaal and Great Britain the gold was seized by the Transvaal Government. The defendants contended they were not liable because the plaintiffs were alien enemies, and the loss was sustained by seizure by the Transvaal Government for the purpose of supplying it with funds to levy war against Her Majesty. The defendants waived all objections

on the ground that the plaintiffs were aliens and could not sue while the war lasted, and agreed that the case should be dealt with as if the war were over. Mathew, J., held that the fact that war had not been declared prevented the seizure, though made in contemplation of hostilities, from being an hostile act; and that the subsequent breaking out of the war did not invalidate the contract of insurance; and that the case was not within the rule of law which forbids the insurance by a British subject of an alien enemy's property; that the loss was covered by the policy and that the plaintiffs were accordingly entitled to recover.

INSURANCE (MARINE)—COLLISION CLAUSE—CONSTRUCTION—SUM PAID "IN RESPECT OF INJURY TO SUCH OTHER SHIP OR VESSEL ITSELF"—EXPENSE OF REMOVAL OF WRECK.

Burger v. *Indemnity M. M. Assurance Co.* (1900) 2 Q.B. 348, was also an action on a policy of marine insurance in which the point determined by the Court of Appeal (Smith, Williams and Romer, L.JJ.) overruling Mathew, J., is simply this, that the expenses of removing a ship wrecked by collision with the vessel assured do not come within the terms of "sums paid in respect of injury to such other ship or vessel itself" of which the policy provided, in the event of a collision, the insurers would pay a proportionate part.

COMPANY—CALLS ON FORFEITED SHARES.

In Ladies' Dress Association v. *Pulbrook* (1900) 2 Q.B. 376. The action was brought by a liquidator of a joint stock company to recover calls which had been made, prior to forfeiture, on certain shares which had been forfeited. The articles of association provided that any member whose shares had been forfeited should, notwithstanding the forfeiture, be liable to pay all calls owing on the shares at the time of forfeiture. The defendants resisted the claim on the ground that the shares had been forfeited more than a year before the commencement of the liquidation, and therefore the defendants were not liable to be placed on the list of contributories. But the Court of Appeal (Smith, Williams and Romer, L.JJ.) agreed with Ridley, J., and overruled this contention, being of opinion that the defendants were liable, not as contributories, but as debtors of the company. The case also deals with another point as to the validity of certain resolutions for the reduction of capital which does not appear to call for notice here.

MASTER AND SERVANT—INJURY TO WORKMAN ON HIS WAY TO WORK—ACCIDENT "IN COURSE OF EMPLOYMENT."

Holmes v. *Great Northern Ry.* (1900) 2 Q.B. 409, is a very similar case to *Holness* v. *McKay* (1899) 2 Q.B. 319 (noted ante vol. 35, p. 707). An engine cleaner employed by the defendants at their station at King's Cross, was directed by the defendants to work in a new engine-shed at Hornsey, about four miles distant. He was conveyed by the defendants free of charge to and from his work at Hornsey, and while crossing the line at the station at Hornsey in order to get to his work he was killed by a passing train. The Court of Appeal (Smith, Williams and Romer, L.JJ.) held that the accident took place in the course of his employment

DESERTION BY WIFE—REFUSAL OF MARITAL INTERCOURSE.

Synge v. *Synge* (1900) P. 180, deserves attention, as bearing on the law of alimony, inasmuch as Jeune, P.P.D., held that the refusal by a wife of marital intercourse with her husband is desertion by her, and she cannot allege desertion by her husband if in consequence he refuses to live with her.

PRIVATE INTERNATIONAL LAW—DOMICIL—FRENCH SUBJECTS WILL—REVOCATION OF WILL BY SUBSEQUENT MARRIAGE—HUSBAND AND WIFE.

In re Martin, Loustalan v. *Loustalan* (1900) P. 211, is a case brimful of difficult questions of private international law. The question at issue was whether a will made by a Frenchwoman domiciled in England was revoked on her subsequent marriage in England to a Frenchman under the following circumstances. The testatrix was an unmarried Frenchwoman living in England at the date of the will, and she was then living in service. She subsequently set up a laundry business and married a Frenchman who had been accused and, in his absence, convicted of crime in France, and who had fled from that country to escape punishment. There was no settlement. After marriage the husband assisted to carry on his wife's laundry business and after the lapse of twenty-two years he left his wife, returned to France, and had ever since lived there, the lapse of twenty years having, according to French law, relieved him from any further liability for his alleged offence. The question as to whether or not the ante-nuptial will had been revoked or not caused a difference of opinion. Jeune, P.P.D., held that the domicil of the parties throughout was French, and that

the effect of marriage on the will was governed by French law so far as the will related to moveables, and under that law it was not revoked, and therefore entitled to probate in the English Court—with this Lindley, M.R., agreed with the qualification that the will did not affect leaseholds. Rigby and Williams, L.JJ., however, disagreed and held that both the husband and wife had acquired an English domicil at the time of the marriage, and that the English law applied and that the previous will made by the wife was revoked by the marriage, and that this was unaffected by the husband, and consequently the wife, afterwards reacquiring a French domicil. As to whether the law, that marriage revokes a previously made will, is a part of the matrimonial law, or testamentary law of England, the judges were also not agreed. Jeune, P.P.D., was of opinion that it is part of the testamentary law. Williams, L.J., on the other hand considers that it is part of the matrimonial law.

PATENT – JOINT GRANT—SURVIVORSHIP—COVENANT BY JOINT OWNERS TO ASSIGN —APPEAL – CROSS APPEAL—RULE 870—(ONT. RULE 813).

In *National Society for Distribution of Electricity* v. *Gibbs* (1900) 2 Ch. 280, the judgment of Cozens-Hardy, J., (1899) 2 Ch. 289 (noted ante vol. 35, p. 714) has failed to stand the fire of the Court of Appeal. The facts, it may be remembered, were simple. Certain patents for inventions had been granted to Goulard & Gibbs, and Goulard & Gibbs had entered into a covenant to assign the patents to the plaintiffs, and the agreement provided that the assignment should contain a covenant by the vendors that all the patents were valid and in nowise void or voidable. Goulard died before the assignment had been executed, and his administratrix refused to join in the assignment or the covenant above referred to. Cozens-Hardy, J., held that the patentees were joint owners and that Gibbs, the survivor, alone could be required to assign, or to enter into the covenant. The Court of Appeal (Lindley, M.R., and Rigby and Collins, L.JJ.) held that the effect of the agreement was that the transfer should contain joint and several covenants by the vendors, and that the liability of the administratrix to the plaintiffs must be ascertained on that footing —and a declaratory order was made to that effect, and the case was remitted for trial. A point of practice also arose on the appeal as to which the Court of Appeal express an opinion which it may

be useful to note, to the effect that where a claim and counter claim are dismissed at a trial and the defendant appeals from the judgment on the counter claim, it is not open for the plaintiff, by a notice served under Rule 870 (Ont. Rule 813), to appeal from the judgment on the claim, but in order to do so he must bring a cross appeal. But in the present case the judge had so linked the action and counter claim together, with the acquiescence of counsel, that a cross notice was, in this case, treated as a cross appeal.

VENDOR AND PURCHASER—REPUDIATION BY PURCHASER AFTER PART PAYMENT—SPECIFIC PERFORMANCE—LACHES.

