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APPELLATE DIVISION.

JULY 22ND, 1913.

EADIE DOUGLAS LIMITED v. H. C. HITCH & CO.

Mechanics' Liens—Account—Cross-claims—Items in Dispute—Findings of Master—Appeal.

Appeal by the defendants H. C. Hitch & Co. from the judgment of the Local Master at Ottawa, in a mechanics' lien action; and cross-appeal by the plaintiffs from the same judgment.

The matters in dispute upon both appeal and cross-appeal were as to the allowance and disallowance of items going to make up the amount claimed by the plaintiffs as due in respect of their lien and sums charged by the defendants H. C. Hitch & Co. to the plaintiffs by reason of delay and otherwise.

The appeal was heard by CLUTE, RIDDELL, SUTHERLAND, and LEITCH, JJ.

J. E. Caldwell, for the defendants H. C. Hitch & Co.

H. M. Mowat, K.C., for the plaintiffs.

The judgment of the Court was delivered by CLUTE, J., who made an examination of the various items in dispute, and concluded that the appeal of the defendants H. C. Hitch & Co. should be dismissed with costs and the cross-appeal of the plaintiffs allowed, except as to $542.19, with costs fixed at $50.

HIGH COURT DIVISION.

MIDDLETON, J. JUNE 7TH, 1911.

ECKERSLEY v. FEDERAL LIFE ASSURANCE CO.

Life Insurance—"Homans" Plan—Fraud and Misrepresentation—Construction of Policy—Action for Rescission—Dismissal without Costs.

Action by a policy-holder in the defendant company for rescission of the contract of life insurance evidenced by the policy, on the ground of fraud and misrepresentation.

J. H. Ingersoll, K.C., and A. C. Kingstone, for the plaintiff.

G. H. Watson, K.C., and T. C. Haslett, for the defendant company.

MIDDLETON, J.:—I have read very carefully all the correspondence, and considered the evidence given by the plaintiff, and conclude that there was no fraud or misrepresentation inducing the contract.

At the trial I was somewhat impressed by the statement made by the plaintiff that he was assured that the premium could never exceed the maximum named in the policy, and, from 60 on, the premium would be level. No such claim is made in the pleadings or in the long correspondence prior to the action, in which the plaintiff many times set forth his grievances.

The policy must be construed as it is written, and both parties are bound by its terms.

The Homans plan of insurance has been generally misunderstood by policy-holders, and is one that readily lends itself to misrepresentation, and hence has been discredited in practice. Life insurance has came to be regarded as investment, and in the case of ordinary level premium insurance this is the case. In that type of insurance the members pay premiums which, when invested, would, if the member lived exactly the average life, produce the sum agreed to be paid. Those who do not reach the expected age gain, those who exceed the age lose, but in the long run there cannot be either gain or loss. The policy-holder takes his chances of being a gainer or loser, but the fundamental idea is investment.

In the Homans plan, the fundamental idea is quite different. Out of a certain number of persons of a given age alive to-day experience has shewn that so many may be expected to die within the next year—e.g., to take the age of this insured, 48: of 7,495 persons living at the beginning of the year, experience shews that 106 would be expected to die within the year and 7,389 survive.

On this plan, the company propose to exact a premium from the 7,495 which will enable them to meet the death claims of the 106, and this premium, with a loading as a factor of safety and to cover expense and profit, is what is demanded.

The insurance is for the year and the year alone. There is no element of investment; the money received is to be paid out on the death claims, and not to be retained for investment. This is what is called a natural premium plan.

The plan is in practice modified. The policy in this case contains two important provisions. Seventy-five per cent. of the premium is to be placed in a "death fund," so that, if "experience" varies from "expectation" more than twenty-five per cent., this will operate as a reservoir or balance wheel, and neutralise any adverse experience which, upon the law of average, may be expected. And, secondly, the expenses are limited, and the company is made to some extent "mutual," by providing for an abatement from the stipulated premium for the next year of the profit of the last year.

As the age of the insured increases, manifestly the annual premium must increase as the chance of an older man dying during the next year is greater; and the actuaries' tables shew that from about 1 in 75, the ratio at 48, when Eckersley insured, the ratio has changed to 249 in 3,307, or about 1 in 13, at his present age of 72.

The insured usually fails to understand that in a policy of this class, if the life is normal, there is nothing to gain by renewing the insurance. The premium charged is the exact equivalent of the death risk—by allowing the policy to lapse the assured is not forfeiting any accumulated revenue—he has had from year to year the protection he has purchased, i.e., insurance for the year. If an old man desires insurance for the year, he must pay a large premium; for the risk assumed by the company for that year is large.

The only merit of the system is, that it affords a young man, who desires insurance during a limited time, the maximum of temporary protection at the minimum of cost. If he survives

this period, then he will not continue the insurance at the high and practically prohibitive rates; and, realising that he has had all that he paid for, he will not continue the temporary insurance.

The trouble is, that insured persons, not understanding the theory of the policy, prolong the insurance unduly and come to regard it in the light of an investment (like ordinary life insurance), instead of temporary protection (like fire insurance).

When a man reaches mature years and the premium becomes heavy, he will not, if his life is normal or better than normal, continue the risk, and will only pay the premium demand if he expects an early death; and so there is an automatic adverse selection in old age, which has rendered the system unworkable from the standpoint of the company.

This consideration of the nature of the policy shews that the change of contract complained of by many of the insured has in no way prejudiced the plaintiff. I am clear that there is nothing in the contract to prevent any bonâ fide agreement between the company and other policy-holders in the same class, and there is no suggestion that the company have not in this matter acted in good faith.

There then remains the question as to the proper construction of the policy in question, and this I find by no means easy. There is, first, the insurance for six months from the 21st January, 1886, and then the provision: "And the said company further promises and agrees to renew and extend this insurance during each successive half-year from the date hereof, upon condition that the assured pays the mortuary premium herein provided for," and a further sum of $3 for expenses.

In the conditions is found the following: "Mortuary premiums required for the payment of actual death claims among the insured according to the rates for each $1,000 insured herein as set forth in the official schedule for each actual age printed upon the back of this policy shall be paid to the said company before renewal for any succeeding term above provided." On the back is printed a schedule: "Maximum mortuary premiums for each $1,000 insured." And then is given the premium for each year from 15 to 60. Below this is printed: "The premiums after the first payment required to continue and extend the insurance can never exceed the maximum rates named in the above table," but may be reduced by the surplus

portion of the preceding premium not required to meet death claims.

After attaining 60, the insured contends, no greater premium than the maximum named in the schedule can be demanded as the price of renewal.

In Provident Savings Life Assurance Society of New York v. Mowat, 32 S.C.R. 147, the Court were enabled to come to a conclusion as to the meaning of the policy there in question by reason of an endorsement stating that the rates for ages beyond 60 would be given on application, and in each of the two United States cases cited there was found some context to guide. In Nall v. Provident Savings Life Assurance Society, 54 S.W. Repr. 109, it was a clause relating to insurance after the age of 60, which might be continued on the level rate plan at the premium for attained age, shewing, in the opinion of the Court, that it could not be contemplated that it continue at the stated rate as a level premium. In Jones v. Provident Savings Life Assurance Society of New York, 61 S.E. Repr. 388, the schedule was followed by "etc., etc., etc.," meaning "and so on," i.e., in an increasing scale.

The conclusion at which I have arrived is, that, the schedule ceasing at 60, the right to renewal then ceases to be provided for by the policy, and, in the event of renewal being desired, terms must in each case be made. No premium is bargained for in anticipation, and the policy "runs out" as a contract and can only be continued at the will of the parties. This may place the company in an unfair position where the expectation of life is less than the average; but in the case of this plaintiff, whose expectation of life seems unusually good, he will, no doubt, when once he understands the basis upon which the premiums are computed, allow his policy to lapse.

I can see no course open save to dismiss the action; and, doing so, I do not give costs—not because of any unfair conduct of those now in charge of the company (they appear to have been both fair and frank), but to shew my disapproval of the original form of policy, which seems to me to be tricky and calculated to deceive. I think that the rates should have been carried on so as to shew the great and prohibitive cost when the insured lives beyond 70.

Action dismissed without costs.

[This decision, given more than two years ago, is rather meagrely noted in 2 O.W.N. 1274. A recent inquiry for the full text of the decision suggested the advisability of publishing it.]

BRITTON, J. AUGUST 2ND, 1913.

McDOUGALL v. PAILLE.

Gift—Sum of Money in Bank Standing to Credit of Deceased Person—Money Received from Wife of Deceased—Action by Administratrix of Wife to Recover from Estate of Deceased Husband—Assertion of Gift from Wife to Husband—Evidence—Onus—Corroboration—Undue Influence—Mental and Physical Weakness of Wife.

Action originally brought by Martha Nolan against her husband, P. John Nolan, to recover a sum of money belonging to the plaintiff, deposited in a bank to the credit of the defendant. Both parties died, pendente lite, and the action was continued in the name of the present plaintiff, the administratrix of the estate of the deceased Martha Nolan, against the present defendant, as executor of the will of the deceased P. John Nolan.

The action was tried before BRITTON, J., without a jury, at Fort Frances.

G. S. Bowie, for the plaintiff.

A. D. George, for the defendant.

BRITTON, J.:—The plaintiff resides in the city of Winnipeg, and is a school-teacher. She is the daughter of the late Peter McDougall and Martha McDougall, his wife. Her father died in September, 1905, and her mother, Martha McDougall, married P. John Nolan in August, 1907. At the time of his marriage, P. John Nolan was a locomotive engineer, residing at Winnipeg. Shortly after the marriage, Nolan and his wife left Winnipeg and took up their residence in Rainy River, in the Province of Ontario.

In 1910, Mrs. Nolan became sick. She suffered from a growth or tumor in the brain. The disease proved fatal, and she died on or about the 25th November, 1911. P. John Nolan became ill at a later date than the beginning of the sickness of his wife, and he died in July, 1911. No children were born to P. John Nolan and Martha McDougall, but two children were born to Martha and Peter McDougall, and two children were born to P. John Nolan and his former wife.

Martha Nolan became possessed and was the owner of a large sum of money, part received by her from her former husband Peter McDougall, and part from property which became hers and was sold by her.

Of this money, at least $4,800 was, prior to the 21st January, 1911, on deposit to the credit of Mrs. Nolan in the Canadian Bank of Commerce at Rainy River. Of this money, the sum of $2,100 was drawn out of that bank upon the cheque of Mrs. Nolan and deposited to the credit of P. John Nolan in the Bank of Nova Scotia at its branch at Rainy River.

The balance of the $4,800, viz., the sum of $2,700, was drawn out by the wife, she getting a draft for it upon the Canadian Bank of Commerce at Belleville. This money was also received by the deceased P. John Nolan. Some of it was expended by him in his care for and the search for the restoration of his wife's health; but a very considerable part of it was retained by the husband. It is said that he expended money upon himself, not wisely—his habits having become bad.

This action was commenced during the lifetime of the parties, the present plaintiff suing as next friend of her mother. The action abated by the death of P. John Nolan, and was revived as against the present defendant, as executor of the will of P. John Nolan. Then Martha Nolan died, and the action is now continued by the plaintiff as administratrix of Martha Nolan.

An interim injunction was obtained against P. John Nolan drawing out and expending any more of the money. Of the money which Martha Nolan had, there is the sum of $3,724.81 and interest in the Bank of Nova Scotia at Toronto, standing to the credit of P. John Nolan. P. John Nolan was the original defendant, and this money is the subject of the present controversy. It is hardly in dispute that the money was the money of Martha Nolan, but P. John Nolan asserted, and his executor now asserts, that it was given to P. John Nolan by his wife Martha.

To establish this gift inter vivos, the onus is upon the defendant. In my opinion, that onus has not been satisfied. Upon this first point, which goes to the root of the matter, the plaintiff is entitled to recover.

There is really no corroboration of the statement of P. John Nolan. All the facts in connection with the transfer of the money from Martha—the sick wife—to her husband, are more consistent with there being no gift, than that there was a gift. No gift can be implied from the facts and circumstances as stated by John Nolan.

Martha Nolan was not, at the time of the alleged gift, in a state of mind to appreciate the nature and effect of the acts

which are alleged to constitute the gift. The effect would be to deprive her own children of the money and to enable her husband to give it to his children. Such a gift by her would be an improvident act, and one she would not, if in sound mind, be likely to commit.

Although it so happened that Mrs. Nolan survived her husband, her disease, which later on proved fatal, was such as to render her mentally unfit to make a will or a valid gift such as alleged.

In considering the question of burden of proof, it is important to note the difference between influence to obtain a gift inter vivos and influence to obtain a will or legacy.

The case of Parfitt v. Lawless (1872), L.R. 2 P. & D. 462, was cited by counsel for the plaintiff, and is very much in point. In that case the claim was under a will. There was no evidence to go to the jury on the question of undue influence, and the difference mentioned above is thus emphasised: "Natural influence exerted by one who possesses it, to obtain a benefit for himself, is undue, inter vivos, so that gifts and contract inter vivos between certain parties will be set aside, unless the party benefited can shew, affirmatively, that the other party could have formed a free and unfettered judgment in the matter; but such natural influence may be fully exercised to obtain a will or legacy. The rules, therefore, in Courts of equity, in relation to gifts inter vivos, are not applicable to the making of wills."

The many cases cited upon the argument and in the judgment in Parfitt v. Lawless are applicable to the case now in hand.

When the money passed from Martha Nolan to her husband, she was of "feeble mental capacity and in a weak state of health." She could easily be induced to allow her husband to have control of the money.

Upon the whole evidence in this case, the plaintiff is entitled to recover.

There will be judgment for the plaintiff against the defendant executor for the sum of $3,724.81, and the interest allowed by the bank.

There will be a declaration that the money in the Bank of Nova Scotia at Toronto, viz., the $3,724.81 standing there to the credit of P. John Nolan, is money belonging to the estate of Martha Nolan, and that it may be paid over to the plaintiff as administratrix of the said Martha Nolan. Payment to the plaintiff of this money will be in full satisfaction of this judgment.

The plaintiff asked for a reference to take the accounts against the estate of the late P. John Nolan. In an ordinary case of this sort, the plaintiff would be entitled, at her own risk, to such reference; but in this case it is quite clear that the plaintiff would gain nothing by having an account of how P. John Nolan expended his wife's money.

The judgment will be without costs payable by the defendant. The plaintiff's costs will be payable out of the money belonging to the estate of Martha Nolan.

RE BURRIDGE—LENNOX, J.—JULY 24.

Executors—Power to Sell and Convey Land—Interest of Infants—Approval of Court—Vendors and Purchasers Act.]—Motion by all parties interested for an order approving of a sale of land in which infants were interested. The Court was asked to treat the application as one under the Vendors and Purchasers Act. The counsel making the application represented all interested parties, including the infant and including the proposed purchasers, the Board of Education of the City of London. It appeared by the affidavits of Patrick Walsh and Thomas C. Knott that it would be decidedly beneficial to the estate that the proposed sale should go through. An excellent price was offered for the property, and it was stated that the money was required for payment off of mortgages upon the estate. LENNOX, J., was of opinion that the testator, by the will under which the vendors derived title as executors, clearly intended that his executors should have power to convey in a case of this kind. He, therefore, declared that the surviving executor and executrix had power to convey the property, and that the Board of Education of the City of London were compelled to accept the title made in this way. J. R. Meredith, for all parties.

BANCROFT v. MILLIGAN—FALCONBRIDGE, C.J.K.B.—JULY 26.

Fraudulent Conveyance—Setting aside—Priority of Mortgage—Will—Election—Counterclaim — Costs.]—Action for a declaration that a conveyance of land by the defendant John C. Milligan to the defendant Maude Milligan was voluntary, fraudulent, and null and void, and that a certain mortgage had

priority thereto, and for other relief. The learned Chief Justice finds that the plaintiff has proved all the material allegations in the statement of claim, and gives judgment for the plaintiff in terms of the prayer of the statement of claim with costs against the defendants John C. and Maude Milligan. He observes that the death of one of the parties since the trial has removed her contentions from the arena; but he would have held, in any event, that she had elected to take under the will. The plaintiff was willing, if she had lived, to pay the deceased party $100 a year as claimed in paragraph 3 of the counterclaim. No costs for or against the defendants other than John C. and Maud Milligan. G. A. Stiles, for the plaintiff. R. A. Pringle, K.C., for the defendants John C. and Maude Milligan. J. G. Harkness, for the other defendants.

RE MACKENZIE AND HAMILTON—LENNOX, J.—JULY 31.

Vendor and Purchaser—Contract for Sale of Land—Objection to Title—Outstanding Interest—Vendors and Purchasers Act.]—Motion by the vendor, under the Vendors and Purchasers Act, for an order declaring that the purchaser's objection to the title shewn by the vendor, upon a contract for the sale and purchase of land, was invalid, and that the vendor could make a good title. LENNOX, J., considered himself bound by a decision of MIDDLETON, J., in Re Hamilton and Adair, on the 18th September, 1911, in respect of another property, but upon the same question, viz., whether Gordon A. Yates took an interest under a declaration in his favour made by the vendor. LENNOX, J., was inclined to think that Yates took an interest in the land; but he did not see that the circumstances of the present application differed from the conditions which MIDDLETON, J., had to consider. Order declaring that the objection made by the purchaser in reference to the interest of Yates was not a valid objection to the title to the land which he was purchasing, and that neither Yates nor his assignee had any interest in the land in question. The purchaser to pay the vendor the costs of the application. J. A. McEvoy, for the vendor. H. L. Macdonell, for the purchaser.

RE MACKAY AND NELSON—LENNOX, J.—JULY 31.

Will—Power of Executors to Sell Land for Payment of Debts —Contract for Sale of Land by Executors—Objection to Title—Application under Vendors and Purchasers Act—Costs.]—Motion by the vendors for an order, under the Vendors and Purchasers Act, declaring that the purchaser's objection to the title of the vendors, upon a contract for the sale and purchase of land, was invalid, and that the vendors could make a good title. The vendors were the executors of a deceased person, and the objection was as to the power of the executors to sell, under the terms of the will. LENNOX, J., said that the will contained a clear charge of debts and a specific devise of all the property of the testatrix to the executors for named purposes—amongst them, the payment of debts. A few months only having elapsed since the death of the testatrix, there was no presumption that the debts had been paid; and the purchaser had no right to be informed as to them. It was admitted on the argument that the Ontario statutory law relating to the matter was the same as the English law; and all the points were covered by In re Tanqueray, 20 Ch.D. 465. The executors had power to convey; and it should be so declared. The question of interest did not come before the Court on the application. The letters and attitude of the vendors had been somewhat vacillating; and it was a case in which each party should pay his own costs. J. M. Langstaff, for the vendors. A. B. Armstrong, for the purchaser.

COUNTY OF HURON ASSESSMENT APPEALS.

DOYLE, CO.C.J. JULY 29TH, 1913.

RE RATTENBURY AND TOWN OF CLINTON.
RE MCCAUGHEY AND TOWN OF CLINTON.
RE PIKE AND REINHARDT AND TOWN OF CLINTON.

Assessment and Taxes—Assessment of Hotel Properties—Effect of Local Option By-law—Reduction in Value—Business Assessment—Inapplicability to Hotel without License—Assessment Act, 4 Edw. VII. ch. 23, sec. 10(h).

Appeals by Joseph Rattenbury, John J. McCaughey, and Thomas G. Pike and Joseph E. Reinhardt, hotel-keepers in the town of Clinton, from decisions of the Court of Revision for the town, affirming the assessments of the appellants.

J. L. Killoran, for the appellants.

The Mayor and Reeve of the town supported the rulings of the Court of Revision.

DOYLE, Co.C.J.:—The appellants in each of the above-mentioned appeals appeal against their assessments, on the grounds of (1) overcharge on land, and (2) that the appellants are not liable for business tax.

The appellants contend that the passage of a local option by-law by the town corporation has reduced the value of the appellants' hotel properties to one-half of their former value.

A standard author, Weir, "Assessment Law of Ontario," p. 130, says: "It is a popular error that the cost of the buildings, less proper allowance for wear and tear, and other deterioration, should be the assessed value. By 'value of the land' and 'actual value,' in this section, is doubtless meant the market-value, or the value as an asset of the owner's estate. Its actual value must, however, be measured in dollars, and is not more than what, within a reasonable time, and with due care, can be realised from the sale of it. . . . Strictly speaking, the value of the land, as of any other commodity, is the price it will bring at the time it is offered for sale: Squire qui tam v. Wilson, 15 C.P. 284."

There is no doubt that the passage of the local option by-law in Clinton has most materially reduced the value of all hotel property there, if it has not made it wholly unsaleable.

The appellants contend, and not unreasonably, that the by-law has reduced the value by one-half. It is a serious question whether any of these properties could not be sold, without their contents or fixtures (which are not assessable), for half the sum at which they are now assessed.

Yet, as shewn by the case cited, the value of land is the *price* it *will bring* at the *time it is offered* for sale.

Adopting McCaughey's present valuation, for assessment purposes, of his hotel property, including stable and sheds, which I believe to be a reasonable estimate, I order and adjudge that the assessment of the said property be and the same is hereby reduced to $2,500; the rink property to remain at the sum at which it is assessed. There was evidence shewing that the hotel building is from fifty to sixty years old.

I order and adjudge that the assessment of the hotel property, including the stable and sheds, of the appellant Joseph Rattenbury, be and the same is hereby reduced on the assess-

ment roll to $3,500. The buildings on this property are new, and the whole property is certainly worth $1,000 more than the McCaughey hotel property.

And I also order and adjudge that the assessment of the Pike hotel property, including all of the buildings, be and the same is hereby reduced to $800.

As to the business tax, assessed against these appellants, when they were assessed, those three hotels were "licensed," and properly assessable as "licensed" hotels, for a business tax. But, subsequently, and before appeal, the local option by-law was passed by the respondents, which deprived the appellants of the opportunity to renew their licenses.

The appellants are now all hotel-keepers, but not "licensed;" and, therefore, they are *not* in the class of persons mentioned in the Act as liable to business assessment: see the Assessment Act, 4 Edw. VII. ch. 23, sec. 10 (1) (h).

The only hotel-keeper defined by that Act, as liable to a business tax, is "every person carrying on the business of a . . . hotel in respect of which a *tavern license has been granted.*" No tavern license having been granted to any one of the appellants, they are clearly not within the Act.

In America, "hotel" has been held to be a synonym for "inn": Cromwell v. Stevens, 2 Daly 15.

"I agree that the words 'hotel' and 'tavern' are undergoing a change in their meaning, there being temperance hotels and temperance taverns, as well as houses for the sale of excisable liquors:" per Chitty, L.J., in Webb v. Fagotti, 79 L.T.R. 684.

"An inn or hotel may be defined to be a house in which travellers, passengers, wayfaring men, and other such like casual guests are accommodated with victuals and lodgings and whatever they reasonably desire for themselves and their horses, at a reasonable price, while on their way:" Stroud's Judicial Dictionary, 2nd ed., 978, tit. "Inn," and cases cited. "Neither a boarding-house, restaurant, nor coffee-house, is an inn:" *ib.*

Inn, hotel, tavern, public-house, the keeper of which is now by law responsible for the goods and property of his guests, are treated as synonymous in the English Act, 1863, 26 & 27 Vict. ch. 41.

"Taxing Acts must be construed strictly, and any ambiguity will entitle the subject to be exempt from the tax:" Weir's Assessment Law, p. 49, and cases cited.

I order and adjudge that the "business tax" assessed against

each of the appellants be and the same is hereby disallowed, and I order that it be struck out of the assessment roll.

And I order the said assessment roll to be amended according to all of the foregoing adjudications.

The appellants, being all clearly entitled to succeed, I allow them their costs.

INDEX

ACCORD AND SATISFACTION.

Purchase-money of Land—Acceptance of Person as Debtor in Respect of Part—Evidence—Acceptance of Certificate of Discharge of Mortgage—Payment of Balance of Purchase-money—Assignment of Interest in Mortgage. *Malcolmson* v. *Wiggin*, 4 O.W.N. 1538.—App. Div.

ACCOUNT.

1. Change of Solicitors—Notice of Discontinuance—New Plaintiff. *Land Owners Limited* v. *Boland*, 4 O.W.N. 305.—Sutherland, J. (Chrs.)

2. Preliminary Accounts and Inquiries—Con. Rule 645—Corresponding English Rule—Non-production of Writ—Filing Documents Used on Motions. *Land Owners Limited* v. *Boland*, 4 O.W.N. 242.—Riddell, J. (Chrs.)

3. Reference—Book-accounts—Credits—Absence of Surcharge or Falsification—Payment—Onus — Amounts Received in Excess of those for which Credit Given—Opening up Accounts—Estoppel—Fraud. *Ontario Asphalt Block Co.* v. *Cook*, 4 O.W.N. 591.—D.C.

See Assignments and Preferences, 2—Brokers, 1—Company, 10—Discovery, 33—Executors and Administrators, 1—Gift, 5—Guaranty, 3—Judgment, 16—Mechanics' Liens, 1—Mortgage, 1, 2—Particulars, 3—Partnership, 1— Street Railways, 7.

ACCOUNTANT.

See Reference.

ACQUIESCENCE.

See Brokers, 1—Contract, 10, 25—Master and Servant, 3—Solicitor, 6.

ACTION.

See Discovery—Pleading—Practice—Settlement of Action—Trial.

ADDRESS.

See Assessment and Taxes, 8.

ADMINISTRATION.

See Distribution of Estates, 3—Will, 41.

ADMINISTRATOR.

See Executors and Administrators.

ANIMALS.

1. Injury from Bite of Trained Monkey—Keepers or Harbourers—Evidence—Liability for Act of Naturally Wild and Mischievous Animal—Trespass—Negligence. *Connor* v. "*The Princess Theatre,*" 4 O.W.N. 502, 27 O.L.R. 466.—D.C.

2. Lien for Keep—Sale of Animal for Unpaid Board—Notice—Newspaper Advertisement—Statutory Condition—Innkeepers' Act, 1 Geo. V. ch. 49, sec. 3, sub-sec. 6—Vendor Becoming Purchaser—Conversion—Damages—Costs. *Martin* v. *Howard,* 4 O.W.N. 1266.—MIDDLETON, J.

See Sale of Goods, 3, 5, 7.

ANNUITY.

See Will, 5, 6, 13, 41.

APARTMENT HOUSE.

See Deed, 5—Municipal Corporations, 20, 21, 22, 23, 26.

APPEAL.

1. To Appellate Division—Leave to Appeal from Order of Judge in Chambers—Interpleader—Issue—Parties—Claimants—Security—Practice. *Pallandt* v. *Flynn,* 4 O.W.N. 821.—MIDDLETON, J. (Chrs.)

2. To Appellate Division—Leave to Appeal from Order of Judge in Chambers—Necessity for—Con. Rule 777 (1278)—Order "which Finally Disposed of the Action." *J. J. Gibbons Limited* v. *Berliner Gramophone Co. Limited,* 4 O.W.N. 1068.—APP. DIV.

3. To Appellate Division—Leave to Appeal from Order of Judge in Chambers—Refusal of Leave—Con. Rule 1278. *Re Emmons* v. *Dymond,* 4 O.W.N. 1405.—LENNOX, J. (Chrs.)

4. To Appellate Division—Leave to Appeal from Order of Judge in Chambers Striking out Jury Notice—Discretion—Con. Rule 1322—Non-appealable Order. *Cornish* v. *Boles,* 4 O.W.N. 1551.—MIDDLETON, J. (Chrs.)

5. To Appellate Division—Question of Fact—Finding of Trial Judge on Disputed Facts—Absence of Reasons for Finding—Different View Taken by Appellate Court—New Trial—Highway—Nonrepair—Excavation—Injury to Traveller—Negligence—Want of Sufficient Barrier. *Patterson* v. *Township of Aldborough,* 4 O.W.N. 1346.—APP. DIV.

See Arbitration and Award, 1, 4, 5—Assessment and Taxes, 1, 5—Brokers, 3—Company, 12, 13, 17, 19, 21—Contract, 3, 8, 14, 16, 32—Costs, 3, 11—Criminal Law, 15—Damages, 2, 5, 7—Distribution of Estates, 1 — Division Courts, 1 — Fraud and Misrepresentation, 1—Fraudulent Conveyance, 2—Gift, 3—Guaranty, 3—Highway, 9, 12—Infants, 5—Insurance, 3, 4 — Judgment, 9 — Judgment Debtor, 1 — Landlord and Tenant, 14 — Lis Pendens, 1 — Mandamus — Master and Servant, 11 — Mechanics' Liens, 1 — Mines and Minerals, 1 — Money Lent, 1 —

Mortgage, 2— Motor Vehicles Act, 1—Municipal Corporations, 4, 7, 20, 30—Municipal Elections, 2—Negligence, 10, 11, 12—Ontario Railway and Municipal Board—Parent and Child—Parties, 6—Physicians and Surgeons—Pleading, 35—Principal and Agent, 12, 14—Promissory Notes, 5—Railway, 6, 8, 9, 10—Solicitor, 6, 7—Surrogate Courts—Trial, 3, 8—Trusts and Trustees, 1—Vendor and Purchaser, 3—Will, 3—Writ of Summons, 2.

APPEARANCE.

See Judgment, 4—Writ of Summons, 3, 4.

APPELLATE DIVISION.

See Appeal—Division Courts, 1.

APPORTIONMENT.

See Will, 35.

APPORTIONMENT OF DAMAGES.

See Damages, 1, 4—Master and Servant, 26.

APPROPRIATION OF PAYMENTS.

See Banks and Banking, 2.

ARBITRATION AND AWARD.

1. Appeal from Award—Municipal Arbitrations Act, R.S.O. 1897 ch. 227, sec. 7—Time for Appealing—Notice of Taking up Award—Order Quashing Appeal as too Late. *Re Ketchum and City of Ottawa*, 4 O.W.N. 28.—KELLY, J.

2. Misconduct of Arbitrators—Costs. *Re Windatt and Georgian Bay and Seaboard R.W. Co.*, 4 O.W.N. 395.—MIDDLETON, J.

3. Notice of Appointment of Arbitrator—Motion to Set aside—Jurisdiction of High Court—Submission—Arbitration Act, 9 Edw. VII. ch. 35, sec. 5—Estoppel—Timber Slides Act, R.S.O. 1897 ch. 194, secs. 24-35—Remedy. *Re Little Sturgeon River Slides Co. and Mackie Estate*, 4 O.W.N. 262.—RIDDELL, J. (Chrs.)

4. Valuation—Appeal. *Re Irwin and Campbell*, 4 O.W.N. 1562.—MIDDLETON, J.

5. Valuation—Appeal—Costs. *Re Irwin, Hawken, and Ramsay*, 4 O.W.N. 1562.—FALCONBRIDGE, C.J.K.B.

See Highway, 9, 10—Municipal Corporations, 9, 10, 11—Partnership, 3—Railway, 4, 5, 6—Schools, 1.

ARCHITECT.

See Contract, 1, 2, 3, 15—Interpleader, 6.

ASSAULT.

See Criminal Law, 9—Husband and Wife, 2—Malicious Prosecution, 3—Parent and Child.

ASSESSMENT AND TAXES.

1. Appeal to Court of Revision—Municipality in Unorganised District—Assessment Acts and Amendments—Act respecting Municipal Institutions in Territorial Districts—Appeal from Decision of Court of Revision—Person Assessed—Opposing Ratepayer—Forum—District Court Judge—Ontario Railway and Municipal Board—Conflict—Construction of Statutes. *Re Fort Frances Assessment*, 4 O.W.N. 600, 27 O.L.R. 622.—C.A.

2. Assessment of Hotel Properties—Effect of Local Option By-law—Reduction in Value—Business Assessment—Inapplicability to Hotel without License—Assessment Act, 4 Edw. VII. ch. 23, sec. 10(*h*). *Re Rattenbury and Town of Clinton, Re McCaughey and Town of Clinton, Re Pike and Reinhardt and Town of Clinton*, 4 O.W.N. 1607.—DOYLE, Co.C.J.

3. Assessment of Interest of Locatee in Free Grant Land—Distress for Taxes on Located Crown Lot—Free Grants and Homesteads Act, R.S.O. 1897 ch. 29, secs. 8, 9, 26—Cancellation of Location—Relocation—Seizure of Goods of New Locatee for Taxes Unpaid by Former Locatee—"Owner"—Assessment Act, 4 Edw. VII. ch. 23, secs. 5, 26, 103, 151, 154. *Pattison* v. *Township of Emo*, 4 O.W.N. 807, 28 O.L.R. 228.—APP. DIV..

4. Lien on Land for Unpaid Taxes—Action for Declaration of Lien and Enforcement by Sale—Assessment Act, sec. 89—Effect of—Declaratory Judgment—Consequential Relief—Acceptance of Promissory Notes for Taxes—Abandonment of Other Remedies—Validity of Assessments—Non-compliance with sec. 22 of Act—Description of Properties—Registered Plans—Subdivisions—Evidence. *Town of Sturgeon Falls* v. *Imperial Land Co.*, 4 O.W.N. 178.—KELLY, J.

