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THE DOMINION LAW REPORTS.

A new departure in law reporting is announced under the above title by the Canada Law Book Company, Limited, of Toronto. In the circular just issued by them, the main idea appears to be to standardize law reporting in Canada and to bring the reported decision of every province of the Federal Courts into one series.

The expansion of interprovincial trade and of corporation business has brought the provinces more closely together as regards the interpretation of the law. Although the confederation of the Canadian provinces had a statutory beginning in 1867, the real confederation has been developed since, not only as to trade and national spirit, but as to the various forms of local government in the provinces, and the reliance placed by the Courts of one province upon the decisions of the Courts of another.

What is aimed at in this new series is to systematize the reporting of all cases involving important points of law in Canada, and to furnish the profession with headnotes stating the principles of law for which the reported case can be cited as authority, and to follow the unabridged text of the delivered opinion of the judges, with annotations to the principal cases, briefing the leading cases on the same point in the other provinces and in England.

A sample report of an Ontario decision indicates the method which is to be followed, and no further recommendation is required than the high standard of the head notes and annotations contained in the sample report, which has been printed for free circulation. The profession has long endured the historical headnote which, not infrequently covers two pages of closely

printed small type, and which very often fails to ennunciate any principle or doctrine of law in any other way than by inference from the circumstances which it details, and the general result which announces who has been the successful party.

A proper syllabus or headnote of a law report should deal only with principles and should eliminate the only too common feature of setting forth the adventures of A B and C. This series will be invaluable to the lawyer, who desires to keep thoroughly posted on British and Canadian law, and who is not content to search only in the reports of his own province. We find, on inquiry, that the decisions of the Privy Council on all Canadian appeals are to be included. The scheme does not conflict with the publication by the various Law Societies of their own official reports, but aims, as a private enterprise, to give reports on cases within thirty days from their delivery and to so dispense with the necessity of advance notes of cases.

The same idea was brought forward a good many years ago by the late Christopher Robinson, K.C., and the late B. B. Osler, Q.C., both of whom strongly advocated the publication of all the Canadian reports in one series and the supplying of same to members of the Law Society in Ontario, but the scheme was then dropped, as it was considered that the Ontario Law Society would have no authority to carry it out without legislative sanction.

The Dominion Law Reports should go far to perfect the confederation of the law courts of Canada, and one cannot doubt on reading the many references in the current reports to the decisions in other provinces that the policy of comity between the provincial courts is growing apace.

This is by far the largest and most important venture in the way of law reporting ever undertaken in this country and is unique in its comprehensiveness. It deserves and will doubtless receive the hearty support of the profession. The work is under the editorial management of Messrs. C. B. Labatt and W. J. Tremeear, barristers-at-law, assisted by a competent editorial staff.

HON. MR. JUSTICE KELLY.

With commendable promptitude, the new government at Ottawa has filled the vacancy in the Ontario High Court Bench, caused by the death of Mr. Justice MacMahon by the appointment of Mr. Hugh T. Kelly, K.C., of Toronto.

It is doubtless gratifying to him to know that his appointment has been well received by the profession. Other men might have been found who have had more experience as counsel, and who have been more prominently before the public in that capacity or in some other way; but it must be remembered that there are, after all, other matters for consideration in respect to judicial qualifications of still more importance, and in these we think the selection of Mr. Kelly may well be justified. He is a sound lawyer, a man of great industry and thoroughness, of high character and unblemished reputation, and well versed in the general business of the country.

As chairman of the Public Library Board and as a member of the Board of Governors of the University of Toronto, he earned the respect of his fellows, and fully met the expectations of his friends. Unassuming and dignified in manner, courteous and considerate, he will, we venture to think, be a judge before whom it will be a pleasure to practise.

The best incumbents of judicial positions are those who have a laudable ambition to be known by their brethren as good judges, and to be remembered by them and by others as men who have endeavoured to do justice without fear, favour or affection. We believe Mr. Kelly has that ambition, and congratulate him upon his promotion to the Bench.

He was born in the township of Adjala in the county of Simcoe in 1858, the son of Mr. John Kelly, a well-to-do farmer there. In 1873, (being a member of the Roman Catholic Church) he began his education in St. Michael's College, Toronto, graduating therefrom in 1880. In 1880, he began the study of the law, in the office of Foy & Tupper, composed of the present Attorney-General of Ontario and Mr. J. Stewart Tupper, now of Winnipeg, eldest son of Sir Charles Tupper. In 1887

he entered into partnership with Mr. Foy, the partnership continuing until his appointment to the Bench.

The management of the extensive practice of the firm of Foy & Kelly has been for many years under his supervision.

ACTION BY REPRESENTATIVES OF DECEASED WORKMEN.

There are some observations of Garrow, J.A., in the case of *Dawson* v. *Niagara, St. Catharines & Toronto Ry.* 23 O.L.R., pp. 675-6., which appear to have been concurred in by the full Court of Appeal, which are somewhat hard to understand. The learned judge seems to be of the opinion that no action can be taken by the representatives of a deceased workman under the Workmen's Compensation for Injuries Act. He says section 3 of that Act does not attempt to confer a right of action upon the widow, etc., all it does is to give the same right of compensation and remedies against the employer as if the workman had not been a workman. The workman himself is given a right to sue under the statute. It is as to him a new right, but, as to his representatives, the effect of the statute is simply to remove a difficulty out of the way. The action when not brought by him, but after his death, by his representatives, must thus rest for its basis upon the earlier Act (i. e., the Fatal Accidents Act), and upon it alone, although the amount recoverable is necessarily limited by the provisions of the later Act (i. e., the Workmen's Compensation for Injuries Act.)

It appears to us that in making these observations the learned judge has failed to give full effect to the words of section 7 of the Workmen's Act, which expressly provides that "the workman, or in case the injury results in death, *the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of,* nor in the service of the employer, nor engaged in his work." These words seem to give to the personal representatives and any persons entitled in case of death, the same right of action which the deceased himself gets under the Act. If, as the learned judge assumes, the section only removes out of the way of the deceased's repre-

sentatives the difficulty of the deceased being in the position of a servant of the defendant, and as such having no right of action; and the action by such representatives is only maintainable under the Fatal Accidents Act, then the logical conclusion appears to be that such and only such damages as are recoverable under the Fatal Accidents Act are recoverable in such an action; viz., the actual pecuniary loss occasioned by the death; but the learned judge while holding the action to be only maintainable under the Fatal Accidents Act, yet nevertheless reaches what appears to us to be the illogical conclusion that the damages in such an action are limited by the Workmen's Act, although, according to the learned judge's view, the representatives have no right of action under that Act. If they have no right of action under that Act, how can the damages recoverable by them under the Fatal Accidents Act, be limited by an Act under which, according to the learned judge they have no right of action? The positions seem inconsistent.

It is interesting, not to say amusing, to note the comments of the *Law Times* on the appointment of judges in England, in view of what takes place in this country. Our contemporary states that some vacancies on the County Court Bench have just been filled: "Both the promotions are excellent, and will be welcomed throughout the profession; but it is to be hoped that in future a little more expedition will be shewn by the Lord Chancellor in selecting candidates for the Bench. Nearly three months have elapsed since the death of His Honour Judge Willis, and, although a certain rearrangement of judges has been carried out in the meantime, that period is too long even for the most careful deliberation." The vacancy in the Ontario Superior Court Bench, owing to the death of Mr. Justice Mac-Mahon, which occurred nearly a year ago, has only just been filled. Had such delay taken place in England, our brother would have some caustic remarks to make on the subject. In this country the Bench is too much made use of as a plaything for party politicians, and not sufficiently regarded as one of the great foundation stones supporting the nation's welfare.