Cornwall v. *Henson* (1900) 2 Ch. 298, is another case in which the judgment of Cozens-Hardy, J., (1899) 2 Ch. 710 (noted ante p. 89) has failed to be upheld by the Court of Appeal. As the facts are pretty fully stated in our previous note of the case, it is only necessary here to say that in the judgment of the Court of Appeal (Webster, M.R., and Rigby and Collins, L.JJ.) the conduct of the plaintiff did not amount to an abandonment of the contract, and the vendor was not justified in treating the contract as abandoned; but, at the same time, the Court held that the plaintiff's laches disentitled him to specific performance, but the Court of Appeal considered him entitled to recover damages which were assessed at £125. The report is silent as to the question of costs.

COMPANY—DIRECTORS—IMPROPER ALLOTMENT OF SHARES TO DIRECTORS AT UNDER VALUE—DAMAGES, MEASURE OF—PRACTICE—APPEAL—STAY OF REFERENCE PENDING APPEAL.

Shaw v. *Holland* (1900) 2 Ch. 305, was a case of a shareholder against directors, to make them account to the company of which they were directors, for damages for allotting shares to themselves at an under value, and the question was as to the proper measure of damages. North, J., had held that the damages should be ascertained as to shares sold, on the footing of the difference between the market price the shares realized and that at which they were allotted, and as to shares retained the difference between the market price on the day when the trial ended before him and the price at which they were allotted. The Court of Appeal (Webster, M.R., and Rigby and Collins, L.JJ.,) agreed with North, J., as to the measure of damages as to the shares sold, but

as to the shares retained, they considered the difference between the market price on the day of allotment and the price paid, was the proper measure of damages as to them. An application was made to stay the reference as to damages pending an appeal to the House of Lords, but the Court of Appeal refused to make any order, being of opinion that as a general rule proceedings on a judgment should not be stayed pending an appeal, except on special grounds.

PRACTICE—DISCOVERY—PRODUCTION OF DOCUMENTS—PRIVILEGE—BILLS OF COSTS.

In *Ainsworth* v. *Wilding* (1900) 2 Ch. 315, two points of practice are decided, (1) that mere records of what takes place in chambers in the course of hostile proceedings in the presence of parties on both sides, are not privileged from production, and such entries contained in a bill of costs delivered by a solicitor to his client are not privileged from production by the client; and (2) that correspondence which is protected on the ground of privilege is not rendered liable to discovery merely because it contains statements of fact as to what has taken place in chambers in the course of hostile litigation in the presence of both parties, and therefore letters or statements made by a solicitor to his client containing such statements of fact were not liable to production. It would almost seem that these two propositions are mutually destructive; it may be observed, however, that with regard to the bills of costs no objection was made to their production, but privilege was claimed only for certain entries therein, which was really the point determined by Sterling J., and not the larger question whether the bills were liable at all to production.

RESULTING TRUST—FUND RAISED BY SUBSCRIPTION FOR MAINTENANCE OF POOR PERSON — DEATH OF BENEFICIARY — UNAPPLIED SURPLUS OF CHARITABLE FUND RAISED BY SUBSCRIPTION.

In re Trusts of Abbott, *Smith* v. *Abbott* (1900) 2 Ch. 326, discusses the doctrine of resulting trusts. The facts were that a fund had been raised by voluntary subscription for the maintenance of two poor persons who had died. There had been no declaration of trust, and the surplus of the fund remained unexpended, and the question presented for Sterling, J., to decide was whether the representatives of the deceased beneficiaries or

the subscribers to the fund were entitled to such surplus. The learned judge held that there was a resulting trust in favour of the subscribers.

WILL—LIMITED POWER OF APPOINTMENT—APPOINTMENT MADE PRIOR TO DATE OF POWER—WILLS ACT 1837 (1 VICT. C. 26) SS. 24, 27 -(R.S.O. C. 128, SS. 26, 29).

In re Hayes, *Turnbull* v. *Hayes* (1900) 2 Ch. 332, is a case that shews, that, notwithstanding the provisions of the Wills Act (1) that every will is to speak as if executed immediately before the death of the testator: 1 Vict. c. 16, s. 24 (R.S.O. c. 128, s. 26); and (2) that a general devise of reality or personalty is to include property over which the testator had a general power of appointment: s. 27, (R.S.O. c. 128, s. 29),—a will purporting to dispose of all property over which at the time of his death the testator should have a disposing power, will not be deemed an execution of a special power of appointment by will, subsequently given to the testator. The facts were that the testator in 1884 made a will whereby he gave all his residue over which he should have any disposing power at the time of his death to trustees, upon trust for sale and conversion, and to pay the yearly income to his wife for life or widowhood. In 1893 the testator's father made a will whereby he gave a power to the testator to appoint a fund by will or codicil in favour of his wife. The father died in 1895, and the testator in 1899, leaving a wife and children, and Byrne, J., held that the will of 1884 could not be construed as an execution of the power subsequently conferred on the testator by his father's will. Section 27 of the Wills Act (Ont. Act, s. 29) he holds, extends only to property over which the testator has a general power of appointment at the time of his death, and he considered the opinion of Shadwell, V.-C., in *Stillman* v. *Weedon*, 16 Sim. 26, that it also extended to special powers, not to be well founded.

POWER OF APPOINTMENT—GENERAL POWER TO BE EXERCISED BY WILL ATTESTED BY TWO WITNESSES— DONEE OF POWER A DOMICILED FRENCHWOMAN—HOLOGRAPH WILL OF DONEE UNATTESTED.

Barretto v. *Young* (1900) 2 Ch. 339, is another decision on the subject of the execution of a power of appointment. In this case the power provided that it was to be executed by will attested by two or more witnesses. The donee of the power was a domiciled Frenchwoman, and she left a holograph will unattested, disposing

of all of her estate, which was valid according to French law, and, therefore, admitted to probate in England. It was claimed by the testatrix's next of kin that the will was not an execution of the power. Byrne, J., upheld the contention, being of opinion that where the instrument creating the power prescribes special formalities in the execution of the instrument by which the power is to be executed, it is essential that those formalities shall be complied with, and that it was not enough in the present case that for other purposes the will was a valid will.

WILL—CONSTRUCTION—"DIE UNMARRIED."

In re Chant, Chant v. *Lemon* (1900) 2 Ch. 345, construes the meaning of the words "die unmarried," contained in a will. By the will in question the testatrix made a disposition of real and personal property in favour of her brother Frederick for life, and after his death in trust for his children or child. "But if he shall die unmarried and without leaving any children or a child who shall attain 21," then the gift was to go over to other parties. Frederick died, leaving a widow, but he had never had any child Those entitled under the gift over claimed to be entitled, and the question was whether the contingency upon which the gift over was to take effect had happened; on the other hand, the next of kin claimed to be entitled to the property as upon an intestacy. Cozens-Hardy, J., who tried the case, came to the conclusion that the will was to be construed as if the testatrix had said "if he shall die without leaving a wife and without leaving a child," and as that contingency had not taken place, he declared the next of kin were entitled as upon an intestacy.