5. *Salary of County Court Judge—Appeal from Decision of Court of Revision to County Court Judge—Prohibition—*

Disqualification by Interest—Jurisdiction of Judge in Chambers—10 Edw. VII. ch. 26, sec. 16—Appointment under.] —It is important not only that the fountain of justice should be preserved from all impurity, but also that it should be protected against any semblance of impurity. *Eckersley* v. *Mersey Docks and Harbour Board*, [1894] 2 Q.B. 667, 671, followed.—Where a County Court Judge had appealed unsuccessfully to the Court of Revision of the city in which he lived, from the assessment of his salary as income, and had launched a further appeal to the County Court Judge, which he proposed to request some other County Court Judge to hear (9 Edw. VII. ch. 29, sec. 15) :—*Held*, upon a motion for prohibition and in the alternative for an order under 10 Edw. VII. ch. 26, sec. 16, that an order should be made under that enactment appointing a disinterested person to hear the appeal. The County Court Judge being disqualified by reason of interest, the jurisdiction of a Judge of the High Court to appoint another person immediately arises. *Re Chisholm and City of Berlin*, 4 O.W.N. 431.—MIDDLETON, J. (Chrs.)

6. Tax Sale—Action by Purchaser to Recover Possession of Land —Defence—Tender—Redemption—Mortgages — Appointment of Guardian or Committee for Defendant—Settlement of Action. *McPherson* v. *Ferguson*, 4 O.W.N. 1564.—MIDDLETON, J.

7. Tax Sale—Action to Set aside—Evidence—Production of Tax Deed—Onus—Assessment Act, 4 Edw. VII. ch. 23, sec. 173 —"Time of Sale"—Time of Execution and Delivery of Tax Deed—Conduct of Tax Sale—Sale without Regard to Value of Land Sold—Irregularities as to Assessment Roll—Absence of Affidavit—Omission Cured by sec. 172—"In Arrear for Three Years"—Sec. 121—Computation of Time —Right to Redeem—Sec. 165—Construction of, when Read with sec. 172—Joint Assessment of Lots—Illegality—Validating Act, 10 Edw. VII. ch. 124—Construction of sec. 4— Sale Effected when Tax Deed Delivered—Cancellation of Tax Deed—Repayment of Taxes Paid by Purchaser—Costs. *Errikkila* v. *McGovern*, 4 O.W.N. 195, 518, 27 O.L.R. 498.— LENNOX, J.—D.C.

8. Tax Sale—Action to Set aside—Non-resident Owner—Statutory Notice of Assessment—Statement and Demand of Taxes—Transmission of, to Owner's Address, "If Known"

ASSIGNMENT FOR BENEFIT OF CREDITORS.

ASSIGNMENT OF CHOSE IN ACTION.

ASSIGNMENT OF EQUITY OF REDEMPTION.

See Mortgage, 1, 2.

ASSIGNMENT OF WAGES.

See Company, 3.

ASSIGNMENTS AND PREFERENCES.

1. Assignment by Company for Benefit of Creditors—Inspector of Insolvent Estate—Interest in Purchase of Assets—Action to Set aside Sale—Locus Standi of Plaintiff—Acquisition of Share of Company's Stock after Winding-up Order—Shareholder not representing Company—Inspector Abstaining from Action in Regard to Assets—Formal Concurrence in Conveyance of Assets—Absence of Knowledge by Assignee of Interest of Inspector—Sale Beneficial for Creditors—Insolvent plaintiff—Inspector not Occupying Fiduciary Position. *Shantz* v. *Clarkson*, 4 O.W.N. 1303.—MIDDLETON, J.

2. Assignment for Benefit of Creditors—Action by Assignee to Set aside Chattel Mortgage Made by Insolvent to Secure Debt Previously Incurred—Evidence—Mortgagee's Knowledge of Insolvency—Intent to Prefer—Invalidity of Mortgage—Bills of Sale and Chattel Mortgage Act, 10 Edw. VII. ch. 65, secs. 5, 7—Affidavit of Attesting Witness—Omission to Shew Date of Execution—Imperative Statutory Provision—Account—Application of Assets Freed from Mortgage—Costs. *Cole* v. *Racine*, 4 O.W.N. 1327.—KELLY, J.

3. Assignment for Benefit of Creditors—Claim by Assignee to Goods Seized by Sheriff under Execution and Subject of Interpleader Issue Delivered but not Tried when Assignment Made—Sheriff's Sale under Order of Court—Preference—Priorities—Assignments Act, sec. 14—Creditors' Relief Act, sec. 6, sub-secs. 4, 5. *Soper* v. *Pulos*, 4 O.W.N. 1258.—REYNOLDS, L.M.

4. Assignment for Benefit of Creditors—Claim by Assignee to Goods Seized by Sheriff under Execution and Subject of Interpleader Issue Delivered but not Tried when Assignment Made—Sheriff's Sale under Order of Court—Preference—Priorities—Assignments and Preferences Act, 10 Edw. VII. ch. 64, secs. 12, 14—Creditors' Relief Act, 9 Edw. VII. ch. 48, sec. 6—"Salvage"—Mortgage Made in Fraud of Creditors—Property Covered by—Right of Sheriff to

ATTACHMENT.

ATTACHMENT OF DEBTS.

ATTORNEY-GENERAL.

AUCTIONEER.

AUTHOR.

Preparation of Biography—Access to Collection of Private Documents—Implied Undertaking as to Use to be Made of Documents—Misrepresentation as to Character of Proposed Work—Breach of Faith—Delivery up of Copies and Extracts—Use of Information Obtained—Restraint of Publication—Injunction—Nominal Damages. *Lindsey* v. *Le Sueur*, 4 O.W.N. 570, 27 O.L.R. 588.—BRITTON, J.

AWARD.

See Arbitration and Award.

BAILMENT.

See Contract, 17—Malicious Prosecution, 4—Sale of Goods, 10.

BALLOTS.

See Criminal Law, 11—Municipal Corporations, 14, 15, 16.

BANKRUPTCY AND INSOLVENCY.

See Assignments and Preferences—Banks and Banking, 3—Contract, 7—Costs, 17—Criminal Law, 6—Fraudulent Conveyance—Libel, 1, 2.

BANKS AND BANKING.

1. Customer's Deposit—Claim of Bank on Overdue Notes—Right of Set-off—Banker's Lien—Customer and Banker—Creditor and Debtor—Application of Deposit on Cross-debt—When to be Made—Interest. *Royal Trust Co.* v. *Molsons Bank*, 4 O.W.N. 437, 27 O.L.R. 441.—FALCONBRIDGE, C.J. K.B.

2. Mortgages to Bank to Secure Debt of Customer and Future Advances—Increased Indebtedness—Evidence—Absence of Duress—Bank Continuing to Make Advances—Interest—Stated Accounts—Application of Moneys Raised from Securities—Secured and Unsecured Debts—Appropriation of Payments—Balance Due on Mortgage—Suspense Account—Mortgagee in Possession—Conveyance of Equity of Redemption by Customer to Persons not Purchasers for Value—Rights of Grantees—Registry Act—Bank Act—Security for Future Indebtedness—Account—Redemption. *Thomson* v. *Stikeman*, 4 O.W.N. 1546, 29 O.L.R. 146.—MIDDLETON, J.

BILL OF COSTS.

See Solicitor, 1, 2, 3, 7.

BILL OF LADING.

See Carriers, 2—Sale of Goods, 9.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

See Promissory Notes.

BILLS OF SALE.

See Execution, 2, 3.

BILLS OF SALE AND CHATTEL MORTGAGE ACT.

See Assignments and Preferences, 2—Chattel Mortgage—Execution, 3.

BOARD OF RAILWAY COMMISSIONERS.

See Carriers, 1—Costs, 18—Municipal Corporations, 1—Railway, 1, 2, 6, 11.

BONDS.

See Contract, 26—Guaranty, 2—Judgment, 14—Mortgage, 4—Pleading, 36—Principal and Surety, 1, 2.

BONUS SHARES.

See Company, 15.

BOOK-DEBTS.

See Account, 3—Banks and Banking, 3.

BOOKMAKER.

See Conspiracy.

BOOM COMPANY.

See Water and Watercourses, 3.

BOUNDARIES.

Establishment of Line between Adjoining Parcels of Land—Evidence—Encroachment—Damages—Injunction—Interim Order—Undertaking as to Damages—Remoteness—Refusal to Order Inquiry—Costs. *Douglas* v. *Bullen*, 4 O.W.N. 1587.—BRITTON, J.

See Crown Lands, 1—Highway, 1—Trespass to Land, 1, 2, 4—Water and Watercourses, 1.

BREACH OF PROMISE OF MARRIAGE.

See Contract, 22—Pleading, 9.

BREACH OF TRUST.

See Trusts and Trustees, 6.

BRIBERY.

See Criminal Law, 1—Municipal Elections, 1, 2.

BRIDGE.

See Highway, 2, 19.

BRITISH NORTH AMERICA ACT.

See Constitutional Law.

BROKERS.

1. Dealings with Customers—Purchase and Sale of Shares in Mining Companies—Connected Dealings by two Customers with Brokers—Agency—Transfer of Shares to one—Sufficient Compliance with Duty of Brokers—Contract—Keeping Speculative Shares Ready for Sale—Allotment of Particular Certificates in Brokers' Books—Sale by Brokers without Regard to Allotment — Conversion — Accounting for Moneys Intrusted to Brokers for Investment—Agreement—Acquiescence—Costs. *Long* v. *Smiley*, 4 O.W.N. 229, 1452.—RIDDELL, J.—APP. DIV.

2. Employment to Purchase Shares for Customer—Relation of Principal and Agent—Agents Selling their own Stock—Non-disclosure to Principal — Stock Exchange Rules — Pleading—Amendment— Undisclosed Principal—Evidence. *Playfair* v. *Cormack*, 4 O.W.N. 1195.—MIDDLETON, J.

3. Purchase by Customer of Shares on Margin—Contract—Terms—Failure to Keep up Margin—Re-sale by Brokers—Findings of Fact—Appeal. *Gray* v. *Buchan*, 4 O.W.N. 220, 770.—D.C.

4. Purchase of Shares for Customer on Margin—Failure to Deliver on Demand and Offer to Pay Balance Due—Liability of Broker—Employment of Agent—Purchase "for your Account"—Interest — Commission — Value of Shares at Time of Demand. *Croft* v. *Mitchell*, 4 O.W.N. 1086.—LENNOX, J.

5. Shares—Pledge — Contract — Breach—Tender of Shares — Time. *Warren Gzowski & Co.* v. *Forst & Co.*, 4 O.W.N. 770, 1284.—MIDDLETON, J.—APP. DIV.

See Company, 9—Judgment, 8.

BUILDING CONTRACT.

See Contract, 2, 3, 15—Mechanics' Liens.

BUILDING RESTRICTIONS.

See Covenant, 1—Deed, 5—Vendor and Purchaser, 7.

BUILDING TRADES PROTECTION ACT.

See Master and Servant, 5.

BUILDINGS.

Encroachment — Evidence — Deprivation of Light — Nominal Damages—Costs. *Singer* v. *Prosky*, 4 O.W.N. 1000.—FALCONBRIDGE, C.J.K.B.

See Contempt of Court, 1—Landlord and Tenant—Municipal Corporations, 9, 10, 20-27—Vendor and Purchaser, 42.

BURGLARY.

See Criminal Law, 2.

BY-LAWS.

See Assessment and Taxes, 2—Company—Criminal Law, 15—Highway, 2, 4, 10—Municipal Corporations—Public Health Act.

CANCELLATION OF CONTRACT.

See Vendor and Purchaser.

CARRIERS.

1. Express Company—Loss of Goods Received for Carriage—Receipt—Conditions Limiting Liability—Special Contract—Want of Privity—Approval of Form by Board of Railway Commissioners—Railway Act, R.S.C. 1906 ch. 37, sec. 353—Common Carriers. *Wilkinson* v. *Canadian Express Co.*, 4 O.W.N. 290, 27 O.L.R. 283.—D.C.

2. Railway Company—Sale of Goods to Pay Charges—Negligence and Default of Auctioneers Employed by Carriers—Conversion of Goods—Loss—Failure to Deliver Surplus Goods — Third Parties—Remedy over — Limitation of Amount to be Recovered—Bill of Lading—Endorsement—Judgment—Costs—Set-off. *Swale* v. *Canadian Pacific R.W. Co.*, 4 O.W.N. 884.—LENNOX, J.

See Damages, 3—Railway.

CASES.

Matthews, In re, [1905] 2 Ch. 460, followed.]—See PARTNERSHIP, 2.

Miron v. McCabe, In re, 4 P.R. 171, followed.]—See COSTS, 7.

Moore v. Gillies, 28 O.R. 358, followed.]—See LANDLORD AND TENANT, 13.

National Bank of Australasia v. United Hand in Hand, 4 App. Cas. at pp. 392, 411, followed.]—See MORTGAGE, 3.

National Telephone Co. v. Baker, [1893] 2 Ch. 186, followed.]—See NEGLIGENCE, 13.

Osterhout v. Fox, 4 O.L.R. 599, followed.]—See COSTS, 7.

Playfair v. Cormack and Steele, 4 O.W.N. 647, reversed.]—See DISCOVERY, 4.

Reynolds v. Foster, 3 O.W.N. 983, affirmed.]—See VENDOR AND PURCHASER, 16.

Rickert v. Britton, 4 O.W.N. 256, affirmed.]—See STAY OF PROCEEDINGS, 2.

Seal & Edgelow v. Kingston, [1908] 2 K.B. 579, followed.]—See PARTNERSHIP, 2.

Sherwood v. Cline, 17 O.R. 30, followed.]—See COSTS, 7.

Stewart v. Sullivan, 11 P.R. 529, followed.]—See STAY OF PROCEEDINGS, 2.

Urquhart v. Farrant, [1897] 1 Q.B. 241, referred to.]—See NEGLIGENCE, 13.

Wickham, In re, 35 Ch.D. 272, followed.]—See STAY OF PROCEEDINGS, 2.

Widell Co. & Johnson v. Foley Bros., 4 O.W.N. 1338, reversed.]—See PARTNERSHIP, 2.

Wright v. Wright, 12 P.R. 42, followed.]—See STAY OF PROCEEDINGS, 2.

CERTIORARI.

See Criminal Law, 15.

CHALLENGE OF JURORS.

See Criminal Law, 14.

CHANGE OF VENUE.

See Venue.

CHARGE ON LAND.

Registration—Absence of Interest in Creator of Charge—Cloud on Title—Removal—Damages. *Fee* v. *MacDonald Manufacturing Co.*, 4 O.W.N. 63.—D.C.

See Vendor and Purchaser, 34—Will, 5, 10, 15, 39.

CHARITABLE BEQUEST.

See Will, 11, 12.

CHATTEL MORTGAGE.

Non-compliance with Bills of Sale and Chattel Mortgage Act—Seizure of Goods under Execution—Claim by Chattel Mortgagee—Interpleader Issue—Parties—Assignee for Benefit of Creditors of Execution Debtor—Costs. *Pulos* v. *Soper*, 4 O.W.N. 1559.—MEREDITH, C.J.C.P.

See Assignments and Preferences, 2—Fraudulent Conveyance, 1—Judgment, 15.

CHEQUE.

See Attachment of Debts, 1—Criminal Law, 6—Gift, 1—Particulars, 3—Principal and Agent, 4.

CHILDREN'S AID SOCIETY.

See Infants, 1.

CHILDREN'S PROTECTION ACT.

See Infants, 1, 4.

CHOSE IN ACTION.

See Discovery, 12.

CIRCULATING OBSCENE PRINTED MATTER.

See Criminal Law, 4.

CITY AND SUBURBS PLANS ACT.

See Municipal Corporations, 30—Statutes (Construction of).

CLERK OF WORKS.

See Contract, 15.

CLOSING OF STREET.

See Municipal Corporations, 1.

CLUB.

Unincorporated Society—Reception of New Members—Regularity—Resolution for Affiliation of Society to Organisation with Different Objects—Absence of Notice—Change of Constitution — Annual Meeting — Diversion of Property of Society from Purposes for which Acquired—Rights of Dissenting Minority—Ultra Vires Resolution—Injunction. *Vick* v. *Toivonen*, 4 O.W.N. 1542.—App. Div.

COLLEGE COUNCIL.

See Physicians and Surgeons.

COLLISION.

See Damages, 6—Motor Vehicles Act—Negligence, 10, 11.

COLLUSION.

See Municipal Corporations, 9.

COMMISSION.

See Brokers, 4—Contract, 14—Interpleader, 5, 6—Principal and Agent—Solicitor, 7.

COMMITTEE.

See Lunatic, 3.

COMPANY.

1. Action against—Absence of Organisation—Legal Existence by Virtue of Letters Patent—Companies Act—Authority of Solicitors to Defend Action—Powers of Directors—Judgment against Company—Absence of Assets—Costs. *Campbell* v. *Taxicabs Verrals Limited*, 4 O.W.N. 28, 27 O.L.R. 141.—Boyd, C.

2. Amalgamation of Mining Companies—Exchange of Shares—Transfer—Registration—Separate Causes of Action—Election—Shareholder—Costs. *MacKay* v. *Mason*, 4 O.W.N. 354.—Clute, J.

3. *Directors—Action against—Wages of Servants—Companies Act, 7 Edw. VII. ch. 34, sec. 94—Assignment—Equitable Assignment—Part of Wages Paid to Keeper of Boarding-house—Judgment against Company—Promissory Note.*]—An action brought by the plaintiff, as assignee of the wages of men employed by a company, to recover from the directors of the company the amount of a judgment against the company, under the Ontario Companies Act, 7 Edw. VII.

11. Trading Company — Powers Given by Charter — Declared and Incidental Purposes of Company—Guaranty — Ultra Vires—Ratification—Costs. *Union Bank of Canada* v. *A. McKillop & Sons Limited*, 4 O.W.N. 1253.—LENNOX, J.

12. Winding-up—Appeal—Leave—Extension of Time for Giving Security—Interpretation of Statute—Matters in Question upon Proposed Appeal—Refusal of Leave—Solicitors' Slips. *Re Canadian Shipbuilding Co.*, 4 O.W.N. 157.—RIDDELL, J. (Chrs.)

13. Winding-up—Appeal—Leave to Appeal to Court of Appeal from Order of Judge on Appeal from Master's Order Allowing Claim to Rank on Assets. *Re Stratford Fuel Ice and Construction Co.*, 4 O.W.N. 497.—RIDDELL, J. (Chrs.)

14. Winding-up—Claim on Assets — Guaranty — Payment to Guarantors by Secured Creditor—Right to Rank for—Affidavit of Claim—Compromise of Claim—Double Ranking—Winding-up Act, secs. 36, 37, 76, 77, 78, 82, 83—Proof of Claim under Act — Voluntary Payment — Compounding —Agreement not to Rank—Memorandum of Settlement — Construction and Effect. *Re Stratford Fuel Ice and Construction Co., Coughlin and Irwin's Claim*, 4 O.W.N. 414, 1051, 28 O.L.R. 481.—MIDDLETON, J.—APP. DIV.

15. Winding-up — Contributories — Contract with Company to Take Payment for Land in Company-shares—Allotment of Paid-up Shares — Acceptance — Vendors Acting as Shareholders—Failure to Transfer Land—Breach of Contract—Remedy in Damages—Effect of New Arrangement for Payment—Bonus Shares—Liability upon, as Unpaid Shares. *Re Modern House Manufacturing Co., Dougherty and Goudy's Case*, 4 O.W.N. 861, 1567, 28 O.L.R. 237, 29 O.L.R. 266.—MIDDLETON, J.—APP. DIV.

16. Winding-up—Contributory—Subscription for Shares—Promissory Note—Misfeasance — Allotment — Rescission. *Re Stewart Howe & Meek Co.*, 4 O.W.N. 506.—MIDDLETON, J.

17. Winding-up — Contributory — Subscription for Shares — Failure to Prove Fraud—Approbation of Contract—Election—Patented Article—Character of—Finding of Master —Appeal—Costs. *Re National Husker Co., Worthington's Case*, 4 O.W.N. 1077.—MEREDITH, C.J.C.P.

COMPENSATION.

See Highway, 10—Municipal Corporations, 9, 10, 11—Principal and Surety, 1—Railway, 4, 5, 6—Vendor and Purchaser, 10, 12, 40.

CONDITION.

See Sale of Goods, 6—Vendor and Purchaser, 7, 8, 23—Will.

CONDITIONAL APPEARANCE.

See Writ of Summons, 3, 4.

CONDITIONAL SALE.

See Motor Vehicles Act, 3.

CONFIDENTIAL RELATIONSHIP.

See Gift, 3.

CONSENT JUDGMENT.

See Infants, 7—Judgment, 1.

CONSOLIDATION OF ACTIONS.

See Costs, 15—Practice, 2.

CONSPIRACY.

Bookmaker — Exclusion from Racetrack — Interference with Business. *Scully* v. *Madigan*, 4 O.W.N. 394.—D.C.

See Criminal Law, 2, 3—Pleading, 11, 17, 18.

CONSTABLE.

See Criminal Law, 5.

CONSTITUTIONAL LAW.

Ontario Railway Act, 1906, secs, 3, 5, 193—Application to Railway Company Incorporated by Dominion Statute—Undertaking within Exclusive Legislative Authority of Parliament—B.N.A. Act, sec. 91, cl. 29—Powers Exercisable under Act of Incorporation—Railway Act of Canada, 1903, sec. 6*a* (4 Edw. VII. ch. 32, sec. 2)—R.S.C. 1906 ch. 37, sec. 9—Proclamation of Governor in Council—Effect of and Application to Company—Unnecessary Declaration that Undertaking for General Advantage of Canada—"Subject to the Jurisdiction of the Province"—4 Edw. VII. ch. 10, sec. 79 (O.) *Kerley* v. *London and Lake Erie Railway and Transportation Co.*, 4 O.W.N. 1234, 28 O.L.R. 606.—App. Div.

See Marriage, 2—Water and Watercourses, 3.

CONTEMPT OF COURT.

1. Motion to Commit—Disobedience of Judgment—Injunction—Manner of Erecting Building—Structural Alterations to Comply with Judgment—Sufficiency of—Building Restrictions—"Front" of Building—"Main Wall." *Holden* v. *Ryan*, 4 O.W.N. 668.—BRITTON, J.

2. Motion to Commit—Disobedience of—Judgment Restraining Infringement of Copyright—Preparation of New Edition of Book—Errors Common to Book Infringing and Book Infringed—Explanation—Refusal of Motion—Costs. *Cartwright* v. *Wharton*, 4 O.W.N. 210.—MIDDLETON, J.

3. Motion to Commit—Refusal to Answer Questions on Examination—Company—Director—Con. Rules 902, 910. *Powell-Rees Limited* v. *Anglo-Canadian Mortgage Corporation*, 4 O.W.N. 352, 499.—SUTHERLAND, J.—D.C.

4. Publisher and Editor of Newspaper—Injurious Publications Pending Action — Breach of Undertakings — Motions for Committal and Sequestration—Finding Defendants in Contempt—Punishment—Costs. *St. Clair* v. *Stair*, 4 O.W.N. 808.—LATCHFORD, J.

See Discovery, 12—Husband and Wife, 6—Injunction, 4—Stay of Proceedings, 2.

CONTINUATION SCHOOLS.

See Schools, 2, 3.

CONTRACT.

1. Architect—Preparation of Plans and Specifications—Remuneration—Liability—Evidence—Agency—Ratification. *Armes* v. *Mancil*, 4 O.W.N. 93.—LATCHFORD, J.

2. Building Contract—Mistake in Construction of Foundations—Duty as to Laying out Ground—Authority of Clerk of Works — Powers of Architect — Waiver — New Contract—Non-completion of Work—Withholding of Certificate of Architect—Absence of Fraud or Collusion—Premature Action—Extras—Sanction of Architect—Evidence. *Vandewater* v. *Marsh*, 4 O.W.N. 882.—KELLY, J.

3. Building Contract—Parol Modification of Written Agreement—Evidence—Onus—Allowance for Materials—Services of Architect—Quantum Meruit—Appeal on Questions of Fact — Further Appeals — Judgment Disposing of Action

without Reference back—Costs. *McKenzie* v. *Elliott*, 4 O.W.N. 1151.—C.A.

4. Dealings in Land—Construction of Agreement—Partnership — Joint Venture — Division of Profits — Expenses — Advances. *Galbraith* v. *McDougall*, *McDougall* v. *Galbraith*, 4 O.W.N. 919—App. Div.

5. Formation of Contract—Evidence—Absence of Consensus. *Sheriff* v. *Aitcheson*, 4 O.W.N. 1269.—Lennox, J.

6. Formation of Contract—Offer to Sell Machine—Use of Ambiguous Words — Letter Relied on as Acceptance — "In Place"—Attempt to Attribute Special Meaning to—Contract not Made out—Interim Injunction—Undertaking as to Damages—Demurrage—Speedy Trial. *Godson* v. *McLeod*, 4 O.W.N. 1205.—Middleton, J.

7. Guaranty—Debt of Insolvent Company—Correspondence—Liability — Bank Act — Securities — Payment for Timber. *Quebec Bank* v. *Sovereign Bank of Canada* (No. 1), 4 O.W.N. 22.—Britton, J.

8. Interest in Oil Leases—Oral Agreement—Evidence to Establish—Finding of Fact by Trial Judge—Reversal on Appeal to Divisional Court—Further Appeal—Variation of Judgment—Partnership—Interest in Land—Statute of Frauds. *Leslie* v. *Hill*, 4 O.W.N. 685, 28 O.L.R. 48.—C.A.

9. Lease of Lands—Agreement for—Construction — Lessee in Possession—Forfeiture of Lease—Rights of Lessee—Option of Purchase—Pre-emption—Termination on Forfeiture of Lease — Vendor and Purchaser — Specific Performance. *Guise-Bageley* v. *Vigars-Sheir Lumber Co.*, 4 O.W.N. 559.—D.C.

10. License to Manufacture and Sell Patented Envelopes—Non-compliance with Postal Regulations—Failure of Consideration — Repudiation of Contract — Acquiescence — Modified Envelope—Applicability of Patent. *Neostyle Envelope Co.* v. *Barber-Ellis Limited*, 4 O.W.N. 1585.—Falconbridge, C.J.K.B.

11. Mining Agreement—Right of Entry—Agreement not Executed by all the Joint Owners—Rescission of Agreement—Finding of Fact—Interim Injunction—Damages by Reason of—Counterclaim—Reference—Costs. *United Nickel Cop-*

Co. v. *Owen Sound Iron Works Co.*, 4 O.W.N. 721, 1189.—KELLY, J.—APP. DIV.

21. Sale of Interest in Mining Company—Indefinite and Incomplete Agreement—Time Deemed of Essence—Abandonment—Rescission—Caution. *Thomson* v. *McPherson*, 4 O.W.N. 216.—D.C.

22. Sale of Land—Agreement under Seal for Division of Proceeds of—Consideration—Cessation of Illicit Cohabitation—Illegality—Breach of Promise of Marriage. *Pepperas* v. *LeDuc*, 4 O.W.N. 1208.—BRITTON, J.

23. Sale of Mill Property—Mutual Mistake—Return of Money Paid — Tender — Payment into Court — Interest — Costs. *Hamilton* v. *Smyth*, 4 O.W.N. 1572.—BRITTON, J.

24. Servant of Railway Company—Promise of Foreman to Add Crop of Hay to Wages—Authority of Foreman—Breach—Evidence—Nonsuit—Interest in Land. *Cleveland* v. *Grand Trunk R.W. Co.*, 4 O.W.N. 1281.—APP. DIV.

25. Sub-contract for Railway Construction Works—Payment—Terms of Contract—Inclusion of Terms of Principal Contract—Partnership—Authority of Partner—Acquiescence—Withholding of Percentage of Price—Premature Action—Costs. *Finlayson* v. *O'Brien*, 4 O.W.N. 1440.—BRITTON, J.

26. Subscription for Bonds of Railway Company—Undertaking to Extend Railway to Village—Payment of Money to Railway Company by Property-owners in Village—Receipt of Company's Bonds — Breach of Undertaking — Liability of Company—Personal Liability of President—Damages—Remoteness—Principle of Assessment—Return of Bonds. *Wood* v. *Grand Valley R.W. Co.*, 4 O.W.N. 556, 27 O.L.R. 556.—D.C.

27. Supply of Goods for Railway Construction—Action for Price—Guaranty—Defence of Sureties—Variation in Terms of Contract—Evidence—Term of Credit—Expiry before Action Brought—Counterclaim. *Allen* v. *Grand Valley R.W. Co.*, 4 O.W.N. 1578.—KELLY, J.

28. Supply of Natural Gas — Construction of Agreement — Breach—Damages. *Sundy* v. *Dominion Natural Gas Co.*, 4 O.W.N. 167.—D.C.

29. Supply of Natural Gas—Joint or Several Contract—Oil and Gas Lease—Right to—Enforcement of Contract — Usual Form—Reformation. *Welland County Lime Works Co.* v. *Shurr*, 4 O.W.N. 336.—C.A.

30. Supply of Timber Bolts—Construction of Contract—Breach —Counterclaim—Damages. *Keenon Woodware Manufacturing Co.* v. *Foster*, 4 O.W.N. 168.—D.C.

31. Work and Labour—Construction of Agreement—Reformation—"Site of the Work"—Cost of Transporting Material—Variation of Judgment. *Wallberg* v. *Jenckes Machine Co.*, 4 O.W.N. 555, 1188.—MIDDLETON, J.—APP. DIV.

32. Work and Labour—Erection of Silo—Action for Price—Defective Work—Finding of Trial Judge on Conflicting Evidence—Appeal—Counterclaim—Damages for Loss of Crop for Want of Silo—Contemplation of Parties—Evidence—Quantum of Damages. *Rice* v. *Sockett*, 4 O.W.N. 1570.—APP. DIV.

See Author—Brokers—Carriers—Company—Damages, 2 — Discovery, 31—Estoppel—Fraud and Misrepresentation—Highway, 2—Infants, 6—Insurance—Judgment, 6, 15—Landlord and Tenant—Mechanics' Liens—Municipal Corporations, 2 —Municipal Elections, 1—Particulars, 4, 7—Partnership—Pleading, 3, 7, 13, 25—Principal and Agent—Principal and Surety—Promissory Notes—Public Health Act—Railway, 2 —Res Judicata, 2—Sale of Goods—Settlement of Action—Stay of Proceedings, 1—Street Railways, 1, 2, 7—Vendor and Purchaser—Water and Watercourses, 3—Way—Writ of Summons, 2.

CONTRACT OF HIRING.

See Master and Servant, 1, 30.

CONTRIBUTORIES.

See Banks and Banking, 4—Company, 15, 16, 17, 22, 23.

CONTRIBUTORY NEGLIGENCE.

See Highway, 15—Master and Servant, 2, 9, 12, 19, 21, 25, 28, 29 —Negligence—Railway, 8—Street Railways, 3, 5, 6—Trial, 3.

CONVERSION OF CHATTELS.

1. Damages—Lien. *Smyth* v. *McClellan*, 4 O.W.N. 1442. — BRITTON, J.

2. Return or Payment of Value—Reference. *Jewell* v. *Doran*, 4 O.W.N. 1581.—BRITTON, J.

See Animals, 2—Brokers, 1—Carriers, 2—Contract, 17—Landlord and Tenant, 7—Malicious Prosecution, 1, 4—Sale of Goods, 10.

CONVEYANCING CHARGES.

See Solicitor, 1.

CONVICTION.

See Criminal Law——Liquor License Act—Mandamus.

COPYRIGHT.

Infringement—Interim Injunction—Damages—Costs. *Hawkes* v. *Whaley Royce & Co. Limited*, 4 O.W.N. 394.—MIDDLETON, J.

See Contempt of Court, 2—Damages, 5.

CORPORATION.

See Company—Municipal Corporations.

CORROBORATION.

See Absconding Debtor—Executors and Administrators, 2—Gift, 7—Trespass to Person.

CORRUPT PRACTICES.

See Municipal Elections.

COSTS.

1. Action—Reference—Trustees — Conduct of. *McDonald* v. *Trusts and Guarantee Co.*, 4 O.W.N. 192. — RIDDELL, J. (Chrs.)

2. County Court Action—Alternative Money Claims—Payment of Money into Court—Acceptance by Plaintiff in Satisfaction of Smaller Claim—Taxation of Costs—County Court Scale—Con. Rule 425—"All the Causes of Action"—Estoppel—Res Adjudicata—Election of Plaintiffs—Terms—New Action. *Frost and Wood Co. Limited* v. *Leslie*, 4 O.W.N. 472, 27 O.L.R. 450.—D.C.

