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CROWN BONDS.

Among the recent statutes of the Dominion is one (51 Vict. c. 36) releasing lands from the operation of Crown Bonds registered in the office of the Queen's Bench. These bonds, so far as the Province of Ontario was interested therein, were released so long ago as 1873; but for some reason or other no similar Act was passed by the Dominion Government, and, consequently, bonds given by Dominion officials and registered in the Queen's Bench, continued to form a charge on their lands. This often resulted in great and needless inconvenience, delay, and expense in making title to lands, involving, as it did, searches for such bonds, and applications for Orders-in-Council for the discharge of any which might appear to be registered against former owners. The public and the professsion are indebted to Mr. Dalton McCarthy, M.P., for bringing about this useful piece of legislation.

OCCASIONAL RULES OF COURT.

We think objection may reasonably be taken to the mode in which the Occasional Rules of Court are published, or perhaps we should say, are not published. When any considerable number of Rules are passed, they are usually printed in pamphlet form, and official copies may be had at the booksellers by those who desire to have them. But in the case of single Rules, or one or two Rules, it is often thought unnecessary to print them at all, and the only steps taken to make them public are possibly the sending them to some of the Toronto daily papers, and they are sometimes published in this way in such a defective form that it is difficult to make out what they mean. This was notably the case with one of the Rules postponing the time for the Consolidated Rules to take effect. This method of publication is not at all satisfactory, and, to the country practitioners especially, exceedingly unfair. They, in common with the rest of the profession, are supposed to know the practice as prescribed by these Rules of Court, and yet there is no settled and established way by which they can keep themselves *au courant* with the Rules as they are promulgated. It was formerly the practice to publish the Rules in the Reports. That was certainly a better plan than not publishing them at all; at the same time it was not quite as convenient a method as might be suggested, because in due course the Rules got bound up with the Reports, and the Reports were not a suitable book of reference for such matters. A far better plan would be for the Law

Society to take steps to secure authentic copies of all Occasional Rules of Court as soon as they are passed, and have them printed in a uniform style, but separate and distinct from the Reports, so that they could be bound up separately—or interleaved in books of practice; and to distribute them along with the next number of the Reports issued after their passage. Our attention was drawn very forcibly to this matter the other day, when we were desirous of finding a Rule which had been passed under the statute relating to summary proceedings in criminal cases. Application was made to the Registrar of the Court of Appeal, who is supposed to be the officer of the court having the custody of its Rules, but he knew nothing about any such Rule. Application was then made to the Registrar of the Chancery Division, in which the particular matter was pending, and he was equally ignorant of any such Rule. Finally, on applying to the Common Pleas Division, a printed copy of a Rule passed in the High Court on the 17th November, 1886, was produced. We now print it for the benefit of our readers, in another column. This Rule, it seems, had been passed at a session of the judges when the learned Registrar of the Common Pleas Division was the acting Clerk, but strangely enough the other officers of the court, who ought to have been informed of its existence, seem to have been left in profound ignorance of it. We can only say, that if even the responsible officers of the court are thus left in ignorance of the Rules, how can it be reasonably expected that practitioners can keep track of them? Even the consolidators of the Rules appear to have been ignorant of the existence of the Rule we have referred to, for by Rule 3 they have repealed all former Rules passed by any of the Superior Courts of Law or Equity in Ontario, except those mentioned in the schedule, and this particular Rule is neither referred to in the schedule, nor is it included in the Consolidated Rules. This matter is a crying grievance, which the learned judges and the Law Society between them ought to remedy, and we trust they will do so.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The *Law Reports* for August comprise 21 Q. B. D. pp. 177-309; 13 P. D. pp. 117-140; 38 Chy. D. pp. 385-506; and 13 App. Cas. pp. 241-505.

PRACTICE—EVIDENCE ABROAD—COMMISSION—DISCRETION.

Taking up first, as is our custom, the cases in the Queen's Bench Division, *Coch* v. *Allcock*, 21 Q. B. D. 178, is deserving of attention. This was an appeal from the Divisional Court, granting the order for a commission to take evidence abroad.

The court (Lord Esher, M.R., Lindley and Lopes, L.JJ.), though affirming the order, on the ground that the examination of the witnesses in question could be taken under commission at less expense than bringing them to England, and that there was nothing to show that their presence in court was essential, never-

theless affirm that a party is not entitled to a commission *ex debito justitiæ*, but that it is a matter of judicial discretion, and ought only to be granted on reasonable grounds being shown for its issue. Lord Esher, who delivered the judgment of the court, says, at p. 181: "The court must take care, on the one hand, that it is not granted when it would be oppressive or unfair to the opposite party, and, on the other hand, that a party has reasonable facilities for making out his case, when, from circumstances, there is a difficulty in the way of witnesses attending at the trial. All the circumstances of each particular case must be taken into consideration."

When a party applies for a commission to examine himself, he goes on to say that the discretion must be exercised in a stricter manner, which agrees with the decisions of our own courts in *Price* v. *Bailey*, 6 P. R. 256; *Thomas* v. *Story*, 11 P. R. 417; and *Mills* v. *Mills*, 12 P. R. 473.

COSTS—ARBITRATION—"COSTS OF REFERENCE"—COSTS OF NEGOTIATING AND SETTLING TERMS OF SUBMISSION.

In re Autothreptic Steam Boiler Co., 21 Q. B. D. 182, Huddleston, B., and Charles, J., were called on to decide whether or not the costs of negotiating and settling the terms of a submission to arbitration by consent, but not in a cause, could be considered as part of "the costs of the reference," which were in the discretion of the arbitrator, and they decided that they were.

JUSTICE OF THE PEACE—INFORMATION NOT DISCLOSING INDICTABLE OFFENCE—REFUSAL TO ISSUE SUMMONS.

Ex parte Lewis, 21 Q. B. D. 191, was an application for a rule calling on a police magistrate to show cause why he should not hear and determine an application for summonses against one of Her Majesty's Secretaries of State and the Chief of the Metropolitan Police, for prohibiting public meetings to be held in Trafalgar Square. The application had been refused by the magistrate, on the ground that no indictable offence was shown by the information; and it was held by Wills and Grantham, JJ., to whom the application for the rule was made, that when a magistrate has refused a summons, on the ground that the information does not disclose an indictable offence, the High Court has no jurisdiction to review his decision either as to law or fact, and they therefore refused the rule.