CONTRACT — STATUTORY CONFIRMATION OF CONTRACT — CONTRACT TO GIVE 'FIRST REFUSAL' OF LAND—PURCHASER WITH NOTICE—INJUNCTION.

In *Manchester Ship Canal* v. *Manchester Race Course Co.* (1900) 2 Ch. 352, the plaintiffs had entered into an agreement with the Manchester Race Course Co. whereby, inter alia, it was agreed that whenever the lands used by the Race Course Co. as a race course should cease to be so used, or in case the lands should be at any time proposed to be used for dock purposes, then in either of such cases the Race Course Co. were to give the plaintiffs "the first refusal" of the lands. The agreement had been confirmed by statute. In October, 1899, the Race Course Co. offered to sell the

land in question to the plaintiffs for £350,000, and at the same time the Race Course Co. were also negotiating for a sale of the property to another company, but the price the company was willing to give was never communicated to the plaintiffs. On 6th November, 1899, the plaintiffs offered £200,000, which was refused, and on the same day the Race Course Co. arranged to sell the property for £280,000 to the Trafford Park Co., "subject to the rights of the Canal Co. under the agreement of March 7, 1893." The action was brought against both the vendors and purchasers, to restrain the carrying out of the sale as being a breach of the agreement with the plaintiffs. The defendants contended that the agreement was void for remoteness and uncertainty, but Farwell, J., held that the agreement, having received statutory confirmation, was not open to objection on that ground. He also held that a proposed user by any intending purchaser (including the plaintiffs) entitled the plaintiffs to a first refusal, and that the Race Course Co. could not sell the race course to third parties without first informing the plaintiffs of the actual cash price the intending purchaser was offering, and offering it to the plaintiffs at that price, and that such right of first refusal might be enforced against an intending purchaser with notice, on two grounds, viz., (1) because it was an interest in land, and (2) because so long as the matter rested in fieri, the Court, by an inverse application of the principle of *Wilmott* v. *Barber* (1880) 15 Ch. D. 96, could restrain the intending purchaser from accepting a conveyance of the legal estate in breach of the vendor's prior contract with the plaintiffs. He, therefore, granted an injunction restraining the Race Course Co. from selling the race course to any person or company without first offering it to the plaintiffs at the same cash price that the intending purchaser is offering; and also restraining the carrying out of the agreement with the Trafford Park Co. unless and until that had been done.

MERGER—LEASE AGREEMENT FOR LIFE ESTATE—INTENTION.

Ingle v. *Vaughan Jenkins* (1900) 2 Ch. 368, was an action to compel the specific performance of an agreement to grant a lease. The facts were a little peculiar. A tenant for life, under a strict settlement having power to grant a lease for 99 years, executed an informal instrument whereby he agreed to grant a lease to the second tenant for life, at a rent of £9 per annum, on his erecting a

house, which he shortly after erected at a cost of £1,500. The first tenant for life died, and the second tenant for life became legal tenant for life in possession of the settled estate. The lease was never actually granted. On the death of the second tenant for life the remainderman declined to recognize the right of the executor of the second tenant for life to a lease, on the ground that the benefit of the agreement for a lease or equitable term thereby created had become merged, or extinguished, in the legal life estate of the termor. Farwell, J., however, held that the principle applicable to the merger of charges in equity, applies also to the merger of leases, and the Court is guided by the intention, and, in the absence of evidence of any express intention, will be guided by a consideration of what would be most for the benefit of the person in whom the two estates became vested, and in the present case he held the presumption was clearly against any merger, and specific performance of the agreement was accordingly decreed.

INJUNCTION — NUISANCE — ADJOINING PREMISES — REASONABLE USE — ALTERATIONS.

Sanders-Clark v. *Grosvenor Mansions Co.* (1900) 2 Ch. 373, was an action by a lessee to restrain a nuisance by the lessee of adjoining premises. The plaintiff was a lessee of a flat, and the defendant D'Allessandri was lessee from the same landlords of the premises immediately underneath the plaintiff's flat, and carried on there the business of a restaurant. In order to do this he made certain alterations in his flat, put up a large cooking range in place of a small grate formerly in the kitchen, and substituted wire gauze for glass in a window. The flue was not properly constructed for the large range and caused undue heat and danger to the plaintiff's premises. The plaintiff complained that D'Allessandri conducted his premises so as to cause an intolerable nuisance to her by noise, heat, and smell, and brought an action for an injunction against him and also against their common landlords, but the action was discontinued as against the latter. Pending the action the defendant made alterations to remedy the defect in the flue. Buckley, J., who tried the action, held that the defendant by the alterations he had made in the premises, and the mode in which he carried on his business, had created a nuisance, and that the proper test was whether he was using his

premises reasonably or not, not merely whether for the purpose of carrying on a restaurant he was acting reasonably. Having regard to the nature of the premises he come to the conclusion that the defendant D'Allessandri was not using his premises reasonably, and that the plaintiff was entitled to an injunction.

CHARTER PARTY — CONTRACT — FULL AND COMPLETE CARGO — CARGO IN FROZEN CONDITION.

The Steamship Isis Co. v. *Bahr* (1900) A.C. 345, was an action brought by shipowners to recover for loss of freight. By a charter party made in contemplation of a mid-winter loading, the defendants agreed to load at a port in the United States "a full and complete cargo of wet wood pulp which contains about 50 per cent. of water." The defendants loaded pulp of that description which was frozen. By reason of its frozen condition it occupied more space than it otherwise would, and it was consequently not possible to stow as large a quantity by 450 tons. Evidence was given that in winter wet pulp was usually loaded in a frozen condition, and the House of Lords (Lord Halsbury, L.C., and Lords Macnaghten, Morris, Shand and Brampton) agreed with the Court of Appeal that the obligation to load a full and complete cargo had been performed by loading as much pulp in a frozen condition as the ship would carry, and that the action was therefore properly dismissed.

WORKMEN'S COMPENSATION — DEATH OF CHILD—DEPENDENCY OF FATHER ON CHILD.

The Main Colliery Co. v. *Davies* (1900) A.C. 358, was a case arising under the Workmen's Compensation Act 1897 in which the father of a child who had been killed claimed to be entitled to compensation under the Act, and the question was whether the father could be said to have been dependent on the child. The evidence shewed that the deceased child's earnings had been handed by him to his father and used with the father's own earnings in support of the family. The House of Lords (Lord Halsbury, L.C., and Lords Morris, Davey, Shand and Brampton) held that the question of dependency is one of fact in each case, irrespective of the standard of living in the neighbourhood or the class to which the family belonged, and that the evidence in this case was sufficient to establish such dependency of the father upon the child.

ADMINISTRATION SUIT—FUND ORDERED TO BE CARRIED TO SEPARATE ACCOUNT —ASSIGNMENT OF FUND—ASSIGNEE.

In *Edgar* v. *Plomley* (1900) A.C. 431, the Judicial Committee of the Privy Council (Lords Hobhouse, Morris and Davey, and Sir R. Couch), on appeal from the Supreme Court of New South Wales, decided that where in an administration suit a fund has been ordered to be carried over to a separate account, and after being so carried over, is specifically assigned for value to another without notice of any equitable claim by the other parties to the suit against the assignor, the assignee is entitled to hold the fund free from any such equitable claims; and mere notice that the assignor was trustee and defendant in a suit for an account, in which his fund might be made answerable, in case of default proved against the assignor, is not sufficient to affect the assignee.