3. Dismissal of Action—Defendant Ordered to Pay Plaintiff's Costs—Appeal—Right of Plaintiff to Support Order (without Cross-appeal) on Ground that Plaintiff Entitled to Succeed on Merits. *Vipond* v. *Sisco*, 4 O.W.N. 1498, 29 O.L.R. 200.—APP. DIV.

4. Inquiry as to Next of Kin of Intestate—Disposition of Estate —Escheat to Crown. *Re Corr*, 4 O.W.N. 1487.—MIDDLETON, J.

5. Mortgage—Redemption—Payment into Court—Mortgagees in Possession. *Geller* v. *Benner*, 4 O.W.N. 1565.—FALCONBRIDGE, C.J.K.B.

6. Motion for Judgment—Costs of Action—Incidence Determined by Judge. *Bartrum Harvey & Co.* v. *Scott*, 4 O.W.N. 389.—MIDDLETON, J.

7. *Scale of Costs—Taxation—Amount in Controversy—Set-off—Jurisdiction of Inferior Court.*]—The inferior Court has not jurisdiction merely by reason of the existence of a set-off reducing the amount of the plaintiff's claim to a sum within the competence of the inferior Court, unless the set-off has been assented to by both parties, so that it in law constitutes a payment. In the absence of such an agreement, a plaintiff, having a claim against which a defendant may, if he pleases, set up a set-off, must sue in the superior Court; for he cannot compel the defendant to set up his claim by way of set-off, and he cannot, by voluntarily admitting a right to set-off, confer jurisdiction upon the inferior Court. *In re Miron* v. *McCabe*, 4 P.R. 171, *Furnival* v. *Saunders*, 26 U.C.R. 119, *Sherwood* v. *Cline*, 17 O.R. 30, and *Osterhout* v. *Fox*, 4 O.L.R. 599, followed. *Gates* v. *Seagram*, 19 O.L.R. 216, distinguished.—Where the plaintiff was found entitled to $3,699.22, and the defendant, upon set-off and counterclaim, to $3,013.62, leaving a balance in favour of the plaintiff of $685.50, it was *held*, that the plaintiff was entitled to costs upon the Supreme Court scale. *Caldwell* v. *Hughes*, 4 O.W.N. 1192.—MIDDLETON, J. (Chrs.)

8. Security for Costs—Action against Police Officers—1 Geo. V. ch. 22, sec. 16—Statement of Claim—Amendment. *Meredith* v. *Slemin*, 4 O.W.N. 885.—MASTER IN CHAMBERS.

9. Security for Costs—Action by Company—Winding-up in another Province — Amount of Security — Costs of Motion. *Bishop Construction Co.* v. *City of Peterborough*, 4 O.W.N. 946.—MASTER IN CHAMBERS.

10. Security for Costs—Extension of Time—Insufficient Affidavit—Con. Rules 312, 518, 524, 1203. *Nieminen* v. *Dome Mines*, 4 O.W.N. 301.—MASTER IN CHAMBERS.

11. Security for Costs—Increased Security — Special Circumstances—Appeal—New Evidence. *Badie* v. *Astor*, 4 O.W.N. 880, 1180.—MASTER IN CHAMBERS.—MIDDLETON, J. (Chrs.)

12. Security for Costs—Non-payment of Costs of Former Action—Con. Rule 1198(*d*)—"For the Same Cause"—Proof of Identity. *Scully* v. *Ontario Jockey Club*, 4 O.W.N. 678. —MASTER IN CHAMBERS.

13. Security for Costs—Plaintiff Ordinarily Resident out of Jurisdiction—Temporary Residence in Jurisdiction—Con. Rule 1198(b)—Assets in Jurisdiction — Admitted Money Claim against Defendants—Counterclaim or Set-off. *Trowbridge* v. *Home Furniture and Carpet Co.*, 4 O.W.N. 910, 1140.—MASTER IN CHAMBERS.

14. Security for Costs—Præcipe Order—One Plaintiff in Jurisdiction—Order Set aside—Leave to Move for Security after Pleadings Delivered. *Fischer* v. *Anderson*, 4 O.W.N. 647.—MASTER IN CHAMBERS.

15. Security for Costs—Prior Action between Same Parties—Property in Controversy only Relied on—Suggested Consolidation. *Moore* v. *Thrasher*, 4 O.W.N. 302.—MASTER IN CHAMBERS.

16. Security for Costs—Public Authorities Protection Act, 1 Geo. V. ch. 22, sec. 16—Police Magistrate—Action against, for Tort—Unofficial Act—Cause of Action—Motion to Strike Out Statement of Claim—Con. Rule 261—Forum. *Fritz* v. *Jelfs*, 4 O.W.N. 1271.—MASTER IN CHAMBERS.

17. Security for Costs—Stay of Proceedings—Motion for—Action by Insolvent Plaintiff after Assignment for Benefit of Creditors—Claims for Damage to Credit, Character, and Business—Personal Damages not Passing to Assignee—Remoteness—Plaintiff Suing for his own Benefit. *Tucker* v. *Bank of Ottawa*, 4 O.W.N. 1090, 1189.—MASTER IN CHAMBERS.—MIDDLETON, J. (Chrs.)

18. Taxation—"Costs of and Incidental to the Reference"—Costs of Application for Appointment of Referee—Dominion Board of Railway Commissioners—Policy as to Awarding Costs. *Re Canadian Pacific R.W. Co. and Town of Walkerton*, 4 O.W.N. 756.—MIDDLETON, J. (Chrs.)

19. Third Parties—Liability of Defendant. *Walker and Webb* v. *Macdonald*, 4 O.W.N. 64.—FALCONBRIDGE, C.J.K.B.

COUNTERCLAIM.

COUNTY COUNCIL.

COUNTY COURT JUDGE.

COUNTY COURTS.

Courts Act, 10 Edw. VII. ch. 30, sec. 29—"Fit to be Tried in the High Court"—Reason for Transfer. *Re Emmons* v. *Dymond*, 4 O.W.N. 1363, 1405.—BRITTON, J. (Chrs.)—LENNOX, J. (Chrs.)

See Costs, 2—Judgment, 9—Venue, 6-9.

COUNTY CROWN ATTORNEY.

See Criminal Law, 12—Malicious Prosecution, 1.

COURT OF APPEAL.

See Appeal.

COURT OF REVISION.

See Assessment and Taxes, 1, 5.

COURTS.

See Appeal—County Courts—Criminal Law, 13—Division Courts—Landlord and Tenant, 14—Surrogate Courts—Will, 45.

COVENANT.

1. Building Restriction—Covenant not Running with the Land—Privity—Merits—Injury to Building. *Hoodless* v. *Smith*, 4 O.W.N. 816.—FALCONBRIDGE, C.J.K.B.

2. Restraint of Trade—Breach—Declaration—Injunction—Patent for Invention—Infringement. *William Peace Co.* v. *William Peace*, 4 O.W.N. 63.—LATCHFORD, J.

See Deed, 5—Idemnity—Landlord and Tenant—Limitation of Actions, 1—Street Railways, 1.

CREDITORS.

See Assignments and Preferences—Banks and Banking, 3—Company—Deed, 3—Estoppel, 1—Execution—Gift, 1—Trusts and Trustees, 3.

CREDITORS' RELIEF ACT.

See Assignments and Preferences, 3, 4—Execution, 1.

CRIMINAL CONVERSATION.

See Trial, 2.

CRIMINAL LAW.

1. Bribery—Counselling and Procuring Bribery of Peace Officer—No Evidence of Bribery or Attempt to Bribe—Discharge of Accused—Criminal Code, sec. 1018. *Rex* v. *Ryan*, 4 O.W.N. 622.—C.A.

9. Murder—Evidence—Murderous Assault Committed on Another Person—Relevancy to Immediate Charge—Admissibility. *Rex* v. *Gibson*, 4 O.W.N. 1167, 28 O.L.R. 525.—App. Div.

10. Perjury—Tribunal before which Offence Committed—Registrar under Manhood Suffrage Registration Act—Irregularity of Appointment—Tribunal de facto—"Judicial Proceeding"—Criminal Code, sec. 171. *Rex* v. *Mitchell*, *Rex* v. *West*, 4 O.W.N. 605, 27 O.L.R. 615.—C.A.

11. Police Magistrate—Jurisdiction—Prohibition—Information for Indictable Offence—Fraudulently Depositing Paper in Ballot Box at Municipal Election—Municipal Act, 1903, sec. 193, sub-sec. 1(*b*), sub-sec. 3—Criminal Code, sec. 164—Act Prohibited by Statute—Specific Remedy—Remedy by Indictment. *Rex* v. *Durocher*, 4 O.W.N. 867, 1507, 28 O.L.R. 499.—Kelly, J.—App. Div.

12. Police Magistrate—Jurisdiction—Summary Trial for Theft—Case Begun before one Magistrate and Continued before another—Criminal Code, secs. 668, 708—Police Magistrates Act, 10 Edw. VII. ch. 36, secs. 10, 18, 34(O.)—Prohibition—Acquittal of Defendant—Application before Certificate of Acquittal Issued—Status of Informant as Applicant—Duty of Magistrate, after Service of Notice of Motion—Adjournment of Hearing—County Crown Attorney—Conduct of. *Re Holman and Rea*, 4 O.W.N. 207, 434, 27 O.L.R. 432.—Sutherland, J.—D.C.

13. Procedure—Direction as to Trial of Criminal Cause—Jurisdiction of Judge of High Court Sitting in Weekly Court. *Rex* v. *Stair*, 4 O.W.N. 1402.—Lennox, J.

14. Proceeding at Trial—Conviction—Case Stated by Judge—Request of Counsel to Examine Jurors—Proper Time for—Challenge for Cause—Refusal of Right—Misunderstanding of Counsel—Jurisdiction of Court of Appeal—Criminal Code, secs. 1014, 1022. *Rex* v. *Pilgar*, 4 O.W.N. 330, 27 O.L.R. 337.—C.A.

15. Summary Conviction—Person Found Drunk in Public Place—Municipal By-law—2 Geo. V. ch. 17, secs. 19, 34(O.)—Imprisonment—Habeas Corpus—Certiorari in Aid—Accused not Given Opportunity to Make Defence—Duty of Magistrate—Criminal Code, secs. 686, 687, 721, 749—

CRUELTY.

See Husband and Wife, 2.

CUSTODY OF INFANTS.

See Husband and Wife, 2, 3, 7—Infants.

CUSTOM.

See Company, 9.

DAMAGES.

1. Apportionment—Fatal Accidents Act, 1 Geo. V. ch. 33, secs. 4, 9—Widow and Mother of Deceased—Separation of Husband and Wife—Basis of Apportionment—Costs and Expenses. *Scarlett* v. *Canadian Pacific R.W. Co.*, 4 O.W.N. 718.—LENNOX, J. (Chrs.)

2. Breach of Contract—Reference—Contradictory Evidence—Finding of Master—Appeal—Costs. *Jamieson* v. *Gourlay*, 4 O.W.N. 216.—LATCHFORD, J.

3. Carriage of Goods—Loss in Transit—Liability of Carriers—Assessment of Damages—Value of Goods. *Pagliai* v. *Canadian Pacific R.W. Co.*, 4 O.W.N. 1271.—BRITTON, J.

4. Fatal Accidents Act—Workmen's Compensation for Injuries Act—Persons Entitled to Share—Widow of Deceased Person—Infant Stepchildren—Apportionment of Damages—Basis of Division—Allowance for Maintenance of Infants *Brown* v. *Grand Trunk R.W. Co.*, 4 O.W.N. 942, 28 O.L.R. 354.—MEREDITH, C.J.C.P.

5. Infringement of Copyright—Finding of Master—Quantum of Damages—Appeal. *Cartwright* v. *Wharton*, 4 O.W.N. 248.—RIDDELL, J.

6. Quantum—Injury to Motor-car in Collision—Negligence. *Macdonald* v. *Toronto R.W. Co.*, 4 O.W.N. 947.—LENNOX, J.

7. Reference—Report—Appeal—Account—Items. *Richards* v. *Lambert*, 4 O.W.N. 646.—LATCHFORD, J.

See Animals, 2—Author—Boundaries—Buildings—Charge on Land—Company, 7, 15—Contract, 6, 11, 14, 17, 26, 28, 30, 32—Conversion of Chattels—Copyright—Costs, 17—Crown Lands, 1—Fatal Accidents Act, 3—Fraud and Misrepresentation, 4—Highway, 7, 9, 10, 13, 15, 17, 19—Landlord and Tenant, 2, 7, 11, 12—Limitation of Actions, 2—Malicious Prosecution, 3, 4—Master and Servant, 1, 9, 18, 19, 20,

DEATH.

DEBENTURES.

DECEIT.

DECLARATION OF TRUST.

DECLARATIONS OF DECEASED PERSON.

DECLARATORY JUDGMENT.

DEDICATION.

DEED.

tors—Revocable Deed—Limitations Act, 10 Edw. VII. ch. 34, sec. 48—Implication of Power of Sale—Vendor and Purchaser—Objection to Title. *Re Snell and Dyment*, 4 O.W.N. 759.—KELLY, J.

4. *Construction—Grant "in Fee Simple"—Habendum—Bar of Entail—Act respecting Assurances of Estates Tail.*]—Land was devised to G. "and the heirs of his body." He, by deed, conveyed the land to his wife "in fee simple," *habendum* to her, "her heirs and assigns, to and for her and their sole and only use forever:"—*Held*, upon an application under the Vendors and Purchasers Act, that the purchaser must accept the deed as sufficient to bar the entail. See the Act respecting Assurances of Estates Tail, R.S.O. 1897 ch. 122, sec. 29. *Re Gold and Rowe*, 4 O.W.N. 642.—SUTHERLAND, J.

5. Conveyance of Land—Building Restriction—Construction—Covenant or Condition — "Detached Dwelling-house" — Apartment House. *Pearson* v. *Adams*, 4 O.W.N. 779, 28 O.L.R. 154.—C.A.

6. Forgery by Grantee—Decease of Grantee—Evidence. *Deevy* v. *Deevy*, 4 O.W.N. 555.—KELLY, J.

See Fraudulent Conveyance—Gift, 2, 5—Trusts and Trustees, 1, 2, 3—Vendor and Purchaser—Way.

DEED POLL.

See Will, 41.

DEFAMATION.

See Libel—Particulars, 2—Slander.

DEFAULT JUDGMENT.

See Judgment, 3, 4, 5.

DEFECTIVE SYSTEM.

See Master and Servant.

DEMURRAGE.

See Contract, 6.

DEPOSIT.

See Vendor and Purchaser, 3.

DEPOSITIONS OF DECEASED PARTY.

See Assessment and Taxes, 10.

concerning a case which he has not attempted to make by his pleadings. *Hennessy* v. *Wright*, 24 Q.B.D. 445, followed.—And *held*, in this case, reversing the order of the Master in Chambers, 4 O.W.N. 647, that certain questions asked by the plaintiff, upon his examination of one of the defendants, were irrelevant to the issues raised by the pleadings, and the defendant should not be required to answer. *Playfair* v. *Cormack and Steele*, 4 O.W.N. 817.—MIDDLETON, J. (Chrs.)

5. Examination of Defendants—Relevancy of Questions—Pleading—Amendment. *Gascoyne* v. *Dinnick*, 4 O.W.N. 1563.—MASTER IN CHAMBERS.

6. Examination of Officer of Defendant Company—Engineer of Mining Company—Production of Time-sheets. *Curry* v. *Wettlaufer Mining Co.*, 4 O.W.N. 500.—MASTER IN CHAMBERS.

7. Examination of Officer of Defendant Corporation—Appointment for, after Trial Begun and Adjourned—Previous Examination of two Officers—Undertaking to Produce Correspondence. *Schofield-Holden* v. *City of Toronto*, 4 O.W.N. 1040.—MASTER IN CHAMBERS.

8. Examination of Officer of Foreign Company Defendant—Con. Rule 1321—Construction and Scope of. *Grocock* v. *Edgar Allen & Co. Limited*, 4 O.W.N. 660.—MASTER IN CHAMBERS.

9. Examination of Officer or Servant of Defendant Company—Sales-agent—"Representative"—Meaning of "Servant"—Con. Rule 1250 (439a). *Clarke & Monds Limited* v. *Provincial Steel Co.*, 4 O.W.N. 991.—MASTER IN CHAMBERS.

10. Examination of Officers of Plaintiff Company—Production of Books—Affidavit on Production—Practice. *North American Exploration Co.* v. *Green*, 4 O.W.N. 1142.—MASTER IN CHAMBERS.

11. Examination of Parties—Motions for Further Examination—Information and Belief—Solicitor and Client—Privilege. *Phillips* v. *Lawson*, 4 O.W.N. 390.—MASTER IN CHAMBERS.

12. Examination of Person as Assignor of Chose in Action Sued for—Con. Rule 441—Refusal to Testify—Remedy—Attachment for Contempt of Court—Con. Rule 454—Jurisdiction of Master in Chambers—Con. Rule 42(1). *Krehm* v. *Bastedo*, 4 O.W.N. 1307.—MASTER IN CHAMBERS.

22. Inspection of Mine—Relevancy—Pleading—Evidence. *Jackman* v. *Worth*, 4 O.W.N. 1220.—MASTER IN CHAMBERS.

23. Production of Documents—Affidavit on Production—Claim of Privilege for Certain Reports—Necessity for Identification — Documents obtained for Information of Solicitor — "Solely." *St. Clair* v. *Stair*, 4 O.W.N. 1437, 1580.—MASTER IN CHAMBERS.—FALCONBRIDGE, C.J.K.B. (Chrs.)

24. Production of Documents—Affidavits—Information Obtainable on Examination of Parties—Con. Rules 469, 1224. *Kennedy* v. *Kennedy*, 4 O.W.N. 1560.—MASTER IN CHAMBERS.

25. Production of Documents—Better Affidavit—Identification of Documents—Issue as to Release—Account—Relevancy of Documents. *Rundle* v. *Trusts and Guarantee Co.*, 4 O.W.N. 1438, 1488.—MASTER IN CHAMBERS.—MIDDLETON, J. (Chrs.)

26. Production of Documents—Further Affidavit on Production — Insufficient Material — Inspection of Car. *Ramsay* v. *Toronto R.W. Co.*, 4 O.W.N. 420.—MASTER IN CHAMBERS.

27. Production of Documents—Further Production—Relevancy. *Davison* v. *Thompson*, 4 O.W.N. 396.—MASTER IN CHAMBERS.

28. Production of Documents—Impeaching Affidavit of Documents—Examination for Discovery — Relevancy of Documents—Further and Better Affidavit. *Phillips* v. *Lawson*, 4 O.W.N. 679.—MASTER IN CHAMBERS.

29. Production of Documents — Motion for Better Affidavit — Grounds for. *Hay* v. *Coste*, 4 O.W.N. 831.—MASTER IN CHAMBERS.

30. Production of Documents — Motion for Better Affidavit — Production Sought of Documents not Relevant to Case Made on Pleadings—Leave to Amend—Further Discovery—Costs. *Antiseptic Bedding Co.* v. *Gurofsky*, 4 O.W.N. 1221.—MASTER IN CHAMBERS.

31. Production of Documents—Motion for Better Affidavit from Defendant Company—Dealing in Shares—Pleading—Contract—Grounds for Motion. *Jarvis* v. *Lamb*, 4 O.W.N. 945. —MASTER IN CHAMBERS.

32. Production of Documents—Practice—Deposit of Documents in Central Office—Motion for. *Grills* v. *Canadian General Securities Co.*, 4 O.W.N. 1223.—MASTER IN CHAMBERS.

DISCRETION.

DISMISSAL OF ACTION.

DISMISSAL OF SERVANT.

DISPENSING WITH JURY.

DISQUALIFICATION.

DISTRESS.

DISTRIBUTING OBSCENE PRINTED MATTER.

DISTRIBUTION OF ESTATES.

3. Claim of Alleged Daughter of Intestate—Administration—Issue—Representation of Heirs—Money in Court. *Re Vine*, 4 O.W.N. 408.—SUTHERLAND, J.

See Costs, 4—Will.

DISTRICT COURT JUDGE.

See Assessment and Taxes, 1—Registry Laws.

DITCHES.

See Highway, 9—Municipal Corporations, 12.

DIVIDENDS.

See Company, 22, 23.

DIVISION COURTS.

1. *Appeal to Appellate Division—Evidence Taken at Trial—Duty of Judge—Memorandum of Facts—Insufficiency—New Trial—Division Courts Act, 10 Edw. VII. ch. 32, secs. 106, 127.*]—The Division Courts Act, 10 Edw. VII. ch. 32, sec. 106, declares that in all actions in which the sum sought to be recovered exceeds $100, unless the parties agree not to appeal, "the Judge shall take down the evidence in writing and leave the same with the clerk;" and, in the event of an appeal, by sec. 127, the clerk is to forward the certified proceedings and evidence to Osgoode Hall:—*Held*, in the case of an appeal by the defendant from the judgment of a Division Court in favour of the plaintiff for the recovery of $176.70, that it was the defendant's right to have the evidence taken down in writing by the Judge and certified to the appellate Court; and that Court had no right to accept, in lieu of the evidence, which had not been taken down, a statement by the Judge of the facts proved at the trial; and the Court directed a new trial. *Smith* v. *Boothman*, 4 O.W.N. 801.—APP. DIV.

2. Territorial Jurisdiction—Action for Sum in Excess of $100—Place of Payment—Division Courts Act, 10 Edw. VII. ch. 32, sec. 77(1)—New Trial—Inspection of Document—Motion for Prohibition—Costs. *McDonald Thresher Co.* v. *Stevenson*, 4 O.W.N. 732.—BRITTON, J. (Chrs.)

3. Territorial Jurisdiction—Division Courts Act, 10 Edw. VII. ch. 32, sec. 78—Notice Disputing Jurisdiction—Motion for Judgment—Defendant not Represented—Defective Affi-

EARLY CLOSING BY-LAW.

See Municipal Corporations, 18, 19.

EASEMENT.

See Way.

ECCLESIASTICAL CORPORATION.

See Company, 6.

EJECTMENT.

Limitation of Actions—Title to Land—Possession—Evidence. *Poulin* v. *Eberle*, 4 O.W.N. 1545.—App. Div.

See Landlord and Tenant—Limitation of Actions—Venue, 15.

ELECTION.

See Banks and Banking, 4—Company, 2, 17, 19—Costs, 2—Fraudulent Conveyance, 3—Master and Servant, 1—Pleading, 6, 10—Will, 5, 14, 22.

ELECTIONS.

See Municipal Corporations, 2, 3—Municipal Elections.

ELECTRIC SHOCK.

See Negligence, 2, 4, 13.

EMBLEMENTS.

See Landlord and Tenant, 6.

EMPLOYERS' LIABILITY INSURANCE.

See Parties, 5.

ENCROACHMENT.

See Boundaries—Buildings—Highway, 1—Trespass to Land, 4—Vendor and Purchaser, 13, 42—Water and Watercourses, 1—Will, 3, 9.

ENGINEER.

See Municipal Corporations, 8.

ENTAIL.

See Deed, 4.

EQUITABLE ASSIGNMENT.

See Company, 3.

EROSION.

See Water and Watercourses, 1.

ESCHEAT.

See Costs, 4.

ESTATE.

See Deed, 4—Distribution of Estates—Dower—Landlord and Tenant, 6—Vendor and Purchaser, 22—Will.

ESTOPPEL.

1. Representing Woman as Wife—Goods Supplied by Tradesmen on Credit and Charged to her—Liability—Credit, to whom Given. *Redferns Limited* v. *Inwood*, 4 O.W.N. 75, 27 O.L.R. 213.—D.C.

2. *Shares Purchased for Defendant without Authority—Contract—Evidence—Correspondence—Assumption of Liability—Ratification—Costs.*]—The plaintiffs sued for a balance of the price of certain company-shares said to have been bought by them for the defendant. The plaintiffs' instructions were received from one M., purporting to act on behalf of the defendant, and they received payment for a part from M.; but he had in reality no authority to use the defendant's name. M. died before the action was brought. The plaintiffs relied on a certain letter of the defendant to them as establishing ratification or estoppel:—*Held*, that, as at the time the letter was written the loss had been sustained, and the plaintiffs knew that M. had no authority, and the letter in fact refused to admit liability, while expressing doubt about the legal position, it did not warrant a finding of assumption of liability or of an estoppel. *Dominion Bank* v. *Ewing*, 7 O.L.R. 90, *Ewing* v. *Dominion Bank*, 35 S.C.R. 133, [1904] A.C. 807, distinguished.—The action was dismissed without costs, as it had been provoked by the defendant's letter. *Wiggin and Elwell* v. *Browning*, 4 O.W.N. 155.—MIDDLETON, J.

See Account, 3—Arbitration and Award, 3—Banks and Banking, 4—Contract, 20—Costs, 2—Highway, 1, 3—Improvements—Landlord and Tenant, 1—Liquor License Act, 4—Municipal Corporations, 21, 23—Res Judicata—Sale of Goods, 2, 10—Solicitor, 7—Stay of Proceedings, 3—Vendor and Purchaser, 42—Water and Watercourses, 8.

EVICTION.

See Landlord and Tenant, 8.

EVIDENCE.

1. Action to Recover Amount of Lost Promissory Note Payable at Decease of Maker—Letters Acknowledging Existence of Note—Provisions of Will and Codicil of Maker—Recovery against Executors on Note—Satisfaction of Legacy—Indemnity—Costs. *Board of Governors of King's College Windsor* v. *Poole*, 4 O.W.N. 1293.—KELLY, J.

2. Foreign Commission—Application by Defendant—Delay of Trial—Reasonable Facilities for Making out Defence—Refusal to Impose Terms. *Antiseptic Bedding Co.* v. *Gurofsky*, 4 O.W.N. 1309, 1552.—MASTER IN CHAMBERS.—MIDDLETON, J. (Chrs.)

3. Foreign Commission—Examination of a Defendant on Behalf of Plaintiffs—Security for Costs of Commission. *Carter* v. *Foley-O'Brien Co.*, 4 O.W.N. 835.—MASTER IN CHAMBERS.

4. Foreign Commission—Motion for—Affidavit in Support—Clerk in Solicitor's Office—Information and Belief—Practice—Con. Rules 312, 518. *McAlpine* v. *Proctor*, 4 O.W.N. 769.—MASTER IN CHAMBERS.

5. Foreign Commission—Order for—Terms—Payment of Disbursements—Husband and Wife. *Jordan* v. *Jordan*, 4 O. W.N. 1222.—MASTER IN CHAMBERS.

6. Foreign Commission—Testimony of Plaintiff—Necessary and Material Witness—Order granted on Terms—Security for Costs. *Stewart* v. *Henderson*, 4 O.W.N. 355.—MASTER IN CHAMBERS.

7. Witnesses Entitled to Give Opinion Evidence—"Expert"—Evidence Act, 9 Edw. VII. ch. 43, sec. 10(O.)—Limitation of Number of Witnesses—Disregard of Statute—Mistrial New Trial—Costs. *Rice* v. *Sockett*, 4 O.W.N. 397, 27 O.L. R. 410.—D.C.

8. Witnesses on Pending Motion—Production of Documents—Power to Compel—Company—Winding-up—Petition—Dismissal—Previous Order—Con. Rules 448 *et seq.*, 490, 492. *Re Baynes Carriage Co.*, 4 O.W.N. 118, 27 O.L.R. 244.—RIDDELL, J. (Chrs.)

See Absconding Debtor—Accord and Satisfaction—Assessment and Taxes, 4, 7, 10—Brokers, 2—Buildings—Company, 20,

EXAMINATION OF INFANT.

See Infants, 10.

EXAMINATION OF JUDGMENT DEBTOR.

See Judgment Debtor.

EXAMINATION OF PARTIES.

See Discovery.

EXCAVATION.

See Highway, 7, 11.

EXCHANGE OF LANDS.

See Vendor and Purchaser, 1.

EXECUTION.

1. Money in Court—Surplus Proceeds of Mortgage Sale—Execution Creditors of Mortgagor—Payment out to Sheriff—Creditors' Relief Act. *Re Ferguson and Hill, Purse* v. *Ferguson,* 4 O.W.N. 1339.—MASTER IN CHAMBERS.

2. Seizure of Goods—Claim under Bill of Sale—Interpleader Issue—Evidence—Credibility—Onus — Possession — Title. *Reinhardt Brewery Limited* v. *Nipissing Coca Cola Bottling Works,* 3 O.W.N. 366.—C.A.

3. Seizure of Goods—Claim under Prior Sale—Bills of Sale and Chattel Mortgage Act—Change of Possession—Interpleader. *Dominion Bank* v. *Salmon,* 4 O.W.N. 460.—KELLY, J.

See Assignments and Preferences, 3, 4—Chattel Mortgage—Interpleader, 3—Judgment, 16.

EXECUTORS AND ADMINISTRATORS.

1. Absence of Executor from Jurisdiction—Refusal to Account before Surrogate Court—Protection of Interests of Infant—Appointment of Receiver—Ex Parte Order—Right to Move against, Reserved to Executor. *Re Beaird*, 4 O.W.N. 720.—LENNOX, J.

2. Action by Administrator for Money Lent—Interest—Advancement—Evidence — Onus — Corroboration — R.S.O. 1897 ch. 73, sec. 10—Lien—Costs. *Little* v. *Hyslop*, 4 O. W.N. 285.—LENNOX, J.

3. Application for Advice under Trustee Act and Con. Rule 938—Legacy—Deduction of Amount Due from Legatee to Testator—Pending Action—Adjournment of Motion before Trial Judge. *Baechler* v. *Baechler*, 4 O.W.N. 226.—SUTHERLAND, J.

4. Discharge of Mortgage—Foreign Probate of Will of Mortgagee—Registration of, with Discharge—Effect of—Registry Act, 10 Edw. VII. ch. 60, secs. 56, 65—Objection to Title—Vendor and Purchaser. *Re Green and Flatt*, 4 O W.N. 1388, 29 O.L.R. 103.—MIDDLETON, J.

5. Power of Executors to Sell and Convey Land—Interest of Infants—Approval of Court—Vendors and Purchasers Act. *Re Burridge*, 4 O.W.N. 1605.—LENNOX, J.

6. Sale of Land by Executors—Attack on, by Widow of Testator—Release—Claim against Estate—Adjudication by Surrogate Court Judge—Status of Widow as Plaintiff—Interest in Estate—Costs. *Shaw* v. *Tackaberry*, 4 O.W.N. 1369.—FALCONBRIDGE, C.J.K.B.

7. Trust for Sale of Land—Sale Made by Executors Attacked by Parties to Conveyance—Adequacy of Purchase-price—Breach of Trust not Established—Delay in Making Attack—Expenditure by Purchaser in Making Improvements. *Blaisdell* v. *Raycroft*, *Raycroft* v. *Cook*, 4 O.W.N. 297, 1568, 1595.—BOYD, C.—APP. DIV.

See Evidence, 1—Gift, 1, 2, 5, 7—Surrogate Courts—Will.

EXEMPTION.

See Railway, 2.

EXPERT TESTIMONY.

See Evidence, 7—Negligence, 12.

EXPRESS COMPANY.

See Carriers, 1.

EXPROPRIATION.

See Municipal Corporations, 9, 10, 11—Ontario Railway and Municipal Board—Railway, 4, 5, 6—Schools, 1.

EXTORTION.

See Criminal Law, 5.

EXTRADITION.

See Criminal Law, 7.

EXTRAS.

See Contract, 2—Particulars, 4.

FACTORIES ACT.

See Master and Servant, 7, 12.

FACTORY.

See Master and Servant.

FALSE IMPRISONMENT.

See Master and Servant, 30.

FALSE PRETENCES.

See Criminal Law, 6.

FALSE RETURNS.

See Criminal Law, 7.

FATAL ACCIDENTS ACT.

1. Action Brought in Name of Infant by Next Friend on Behalf of Parents of Deceased—Power of Attorney—Status of Plaintiff—Assignee of Claim—Letters of Administration not Granted—Amendment—Time-limit for Bringing Action—Con. Rules 259, 261, 298, 312—Motion to Set aside Statement of Claim—Cause of Action—Jurisdiction of Master in Chambers—Reference to Judge. *Luciani* v. *Toronto Construction Co.*, 4 O.W.N. 1025.—MASTER IN CHAMBERS.

2. *Action Brought in Name of Infant by Next Friend on Behalf of Parents of Deceased—Power of Attorney—Status of Plaintiff—Letters of Administration not Granted—Amendment—Time-limit for Bringing Action—Unfounded and Vexatious Action—Summary Dismissal—Con. Rule* 261.]—The plaintiff, an infant suing by his next friend, alleged that he sued on behalf of his father and mother for damages for the death of his brother, a labourer employed by the defendants, who was killed by an explosion of dynamite, owing, as the plaintiff alleged, to the defendants' negligence and an improper and defective system in their works. The father and mother, by an instrument under seal, constituted the plaintiff their attorney to sue to recover the damages:—*Held,* that the person in whom the cause of action is vested, and not his attorney or agent, must be the plaintiff.—It was said that the plaintiff would, if the trial of the action were delayed until he should be of age, apply for letters of administration to the estate of his deceased brother, and that his title as administrator would relate back to the death; but it was *held,* that a plaintiff, suing in his own right, cannot succeed upon a cause of action vested in the administrator of another, merely because he produces at the hearing letters of administration constituting him the administrator of that other. *Dini* v. *Fauquier,* 8 O.L.R. 712, and *Chard* v. *Rae,* 18 O.R. 371, distinguished.—An action brought in the name of an infant by a next friend is authorised only with respect to an action where the right is vested in the infant personally.—No amendment could be made in the plaintiff's favour which would deprive the defendants of the protection of the statutory limitation.—The action was summarily dismissed: Con. Rule 261. *Luciani* v. *Toronto Construction Co.,* 4 O. W.N. 1073.—MIDDLETON, J.—See also S.C., 4 O.W.N. 1025.