REVIEW OF CURRENT ENGLISH CASES.

ADMIRALTY—TOWAGE CONTRACT—DEFECT IN TOWING GEAR—WARRANTY OF FITNESS OF TUG—EXEMPTIONS FROM LIABILITY.

In *The West Cock* (1911) P. 208, the Court of Appeal (Williams, Farwell and Kennedy, L.JJ.) have affirmed the decision of Evans P.P.D., (1911) P. 23, noted ante, p. 174.

PRACTICE—PARTIES—ADMINISTRATION ACTION—REAL ESTATE—CREDITOR'S ACTION.

In re James, James v. *Jones* (1911) 2 Ch. 348, a small point of practice on the subject of parties is settled by Warrington, J. The action was by a creditor for administration of the real and personal estate of a deceased person—and it was objected that as administration of the realty was asked, it was necessary that the plaintiff should sue on behalf of himself and all other creditors. The learned judge, however, overruled the objection, holding that since the Land Transfer Act, 1897, which contains similar provisions to those contained in the Devolution of Estates Act of Ontario, whereby the realty of a deceased person vests in his personal representative, it was no longer necessary that a creditor suing for administration of the realty should sue on behalf of other creditors.

DAMAGES—INTEREST—REFEREE'S REPORT—DATE FROM WHICH INTEREST RUNS—JUDGMENTS ACT 1838 (1-2 VICT. C. 110) SS. 17, 18.—(ONT. JUD. ACT, S. 116).

Astover Fluor Spar Mines v. *Jackson* (1911) 2 Ch. 355. This was an action for trespass to mines. By consent, on June 18, 1910, it was refered to a special referee to inquire as to the value of material taken by defendants from the plaintiffs' mines, making all just allowances for the cost and expense of bringing such material to the surface, and also whether the plaintiffs had suffered damage by reason of the defendants having rendered other minerals on the plaintiff's lands unworkable, the defendants to pay the amounts found due on such inquiry. The referee on June 1, 1911, found the amount due on each head of the inquiry, and the plaintiffs now moved for judgment in accordance with the report, and the question was whether the amounts found due bore interest from the date of the order of reference of the 18 June, 1910, or from report, or whether the interest would only run from the date of the judgment to be pronounced on the present motion. Eve, J., held that the order of the 18 June, 1910, was not an order

whereby a sum of money was payable and therefore interest did not run from its date, because that order was so framed as to necessitate a further order to pay; but he held that the order of reference practically embodied an agreement to pay what should be found due when certified, therefore interest should run from the date of the report.

COMPANY—REDUCTION OF SHARE CAPITAL—CONFIRMATION OF BY-LAW FOR REDUCTION OF CAPITAL—DISSENTIENT SHAREHOLDER—COMPANIES ACT, 1908 (8 EDW. VII. c. 69) s. 46.—(R. S. C. c. 79, ss. 54, 228)—(7 EDW. VII. c. 34, s. 13 (*a*), ONT.).

Re Thomas De la Rue & Co. (1911) 2 Ch. 361. This was a petition by a limited company to obtain the sanction of the court to a resolution for the reduction of the share capital of the company. The scheme of reduction differentiated between holders of the same class of shares to the extent that it provided for the paying off some and not others, and imposed upon the shareholders whose shares were to be extinguished the obligation to accept debenture stock in lieu of cash, and involved the advance to the company of the moneys to be utilized in redemption of the shares by the persons whose shares were to be redeemed. Eve, J., held that the scheme was within the power of the company under s. 46 of the Companies' Act, 1908 (see R. S. C. c. 79, ss. 54, 228, and 7 Edw. VII. c. 34, s. 13 (*a*) Ont.) and made the order asked, as being on the whole fair and equitable, but made it a term of the order that the costs of a dissentient shareholder, who had assisted the court by his criticism of the scheme should be paid by the company. We may note that under the Dominion Companies Act, by-laws for reduction must be approved by "the Minister" with the approval of the Treasury Board. The particular Minister referred to not being defined, though from the other parts of the Act, it would appear that the Secretary of State is probably intended. Under the Ontario Companies Act (7 Edw. VII. c. 34) no confirmation by any external authority of a scheme for reduction of capital appears to be necessary, so that a dissenting minority has no redress, which affords an illustration of the desirability of having one company law for the whole Dominion.

WILL—LIMITATION IN STRICT SETTLEMENT—DISCLAIMER OF LIFE ESTATE, PRECEDING ESTATE TAIL—NO PRESENT ISSUE IN TAIL—ACCELERATION OF ESTATE IN REMAINDER—CONTINGENT REMAINDERS ACT, 1877 (40-41 VICT. c. 33)—(1 Geo. V. c. 25, s. 31 (Ont.).

Re Scott, Scott v. *Scott* (1911) 2 Ch. 374 is what Warrington, J., calls a curious case. A testator devised land to his eldest son,

John, for life, with remainder to his first and other sons successively in tail male, with remainder to his grandson Walter, the son of his son Joseph, for life, with remainder over. After giving numerous legacies he gave his real and personal estate not otherwise devised or bequeathed to trustees upon trust to sell and convert and hold proceeds on specified trusts. John, the eldest son, disclaimed the life estate devised to him, but, though living and married he had no male issue, nor was there any prospect of his having any, consequently the estate tail could not take immediate effect. In these circumstances the grandson Walter claimed that his life estate was accelerated, subject to be divested in case issue in tail should be born to John, but Warrington, J., concluded that the effect of the Contingent Remainders Act, 1877 (see 1 Geo. V. c. 25, s. 31, Ont.) was to preserve the contingent remainder to the same extent as if a trustee to preserve the contingent remainder in tail had been actually appointed, and consequently that the life estate of Walter was not accelerated; but he further held that until issue in tail should be born, or the possibility of such issue should be at an end by the death of John, the rents and profits of the disclaimed life estate of John formed part of the testator's residuary estate.

TRADE MARK—MAKER'S SURNAME AS TRADE MARK.

In re Pope's Electric Lamp Co. (1911) 2 Ch. 382. This was an application by Pope's Electric Lamp Co. to register the name of "Pope" as a trade mark for lamps manufactured by the applicants. There was evidence that the name had become identified by user with the goods sold by the applicants, but Warrington, J., was of the opinion that the word was, for all essential purposes, the surname of the maker of the plaintiff's goods, and was not, in its nature, adapted to distinguish them from the goods of other persons of the name of "Pope" and could not become so adapted by user as to be capable of registration as a trade mark, and even if the name could be adapted to distinguish the plaintiff's goods, in the exercise of a sound discretion, the court ought not to make the order asked.

PRINCIPAL AND SURETY—CO-SURETIES—CONTRIBUTION — JOINT AND SEVERAL GUARANTEE—DEBT PAYABLE BY INSTALMENTS.

Stirling v. *Burdett* (1911) 2 Ch. 418. This was an action by some sureties against their co-sureties claiming contribution, in the following circumstances. The plaintiffs and defendants had jointly and severally guaranteed the payment of a debt of £15,000 and their respective liabilities were limited to various specified amounts. The £15,000 was payable in instalments, some of which had fallen due and had been paid by the plaintiffs. The amount so paid was more than their proportionate shares of the

instalments, but not as much as their proportionate shares of the whole debt, and Warrington, J., held that until they had paid more than their proportionate share of the whole debt, they could not call on the defendants for contribution. The action therefore failed.