DEED OF SEPARATION — HUSBAND AND WIFE — MISREPRESENTATIONS NOT CREDITED—SETTING ASIDE DEED—COSTS—PAUPER.

Wasteneys v. *Wasteneys* (1900) A.C. 446, was an action by a husband to set aside a separation and annuity deed on the ground of fraudulent representations of the wife that she had not then committed adultery, and also on the ground of subsequent adultery by her. It appeared that at the time the deed was executed the husband disbelieved his wife's representations as to her chastity, and the deed contained no condition as to chastity. The Court of Appeal of New Zealand had affirmed a judgment in favour of the husband, but the Judicial Committee of the Privy Council (Lord Halsbury, L.C., and Lords Hobhouse, Macnaghten, Davey and Robertson) reversed the decision, holding that on neither ground could the plaintiff succeed. The wife having brought her appeal in forma pauperis, she was held entitled to such costs below as are payable in the colony in pauper appeals, and to such costs of appeal to the Privy Council as she would be entitled to under the rule of the House of Lords relating to pauper appeals which rule is adopted by the Privy Council.

ARBITRATION—AWARD—LUMP SUM AWARDED—EVIDENCE TAKEN ON MATTERS NOT REFERRED—ARBITRATORS, JURISDICTION OF—SCOPE OF REFERENCE.

Falkingham v. *Victorian Railway Commissioners* (1900) A.C. 452, was an action on an award made by arbitrators appointed under a contract between the plaintiffs and defendants for the construction of a railway. A lump sum had been awarded in favour

of the plaintiffs, and the defendants pleaded that the sum included matters, claims, and demands, in respect of which the arbitratrso had no jurisdiction, as being beyond the scope of the reference. They also counter claimed for damages for delays, not allowed in writing by their engineer in chief, and which claims the arbitrators had disallowed. In the Supreme Court of Victoria the claim of the plaintiffs had been dismissed, and the counterclaim of the defendants allowed. The Judicial Committee of the Privy Council (The Lord Chancellor, Lords Macnaghten, Davey and Robertson) came to the conclusion that the Colonial Court had erred in both points. The Court below had held the award bad, but the Privy Council held it to be valid and not open to objection, because it appeared that the matters actually referred were those mentioned in the submission, and it was no objection to the award that it did not state on its face that other matters not referred had been rejected from consideration; neither was it bad because the arbitrators had taken evidence on matters not referred, but not shewn to have been irrelevant to the inquiry, or to have been included in the sum awarded. With regard to the counterclaim the Privy Council found that by the contract, the refusal of the Chief Engineer to grant a certificate allowing delay, was to be subject to arbitration, and that under the submission a final award could be made without sending the matter back to the engineer, and it was therefore held that the award was valid as to the counterclaim which was accordingly disallowed.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Que.] GRAND TRUNK RAILWAY *v.* THERRIEN. [Oct. 8.

Railways—Farm crossings—G. T. R. Co.—Interpretation of statute—Railway Act of Canada, s. 191—16 Vict. c. 37, s. 2—18 Vict. c. 33, s. 4—14 and 15 Vict. c. 51, c. 9, s. 16—Constitutional law—Jurisdiction of provincial legislature.

An owner whose lands adjoin a railway subject to the Railway Act of Canada, upon one side only, is not entitled to have a crossing over such railway under the provisions of that Act, and the special statutes in respect

to the Grand Trunk Railway of Canada do not impose any greater liability in respect to crossings than the Railway Act of Canada. *Gribble* v. *The Midland Railway Co.* (1895) 2 Chy. 827, and *The Canada Southern Railway* v. *Clouse*, 13 S.C.R. 140, referred to.

The provincial legislatures in Canada have no jurisdiction to make regulations in respect to crossings or the structural condition of the road-bed of a railway subject to the provisions of the Railway Act of Canada. *The Canadian Pacific Railway* v. *Parish of Notre Dame de Bonsecours* (1899) A.C. 367 followed. Appeal allowed with costs.

Stuart, Q.C., for appellant. *Fitzpatrick*, Q.C., and *L. A. Taschereau*, for respondent.

Man.] CANADIAN PACIFIC R.W. CO. *v.* WINNIPEG. [Oct. 8.

Assessment and taxes—Exemption from taxation—School taxes—By-law—Validating statute—Construction.

In 1881 the City of Winnipeg passed a by-law, No. 148, providing for a bonus to the C.P.R. Co. in consideration of certain works to be undertaken by the company, and also providing that the company should be forever exempt from all "Municipal taxes and rates, levies and assessments of every nature and kind." In 1883 the Legislature of Manitoba passed an Act making valid by-law No. 148 of the City of Winnipeg, describing it as a by-law for a bonus, but omitting all reference to the exemption clause.

Held, affirming the judgment of the Court of Queen's Bench for Manitoba, 12 Man. L.R. 561, that the said statute made valid the whole by-law 148, that relating to exemption from taxes as well as the portion recited in the Act.

Held, also, reversing the said judgment, that under said by-law school taxes were included in the exemption from "All municipal taxes." Appeal allowed with costs.

Aylesworth, Q.C., and *Atkins*, Q.C., for appellant. *Howell*, Q.C., and *Chrysler*, Q.C., for respondent.

Ont.] CITY OF OTTAWA *v.* HUNTER. [Oct. 24.

Appeals, Ontario—Amount in dispute—60 & 61 Vict. c. 34 (f).

Sec. 1 (*f*) of 60 & 61 Vict. c. 34, which provides that where an appeal from the Court of Appeal for Ontario depends on the amount in dispute, such amount shall be understood to be that demanded and not that recovered, if they are different, has no operation, being repugnant to sub-sec. (*c*) which requires the amount on the appeal to exceed $1,000 to give jurisdiction.

Where two clauses of the same statute, coming into force at the same time are repugnant, the clause placed last in point of arrangement cannot

be held to supersede the other as expressing the latest mind of the legislators. Appeal quashed with costs.

Latchford, Q.C., for the motion. *McVeity*, contra.

Que.] FRECHETTE v. SIMONEAU. [Oct. 26.

Appeal—Jurisdiction—Amount in dispute—R.S.C. c. 135, s. 29 (b).

An action was brought by the lessee of lands the rental of which was $250 per annum, to have the lease cancelled as being simulated.

Held, that no amount of $2,000 or upwards was in dispute, and the appeal not relating to any title to land or tenements or annual rents within the meaning of sec. 29 (*b*) of R.S.O. c. 135, the Supreme Court has no jurisdiction to hear it. Appeal quashed with costs.

Pelletier, Q.C., for the motion. *Fitzpatrick*, Q.C., and *L. A. Taschereau*, contra.

N.S.] HAMILTON *v.* GRANT. [Oct. 8.

Company—Judgment creditor—Action against shareholder—Transfer of shares—Evidence.

Judgment creditors of an incorporated company being unable to realize anything on their judgment brought action against H. as a shareholder, in which they failed, from inability to prove that he was owner of any shares. They then brought action against G. in which evidence was given, not produced in the former case, that the shares once held by G. had been transferred to H. but were not registered in the company's books. On this evidence the court below gave judgment in favour of G.