3. Right of Parents to Recover for Death of Child of Eleven Years — Reasonable Expectation of Pecuniary Benefit—Negligence—Motor Bicycle Casualty on Highway—Damages. *Beahan* v. *Nevin,* 4 O.W.N. 1399.—LENNOX, J.

See Damages, 1, 4—Master and Servant, 29.

FENCES.

See Highway, 1, 6—Trespass to Land, 1.

FRATERNAL AND BENEVOLENT SOCIETY.

Constitution of—Amendment by Grand Lodge—Increase of Insurance Rates—Instruction of Representatives—Failure to Give Notice of Proposed Amendment—Injunction Made Perpetual—Relations of Grand and Subordinate Lodges—Parliamentary Practice—Constitutional Changes. *Cordiner* v. *Ancient Order of United Workmen of the Province of Ontario*, 4 O.W.N. 102, 549.—RIDDELL, J.—D.C.

FRAUD AND MISREPRESENTATION.

1. Agreement for Purchase of Land—Misrepresentations of Agent of Vendor—Complicity of Vendor—Cancellation of Agreement—Return of Money Paid—Findings of Trial Judge—Appeal—Evidence. *Scobie* v. *Wallace*, 4 O.W.N. 881, 1345.—LENNOX, J.—APP. DIV.

2. Contracts Induced by Fraud—Action for Rescission—Affirmance by Disposing of Property Acquired—Dismissal of Action without Prejudice to Action for Deceit. *Tucker* v. *Titus*, 4 O.W.N. 1402.—LATCHFORD, J.

3. Rescission of Contracts for Purchase of Lands—Return of Moneys Paid—Evidence—Findings of Fact. *Pratt* v. *Robert Hyland Realty Co.*, 4 O.W.N. 771.—LENNOX, J.

4. Sale of Business—Damages for Deceit—Counterclaim—Judgments—Set-off. *Garrett* v. *Gibbons*, 4 O.W.N. 981.—BRITTON, J.

5. Sale of Business—Evidence—Declaration of Co-partnership—Failure to Register—Remission of Penalties—Costs. *Dixon* v. *Georgas Brothers*, 4 O.W.N. 462.—LENNOX, J.

6. Sale of Land—Action for Damages for Deceit—Failure of Proof. *Wilson* v. *Suburban Estates Co.*, 4 O.W.N. 1488.—FALCONBRIDGE, C.J.K.B.

7. Sale of Shares—Agreement—Lease—Rescission—Return of Moneys Paid. *Farah* v. *Capital Manufacturing Co.*, 4 O.W.N. 680, 1281.—KELLY, J.—APP. DIV.

See Account, 3—Assignments and Preferences, 4—Author—Company, 17, 19, 21—Contract, 16—Criminal Law, 6, 7, 11—Crown Lands, 1—Guaranty, 2—Insurance, 4, 5, 10—Landlord and Tenant, 3—Mortgage, 3—Municipal Corporations, 29—Particulars, 7—Pleading, 5, 19, 20—Principal and Agent, 17—Sale of Goods, 4—Vendor and Purchaser, 3, 5, 12, 32, 33.

FRAUDULENT CONVEYANCE.

1. Chattel Mortgages—Mortgage of Land—Conveyance of Land—Action to Set aside—Evidence—Insolvency—Knowledge Actual Advances—Good Faith. *Saturday Night Limited* v. *Horan*, 4 O.W.N. 832.—LATCHFORD, J.

2. Husband and Wife—Inference of Fraudulent Intent—Evidence—Voluntary Settlement—Solvency of Husband—Value of Assets—Goodwill of Business—Plaintiff's Status to Attack Settlement—Continuous Account—Hazardous Business—13 Eliz. ch. 5—Question of Fact—Findings of Trial Judge—Appeal. *Ottawa Wine Vaults Co.* v. *McGuire*, 4 O.W.N. 318, 27 O.L.R. 319.—C.A.

3. Setting aside Deed—Priority of Mortgage—Will—Election—Counterclaim—Costs. *Bancroft* v. *Milligan*, 4 O.W.N. 1605.—FALCONBRIDGE, C.J.K.B.

FREE GRANTS AND HOMESTEADS ACT.

See Assessment and Taxes, 3.

GARAGE.

See Lien.

GARNISHMENT.

See Attachment of Debts.

GIFT.

1. Cheque Signed in Blank by Deceased—Action by Administrator—Evidence—Trust for Creditors. *Munn* v. *Keyes*, 4 O.W.N. 250.—BRITTON, J.

2. Deed of Land—Parent and Child—Absence of Undue Influence—Action by Administratrix of Mother to Set aside Deed—Burden of Proof—Separate and Independent Evidence—Testimony of Donee—Settlement—Affirmance—Will—Failure to Prove—Revocation of Letters of Administration—Jurisdiction. *Taylor* v. *Yeandle*, 4 O.W.N. 531, 27 O.L.R. 531.—D.C.

3. Evidence—Onus—Failure to Satisfy—Money Deposited for Safekeeping—Confidential Relationship—Finding of Fact—Appeal. *Johnstone* v. *Johnstone*, 4 O.W.N. 915, 28 O.L.R. 334.—APP. DIV.

4. Money in Savings Bank—Direction of Customer to Allow Daughter to Draw—Money Placed by Bank in Joint Ac-

count—Evidence—Ratification—Survivorship — Relationship of Bank to Customer—Debtor and Creditor—Trust —Failure to Establish—Will—Testamentary Capacity. *Everly* v. *Dunkley*, 4 O.W.N. 406, 27 O.L.R. 414.—D.C.

5. Money in Savings Bank Deposited in Names of Deceased and another—Evidence—Intention—Survivorship — Testamentary Gift—Failure of—Deed of Land—Action to Set aside —Account—Administrator—Costs. *Vogler* v. *Campbell*, 4 O.W.N. 1389.—LENNOX, J.

6. Parent and Child—Evidence—Onus—Failure to Establish—Improvidence—Lack of Independent Advice—Moneys Intrusted to Solicitor for Safekeeping—Transfer to Alleged Donee—Right of Donor to Follow. *Kinsella* v. *Pask*, 4 O. W.N. 964, 28 O.L.R. 393.—APP. DIV.

7. Sum of Money in Bank Standing to Credit of Deceased Person—Money Received from Wife of Deceased—Action by Administratrix of Wife to Recover from Estate of Deceased Husband—Assertion of Gift from Wife to Husband —Evidence—Onus — Corroboration — Undue Influence—Mental and Physical Weakness of Wife. *McDougall* v. *Paille*, 4 O.W.N. 1602.—BRITTON, J.

See Husband and Wife, 8—Will.

GOODWILL.

See Fraudulent Conveyance, 2.

GROUND RENT.

See Landlord and Tenant, 4.

GUARANTY.

1. Fidelity Bond—Defalcation of Employee—Parties—Liability —Ascertainment of Amount—Reference—Costs. *Reichnitzer* v. *Employers' Liability Assurance Corporation*, 4 O.W. N. 875.—BOYD, C.

2. Fidelity Bond Guaranteeing Honesty of Tax Collector of Municipality — Embezzlement of Money — Conditions of Bond — Alleged Breaches — Written Statement of Mayor of Municipality—Expiry of First Bond—Execution of New one without Fresh Application or Statement—Inclusion in New Bond—Renewal of Original Bond—Answers of Mayor to Questions in Statement—Substantial Truth—

3. Dedication—Acceptance—Municipal Action—Subsequent Registration of Plan not Shewing Highway—Approval of Council—Estoppel—Surrender or Closing of Street—Land Titles Act, R.S.O. 1897 ch. 138, secs. 26, 109, 110—Municipal Act, 1903, secs. 29, 630, 632—Costs. *Larcher* v. *Town of Sudbury*, 4 O.W.N. 1289.—LENNOX, J.

4. Dedication—Acceptance — Plan—Registration—Consent under Seal of Municipal Corporation—Surveys Act, 1 Geo. V. ch. 42, sec. 44 (6)—Amendment by 2 Geo. V. ch. 17, sec. 32—Assumption of Highway for Public Use—Subsequent By-laws—Mortgages—Tax Sale—Title of Municipality — Motion to Amend Plan by Closing Highway—Registry Act. 10 Edw. VII. ch. 69, sec. 85—Land Titles Act, 1 Geo. V. ch. 28, sec. 110. *Re City of Toronto Plan M. 188*, 4 O.W.N. 662, 28 O.L.R. 41.—MIDDLETON, J.

5. Dedication—Acceptance—Travelled Road—User—Evidence—Statute Labour—Municipal By-laws—Action for Declaration of Existence of Highway—Presumption of Intention to Dedicate—Obstruction—Injunction — Peculiar Damage to Plaintiff—Right of Action—Parties—Municipal Corporation—Attorney-General—Nuisance. *O'Neil* v. *Harper*, 4 O.W.N. 841, 1276, 28 O.L.R. 635.—BRITTON, J.—APP. DIV.

6. Dedication—Unregistered Plan—Lots Sold or Leased according to Plan—Registry Act—Substitution and Registration of New Plan—Consent—Location of Fences—Lands inside and outside of Town Limits—Access to Lands—Obstruction—Injunction. *Peake* v. *Mitchell*, *Mitchell* v. *Peake*, 4 O.W.N. 988.—MIDDLETON, J.

7. Excavation of Earth—Injury to Adjoining Land—Deprivation of Access—Absence of Municipal By-law—Injunction—Damages—Reference. *Taylor* v. *Gage*, 4 O.W.N. 947.—FALCONBRIDGE, C.J.K.B.

8. Forced Road Substituted for Road Allowance—Right to Portion of Road Allowance in Lieu thereof—Municipal Act, secs. 641, 642. *Mills* v. *Freel*, 4 O.W.N. 79.—D.C.

9. Improvement—Work Done by County Corporation—Interference with Watercourse—Defective Work—Ditches—Injury to Land by Flooding—Employment of Competent Engineer—Agent of Corporation — Action — Arbitration — Damages—Findings of Fact of Trial Judge—Appeal. *Mar-*

Notice to Municipality—Liability—Nonrepair—Negligence. *Colquhoun* v. *Township of Fullerton*, 4 O.W.N. 737, 28 O. L.R. 102.—App. Div.

19. Street Laid out by Private Persons—Bridge Forming Part thereof—Failure to Replace, when Carried away by Freshet —Liability of Township Corporation—Status of Highway —Dedication—Acceptance by Council—Statutory Duty to Repair—Municipal Act, 1903, secs. 606, 607—Application of sub-sec. 3 of sec. 606 to Cases other than "Accident" Cases—Necessity for Notice—Damages—Costs. *Strang* v. *Township of Arran*, 4 O.W.N. 765, 28 O.L.R. 106.—App. Div.

See Appeal, 5—Motor Vehicles Act—Municipal Corporations, 1, 6, 17, 20-27, 30—Negligence, 4, 6—Ontario Railway and Municipal Board—Railway, 5—Solicitor, 6—Street Railways—Water and Watercourses, 1.

HIGHWAY CROSSING.

See Railway, 9, 10, 11.

HIGHWAY IMPROVEMENT ACT.

See Highway, 13.

HIRING.

See Master and Servant, 1, 30.

HIRING OF TEAM.

See Municipal Elections, 2.

HOSPITALS.

See Trusts and Trustees, 5.

HUSBAND AND WIFE.

1. Alimony—Cohabitation after Action—Costs. *Ruttle* v. *Ruttle*, 4 O.W.N. 457.—Middleton, J.

2. Alimony—Cruelty—Assault — Willingness of Wife that Husband should Leave her House — Permanent Alimony — Amount—Costs—Custody of Children—Access by Father —Terms. *Fitchett* v. *Fitchett*, 4 O.W.N. 844.—Britton, J.

3. Alimony—Custody of Children. *Karch* v. *Karch*, 4 O.W.N. 65.—D.C.

ILLEGALITY.

ILLEGITIMATE CHILD.

IMPRISONMENT.

IMPROVEMENTS.

Default of Payment. *McBride* v. *McNeil*, 4 O.W.N. 475, 27 O.L.R. 455.—MIDDLETON, J.

See Assessment and Taxes, 9—Executors and Administrators, 7—Highway, 9—Landlord and Tenant, 4—Vendor and Purchaser, 22—Water and Watercourses, 3.

IMPROVIDENCE.

See Gift—Vendor and Purchaser, 21.

INCUMBRANCES.

See Vendor and Purchaser, 34.

INDEMNITY.

Covenant for Indemnity against Mortgage-debt—Enforcement, notwithstanding that Debt not Paid—Payment into Court. *Shaver* v. *Sproule*, 4 O.W.N. 968.—BRITTON, J.

See Evidence, 1—Insurance—Parties, 6—Principal and Agent, 8—Vendor and Purchaser, 34.

INDEPENDENT ADVICE.

See Gift, 6.

INDEPENDENT CONTRACTOR.

See Master and Servant, 23—Negligence, 2.

INDIAN.

Attachment of Debts—Bank Deposit—"Personal Property outside of the Reserve"—"Property Subject to Taxation"—Indian Act, R.S.C. 1906 ch. 81, secs. 99, 102—Construction of. *Avery* v. *Cayuga*, 4 O.W.N. 1164, 28 O.L.R. 517.—APP. DIV.

INDIAN LANDS.

See Assessment and Taxes, 9.

INDICTMENT.

See Criminal Law, 3, 7, 11.

INFANTS.

1. Custody—Committal by Father to Children's Aid Society—Rights of Mother after Death of Father—Welfare of Infants—Difference in Religion—Proceedings in Juvenile Offenders Court—Order for Delivery of Children to Society

10. Order for Sale of Land—Practice—Petition—Status of Petitioner—Production of Infant for Examination by Judge—Examination of Witnesses Viva Voce—Infants Act, 1 Geo. V. ch. 35—Con. Rules 960-970, 1308. *Re Sugden*, 4 O.W.N. 924.—MEREDITH, C.J.C.P. (Chrs.)

See Damages, 4—Executors and Administrators, 5—Fatal Accidents Act, 1, 2—Husband and Wife, 2, 3, 7—Marriage, 2—Negligence, 3, 8, 9—Parent and Child—Vendor and Purchaser, 36—Will, 36.

INFORMATION.

See Criminal Law, 8, 11—Liquor License Act, 1—Mandamus.

INJUNCTION.

1. Interim Order—Motion to Continue—Affidavits—Service. *Tourbin* v. *Ager*, 4 O.W.N. 1405.—LENNOX, J.

2. Interim Order—Nuisance—Coal-yard—Noise — Increase — Preponderance of Convenience. *Breed* v. *Rogers*, 4 O.W.N. 1576.—FALCONBRIDGE, C.J.K.B.

3. Interim Order—Powers of Local Judge—Ex Parte Order—Practice—Jurisdiction—Motion to Continue Injunction—Riparian Rights—Obstruction—Balance of Convenience—Bonâ Fide Question for Trial—Amendment—Addition of Plaintiffs—Terms. *Baldwin* v. *Chaplin*, 4 O.W.N. 1574.—LENNOX, J.

4. Interim Order—Refusal to Continue—Breach—Contempt of Court—Ignorance—Costs. *Casey* v. *Kansas*, 4 O.W.N. 1581.—LENNOX, J.

5. Interim Order—Trade Name—Infringement—Soliciting Customers—Information Obtained by Former Officer of Company—Grounds for Injunction—Relative Convenience or Inconvenience—Terms. *York Publishing Co.* v. *Coulter*, 4 O.W.N. 1091.—LENNOX, J.

6. Nuisance—Locus Standi of Plaintiffs — Enlargement of Motion for Interim Injunction—Leave to Apply—Speedy Trial. *Smyth* v. *Harris*, 4 O.W.N. 134.—RIDDELL, J.

7. Receiver—Endorsement on Writ of Summons—Amendment. *Loveland* v. *McNairney*, 4 O.W.N. 680.—KELLY, J.

See Author — Boundaries—Club—Company, 6—Contempt of Court, 1—Contract, 6, 11, 13, 18—Copyright—Covenant, 2—Crown Lands, 1—Fraternal and Benevolent Society—Highway, 1, 5, 6, 7—Landlord and Tenant, 2—Municipal Corporations, 27—Particulars, 1—Patent for Invention—Res Judicata, 1, 2—Schools, 3—Trade-Name—Trespass to Land, 3, 4—Water and Watercourses, 2, 5—Way, 1, 3.

INNKEEPERS' ACT.

See Animals, 2—Lien.

INSOLVENCY.

See Assignments and Preferences.

INSPECTION.

See Discovery, 22, 26—Division Courts, 2—Sale of Goods, 7, 8.

INSPECTION AND SALE ACT.

See Criminal Law, 8.

INSPECTOR.

See Assignments and Preferences, .1

INSURANCE.

1. Accident Insurance—Death Claim—Cause of Death—Finding of Trial Judge—Injury from Lifting Heavy Weight—Evidence—Statement of Deceased—Admissibility—Conditions of Original Policy—Non-compliance with—"Accident Renewal Receipt"—Fresh Contract or Renewal of Policy—"According to Tenor of Policy"—Reference to Original Policy—Sufficiency—Insurance Act, R.S.O. 1897 ch. 203, secs. 80 (2), 144 (1), 152—Status of Preferred Beneficiary Suing for Insurance Moneys—Trust Subject to Terms of Contract. *Youlden* v. *London Guarantee and Accident Co.*, 4 O.W.N. 782, 28 O.L.R. 161.—C.A.

2. Accident Insurance — Death Claim—Construction of Policies—"Caused by the Burning of a Building"—"Injuries Happening from Fits"—"External Violent and Accidental Means"—Injuries Resulting in Death—Cause of Injuries—Quantum of Indemnity. *Wadsworth* v. *Canadian Railway Accident Insurance Co.*, 4 O.W.N. 1145, 28 O.L.R. 537.—C.A.

3. Fire Insurance—Actions on Policies—Extent of Loss—Value of Goods Destroyed—Stock-taking—Evidence—Furnishing Proofs of Loss—Statutory Condition 13—Duplicate Invoices — Imperfect Compliance — Relief against Consequences of—Ontario Insurance Act, R.S.O. 1897 ch. 203, sec. 172—Application of—Ontario Insurance Act, 1912, sec. 199—Application to Actions Previously Commenced—Time for Bringing Actions—Variation of Statutory Condition 22—"Unjust and Unreasonable Condition"—Misrepresentation in Application—Materiality—Finding of Fact by Trial Judge—Appeal—Interest. *Strong* v. *Crown Fire Insurance Co.*, *Strong* v. *Rimouski Fire Insurance Co.*, *Strong* v. *Anglo-American Fire Insurance Co.*, *Strong* v. *Montreal-Canada Fire Insurance Co.*, 4 O.W.N. 584 (3), 29 O.L.R. 33.—SUTHERLAND, J.—APP. DIV.

4. Fire Insurance—Proofs of Loss—Overvaluation—Fraud—Reference to Master—Quantum of Damage—Appeal from Report—Findings of Fact by Master—Finding at Trial—Appeal—Costs. *Nassar* v. *Equity Fire Insurance Co.*, 4 O.W.N. 340.—RIDDELL, J.

5. Fire Insurance—Representation that Property Free from Incumbrance—Material Misrepresentation and Concealment—Onus—Innocent Non-disclosure—Act of Agent of Insurance Company—Prejudice—Absence of Evidence as to Value of Property—Failure to Prove Materiality of Misrepresentation—Concealment of Fear of Incendiarism—Failure of Proof—Statutory Declaration—Statutory Conditions 13 and 15—Proofs of Loss—Particulars—Omission to Give Notice in Writing of Loss—Insurance Act, sec. 172—Relief from Omission—Knowledge and Conduct of Directors—Adoption of Oral Notice. *Patterson* v. *Oxford Farmers Mutual Fire Insurance Co.*, 4 O.W.N. 140.—MULOCK, C.J. Ex.D.

6. Life Insurance—Application by Company for Leave to Pay Insurance Moneys into Court—Principle on which such Orders Made. *Re Heitner and Manufacturers Life Insurance Co.*, 4 O.W.N. 251.—MASTER IN CHAMBERS.

7. Death of Beneficiary—Designation in Favour of New Beneficiary, by Will in General Language—Ineffectiveness — "Survivor" — "Surviving Children" — Ascertainment at Death of Insured—Preferred Beneficiaries—Insurance Act,

INTEREST.

INTERIM ALIMONY.

INTERIM INJUNCTION.

INTERLOCUTORY COSTS.

INTERNATIONAL BOUNDARY STREAM.

INTERPLEADER.

1. Adverse Claims to Valuable Chattel — Form of Issue. *Re Smith*, 4 O.W.N. 188, 457.—RIDDELL, J. (Chrs.)—MIDDLETON, J. (Chrs.)

2. Company-shares—Seizure by Sheriff—Claim by Bank—Facts not Admitted—Order Directing Trial of Issue—Terms—Security Required from Claimant—Practice—Parties—Con. Rule 1111. *Pallandt* v. *Flynn*, 4 O.W.N. 681, 821, 837.—BRITTON, J. (Chrs.)—MIDDLETON, J. (Chrs.)—APP. DIV.

3. Jurisdiction of Local Master — Administration—Sheriff's Bailiff in Possession—Levy—Lien of Execution Creditor—Trustee Act, 1 Geo. V. ch. 26, sec. 52. *Re Hunter*, 4 O.W.N. 451.—MIDDLETON, J.

4. Order Directing Issue—Parties—Who should be Plaintiff. *Laidlaw Lumber Co.* v. *Cawson*, 4 O.W.N. 1595.—LENNOX, J. (Chrs.)

5. Stakeholder—Application by—Rival Claimants for Commission on Sale of Land—Want of Neutrality. *Re Lankin*, 4 O.W.N. 772.—MASTER IN CHAMBERS.

6. Stakeholder—Application by—Want of Neutrality—Architects' Commission. *Barber* v. *Royal Loan and Savings Co.*, 4 O.W.N. 91.—MASTER IN CHAMBERS.

See Appeal, 1, 9—Assignments and Preferences, 3, 4—Chattel Mortgage—Execution, 2, 3—Principal and Agent, 3, 17.

INTOXICATING LIQUORS.

See Liquor License Act—Municipal Corporations, 13-16.

INVENTION.

See Patent for Invention.

INVESTMENT.

See Trusts and Trustees, 6—Will, 5, 15, 27.

JOINDER OF CAUSES OF ACTION.

See Pleading, 6, 15.

JOINDER OF PARTIES.

See Parties.

JOINT CONTRACT.

See Res Judicata, 2.

JOINT TENANCY.

See Infants, 8—Will, 17.

JUDGE IN CHAMBERS.

See Trial, 7.

JUDGE IN COURT.

See Criminal Law, 13.

JUDGMENT.

1. Consent Minutes—Motion to Enforce Terms of—Forum—Jurisdiction of Master in Chambers. *Sovereign Bank* v. *Sevigny*, 4 O.W.N. 459.—MASTER IN CHAMBERS.

2. Death of Plaintiff between Hearing and Judgment—Entry of Judgment as of Date of Hearing — Practice. *Snell* v. *Brickles*, 4 O.W.N. 707, 28 O.L.R. 358.—FALCONBRIDGE, C.J. K.B.

3. Default Judgment—Motion to Set aside—Absence of Defendant — Excuse — Affidavit of Solicitor — Correspondence. *Head* v. *Stewart*, 4 O.W.N. 590.—MASTER IN CHAMBERS.

4. Default of Appearance—Leave to Defend—Defence—Terms —Amendment—Assignment pendente Lite. *Union Bank of Canada* v. *Toronto Pressed Steel Co.*, 4 O.W.N. 887.—MASTER IN CHAMBERS.

5. Default of Statement of Defence — Writ of Summons not Specially Endorsed—Sufficiency of Statement of Claim—Con. Rule 587—Regularity of Judgment—Leave to Defend—Terms—Security—Costs—Practice. *Brown* v. *Coleman Development Co. and Gillies*, 4 O.W.N. 728. — MASTER IN CHAMBERS.

6. Form of Judgment — Contract — Trustees — Registration of Conveyances—Cancellation. *Wiley* v. *Trusts and Guarantee Co.*, 4 O.W.N. 829.—D.C.

7. Motion for—Default of Defence—Application to be Let in to Defend—Deliberate Default—Prejudice to Plaintiff by Delay. *Pherrill* v. *Henderson*, 4 O.W.N. 1487.—MIDDLETON, J.

8. Motion to Vary — Dealing in Company-shares — Brokers — Proof of Actual Sale—Refusal to Give Further Evidence. *Gray* v. *Buchan*, 4 O.W.N. 770.—D.C.

9. Motion to Vary Minutes—County Court Appeal. *Parks* v. *Simpson, Simpson* v. *Parks,* 4 O.W.N. 829.—D.C.

10. Summary Judgment—Con. Rule 603—Action on Guaranty —Proof of Amount Due — Liability — Reference. *Union Bank of Canada* v. *McKillop,* 4 O.W.N. 36.—MASTER IN CHAMBERS.

11. Summary Judgment—Con. Rule 603—Action on Judgment Recovered against Partnership Firm—Partner not Served nor Appearing in Original Action Made a Defendant in New Action—Con. Rule 228—Writ of Summons—Special Endorsement—Con. Rule 138—Unconditional Leave to Defend. *Bank of Hamilton* v. *Davidson,* 4 O.W.N. 749.—LENNOX, J. (Chrs.)

12. Summary Judgment—Con. Rule 603—Action on Promissory Note—Defence—Counterclaim—Unconditional Leave to Defend. *Augustine Automatic Rotary Engine Co.* v. *De Sherbinin,* 4 O.W.N. 834.—MASTER IN CHAMBERS.

13. Summary Judgment—Con. Rule 603—Action on Promissory Note—Examination of Officer of Plaintiff Bank—Disclosure of Facts Constituting Defence—Costs. *Quebec Bank* v. *Freeland,* 4 O.W.N. 305.—MASTER IN CHAMBERS.

14. Summary Judgment — Con. Rule 603 — Action on Security Bond—Suggested Defences—Unconditional Leave to Defend. *McPherson* v. *United States Fidelity Co.,* 4 O.W.N. 1140, 1182.—FALCONBRIDGE, C.J.K.B. (Chrs.)

15. Summary Judgment—Con. Rule 603 — Contract — Chattel Mortgage—Provision as to Local Option. *Smyth* v. *Bandel,* 4 O.W.N. 425, 498.—MASTER IN CHAMBERS.

16. Summary Judgment—Con. Rule 603—Motion for Judgment — Judgment Granted, but Execution Stayed until after Trial of Counterclaim—Account—Reference. *Berlin Lion Brewery Co.* v. *Lawless,* 4 O.W.N. 1441, 1486.—MASTER IN CHAMBERS.—RIDDELL, J. (Chrs.)

17. Summary Judgment—Con. Rule 608—Application of—Special Circumstances—Claim on Overdue Promissory Notes. *Hayes & Lailey* v. *Robinson,* 4 O.W.N. 1280.—APP. DIV.

See Appeal, 7—Assessment and Taxes, 4—Attachment of Debts, 2—Carriers, 2—Company, 1, 3—Contempt of Court, 1, 2—Contract, 14, 31—Costs, 6—Division Courts, 3—Fraud and

JUDGMENT DEBTOR.

JUDICIAL COMMITTEE OF PRIVY COUNCIL.

JUDICIAL PROCEEDING.

JUDICIAL SALE.

JURISDICTION OF ARBITRATORS.

JURISDICTION OF BOARD OF RAILWAY COMMISSIONERS.

JURISDICTION OF COUNTY COURT JUDGE.

See Mandamus—Municipal Corporations, 15.

JURISDICTION OF COURT OF APPEAL.

See Criminal Law, 14.

JURISDICTION OF DISTRICT COURT JUDGE.

See Registry Laws.

JURISDICTION OF DIVISION COURTS.

See Division Courts.

JURISDICTION OF HIGH COURT OF JUSTICE.

See Arbitration and Award, 3—Crown Lands, 2—Gift, 2—Lunatic, 3—Mandamus—Marriage—Municipal Corporations, 14—Water and Watercourses, 7—Will, 45.

JURISDICTION OF JUDGE OF HIGH COURT OF JUSTICE.

See Assessment and Taxes, 5—Criminal Law, 13.

JURISDICTION OF LOCAL JUDGE.

See Injunction, 3.

JURISDICTION OF LOCAL MASTER.

See Interpleader, 3.

JURISDICTION OF MASTER IN CHAMBERS.

See Discovery, 12, 14—Fatal Accidents Act, 1—Judgment, 1—Practice, 5—Trial, 11.

JURISDICTION OF ONTARIO RAILWAY AND MUNICIPAL BOARD.

See Ontario Railway and Municipal Board—Street Railways, 1, 2, 7.

JURISDICTION OF POLICE MAGISTRATE.

See Criminal Law, 11, 12.

JURISDICTION OF PROVINCE.

See Constitutional Law.

JURY.

See Criminal Law, 3, 14—Malicious Prosecution, 1, 4—Master and Servant—Motor Vehicles Act, 1, 2, 3—Negligence, 2, 3,

3. Lease—Action to Set aside—Fraud and Misrepresentation—Collateral Agreement—Alleged Breach of—Tenant in Possession—Counterclaim—Costs. *Ruff* v. *McFee*, 4 O.W.N. 501.—D.C.

4. Lease—Construction—Right of Tenant to Renewal or Payment for Improvements—Option of Landlord—"Ground Rent." *MacDonell* v. *Davies*, 4 O.W.N. 620.—C.A.

5. Lease—Right of Lessee to Purchase Demised Lands — Forfeiture by Non-payment of Rent—Recovery of Amount of Rent. *Canada Co.* v. *Goldthorpe*, 4 O.W.N. 1003.—CLUTE, J.

6. Lease of Farm by Tenant for Life—Rights of Lessee and Remainderman at Death of Life-tenant — Crops in the Ground — Emblements—Manure and Straw—Covenant to Expend upon Farm. *Atkinson* v. *Farrell*, 4 O.W.N. 73, 27 O.L.R. 204.—D.C.

7. Lease of Hotel—Covenants of Lessee—Breach—Delay in Giving up Possession at End of Term—Damages—Loss of Business—Profits of Bar—Refusal to Transfer Bar License—Conversion of Chattels—Fixtures—Intention—Trade Fixtures. *Simons* v. *Mulhall*, 4 O.W.N. 1424.—LATCHFORD, J.

8. Lease of or License to Use Premises—Covenant not to Sublet—Power to Relieve from Consequences of Breach—Importance of Personality of Occupiers—"Interest in or Use of any Part of the Property"—Construction of Agreement between Licensees and Stranger—Power of Assignee of Reversion to Evict—Landlord and Tenant Act, 1 Geo. V. ch. 37, secs. 4, 5—Other Breaches of Provisions in Lease—Evidence—Judgment for Possession. *Curry* v. *Pennock*, 4 O W.N. 712, 1065.—MEREDITH, C.J.C.P.—APP. DIV.

9. Obstruction and Nuisance—Costs. *Appelbe* v. *Douglas*, 4 O. W.N. 389.—FALCONBRIDGE, C.J.K.B.

10. Purchaser from Landlord—Acceptance of Rent—Tenancy from Year to Year—Termination—Notice—Proof of Title Ejectment. *Laporte* v. *Wilson*, 4 O.W.N. 1267.—LENNOX, J.

11. Repairs—Lessee's Covenant—Ordinary Wear and Tear—Exclusion of, in Computing Damages—Old Building—Liability of Lessee—Damages. *Bornstein* v. *Weinberg*, 4 O. W.N. 534, 27 O.L.R. 536.—D.C.

12. Seizure for Rent—Illegal Distress—Acceleration Clause—Valuation of Goods Seized—Special Damages for Injury to Tenant's Business—Credibility of Witness not Subjected to Cross-examination. *Jarvis* v. *Hall*, 4 O.W.N. 232.—D.C.