PRACTICE—PAYMENT INTO COURT—DEFENCE SETTING UP DENIAL OF LIABILITY.

The case of *Davys* v. *Richardson*, 21 Q. B. D. 102, is an appeal from the decision of Lord Coleridge, C.J., and Mathew, J., 20 Q. B. D. 722, noted *ante* p. 354. The Court of Appeal (Lindley and Lopes, L.JJ.) were of opinion that, as the plaintiff's solicitor had acted *bona fide* in taking the money out of court and paying it over to his client before any application to refund was made, he ought not to have been ordered to repay it, and they therefore varied the order to that extent.

RAILWAY COMPANY—PASSENGER—TICKET, FAILURE TO PRODUCE—CONDITION INCORPORATED BY TICKET—FORCIBLE REMOVAL FROM TRAIN—ASSAULT.

Butler v. *The Manchester and Sheffield Railway Co.*, 21 Q. B. D. 207, is an important decision on a question of railway law. The plaintiff was a passenger on the defendants' railway. The ticket issued to him incorporated, by reference, certain conditions published in the defendants' time-tables, one of which was that a passenger should show and deliver up his ticket to any duly authorized servant of the company when demanded, and any passenger travelling without a ticket, or failing to produce or deliver it up when required, should pay the fare from the station whence the train originally started. The plaintiff lost his ticket, and being unable to produce it when required, was required to pay the fare from the place where the train had started, and on his refusing to do so was forcibly removed from the train, no more force being used than was necessary. The action was brought for assault, and was tried before Manisty, J., and a jury, and a verdict was rendered for the plaintiff for £25; but Manisty, J., directed judgment to be entered for the defendants, holding it to be an implied term of the contract, that on failure to produce his ticket, the plaintiff might be removed from the train. The plaintiff appealed; and it was held by the Court of Appeal (Lord Esher, M.R., Lindley and Lopes, L.JJ.) that the contract between the plaintiff and defendants did not by implication authorize the defendants to remove the plaintiff from the train on his failing to produce a ticket, and refusing to pay the fare, as provided by the condition; that the defendants were not justified in so removing him, and that the action was therefore maintainable. Without actually deciding the point, Lord Esher, M.R., expressed a doubt whether, under the authority of *Saunders* v. *South-Eastern Railway Co.*, 5 Q. B. D. 456, the condition incorporated on the ticket was not unreasonable, and therefore not binding on the plaintiff. At all events he was of opinion that even if it were binding, it only gave the defendants the right to proceed against the plaintiff for the amount of his fare, and did not justify his forcible expulsion from the train. By C. S. C. c. 109, s. 25, s.s. 9, and R. S. O. c. 170, s. 41, s.s. 10, express power is given to expel a passenger from a train on his refusal to pay his fare, but it is open to question whether these provisons would warrant the expulsion of a passenger who had paid his fare, but lost his ticket. This case would seem to show that they would not.

NEGLIGENCE—DANGEROUS PREMISES—VOLENT NON FIT INJURIA.

Osborne v. *London and North-Western Railway Co.*, 21 Q. B. D. 220, was an action brought against a railway company to recover damages for injuries sustained by the plaintiff by falling on steps leading to the defendants' railway station. These steps the defendants had allowed to be slippery and dangerous. There was no contributory negligence on the part of the plaintiff, but there were other steps which the plaintiff might have used, and he admitted that he knew the steps in question were dangerous, and went down carefully holding the handrail. Under these circumstances it was contended by the defendants that the maxim ***volenti non fit injuria*** applied, and that they were not liable; but the

court (Wills and Grantham, JJ.) was of opinion, that in order to succeed on that ground it should have been found by the jury as a matter of fact "that the plaintiff freely and voluntarily, with full knowledge of the nature of the risk he ran, impliedly agreed to incur it." That there being no such finding, the admission of the plaintiff that he knew there was danger was not sufficient to entitle the defendants to succeed.

PRACTICE—COSTS—COUNTER-CLAIM AGAINST THIRD PARTY—ORD. 65, R. 1 (ONT. C. R. 1170).

Lewis v. *Trimming*, 21 Q. B. D. 230, was an action by a landlord against his tenant, in which the defendant brought a counter-claim for illegal distress against the plaintiff and a third party. The case was tried by a judge without a jury, and judgment was given for the plaintiff on the claim, and the counter-claim, but for the defendant against the third parties for £2 5s. 0d, "with such costs as the defendant would be entitled to by law." Upon taxation a question arose whether the defendant was entitled to any, and if any, what costs as against the third parties. On appeal to Huddleston, B., and Charles, J., they held that, as under Ord. 65, r. (Ont. R. 1170), the costs were in the discretion of the judge—the case having been tried without a jury—and there having been no exercise of such discretion in favor of the defendant, he was not "entitled by law" to any costs.

PRACTICE—CONTEMPT OF COURT—DISCHARGE OF PRISONER.

In re Davies, 21 Q. B. D. 236, is one of those cases which indicates the difficulty which courts of justice, from time to time, experience in maintaining their proper and lawful authority as against the "legal crank," a creature with which all courts are liable to be more or less troubled. In this case, Mrs. Davies, conceiving she had some right to certain property, and having failed in maintaining her right in a court of law, proceeded, in violation of the judgment of the court, to attempt to take forcible possession. An injunction was granted by Kay, J., restraining her from molesting the tenants of the property; but, nothing daunted, she renewed her attempt to take possession, and was ultimately lodged in gaol in December, 1886, where she had ever since remained, although she had been offered her freedom on her giving an undertaking not to renew her contempt, which she declined to do. With the consent of the plaintiff, the court (Lord Coleridge, C.J., and Mathew, J.) made an order for her discharge, on the terms that the injunction should be made perpetual during the currency of the plaintiff's tenancy, that a copy of the order should be handed to the owner of the premises with a view to his obtaining the assistance of all constables and peace officers in case the defendant should renew her attempt to obtain forcible possession. That in case the defendant should be guilty of a further contempt, the official solicitor should, at the plaintiff's request, take the necessary steps to bring the offending parties before the court; and that Mrs. Davies should not be allowed to take any further proceedings without the leave of a judge in Chambers, and that if she did, the same were to be communicated by letter to the official solicitor, and the respondents were to be under no obligation to appear thereto unless the court otherwise ordered.

INN—SUFFERING GAMING—IGNORANCE OF LICENSED PERSON—KNOWLEDGE OF SERVAN..