Held, affirming such judgment, that the shares were duly transferred to H. though not registered, as it appeared that H. had acted for some time as president of, and executed documents for the company, and the only way he could have held shares entitling him to do so was by transfer from G.

Held also, that although there appeared to be a failure of justice from the result of the two actions, the inability of the plaintiffs to prove their case against H. in the first could not affect the rights of G. in the subsequent suit.

The company in which G. held stock was incorporated in 1886 and empowered to build a certain line of railway. In 1890 an Act was passed intituled "An Act to consolidate and amend" the former company, but authorizing additional works to be constructed, increasing the capital stock, appointing an entirely different set of directors, and giving the company larger powers. One clause repealed all Acts and parts of Acts inconsistent therewith. G. had transferred his shares before the latter Act came into force. The judgment against the company was recovered in 1895.

Held, that G. was never a shareholder of the company against whom such judgment was obtained. Appeal dismissed with costs.

Cahan, for appellants. *Newcombe*, Q.C., and *Mellish*, for respondents.

N.S.] MICHAELS *v.* MICHAELS. [Oct. 8.

Husband and wife—Separate property of wife—Action by wife against husband—Married Woman's Property Acts N.S.

In 1882 the respondent, A. L. Michaels, made a promissory note for $10,000 in favour of Jennie Levy, payable on demand. This note was endorsed by the payee to her sister, the maker's wife. In 1899 an action was brought on the note by the endorsee against her husband the maker, which at the trial was dismissed on the ground that the Married Woman's Property Act did not authorize such an action. On appeal to the court en banc, the judges were equally divided in opinion, and the judgment at the trial stood affirmed. The plaintiff then appealed to the Supreme Court of Canada.

By R.S.N.S. 5 ser., c. 94, a married woman in Nova Scotia holds her separate personal property, not reduced into possession by her husband, as if she were a feme sole, and the Act of 1898, c. 22, gives her the same civil remedies against every person, including her husband, as an unmarried woman has.

Held, reversing the judgment of the Supreme Court of Nova Scotia, that the note sued on was personal property of the wife not reduced into possession, and the action could be maintained under the above Acts by the wife against her husband. Appeal allowed with costs.

Borden, Q.C., for appellant. *Mellish*, for respondent.

EXCHEQUER COURT.

Burbidge, J.] [June 28.

GIBBONS *v.* THE QUEEN, ST. JOHN TERMINAL RY. CO., THIRD PARTY.

Expropriation—Compensation for leasehold interest.

The suppliants were lessees of certain land and premises expropriated for the Intercolonial Railway. The premises had been fitted up and were used by them, for the purposes of their business as coal merchants. By the terms of the lease under which they were in possession the term for which they held could at any time be determined by the lessors by giving six months' notice in writing, in which event the suppliants were to be paid two thousand five hundred dollars for the improvements they had made.

Held, that the measure of compensation to be paid to the suppliants

was the value at the time of the expropriation of their leasehold interest in the lands and premises.

Apart from the sum payable for improvements there was no direct evidence to shew what the value was. But it appeared that the suppliants had procured other premises in which to carry on their business, and that in doing so they had of necessity been at some loss, and that the cost of carrying on their business had been increased. The amount of the loss and of increased cost of carrying on business during the six months succeeding the expropriation proceedings was in addition to the sum mentioned taken to represent the value to them or to any person in a like position of their interest in the premises.

The suppliants also contended that if they had not been disturbed in possession they would have increased their business, and so have made additional profits, and they claimed compensation for the loss of such profits.

Held, that this claim could not be allowed.

A. P. Barnhill, for suppliants. *H. A. McKeown*, for respondent. *A. A. Stockton*, Q.C., for third party.

Province of Ontario.

COURT OF APPEAL.

From Boyd, C.] PEDLOW *v.* TOWN OF RENFREW. [Oct. 11.

Way—Highway—Plan—Dedication—Municipal corporations.

The owners of two adjoining lots agreed between themselves to give twenty feet of each lot to form a street, and a plan of sub-division of the lots shewing a street of this width was filed by them, the consent of the municipality being given by resolution. The line fence was then taken down, and one owner fenced his land so as to leave twenty feet of the lot open to the public, but the other fenced his so as to leave forty feet. Without any by-law or further resolution the municipality did some grading on the sixty feet and the sixty feet were used by the public for the purpose of a highway.

Held, that the giving of forty feet by the one owner did not relieve the other owner from his obligation to give twenty feet, and that he could not, after the expenditure of public money upon it and its user by the public retract the dedication of the twenty foot strip. Judgment of BOYD, C., 31 O. R. 499, ante p. 159, affirmed.

Aylesworth, Q.C., and *T. W. McGarry*, for appellant. *S. H. Blake*, Q.C., for respondents.

HIGH COURT OF JUSTICE.

Master in Chambers.] HALL *v.* BOWERMAN. [July 5.

Interpleader—Writ of possession—Interference with execution—Claim to land.

Upon an attempt to execute a writ of possession under a judgment against G., who was in actual possession, the sheriff was served with a notice by B. claiming the land mentioned in the writ, and informed the sheriff that the house standing thereon was locked and that he (B.) had the key. B.'s claim was as mortgagee upon default in payment of interest.

Semble, that the sheriff's duty, as soon as he received the writ, was to break open the door and give the plaintiff possession. But

Held, that, as the sheriff was not bound to consider the legality of the claim put forward, he was entitled to an interpleader order.

R. J. Maclennan, for sheriff. *E. D. Armour*, Q.C., for plaintiff. *G. W. Holmes*, for defendant.

Street, J.] IN RE HOPKINS' ESTATE. [Oct. 11.

Devolution of Estates Act—Payment of debts—Distinction between real and personal property—R.S.O. c. 127.

The Devolution of Estates Act, R.S.O. c. 127, vests the real as well as the personal estates of a deceased person in his personal representatives for the purpose of paying his debts; but, except in the case of a residuary devise of real and personal estate, which is especially provided for by section 7, the order in which the different classes of property were applicable to the payment of debts before the passing of the Act, has not been disturbed by its provisions.

W. M. Douglas, Q.C., for executors. *Gibbons*, Q.C., *Ferguson*, and *Middleton*, for other parties.

Ferguson, J.] REGINA *v.* RANDOLPH. [Oct. 31.

Criminal law—Theft—Summary trial—Excessive penalty—Amendment—Discharge—Further detention—Criminal Code, ss. 752, 783, 787, 800.

The defendant was prosecuted for stealing $5 in money, the property of one J. M., contrary to the form of the statute, etc., and the charge was heard and determined in a summary way by a police magistrate.

Held, that the prosecution fell under s. 783 (*a*) of the Criminal Code, the value of the property being less than $10, and it not being charged that the offence was "stealing from the person;" and, therefore, s. 787 applied,

and the magistrate had no power to impose a penalty of imprisonment for longer than six months.

The provisions of the Code respecting amendments to summary convictions do not apply to summary trials; and the provisions of s. 800 do not apply where the same infirmity is found in the conviction as in the commitment.

The conviction and commitment were bad for imposing an unauthorized penalty; the defendant was entitled to be discharged upon habeas corpus; and an order should not be made under s. 752 for his further detention.