COMPANY—MINIMUM NUMBER OF DIRECTORS—QUORUM—MINIMUM NUMBER NEVER APPOINTED—ALLOTMENT BY LESS THAN MINIMUM NUMBER OF DIRECTORS—INVALID ALLOTMENT.

In re Sly Spink & Co. (1911) 2 Ch. 430. This was an application in a winding-up proceeding for a rectification of the register of shareholders, on the ground that the shares allotted to the persons whose names were sought to be removed had been invalidly allotted by less than the minimum number of directors required by the articles of association. The articles provided that the number of directors should not be less than four nor more than eight, that the two vendors should be the first directors, that the first directors should have power before the first general meeting to appoint additional directors, but so that the number should not exceed seven; that continuing directors might act, notwithstanding any vacancy, and that three should be a quorum. The two first directors appointed a third and the three held board meetings and allotted shares including 2,000 allotted as fully paid up to Macdonald, the promoter, by way of commission for his services. Macdonald had transferred some of these shares to Herstlet partly as a gift and partly in payment of costs, and others to bona fide purchasers. The company never really commenced business, and was ordered to be wound up on the petition of shareholders. The vendors who had acted honestly, paid all the debts of the company, and repaid the bona fide shareholders what they had paid, and took transfers of their shares. The liquidator moved to rectify the register by striking out the names of Macdonald and Herstlet, who had full notice of the articles of association, and Neville, J., granted the application, thus leaving the vendors the only shareholders of the company and enabling them to get back their property. The learned judge holding that as the minimum number of directors had never been appointed, the three directors who assumed to act could not be deemed to be continuing directors; or as constituting a quorum, and therefore the allotment of shares made by them was invalid.

VENDOR AND PURCHASER—TITLE—LAND PURCHASED BY TRUSTEES AS AN INVESTMENT UNDER POWER—NO EXPRESS POWER TO VARY INVESTMENTS—IMPLIED POWER TO VARY—SALE BY TRUSTEES—CONCURRENCE OF CESTUI QUE TRUST FOR LIFE, IN CONVEYANCE.

In re Pope (1911) 2 Ch. 442. This was an application under the Vendors and Purchasers Act to determine a question of

title. The vendor's title was derived from trustees who had purchased the land in question under a power contained in a settlement as an investment, and for the occupation of one of the cestui que trust, a tenant for life. The settlement contained no express power to vary the investment but the property being no longer required by the tenant for life, the trustees, with his consent, had sold it to the vendor. Two questions were raised by the purchaser:(1) In the absence of an express power to vary investments, had the trustees any power to sell at all; (2) If they had, was the tenant for life a necessary party to the conveyance. Neville, J., answered the first question in the affirmative and the second in the negative. He held that a power to invest, where there is no special reason against it, implies a power to vary investments, and there being no special reason against it in this case, the trustees had power to sell. And though under the Settled Land Act, s. 56, the tenant for life had also power to sell, yet that did not put an end to the power of the trustees to vary the investment. He was therefore of the opinion that both the trustees and the tenant for life, had power to sell. And assuming that the consent of the tenant for life was necessary to a sale by the trustees, it was not necessary that the consent should be in writing, or that he should concur in the conveyance.

MORTGAGE—PRIORITY—MERGER—RELEASE OF PART OF SECURITY.

In *Manks* v. *Whitley* (1911) 2 Ch. 478 the plaintiff claimed priority as mortgagee in the following circumstances. Ogden being owner of the land in question in 1900, mortgaged it to Ackroyd for £300. In 1901 he mortgaged it to plaintiff for £120. In 1905 he mortgaged it again to Ackroyd for £172. In 1907 Ogden agreed to sell the property to Whitley; Whitley was informed that the only incumbrances were the two mortgages to Ackroyd. In order to pay off the first mortgage Whitley borrowed £300 from Farrar and Whitley paid off the second mortgage. The transaction was carried out by Ackroyd reconveying to Ogden. Ogden then conveyed to Whitley and Whitley mortgaged to Farrar to secure £300 advanced by him to pay off Ackroyd's first mortgage. In these circumstances the plaintiff contended that the first mortgage not having been kept in foot, but the mortgagee having reconveyed to Ogden and he having conveyed to Whitley free from the Ackroyd first mortgage, it was extinguished, and the second mortgage of the plaintiff acquired priority; but Parker, J., held that the transaction having taken place without notice of the plaintiff's mortgage, it could not be supposed that there was any intention to merge or extinguish the mortgage, and that Whitley and Farrar were entitled to be subrogated to the rights of the first mortgagee. Another point in this case was this: the plaintiff besides the mortgage above

referred to, had also a collateral mortgage on other property. This latter property had with the concurrence of the mortgagor, been sold, and the plaintiff had released it from his mortgage and taken a new mortgage from the purchaser, and it was held that this transaction did not disentitle him to enforce his first mentioned mortgage. The learned judge on this point said: "It was argued that this transaction was in derogation of the rights of the defendants, Farrar and Whitley, to compel the plaintiff to marshal his securities in their favour. . . . The equitable right of marshalling has never been held to prevent a prior mortgagee from realizing his securities in such manner and order as he thinks fit."

ADULTERATION—CORPORATION—WARRANTY GIVEN BY CORPORATION—"REASON TO BELIEVE"—"PERSON"—LIABILITY OF CORPORATION FOR FALSE WARRANTY.

Chapman v. *Freeth* (1911) 2 K. B. 832. In this case the defendants, a corporation, were prosecuted for having sold milk with a false warranty that it was pure when in fact it was not. The prosecution was under a statute which provided that a person giving a false warranty should be liable to a penalty unless he proves that when he gave the warranty he had reason to believe that the statements or descriptions therein were true. The magistrate before whom the information was laid, held that as a corporation could not believe it was incapable of committing the offence; but the Divisional Court (Lord Alverstone, C. J., and Pickford and Lush, JJ.) held that this was too narrow a construction of the Act, and that if a corporation is capable of giving a warranty, it is liable to the penalty if it is false; and as there is no reason why a corporation cannot give a warranty through its agents, so there is no reason why, through its agents, it cannot believe or not believe in its truth or falsity.

TRESPASS—JUSTIFICATION—ACT DONE IN PRESERVATION OF TRESPASSER'S PROPERTY—ACTUAL NECESSITY—REASONABLE ACT.

In *Cope* v. *Sharpe* (1911) 2 K. B. 837, on a former report of this case (1910) 1 K. B. 168 (noted ante, vol. 46, p. 171), a new trial was ordered. The facts were that the defendant in order to protect his master's shooting rights, for the purpose of staying the spread of fire over the land over which the rights existed, had set fire to patches of heather at some considerable distance from the main fire. The plaintiff, the owner of the land, claimed that this act amounted to a trespass. On the new trial of the action the jury made two apparently inconsistent findings. It found that the act of the defendant was not necessary for the protection of his master's property, and they also found that in the circum-

stances it was reasonably necessary. The County Court judge acting on the latter finding dismissed the action, but the Divisional Court (Phillimore, Hamilton, and Stratton, JJ.) thought the first finding should prevail and gave judgment for the plaintiff for nominal damages and an injunction. The Divisional Court thought that what the jury meant by their second finding was merely that the defendant had done the act in such circumstances as a reasonable man acting bona fide would consider necessary, but they held that if the act was not in fact necessary then it could not be justified merely by a bona fide belief that it was on the part of the trespasser.

PRACTICE—SERVICE OF WRIT OF SUMMONS—INDORSEMENT ON WRIT OF DATE OF SERVICE—PROCEEDINGS BY DEFAULT—RULE 62—(ONT. RULE 150).—IRREGULARITY—NULLITY.