Bond v. *Evans*, 21 Q. B. D. 249, was a prosecution of an innkeeper for breach of a statute which imposed a penalty on any licensed person who "suffers any gaming, or unlawful game, to be carried on on his premises." Gaming had taken place on the defendant's premises to the know' dge of his servant, but without his knowledge; and it was held by Manisty and Stephen, JJ., that the defendant was bound by the knowledge of his servant, and was rightly convicted.

HIGHWAY—EXPROPRIATED LAND—POWER OF COMPANY TO DEDICATE PART OF LAND EXPROPRIATED AS A PUBLIC HIGHWAY.

The sole point decided by the Court of Appeal (Lord Esher, M.R., and Lindley and Lopes, L.JJ.) in *The Grand Junction Canal* v. *Petty*, 21 Q. B. D. 273, was, that where land is acquired by a public company under a statute, for the purposes of their undertaking, it is competent for them to dedicate it as a public highway, if such use by the public be not incompatible with the objects prescribed by the Act. In this case the plaintiffs, a canal company, had, under a statute, expropriated certain land for a towing-path, and it appeared that the use of it as a public foot-path was not inconsistent with its use as a towing-path, and it was held that the company could, under these circumstances, dedicate the land as a public foot-path, subject to its use by them as a towing-path.

CRIMINAL LAW—LIBEL—INDICTMENT FOR PUBLISHING A LIBEL "KNOWING THE SAME TO BE FALSE"—CONVICTION FOR PUBLICATION ONLY—(C. S. C. C. 163, S. 2).

The short point decided in *Boaler* v. *The Queen*, 21 Q. B. D. 284, was simply this, that on an indictment for publishing a defamatory libel, "knowing the same to be false," the defendant may be convicted of merely publishing a defamatory libel.

LANDLORD AND TENANT—AGREEMENT FOR LEASE—FORFEITURE NOTICE—44 & 45 VICT. C. 41, S. 14 (R. S. O. C. 143, S. 11).

In *Swain* v. *Ayres*, 21 Q. B. D. 289, it was held by the Court of Appeal (Lord Esher, M.R., and Lindley and Lopes, L.JJ.), affirming the decision of Charles, J., 20 Q. B. D. 585, that an agreement for a lease is not a lease within the meaning of the Conveyancing and Property Act, 1881, s. 14 (R. S. O. c. 143, s. 11), and therefore the terms of that section do not apply to a tenancy under an agreement for a lease where there is no actual lease in existence, and no title to specific performance. In this case the defendant was in possession of the premises as tenant under an agreement for a lease, which provided that the lease to be executed thereunder should contain (*inter alia*) a covenant to keep the premises in repair, and a condition for re-entry for breach of such covenant. Rent had been paid under the agreement, but no lease had been executed. The premises being out of repair, the landlord brought the action to recover them as upon a forfeiture, without first giving notice under the above mentioned section. Referring to s. 14, Lord Esher says, at p. 292: "Does it apply to anything besides an actual lease in tangible existence? I am inclined to think it would be

correct to say that the section would apply to the case of something which in law is equivalent to an actual lease. What, then, would be such an equivalent? The distinction between law and equity is now abolished in the sense that the same court is to give effect to both, and that when the doctrines of law and equity conflict the latter are to prevail. I should, therefore, be disposed to say that when there is such a state of things that a Court of Equity would compel specific performance of an agreement for a lease by the execution of a lease, both in the Equity and Common Law Divisions the case ought to be treated as if such a lease had been granted, and was actually in existence." But he goes on to show, that by reason of the breach of the covenant to repair, without any circumstances such as a surprise, or some other excuse, the right to specific performance was lost.

BUILDING SOCIETY—BORROWING WITHOUT POWERS—DEPOSIT NOTE FOR LOAN CONTRACTED WITHOUT POWER.

In re Watson, 21 Q. B. D. 301, the directors of an unincorporated building society, which had no borrowing powers, borrowed money for the benefit of the society, and gave to the lender as security the promissory notes of the directors. The society was afterwards incorporated, and acquired borrowing powers. The appellant, who was the representative of the lender, applied to the society for repayment of the loan, and ultimately agreed to refrain from legal proceedings on the directors giving him a deposit receipt for the amount due. The directors accordingly gave him a deposit receipt under the seal of the society, stating that the money was lent by the appellant on the date of the deposit note, and he thereupon gave up to them the promissory notes of the directors. It was held by Cave and Wills, JJ., that the deposit note was not binding on the society. Wills, J., says, at p. 305: "In this instance every cardinal fact was equally within the knowledge of, and equally known to both of the parties, and the very object of the transaction was that which is its essential vice, according to my view, viz., that the money was borrowed for the purpose of repaying a loan illegally contracted, and to the payment of which, as a loan, the funds of the society could not be legally applied."

At the conclusion of his judgment he makes the following protest against the indiscriminate use of the words "fraud" and "fraudulent." "Fraud, in my opinion, is a term that should be reserved for something dishonest and morally wrong, and much mischief is, I think, done, as well as much unnecessary pain inflicted, by its use where 'illegality' and 'illegal' are the really appropriate expressions."

None of the cases in the Probate Division require notice here.

PRACTICE—COSTS OF MOTION ADJOURNED TO TRIAL.

In *Gosnell* v. *Bishop*, 38 Chy. D. 385, it was held by Kekewich, J., that on the taxation of costs under a judgment dismissing the action with costs, the costs of a motion by the plaintiff for an interim injunction, which was adjourned to the trial, but which was not brought on at the trial and was not alluded to, nor

anything said about the costs of the motion, might, nevertheless, be taxed to the defendant as part of the costs of the action.

SHARES IN FOREIGN COMPANY—PLEDGE OF CERTIFICATES—BLANK INDORSEMENT—DEFECTIVE TITLE—FRAUD.