13. *Summary Proceeding to Eject Overholding Tenant—Dispute as to Tenancy — Evidence — Inference of Assent from Silence—Credibility of Witness—Rejection of Testimony—New Trial — Costs—Powers of County Court Judge — Reasons for Judgment.*]—Upon a summary proceeding by a landlord against an overholding tenant, it is competent for and the duty of the County Court Judge to determine the question of tenancy, and the termination of it, and the Judge may do this on conflicting evidence. *Re Fee and Adams*, 1 O.W.N. 812, and *Moore* v. *Gillies*, 28 O.R. 358, followed.—Upon appeal by the tenant from the order for possession made by the County Court Judge, the Court ordered a new trial, the facts as to the tenancy not having been fully developed.—County Court Judges should give reasons for the conclusions they arrive at.—Costs of appeal, of the new trial, and of the former proceedings, were left to be disposed of by the County Court Judge. *Re St. David's Mountain Spring Water Co. and Lahey*, 4 O.W.N. 32.—D.C.

14. Summary Proceeding to Eject Overholding Tenant—Landlord and Tenant Act, 1 Geo. V. ch. 37, Part III.—Order of County Court Judge "Dismissing Application"—Refusal of Writ of Possession—Appeal under sec. 78(1)—Termination of Tenancy—Conflicting Evidence—Powers of Divisional Court—Discharging Order of Judge—Landlord Left to Bring Action—Costs. *Re Dickson Co. of Peterborough and Graham*, 4 O.W.N. 100, 27 O.L.R. 239.—D.C.

See Assessment and Taxes, 11—Contract, 9.

LEASE.

See Landlord and Tenant—Mines and Minerals, 2—Negligence, 7—Vendor and Purchaser, 21, 23 — Water and Watercourses, 1.

LEAVE TO APPEAL.

See Appeal—Company, 12, 13—Ontario Railway and Municipal Board.

LEGACY.

See Evidence, 1—Executors and Administrators, 3—Will.

LETTERS OF ADMINISTRATION.

See Fatal Accidents Act, 1, 2—Gift, 2.

LIBEL.

1. Security for Costs—Insolvent Plaintiff—Alleged Libel Involving Criminal Charge—Report of Proceeding before Magistrate—Animus—Implication. *McVeity* v. *Ottawa Citizen Co.*, 4 O.W.N. 37.—MASTER IN CHAMBERS.

2. Security for Costs—Libel and Slander Act, 9 Edw. VII. ch. 40, sec. 12—Affidavit in Support of Motion—Cross-examination on — Scope — Insolvent Plaintiff — Defence on the Merits—Good Faith—Justification—Discovery. *St. Clair* v. *Stair*, 4 O.W.N. 645, 731.—MASTER IN CHAMBERS.

See Pleading, 18.

LICENSE.

See Contract, 10, 13—Liquor License Act—Marriage, 2—Negligence, 7.

LICENSE OF OCCUPATION.

See Crown Lands, 1.

LIEN.

Motor-car—"Carriage"—Keeper of Garage—Innkeepers' Act, 1 Geo. V. ch. 49, sec. 3 (4), (5)—Lien on Property of Third Person. *Automobile and Supply Co. Limited* v. *Hands Limited*, 4 O.W.N. 1210, 28 O.L.R. 585.—MIDDLETON, J.

See Animals, 2—Assessment and Taxes, 4, 9—Banks and Banking, 1—Conversion of Chattels—Executors and Administrators, 2—Improvements — Interpleader, 3 — Judicial Sale—Mechanics' Liens—Sale of Goods, 11—Solicitor, 5—Stay of Proceedings, 1.

LIFE ESTATE.

See Vendor and Purchaser, 43—Will.

LIFE INSURANCE.

See Death—Insurance, 6-10.

LIGHT.

See Buildings.

LIMITATION OF ACTIONS.

1. *Mortgage—Foreclosure—Recovery of Land—Period of Limitation—Covenant for Payment—Default in Payment of In-*

Effect of—New Starting-point—Registry Act—Purchaser Claiming under Mortgagee—Stranger to Estate Obtaining Discharge. *Noble* v. *Noble*, 4 O.W.N. 359, 27 O.L.R. 342.—C.A.

See Deed, 3—Ejectment—Fatal Accidents Act, 1, 2—Trusts and Trustees, 6—Way, 1—Will, 5—Writ of Summons, 1.

LIMITATION OF LIABILITY.

See Railway, 2, 3.

LIQUIDATOR.

See Banks and Banking, 4—Company.

LIQUOR LICENSE ACT.

1. Amending Act, 2 Geo. V. ch. 55, sec. 13—Person Found Drunk in Municipality where Local Option in Force—"Street"—"Public Place"—Hotel—Ejusdem Generis—Conviction—Information. *Rex* v. *Cook*, 4 O.W.N. 383, 27 O.L.R. 406.—KELLY, J. (Chrs.)

2. Construction of sec. 54—"Sale or Other Disposal" of Intoxicating Liquor—Sale Completed on Saturday—Possession Given on Sunday—Scope of Prohibition. *Rex* v. *Clark*, 4 O.W.N. 529, 27 O.L.R. 525.—D.C.

3. Selling Intoxicating Liquors without License—Magistrate's Conviction — Evidence — Acting as Messenger. *Rex* v. *Davis*, 4 O.W.N. 358.—KELLY, J. (Chrs.)

4. Selling Intoxicating Liquors without License—Magistrate's Conviction—Evidence—Bottle Seized Bearing Label "Salvador" — Refusal to Admit — Request for Analysis — Estoppel—Fair Trial. *Rex* v. *Stephenson*, 4 O.W.N. 272.—KELLY, J. (Chrs.)

5. Unlawful Sale—Evidence—Existence of Bar—Sec. 111, as Amended by 2 Geo. V. ch. 55, sec. 9—Construction—Local Option Beer—Beer Pump—"Appliances" and "Signs"—Reasonable Belief—What Constitutes an Offence under the Act. *Rex* v. *Bevan*, 4 O.W.N. 400.—MIDDLETON, J. (Chrs.)

6. Unlawful Sale—Evidence—Existence of Bar—Sec. 111, as Amended by 2 Geo. V. ch. 55, sec. 9—Plea of Guilty—Return of Magistrate. *Rex* v. *Dorr*, 4 O.W.N. 419.—MIDDLETON, J. (Chrs.)

See Assessment and Taxes, 2—Municipal Corporations, 13-16.

LIS PENDENS.

1. Certificate of—Motion to Vacate Registration—Abuse of Process of Court—Endorsement on Writ of Summons—Cause of Action—Right of Appeal. *Salter* v. *McCaffrey*, 4 O. W.N. 478.—MASTER IN CHAMBERS.

2. Certificate of—Motion to Vacate Registration—Speedy Trial of Action—Terms. *Kennedy* v. *Kennedy*, 4 O.W.N. 1336, 1370.—MASTER IN CHAMBERS.—BRITTON, J. (Chrs.)

3. Writ of Summons—Endorsement—Statement of Claim—Refusal to Sign "Option" of Purchase of Land—Vacating Registry of Certificate. *Jenkins* v. *McWhinney*, 4 O.W.N. 90.—MASTER IN CHAMBERS.

See Mechanics' Liens, 4—Practice, 5.

LOCAL IMPROVEMENTS.

See Municipal Corporations, 11.

LOCAL JUDGE.

See Injunction, 3.

LOCAL MASTER.

See Interpleader, 3.

LOCAL OPTION BY-LAW.

See Assessment and Taxes, 2—Judgment, 15—Liquor License Act—Municipal Corporations, 13-16.

LOCAL VENUE.

See Venue, 1.

LOST GRANT.

See Water and Watercourses, 8.

LOST LUGGAGE.

See Railway, 3.

LUMBER.

See Banks and Banking, 3.

LUNATIC.

1. Maintenance—Motion for Payment out of Moneys in Court—Insufficient Material. *Re Barley and Fawcett*, 4 O.W.N. 426.—SUTHERLAND, J. (Chrs.)

2. Petition—Evidence. *Re Yeo*, 4 O.W.N. 734.—KELLY, J.

3. Statutory Committee—Jurisdiction. *Re Montgomery Estate*, 4 O.W.N. 308.—MIDDLETON, J.

See Assessment and Taxes, 6—Discovery, 14, 18.

MACHINERY.

See Negligence, 5.

MAGISTRATE.

See Criminal Law—Liquor License Act.

MAINTENANCE.

See Infants, 9—Lunatic, 1—Will, 9, 39, 41.

MALICE.

See Libel—Malicious Prosecution—Slander.

MALICIOUS PROSECUTION.

1. Conversion of Goods of Trading Company by Employee—Liability of Agent of Company for Prosecution—Finding of Jury—Facts not Properly Disclosed to Crown Attorney—Liability of Company for Prosecution Instituted by Agent—Authority of Agent—Absence of Express Authority—Non-existence of Emergency Giving Rise to Implication—General Scope of Agency—Evidence—Burden of Proof—Nonsuit. *March* v. *Stimpson Computing Scale Co.*, 4 O.W.N. 1259.—KELLY, J.

2. Proof of Favourable Termination of Prosecution—Dismissal of Charge—Right to Go behind Record and Shew Abandonment of Prosecution as Result of Compromise—Abuse of Criminal Process of Court—Issue of Warrant in Lieu of Summons—Cause of Action. *Cockburn* v. *Kettle*, 4 O.W.N. 1161, 28 O.L.R. 407.—APP. DIV.

3. Reasonable and Probable Cause—Evidence—Assault—Damages—Costs. *Bigham* v. *Boyd*, 4 O.W.N. 1193.—MIDDLETON, J.

4. Reasonable and Probable Cause—Jury—Right of Owner of Property to Resort to Criminal Law for its Recovery—Damages—Mortgagee of Boat—Illegal Seizure—Deprivation of Use—Conversion—Bailment—Recovery of Damages—Relief from Liability. *Truesdell* v. *Holden*, *Truesdell* v. *Holden*, *Holden* v. *Collingwood Shipbuilding Co.*, 4 O.W.N. 1138.—MIDDLETON, J.

See Master and Servant, 30.

MALPRACTICE.

See Trial, 9.

MANDAMUS.

Division Court—Appeal from Police Magistrate's Conviction—Allowance upon Ground of Insufficiency of Information—Criminal Code, sec. 753—Misconstruction by Division Court Judge—Power of High Court to Review Decision—Consent—Decision on Merits, not on Preliminary Point—Jurisdiction—Reopening Appeal—Duty of High Court. *Re McLeod* v. *Amiro*, 4 O.W.N. 97, 27 O.L.R. 232.—RIDDELL, J. (Chrs.)

See Company, 8—Municipal Corporations, 14, 20, 28—Schools, 2.

MANHOOD SUFFRAGE REGISTRATION ACT.

See Criminal Law, 10.

MANUFACTORIES.

See Municipal Corporations, 27.

MARGINS.

See Brokers.

MARKET.

See Negligence, 7.

MARRIAGE.

1. Action by Husband for Declaration of Invalidity—Incapacity of Wife—Jurisdiction of High Court—Motion to Strike out Statement of Claim and Dismiss Action—Con. Rules 261, 617—Judgment. *Leakim* v. *Leakim*, 4 O.W.N. 214.—D.C.

2. Action for Declaration of Nullity—1 Geo. V. ch. 32—Constitutionality—Marriage of Children—License—Perjury—Evidence. *Malot* v. *Malot*, 4 O.W.N. 1405, 1577.—LENNOX, J.

3. Invalidity—Declaratory Judgment—Jurisdiction of Supreme Court of Ontario. *Prowd* v. *Spence*, 4 O.W.N. 998.—LENNOX, J.

See Contract, 22—Husband and Wife—Pleading, 9.

MARRIAGE SETTLEMENT.

See Will, 36.

MASTER AND SERVANT.

1. Contract of Hiring—Construction—Right to Dismiss Servant—Failure to Shew Incompetence or Misconduct—Expenses—Right to Sue in Ontario—Assets within Ontario—Con. Rule 162—Contract Made in Quebec—Election of Domicile—Exclusion of Foreign Court—Public Policy—Wrongful Dismissal—Damages—Costs. *Carveth* v. *Railway Asbestos Packing Co.*, 4 O.W.N. 872.—MIDDLETON, J.

2. Death by Drowning of Foreman of Power-house—Necessary Work Done for Benefit of Master—Scope of Foreman's Duty—Negligence—Defective Plant or System—Dangerous Work—Absence of Safeguards—Cause of Death—Liability at Common Law and under Workmen's Compensation for Injuries Act, R.S.O. 1897 ch. 160, sec. 3, sub-sec. 1—Voluntary Assumption of Risk—Contributory Negligence—Evidence—Findings of Trial Judge. *Fairweather* v. *Canadian General Electric Co.*, 4 O.W.N. 892, 28 O.L.R. 300.—HODGINS, J.A.

3. Dismissal of Servant—Action for Wrongful Dismissal—Justification — Acquiescence — Costs. *Wilson* v. *Sanderson-Harold Co.*, 4 O.W.N. 1403.—FALCONBRIDGE, C.J.K.B.

4. Employment of Works Manager by Incorporated Company—Action for Salary—Suspension—Dismissal—Resolution—Notice—Sufficiency—Jusification—Incapacity—Misconduct—Counterclaim—Improper Expenditure by Manager——Costs. *Bashforth* v. *Provincial Steel Co.*, 4 O.W.N. 1019.—MIDDLETON, J.

5. Injury to Servant—Building Trades Protection Act, 1 Geo. V. ch. 71, sec. 6(O.)—Breach of Employer's Duty—"Scaffolding"—Findings of Jury—Liability of Employer. *Hunt* v. *Webb*, 4 O.W.N. 1225, 28 O.L.R. 589.—APP. DIV.

6. Injury to Servant—Negligence—Common Law Liability—Workmen's Compensation for Injuries Act—Accident—Evidence. *Eagle* v. *Meade*, 4 O.W.N. 948, 1497.—BRITTON, J.—APP. DIV.

7. Injury to Servant—Negligence — Dangerous Machinery in Factory — Common Law Liability — Defective System — Factories Act—Absence of Guard—Workmen's Compensation for Injuries Act—Notice of Injury—Failure to Give in

14. Injury to Servant—Negligence of Fellow-servant—Engineer in Charge of Engine Operating Steam-shovel—Person in Charge or Control of Engine or Machine upon Railway—Workmen's Compensation for Injuries Act, sec. 3, sub-sec. 5—Findings of Jury. *Dicarllo* v. *McLean*, 4 O.W.N. 1444. —App. Div.

15. Injury to Servant—Negligence of Fellow-servant—Liability of Master—Railway — Engine-driver — Signals — Backing Movement—Workmen's Compensation for Injuries Act—"Charge or Control" of Engine. *Allan* v. *Grand Trunk R.W. Co.*, 4 O.W.N. 325.—C.A.

16. Injury to Servant—Negligence of Fellow-servant in Lower Grade of Employment—Liability of Master—Workmen's Compensation for Injuries Act, sec. 3, sub-sec. 5—Railway —"Person in Charge or Control of Engine"—Evidence—Findings of Jury. *Martin* v. *Grand Trunk R.W. Co.*, 4 O. W.N. 51, 27 O.L.R. 165.—C.A.

17. Injury to Servant—Negligence of Fellow-servant in same Grade of Employment—Liability of Master—Workmen's Compensation for Injuries Act, sec. 3, sub-sec. 5—Railway —"Person in Charge or Control of Engine"—Evidence—Findings of Jury—Inference. *Simmerson* v. *Grand Trunk R.W. Co.*, 4 O.W.N. 1082, 1529.—Middleton, J.—App. Div.

18. Injury to Servant—Negligence of Foreman—Person Intrusted with Superintendence—Workmen's Compensation for Injuries Act, sec. 3, sub-secs. 2, 3—Damages—Money Paid for Relief of Workman—Deduction. *Nigro* v. *Donati*, 4 O.W.N. 2, 453.—Lennox, J.—D.C.

19. *Injury to Servant—Negligence of Master at Common Law not Shewn—Negligence of Fellow-servant—Person to whose Orders Plaintiff Bound to Conform—Injury by Reason of Conforming—Workmen's Compensation for Injuries Act, sec. 3, sub-secs. 1, 2—Contributory Negligence—Finding against—Damages—Costs—Liability of University Board of Governors for Injury to Workman at University Press—Position of Governors—Corporate Body—Crown.*]—By statute "The Governors of the University of Toronto" are made a legal entity, a corporate body, with capacity to sue and be sued; and, it being admitted that the work (University Press) in which the plaintiff in this action was

—Principal and Agent—Independent Contractor—Control by Railway Company—Liability for Negligence—Statutory Liability—Common Law Liability. *Dallantanio* v. *McCormick and Canadian Pacific R.W. Co.*, 4 O.W.N. 547.—FALCONBRIDGE, C.J.K.B.

24. Injury to Servant—Notice of Injury—Failure to Give within Proper Time—Reasonable Excuse—Mistake as to Name of Master—Absence of Prejudice—Workmen's Compensation for Injuries Act, R.S.O. 1897 ch. 160, secs. 9, 13, 14. *Quist* v. *Serpent River Logging Co.*, 4 O.W.N. 159.—BRITTON, J.

25. Injury to and Death of Servant—Action by Widow for Damages—Negligence—Statutory Duty—Breach—Contributory Negligence—Finding of Jury—Absence of Evidence to Support—Rejection of Finding by Trial Judge. *Pressick* v. *Cordova Mines Limited*, 4 O.W.N. 1334.—LATCHFORD, J.

26. Injury to and Death of Servant—Dangerous Machinery—Negligence—Defect in Condition of Premises—Common Law Liability—Negligence of Superintendent—Workman Bound to Conform to Orders and Conforming—Liability under Workmen's Compensation for Injuries Act—Damages—Apportionment. *Hicks* v. *Smith's Falls Electric Power Co.*, 4 O.W.N. 1215.—LATCHFORD, J.

27. Injury to and Death of Servant—Dangerous Work—Scope of Employment—Acting under General Instructions of Foreman—Negligence of Fellow-servant—Person Having Superintendence of Work but not over Deceased—Workmen's Compensation for Injuries Act, sec. 3, sub-sec. 2—Defective System of Signalling—Evidence—Findings of jury. *Darke* v. *Canadian General Electric Co.*, 4 O.W.N. 851, 28 O.L.R. 240.—C.A.

28. Injury to and Death of Servant—Negligence—Contributory Negligence—Findings of Jury—Dangerous Machinery in Factory—Cause of Injury—Acceptance of Theory of Defence—Liability—Grounds of Negligence—Amendment—Motion for Nonsuit. *Falconer* v. *Jones*, 4 O.W.N. 709.—MIDDLETON, J.

29. Injury to and Death of Servant—Workman Employed in Factory—Action by Widow under Fatal Accidents Act—Negligence—Person in Position of Superintendence—Con-

MASTER IN CHAMBERS.

MASTER'S REPORT.

MECHANICS' LIENS.

—Preservation of Lien—Time. *Eadie-Douglas* v. *Hitch & Co.*, 4 O.W.N. 147, 27 O.L.R. 257.—D.C.

See Stay of Proceedings, 1.

MEDICAL HEALTH OFFICER.

See Municipal Corporations, 32—Public Health Act.

MEDICAL PRACTITIONER.

See Physicians and Surgeons.

MINES AND MINERALS.

1. Recording Mining Claims—Priorities—Dispute—Appeal—Refusal of Mining Commissioner to Consider Merits of Staking—Extension of Time for Doing Work—Mining Act of Ontario, 1908, secs. 60, 62, 63, 65, 66, 80, 130, 140. *Re Campsall and Allen*, 4 O.W.N. 130.—D.C.

2. Unpatented Mining Claims—Destruction of Value—Damage by Flooding—Lease by Crown of Water Power Location—Construction—Erection of Dam — Act of Crown — Intra Vires. *Bucknall* v. *British Canadian Power Co.*, 4 O.W.N. 164.—D.C.

See Discovery, 22—Judicial Sale—Railway, 6.

MINING AGREEMENT.

See Contract, 11, 12.

MINING COMPANY.

See Company, 2.—Contract, 21.

MISCONDUCT.

See Arbitration and Award, 2—Husband and Wife, 7—Master and Servant, 1, 4—Physicians and Surgeons.

MISDIRECTION.

See Railway, 11.

MISFEASANCE.

See Company, 16—Discovery, 20—Pleading, 1—Solicitor, 6.

MISREPRESENTATIONS.

See Author—Fraud and Misrepresentation.

MISTAKE.

Cancellation of Promissory Note—Acceptance of Note in Renewal—Mistake as to Identity of Signatory—Relief from Conse-

MONEY IN COURT.

MONEY-LENDER.

MONEY LENT.

MORTGAGE.

of the prudent man dealing with his own property is not to be applied; a lesser degree of responsibility is involved. Where the sale is attacked, the inquiry should be: has the mortgagee been culpable to the extent of wilful default in exercising the power? If a mortgagee takes pains to comply with the provisions of the power and acts in good faith, his conduct as to the sale cannot be impeached. *British Columbia Land and Investment Agency* v. *Ishitaka*, 45 S.C.R 302, 317, *National Bank of Australasia* v. *United Hand in Hand*, 4 App. Cas. at pp. 392, 411, *Haddington Island Quarry Co.* v. *Huson*, [1911] A.C. at p. 729, and *Kennedy* v. *De Trafford*, [1897] A.C. 180, followed.—And in a case where the land was advertised and sold by the mortgagee *en bloc*, and the evidence shewed that a better price might have been obtained if it had been sold in parcels, but the good faith of the mortgagee was not impugned, and there was no fraud nor wilful nor reckless conduct, an action for damages was dismissed. *Wilson* v. *Taylor*, 4 O.W.N. 253.—BOYD, C.—Affirmed, 4 O.W.N. 1376.—APP. DIV.

4. Security for Bonds of Railway Company—Default—Payment of Interest pendente Lite—Possession—Receiver — Taxes — New Trial—Costs. *National Trust Co.* v. *Brantford Street R.W. Co.*, 4 O.W.N. 1342.—APP. DIV.

See Accord and Satisfaction—Assessment and Taxes, 6, 10—Banks and Banking, 2—Charge on Land—Costs, 5—Dower—Execution, 1—Executors and Administrators, 4—Fraudulent Conveyance, 1, 3—Indemnity—Limitation of Actions, 1, 5—Pleading, 33—Trusts and Trustees, 2—Vendor and Purchaser, 14, 16, 18, 19—Will, 5, 39.

MOTOR VEHICLES.

See Damages, 6—Highway, 13—Lien—Motor Vehicles Act.

MOTOR VEHICLES ACT.

1. Collision between Motor Car and Bicycle—Injury to Bicyclist—Negligence—Violation by Driver of Motor Car of sec. 6 of 2 Geo. V. ch. 48—Responsibility of Owner for Act of Driver—Sec. 19 of Act—Findings of Jury—Driver Acting within Scope of Employment—Evidence—Appeal. *Bernstein* v. *Lynch*, 4 O.W.N. 435, 28 O.L.R. 435.—APP. DIV.
2. Injury to Pedestrian "by reason of a Motor Vehicle on a Highway" — Construction of 6 Edw. VII. ch. 46, sec. 18, as

MUNICIPAL ARBITRATIONS ACT.

MUNICIPAL CORPORATIONS.

into—Exceeding Capacity of Watercourse—Overflow—Injury to Land—Liability—Damages. *McGuire* v. *Township of Brighton*, 4 O.W.N. 137.—D.C.

6. Drainage—Open Drain or Ditch in Highway—Negligent Construction—Neglect to Clean out—Overflow of Waters upon Plaintiff's Land—Seepage—Actionable Wrong—Damages—Costs. *Moore* v. *Town of Cornwall*, 4 O.W.N. 145.—D.C.

7. Drainage—Report of Referee—Appeal—Instructions to Engineer—Repair of Drain—Sufficient Outlet—Alleged Variation as to Maintenance—Assessment—Reliance upon Engineer's Conclusions—Municipal Drainage Act. *Re Township of Anderdon and Townships of Malden and Colchester South*, 4 O.W.N. 327.—C.A.

8. Drainage—Report and Plans of Engineer — Independent Judgment — Assessment — Cost of Work — Inclusion of Sum for Fees and Expenses of Solicitors and Engineers. *Re Bright and Township of Sarnia, Re Wilson and Township of Sarnia*, 4 O.W.N. 1535.—App. Div.

9. Expropriation of Land—Expropriating By-law—Registration—Propriety of—Repealing By-law—Injury to Land-owner—Suspended Building Operations—Delay in Issuing Permit—Collusion of Municipal Officers—Claim for Damages——Arbitration—Costs—Municipal Act, sec. 463(1)—Effect of Repealing By-law—Necessity for Reconveyance—Action—Stay of Proceedings—Terms—Cause of Action. *Grimshaw* v. *City of Toronto*, 4 O.W.N. 1124, 28 O.L.R. 512.—Middleton, J.

10. Expropriation of Land for Widening City Street—Compensation — Award — Damages for Depriving Land-owner of Contingent Advantages—By-law Restricting Use of Street—Possibility of Repeal—Character of Street—Residential Street—Commercial Buildings to be Erected in Future—Remoteness—Elements of Damage. *Re Gibson and City of Toronto*, 4 O.W.N. 612, 28 O.L.R. 20.—C.A.

11. Expropriation of Land for Widening City Street—"Due Compensation"—Arbitration and Award—Value of Land Taken—Injurious Affection of Land not Taken—Depreciation in Value—Change in Character of Street—Street Railway Lines—Local Improvement Assessment. *Re Macdonald and City of Toronto*, 4 O.W.N. 54, 27 O.L.R. 179.—C.A.

Voters' Lists Act, secs. 21, 24—Irregularities in Procedure —Certificate of Judge—Finality. *Re North Gower Local Option By-law*, 4 O.W.N. 1177.—KELLY, J.

17. Police Village—Status of—Nonrepair of Sidewalk—Injury to Person—Liability of Township Corporation—Municipal Act, R.S.O. 1897 ch. 223, secs. 714-750—Trustees of Village —Powers and Responsibilities—Powers of County Council —Creation of Body Corporate—Ultra Vires. *Smith* v. *Township of Bertie*, 4 O.W.N. 907, 28 O.L.R. 330.—MIDDLETON, J.

18. Regulation of Barber Shops—Early Closing By-law — Ontario Shops Regulation Act, R.S.O. 1897 ch. 257, sec. 44(3) —Application to Barbers' Shops—4 Edw. VII. ch. 10, sec. 61—Petition—Signatures of Members of Class Affected— Ascertainment of Numbers and Majority—Duty of Council —Delegation to Clerk—Signatures Improperly Appended to Petition — Inquiry — Attempted Ratification. *Re McCoubrey and City of Toronto*, 4 O.W.N. 573.—KELLY, J.

19. Regulation of Barber Shops—Early Closing By-law—Validity—Statutes. *Re McCoubrey and City of Toronto*, 4 O.W.N. 1595.—LENNOX, J.

20. Regulation of Buildings—Erection in City — Apartment House—Lodging House—Hotel—City By-laws—Municipal Act, 1903, sec. 541*a*—Amendment by 2 Geo. V. ch. 40, sec. 10—Mandamus for Approval of Plans—Conditions—Undertaking —Reversal of Order on Appeal. *Re Coleman and McCallum*, 4 O.W.N. 1127, 1449.—LENNOX, J. (Chrs.)—APP. DIV.

21. Regulation of Buildings—Prohibition of Erection of Apartment House—By-law—2 Geo. V. ch. 40, sec. 10—Permit for Erection—Revocation—Bona Fides—"Location" before Statute—Building not Actually Begun—Estoppel. *City of Toronto* v. *Williams*, 4 O.W.N. 58, 27 O.L.R. 186.—D.C.

22. Regulation of Buildings—Prohibition of Erection of Apartment Houses on Residential Streets—2 Geo. V. ch. 40, sec. 10 —City By-law—"Location" before Passing of By-law— Actual Work Done. *City of Toronto* v. *Stewart*, 4 O.W.N. 1027.—KELLY, J.

23. Regulation of Buildings—Prohibition of Erection of Apartment Houses on Residential Streets—2 Geo. V. ch. 40, sec.

struction — Approval of Plan by Ontario Railway and Municipal Board—Objection of City Corporation not Filed within 21 Days—Powers of Board—Appeal—Question of Law—Board Acting without Evidence—Reference back. *Re Canadian Building and Loan Association and City of Hamilton,* 4 O.W.N. 1185.—APP. DIV.

31. Telephone System—By-law and Resolution for Establishment of—Motion to Quash—Two Parallel Systems in Operation—Ontario Telephone Act, 2 Geo. V. ch. 58—Petition Changed without Consent—Discretion of Council — Petitioners not Allowed to Withdraw—Violation of Alleged Understanding on which By-law Passed—Sealing of By-law —Schedule not Attached—Matters of Routine—Date of Debentures—Binding Lands in another Township — Alleged Partisan Action of Reeve and Councillor—Bona Fides. *Re Robertson and Township of Colborne,* 4 O.W.N. 274.—RIDDELL, J.

32. Waterworks—Broken Service Pipe—Injury to Premises of Water Taker—Inspection by Medical Health Officer—Notice of Complaint—Negligence— Statutory Defences. *Gatto* v. *City of Toronto,* 4 O.W.N. 356.—MIDDLETON, J.

See Appeal, 6—Assessment and Taxes—Criminal Law, 15—Discovery, 7—Guaranty, 2—Highway—Liquor License Act—Negligence, 2, 7, 8—Ontario Railway and Municipal Board —Public Health Act—Railway, 5—Schools—Street Railways—Way, 1.

MUNICIPAL DRAINAGE ACT.

See Municipal Corporations, 4-8.

MUNICIPAL ELECTIONS.

1. Corrupt Practices by Successful Candidate—Bribery—Payment of Scrutineers—Inducement to Procure Return of Candidate—Municipal Act, 1903, secs. 179 (4), 245 (2)—5 Edw. VII. ch. 22, sec. 8—Absence of Evidence of Payment by Reason of Scrutineer having Voted—Payment of Debt to Voter—Evidence — Suspicious Circumstances—Interest in Contract with Corporation—Municipal Act, 1903, sec. 80 —Transaction with Crown—Absence of Benefit to Candidate—Conflict of Evidence—Costs. *Rex ex rel. Fitzgerald* v. *Stapleford,* 4 O.W.N. 1468, 29 O.L.R. 133.—RIDDELL, J. (Chrs.)

MUNICIPAL WATERWORKS ACT.

MURDER.

NATURAL GAS.

NAVIGABLE WATERS.

NEGLIGENCE.

4. Highway—Injury to Person from Contact with Broken Live Wire upon—Evidence—Judge's Charge—Findings of Jury—Insufficiency—New Trial. *Hudson* v. *Smith's Falls Electric Power Co.*, 4 O.W.N. 1227.—App. Div.

5. Machinery and Plant—Defective Condition of—Injury to Engineer—Evidence—Findings of Jury—Motion for Nonsuit—Liability—Contractors—Installation in Premises of Purchaser—Non-acceptance by Purchaser. *Nokes* v. *Kent Co. Limited*, 4 O.W.N. 665.—Middleton, J.

6. Motor Car on Highway—Injury to Person by—Motor Vehicles Act, sec. 7—Onus—Question for Jury—Evidence as to Defendant Having Insured against Accident—Admission of—No Substantial Wrong or Miscarriage—Address of Counsel to Jury—Damages—Excess—Consent to Reduction—New Trial. *Mitchell* v. *Heintzman*, 4 O.W.N. 636.—D.C.

7. Municipal Corporation—Nonrepair of Market Stall—Weekly Letting for Part of each Day—Injury to Health of Huckster Occupying Stall—Notice to Corporation—Lessee or Licensee—Contributory Negligence — Voluntary Assumption of Risk. *Wood* v. *City of Hamilton*, 4 O.W.N. 427, 805, 28 O.L.R. 214.—Clute, J.—App. Div.

8. Municipal Corporation—Repair of Pavement—Statutory Duty—Delegation to Contractor—Use of Dangerous Material—Improper Implement—Injury to Child—Necessity for Precautions—Necessary Work—Notice of Action—Contributory Negligence. *Waller* v. *Corporation of Sarnia*, 4 O.W.N. 403, 890.—Leitch, J.—App. Div.

9. Railway—Infant "Stealing Ride" on Cow-catcher of Engine—Nonsuit. *Wallace* v. *Canadian Pacific R.W. Co.*, 4 O.W.N. 133.—Sutherland, J.

10. Street Railway—Collision—Injury to Passenger—Evidence of Injury—Conduct of Injured Person—Finding of Fact—Damages—Appeal. *Rose* v. *Toronto R.W. Co.*, 4 O.W.N. 833, 1069.—Britton, J.—App. Div.

11. Street Railway—Injury to Driver of Carriage—Collision between Street Car and Carriage—Action for Damages—Findings of Jury—Concurrent Negligence of Motorman and Plaintiff — Ultimate Negligence — Questions Left to Jury — Written Answers — Subsequent Oral An-

National Telephone Co. v. *Baker*, [1893] 2 Ch. 186, and *Eastern and South African Telegraph Co.* v. *Capetown Tramways Co.*, [1902] A.C. 381, followed.—*Held*, also, that the injury sustained by R. was the direct and proximate result of the negligence of the telephone company, and there was no reason why the electric company should anticipate and guard against that negligence. *Urquhart* v. *Farrant*, [1897] 1 Q.B. 241, referred to.—The action, as against the electric company, was dismissed. *Roberts* v. *Bell Telephone Co. and Western Counties Electric Co.*, 4 O.W.N. 1099.—MIDDLETON, J.