Du Vernet, for defendant. *J. R. Cartwright*, Q.C., and *J. W. Curry*, Q.C., for the Crown.

Boyd, C.] IN RE SOLICITORS. [Nov. 2.

Solicitor—Bills of costs—Taxation—Payment—Connected charges—Agreement—Unsigned bills—Delay—Overcharges.

A firm of solicitors for about eight years acted for an estate in the collection of moneys and realization of securities relating to a block of land sold by the testator. During this period the solicitors from time to time rendered statements of account to the executors and paid them cheques for balances in their hands as shewn by such statements, and also rendered detailed bills of their costs for their services, in respect of different actions and proceedings taken, though not in all cases, such bills being paid by the retention by the solicitors, without objection on the part of the executors, of part of the moneys collected. Two or three of the larger bills were moderated by a taxing officer shortly after they were rendered. Upon an application by executors for taxation of all the bills after the eight years,

Held, that this could not be regarded as one continuous dealing keeping the right to tax in suspense till the collection or exhaustion of all the securities.

Held, also, that there was no agreement between the solicitors that the right to tax generally should remain open to the executors.

As to certain of the bills of costs said not to have been actually signed by the solicitors,

Held, that they were substantially sufficient, and, after being paid out of the funds collected, with the knowledge and sanction of the executors, they could not be treated as open to taxation, after years of delay and no specific overcharges being indicated.

In re Sutton and *Elliott*, 11 Q.B.D. 377, followed.

J. H. Moss, for executors. *W. E. Middleton*, for solicitors.

Meredith, C.J., MacMahon, J.] [Nov. 12.

JONES *v.* TOWNSHIP OF STEPHENSON.

Municipal corporations—Damages—Non-repair of highway—Notice of accident—Joint liability—Waiver.

Notice of an accident and the cause thereof required by R.S.O. c. 223, s. 606 (3), must now, by 62 Vict. c. 25, s. 39, be given to each of the municipalities where the claim is against two or more as jointly responsible for the repair of the road. *Leizert* v. *Township of Matilda*, 26 A.R. 1, not now applicable. Where notice in writing was given to one township municipality of two sued as jointly liable, but not to the other, it appeared that the reeve of the latter had been verbally notified by the plaintiff and had then promised to write and had written to the reeve of the former, after which both reeves attended with the plaintiff and examined the place of the accident, and the reeve of the latter afterwards wrote to the plaintiff advising him that the township corporation did not recognize his claim because it was considered that the loss arose from the fault of the plaintiff, and all this within thirty days after the accident.

Held, that there was no waiver.

Lindsey, Q.C., for plaintiff. *Du Vernet* and *A. A. Mahaffy*, for defendant.

SECOND DIVISION COURT, COUNTY OF PERTH.

MCLAREN *v.* MILLER.

Promissory note—Material alteration—Correction of error after issuing of note—Bills of Exchange Act, 1890, s. 63.

A promissory note was drawn up and signed on January 1st, 1896, payable "twelve months after date." The payee, who drew the note, used an old form with the figures "188—" printed in the place for the date. When drawing the note, the payee added the figure "6," thus making the date read January 1st, 1886, instead of 1896. Some time after the issue of the note, the payee discovered the mistake and corrected it by writing a figure "9" over the last "8," without asking or obtaining the consent of the makers.

Held, that this was not a "material alteration" within the meaning of "The Bills of Exchange Act, 1890," s. 63, but being only the correction of an error, making the contract appear what it was originally intended to be, did not invalidate the note.

[Stratford, Sept. 15. BARRON, Co.J.

Action on a promissory note made by one Albert Cameron and the defendant in favour of one George Guest Wilson or bearer for $50, dated "Staffa, Jan. 1st, 1896," payable twelve months after date, and which note was transferred by Wilson to the plaintiff.

The defence was that the date was altered. The note when signed had the date "January 1st, 1886," but it was not signed upon that day. It was

in fact signed on the 1st of January, 1896. A form of note was used which had the figures printed of "188—." When the note was filled up ready for signature the figure "6" alone was added, making the note read as of the year "1886," it not being noticed at the time that the preceding figure was "8" instead of "9." Some time after the note was signed, the payee altered the figures by inserting over the second "8" the figure "9," thus making the year "1896," which was the true year, instead of 1886 which was not only not the true year, but, under the circumstances in evidence an impossible year for the note to have been signed. It was not argued that the note was signed by Miller on any other day than the "1st January, 1896;" but it was said that, being signed as of January 1st, 1886, such is the date of the note, so that, when the note was so signed, it was a contract to pay twelve months after the 1st January, 1886, and that, though, by this, the note when signed in fact was due, such was the contract in writing, and if then altered the alteration was material and the note thereby became void.

F. W. Thomson, for the plaintiff. *Mabee*, Q.C., for defendant.

BARRON, Co. J.—The Bills of Exchange Act, s. 63, enacts that where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is voided. The defendant's assent was never obtained, so that the question remains: Is the alteration in this case a "material alteration"? The above section except as to the proviso, is not new law, the statute is simply an adoption or codification of what was theretofore existing law: *Vana* v. *Lowther*, 1 Ex. D. (1876), 176; *Beltz* v. *Molson's Bank*, 40 U.C.R. 253; *Boulton* v. *Langmuir*, 24 O.A.R. 618. The alteration of the date of a note was always held to be material, and the Act has made no change in this respect. Hence the authorities governing the condition of the law before the passing of the Act are applicable to the same condition of law since the passing of the Act.

The date of a note or document is its true date, not a false or impossible date. So, when a date is altered to be material it must be the true date, not a false or impossible date. This, I take it, is understood all through the cases wherein it is held that the alteration of the date is material. For example, in *Boulton* v. *Langmuir* it was held that the changing by the payee of the date of a demand note to a later date was a material alteration and made the note void; but in that case it was the true date that was altered. MR. JUSTICE OSLER says (p. 625): "To alter the date of the note was to make it appear to be a different contract . . . from that which the defendant had entered into." But, in the case in question, to alter the date was to make it appear to be the exact contract the defendant had entered into and not a different one, because the note was, in fact, signed on the 1st January, 1896, and not on the 1st January, 1886.

There are said to be two cases in which an alteration, though in a material part, will not vacate an instrument. One of these cases is where the note is altered to correct a mistake, or supply an omission, and in furtherance of the original intention of the parties. The original intention

of the parties was not to make an impossible contract, for that is what the contract is, if the date had not been corrected. How is it possible on the 1st January, 1896, to contract to do a thing twelve months after the 1st day of January, 1886. Therefore the date, as it was before the alteration, was an impossible date. It might be entirely different if the time for performance had been subsequent to the 1st day of January, 1896, starting to run from the 1st of January, 1886; but that is not this case. This case is one of correcting an accidental mistake so as to make the contract that which it was intended to be according to the original intention of the parties. No one is injured, and no one is benefitted, though that is not altogether the test of the materiality of an alteration (*Boulton* v. *Langmuir*, supra, at page 627) but it is a help in ascertaining what the real contract between the parties actually is. The rule relating to the alteration of deeds, as laid down in *Figot's case*, 11 Rep. 266, and *Master* v. *Miller*, 1 Sm. L.C. 796 decides that this rule is applicable to promissory notes. Subsequent cases have applied the rule indiscriminately to all written instruments whether under seal or not (*Davidson* v. *Cooper*, 11 M. & W. 778; 31 M. & W. 343), and it is a most wholesome rule and in keeping with good conscience and equity, that when a contract is so altered as to make it just what the contractor intended it should be, that he should not be discharged from the very contract he actually did make, by reason of such alteration. LUSH, J., (in *Aldous* v. *Cornwell*, L.R. 3 Q.B., a case most fitting to the present one) said: "It seems to us repugnant to justice and common sense to hold that the maker of a promissory note is discharged from his obligation to pay it because the holder has put in writing on the note what the law would have supplied if the words had not been written." See also *Fitch* v. *Kelly*, 44 U.C.R. 578; *Merchants' Bank* v. *Stirling*, 1 Russ. & Geld. (N.S.) 439.