Williams v. *Colonial Bank*, 38 Chy. D. 388, was a case in which there was a struggle between two innocent persons as to which should bear a loss occasioned by the fraud of a third party. The plaintiffs were the executors of an English holder of shares in an American railway, and in order that the shares might be registered in their names, so as to enable them to receive the dividends, and, if necessary, to sell the shares, signed blank transfers, together with powers of attorney indorsed on the share certificates, and gave them to their brokers in London, who fraudulently deposited them with the defendants to secure advances made to themselves, and afterwards became bankrupt. According to American law the certificates were not negotiable, but the rightful holder of them with the indorsed transfers was entitled to be registered as holder. By the practice of the railway company, transfers executed abroad by executors are required to be attested by a consul, which had not been done, and without this, they were not regarded in the Stock Exchange as duly indorsed, though this want of attestation would not prevent registration if the railway company were otherwise satisfied of the genuineness of the signatures. There was some evidence that, under the circumstances, the defendants would be entitled to be registered, on the ground that the plaintiffs had estopped themselves from disputing the title of the holders of the certificates. But it was held by Kekewich, J. (36 Chy. D. 659, see *ante* p. 73), and the Court of Appeal (Cotton, Lindley and Bowen, L.JJ.) that, as the question whether the defendants were to be deemed rightfully in possession of the certificates turned upon transactions in England, it was to be decided by English and not by American law, though the consequences of being rightfully in possession of them depended on American law. But the Court of Appeal differed from Kekewich, J., as to the effect of the defective transfer, and held that as the certificates did not represent on the face of them that the person in possession of them would be entitled to the shares, the absence of the consul's attestation made the transfer irregular, and was sufficient to put a party dealing with the brokers on inquiry, and the executors, therefore, were not estopped from disputing the title of the defendants, and must be held entitled to the shares as part of their testator's estate. The broad principle of law on which the Court of Appeal proceeded was "that except in the case of a sale in market *overt*, a person does not acquire a title to a personal chattel from anybody except the true owner."

PRACTICE—PARTICULARS OF DEFENCE.

Spedding v. *Fitzpatrick*, 38 Chy. D. 410, is a decision of the Court of Appeal (Cotton, Fry and Lopes, L.JJ.) varying an order of Kay, J. The action was brought to restrain trespass on a road. The defendants set up that the road in question was a highway, and were ordered to amend so as to show the mode, or title, in or under which they claimed that the road had become a highway. The

defendants then amended by alleging that the road had for many years been used by the public, as of right, as a highway, having been dedicated to the public by the plaintiff and her predecessors in title, or some of them. Kay, J., then made an order that the defendants should deliver to the plaintiff full particulars of the nature of all acts of dedication relied on by the defendants, and if the defendants claimed by acts of dedication other than permissive uses, particulars of such acts, with dates, and by whom done. From this order the defendants appealed, and it was held by the Court of Appeal that although under the present system of procedure the Court will oblige a party to give such information as to the nature of his case, as is requisite to prevent his opponent from being taken by surprise at the trial, yet, that the order appealed from went too far, and should be limited to compelling the defendants, if they relied on specific acts of dedication, or specific declarations of intention to dedicate, whether alone or jointly with evidence of user, to set forth the nature and dates of those acts or declarations, and the names of the persons by whom they were done or made, and they varied the order accordingly.

COMPANY—SHARES ISSUED AT A DISCOUNT.

In re Almada and Tirilo Co., 38 Chy. D. 415, the question was very similar to that disposed of *In re Addlestone Linoleum Co.*, 37 Chy. D. 191 (noted *ante* p. 202). In this case a limited company issued shares at a discount, so as to render the shareholder liable for a smaller sum than that fixed as the value of the shares by the articles of association, and it was held that such issue was invalid, notwithstanding the contract with the shareholder under which the shares were issued was registered under the Companies Act of 1867, which had not been done in the *Addlestone* case. As Cotton, L.J., puts it, "It is perfectly clear that an agreement that you should pay 2s. on the shares you take, and not pay up the other 18s. which would make up the amount in money fixed by the memorandum of association would be entirely *ultra vires*." The Court of Appeal (Cotton, Fry and Lopes, L.JJ.) therefore reversed the decision of Chitty, J., who had held that the issue of the shares was valid. See another case, *In re New Chili Gold Mining Co.*, point to the same effect.

"TRUE COPY"—BLANKS IN COPY—EFFECT OF.

Perhaps the only point for which it is necessary to notice *Sharp* v. *McHenry*, 38 Chy. D. 427, a bankruptcy case, is the decision of Kay, J., as to the meaning of the words "true copy." By the Bills of Sale Act, 1878, "a true copy" of a bill of sale is required to be filed with the registrar. In this case the copy filed stated the amount of the debt in the operative part, but by a clerical error in the power of sale, and also in the covenant for quiet enjoyment until default, the debt was referred to as "the said sum of ," though the blanks did not occur in the original; but it was held by Kay, J., that notwithstanding these omissions the copy was "a true copy" within the meaning of the Act, and that "a true copy" does not necessarily mean an exact copy, but one that is true in all essential particulars, so that no one can be misled as to the effect of the bill of sale.

WILL—REVOCATION—SPECIAL POWER OF APPOINTMENT—SUBSEQUENT REVOCATION OF GIFTS "IN FAVOR OF"—DEVISE OF POWER.

In re Brough. Currey v. *Brough*, 38 Chy. D. 456, Kay, J., decided that where a testator by his will gave to his sister H. a life interest in a share of his residuary estate, and a special power of appointment by will over the capital of the share, and afterwards by a codicil revoked all devises and bequests "in favor of H.," that the power was thereby revoked, as well as the life interest.

RAILWAY COMPANY—SHARES—EXECUTORS—FORGED TRANSFER—FORGERY BY ONE OF TWO EXECUTORS—STATUTE OF LIMITATIONS (21 JAC. I, C. 16) S. 3.

In *Bartow* v. *North Staffordshire Railway Co.*, 38 Chy. D. 458, two points of some interest were decided. First, that where shares are standing in the name of two executors and trustees, registered and subject to the provisions of the *Companies Act*, 1845, and one of the executors and trustees executed a transfer of such shares, and forged the signature of his co-executor and trustee thereto, that such transfer was wholly void, and did not even transfer a moiety of the shares. Second, that in an action to compel the company to replace the stock, by the executor whose name had been forged, and a new trustee who had been appointed in the place of the forger, the cause of action arose not from the date of the transfer, but from the time when the company refused to comply with the application of the plaintiffs to replace the stock in their names. In answer to the contention that the transfer was good as to a moiety, Kay, J., says at p. 465, "This was answered by the late Vice-Chancellor of England in *Sloman* v. *Bank of England*, 14 Sim. 488. If the transfers were good as to one half, the other half would remain in the names of the two, and he might thus transfer one moiety of that, and so on until the residuum was infinitesimal."