See Animals, 1—Appeal, 5—Carriers, 2—Damages, 6—Fatal Accidents Act, 3—Highway, 11-18—Master and Servant—Motor Vehicles Act—Municipal Corporations, 4, 6, 32—Parent and Child—Principal and Agent, 1—Railway, 2, 7, 8, 9, 10—Solicitor, 6—Stay of Proceedings, 3—Street Railways, 3, 4, 5, 6—Trial, 3.

NEW TRIAL.

Order of Divisional Court—Terms. *Nokes* v. *Kent*, 4 O.W.N. 252.—D.C.

See Appeal, 5—Criminal Law, 2—Division Courts, 1, 2—Evidence, 7—Landlord and Tenant, 13—Master and Servant, 10—Mortgage, 4—Negligence, 1, 4, 6, 11—Railway, 9, 10, 11—Trial, 3.

NEWSPAPER.

See Contempt of Court, 4.

NEXT FRIEND.

See Fatal Accidents Act, 1, 2—Venue, 1.

NEXT OF KIN.

See Costs, 4—Distribution of Estates, 1, 2, 3.

NOMINAL DAMAGES.

See Author—Buildings.

NONJOINDER OF PARTIES.

See Parties.

NONREPAIR OF HIGHWAY.

See Highways, 11-18—Municipal Corporations, 17—Solicitor, 6.

NUISANCE.

See Highway, 5, 17—Injunction, 2, 6—Landlord and Tenant, 9—Particulars, 9—Pleading, 6—Water and Watercourses, 8

OBSCENE PUBLICATION.

See Criminal Law, 4.

OBSTRUCTION.

See Highway, 5, 6, 18—Injunction, 3—Landlord and Tenant, 9—Water and Watercourses, 6.

OCCUPATION RENT.

See Landlord and Tenant, 2.

OIL LEASES.

See Contract, 8, 29.

ONTARIO RAILWAY AND MUNICIPAL BOARD.

Jurisdiction — Right of Appeal—Ruling on Preliminary Question not Appealed against—Leave to Appeal from Substantive Order of Board—Work Done in Pursuance of Previous Ruling—Diversion or Deviation of Street Railway from Highway to Right of Way—Power of Expropriation—Construction of Statutes—Statutory Powers—Authority of Board—40 Vict, ch. 84, secs. 2, 8—56 Vict. ch. 94, secs. 4, 5, 11—60 Vict. ch. 92, secs. 1, 6—61 Vict. ch. 66, secs. 6, 23—6 Edw. VII. ch. 30, secs. 55, 199—6 Edw. VII. ch. 124, sec. 3—10 Edw. VII. ch. 83, sec. 12—1 Geo. V. ch. 134, secs. 1, 6. *Re City of Toronto and Toronto and York Radial R.W. Co.*, 4 O.W.N. 784, 28 O.L.R. 180.—C.A.

See Assessment and Taxes, 1—Highway, 10—Municipal Corporations, 28, 30—Statutes (Construction of)—Street Railways, 1, 2, 7.

OPINION EVIDENCE.

See Evidence, 7.

OPTION.

See Contract, 9, 12—Landlord and Tenant, 4—Lis Pendens, 3—Principal and Agent, 9—Vendor and Purchaser, 20-23.

OVERHOLDING TENANT.

See Landlord and Tenant, 13, 14.

OVERVALUATION.

See Insurance, 4.

PARENT AND CHILD.

Liability of Parent for Tort of Infant Child—Assault—Repetition of Former Assault—Notice to Parent of First Offence—Failure to Prove—Evidence—Finding of Jury—Perverseness—Interference by Appellate Court—Knowledge of Dangerous Propensity—Conduct of Parent—Evidence of Scienter—General Verdict of Jury—Proper Case for Submission of Questions—Failure to Shew Approval or Ratification by Parent of Conduct of Child—Absence of Negligence—Rule as to Liability for Injury Done by Animals—Application of, to Children. *Corby* v. *Foster*, 4 O.W.N. 1352, 29 O.L.R. 83.—App. Div.

See Deed, 2—Fatal Accidents Act, 1, 2, 3—Gift, 2, 6—Husband and Wife, 2, 3, 7—Infants—Trusts and Trustees, 2.

PARLIAMENT.

See Constitutional Law.

PARLIAMENTARY ELECTIONS.

See Wager.

PART PERFORMANCE.

See Vendor and Purchaser, 2.

PARTICULARS.

1. Counterclaim—Claim for Damages by Reason of Interim Injunction—Practice—Costs. *Smith* v. *Stanley Mills Co.*, 4 O.W.N. 1269.—Master in Chambers.

2. Statement of Claim—Action for Defamation—Slanderous Words in Foreign Language—Special Damage. *Dickman* v. *Gordon*, 4 O.W.N. 424.—Master in Chambers.

3. Statement of Claim—Cheques—Refusal to Account—Discovery—Production of Books—Banks. *Spitzer Bros.* v. *Union Bank of Canada*, 4 O.W.N. 594.—Master in Chambers.

4. Statement of Claim—Contract—Work Done under Railway Construction Sub-contract—Extras—Overcharges — Interest. *Eastern Construction Co.* v. *J. D. McArthur Co.*, 4 O.W.N. 1368.—Master in Chambers.

5. Statement of Claim—Delay in Moving—Con. Rule 268. *Delap* v. *Canadian Pacific R.W. Co.*, 4 O.W.N. 416.—Master in Chambers.

6. Statement of Claim—Guaranty—Suggested Assessment of Damages on Reference. *Niagara and Ontario Construction Co.* v. *Wyse and United States Fidelity and Guaranty Co.*, 4 O.W.N. 357.—SUTHERLAND, J. (Chrs.)

7. Statement of Claim—Misrepresentations—Contract—Rescission—Demand—Costs. *Murray* v. *Thames Valley Garden Land Co.*, 4 O.W.N. 773.—HOLMSTEAD, SENIOR REGISTRAR (Chrs.)

8. Statement of Claim—Motion after Delivery of Defence, but before Examination for Discovery — Plaintiffs Resident Abroad—Default in Payment of Interlocutory Costs. *Rickart* v. *Britton Manufacturing Co.*, 4 O.W.N. 112.—MASTER IN CHAMBERS.

9. Statement of Claim—Motion before Delivery of Defence—Absence of Affidavit—Nuisance—Damages. *Black* v. *Canadian Copper Co.*, 4 O.W.N. 62, 111.—MASTER IN CHAMBERS, RIDDELL, J. (Chrs.)

10. Statement of Claim—Vagueness. *Woltz* v. *Woltz*, 4 O.W.N. 354.—HOLMESTED, REGISTRAR (Chrs.)

See Municipal Elections, 2—Pleading—Slander, 2—Trial, 2.

PARTIES.

1. Action for Damage to Land—Non-joinder of Co-tenant of Plaintiff—Order Requiring Plaintiff to Add Party—Penalty for Default—Stay of Trial—Delay in Moving—Costs. *Hoodless* v. *Smith*, 4 O.W.N. 190.—RIDDELL, J. (Chrs.)

2. Persons Having the Same Interest in one Cause or Matter—Suing One of a Number of Persons on behalf of all—Con. Rule 201—Con. Rule 200—Action for Trespass—Practice. *Scully* v. *Ontario Jockey Club*, 4 O.W.N. 379.—MIDDLETON, J.

3. Third Parties—Closing Pleadings against Third Party — Motion by Plaintiff—Con. Rule 3—Particulars in Action on Guaranty. *Niagara and Ontario Construction Co.* v. *Wyse and United States Fidelity and Guaranty Co.*, 4 O.W.N. 248.—MASTER IN CHAMBERS.

4. Third Parties—Motion to Set aside Third Party Notice—Ex Parte Order—Lapse of Time—Time for Service—Extension. *Hudson* v. *Smith's Falls Electric Power Co.*, 4 O.W.N. 391.—MASTER IN CHAMBERS.

PARTITION.

PARTNERSHIP.

to stay proceedings:—*Held*, reversing the order of the Master in Chambers, 4 O.W.N. 1338, that the name of the objecting co-partner should be eliminated from the style of cause, and he should be added as a party defendant, with leave to serve him out of the jurisdiction and to make all appropriate amendments. *In re Mathews*, [1905] 2 Ch. 460, followed. *Widell Co. & Johnson* v. *Foley Bros.*, 4 O. W.N. 1419.—MIDDLETON, J. (Chrs.)

3. Arbitration Clause in Articles—Interim Receiver. *Davies* v. *Mack*, 4 O.W.N. 357.—SUTHERLAND, J.

4. Establishment of Partnership—Oral Agreement to Divide Profits of Land Transactions—Validity—Evidence—Basis of Division—Costs. *Bindon* v. *Gorman*, 4 O.W.N. 839, 1505. —LENNOX, J.—APP. DIV.

See Contract, 4, 8, 12, 25—Fraud and Misrepresentation, 5—Judgment, 11—Practice, 1—Principal and Agent, 16 — Vendor and Purchaser, 32—Will, 29.

PASSENGER.

See Negligence, 10, 12—Railway.

PASSING-OFF.

See Trade-Name.

PATENT FOR INVENTION.

Combination of Parts—Novelty—Utility—New and Useful Result—Infringement—Trade Name—Injunction — Damages. *United Injector Co.* v. *James Morrison Brass Manufacturing Co.*, 4 O.W.N. 1263.—BOYD, C.

See Contract, 10—Covenant, 2—Pleading, 30—Venue, 2.

PATENT FOR LAND.

See Crown Lands.

PAYMENT.

See Account, 3—Banks and Banking, 2—Company, 14—Contract, 25—Guaranty, 3.

PAYMENT INTO COURT.

See Contract, 23—Costs, 2, 5—Indemnity—Infants, 8—Insurance, 6—Partition—Promissory Notes, 1—Vendor and Purchaser, 34—Will, 41.

PAYMENT OUT OF COURT.

See Execution, 1—Lunatic, 1—Partition—Solicitor, 5.

PEACE OFFICER.

See Criminal Law, 1.

PEDIGREE.

See Distribution of Estates, 2.

PENALTY.

See Contract, 12—Fraud and Misrepresentation, 5.

PERJURY.

See Criminal Law, 10—Marriage, 2.

PERPETUITY.

See Will, 34, 36, 41.

PERSONA DESIGNATA.

See Surrogate Courts.

PERSONATION.

See Criminal Law, 11.

PETITION.

See Company—Lunatic, 2—Municipal Corporations, 18, 31.

PHYSICIANS AND SURGEONS.

College Council—Inquiry into Alleged Misconduct of Registered Practitioner—Ontario Medical Act, R.S.O. 1897 ch. 176, secs. 33, 35, 36—10 Edw. VII. ch. 77—Order of Council for Erasure of Name from Register—Appeal to Divisional Court—Authority of Previous Decision—2 Geo. V. ch. 17, sec. 10 (4)—Proceedings before Committee and Council—"Ascertain the Facts"—Duty of Committee—Findings of Fact—Duty of Council—Decision upon Facts Found—Credibility of Witnesses—Report of Committee—Council "May" Act upon—Further Inquiry by Council through Committee—Restoration of Name—Costs. *Re Stinson and College of Physicians and Surgeons of Ontario,* 4 O.W.N. 627, 27 O.L.R. 565.—D.C.

See Trial, 9.

PLACE OF TRIAL.

See Venue.

PLANS.

See Assessment and Taxes, 4—Contract, 1—Highway, 3, 4, 6—Municipal Corporations, 30—Railway, 5—Registry Laws—Statutes (Construction of)—Trespass to Land, 2—Water and Watercourses, 5.

PLEADING.

1. Counterclaim—Con. Rule 254—New Defendants by Counterclaim—Company — Directors — Misfeasance — Wrongful Dismissal—Amendment. *Polson Iron Works Limited* v. *Main*, 4 O.W.N. 648.—MASTER IN CHAMBERS.

2. Counterclaim—Particulars—Leave to Rejoin—Examination for Discovery. *Canadian Westinghouse Co.* v. *Water Commissioners for City of London*, 4 O.W.N. 387.—MASTER IN CHAMBERS.

3. Reply—Departure—Embarrassment—Wrongful Dismissal — Breach of Contract. *Regan* v. *McConkey*, 4 O.W.N. 877.—MASTER IN CHAMBERS.

4. Reply—Withdrawal—Amendment of Defence—Right to Deliver New Reply—Costs. *Sheardown* v. *Good*, 4 O.W.N. 768.—MASTER IN CHAMBERS.

5. Statement of Claim—Action of Deceit—False Representations Inducing Plaintiff to Live with a Married Man as his Wife—Damages—Birth of Child—Cause of Action—Embarrassment. *Widgery* v. *Dudley*, 4 O.W.N. 733.—MASTER IN CHAMBERS.

6. Statement of Claim—Action to Restrain Nuisance—Joinder of Plaintiffs—Property Rights and Interests — Embarrassment—Prejudice—Joinder of Causes of Action—Election—Attorney-General. *Smyth* v. *Harris*, 4 O.W.N. 168.—MASTER IN CHAMBERS.

7. Statement of Claim—Amendment—Addition of Claim for Reformation of Agreement—Conformity of Amendment to Order Giving Leave to Amend—Sufficiency of Allegations. *Rogers* v. *National Portland Cement Co.*, 4 O.W.N. 1094.—MASTER IN CHAMBERS.—MIDDLETON, J. (Chrs.)

8. Statement of Claim—Application to Amend by Adding Claim for Tort—Stale Claim—Bar by 10 Edw. VII. ch. 34, sec. 49 (*j*)—Previous Action for same Cause—Husband and Wife. *Jordan* v. *Jordan*, 4 O.W.N. 1219.—MASTER IN CHAMBERS.

19. Statement of Claim—Misrepresentations—Particulars. *Murray* v. *Thames Valley Garden Land Co.*, 4 O.W.N. 886.—MASTER IN CHAMBERS.

20. Statement of Claim—Misrepresentations—Particulars. *Morgan* v. *Thames Valley Garden Land Co.*, 4 O.W.N. 887.—MASTER IN CHAMBERS.

21. Statement of Claim—Mistake—Motion to Amend. *Sheardown* v. *Good*, 4 O.W.N. 553.—MASTER IN CHAMBERS.

22. Statement of Claim—Motion to Strike out Part—Particulars—Costs. *Cantin* v. *Clarke*, 4 O.W.N. 879.—MASTER IN CHAMBERS.

23. Statement of Claim—Motion to Strike out Portion—Prejudice—Materiality. *Fritz* v. *Jelfs*, 4 O.W.N. 1371, 1408.—MASTER IN CHAMBERS.—LENNOX, J. (Chrs.)

24. Statement of Claim—Motion to Strike out Portions—Irrelevancy—Embarrassment—Motion for Particulars before Pleading — Practice — Affidavit — "Arrangement" for Transfer of Shares—Particulars of Time, Place, Persons, etc. *Wall* v. *Dominion Canners Co.*, 4 O.W.N. 214, 684.—MASTER IN CHAMBERS.

25. Statement of Claim—Oral Contract—Consideration—Particulars—Con. Rules 261, 268. *Harris* v. *Elliott*, 4 O.W.N. 849.—MASTER IN CHAMBERS.

26. Statement of Claim—Particulars—Acts Antecedent to Writ—Inability to Give Further Particulars—Municipal By-law—Con. Rule 552. *Fuller* v. *Bonis*, 4 O.W.N. 306.—MASTER IN CHAMBERS.

27. Statement of Claim—Restriction—Claim to Set aside Release—Other Claims—Con. Rule 298—Judicature Act, sec. 57 (12). *Broom* v. *Dominion Council of Royal Templars of Temperance*, 4 O.W.N. 773.—MASTER IN CHAMBERS.

28. Statement of Claim—Wrongful Dismissal—Other Causes of Action—Prolixity—Irrelevancy — Embarrassment. *Caulfeild* v. *National Sanitarium Association*, 4 O.W.N. 592, 732.—MASTER IN CHAMBERS.—BRITTON, J. (Chrs.)

29. Statement of Defence—Con. Rule 298—Denial—Non-payment of Interlocutory Costs—Remedy. *Rickart* v. *Britton Manufacturing Co.*, 4 O.W.N. 110.—MASTER IN CHAMBERS.

See Assessment and Taxes, 9—Brokers, 2—Costs, 8, 14, 16—Crown Lands, 2—Discovery—Fatal Accidents Act, 1, 2—Master and Servant, 10—Particulars—Parties—Slander, 2—Trial, 11—Vendor and Purchaser, 5—Venue.

PLEDGE.

See Banks and Banking, 3—Brokers—Company, 9, 22.

POLICE MAGISTRATE.

See Costs, 16—Criminal Law—Mandamus.

POLICE OFFICERS.

See Costs, 8.

POLICE VILLAGE.

See Municipal Corporations, 17.

POLLUTION OF STREAM.

See Water and Watercourses, 8.

POSSESSION OF LAND.

See Ejectment—Landlord and Tenant—Limitation of Actions.

POSTPONEMENT.

See Trial, 2, 10-13.

POWER OF APPOINTMENT.

See Will, 34, 36, 37.

POWER OF ATTORNEY.

See Fatal Accidents Act, 1, 2—Vendor and Purchaser, 21.

POWER OF SALE.

See Deed, 3—Executors and Administrators, 5—Mortgage, 3.

PRACTICE.

1. Action Brought in Name Denoting Partnership—Sole Member of Firm—Style of Cause—Irregularity—Amendment—Con. Rules 222, 231. *Lloyd & Co.* v. *Scully*, 4 O.W.N. 1404.—MASTER IN CHAMBERS.

2. Consolidation of Actions — Two Actions Brought by same Plaintiff against Different Defendants—Trial—Stay of one Action. *St. Clair* v. *Stair*, 4 O.W.N. 731.—MASTER IN CHAMBERS.

3. Delay in Proceeding with Action—Judgment at Trial Dismissing Action Set aside—Addition of Party Plaintiff—Leave to Amend—Amended Statement of Claim Delivered after Lapse of two Years—Motion to Set aside—Validation—Terms—Interest—Costs. *Browne* v. *Timmins*, 4 O.W.N. 897, 983.—MASTER IN CHAMBERS.—FALCONBRIDGE, C.J.K.B. (Chrs.)

4. Discontinuance of Action — Con. Rule 430 — Proceedings Taken after Delivery of Statement of Defence—Issue of Order to Produce and Appointment for Examination of Defendant. *Christie Brown & Co. Limited* v. *Woodhouse*, 4 O.W.N. 93.—MASTER IN CHAMBERS.

ent Commission Agreement—Termination—Quantum Meruit. *Strong* v. *London Machine Tool Co.*, 4 O.W.N. 593, 1062.—MIDDLETON, J.—APP. DIV.

3. Agent's Commission on Sale of Land—Commission Claimed by two Agents—Interpleader Order—Scope of Issue Directed—Right to Commission—Evidence. *Rice* v. *Proctor*, 4 O.W.N. 1242.—APP. DIV.

4. Agent's Commission on Sale of Land—Contract—Cheque for Deposit Unpaid—Refusal of Purchaser to Complete—"Selling the Property"—Meaning of—Procuring Purchaser Acceptable to Principal—Agreement for Sale not Carried out. *Smith* v. *Barff*, 4 O.W.N. 236, 27 O.L.R. 276.—D.C.

5. Agent's Commission on Sale of Land—Contract—Time-limit—Sale Effected after Expiry—Introduction of Purchaser by Agent. *Sibbitt* v. *Carson*, 4 O.W.N. 114, 27 O.L.R. 237.—D.C.

6. Agent's Commission on Sale of Land—Employment of Agent—Contractual Relationship—Instrumentality in Bringing about Sale—Want of Connection with Actual Contract of Sale. *Copeland* v. *Wagstaff*, 4 O.W.N. 567.—MIDDLETON, J.

7. Agent's Commission on Sale of Land—Introduction of Purchaser by Agent—Purchase from Principal of a Different Property from that which Agent Employed to Sell. *Moody* v. *Kettle*, 4 O.W.N. 1410.—MACBETH, Co.C.J.

8. Agent's Commission on Sale of Land—Liability—Indemnity by Purchaser—Third Party—Costs—Liability of Vendor for two Commissions. *Walker and Webb* v. *Macdonald*, *Graham* v. *Macdonald*, 4 O.W.N. 1—FALCONBRIDGE, C.J.K.B.

9. Agent's Commission on Sale of Land—Option for Limited Time—Expiry of Option—Subsequent Sale to Purchaser Found by Agent. *Hubbard* v. *Gage*, 4 O.W.N. 901.—FALCONBRIDGE, C.J.K.B.

10. Agent's Commission on Sale of Land—Quantum—Evidence. *Chapman* v. *McWhinney*, 4 O.W.N. 417, 699.—APP. DIV.

11. Agent's Commission on Sale of Land—Sale Made "by or through" Agent—Purchaser Originally Introduced Interested in Sale Ultimately Made—Change in Form or Scope of Dealing—Causa Causans. *McBrayne* v. *Imperial Loan Co.*, 4 O.W.N. 1311, 28 O.L.R. 653.—APP. DIV.

PRINCIPAL AND SURETY.

—Effect upon Sureties—Construction of Contract—Condition Precedent—Completion of Work—Advances Made to Contractor — Liability to Recoup — Notice — Reference. *Niagara and Ontario Construction Co.* v. *Wyse and United States Fidelity and Guaranty Co.*, 4 O.W.N. 975.—MIDDLETON, J.

2. Guarantee Bond—Construction of Agreement—Termination of Grant—Effect of—Variance of Contract to Prejudice of Surety—Meaning of "Adjudged." *City of Guelph* v. *Jules Motor Co.*, 4 O.W.N. 401.—BOYD, C.

See Contract, 27—Guaranty—Mistake.

PRIVATE WAY.

See Way.

PRIVILEGE.

See Discovery, 11, 23—Slander, 1.

PRIVY COUNCIL.

See Appeal, 13.

PROCLAMATION.

See Constitutional Law.

PRODUCTION OF DOCUMENTS.

See Discovery—Evidence, 8.

PROFITS.

See Street Railways, 7.

PROHIBITION.

See Assessment and Taxes, 5—Criminal Law, 11, 12—Division Courts, 2, 3, 4, 5—Municipal Corporations, 15—Registry Laws.

PROMISSORY NOTES.

1. Action on Note—Defence—Agreement to Renew — Money Paid for Defendant—Action for—Payment into Court — Costs. *Butler* v. *Butler*, 4 O.W.N. 1308.—MIDDLETON, J.

2. Action on Note—Defence—Note Given as Evidence of Debt and for Accommodation of Plaintiff—Onus—Failure of Proof on Facts—Consideration. *Pettit* v. *Barton*, 4 O.W.N. 200.—FALCONBRIDGE, C.J.K.B.

3. Action on Notes—Defence—Notes Given without Consideration and for Accommodation of Plaintiff—Conflicting Testimony—Finding of Fact—Amendment of Defence—Refusal. *Davison* v. *Thompson*, 4 O.W.N. 1310.—KELLY, J.

4. Action on Note—Defence—Part Failure of Consideration—Unascertained Amount—Sale of Motor Car not in Running Order—Counterclaim—Damages—Sum Required to Place Car in Order. *Automobile Sales Limited* v. *Moore*, 4 O.W.N. 700.—D.C.

5. Unauthorised Alteration by Holder after Making—Money-Lender—Stipulation for Excessive Rate of Interest—Alteration to Statutory Rate—Action in Division Court on Note as Altered—Money-Lenders Act, R.S.C. 1906 ch. 122, secs. 6, 7, 8—Bills of Exchange Act, R.S.C. 1906 ch. 119, sec. 145—Illegal Stipulation—Note Void when Made—Materiality of Alteration—Effect of sec. 7—Division Courts Act, R.S.O. 1897 ch. 60, sec. 134 (10 Edw. VII. ch. 32, sec. 113)—Amendment—Refusal — Discretion — Appeal. *Bellamy* v. *Porter*, 4 O.W.N. 1171, 28 O.L.R. 572.—APP. DIV.

See Assessment and Taxes, 4—Banks and Banking, 1, 3—Company, 3, 16—Contract, 16—Evidence, 1—Judgment, 12, 13, 17—Mistake—Sale of Goods, 1, 11.

PROPERTY PASSING.

See Sale of Goods 9, 10, 11.

PROXIES.

See Company, 22.

PUBLIC AUTHORITIES PROTECTION ACT.

See Costs, 16.

PUBLIC HEALTH ACT.

Appointment of Medical Officer of Health—By-law—Tenure of Office of Officer Appointed under Former Act—Change in Policy Effected by New Act—Contract—Termination — Appointment by Tender—Municipal Act, 1903, sec. 320. *Re Warren and Town of Whitby*, 4 O.W.N. 1029.—LENNOX, J.

PUBLIC LANDS ACT.

See Crown Lands, 2.

PUBLIC MORALS.

See Criminal Law, 4.

PUBLIC PLACE.

See Liquor License Act, 1.

PUBLIC POLICY.

See Master and Servant, 1.

PUBLIC SCHOOLS.

See Schools.

QUANTUM MERUIT.

See Contract, 3—Principal and Agent, 2.

QUEBEC LAW.

See Master and Servant, 20.

QUO WARRANTO.

See Municipal Corporations, 2, 3—Municipal Elections.

RAILWAY.

1. Breach of Statutory Duty—Neglect to Furnish Accommodation for Passengers at Station—Dominion Railway Act, secs. 284 (1) (*a*), (7), 427 (2)—Exposure of Passenger to Cold—Damages—Remoteness—Findings of Jury—Jurisdiction of Board of Railway Commissioners—7 & 8 Edw. VII. ch. 61, sec. 10. *Morrison* v. *Pere Marquette R.R. Co.*, 4 O. W.N. 186, 544, 890, 27 O.L.R. 271, 551, 28 O.L.R. 319.—BRITTON, J.—D.C.—APP. DIV.

2. Carriage of Live Stock and Person in Charge—Half Fare Privilege—Injury to Person—Negligence—Liability—Exemption—Contract with Shipper—Privity and Knowledge of Person Injured—Powers of Board of Railway Commissioners—Railway Act, R.S.C. 1906 ch. 37, secs. 284, 340. *Robinson* v. *Grand Trunk R.W. Co.*, 4 O.W.N. 309, 27 O.L.R. 290.—C.A.

3. Carriage of Passenger and Luggage — Loss of Luggage Checked on Passenger's Ticket—Limitation of Liability—Condition on Back of Check—Absence of Knowledge or Assent on Part of Passenger. *Spencer* v. *Canadian Pacific R.W. Co.*, 4 O.W.N. 1446, 29 O.L.R. 122.—APP. DIV.

4. Expropriation of Land—Compensation—Offer of Money and Right of Way over other Land—Arbitration and Award—

Jurisdiction of Arbitrators—Costs. *Re Grand Trunk R.W. Co. and Ash, Re Grand Trunk R.W. Co. and Anderson,* 4 O.W.N. 810, 985.—BRITTON, J.—APP. DIV.

5. Expropriation of Land — Dominion Railway Act—Compensation — Arbitration and Award—Evidence—Quantum of Allowance — Damages for Severance — Sale of Portion Severed—Deprivation of Access to Highway—Subdivision —Registration of Plan — Consent of Municipality — Increased Value of Land from Construction of Railway—Appreciation of—Omission of Arbitrators to Fix Date for Making Award—View of Locus by Arbitrators—Failure to State Weight to be Attached to View—Ontario Arbitration Act, 9 Edw. VII. ch. 35, sec. 17(3)—Application to Arbitrations under Dominion Act—Reference back for Certificate —Husband and Wife—Arbitration with Wife—Release by Husband. *Re Myerscough and Lake Erie and Northern R.W. Co.,* 4 O.W.N. 1249.—MIDDLETON, J.

6. Expropriation of Land for Right of Way—Compensation of Land-owner — Arbitration and Award — Minerals under Right of Way not Expressly Taken or Purchased—Railway Act, R.S.C. 1906 ch. 37, secs. 170, 171—Allowance for Value of Minerals—Board of Railway Commissioners—Jurisdiction—Compensation Deferred until Time when Minerals to be Worked — Minerals in Slopes Supporting Strip Taken for Right of Way—Common Law Right to Support—Taking of Land Specially Valuable in Owner's Business—Loss of Trade Profits—Quantum of Allowance for Damage—Severance Affecting Value of Mineral Lands —Haulage across Railway Lines—Proof of Damage—Onus —Appeal—Powers of Appellate Court—Deferred Working—Basis of Calculation—Cost of Grading—Set-off for Benefit to Land by Railway—Present Value—Period of Years—Cross-appeal—Costs. *Re Davies and James Bay R.W. Co.,* 4 O.W.N. 1154, 28 O.L.R. 544.—C.A.

7. Injury to and Death of Servant—Engine-driver—Negligence —Person in Charge—Conductor of Train—Workmen's Compensation for Injuries Act, sec. 3, sub-sec. 5—Rules of Railway Company—Negligence of Engine-driver—Responsibility—Findings of Jury. *Smith* v. *Grand Trunk R.W. Co.,* 4 O.W.N. 42.—C.A.

8. Injury to Passenger Alighting from Train while in Motion—Invitation—Negligence — Contributory Negligence — Con-

flict of Evidence—Wrongful Entry upon Pullman Car — Trespasser—Reasonable Action—Emergency—Findings of Jury and Trial Judge—Appeal. *McDougall* v. *Grand Trunk R.W. Co.*, 4 O.W.N. 363, 27 O.L.R. 369.—C.A.

9. Level Highway Crossing—Injury to and Death of Persons Crossing Track—Negligence—Findings of Jury—Damages —Proof of—Quantum—Second Trial—Appeal. *Zufelt* v. *Canadian Pacific R.W. Co.*, 4 O.W.N. 39.—C.A.

10. Level Highway Crossing—Injury to Person Crossing Track —Foot Caught between Rail and Plank—Negligence—Findings of Jury at Second Trial—Appeal—Refusal to Direct Third Trial. *Stevens* v. *Canadian Pacific R.W. Co.*, 4 O. W.N. 697.—C.A.

11. Level Highway Crossing—Injury to Person Using—Excessive Speed of Train—Previous Accident—Absence of Knowledge by Railway Company—"Moving Train Causing Bodily Injury"—Railway Act, R.S.C. 1906 ch. 37, sec. 275, sub-sec. 4 (8 & 9 Edw. VII. ch. 32, sec. 13)— Construction of—Impact—Board of Railway Commissioners—Actual and Physical Cause of Accident—Train Moving through Thickly Peopled Portion of Village—Statutory Warnings—Evidence—Findings of Jury—Misdirection—New Trial. *Bell* v. *Grand Trunk R.W. Co.*, 4 O.W.N. 1524, 29 O.L.R. 247.— App. Div.

See Carriers, 2—Constitutional Law—Contract, 24-27—Damages, 3—Master and Servant, 15, 16, 17, 23—Mortgage, 4— Municipal Corporations, 1—Negligence, 9—Street Railways.

RAPE.

See Trespass to Person.

RATEPAYER.

See Appeal, 6—Assessment and Taxes, 1.

RATIFICATION.

See Company, 11—Contract, 1—Estoppel, 2—Gift, 4—Municipal Corporations, 18—Parent and Child—Vendor and Purchaser, 5, 27.

REAL PROPERTY LIMITATION ACT.

See Limitation of Actions.

See Banks and Banking, 2—Charge on Land—Executors and Administrators, 4—Highway, 3, 4, 6—Land Titles Act—Limitation of Actions, 5—Lis Pendens—Mechanics' Liens—Municipal Corporations, 9—Statutes (Construction of)—Vendor and Purchaser, 39, 42.

RELATOR.

See Municipal Elections, 2.

RELEASE.

See Contract, 12—Discovery, 25—Executors and Administrators, 6—Pleading, 27—Railway, 5—Vendor and Purchaser, 38, 43.

RELIEF FUND.

See Trusts and Trustees, 5.

RELIGIOUS CORPORATION.

See Company, 6.

REMOVAL OF CAUSE.

See County Courts.

RENT.

See Landlord and Tenant.

REPAIR OF HIGHWAYS.

See Highway.

REPLY.

See Pleading, 3, 4.

RES IPSA LOQUITUR.

See Highway, 15—Negligence, 1.

RES JUDICATA.

1. *Action for Money Due on Subscription for Shares—Judgment in — Issues—Refusal of Leave to Amend by Setting up New Defences—Attempt to Raise in Action to Rescind Subscription—Injunction to Restrain Enforcement of Judgment—Judicature Act, sec.* 57, *sub-sec.* 9.]—A judgment is conclusive, not only upon all matters which are actually brought forward, but as to all matters which might have been brought forward as part of the subject of the contest. —It is not competent for a defendant who has failed to plead any defence open to him in the original action to obtain any relief by any substantive proceeding; his only remedy

RIGHT OF WAY.