Hamp-Adams v. *Hall* (1911) 2 K. B. 942 is a case which illustrates the importance of complying with the rule requiring the date of service to be indorsed on a writ of summons; see Ont. Rule 150. In this case the indorsement had not been made, and the defendant not having appeared, the plaintiff signed judgment for default of appearance and assessed damages, and on the application of the defendant the judgment and assessment were set aside, as being, not a mere irregularity, but a nullity,—the court holding that the omission of the indorsement of service as required by the Rule disabled the plaintiff from proceeding under the Rules for default of appearance. The Court of Appeal (Williams and Buckley, L.JJ.) reversed the order of Bucknill J., who had refused the defendant's application.

PASSING OFF—"GET-UP" OF GOODS—USEFUL BUT UNPATENTABLE COMBINATION—ARTICLE IN COMMON USE—INJUNCTION.

In *Edge* v. *Niccolls* (1911) A.C. 693, the House of Lords (Lord Loreburn, L.C., and Lords Gorell, Robson and Atkinson), have been unable to agree with the decision of the Court of Appeal (1911) 1 Ch. 5 (noted ante, p. 175). The action, it may be remembered, was to restrain the defendants from imitating the "get-up" of plaintiff's goods. The goods in question were laundry blue which the plaintiffs sold in canvas bags with a small stick attached thereto, it being shewn that this particular style of get-up had become a distinctive feature of the plaintiff's goods. The defendants did up their goods in a similar style, the only difference being that they attached to the bags a label bearing their own name. The Court of Appeal thought that the stick being a useful but unpatentable device could not be regarded as part of the get-up of the article, but their Lordships thought otherwise and granted the injunction prayed.

EJECTMENT—DOMINION LEASE TO PLAINTIFF—DECEIT—LESSEE TAKING WITHOUT NOTICE OF PREVIOUS GRANT.

Vancouver v. *Vancouver Lumber Co.* (1911) A.C. 711. This was an action concerning Deadman's Island, which had formed part of Stanley Park, Vancouver, and appears to have been a fruitful source of litigation for some years past. The action was for ejectment against the city of Vancouver, and the plaintiffs were a lumber Company claiming under a lease from the Dominion Government made in 1899. It appeared that the island, assumed to be part of a military reserve, had, by an order in council of 1887, been permitted to be used by the city of Vancouver for a public park, subject to the right of the Government to resume possession if required. The city entered into possession and used the island for park purposes, but certain squatters also seem to have entered whom the city, for want of title, found they could not eject. Negotiations took place with the view to a lease being granted, which was refused. Up to this time there had been no reference to the island by name or otherwise in the communications passing between the city and the Government. In 1899 a lease of the island for 25 years was made by the Government to the plaintiffs at a yearly rent of $500. On the city learning of this lease they asked the Government to revoke it, on the ground that the island was included in the property covered by the order in council of 1887; and in answer the Minister of Militia replied that the island had not been considered part of the military reserve; thereupon a writ was issued by the Attorney-General for the Province of British Columbia against the plaintiffs in the present action, claiming that the land belonged to the Crown in right of the Province, but this failed and the land was adjudged to belong to the Dominion. Further negotiations with the Dominion Government resulted in the order in council of 1887 being cancelled, and in August, 1906, a 99 years' lease was recommended by order in council of the Dominion Government to be made to the city of the military property known as Stanley Park, which lease was ultimately executed in 1908. The city relied on its possession as against the prior lease of the plaintiff, which on appeal they claimed was invalid (1) for want of being under seal and (2) as having been obtained by deceit of the Crown. But both points failed, the first because it had not been taken in the court below, and the second because it was not shown that the plaintiffs when taking their lease in 1899 had any notice of the claim of the city.

REDEMPTION—POWER OF SALE—DUTY OF MORTGAGEE—INADEQUACY OF PRICE—NO CHARGE OF COLLUSION AGAINST PURCHASERS—PLEADINGS.

Haddington Island Quarry Co. v. *Huson* (1911) A.C. 722. This was an action of redemption, the plaintiffs alleging that a sale of the mortgaged property under a power of sale was invalid, by reason of the alleged inadequacy of the price obtained. The Court of Appeal of British Columbia had held the sale bad, and given judgment for redemption; but the Judicial Committee of the Privy Council (Lords Macnaghton, Shaw, Mersey, DeVilliers, and Robson) reversed the decision, as it appeared that the pleadings contained no allegation that the purchasers were in any way guilty of fraud, collusion or bad faith, and that there had been no notice to the defendants before trial that inadequacy of price would be relied on, and the court of first instance had found the sale to have been valid and regular. In these circumstances their Lordships held the judgment at the trial ought not to have been reversed, and that the omission of the defendants to produce counter evidence as to the adequacy of the price, did not justify a finding that the sale was fraudulent.

EXTRADITION—R.S.C. c. 155, s. 10—REQUISITION FOR ARREST—EVIDENCE.

Attorney-General for Canada v. *Fedorenko* (1911) A.C. 735. The Chief Justice of Manitoba had, on the sworn information of a police officer, issued his warrant for the committal of the defendant on a charge of murder, for the purpose of extradition under the Extradition Act (R.S.C. c. 155) s. 10. The defendant subsequently applied to be discharged and his application was granted by Robson, J., on the ground that there had been no evidence before the Chief Justice of any diplomatic requisition for the extradition of the defendant, without which he held the defendant could not be legally committed under the Act; but the Judicial Committee of the Privy Council (Lord Loreburn, L.C., and Lords Haldane, Macnaghten, Shaw, DeVilliers, and Robson) held that the warrant for committal was properly issued by the Chief Justice under the statute, and that proof of the diplomatic requisition was unnecessary, and that the statute in no way contravened the treaty with Russia, under which the extradition was sought.

CANADIAN RAILWAY ACT, 1903, ss. 42, 242—ACTION FOR DAMAGES—REMOVAL OF SIDING—RAILWAY BOARD'S FINDING OF FACT—EVIDENCE—LIMITATION OF ACTION.

Canadian Northern Ry. v. *Robinson* (1911) A.C. 739. This was an action brought by Robinson against the railway company

to recover damages for removing a siding and thereby depriving the plaintiff of certain conveniences for the shipment of their goods to which they were entitled, in the following circumstances. The railway company had constructed a spur or siding from their railway into the plaintiff's premises. In October, 1904, the defendants wrongfully (as the Railway Board subsequently held) removed the siding, and it was not restored until after the Board had directed its restoration in September, 1906. The plaintiffs claimed damages for their deprivation of the siding between October, 1904, and September, 1906. The action was commenced in 1908. The defendants contended that under s. 242 (now R.S.C. c. 37, s. 306), the action was barred because not brought within one year next after the damage complained of was sustained; and they also claimed that no action lay for any damages sustained before the order of the Railway Board directing the restoration of the siding. At the trial the plaintiff succeeded and the judgment at the trial was affirmed by the Court of Appeal for Manitoba, and this judgment was affirmed by the Supreme Court of Canada, a minority of the judges of the latter court, however, dissented on the ground that the action was barred under s. 242. The Judicial Committee of the Privy Council (Lords Haldane, Macnaghten, Shaw, DeVilliers, and Robson) affirmed the judgment of the Supreme Court, their Lordships holding, first, that the finding of the Railway Board that the plaintiffs had been unreasonably deprived of the siding was conclusive and not controvertible in this action; and they also held that section 242 did not apply because the act complained of was not an act done in the construction or operation of the defendants' railway; the removal of the siding not being, in their Lordships' opinion, an act done in the course of operating the railway itself.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Ont.] [Oct. 3.