COMPANY—ISSUE OF SHARES AT A DISCOUNT—REDUCTION OF CAPITAL.

In re New Chili Gold Mining Co., 38 Chy. D. 475, the point presented for adjudication was very similar to that *In re Almada & Tirito Co.*, noted *ante*. The liquidator of a company in voluntary liquidation entered into an agreement for the sale of its property to a new company, part of the consideration being the issue to each shareholder of the old company of a £1 share in the new company, with 15s. credited as paid up thereon, in exchange for each fully paid up £1 share in the old company held by such shareholder, the remaining 5s. to be payable by the allottee at the times mentioned in the agreement. The whole of the shares in the new company, 500,000 in number, were issued to the shareholders in the old company under this agreement. The company afterwards increased its capital by the creation of 500,000 more shares of £1 each, of which 50,000 were issued as fully paid up, as the consideration for the purchase of other property by the company, and 240,000 were issued at a discount of 15s. per share. After this had been done the company passed a special resolution for the reduction of the capital by cancelling paid-up capital to the extent of 15s. per share as having been lost or being unrepresented by available assets. The company having petitioned for the confirmation of this resolution by the court, and there

being no evidence of any loss of capital otherwise than by reason of the issue of the shares at a discount, it was held by North, J., that the issue of the shares at a discount was illegal, and that the shareholders were still liable to the extent of 15s. per share, and the proposed reduction of capital could not, therefore, be sanctioned.

EQUITABLE MORTGAGE OF REVERSIONARY INTEREST—REAL PROPERTY LIMITATION ACT, 1874 (37 & 38 VICT. C. 57), SS. 1, 2 (R. S. O. C. 111, S. 5, S.S. 12).

Hugill v. *Wilkinson*, 38 Chy. D. 480, disposes of what appears to be a new point under the Statute of Limitations. Joseph Wilkinson, being entitled to a reversionary interest in the real estate of his grandfather, Joseph Hugill, expectant on the life of a certain person who died in 1886, in 1870, in order to secure a loan of £150, charged this interest in favor of John Wilkinson. Joseph Wilkinson afterwards became bankrupt, and his reversionary interest, subject to the charge, vested in the official receiver. The present action was brought for the partition of Joseph Hugill's estate, and a reference was directed as to the parties interested. Upon this reference John Wilkinson carried in a claim as an incumbrancer on Joseph Wilkinson's share, and his claim was contested by the official receiver, on the ground that it was barred by the Statute of Limitations. But North, J., held that, though the personal claim against Joseph Wilkinson might be barred, yet the claim against the land was not barred, because the time did not begin to run for the purpose of barring a foreclosure until the reversionary interest fell into possession.

COMPANY—TRANSFER OF SHARES—DEFECTIVE TRANSFER—INCHOATE LEGAL TITLE—PRIOR EQUITABLE TITLE.

Roots v. *Williamson*, 38 Chy. D. 485, presents some points of similarity to *Williams* v. *Colonial Bank*, noted *supra*. The deed of settlement, under which a company was formed, provided (1) that no person should be treated as a shareholder unless and until he had been registered in the register of shareholders; (2) that no person should be registered as a shareholder until by execution of the deed of settlement, or some deed referring thereto, he should have undertaken all the obligations of a shareholder; (3) that every transfer should be made by deed, to be left at the office of the company.

The plaintiff purchased shares in the company, which were transferred to, and registered in the name of, one Williamson, who held them as her trustee. Williamson, being indebted to the defendants, in fraud of the plaintiff, executed to the defendants a transfer of the shares; the deed of transfer (which did not refer to the deed of settlement) was sent by the defendants, together with the certificates for the shares to the office of the company for registration, but the defendants did not execute, or offer to execute, the deed of settlement. The company having received notice that the plaintiff claimed to be the beneficial owner of the shares, did not register the defendants' transfer. This action was brought by the plaintiff to establish her title to the shares, and it was held by Stirling, J., that the defendants had neither a complete legal title to the shares, nor, as between themselves and the company, an unconditional right to be regis-

tered as shareholders, and that their title being inchoate only, was insufficient to defeat the plaintiff's prior equitable title.

TENANT FOR YEARS—PERMISSIVE WASTE.

It will be useful to refer to *Davies* v. *Davies*, 38 Chy. D. 499, if for no other reason than to note the view expressed by Kekewich, J., on the subject of the liability of a tenant for years for permissive waste, a point that is not altogether free from doubt.—See *Barnes* v. *Dowling*, 44 L. T. N. S. 809. The question arose in this case under the following circumstances: By 40 & 41 Vict. c. 18, s. 46, tenants for life are empowered to make leases for twenty-one years binding on the remainderman, but such leases are not to be made "without impeachment of waste." Under this statute a tenant for life made a lease for twenty-one years, but exempted the lessee from liability for "fair wear and tear and damage by tempest," and Kekewich, J., held that this provision rendered the lease void, because it exonerated the lessee from liability for permissive waste for which he would otherwise have been subject.

MUNICIPAL ELECTION—DUTY OF RETURNING OFFICER—DISQUALIFICATION OF CANDIDATE.

In *Pritchard* v. *Mayor of Bangor*, 13 App. Cas. 241, the House of Lords, we are glad to see, has affirmed the decision of the Court of Appeal in *Reg.* v. *Mayor of Bangor*, 18 Q. B. D. 349, noted *ante* vol. 23, p. 142, holding that it is the duty of a returning officer, at a municipal election, simply to count the votes, and to declare to whom the majority has been given, and that he has no jurisdiction to pronounce upon the qualification of the candidates, or to declare that the candidate having the minority of votes is elected, on the ground of the disqualification of the candidate having the majority.

LANDLORD AND TENANT—DEMISE TO TWO AS TENANTS IN COMMON—COVENANT, WHETHER JOINT OR SEVERAL.