See Way.

RIPARIAN OWNERS.

See Trespass to Land, 4—Water and Watercourses, 1.

RIPARIAN RIGHTS.

See Injunction, 3.

RIVER.

See Trespass to Land, 4—Water and Watercourses.

ROAD.

See Highway.

ROAD COMPANY.

See Highway, 2.

RULES.

(Consolidated Rules, 1897.)

3.—See Discovery, 14—Parties, 3.
42 (1).—See Discovery, 12.
62.—See Absconding Debtor.
162.—See Master and Servant, 1—Writ of Summons, 2, 4.
200, 201.—See Parties, 2.
222.—See Practice, 1.
231.—See Practice, 1.
254.—See Pleading, 1.
255.—See Venue, 9.
259.—See Fatal Accidents Act, 1—Pleading, 12, 34.
261.—See Costs, 16—Fatal Accidents Act, 1, 2—Marriage, 1—Pleading, 12, 25, 34—Wager.
268.—See Particulars, 5—Pleading, 25.
298.—See Fatal Accidents Act, 1—Pleading, 12, 27, 29.
310.—See Writ of Summons, 1.
311.—See Solicitor, 2.
312.—See Costs, 10—Evidence, 4—Fatal Accidents Act, 1—Parties, 6—Pleading, 16—Writ of Summons, 1.
353.—See Pleading, 16.
425.—See Costs, 2.
430.—See Practice, 4.
439*a*.—See Discovery, 9.
440.—See Discovery, 13.
441.—See Discovery, 12.

448.—See Evidence, 8.
454.—See Discovery, 12, 15.
456-458.—See Municipal Elections, 2.
461.—See Assessment and Taxes, 10.
462.—See Discovery, 14.
469.—See Discovery, 24.
489.—See Company, 20.
490.—See Evidence, 8.
491.—See Company, 20.
492.—See Company, 20—Evidence, 8.
494.—See Municipal Elections, 2.
518.—See Costs, 10—Evidence, 4—Trial, 12.
524.—See Costs, 10.
529 (*b*).—See Venue, 6.
529 (*c*).—See Venue, 1, 15.
552.—See Pleading, 26.
587.—See Judgment, 5.
603.—See Judgment, 10-16.
608.—See Judgment, 17.
616.—See Pleading, 34—Practice, 5.
617.—See Marriage, 1.
640.—See Parties, 6.
645.—See Account, 2.
683.—See Partnership, 1.
777.—See Appeal, 2, 8.
813.—See Will, 3.
902.—See Contempt of Court, 3—Judgment Debtor, 1.
903.—See Judgment Debtor, 4.
910.—See Contempt of Court, 3.
938.—See Executors and Administrators, 3.
939, 940.—See Will, 35.
960-970.—See Infants, 10.
1111.—See Interpleader, 2.
1187.—See Solicitor, 2.
1198 (*b*).—See Costs, 13.
1198 (*d*).—See Costs, 12.
1203.—See Costs, 10.
1224.—See Discovery, 24.
1250.—See Discovery, 9.
1278.—See Appeal, 2, 3.
1308.—See Infants, 10.
1321.—See Discovery, 8.
1322.—See Appeal, 4—Trial, 5, 6, 7, 8, 9.

SALARY.

See Assessment and Taxes, 5.

SALE OF ASSETS OF COMPANY.

See Principal and Agent, 2.

SALE OF BUSINESS.

See Fraud and Misrepresentation, 4, 5.

SALE OF GOODS.

1. Action for Price—Payment to Holder of Promissory Notes Given for Price—Counterclaim—Breach of Contract—Evidence. *Krehm Brothers Fur Co.* v. *D. H. Bastedo & Co.*, 4 O.W.N. 1488.—LENNOX, J.

2. Action for Rescission of Contract—Electric Motor Car—Specifications—Scienter—Variation of Contract—Estoppel by Silence—Sale by Sample—Implied Warranty. *Trethewey* v. *Moyes*, 4 O.W.N. 445.—LENNOX, J.

3. Bees and Honey — Illegal Detention—Damages. *Parks* v. *Simpson*—*Simpson* v. *Parks*, 4 O.W.N. 422.—D.C.

4. Contract—Implied Warranty—Intention of Parties—Reliance on Skill and Judgment of Defendants—Inherent Defects—Scienter—Fraudulent Representation—Loss of Business — Damages. *Alabastine Co. of Paris Limited* v. *Canada Producer and Gas Engine Co. Limited*, 4 O.W.N. 486.—CLUTE, J.

5. Heifer—Warranty—"Due to Calve." *Wilson* v. *Shaver*, 4 O.W.N. 71, 27 O.L.R. 218.—D.C.

6. Implied Warranty or Condition—Intention—Sale of Rifle Cartridges in Sealed Box—Description on Box—Surrounding Circumstances—Absence of Evidence to Shew Reliance on Vendors—Injury to Buyer by Reason of one Cartridge not being as Described—Breach of Warranty—Damages—Remoteness. *Hill* v. *Rice Lewis & Son Limited*, 4 O.W.N. 953, 28 O.L.R. 366.—APP. DIV.

7. Representations—Warranty—Breach—Onus — Swarms of Bees — Foul Brood Act — Contravention of — Inspection — Disease—Cause of Action—Damages. *McKay* v. *Davey*, 4 O.W.N. 903, 28 O.L.R. 322.—D.C.

8. Sale by Sample—Refusal of Inspection—Contract—Breach—Evidence—Damages. *Graham Co. Limited* v. *Canada Brokerage Co. Limited,* 4 O.W.N. 957.—App. Div.

9. Shipment F.O.B.—Bill of Lading—Property not Passing—Refusal to Accept—Justification—Part not Forthcoming—No Evidence of Damage—Statute of Frauds—Amendment at Trial. *Vipond* v. *Sisco,* 4 O.W.N. 1498, 29 O.L.R. 200.—App. Div.

10. Wheat in Elevator—Payment of Purchase-price—Wheat Sold not Separated—Damage by Fire in Elevator—Property Passing — Intention—Contract—"Track Owen Sound"—Payment of Elevator Charges—Notice to Bailee—Course of Dealing—Wheat Held at Risk of Purchaser—Duty to Provide Cars—Unreasonable Delay — Transactions after Fire—Negotiations with Insurance Companies—Vendors Treating Wheat as their own—Estoppel—Salvage Sale by Companies — Purchase by Vendors — Conversion — Damages. *Inglis* v. *James Richardson & Sons Limited,* 4 O.W.N. 655, 1519, 29 O.L.R. 229.—Sutherland, J.—App. Div.

11. Written Warranty—Oral Representations—Defect in Machinery Sold—Existence at Time of Sale—Onus—Evidence—Non-delivery of Part—Acceptance — Action upon Promissory Notes—Counterclaim — Lien — Agreement—Title Remaining in Vendor—Judgment—Set-off. *Harrison* v. *Knowles,* 4 O.W.N. 595.—Britton, J.

See Carriers, 2—Contract, 19, 20—Criminal Law, 8 — Motor Vehicles Act, 3—Principal and Agent, 15.

SALE OF INTOXICATING LIQUORS.

See Liquor License Act.

SALE OF LAND.

See Contract, 22, 23 — Executors and Administrators, 4-7—Fraud and Misrepresentation, 1, 3, 6—Husband and Wife, 6—Improvements—Infants, 7, 8, 10—Interpleader, 5—Judicial Sale—Mortgage—Partition—Principal and Agent, 3-12, 14, 16, 17—Trial, 13—Vendor and Purchaser—Will, 44.

SALE OF MINING PROPERTY.

See Principal and Agent, 17—Vendor and Purchaser, 32.

SALE OF SHARES.

See Fraud and Misrepresentation, 7.

SALVAGE.

See Assignments and Preferences, 4.

SALVAGE SALE.

See Sale of Goods, 10.

SATISFACTION.

See Accord and Satisfaction.

SAVINGS BANK.

See Gift, 4, 5, 7.

SAW LOGS DRIVING ACT.

See Trespass to Land, 4.

SCALE OF COSTS.

See Costs, 2, 7.

SCHOOL SITES ACT.

See Schools, 1.

SCHOOLS.

1. Public Schools—Expropriation of Land for Site—Action for Injunction to Restrain Arbitrators from Proceeding—School Sites Act, 9 Edw. VII. ch. 93—Remedy by Summary Application to County Court Judge—Dismissal of Action—Costs. *Sandwich Land Improvement Co.* v. *Windsor Board of Education*, 4 O.W.N. 112.—D.C.

2. Township Continuation School—Establishment of—Duty of School Board—Mandamus. *Re West Nissouri Continuation School*, 4 O.W.N. 497.—D.C.

3. Township Continuation School — Resolution of Township Council—Ultra Vires—Perpetual Injunction—Costs. *McFarlane* v. *Fitzgerald*, 4 O.W.N. 869.—MIDDLETON, J.

SCIENTER.

See Master and Servant, 23—Parent and Child—Sale of Goods, 2, 4.

SCRUTINEER.

See Municipal Elections, 1.

SETTLEMENT.

See Fraudulent Conveyance, 2—Gift—Will, 36.

SETTLEMENT OF ACTION.

1. Application for Order of Court—Nature of Order to be Made —Order Confirming Settlement—Taxation of Costs. *Smyth* v. *Harris*, 4 O.W.N. 223.—RIDDELL, J.

2. Interpretation of Written Memorandum—Enforcement—Repair of Vehicle Sold in Unsatisfactory Condition—Satisfaction of Referee—Time for Making Repairs — Return of Moneys Paid. *Sauermann* v. *E.M.F. Co.*, 4 O.W.N. 1137, 1510.—MIDDLETON, J.—APP. DIV.

See Assessment and Taxes, 6—Company, 14—Infants, 7.

SHAREHOLDERS.

See Company.

SHARES.

See Banks and Banking, 4—Brokers—Company—Discovery, 31 —Estoppel, 2—Fraud and Misrepresentation, 7 — Interpleader, 2—Judgment, 8—Pleading, 24—Res Judicata, 1.

SHERIFF.

See Assignments and Preferences, 3, 4 — Execution — Interpleader.

SHIP.

See Malicious Prosecution, 4—Water and Watercourses, 6.

SHOPS.

See Municipal Corporations, 25.

SHOPS REGULATION ACT.

See Municipal Corporations, 18, 19.

SLANDER.

1. Defamatory Words Spoken of Plaintiff in Reference to his Trade—Publication—Speaking Brought about by Action of Plaintiff—Privilege—Malice — Jury — Damages — Quantum. *Rudd* v. *Cameron*, 4 O.W.N. 321, 27 O.L.R. 327.—C.A.

2. Pleading—Statement of Defence—Justification — Fair Comment—Particulars. *Brown* v. *Orde*, 4 O.W.N. 18, 36.—MASTER IN CHAMBERS.—BOYD, C. (Chrs.)

See Particulars, 2.

SOCIETY.

See Fraternal and Benevolent Society.

SOLICITOR.

1. Bill of "Costs, Charges, and Disbursements"—Solicitors Act, sec. 34—Amount for each Service not Stated—Action for Amount of Bill—Charges for Conveyancing—Taxation—Effect of Judgment for Part of Bill. *Gould* v. *Ferguson*, 4 O.W.N. 1493, 29 O.L.R. 161.—App. Div.

2. Bill of Costs for Services Rendered in County where Solicitor Resides—Reference for Taxation by Officer at Toronto—Irregularity—Objection not Taken at Proper Time—Con. Rules 311, 1187. *Re Solicitor*, 4 O.W.N. 461.—Master in Chambers.

3. Costs and Charges—Statute Fixing Amount of Costs of Litigation Payable to Client—2 Geo. V. ch. 125, sec. 6—Construction and Effect—Solicitors Act, 2 Geo. V. ch. 28, sec. 34—Delivery of Bill of Costs—Insufficiency of Principal Item—Other Items—Sufficiency—Action for—Recovery of Small Portion—Costs. *Gundy* v. *Johnston*, 4 O.W.N. 121, 788, 28 O.L.R. 121.—Lennox, J.—App. Div.

4. Cross-examination upon Affidavit Made in Cause—Right to Professional Witness-fee—Tariff of Disbursements, Item 119—Practice—Subpœna—Refusal to be Sworn. *Campbell* v. *Verral*, 4 O.W.N. 177.—Middleton, J. (Chrs.)

5. Lien on Fund in Court for Professional Services—Payment out. *Canada Carriage Co.* v. *Lea*, 4 O.W.N. 1594.—Lennox, J. (Chrs.)

6. Negligence—Failure to Bring Action in Time—Conflict of Evidence—Onus—Finding of Fact—Injury from Nonrepair of Highway—Notice of Accident—Sufficiency—Dismissal of Action for Misfeasance—Appeal—Instructions for—Acquiescence—Mistaken Opinion of Solicitor on Question of Law. *Howse* v. *Shaw*, 4 O.W.N. 971.—Britton, J.

7. Taxation of Costs against Clients—Charges not Included in Tariff—Value of Services—Question of Fact—Evidence—Decision of Taxing Officer—Right of Court to Review—Appeal—Bills of Costs—Entries in Solicitors' Books—Estoppel—Increase in Items in Preparing Bills—Services of Solicitors in Selling Company's Stock and Bonds—Services

as Directors and Officers—Remuneration — Commission—Costs of Taxation—Excessive Charges—Retaxation. *Re Solicitors*, 4 O.W.N. 47, 27 O.L.R. 147.—C.A.

See Account, 1—Attachment of Debts, 1—Company, 1, 12—Discovery, 11, 23—Gift, 6—Judgment, 3—Municipal Corporations, 8—Vendor and Purchaser, 27, 30.

SPECIFIC PERFORMANCE.

See Contract, 9—Vendor and Purchaser.

STAKEHOLDER.

See Interpleader, 5, 6.

STATED ACCOUNT.

See Banks and Banking, 2.

STATED CASE.

See Assessment and Taxes, 12—Criminal Law, 14.

STATEMENT OF CLAIM.

See Particulars—Pleading—Practice, 3.

STATEMENT OF DEFENCE.

See Pleading—Slander, 2.

STATUTE OF FRAUDS.

See Contract, 8—Sale of Goods, 9—Trusts and Trustees, 1—Vendor and Purchaser, 14, 15, 20, 28, 30.

STATUTE OF LIMITATIONS.

See Limitation of Actions—Trusts and Trustees, 6—Way, 1—Will, 5—Writ of Summons, 1.

STATUTES (CONSTRUCTION OF).

City and Suburbs Plans Act, 2 Geo. V. ch. 43—Non-retroactivity—Subdivision of Tract of Land—Registration of Plan—Approval of Ontario Railway and Municipal Board. *City of Toronto* v. *Hill*, 4 O.W.N. 1076.—MIDDLETON, J.

See Assessment and Taxes, 1, 7, 9, 10—Assignments and Preferences, 2—Company, 5, 12-23 — Constitutional Law—Criminal Law, 11—Division Courts—Evidence, 7—Highway, 2—Mandamus—Master and Servant, 8—Mechanics' Liens—Municipal Corporations, 19, 20-27—Municipal Elections, 2—Ontario Railway and Municipal Board—Physicians and Surgeons—Solicitor.

STATUTES (REFERRED TO).

R.S.O. 1897 ch. 122, sec. 29 (Act respecting Assurances of Estate Tail)—See DEED, 4.

R.S.O. 1897 ch. 133, secs. 4, 5 (1), 8, 15 (Real Property Limitation Act)—See LIMITATION OF ACTIONS, 3.

R.S.O. 1897 ch. 138, secs. 26, 109, 110 (Land Titles Act)—See HIGHWAY, 3.

R.S.O. 1897 ch. 156, sec. 2 (Wages Act)—See ASSIGNMENTS AND PREFERENCES, 5.

R.S.O. 1897 ch. 160 (Workmen's Compensation for Injuries Act)—See DAMAGES, 4—MASTER AND SERVANT, 9, 10, 15, 22, 23, 26.

R.S.O. 1897 ch. 160, sec. 3, sub-sec. 1—See MASTER AND SERVANT, 2.

R.S.O. 1897 ch. 160, sec. 3, sub-secs. 1, 2—See MASTER AND SERVANT, 19.

R.S.O. 1897 ch. 160, sec. 3, sub-sec. 2—See MASTER AND SERVANT, 27.

R.S.O. 1897 ch. 160, sec. 3, sub-secs. 2, 3—See MASTER AND SERVANT, 18.

R.S.O. 1897 ch. 160, sec. 3, sub-sec. 5—See MASTER AND SERVANT, 8, 14, 16, 17.

R.S.O. 1897 ch. 160, secs. 9, 13, 14—See MASTER AND SERVANT, 24.

R.S.O. 1897 ch. 169, secs. 1, 2, 3 (Support of Illegitimate Children)—See PLEADING, 9.

R.S.O. 1897 ch. 174, sec. 34 (Solicitors Act)—See SOLICITOR, 1.

R.S.O. 1897 ch. 176, secs. 33, 35, 36 (Ontario Medical Act)—See PHYSICIANS AND SURGEONS.

R.S.O. 1897 ch. 194, secs. 24-35 (Timber Slides Act)—See ARBITRATION AND AWARD, 3.

R.S.O. 1897 ch. 203, secs. 80 (2), 144 (1), 152 (Insurance Act)—See INSURANCE, 1.

R.S.O. 1897 ch. 203, secs. 151, 159 (Insurance Act)—See INSURANCE, 7.

R.S.O. 1897 ch. 203, sec. 159 (Insurance Act)—See INSURANCE, 8.

R.S.O. 1897 ch. 203, sec. 160 (Insurance Act)—See WILL, 35.

R.S.O. 1897 ch. 203, sec. 172 (Insurance Act)—See INSURANCE, 3, 5.

R.S.O. 1897 ch. 223, secs. 714, 750 (Municipal Act)—See MUNICIPAL CORPORATIONS, 17.

R.S.O. 1897 ch. 224, sec. 209 (Assessment Act)—See ASSESSMENT AND TAXES, 9.

3 Edw. VII. ch. 19, sec. 541*a* (O.)—See MUNICIPAL CORPORATIONS, 20, 21, 22, 23, 24, 25, 27.

3 Edw. VII. ch. 19, sec. 542 (O.)—See MUNICIPAL CORPORATIONS, 26.

3 Edw. VII. ch. 19, secs. 606, 607 (O.)—See HIGHWAY, 16, 19.

3 Edw. VII. ch. 19, sec. 632 (1) (O.)—See HIGHWAY, 10.

3 Edw. VII. ch. 19, secs. 641, 642 (O.)—See HIGHWAY, 8.

3 Edw. VII. ch. 86, sec. 8 (O.) (City of Toronto Tax Sales)—See ASSESSMENT AND TAXES, 10.

4 Edw. VII. ch. 10, sec. 61 (O.) (Amending Shops Regulation Act)—See MUNICIPAL CORPORATIONS, 18.

4 Edw. VII. ch. 10, sec. 79 (O.) (Sunday Street Cars)—See CONSTITUTIONAL LAW.

4 Edw. VII. ch. 15, sec. 7 (O.) (Amending Insurance Act)—See INSURANCE, 7.

4 Edw. VII. ch. 22, sec. 19 (O.) (Amending Municipal Act)—See MUNICIPAL CORPORATIONS, 27.

4 Edw. VII. ch. 23, secs. 5, 26, 103, 151, 154 (O.) (Assessment Act)—See ASSESSMENT AND TAXES, 3.

4 Edw. VII. ch. 23, sec. 10 (*h*) (O.)—See ASSESSMENT AND TAXES, 2.

4 Edw. VII. ch. 23, sec. 14, sub-sec. 3 (O.)—See ASSESSMENT AND TAXES, 12.

4 Edw. VII. ch. 23, secs. 22, 89 (O.)—See ASSESSMENT AND TAXES, 4.

4 Edw. VII. ch. 23, secs. 46, 165 (2) (O.)—See ASSESSMENT AND TAXES, 8.

4 Edw. VII. ch. 23, secs. 121, 165, 172, 173 (O.)—See ASSESSMENT AND TAXES, 7.

4 Edw. VII. ch. 23, sec. 176 (1)—See ASSESSMENT AND TAXES, 9.

4 Edw. VII. ch. 32, sec. 2 (D.) (Amending Railway Act)—See CONSTITUTIONAL LAW.

5 Edw. VII. ch. 22, sec. 8 (O.) (Amending Municipal Act)—See MUNICIPAL ELECTIONS, 1.

6 Edw. VII. ch. 30 (O.) (Railway Act)—See STREET RAILWAYS, 7.

6 Edw. VII. ch. 30, secs. 3, 5, 193 (O.)—See CONSTITUTIONAL LAW.

6 Edw. VII. ch. 30, secs. 55, 199 (O.)—See ONTARIO RAILWAY AND MUNICIPAL BOARD.

6 Edw. VII. ch. 31 (O.) (Ontario Railway and Municipal Board Act)—See MUNICIPAL CORPORATIONS, 28.

6 Edw. VII. ch. 31, secs. 16, 17, 51, 53, 64 (O.)—See STREET RAILWAY, 7.

R.S.C. 1906 ch. 146, secs. 668, 708—See CRIMINAL LAW, 12.

R.S.C. 1906 ch. 146, secs. 686, 687, 721, 749.—See CRIMINAL LAW, 15.

R.S.C. 1906 ch. 146, sec. 753—See MANDAMUS.

R.S.C. 1906 ch. 146, secs. 1014, 1022—See CRIMINAL LAW, 14.

R.S.C. 1906 ch. 146, sec. 1018—See CRIMINAL LAW, 1.

R.S.C. 1906 ch. 146, sec. 1021—See CRIMINAL LAW, 2.

7 Edw. VII. ch. 4, secs. 21, 24 (O.) (Voters' Lists Act)—See MUNICIPAL CORPORATIONS, 16.

7 Edw. VII. ch. 5 (O.) (Manhood Suffrage Act)—See CRIMINAL LAW, 10.

7 Edw. VII. ch. 34, sec. 94 (O.) (Companies Act)—See COMPANY, 3.

7 Edw. VII. ch. 46, sec. 11 (O.) (Amending Liquor License Act) —*See* MUNICIPAL CORPORATIONS, 13.

7 & 8 Edw. VII. ch. 61, sec. 10 (D.) (Amending Railway Act) —*See* RAILWAY 1.

8 Edw. VII. ch. 21, secs. 60, 62, 63, 65, 66, 80, 130, 140 (O.) (Mining Act)—See MINES AND MINERALS, 1.

8 Edw. VII. ch. 53, sec. 7 (O.) (Amending Motor Vehicles Act) —See MOTOR VEHICLES ACT, 2.

8 Edw. VII. ch. 59, secs. 2 (1), 10-14 (O.) (Children's Protection Act)—See INFANTS, 1.

8 Edw. VII. ch. 59, sec. 30 (O.)—See INFANTS, 4.

8 & 9 Edw. VII. ch. 32, sec. 13 (D.) (Amending Railway Act)—See RAILWAY, 11.

9 Edw. VII. ch. 29, sec. 15 (O.) (County Judges Act)—See ASSESSMENT AND TAXES, 5.

9 Edw. VII. ch. 35, sec. 5 (O.) (Arbitration Act)—See ARBITRATION AND AWARD, 3.

9 Edw. VII. ch. 35, sec. 17 (3) (O.)—See RAILWAY, 5.

9 Edw. VII. ch. 37, secs. 8, 9 (2) (O.) (Lunacy Act)—See DISCOVERY, 14.

9 Edw. VII. ch. 39, sec. 24 (O.) (Dower Act)—See PLEADING, 33.

9 Edw. VII. ch. 40, sec. 12 (O.) (Libel and Slander Act)—See LIBEL, 2.

9 Edw. VII. ch. 43, sec. 10 (O.) (Evidence Act)—See EVIDENCE, 7.

9 Edw. VII. ch. 48, sec. 6 (O.) (Creditors' Relief Act)—See ASSIGNMENTS AND PREFERENCES, 3, 4.

9 Edw. VII. ch. 49, sec. 4 (O.) (Absconding Debtors Act)—See ABSCONDING DEBTOR.

10 Edw. VII. ch. 69, sec. 37 (O.)—See STAY OF PROCEEDINGS.
10 Edw. VII. ch. 72, sec. 3 (Wages Act)—See ASSIGNMENTS AND PREFERENCES, 5.
10 Edw. VII. ch. 77 (O.) (Amending Ontario Medical Act)—See PHYSICIANS AND SURGEONS.
10 Edw. VII. ch. 83, sec. 3 (O.) (Railway and Municipal Board Amendment Act).—See STREET RAILWAYS, 1.
10 Edw. VII. ch. 83, sec. 12 (O.)—See ONTARIO RAILWAY AND MUNICIPAL BOARD.
10 Edw. VII. ch. 90 (O.) (Municipal Drainage Act)—See MUNICIPAL CORPORATIONS, 7.
10 Edw. VII. ch. 124, sec. 4 (O.) (City of Port Arthur Tax Sales)—See ASSESSMENT AND TAXES, 7.
1 Geo. V. ch. 6 (O.) (Bed of Navigable Waters Act)—See CROWN LANDS, 1.
1 Geo. V. ch. 20, secs. 1, 2 (O.) (Amending Lunacy Act)—See DISCOVERY, 14.
1 Geo. V. ch. 22, sec. 16 (O.) (Public Authorities Protection Act)—See COSTS, 8, 16.
1 Geo. V. ch. 26, sec. 36 (O.) (Trustee Act)—See TRUSTS AND TRUSTEES, 6.
1 Geo. V. ch. 26, sec. 52 (O.)—See INTERPLEADER, 3.
1 Geo. V. ch. 28 (O.) (Land Titles Act)—See LAND TITLES ACT.
1 Geo. V. ch. 28, sec. 110 (O.)—See HIGHWAY, 4.
1 Geo. V. ch. 32 (O.) (Marriage Act)—See MARRIAGE, 2.
1 Geo. V. ch. 33 (O.) (Fatal Accidents Act)—See FATAL ACCIDENTS ACT—MASTER AND SERVANT, 29.
1 Geo. V. ch. 33, secs. 4, 9 (O.)—See DAMAGES, 1, 4.
1 Geo. V. ch. 35, sec. 3 (O.) (Infants Act)—See INFANTS, 6, 10.
1 Geo. V. ch. 37, secs. 4, 5 (O.) (Landlord and Tenant Act)—See LANDLORD AND TENANT, 8.
1 Geo. V. ch. 37, Part III. (O.)—See LANDLORD AND TENANT, 14.
1 Geo. V. ch. 41, secs. 3, 25 (O.) (Land Surveyors Act)—See WATER AND WATERCOURSES, 5.
1 Geo. V. ch. 42, sec. 44 (6) (O.) (Surveys Act)—See HIGHWAY, 4.
1 Geo. V. ch. 49, sec. 3 (4), (5) (O.) (Innkeepers' Act)—See LIEN.
1 Geo. V. ch. 49, sec. 3 (6) (O.)—See ANIMALS, 2.
1 Geo. V. ch. 54 (O.) (Amending Ontario Railway and Municipal Board Amendment Act)—See STREET RAILWAYS, 1.
1 Geo. V. ch. 64, sec. 23 (O.) (Amending Municipal Act)—See MUNICIPAL CORPORATIONS, 15.

STATUTORY COMMITTEE.

See Lunatic, 3.

STAY OF PROCEEDINGS.

1. Action by Contractors against Owners—Breach of Contract—Claim for Damages—Prior Proceeding by Holder of Mechanics' Lien—Contractors not Asserting Lien—Mechanics' Lien Act, 10 Edw. VII. ch. 69, sec. 37. *Dick & Sons* v. *Standard Underground Cable Co.*, 4 O.W.N. 57, 111.—Boyd, C. (Chrs.)—Riddell, J. (Chrs.)

2. *Non-payment of Interlocutory Costs—Vexatious Proceedings in Action—Contempt of Court.*]—An action, not in itself vexatious, was stayed because the plaintiffs had made certain vexatious interlocutory motions which were dismissed with costs, and the costs whereof had not been paid. *In re Wickham* (1887), 35 Ch. D. 272, *Graham* v. *Sutton*, [1897] 2 Ch. 367, *Stewart* v. *Sullivan* (1886), 11 P.R. 529, and *Wright* v. *Wright* (1887), 12 P.R. 42, followed. *Rickert* v. *Britton*, 4 O.W.N. 258.—Riddell, J.—Affirmed by a Divisional Court, 4 O.W.N. 499, upon the ground that there was jurisdiction to stay proceedings, and the discretion of the Judge should not be interfered with. *Rickert* v. *Britton*, 4 O.W.N. 499.—D.C.

3. Prior Judgment against Incorporated Company without Assets—Res Judicata—Estoppel—Negligence. *Campbell* v. *Verral, Gibson* v. *Verrals*, 4 O.W.N. 300, 355.—Riddell, J. (Chrs.)—Sutherland, J. (Chrs.)

See Attachment of Debts, 2—Company, 18—Costs, 17—Landlord and Tenant, 2—Mechanics' Liens, 2—Municipal Corporations, 9—Partnership, 2.

STEPCHILDREN.

See Damages, 4.

STOCK EXCHANGE.

See Brokers, 2.

STORAGE.

See Municipal Corporations, 25.

STORES.

See Municipal Corporations, 25, 27.

STREAM.

See Trespass to Land, 4—Water and Watercourses.

STREET.

See Highway.

STREET RAILWAYS.

1. Agreement between Company and Municipality—Construction—Ontario Railway and Municipal Board—Jurisdiction—Order Requiring Street Railway Company to Repair Tracks and Substructures and Pave Part of Roadway Used for Railway—Covenant of Company—Construction—Contractual Obligation—Powers of Board—Railway and Municipal Board Amendment Act, 10 Edw. VII. ch. 83, sec. 3—"Tracks"—1 Geo. V. ch. 54 (O.)—Terms of Order of Board—Omission to Prescribe Kind of Pavement to be Laid—Remitter to Board. *Re City of Toronto and Toronto and Suburban R.W. Co.*, 4 O.W.N. 1379, 29 O.L.R. 105.—App. Div.

2. Agreement between Company and Municipality—Construction—Restriction as to Switches—Right to Carry Freight—Powers of Ontario Railway and Municipal Board. *Re Waddington and Toronto and York Radial R.W. Co.*, 4 O.W.N. 617.—C.A.

3. Injury to and Death of Person Crossing Track—Negligence—Contributory Negligence—Findings of Jury—Evidence—Cause of Injury—Recklessness of Deceased. *Long* v. *Toronto R.W. Co.*, 4 O.W.N. 741.—App. Div.

4. Injury to Person Crossing Track—Car Travelling at High Speed—Proximate Cause of Injury—Negligence of Person Attempting to Cross—Evidence—Finding of Trial Judge—Costs. *Myers* v. *Toronto R.W. Co.*, 4 O.W.N. 1120.—Middleton, J.

5. Injury to Persons Crossing Track—Negligence—Contributory Negligence—Answers of Jury—Reasonable Care—Indefinite and Inconclusive Answers—"To a Certain Extent"—"By Lack of Judgment"—Ultimate Negligence. *Dart* v. *Toronto R.W. Co.*, 4 O.W.N. 315.—C.A.

6. *Injury to Person Crossing Track after Alighting from Car—Negligence—Excessive Speed—Contributory Negligence—Findings of Jury—Evidence to Support—Duty of Railway*

Company.]—The plaintiff, an elderly woman, alighted from a street car of the defendants, and, in attempting to cross the street behind the car, was struck by another car travelling in the opposite direction, and, as she alleged, at an excessive speed. In an action for damages for her injuries the jury found in her favour, and upon appeal the defendants contended that there should have been a nonsuit:—*Held,* that there was reasonable evidence upon which the jury might find, as it did, in the plaintiff's favour, that the defendants were guilty of negligence in excessive speed and that the plaintiff was not guilty of negligence or contributory negligence in crossing behind the car.—In all cases in which there is no reasonable evidence upon which the jury could find in the plaintiff's favour, the case must be withdrawn from the jury and the action dismissed. If there be no legal evidence on one side, no matter which, there is nothing upon which a jury can pass, and so the case should be withdrawn from the jury.—A moving car approaching a car which has stopped to let down passengers ought to approach and pass it with more care than would be needed if both were moving, in order to avoid especially just such accidents as that which was the subject-matter of this action.—When companies use the public highways as discharging and receiving stations for their passengers, they, as well as the passengers, should have some care that the alighting and discharge and boarding are made with some reasonable regard to saving the passengers from the danger to those on foot in a horse road traversed by a railway as well as ordinary traffic. *Cooper* v. *London Street R.W. Co.,* 4 O.W.N. 623.—C.A.