ROSS *v.* CHANDLER.

Partnership—Principal and agent—Partnership funds—Third party—Notice—Inquiry.

R., a member of the firm of R. M. & Co., engaged on a contract for railway construction in Quebec, shortly before its completion went to Ontario, leaving his partners to finish the work, collect any balance due, pay the liabilities and divide the balance among them. M. & C. finished the work and received $56,000 and over, went to Toronto and formed a new partnership of which R. was not a member. Having undertaken another contract in North Ontario, they arranged with the head office of the Imperial Bank to open an account with its branch at New Liskeard and the cheque payable to R. M. & C. was cashed at the branch in Toronto, and by instructions to the New Liskeard branch was placed to the credit of the new firm there and the whole sum was eventually drawn out by the latter firm. R. later brought an action against M. & C. for winding up the affairs of their co-partnership and, pending that action took another against M. & C. and the bank, claiming that the latter should pay the amount of the cheque with interest into court subject to further order.

Held, affirming the judgment of the Court of Appeal (19 O.L.R. 584), Idington and Anglin, JJ., dissenting, that M. & C. had acted within their authority from R. by obtaining cash for the cheque; that there was nothing to shew that they had misapplied the proceeds or intended to do so by their dealing with the cheque; that in any case there was no notice to the bank of any intention to misapply the funds and nothing to put them on inquiry; and that the action against the bank must fail.

Appeal dismissed with costs.

Lafleur, K.C., and *W. A. Mason*, for appellant. *Rose*, K.C., for McRae and Chandler. *Bicknell*, K.C., for Imperial Bank.

Ont.] [Oct. 3.

MORANG *v.* LE SUEUR.

Contract—Literary work—Publisher and author—Obligation to publish.

In 1901 M. & Co., publishers of Toronto, and L., an author in Ottawa, signed an agreement by which L. undertook to write the life of the Count de Frontenac for a work entitled "Makers of Canada" in course of publication by M. & Co.; the latter agreed to publish the work and pay L. $500 on publication and a like sum when the second edition was issued. This contract was carried out and the publishers then proposed that L. should write, on the same terms, the life of Sir John A. Macdonald, for which that of William Lyon Mackenzie was substituted. L. prepared the latter work and forwarded the manuscript to the publishers, who refused to publish it as being unsuitable to be included in the "Makers of Canada." L. then tendered to M. & Co. the amount paid him in advance for his own work and demanded a return of the manuscript, which was refused, M. & Co. claiming it as their property. In an action by L. for possession of his manuscript,

Held, affirming the judgment of the Court of Appeal (20 O.L.R. 594), Idington and Anglin, JJ., dissenting, that he was entitled to its return.

Held, per Fitzpatrick, C.J., that the property in the manuscript (or what is termed literary property) has a special character distinct from that of other articles of commerce; that the contract between the parties must be interpreted with regard to such special character of the subject-matter; that it implies an agreement to publish if accepted; and when rejected the author was entitled to treat the contract as rescinded and to a return of his property.

Held, per Davies and Duff, JJ., that there was an express contract for publication on breach of which the manuscript should be returned.

Held, per Duff, J., that the publishers could be treated as trustees of the manuscript for publication and that purpose failing there was a resulting trust in favour of the author.

Appeal dismissed with costs.

Hellmuth, K.C., for appellants. *Lafleur,* K.C., for respondent.

Ont.] [Oct. 3.

CLARKE v. BAILLIE.

Broker—Stock carried on margin—Right to pledge.

A broker who carries stock on margin for a customer has a right to pledge it for his own purposes to the extent of the amount he has advanced.

If the broker pledges such stock as security for an amount greater than his advances he is not guilty of a conversion provided that on demand of his customer he delivers to the latter the number of shares ordered and which he has been carrying for him. Anglin, J., dissenting.

Per Anglin, J.:—The broker must at all times be in a position to hand over the stock to his customer, and if, when he pledges it, he is not in that position, he is guilty of conversion.

Judgment of the Court of Appeal (20 O.L.R. 611), affirming that of the Divisional Court (10 O.L.R. 545), affirmed. Appeal dismissed with costs.

Nesbitt, K.C., and *Wood*, for appellant. *Hellmuth*, K.C., and *Long*, for respondent.

Province of Nova Scotia.

SUPREME COURT.

Meagher, J.] [Nov. 20.

GRAHAM v. BIGELOW.

Sales—Contract for goods of specified quality—False and fraudulent marking—Fixing damages—Market intended.

Plaintiff purchased from defendant a large quantity of apples of specified grades and quality defendant being aware that the apples were intended for shipment to England for sale there during the holiday season. Plaintiff became aware shortly after the delivery of the apples that they were not of the quality contracted for and indicated by the marks upon the barrels and proceeded to have them repacked. Owing to the delay caused by the re-packing and the additional handling to the fruit incident thereto the fruit did not reach the market for which it was intended until after the end of the season, when the price had materially fallen.

Held, that defendant by reason of his misconduct was responsible for the delay and was liable in damages and that in estimating the amount of such damages the English market must be taken to have been the one that both parties had in view.

Ritchie, K.C., and *Pineo,* for plaintiff. *Roscoe,* K.C., for defendant.

Meagher, J.] [Nov. 20.

ANDERSON *v.* MAUDE.

Arrest—O. 44, r. 3—Discharge from arrest—Construction of words "or for such other relief, etc."—Trial.

O. 44, r. 3 provides that a defendant who has been arrested under an order in the nature of a capias may at any time apply to rescind or vary it or to be discharged from custody "or for such other relief as may be just."

Held, that the latter words of the rule are not to be regarded as meaning only the same thing as the words which precede them but may fairly be taken to mean some relief not directly covered by the preceding words of the rule.

Defendant who was engaged in an occupation which took him frequently from place to place was arrested at a late hour of the night, when he was without legal advice, and being apprehensive that he might have to go to jail paid the amount of the claim but with an intimation that he intended to dispute it.

Held, 1. That his position was practically the same as if he were in custody and that he was entitled to a trial at the earliest possible moment.

2. That plaintiff must be required to go to trial within ten days, after pleadings were closed, failing which an order would pass directing re-payment of the money deposited with the sheriff.

J. M. Davidson, for plaintiff. *Bell,* K.C., for defendant.

Province of Manitoba.

COURT OF APPEAL.

Full Court.] [Nov. 6.

GAAR SCOTT *v.* OTTOSON.

Contract—Order for chattels given under seal—Covenant to give mortgage on land in statutory form to secure purchase-money—Nature of relief to which covenantee entitled—Right of offerer to withdraw from purchase before acceptance—Vendor's remedies when purchaser refuses to complete purchase—Right of action for price of goods when property in them has not passed to the purchaser.

Held, 1. An order for the supply of goods executed under seal is not revocable before acceptance as an ordinary order might be: *Xenos* v. *Wickham,* L.R. 2 H.L. 296; *Watrous* v. *Pratt,* 30 O.R. 541, and Pollock on Contracts, p. 52; and, if the goods have been supplied, the vendor may sue for the price which the purchaser has covenanted to pay, notwithstanding the purchaser has attempted to cancel the order, returned the goods and refuses to carry out the purchase. In such a case the vendor is not restricted to an action for damages for the breach of contract. *Waterous Engine Works* v. *Wilson,* 11 M.R. 287, and *Sawyer* v. *Robertson,* 1 O.L.R. 297, followed.

2. When the contract provides that, if the purchaser should refuse to accept the goods or give the notes stipulated for, the whole purchase-money shall become due and payable forthwith, the purchaser may be sued for the whole price in either of said events, notwithstanding that the property in the goods has not passed to him by reason of a provision that the ownership of, and title to, the goods should remain in the vendor until the purchase price be fully paid.