It is contended that an alteration can only be effected through the aid of the courts; that the instrument could only be reformed on an application to the proper court. That remedy, of course, was open to the plaintiff, and it appears that some courts in the United States insist on this course from prudent motives, deeming it an element of risk which might lead to grave results to permit corrections to be made or omissions supplied by interested parties. But there are numberless authorities the other way, both in the United States and in England, proceeding on the view that, if the alteration is in furtherance of the intention of the parties, then the assent of the party to be charged is implied and the alteration even though it is in a material respect will not vitiate the instrument. (Chitty on Bills 184. *London etc. Bank* v. *Roberts*, 22 W.R. 402.) "So it has been held that the alteration of the date of a note, made by the promisee, without the knowledge or consent of the promissor, merely to correct a mistake and make the note such as both parties intended that it should be, does not invalidate the instrument;" Am. & Eng. Encl. of Law, 2nd ed., vol. 2, p 211. The judgment will therefore be for the plaintiff.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] MILLER *v.* ARCHIBALD. [March 13.

Practice and procedure—Plea of payment into court—Application after expiry of time for leave to reply accepting amount—Should be allowed on terms—Questions affecting costs only, discretion of Chambers judge as to.

Plaintiff, as executrix of E.M., brought an action against defendant, claiming $300 damages for an alleged unlawful detention of the plaintiff's goods.

Defendant pleaded a number of defences, and paid into court the sum of $1, which he said was sufficient to satisfy plaintiff's claim.

A motion was made on behalf of plaintiff at Chambers for an order that, notwithstanding the time limited for so doing had expired, plaintiff be at liberty within five days, or such other time as should be ordered, to file and deliver a reply accepting the sum of money paid into court by defendant, and that the time for payment of said sum of money out of court be enlarged accordingly.

The application was refused with costs, on the ground that, although there was a technical right on the part of plaintiff to recover nominal damages, the action should not have been commenced for the value of the property, and, for this reason, plaintiff should be refused assistance over the technical difficulty which stood in her way on account of her not having replied within the ordinary time.

Held, allowing plaintiff's appeal, that in case of a plea of payment of money into court to satisfy the claim of the plaintiff, whenever the plaintiff becomes ready to accept such sum, his right to amend so as to accept the sum paid in in full must be allowed, subject to such terms as the law requires.

Per MEAGHER, J., dissenting. As the amendment sought did not go to the merits of any question to be tried, but affected the right to costs merely, the Chambers judge had a discretion to grant or refuse the indulgence asked.

R. L. Borden, Q.C., for appellant. *R. E. Harris*, Q.C., and *L. M. Johnstone*, for respondent.

Full Court.] PARKER *v.* ETTER. [March 13.

Magistrate—Action against, claiming damages for alleged wrongful arrest and imprisonment—Motion to set aside findings and judgment for defendant refused with costs—Mere irregularity where magistrate has jurisdiction over subject matter and person—English cases distinguished.

In an action brought by plaintiff claiming damages for alleged wrongful

arrest and imprisonment, it appeared that plaintiff was arrested and conveyed to jail upon a warrant issued by defendant, a justice of peace for the County of Hants, for the collection of the sum of $4.20, being three years' poll tax at $1 for each year, and an amount due for costs incurred on a general distress warrant previously issued by defendant for the collection of the taxes, to which a return had been made by the constable that he was unable to find any goods whereon to levy. It further appeared that before he issued the warrant under which plaintiff was arrested defendant had before him the affidavit of the secretary of school trustees for the district in which plaintiff resided, shewing that he had not paid his tax for three years, and that the trustees had authorized the secretary to collect the amount.

The evidence on the trial shewed that plaintiff was a defaulter in respect of his poll tax, and that a demand had been made upon him for payment in each of the three years for which the tax was claimed, and that on each occasion he had refused to pay. The jury found, in answer to questions submitted, that defendant acted in perfect good faith in all that he did, and in the belief that all he did was authorized by the statute, and that he was required by the statute to do what he did, and the learned trial judge thereupon directed judgment to be entered for defendant.

Held, refusing with costs a motion to set aside the findings and the judgment entered upon them, that defendant, having jurisdiction over the subject matter brought before him, and over the person of plaintiff in respect thereto, was not liable in trespass, either by reason of his having issued the warrant for arrest without proof of a previous demand made upon plaintiff for payment of his tax, or by reason of a departure from the prescribed form of warrant.

2. The defendant did not do any act which he had not power and jurisdiction to do upon a proper case; the most that could be said being, that he proceeded in an irregular way.

3. Excess of jurisdiction does not extend to a mere irregularity or erroneous judgment, but to a case where the justice does an act which he has no jurisdiction to do.

4. Under the Nova Scotia Statutes the duty of enquiring into the validity of the rate is not imposed upon the justice, and that the English cases, where the justices had jurisdiction to levy rates "well assessed," are therefore distinguishable.

5. Defendant's entry upon the enquiry was clearly within his duty and his jurisdiction.

F. T. Congdon, for appellant. *W. E. Roscoe*, Q.C., for respondent.

Full Court.] ORDWAY *v.* LEBLANC. [March 13.

Practice and procedure—Order for security for costs—Power of judge to extend time for giving, after expiry of time limited in order—Mistake of solicitor.

An order for security of costs contained in the following provision: "That in case default is made in giving security within the time aforesaid, this action be dismissed with costs."

Held, reversing with costs the judgment of the learned County Court Judge for District No. 1, that notwithstanding the expiry of the time limited in the order, the learned judge had jurisdiction to entertain an application on behalf of plaintiff to enlarge the time to enable him to comply with the order, on the ground that it was by reason of a mistake on the part of plaintiff's solicitor that security was not given in time.

F. H. Mathers, for appellant. *H. S. Blackadar*, for respondent.

Ritchie, J., in Chambers.] [Oct. 17.

IN RE DODGE & DENNISON CO.

Insolvent Act, c. 11, stat. of N.S., 1898—Action in name of official assignee.

Application by Messrs. A. W. S. & Co., B. B. & Co., Wm. R. & Co., and W. B. A. & Co., as creditors of said Dodge & Dennison Co., Ltd., to be authorized to take proceedings in the name of the official assignee at their own expense and risk, to recover the proceeds of certain moneys from Messrs. J. T. & Co., which were paid over to them by the said Dodge & Dennison Co., Ltd., within a few days of the assignment of the latter company to E. B. C., official assignee, or to recover certain goods or proceeds thereof which were unlawfully delivered to said J. T. & Co., or their agents, a few days before said assignment, contrary to s. 2 of above-named Act, upon such terms and conditions as to indemnity as shall be adjudged reasonable.