The point involved in *White* v. *Tyndall*, 13 App. Cas. 263, was a very simple one, but one which seems to have caused a conflict of opinion in the Irish courts. Premises were demised to G. and A., "their executors, administrators and assigns," *habendum* to "the said G. and A., their executors, administrators and assigns, as tenants in common, and not as joint tenants," at a single yearly rent; and G. and A. covenanted, "for themselves, their executors, administrators and assigns, that they, the said G. and A., or some or one of them, their executors, administrators or assigns," would pay the rent and keep the premises in repair. G. having died during the term, the lessor sued A. and the executors of G. for breaches of the covenant occurring after G.'s death. G.'s executors contended they were not liable, and the sole question was whether the covenant was joint or several. The Irish Common Pleas Divisional Court held the covenant to be joint only, and, therefore, that G.'s executors were not liable. The Irish Court of Appeal, on the other hand, held that the covenant must be construed by reference to the interests of the covenantors, and that as they were tenants in common, the covenant was joint and several. The House of Lords, however, reversed the Court of Appeal, and affirmed the decision of the Divisional Court.

LANDLORD AND TENANT—LEASE—CONSTRUCTION.

In *Dynevor* v. *Tennant*, 13 App. Cas. 279, the House of Lords affirmed the decisions of the Court of Appeal (33 Chy. D. 420), and Pearson J. (32 Chy. D.,375). The case turned upon the construction of a lease. D. and C., being co-owners of an estate, made a lease, for a term of one thousand years, of a strip of land intersecting the estate, to a canal company for the purpose of making a canal, subject to a proviso that nothing should prevent D. and C., "their heirs or assigns," from using any of the land demised, or any stream of water flowing over the same, or from granting any way-leases across the same for the carriage of goods, etc., or for any other purpose in like manner, as they could have used the same in case the lease had not been granted, but so as not to injure the canal. The canal was made and the estate was afterwards partitioned between D. and C., the reversion in a portion of the land covered by the canal being conveyed to C., and the adjoining lands on each side being conveyed to D. C. subsequently conveyed the reversion in the canal to the company. D., as owner of the lands intersected by this portion of the canal, claimed the right to grant way-leases, etc., and build a bridge across it, for the purpose of making an access from one side to the other. The House of Lords, however, came to the conclusion that the proviso in the lease operated as a covenant with D. and C. as owners of the reversion, and not as owners of the adjoining lands; that this covenant ran with the reversion, and that when the reversion in that portion of the canal became vested in the lessees, there was a merger, and the rights under the proviso were extinguished as to that part of the canal.

CONTRACT INDUCED BY MISREPRESENTATION—RESCISSION OF CONTRACT—PARTNERSHIP—DAMAGES.

In the case of *Adam* v. *Newbigging*, 13 App. Cas. 308, the House of Lords affirmed the decision of the Court of Appeal (34 Chy. D. 582), noted *ante* vol. 23, p. 229. In this case it may be remembered the plaintiff was induced by misrepresentations, made without fraud by the defendants, to become a partner with them in a business which was in fact insolvent. The business having failed with large liabilities, the plaintiff claimed a rescission of the contract and repayment of his capital, though the business which he restored to the defendants was worse than worthless; and it was held that he was entitled to the relief, and that the defendants could not recover against him for money lent and goods sold by them to the partnership. The House of Lords refrained from deciding whether the defendants were bound to indemnify the plaintiff against the general liabilities of the firm, and a declaration to that effect was struck out.

BANKER—PLEDGE—DEPOSIT BY MONEY DEALER OF CUSTOMER'S SECURITIES—PURCHASER FOR VALUE WITHOUT NOTICE—NOTICE OF INFIRMITY OF TITLE OF PLEDGOR.

Sheffield v. *London Joint Stock Bank*, 13 App. Cas. 333, is the case known as *Easton* v. *London Joint Stock Bank*, 34 Chy. D.95, when before the Court of Appeal. This is another case in which a conflict arose between the rightful owner of shares and bonds, and a person to whom they had been transferred in fraud of the true

owner. Lord Sheffield, the true owner, gave to one Easton certificates of the shares, with transfers thereof, executed by him in blank, and also foreign bonds (alleged to be negotiable securities), for the purpose of raising £26,000. Mozley, a money dealer, advanced the money, and the securities were handed to him as security for the advance. Mozley then transferred these securities, with others, to various banks, as security for large loan accounts, the blanks in the transfers of the stock being filled in with the names of the banks' nominees. The banks in so dealing with Mozley either actually knew, or had reason to believe, that the securities did or might belong, not to Mozley, but to his customers. Mozley having become bankrupt, the bank sold some of Lord Sheffield's securities, and claimed to hold the proceeds and the unsold remainder, as security for all the debt due to them by Mozley. The House of Lords (reversing the decision of the Court of Appeal) held that though the banks had the legal title to the securities, they were not purchasers for value without notice, but ought to have inquired into the extent of Mozley's authority, and this whether the securities were negotiable or not, and that upon payment to the banks of the money advanced by Mozley to Easton, Lord Sheffield was entitled to the value of such of the securities as had been sold, and to the remainder which were unsold.

PRACTICE—PETITION TO APPEAR IN FORMA PAUPERIS.

Bowie v. *Ailsa*, 13 App. Cas. 371, was an application for leave to appeal *in formâ pauperis*. The action was brought to have it declared that the plaintiff, as a member of the public, had a right of fishing in a certain tidal river flowing through land belonging to the defendant. It appeared that subscriptions had been taken up to assist the plaintiff in the litigation. The application was refused.

PATENT—INFRINGEMENT—DAMAGES.

The United Horse-Shoe & Nail Co. v. *Stewart*, 13 App. Cas. 401, was an action by the assignees of a patent for the manufacture of horse-shoe nails, to recover damages for the infringement of the patent. The plaintiffs did not grant licenses, but manufactured the nails themselves. It was admitted that the defendants had sold a number of boxes of nails manufactured in such a manner as to infringe the plaintiffs' patent. Under these circumstances the House of Lords came to the conclusion (reversing the court below) that to the extent to which the plaintiffs' trade was injured by the defendants' sales, they were entitled to substantial damages, and that the measure of damages was the amount of profit which they would have made if they had themselves effected such sales, deducting a fair percentage in respect of sales due to the particular exertions of the defendants, and that the mere possibility that the defendants might have manufactured and sold an equal quantity of similar nails without infringing the patent was no ground for reducing the damages to a nominal sum. Their Lordships, however, held that the fact that the plaintiffs had, in consequence of the defendants' unlawful competition, reduced the price of the nails which they had themselves sold, did not entitle them to recover as damages the profits they had lost by such reduction.

VOLUNTARY CONVEYANCE IRREVOCABLE—SUBSEQUENT PURCHASER UNDER EXECUTION—13 ELIZ. C. 5—27 ELIZ. C. 4.