The contract in this case further provided that, for the purpose of securing payment of the price of the machinery, the defendants would deliver to the plaintiffs a mortgage on certain land in the statutory form.

Held, that it should be declared that the plaintiffs have an equitable mortgage on the land to secure the money and that the plaintiff should have the ordinary judgment for foreclosure or sale as they may elect, with the usual inquiries, taking of accounts, etc., as in the case of an ordinary mortgage with the

statutory covenants, giving the defendants the statutory time, twelve months, to redeem; but that they were not entitled to a decree containing the usual provisions for the sale of the land to satisfy their lien or charge, and it was not necessary to require the actual execution of a mortgage by the defendants in order to give the plaintiffs full relief.

Stacpoole, and *L. J. Elliott,* for plaintiffs. *Mulock,* K.C., and *Thorburn,* for the defendants.

Full Court.] [Nov. 16.

DITCH *v.* DITCH.

Alimony—Separation deed—Proof of former marriage of plaintiff—Setting aside deed of wife on grounds of undue influence, lack of independent advice and mental weakness—Husband and wife—Acquiescence and delay before commencing action.

A deed of separation executed by husband and wife, containing mutual covenants that they will thereafter live separate and apart from one another, that each will not thereafter compel the other to cohabit with, and will not disturb, trouble or molest the other and will not claim any of the property or goods of the other thereafter, unless it can be declared void for any reason such as fraud, duress, want of understanding on the part of the wife, lack of independent advice, misrepresentation or undue influence, if followed by an immediate separation, requires no other consideration to support it and is a complete defence to a subsequent action by the wife for alimony. *Hunt* v. *Hunt,* 31 L.J. 161; *Flower* v. *Flower,* 25 L.T.N.S. 902; *Marshall* v. *Marshall,* 5 P.D. 19, and *Clark* v. *Clark,* 10 P.D. 188, followed.

There was no evidence of any fraud, duress, misrepresentation or undue influence inducing the plaintiff to execute the deed, and the parties had been living apart for three years, but the trial judge held that she was not bound by it because of some weakness of mind—her husband having had her examined twice as to her sanity although pronounced sane—for lack of independent advice, and because of her distress of mind caused by her own recent revelation to the defendant of an alleged former marriage, which the trial judge found had not taken place. He also held that the deed was without consideration and therefore void.

Held, Richards, J.A., dissenting, that there was nothing in

the evidence, a summary of which will be found in the judgments, to warrant a finding that the plaintiff was not quite sane or did not understand what she was doing or that the deed was void for any of the other reasons given.

Per HOWELL, C.J.M., and PERDUE, J.A.:—The deed having been acted upon by both parties and not impeached by the plaintiff until after the lapse of ten years, it should not be set aside except upon the clearest proof that she was induced to sign it by some influence which made it not binding upon her and the delay was sufficiently excused. *Sibbering* v. *Balcarras*, 3 De.G. & Sm. 735, and *Allcard* v. *Skinner*, 36 Ch.D. 145, followed.

Per HOWELL, C.J.M.:—The statements which had been previously made by the plaintiff, under the circumstances set out in the judgment, to her husband and other persons, authenticated by her statutory declaration and by the recitals in the deed, that she had been previously married to and had cohabited with another man, tendered so strongly to prove that her marriage to the defendant was void, that the onus was thrown upon her to give some independent evidence that the former marriage was a fiction, and should not be held to be displaced merely by her oath at the trial that such statements were false.

Maulson, for plaintiff. *A. B. Hudson*, for defendant.

Full Court.] [Nov. 20.

GAS POWER AGE *v.* CENTRAL GARAGE CO.

Pleading—Joinder of defendants—Joinder of cause of action arising out of tort with one arising out of contract.

Appeal from decision of MACDONALD, J., noted ante, p. 707, dismissed with costs.

Full Court.] [Nov. 20.

WICKS *v.* MILLER.

Evidence—Parol agreement superseded by written contract—Implied obligation—Expressum facit cessare tacitum—Parol evidence to contradict written document—Formal release of all claims of plaintiff.

Held, 1. Evidence should not be allowed to prove the terms of a verbal agreement between the parties, when they subse-

quently entered into a written agreement relating to the same subject-matter, although the latter has been lost and it cannot be proved by a copy; and, when the plaintiff claiming under the verbal agreement cannot remember the contents of the written agreement, and the evidence on the part of the defendant as to such contents is not credited by the trial judge, the result is that no agreement is proved, and the plaintiff must fail.

2. The presumption of law that two parties making a purchase of land for their joint benefit should contribute equally to the payments required should not be applied in a case where they have reduced their agreement to writing containing the terms on which they purchased together, even when those terms cannot be shewn in consequence of the writing having been lost. In such a case the maxim "expressum facit cessare tacitum" applies. *Merrill* v. *Frame*, 4 Taunt. 329, and *Mathew* v. *Blackmore*, 1 H. & N. 762, followed.

The plaintiff's assignor had given the defendant, long after the accruing of the latter's alleged debt sued for, a release to the following effect:—

"I agree to release T. W. Miller from all agreements made before this date between himself and me and acknowledge this as a receipt in full for all moneys due me to date."

Held, that evidence contradicting the meaning of this writing and limiting its application to a particular set of items so as to exclude the debt sued for ($2,000), should not have been received at the trial, in the absence, at all events, of any proof of fraud, mistake or some other invalidating influence present in the transaction. *Jackson* v. *Drake*, 37 S.C.R. 315, followed.

Trueman, for plaintiff. *A. B. Hudson* and *H. V. Hudson*, for defendant.

KING'S BENCH.

Mathers, C.J.] [Nov. 10.

LAFVENDAL *v.* NORTHERN FOUNDRY & MACHINE CO.

Negligence—Use of defective materials—Degree of care required in inspection of materials put into a building—Presumption of negligence—Res ipsa loquitur.

In the course of his employment as a carpenter in the erection of a building for the defendants, the plaintiff had to walk along the top of one of a number of wooden joists 18 feet long, 10 inches wide and 6 inches thick, fixed in an upright position 25 feet from the ground. When the plaintiff reached the centre of

this joist, it broke across the broad surface in a diagonal splinter about 6 feet long, and the plaintiff fell to the ground, receiving serious and permanent injury. As the joists were delivered at the building, they were inspected by the foreman, whom the trial judge found to be an experienced, competent, careful and efficient man. He had rejected quite a number of them for different reasons and the trial judge found that, although he did not submit them to any test, or even to a careful visual examination, his examination was sufficient to ascertain whether they were straight and of the proper length or had any other defects apparent to a person standing by and looking at them as they were being handled. They had also to pass through the hands of a number of other workmen before they were finally placed in position, but no one noticed the defect in that particular joist before the accident.

Held, that the law presumes that there was negligence in making use of such defective material, that the defendants might, however, rebut that presumption by shewing that, in the selection of the joists, they had taken reasonable care to provide against defective materials being used; and that the finding upon the evidence should be that the breaking of the joists was due to a latent or concealed defect not discoverable on reasonable inspection; that the defendants and their foreman had adopted a reasonably sufficient mode of inspection and had exercised all that reasonable care and diligence that might be expected of a reasonably prudent man under the circumstances, and that the plaintiff, therefore, could not recover.

Labatt on Master and Servant, par. 14, 15; Thompson on Negligence, par. 3767, 3774; *Ormond* v. *Holland*, E. B. & E. 102; *Heaven* v. *Pender*, 11 Q.B.D. 507, and *Richardson* v. *Great Eastern Ry.*, 1 C.P.D. 342, followed.