7. Operation in two Municipalities of Railway Owned by one—Agreement between Corporations—Division of Profits—Approval of Ontario Railway and Municipal Board—Action for Account of Profits—Jurisdiction of Court—Exclusive Jurisdiction of Board—Ontario Railway and Municipal Board Act, 6 Edw. VII. ch. 31, secs. 16, 17, 51, 53, 64—Ontario Railway Act, 1906. *Town of Waterloo* v. *City of Berlin,* 4 O.W.N. 256, 709, 28 O.L.R. 206.—BOYD, C.—APP. DIV.

See Constitutional Law—Damages, 6—Municipal Corporations, 1—Negligence, 10, 11, 12—Ontario Railway and Municipal Board.

SURROGATE COURTS.

Audit of Executors' Accounts—Sums Paid for Maintenance of Legatee under Will—Allowance under Order of High Court —Findings of Surrogate Court Judge—Persona Designata —Appeal by Legatee—Discretion—Acceptance of Sums Allowed. *Re Corkett*, 4 O.W.N. 632.—D.C.

See Executors and Administrators, 1, 6—Will, 45.

SURVEY.

See Trespass to Land, 2—Vendor and Purchaser, 12—Water and Watercourses, 5—Way, 2.

SURVIVORSHIP.

See Gift, 4, 5—Will, 17, 20.

SUSPENSE ACCOUNT.

See Banks and Banking, 2.

TAX COLLECTOR.

See Guaranty, 2.

TAX SALE.

See Assessment and Taxes.

TAXATION OF COSTS.

See Costs, 2, 7, 18—Settlement of Action, 1—Solicitor, 1, 2, 7.

TAXES.

See Assessment and Taxes—Mortgage, 4—Vendor and Purchaser, 34—Will, 1.

TELEPHONE.

See Municipal Corporations, 31—Negligence, 13.

TELEPHONE COMPANY.

See Assessment and Taxes, 12.

TENANT FOR LIFE.

See Landlord and Tenant, 6—Vendor and Purchaser, 43.

TENANTS IN COMMON.

See Way, 3.

TENDER.

See Assessment and Taxes, 6—Brokers, 5—Contract, 23—Public Health Act—Vendor and Purchaser, 1, 4, 22, 23, 31—Way, 2.

ters, 4 O.W.N. 348, 1316, 27 O.L.R. 286, 29 O.L.R. 1.—MIDDLETON, J.—APP. DIV.

See Injunction, 5—Patent for Invention.

TRADE PROFITS.

See Railway, 6.

TRADING COMPANY.

See Company, 11—Malicious Prosecution, 1.

TRANSFER OF ACTION.

See County Courts—Division Courts, 5.

TRANSFER OF SHARES.

See Banks and Banking, 4.

TRANSFEREES.

See Judgment Debtor, 4.

TREATY.

See Water and Watercourses, 3.

TRESPASS TO LAND.

1. Boundaries—Fences—Evidence. *Dickie* v. *Chichigian*, 4 O. W.N. 303.—D.C.

2. Boundaries—Dispute as to, between Lots—Plans and Surveys—Evidence—Claim of Right—Damages. *McMenemy* v. *Grant*, 4 O.W.N. 802.—APP. DIV.

3. Cutting Timber—Damages—Injunction—Costs. *Field* v. *Richards*, 4 O.W.N. 1301.—MIDDLETON, J.

4. Floatable and Navigable Stream—Lumbering Operations—Riparian Owner—Injury to Lands—Chain Reserve—High Water Mark—Access to Water—Saw Logs Driving Act, R. S.O. 1897 ch. 43—Unreasonable Obstruction of Stream—Timber Licensees Exceeding Statutory Rights—Status of Plaintiff—Special Damage—Encroachment on Plaintiff's Land — Location of Boundaries — Flooding of Lands—Trifling Value—Damages—Injunction—Removal of Logs—Amendment—Counterclaim—Damages by Reason of Interim Injunction. *Ireson* v. *Holt Timber Co.*, 4 O.W.N. 1106.—KELLY, J.

TRESPASS TO PERSON.

TRIAL.

Jury — Nature of Remedy — Equitable Relief. *Kelly* v. *McKenzie*, 4 O.W.N. 1412.—LENNOX, J. (Chrs.)

8. Jury Notice—Striking out—Discretion—Con. Rule 1322—Non-appealable Order. *Cornish* v. *Boles*, 4 O.W.N. 1551.—MIDDLETON, J. (Chrs.)

9. Jury Notice—Striking out—Practice—Con. Rule 1322—Action against Surgeons for Malpractice—Question of Fact. *Gerbracht* v. *Bingham*, 4 O.W.N. 118.—RIDDELL, J. (Chrs.)

10. Postponement—Delay in Prosecution of Action—Evidence—Foreign Commission. *Grocock* v. *Edgar Allen & Co. Limited*, 4 O.W.N. 1406.—MASTER IN CHAMBERS.

11. Postponement—Grounds—Terms — Powers of Master in Chambers—Pleading — Amendment. *Armstrong* v. *Armstrong*, 4 O.W.N. 1340.—MASTER IN CHAMBERS.

12. Postponement—Motion for—Affidavit—Con. Rule 518—Absence of Material Witness—Failure to Shew Nature of Expected Testimony — Refusal of Motion — Undertaking—Terms. *Cinnamon* v. *Woodmen of the World*, 4 O.W.N. 1042, 1094.—MASTER IN CHAMBERS.—MIDDLETON, J. (Chrs.)

13. Postponement—Terms—Leave to Sell Land *pendente Lite*. *Topper* v. *Birney*, 4 O.W.N. 879.—FALCONBRIDGE, C.J.K.B. (Chrs.)

See Contract, 6—Criminal Law—Discovery, 7—Division Courts, 4—Evidence—Injunction, 3, 6—Limitation of Actions, 2—Liquor License Act, 4—Lis Pendens, 2—Parties, 1—Pleading, 11—Practice, 2—Venue.

TRUSTEE ACT.

See Executors and Administrators, 3—Trusts and Trustees, 6.

TRUSTEES OF POLICE VILLAGE.

See Municipal Corporations, 17.

TRUSTS AND TRUSTEES.

1. Conveyance of Land—Consideration—Establishment of Trust—Oral Evidence—Statute of Frauds—Setting aside Conveyance—Finding of Fact—Appeal — Variation of Judgment. *Smith* v. *Benor*, 4 O.W.N. 734, 985.—KELLY, J.—APP. DIV.

ULTIMATE NEGLIGENCE.

UNDUE INFLUENCE.

UNINCORPORATED SOCIETY.

UNIVERSITY OF TORONTO.

See Master and Servant, 19.

UNORGANISED DISTRICTS.

See Assessment and Taxes, 1.

VALUATION.

See Arbitration and Award, 4, 5—Will, 29.

VEHICLES.

See Lien—Motor Vehicles Act—Negligence, 11—Settlement of Action, 2.

VENDOR AND PURCHASER.

1. Contract for Exchange of Lands—Time of Essence—Waiver of Provision—Negotiations after Time Expired—Absence of Tender—Reciprocal Obligations—Specific Performance—Damages. *Norman* v. *McMurray*, 4 O.W.N. 1256.—LENNOX, J.

2. Contract for Sale of Land—Absence of Written Memorandum—Part Performance—Subsequent Conveyance by Vendor to Another—Specific Performance—Purchaser Deprived of Remedy by Act of Vendor—Judicature Act, secs. 41, 58 (10)—Damages in Lieu of Specific Performance. *McIntyre* v. *Stockdale*, 4 O.W.N. 482, 27 O.L.R. 460.—CLUTE, J.

3. Contract for Sale of Land—Action by Assignee of Purchaser for Specific Performance—Omission of Term in Written Agreement—Fraud—Refusal to Decree Specific Performance—Finding of Trial Judge—Discretion—Appeal—Dismissal of Action—Repayment of Deposit Paid by Purchaser to Agent of Vendor. *Sheardown* v. *Good*, 4 O.W.N. 1344, 1444.—APP. DIV.

4. Contract for Sale of Land—Action by Purchaser for Specific Performance—Default of Purchaser in Payment of Price—Tender of Conveyance by Vendor—Failure of Vendor to Comply with Terms of Agreement—Cancellation of Contract—Relief from—Costs. *Knibb* v. *McConvey*, 4 O.W.N. 1417.—MIDDLETON, J.

5. Contract for Sale of Land—Action by Purchasers for Specific Performance — Conduct of Plaintiffs — Acts of Agent——Fraudulent Misrepresentation Inducing Defendant to Enter into Contract—Refusal to Carry out Contract before

14. Contract for Sale of Land—Formation of—Execution of Deed—Reading Several Documents together—Statute of Frauds—Signature by Agent's Clerk—Objection to Title—Outstanding Mortgage — Parties — Specific Performance. *Dixon* v. *Dunmore*, 4 O.W.N. 1501.—App. Div.

15. Contract for Sale of Land—Formation of—Husband of Vendor—Authority—Statute of Frauds—Specific Performance. *Boland* v. *Philp*, 4 O.W.N. 166.—D.C.

16. *Contract for Sale of Land—Formation of — Statute of Frauds—Incomplete Agreement—Description of Land—Knowledge of Purchaser—Extrinsic Parol Evidence—Terms of Mortgage to be Given by Purchaser—Manner and Time of Payment of Principal.*]—*Held*, affirming the judgment of Teetzel, J., 3 O.W.N. 983, dismissing an action for specific performance of an alleged contract for the sale and purchase of land, that there never was any concluded agreement between the parties as to the time for payment of a balance of the purchase-money to be secured by mortgage; and that the law would not supply the missing part of the agreement. The question was one of contract or no contract in fact, and of adding by parol to a written formal document, as well as of a violation of the provisions of the Statute of Frauds.—*Held*, also, that the land described in the agreement was not that which was really sold. *Reynolds* v. *Foster*, 4 O.W.N. 694.—C.A.

17. Contract for Sale of Land—Interpretation of Document—Specific Performance. *Gertzbein* v. *Bell*, 4 O.W.N. 715.—Meredith, C.J.C.P.

18. Contract for Sale of Land—Mistake—Evidence—Reformation—Priority between Mortgages—Relief Granted upon Terms—Payment of Costs and Overdue Instalments of Principal and Interest—Specific Performance. *Kling* v. *Lyng*, 4 O.W.N. 1422.—Middleton, J.

19. Contract for Sale of Land—Mortgage to be Given for Part of Purchase-money—Term of Mortgage—Dispute as to—Alteration of Agreement after Signature—Waiver of Objection—Specific Performance. *Graydon* v. *Gorrie*, 4 O.W.N. 704.—Kelly, J.

20. Contract for Sale of Land—Option—Acceptance—Qualification—Statute of Frauds—Time for Accepting—"Thirty

27. Contract for Sale of Land—Specific Performance—Principal and Agent—Solicitor—Ratification. *Foran* v. *Martel*, 4 O. W.N. 496.—D.C.

28. Contract for Sale of Land—Statute of Frauds—Formation of Contract — Correspondence — Specific Performance. *Storie* v. *Hancock*, 4 O.W.N. 459.—BOYD, C.

29. Contract for Sale of Land—Specific Performance Refused—Right to Retain Instalments of Purchase-money—Laches—Resale—Costs. *McGreevy* v. *Hodder*, 4 O.W.N. 536.—FALCONBRIDGE, C.J.K.B.

30. Contract for Sale of Land—Statute of Frauds—Amendment—Manner and Time of Payment—Authority of Solicitor—Incomplete Agreement. *Clement* v. *McFarland*, 4 O.W.N. 448.—KELLY, J.

31. Contract for Sale of Land—Time of Essence of Contract—Failure of Purchaser to Close in Time—Duty as to Preparation and Tender of Conveyance—Construction of Contract—Specific Performance—Refusal — Discretion. *Snell* v. *Brickles*, 4 O.W.N. 707, 951, 28 O.L.R. 358.—FALCONBRIDGE, C.J.K.B.—APP. DIV.

32. Contract for Sale of Mining Property—Commission Received by one of two Joint Purchasers from Vendors—Failure to Disclose to the Other—Duty to Disclose—Partnership—Fraud—Agency for Vendors—Rescission of Contract—Repayment of Instalment of Purchase-money. *Hitchcock* v. *Sykes*, 4 O.W.N. 1146, 29 O.L.R. 6.—C.A.

33. Misrepresentation as to Depth of City Lot Sold and Conveyed—Fraud—Motive—"More or Less"—Executed Contract—Rights of Third Parties — Remedy in Damages—Costs. *Wishart* v. *Bond*, 4 O.W.N. 931.—LENNOX, J.

34. Sale of Land Free from Incumbrances—Unpaid Taxes—Dispute as to whether a Charge on Land—Purchaser not Bound to Pay Purchase-price while Dispute Unsettled—Action for Purchase-price—Summary Disposition—Indemnity or Payment into Court—Costs. *Phillips* v. *Monteith*, 4 O.W.N. 1420.—MIDDLETON, J.

35. Title to Land—Application under Vendors and Purchasers Act. *Re Heward and Steinberg*, 4 O.W.N. 133.—RIDDELL, J.

36. Title to Land—Deed to Person as Trustee for Infant Son—Death of Son in 1882—R.S.O. 1877 ch. 105, sec. 22—Heirship of Father—Right of Mother—Dower. *Re Brennan and Waldman*, 4 O.W.N. 161.—BRITTON, J.

37. Title to Land—Objection to—Outstanding Interest—Vendors and Purchasers Act. *Re Mackenzie and Hamilton*, 4 O.W.N. 1606.—LENNOX, J.

38. Title to Land — Objection to — Registered Agreement—Authority to Sell—Registry Act, 10 Edw. VII. ch. 60, sec. 75—Cloud on Title—Removal—Release. *Re Rosenberg and Bochler*, 4 O.W.N. 757.—LENNOX, J.

39. Title to Land—Objection to—Registered Agreement—Probability of Litigation—Doubtful Title. *Re Pigott and Kern*, 4 O.W.N. 1580.—FALCONBRIDGE, C.J.K.B.

40. Title to Land—Objection to—Rights of Way over Private Lane—Compensation. *Re Boulton and Garfunkel*, 4 O.W.N. 25.—MIDDLETON, J.

41. Title to Land—Will—Restraint on Alienation—Sale Permitted to "Heirs" only—Vested Interest not Taken by Devisees—Settled Estates Act. *Re Lane and Beacham*, 4 O.W.N. 243.—BRITTON, J.

42. Title to Land—Vendors and Purchasers Act, 10 Edw. VII. ch. 58—Building Erected on Land—Encroachment—Estoppel—Possession—Innocent Purchaser—Registry Act. *Re Maton and Clavir*, 4 O.W.N. 263.—RIDDELL, J.

43. Title to Land—Will—Construction—Life Estate — Specific Performance—Parties—Representatives of Deceased Tenant for Life—Application under Vendors and Purchasers Act—Dismissal—Res Judicata—Cancellation of Contract—Release—Costs. *Cameron* v. *Hull*, 4 O.W.N. 581.—BOYD, C.

See Accord and Satisfaction—Contract, 9—Deed, 3—Executors and Administrators, 4, 5, 6, 7—Fraud and Misrepresentation, 1, 3, 6—Lis Pendens, 3—Principal and Agent, 3-12, 14, 16, 17—Way, 2—Will, 20, 37, 44.

VENDORS AND PURCHASERS ACT.

See Vendor and Purchaser, 12, 35-43.

VENDOR'S LIEN.

See Judicial Sale.

VENUE.

1. Action for Dower—Local Venue—Con. Rule 529 (*c*)—Security for Costs—Next Friend—Temporary Residence in Jurisdiction. *Stauffer* v. *London and Western Trust Co.*, 4 O.W.N. 1336.—MASTER IN CHAMBERS.

2. Action for Infringement of Patent for Invention—R.S.C. 1906 ch. 69, sec. 31—"May." *Alsop Process Co.* v. *Cullen*, 4 O.W.N. 114.—MASTER IN CHAMBERS.

3. Convenience — Witnesses — Terms — Avoidance of Delay. *Blackie* v. *Seneca Superior Silver Mines Limited*, 4 O.W.N. 1039.—MASTER IN CHAMBERS.

4. Convenience—Witnesses—Terms—Withdrawal of Jury Notice. *White* v. *Hobbs*, 4 O.W.N. 218.—MASTER IN CHAMBERS.

5. Convenience—Witnesses—Undertaking to Pay Expenses—Jury Notice—Leave to Serve. *Bickell* v. *Walkerton Electric Light Co.*, 4 O.W.N. 1181.—MASTER IN CHAMBERS.

6. County Court Action—Con. Rule 529 (*b*)—Convenience—Costs of Motion. *Ferguson* v. *Anderson*, 4 O.W.N. 830.—MASTER IN CHAMBERS.

7. County Court Action—Convenience—Expense — Witnesses. *Baughart Bros.* v. *Miller Bros.*, 4 O.W.N. 1368.—MASTER IN CHAMBERS.

8. County Court Action—Convenience—Witnesses. *Ontario Bank* v. *Bradley*, 4 O.W.N. 588.—MASTER IN CHAMBERS.

9. County Court Action—Judgment—Counterclaim — Transfer to Another County—Discretion of Court—Con. Rule 255. *Berthold & Jennings Lumber Co.* v. *Holton Lumber Co.*, 4 O.W.N. 458, 523.—MASTER IN CHAMBERS.—RIDDELL, J. (Chrs.)

10. Expediting Trial—Refusal of Motion—Terms. *Shantz* v. *Clarkson*, 4 O.W.N. 592.—MASTER IN CHAMBERS.

11. Failure to Set Case down at Proper Time—Avoidance of Delay. *Brown* v. *Grand Trunk R.W. Co.*, 4 O.W.N. 113.—MASTER IN CHAMBERS.

12. Motion by Plaintiff to Change—Convenience in Getting to Trial — Venue Improperly Laid — Discretion — Onus—Speedy Trial—Costs. *Chwayka* v. *Canadian Bridge Co.*, 4

(O.)—Action to Enforce Payment of Bet—Summary Dismissal—Con. Rule 261—Costs—Discretion. *Harris* v. *Elliott*, 4 O.W.N. 939, 28 O.L.R. 349.—MEREDITH, C.J.C.P.

WAGES.

See Assignments and Preferences, 5—Company, 3—Contract, 24.

WAIVER.

See Contract, 2—Division Courts, 3—Judgment Debtor, 1—Principal and Surety, 1—Vendor and Purchaser, 1, 11, 19, 21—Way, 2—Writ of Summons, 4.

WARRANTY.

See Sale of Goods 2, 4, 5, 6, 7, 11.

WATER AND WATERCOURSES.

1. Crown Grant of Land Bounded by Highway Running near Bank of Lake—Encroachment of Water upon Highway and Land beyond—Right of Grantee to Land Covered by Water—Fixed Boundary—Lease by Crown of Land Previously Granted now Covered by Water—Trespass—Riparian Owners—Navigable Waters. *Volcanic Oil and Gas Co.* v. *Chaplin*, 4 O.W.N. 517, 27 O.L.R. 484.—D.C.

2. Diversion of Surface Water by Adjoining Owner—Trespass—Injunction—Damages — Costs. *Walker* v. *Westington*, 4 O.W.N. 136.—BRITTON, J.

3. Floatable River—Boom Company—Services to Lumber Company in Booming Logs—Action to Recover Payment—Implied Contract—Legal Authority—Company Incorporated under Foreign State Laws—Sheer Boom in Canadian Waters—International Boundary Stream—Illegal Possession of Logs — Right to Payment for Improvements — Sorting of Logs Rendered Necessary by Unlawful Acts of Boom Company—Evidence — Onus—Right to Tolls—Unlawful Erections in River—Ashburton Treaty—Act of State Legislature—Ultra Vires — Navigation Rights. *Rainy Lake River Boom Corporation* v. *Rainy River Lumber Co.*, 4 O.W.N. 5, 27 O.L.R. 131.—MULOCK, C.J.Ex.D.

4. Injury to Mill by Flooding—Unprecedented Spring Freshets—Failure to Shew Fault on Part of Defendants—Damages. *Seaman* v. *Sauble Falls Light and Power Co.*, 4 O.W.N. 217.—MIDDLETON, J.

WATER COMMISSIONERS.

WATERWORKS.

WAY.

of Court.]—Where one person is entitled to a right of way over the land of another, the precise location not having been determined, it is the grantor who has the right and duty to select the precise location, to "define" the way; and, once the way is defined, it cannot be changed by the grantor.—In an agreement (under seal) for the sale of land by the defendant to the plaintiffs, the defendant agreed to give the plaintiffs a right of way across another lot, and agreed "to make a grant of such right of way when and as soon as the same is surveyed:"—*Held*, that it was the duty of the defendant to have the survey made; and, when he refused, an action lay; and, a survey being a prerequisite to a conveyance, the refusal to make a survey was a waiver of the conveyance, if it was the duty of the plaintiffs to prepare and tender one.—*Held*, also, that the plaintiffs were entitled to costs.—*Held*, also, that it is not beneath the dignity of the Court to consider on its merits any question properly before it—contracting parties should not be allowed wilfully to break their contracts because the damage is small. *Burney* v. *Moore*, 4 O.W.N. 173.—D.C.

3. Private Way—Prescription — Easement—Evidence—User—Necessity—Tenants in Common—Dissolution of Interim Injunction—Undertaking as to Damages — Assessment by Trial Judge. *Salter* v. *Everson*, 4 O.W.N. 1457.—MIDDLETON, J.

See Highway—Vendor and Purchaser, 40.

WEEKLY COURT.

See Criminal Law, 13.

WILL.

1. Action by Beneficiary—Taxes Accruing Prior to Testator's Death—Counterclaim. *MacKay* v. *MacKay*, 4 O.W.N. 300.—FALCONBRIDGE, C.J.K.B.

2. Construction—Absolute Bequest—Inoperative Restriction——Discretion of Executors. *Re McGill*, 4 O.W.N. 565.—KELLY, J.

3. Construction—Absolute Gift to Daughter—Restriction—Discretion of Trustee—Invalidity—Restriction against Encroachment during Coverture—Validity—"I Wish"—Obligatory Import—"Settled upon herself"—Extended Mean-

12. Construction—Charitable Gift—Failure to Designate Particular Object with Accuracy—General Charitable Intention—Method of Carrying out. *Re Upton*, 4 O.W.N. 815.—MIDDLETON, J.

13. Construction—Codicil—Substituted Legacy to Daughter—Annuity—Income—Corpus — Division of Estate—Decease of Daughter—Right of Daughter's Representative to Share of Corpus. *Re Smith*, 4 O.W.N. 1115.—MIDDLETON, J.

14. Construction—Codicils—Absolute Gift—Restrictions as to Mode of Enjoyment—"Reliance on Sense of Justice and Kindliness of Heart"—Precatory Trust—Dower—Election. *Re Stanton*, 4 O.W.N. 504.—LATCHFORD, J.

15. Construction—Creation of Trust Fund—Amount of—Charge on Land Devised—Exoneration of General Estate—Investment of Fund—Directions of Will—Loan to Devisee—Insufficiency of Estate to Provide Trust Fund and Pay Legacies—Proportionate Abatement. *Re Campbell*, 4 O.W.N. 760.—LENNOX, J.

16. Construction—Devise—Children "as Heirs"—Estate Tail. *Re Priester*, 4 O.W.N. 456.—MIDDLETON, J.

17. Construction—Devise—Joint Tenancy—Survivorship—Jus Accrescendi. *Re Campbell*, 4 O.W.N. 221.—FALCONBRIDGE, C.J.K.B.

18. Construction—Devise—Restraint on Alienation during Life of Husband of Devisee—Validity—Partition or Sale. *Re Harrison*, 4 O.W.N. 1455.—LENNOX, J.

19. Construction—Devise of Land Subject to Payment of Legacies—Disposition of Insurance Moneys—Application to Payment of Legacies—Designation under Insurance Act—Identification of Policy—Reconciling Clauses of Will. *Re Fillingham*, 4 O.W.N. 1391.—MIDDLETON, J.

20. Construction—Devise to two Daughters—Provision in Event of one Dying without Issue—"Surviving Daughter or her Heirs"—"Or" Read as "and"—Vendor and Purchaser——Title to Land—Forcing Doubtful Title on Unwilling Purchaser. *Re Edgerley and Hotrum*, 4 O.W.N. 1434.—MEREDITH, C.J.C.P.

21. Construction—Devise to Wife—Condition as to Remarriage

duary Legatee during Life-tenancy. *Re Vining*, 4 O.W.N. 1553.—FALCONBRIDGE, C.J.K.B.

32. Construction — Legacies to Nephews and Nieces and to Strangers—Subsequent Direction to Divide Fund among "the Aforesaid Heirs"—Meaning of "Heirs"—Restriction to Nephews and Nieces. *Re Phillips*, 4 O.W.N. 898.—MIDDLETON, J.

33. Construction—Legacy Payable in Instalments—Inconsistent Provisions. *Re Quay*, 4 O.W.N. 677.—KELLY, J.

34. Construction — Life Estate—Remainder to Children and Grandchildren—Vested Estates—Power of Appointment by Will—Rule against Perpetuities—Attempt to Tie up Property during Lifetime of Unborn Grandchildren—Void Provision—Effect of Gift—Intestacy or Absolute Interest—Avoidance of Intestacy. *Re Phillips*, 4 O.W.N. 751, 28 O.L.R. 94.—MIDDLETON, J.

35. Construction—Life Insurance Policies—Identification of—Variation—Altering Apportionment——Ontario Insurance Act, 1912, secs. 170, 171, 247—R.S.O. 1897 ch. 203, sec. 160—Vested Interest — Representation under Con. Rules 939, 940. *Re Stewart Estate*, 4 O.W.N. 293.—SUTHERLAND, J.

36. Construction — Marriage Settlement — Power of Appointment—Guardian of Infants—Appointment by Mother's Will—Invalidity—Trustee—Receipt of Income—Period of Vesting of Estate—Rule against Perpetuities—Result of Offending against. *Re Eliot*, 4 O.W.N. 1198.—MIDDLETON, J.

37. Construction—Power of Appointment—Beneficiary—Trustees—Title to Land—Power to Convey—Application under Vendors and Purchasers Act. *Re Mara and Wolfe*, 4 O.W.N. 866.—MIDDLETON, J.

38. Construction — Precatory Trust. *Re Soullière and McCracken*, 4 O.W.N. 1092.—MIDDLETON, J.

39. Construction — Provisions for Maintenance of Widow—Charge on Land Devised to Son—Estate of Mortgagee Bound by Charge. *Honsinger* v. *Honsinger*, 4 O.W.N. 945.—LENNOX, J.

40. Construction—"Real Estate at" No. 62—"At" and "In" Distinguished—Adjoining Land Included — Presumption

WINDING-UP.

See Assignments and Preferences, 1—Banks and Banking, 4—Company, 5, 12-23—Costs, 9—Evidence, 8—Trusts and Trustees, 6.

WITNESS FEES.

See Solicitor, 4.

WITNESSES.

See Evidence — Infants, 10 — Landlord and Tenant, 12, 13 — Money Lent, 1—Physicians and Surgeons—Venue.

WORDS.

"Accident"—See HIGHWAY, 19.
"Accident Renewal Receipt"—See INSURANCE, 1.
"According to Tenor of Policy"—See INSURANCE, 1.
"Action"—See LAND TITLES ACT.
"Adjudged"—See PRINCIPAL AND SURETY, 2.
"All Branch and Party Lines"—See ASSESSMENT AND TAXES, 12.
"All my Cash in Bank"—See WILL, 8.
"All the Causes of Action"—See COSTS, 2.
"And the Products thereof"—See BANKS AND BANKING, 3.
"Appliances"—See LIQUOR LICENSE ACT, 5.
"Arrangement"—See PLEADING, 24.
"Ascertain the Facts"—See PHYSICIANS AND SURGEONS.
"At"—See WILL, 40.
"Balance"—See WILL, 7, 23.
"Between"—See WILL, 25.
"By Lack of Judgment"—See STREET RAILWAYS, 5.
"By or through"—See PRINCIPAL AND AGENT, 11.
"By Reason of a Motor Vehicle on a Highway"—See MOTOR VEHICLES ACT, 2.
"Carriage"—See LIEN.
"Channel"—See CROWN LANDS, 1.
"Channel-bank"—See CROWN LANDS, 1.
"Charge or Control"—See MASTER AND SERVANT, 8, 15, 16, 17.
"Costs, Charges, and Disbursements"—See SOLICITOR, 1.
"Costs of and Incidental to the Reference"—See COSTS, 18.
"Damages"—See LIMITATION OF ACTIONS, 2.
"Detached Dwelling-house"—See DEED, 5.
"Dismissing Application"—See LANDLORD AND TENANT, 14.
"Due Compensation"—See MUNICIPAL CORPORATIONS, 11.
"Due to Calve"—See SALE OF GOODS, 5.
"Embarrassing Pleading"—See PLEADING, 35.
"Engine or Machine upon Railway or Tramway"—See MASTER AND SERVANT, 8, 15, 16, 17.

"Personal Property outside of the Reserve"—See INDIAN.
"Products of the Forest"—See BANKS AND BANKING, 3.
"Property Subject to Taxation"—See INDIAN.
"Public Place"—See LIQUOR LICENSE ACT,, 1.
"Purpose of Storage"—See MUNICIPAL CORPORATIONS, 25.
"Recipients of this Will"—See WILL, 40.
"Reliance on Sense of Justice and Kindliness of Heart"—See WILL, 14.
"Remain in Business"—See WILL, 29.
"Representative"—See DISCOVERY, 9.
"Sale or other Disposal"—See LIQUOR LICENSE ACT, 2.
"Scaffolding"—See MASTER AND SERVANT, 5.
"Selling the Property"—See PRINCIPAL AND AGENT, 4.
"Servant"—See DISCOVERY, 9.
"Settled upon herself"—See WILL, 3.
"Shops"—See MUNICIPAL CORPORATIONS, 25.
"Signs"—See LIQUOR LICENSE ACT, 5.
"Site of the Work"—See CONTRACT, 31.
"Solely"—See DISCOVERY, 23.
"Stores"—See MUNICIPAL CORPORATIONS, 25, 27.
"Street"—See LIQUOR LICENSE ACT, 1.
"Subject to the Jurisdiction of the Province"—See CONSTITUTIONAL LAW.
"Submission to Electors"—See MUNICIPAL CORPORATIONS, 14.
"Surviving Children"—See INSURANCE, 7.
"Survivor"—See INSURANCE, 7.
"Thirty Days"—See VENDOR AND PURCHASER, 20.
"Time of Sale"—See ASSESSMENT AND TAXES, 7.
"To a Certain Extent"—See STREET RAILWAYS, 5.
"Track Owen Sound"—See SALE OF GOODS, 10.
"Tracks"—See STREET RAILWAYS, 1.
"Unjust and Unreasonable Condition"—See INSURANCE, 3.
"Verdict"—See CRIMINAL LAW, 2.
"Which Finally Disposed of the Action"—See APPEAL, 2.
"Wholesale Purchaser"—See BANKS AND BANKING, 3.
"Wife"—See INSURANCE, 8.
"Wilfully"—See CRIMINAL LAW, 7.
"Wish"—See WILL, 3, 26.

WORK AND LABOUR.

See Contract, 31, 32—Mechanics' Liens, 1—Particulars, 4.

WORKMEN'S COMPENSATION FOR INJURIES ACT.

See Damages, 4—Master and Servant—Railway, 7.

WRIT OF POSSESSION.

See Landlord and Tenant, 14.

WRIT OF SUMMONS.

1. Issue in Name of Former Sovereign—Mistake—Irregularity—Power of Court to Cure—Con. Rules 310, 312—Amendment—Costs—Statute of Limitations. *Bank of Hamilton* v. *Baldwin*, 4 O.W.N. 729, 813, 28 O.L.R. 175.—MASTER IN CHAMBERS.—MIDDLETON, J. (Chrs.)

2. Service out of the Jurisdiction—Con. Rule 162(e), (h)—Contract—Place of Payment or Performance—Assets in Ontario—Debts Owing to Defendant at Time Service Allowed—Discretion—Forum—Appeal. *J. J. Gibbons Limited* v. *Berliner Gramophone Co. Limited*, 4 O.W.N. 381, 1068, 1244, 27 O.L.R. 402, 28 O.L.R. 620.—MIDDLETON, J. (Chrs.)—APP. DIV.

3. Service out of the Jurisdiction—Order Authorising—Motion to Set aside—Guaranty Executed in another Province—Conditional Appearance. *Farmers Bank of Canada* v. *Security Life Assurance Co.*, 4 O.W.N. 61.—MASTER IN CHAMBERS.

4. Service out of the Jurisdiction—Order Authorising—Writ not Conforming to Order — Irregularity — Waiver — Entry of Conditional Appearance—Con. Rule 162(h)—Proof of Assets within Jurisdiction. *Richardson* v. *Allen*, 4 O.W.N. 1136.—MASTER IN CHAMBERS.

See Injunction, 7—Judgment, 5, 11—Lis Pendens, 1, 3—Master and Servant, 1—Pleading, 14, 26.

WRONGFUL DISMISSAL.

See Master and Servant, 1, 3, 30—Pleading, 1, 3, 28.