The only remaining case to be noted is *Godfrey* v. *Poole*, 13 App. Cas. 497, a decision of the Judicial Committee on appeal from New South Wales. A debtor conveyed all his real estate to a trustee to sell and pay creditors, and as to any surplus, to pay the same to trustees for the debtor's wife for her separate use for life, and after her decease, in trust for their children in equal shares. The plaintiff subsequently became the purchaser under execution of the grantor's interest in part of the land comprised in the conveyance. Their Lordships held, affirming the court below, that the deed of conveyance was not revocable, in consequence of the ultimate trust for the wife and children; that it was not void as intended to delay or defeat creditors, under 13 Eliz. c. 5; nor was it void under 27 Eliz. c. 4; and the subsequent sale for value not being made by the voluntary grantor, there was no presumption that the prior grant was fraudulent.

TRUSTS.

During the past year a system of dark and mysterious combinations, known as "Trusts," have sprung up in the industrial and commercial world. They have increased rapidly and have excited the alarm of thinking men. Though many in number, they are one in type and purpose. As in business the trust is an upstart, so, in law, it is a nondescript. It is the combination of a few men who wield all the powers of a mighty corporation without being subject to the limitations or responsibilities of a corporation. They can limit production; cut off employment; lower wages; advance prices; control markets; stifle competition; establish monopoly. Producers, wage-earners and consumers, trade, business and the masses are at their mercy. Their power is unchecked by legal restraints or safeguards. They operate in secret and recognize no legal control or regulation. Their end is self enrichment. It is centralization of financial and commercial power without parallel or precedent. It is simply czarism in business.

The purpose of the "trust" is to make larger profits by decreasing cost, limiting production and increasing the price to the consumer. This it accomplishes by presenting to competitors the alternative of joining the "trust" or being crushed out. Its organization is intricate and subtle. It is an abnormal, unnatural and dangerous development; a sort of financial anaconda, which crushes the life out of the small dealer by driving him into bankruptcy, and then swallows his profits.

When we had slavery in this country, we objected to it on two grounds. First, that it was morally wrong; second that it divided the South into two classes—the rich and the aristocrats on the one hand, and the hopeless poor on the other. Slavery was opposed to the genius of our institutions, which declare

that every man shall have his chance, and that no man shall deprive him of that chance. We fought on many a bloody field until the principle of equality was vindicated; and now the South has entered on a new commercial life which is as much better than the old as gold is better than copper.

The new danger is from the North; and it is, if possible, more subtile and formidable than slavery ever was. When capitalists combine to control the market, they crowd scores of little fellows to the wall, in order to make their control more complete and kill the spirit of competition; the small dealer is doomed, and we are governed by a syndicate which squeezes tens of millions out of necessities.

Take the sugar trust for example. In October, 1887, most of the refineries, including all the New York and Jersey City refineries, four in Boston, one in Portland, two in New Orleans, and one in St. Louis, representing altogether eighty-five per cent of the sugar refining business, formed a combination or "trust." The remaining refineries, being two in San Francisco, two in Philadelphia, one in Boston, and one in St. Louis, representing, altogether, fifteen per cent. of the business, did not take part. The trust was not incorporated, but was called the Sugar Refineries Company. Each separate refiner was incorporated; all the stock of these corporations was turned over to trustees, and the trustees issued "trust certificates" in payment for the stock. This placed all the corporations, hence all the refineries, in the hands of trustees. The trustees could elect the directors of the corporations, and thus place themselves as trusted agents in charge. The trust certificates are largely "water," and their par value is three or four times greater than the par value of the stock held by trustees. The amount of trust certificates may be increased by a majority vote of the certificate holders. Twice has an increase been made already, and $45,000,000 of trust certificates are now out.

Since the trust was formed, the production of refined sugar has decreased. By order of the "Trust," two refineries in Boston have been closed, two in New York, two others have been temporarily shut down, and still others have had the production decreased one-fourth. Refined sugar has advanced in price from three-fourths to one cent a pound since the trust was formed. Refined sugar was worth in February, 1887, $5.93, but in February, 1888, was worth $6.88. The average price of granulated sugar in 1887, was six cents, but the average price during January, 1888, was seven and one-sixteenth cents.

Competition has practically disappeared. The San Francisco sugar rarely gets further east than the Missouri River, and never competes east of Chicago. The object of the "Trust" is frankly stated to be to "limit production."

As to the refined sugars, the trust regulates its own prices, because it is the only seller of that article. One importer of raw sugar is reported to have lost $15,000 and another has lost $16,000 on a single shipment. These losses as they accrue will produce bankruptcy and ruin among the entire class of importers. They are at the mercy of the "Trust," and it has already shown itself to be merciless. As to the refined sugar, it has proceeded with a singular and malicious perversity towards small wholesale buyers. It has a fixed maximum

wholesale price, from which it gives a trifling rebate to purchasers of 100 barrels, while the rebate to purchasers of over 1,000 barrels is quite liberal—that is, for a trust monopoly to concede to its customers. But at the best, the rise is fully one to two cents a pound. This amounts to from $20 to $40 a ton, and, as the consumption of the entire country is 2,800,000 tons a year, the profits of the colossal "combine" can be readily estimated.

The Standard Oil Trust, The American Cotton-seed Oil Trust, The Envelope Trust, The Glass Trust, The New York Meal Trust, The Brooklyn Warehouse Trust, The Milk Trust, The Oil Cloth Trust, The Sandstone Trust, The Pitch and Coal Tar Trust, are other examples that may be mentioned. These were investigated recently by a Committee appointed by the Legislature of New York. Other "Trusts" besides the abovementioned were unearthed, but not investigated. They include upholsterers' felt, lead, lead-pencils, cartridges and shells, watches and watch cases, clothes wringers, carpets, nails, undertakers and coffins, cordage, planes, brewers, silver plate, plated ware, steel rails and hog slaughterers. They are spreading, in fact, like a disease through the entire commercial system.

Having ascertained in a measure the extent of the evil, we naturally seek a remedy.