Macneill and *B. L. Deacon*, for plaintiff; *Dennistoun*, K.C., and *P. C. Locke*, for defendants.

Robson, J.] [Nov. 10.

IN RE DAUPHIN ELECTION.

Application for recount—Mandamus to County Court judge to proceed—Return to clerk of the Crown in Chancery—Affidavit on application to County Court judge to order recount—Requirements of, under s. 193—Swearing on information and belief not sufficient.

The affidavit required by s. 193 of the Dominion Elections Act, R.S.C. 1906, c. 6, upon receipt of which the County Court

judge is to proceed to recount the ballots cast at an election of a member of the House of Commons, must be such as to make it appear to the judge that a deputy returning officer has done one or the other of the wrong things enumerated, and such requirement is not satisfied by the affidavit of an elector who merely states that he verily believes that such things had been done. All that was made to appear by the affidavit was the deponent's belief in certain facts, but the Act requires that the facts themselves must be made to appear by the affidavit. *Re North Cape Breton and Victoria Election*, 6 E.L.R. 37, 532, followed.

After the returning officer has made his return to the clerk of the Crown in Chancery, it is too late to apply, under s. 206 of the Act, to a judge of the King's Bench in Manitoba for an order compelling the County Court judge to proceed with the recount. *Bellechasse Election*, 17 Q.L.R. 294, and *Portneuf Election*, 1 Q.L.R. S.C. 268, followed.

Cooper, K.C., and *Meighen*, for applicant. *A. B. Hudson* and *Simpson*, contra.

Mathers, C.J.] [Nov. 13.

FRASER v. CANADIAN PACIFIC RY. CO.

Assignment — Building contract — Assignment by contractor without consent or knowledge of proprietor—Priority as between successive assignments—Notice to debtor.

One Garson entered into a contract in writing with a railway company for the erection of a number of stations. The contract provided that Garson should not assign it or sublet the work or any part of it without the written consent of the engineer. He, nevertheless, shortly after entering into the contract, made an arrangement with the plaintiff to the effect that the latter should construct the stations in his place and that he would turn over to the plaintiff the payments for the work as and when received from the company. The plaintiff then proceeded to do the work and completed it according to the contract. He did not notify the company of the arrangement between him and Garson. The company's officers knew that the plaintiff was doing the work, but had no reason to suppose that he was not doing it as Garson's manager or agent and gave no consent to any assignment. While the work was in progress, Garson gave the Imperial Bank an assignment of all his claims against the company for moneys then due or to accrue due to him from the company

and the bank at once gave notice of this assignment to the company. The company thereafter made payments of progressive estimates of the work to the bank and paid nothing to the plaintiff. When the bank took its assignment from Garson, it had no notice of the plaintiff's position, but, from about the time the first estimate was paid, it knew that the plaintiff was doing the work and that Garson from time to time transferred to him the progressive payments, with the understanding that they were to be handed over to the plaintiff.

Held, 1. The agreement between Garson and the plaintiff at most amounted to an equitable assignment of the money to be earned and the bank, having acquired priority for its assignment by first giving notice to the company, was not affected by its subsequent knowledge of the plaintiff's position, and was entitled to retain all money received and to receive the balance still unpaid by the company.

2. The plaintiff could, under the circumstances, have no claim against the railway company in respect of the work. *Burck* v. *Taylor*, 152 U.S. 649, and *In re Turcon*, 40 Ch. D. 5, followed.

George A. Elliott and *Macneil*, for plaintiff. *Curle* and *Bond*, for the company. *Fullerton* and *Foley*, for the Imperial Bank.

Province of British Columbia.

COURT OF APPEAL.

Full Court.] [Nov. 8.

REX v. DAY.

Criminal law—Speedy trial—Election—Change—Sheriff.

1. A person committed for trial and out on bail, appearing voluntarily with his counsel before a county judge and electing to be tried speedily cannot afterwards change his election so as to be tried by a jury.

2. The fact that the sheriff was not present on such occasion or that he did not notify the judge of the accused coming before him for election, does not invalidate such election.

3. An objection to a conviction by a civil court of a person for receiving property stolen from the navy, on the ground that such an offence should be dealt with by the naval authorities, is bad.

Therefore a motion for an order directing the county judge to state a case was refused.

Maclean, K.C., and *S. Henderson*, for accused, in support of the motion. *Aikman*, for the Crown, contra. *Pooley*, K.C., for the Admiralty.

Full Court.] [Nov. 20.

TURNER v. MUNICIPALITY OF SURREY.

Practice—Particulars—Interrogatories—On particulars refused, resort had to interrogatories.

Where a party, having asked for an dobtained an order for particulars, and the order was reversed on appeal, and then applied for dincovery by interrogatories, the judge at chambers dismissed the application on the ground that the application was an attempt to gain by another means that which had already been refused.

Held, on appeal, that the judge was right.

Davis, K.C., and *McQuarrie*, for appellant. *Kappele*, for respondent, not called upon.

Full Court.] [Nov. 27.

BROOKS, SCANLON, O'BRIEN CO. v. RHINE FAKKEMA.

Master and servant—Amount paid by employer for medical attendance—Such expenditure considered by jury in reaching verdict—Res judicata.

In an action against an employer for injuries received by an employee, the evidence shewed that when the employee was injured the employers paid some $686.30 in conveying the injured man to the hospital and in defraying his medical expenses. Counsel for the employers brought this fact to the notice of the court and jury during the trial, when plaintiff recovered a verdict of $4,500. The company claimed the amount disbursed, sued and recovered judgment.

Held, on appeal, that counsel for the employers, when he mentioned the amount at the former trial, did so with a view

to mitigation of damages, and that the jury evidently so considered it in arriving at their verdict.

Woodworth and *Creagh*, for appellant. *Ritchie*, K.C., for respondent company.

Full Court.] [Nov. 29.

EASEFELT v. HOUSTON & JOHNSON.

Practice—County Court—Speedy judgment—Motion for—Defence raised in pleadings but not set out in affidavit opposing motion—Slip of solicitor—Discretion.

In an action on a promissory note the defence was, inter alia, misrepresentation. Plaintiff moved for speedy judgment and defendant opposed it, but omitted to state in the affidavit that one of the grounds of defence was misrepresentation.

Held, on appeal, affirming the order of the county judge, that the defendant should be allowed in to defend.

D. Donaghy, for appellant. *Dockerell*, for respondent.

Book Reviews.

Company Law. By W. F. HAMILTON, K.C., of the English Bar and PERCY TINDAL-ROBERTSON, of Lincoln's Inn, Barrister-at-law, with Canadian Notes by W. R. PERCIVAL PARKER, of the Canadian Bar. Third edition 1911. Toronto: Canada Law Book Company, Limited. Philadelphia: Cromarty Law Book Company. 1911.

Hamilton's Company Law having proved to be a work of great utility, it was decided to issue a special Canadian edition for use of practitioners throughout the Dominion of Canada. This Canadian edition has now been issued, in which the plan has been adopted of having Canadian notes follow the main chapters of the English text. As the larger part of the Canadian statute law, with regard to trading corporations, has been modelled after the various English statutes, it is most convenient to have both the English and Canadian cases dealt with in one book. Mr. Parker's extensive practice as a corporation lawyer makes him eminently fitted to be the author of the Canadian annotations.