Held, that applicants were entitled to an order authorizing them to bring such action in the name of the official assignee for their benefit within the terms of s. 9 of the Act on indemnifying said assignee from all claims.

Held, further, that the fertilizing company, who intervened, were entitled to join with the other creditors, and share pro rata in the benefits that might result from the action if they contributed to the expenses and became parties to the indemnity to the assignee. Any question as to the security to be given to assignee to be referred to a judge to settle.

R. E. Harris, Q.C., and *J. A. Chisholm*, for applicants. *E. B. Cogswell*, assignee, in person, contra.

QUEEN *v.* QUINN, ante, p. 644, should be cited as "*Queen* v. *Brine*."

Province of British Columbia.

SUPREME COURT.

Full Court.] GORDON *v.* CITY OF VICTORIA. [June 30.

Interest on judgment entered by Full Court in accordance with verdict, reversing trial judge—When computed from—57 and 58 Vict., s. 3 c. 22.

Appeal by the defendant from an order of WALKEM J., allowing the plaintiff to issue execution for interest at six per cent. on the sum of $10,000.00 from 19th May, 1897, to 12th April, 1900. On 19th May, 1897, the plaintiff obtained a verdict for $10,000.00 damages, but the trial judge dismissed the action. The plaintiff appealed and the Full Court allowed the appeal on 29th November, 1899, and ordered judgment to be entered in plaintiff's favour for the amount of the verdict. The defendant on the 12th April, 1900, paid the plaintiff the amount of the verdict and agreed to pay interest from the date of the Full Court order to date of payment; but the plaintiff claimed interest from the date of the verdict and took out a summons for liberty to issue execution for the amount, and WALKEM, J., granted the application, whereupon the defendant appealed to the Full Court.

Held, that plaintiff was entitled to interest from the date of the verdict.

A. D. Taylor, for appellant. *Wilson*, Q.C., for respondent.

Drake, J.] ALASKA STEAMSHIP CO. *v.* MACAULAY. [Sept. 15.

Security for costs—Foreign company carrying on business in British Columbia—R.S.B.C. 1897, c. 44, s. 144.

Summons for security of costs from the plaintiff, a company incorporated in the State of Washington and having its head office in Seattle. The company owned a steamer running between Seattle and Victoria, had an office in Victoria managed by a freight and passenger agent who devoted his whole time to the business of the company in Victoria, and who was paid a salary by the company. Rent and all office expenses were paid by the company, which was not licensed or registered in British Columbia.

Held, that the company was a foreign company within the meaning of s. 144 of the Companies Act, and was bound to give security for costs. *La Bourgogne* (1899), P. 1, and (1899), A.C. 431, considered.

O'Brien (*Cassidy*), for defendant. *J. H. Lawson, Jr.*, contra.

Book Reviews.

A Treatise on Electric Law, covering the law governing all electric corporations, uses and appliances, and all relative public and private rights, by JOSEPH A. JOYCE (author of Joyce on Insurance) and HOWARD C. JOYCE: New York: The Banks Law Publishing Company, 21 Murray Street, 1900. Price $7.25.

This is a book of nearly 1200 pages, and is a full summary of the law affecting the important subject therein treated of. Though we are as ignorant as ever of what electricity is, we are beginning to find out some of the uses to which it can be applied and how to harness it. In the past few years its use has been fruitful of much litigation, and much law has grown up around it. A thorough investigation of these many and ever increasing authorities has rendered necessary something more than a reference text book; and now we have before us a treatise dealing with the various new and important questions which have arisen in Anglo-Saxon communities in a comprehensive and thorough manner. So far as our examination goes the book before us "fills the bill." The decisions seem to have been examined with great care and the application of old principles to this new and growing branch of the law successfully accomplished. We notice that the authors refer to the Canadian as well as English cases; thus making he book almost as useful to the profession in the Greater Britain as it is to those in the United States.

The large and helpful scope of this work may be gathered from some of its chapters. The Nature and character of electric companies; Constitutional and legislative control, this of course referring only to the United States, and is only of interest so far as the legislation is similar · Municipal lighting; Eminent domain; Abutting owners; Construction of lines, their maintenance and management; Duties and liabilities of companies dealing with electricity in their various uses; Interference of wires; Passengers on electric railways; The use of streets, and crossing railway tracks; Employees, their duties and liabilities; Duties and liabilities of telegraph and telephone companies; Connecting and competing telegraph lines; Telegrams as to sickness, death, etc.; Contracts by telegraph; Taxation of electric companies; Damages and measure of damages; Parties, remedies and evidence, etc. On the whole a very valuable work, which will be largely used both by the profession and by electric corporations, who should possess this work also as it covers matters with which they should be constantly conversant.

Flotsam and Jetsam.

UNITED STATES DECISIONS.

INSURANCE:—The right to insurance on property destroyed by fire after an oral contract to insure, but before issuance of a policy, is held, in *Hicks* v. *British America Assurance Co.* (N.Y.), 48 L.R.A. 424, to be subject to the provisions and conditions of the standard policy prescribed by law, including that as to furnishing proofs of loss within a specified time.

COMPANY LAW.—The right of a stockholder to inspect books of the corporation is held, in *Cincinnati Volksblatt Co.* v. *Hoffmeister* (Ohio), 48 L.R.A. 732, not to depend upon the motive or purpose of the stockholder.

NEGLIGENCE.—The lack of barriers on the side of approaches to a bridge are held, in *Bell* v. *Wayne* (Wash.), 48 L.R.A. 644, not sufficient to make a municipality liable for injuries in case a team goes off the bank, when the roadway was wide enough for two teams to pass without difficulty and the fright of a horse was the proximate cause of the accident.

A charge to the jury that a master should instruct his employee as to the nature, force, and probable effect of the explosion of a pot of molten metal in case it comes in contact with water, and that it is not sufficient merely to instruct that an explosion is likely to follow such contact, is upheld in *Ribich* v. *Lake Superior Smelting Co.* (Mich.), 48 L.R.A. 649.

Whether or not an employee acts properly in obeying an order of a foreman to take bottles to an upper floor by the use of an elevator is held, in *Dallemand* v. *Saalfeldt* (Ill.), 48 L.R.A. 753, to be a question for the jury. A note to this case presents the authorities on a servant's right of action for injuries received in obeying a direct command.

The mere fact that an employee thinks an act is unsafe is held, in *McKee* v. *Tourtellotte* (Mass.), 48 L. R. A. 542, insufficient to render him guilty of negligence in performing it, if the employer assures him that there is no danger. With this case is a note on the effect of an assurance of safety given by the master or a co-servant.

The Living Age: Boston.—The Living Age will begin in its issue for Nov. 17, and will continue for several successive numbers, a thrilling account of "The Siege of the Legations," written by Dr. Morrison, correspondent of *The London Times* at Peking. This narrative is of absorbing interest in its descriptions of the daily life of the besieged legationers, and it is noteworthy also as containing some disclosures relating to the inside history of what went on at Peking in those stirring days, which are altogether new and of the utmost importance.