The Canadian notes relate to all phases of corporation law usually covered by a text-book, and amongst the sub-divisions which call for special mention, we note the Procedure for the licensing of foreign corporations, Secret profits of promotors, Ontario Legislation regarding prospectuses, the Powers of provisional directors, allottment of shares, Debenture stock, Floating charges, Shareholders' meetings and Winding-up procedure.

We heartily commend this new British-Canadian text to all who are interested in Canadian corporations. A feature which will be found to be of great convenience is the addition of appendices containing forms for use in obtaining incorporation in Ontario and forms for extra provincial licenses in British Columbia and Ontario. An elaborate index of over one hundred pages completes the volume.

The Law of Libel and Slander, and of Actions for words causing damage. By W. BLAKE ODGERS, K.C., Recorder of Plymouth, with Canadian Notes by W. J. TREMEEAR, of the Canadian Bar. Fifth edition. London: Stevens & Sons, Limited. Toronto: Canada Law Book Company, Limited. Philadelphia: Cromarty Law Book Company.

To the lawyer who has charge of a libel and slander case the latest edition of Odgers on Libel is almost indispensable. Probably in no branch of the law has there been such a thorough amendment of both the principles and practice during the last decade, as in the subject of this well-known text-book. The harshness and inadequacy of the English common law has been followed by remedial statutes in every Canadian Province and many of these are adapted from the British legislation which is fully dealt with in the text. The practice in civil actions for libel and slander has, as a result re-acquired any ratio of technicality which it may have lost when the Judicature Acts were passed. Whatever may be his practice in drafting his pleadings in other cases, the practitioner must beware, when pleading in an action for libel or slander, or he will find his case very materially prejudiced at the trial through his inattention to technical details.

The Canadian Notes at the end of each chapter cover all of the more recent cases in every Province. The Quebec decisions are included, as in many respects the Quebec law corresponds with the English law. An instructive decision by Judge David-

son of Montreal on this subject, as regards the law of "Qualified Privilege" is cited on page 306*i* and 306*j*.

The general index and the index of the Canadian Notes are both models of what an index should be. The subjects of Justification, Fair comment, Public meetings, Special damage, Injunctions, Privilege, Mitigation of damage, Disparagement of property, Contempt of court, Criminal libel, and the practice generally in both civil and criminal matters coming within the scope of the work, are discussed in a very practical and satisfactory way.

British Ruling Cases, from the courts of Great Britain, Canada, Ireland, Australia and other divisions of the British Empire (Annotated). Vol. I. Rochester, N.Y.: The Lawyers' Co-operative Publishing Company. Toronto, Canada: Canada Law Book Company, Limited. 1911.

This series of selected cases, to be quoted by the letters "B. R. C.," is a continuation, as to England, of the series completed in 1907, known under the title of English Ruling Cases; but in the British Ruling Cases the more important decisions in the appellate courts of other parts of the Empire are to be included. Volume 1 of this new series contains such well-known cases as *Reynolds* v. *Ashby*, dealing with fixtures in relation to conditional sales; *South Wales Miners Federation* v. *Glamorgan Coal Company*, as to breaches of contract through trade unions; *Quinn* v. *Leatham*, and *Taff-Vale Railway Company* v. *Amalgamated Railway Servants*, relating to the same subject; the famous cash carrier case, *British Conveyor* v. *Lamson Store Service Co.*, dealing with the law of maintenance as regards the protection of customers against trade rivals.

All these cases are very fully annotated with references to other recent cases in Great Britain, Canada and the United States. Amongst the Canadian cases reported in full in Volume 1, are *Lovitt* v. *Attorney-General of Nova Scotia*, a succession duty case; *R.* v. *Brooks*, the British Columbia "Zionite" case; *Fahey* v. *Jephcott*, to which is appended a very instructive note as to the liability incident to employing in factories, children under the age specified in the Ontario Factories Act; *Laishley* v. *Goold Bicycle Company*, an Ontario case as to future commissions of sales agents; *Lewin* v. *Lewin*, a New Brunswick case as to next-of-kin; *O'Connor* v. *Halifax Tramway Co.*, a Nova

Scotia case as to continuous passage on street railway lines; and *Metropolitan Life* v. *Montreal Coal Company*, an important appeal from the Quebec Courts in an accident policy case.

The text and annotations in Vol. 1 cover one thousand pages and there are in addition separate indices to the decision reported and to the annotations. These annotations are written by the editorial staff of "The Lawyers' Co-operative" which is a guarantee that the same efficiency which marked the initial volume will be continued throughout the whole work, as was done in the series of American cases known as the "Lawyers' Reports Annotated." This series will prove very valuable to the Canadian Bar and will doubtless be frequently cited in our courts.

The Law of Domicile in its relation to Succession and the Doctrine of Renvoi. By NORMAN BENTWICH, Barrister-at-law. London: Sweet & Maxwell, Limited, Chancery Lane. 1911.

This book is founded on the essay which was awarded the Yorke Prize at Cambridge University in 1910, and is published in accordance with the terms of the prize. The writer expresses his acknowledgments to his old teacher, Dr. Westlake, for much of value in his book; but the information which he has gathered is from a variety of other sources as well; and such a subject necessarily calls for a familiarity with international law in other countries as well as in England.

The nine chapters into which the essay is divided are:—1. Historical introduction; 2. The English conception of domicile; 3. Real and personal property; 4. Administration of the estate; 5. The effect of domicile upon the distribution of the estate; 6. Limitations of the regulation of the succession by the law of the domicile; 7. Death duties and domicile; 8. The doctrine of the renvoi in succession.

Mr. Bentwich has already shewn his capacity as a legal textwriter in his books on "The Law of Private Property in War," and "The Declaration of London." What he writes is up-to-date and accurate, and clearly expressed.

The Law relating to the Reduction of the Share Capital of Joint Stock Companies. By PAUL F. SIMONSON, M.A., Barrister-at-law. London: Effingham Wilson, 54 Threadneedle Street, E.C.; Sweet & Maxwell, Limited, 3 Chancery Lane, W.C. 1911.

The time was when company law became specialized as a branch of commercial law. The time has come when it is found

desirable and convenient to specialize various branches of company law. This is one of them, and it will be a very helpful addition to the library of every professional man dealing with companies and that means now-a-days the whole legal profession. In addition to the legal propositions advanced, and fortified by authorities, the author gives a number of useful forms and precedents, thus making a very complete summary of the law on this subject. The index is more complete than is generally given and therefore much to be commended, a remark which appropriately describes the volume as a whole.

Bench and Bar.

JUDICIAL APPOINTMENTS.

Wilfred Burwell Jonah, of Sussex, in the Province of New Brunswick, Barrister-at-law, to be Judge of the County Court for the Counties of Kings and Albert in the said province, in the room and stead of Charles Wedderburn, resigned. (Nov. 25.)

Flotsam and Jetsam.

"GO ABOUT YOUR BUSINESS."—The old Temple clock in London bears a curious inscription, the origin of which is ascribed to a chance remark.

Some two hundred years or so ago a master workman was employed to repair and put in a new face upon the clock. When his work was nearly done he asked the benchers for an appropriate motto to carve upon the base. They promised to think of one. Week after week he came for their decision, but was put off. One day he found them at dinner in commons.

"What motto shall I put on the clock, your Lordship?" he asked of a learned judge.

"Oh, go about your business!" his Honour cried, angrily.

"And very suitable for a lazy, dawdling gang!" the clock maker is said to have muttered, as he retreated. It is certain that he carved "Go about your business" on the base.

The lawyers decided that no better warning could be given them at any hour of the day, and there the inscription still remains.—*Harper's Weekly.*

ANALYTICAL INDEX

Editorials—*Continued.*

Elections—