Turning to the common law, we find that it has been its policy to limit the time during which a person may lock up his personal property or real estate. In Pennsylvania, for example, trusts for the accumulation of rents and profits cannot be created for a longer term than the life or lives of any grantor or grantors, and the term of twenty-one years from the death of any such grantor; that is to say, only after such decease during the minority or respective minorities, with allowance for the period of gestation; and all other trusts for accumulation are void in so far as these limits are exceeded.* It is well settled that merchandise, land and shares of stock, in fact every kind of valuable property, both real and personal, that can be assigned at law, may be the subject of a trust.† But each State, by its statutes, generally provides and narrows the time during which property may be tied up by a trust; and, if a trust is formed for a period longer than allowed by statute, the trust itself is void.‡ Accordingly, a modern "Trust," whose property consists of real estate in New York, would be void. But there are common-law decisions holding that personal property may be placed in trust for the purpose of carrying on business in the name and under the management of the trustees. In the case of *Holmes* v. *Mead*,§ the court said: "A trust in personal property, which is not in conflict with the statute regulating the accumulation of interest and protecting the suspension of absolute ownership in property of that character, is valid when the trustee is competent to take, and a trust is for a lawful purpose, well defined as to be capable of being specifically executed by the court. . . . Trusts of personal property are not affected by the statute of uses and trusts, which applies only to trusts in real property."

In *Gott* v. *Cook*‖ the court said: "The Revised Statutes have not attempted

* Washburn, Real Property, 684.
† Perry on Trusts, par. 67.
‡ Gerrard, Titles to Real Estate, 228.
§ 52 N. Y. 332 (1873).
‖ 7 Paige, 521.

to define the objects for which express trusts of personal property may be created, as they have done in relation to trusts of real estate. Such trusts, therefore, may be created for any purposes which are not illegal."

In *Power* v. *Cassidy*,* the court said: "The law does not limit or confine trusts to personal property, except in reference to the suspension of ownership, and they may be created for any purpose not forbidden by law."

Many of the States, including Michigan, Wisconsin, Minnesota, California, Dakota, North Carolina, Georgia, Pennsylvania, Connecticut, Kentucky and Vermont, have statutes expressly specifying the object for which a trust may be created.†

The recent decision in *Louisiana* v. *America. Cotton-seed Oil Trust* held that where an Association of persons or an unincorporated joint stock company assume to act as a corporation, a suit will lie in the name of the State against such person or association, even though the corporate acts done are declared not to be done as a corporation, but as a commercial partnership or as a board of trustees,‡ but this view of the law would not be sustained in any of the other States; nor would it be sustained under the old common law of England. Unincorporated joint stock companies have existed for years and are common throughout all the other States.§

If the "Trust" is to be considered a corporation, the question arises whether a corporation thus incorporated in one State can do business in another. Each State pursues its own methods in regard to granting acts of incorporation; and, under the earlier decisions of the Supreme Court of the United States, a State that granted acts of incorporation only through its legislature, and presumably, after careful investigation of the membership of the proposed company, its means and its purposes, could protect itself from the companies that might get acts of incorporation under the general incorporation laws of another State, because the principle was maintained that a corporation created by one State could do business in another State only by grace of the latter State This was the doctrine of the Supreme Court in 1876 in the case of the *Insurance Co.* v. *Doyle.*|| In that case, the permission of the State of Wisconsin to a foreign insurance company to do business within its limits was withdrawn, because the insurance company removed its litigation from the State to the Federal courts. The Supreme courts held in this and a somewhat analogous case that also came from Wisconsin a year or two before (*Morse* v. *Insurance Co.*¶) that a State had no right to require that a company doing business within its territory should agree not to resort to the Federal courts; but it had a right to require every foreign corporation to take out a license as a condition of doing business; and that license the State may revoke at its pleasure for any reason. The court said: "As the State has a right to exclude such company, the means by which she

*79 N. Y. 602, 613 (1880); Buckland *v.* Buckland, 1 Keyes (N.Y.) 141 (1864).

†Stevenson's American Statute Law, par. 1703.

‡Ry. & Corp. L. J. 509.

§Cook, Stock & Stockholders, ch. 29.

||94 U. S. 535.

¶20 Wall. 445.

causes such exclusion or the motives of her action are not the subject of judicial inquiry." The Wisconsin law having been held to be constitutional, Illinois enacted a similar law governing insurance companies chartered in other States. In the case of *Baron* v. *Burnside*,* the court held that the motive of the State in requiring a license to be taken out by a foreign corporation was a subject for judicial inquiry, and that if the requirement of a license was designed to afford the State the means of compelling foreign corporations to carry on their litigation in the State courts, the requirement was unconstitutional. This decision goes some way towards the position that a corporation, like an individual, has equal rights in all the States, and the corporation organized in West Virginia has the same rights in Illinois that an Illinois corporation has, with the added right of removing all suits brought against it into Federal courts. Still more recently, Justice Bradley, in the Circuit Court, in the Arthurkill Bridge case, used this language: "It is argued that corporations, as such, have no legal existence outside the State by whose laws they are created, and cannot transact business in another State except by the comity of its laws, which is not accorded in the present case."

The doctrine is subject to much qualification. Shortly after *Baron* v. *Burnside* was decided, a corporation was formed to absorb all the gas companies of Boston. A charter could not be obtained in Massachusetts, because the law of that State limited the capital of new gas companies to $500,000, probably for the very purpose of preventing such a combination. It is also probable that the legislature would have refused to charter a company organized to accomplish, in effect, a gas trust. Therefore the promoters of the scheme got a New York charter, though by the very nature of their enterprise, they could only transact business in Massachusets, and while the opinions of Supreme Court Judges are not yet decisive on the point, they lean strongly towards the position that a gas trust, organized in New York, to do business in Massachussetts, has every privilege in the latter State that a domestic corporation would have, and two besides, viz., the right to transfer all suits against it to the Federal courts, and the fact that the legislature of the State where it operates cannot touch its charter.

Trusts may be created for the purpose of doing business. They may be allowed to continue and exist as unincorporated companies; they may be organized in one State and do business all over the country, yet there can be no doubt that they are void on the ground of public policy. Public policy unquestionably favors competition in trade, to the end that its commodities may be afforded to the consumer as cheaply as possible: and is opposed to monopolies, which tend to advance the market prices to the injury of the general public.

In 1880, a voluntary association of salt manufacturers was formed in Ohio, for the purpose of selling and transporting that commodity. By articles of association, all salt manufactured or owned by the members, when packed in barrels, became the property of the company whose committee was authorized and required to regulate the price and grade thereof, and also to control the manner

*7 Sup. Ct. Rep. 931.

and time of receiving salt from the members; and each member was prohibited from selling any salt during the continuance of the association, except by retail at the factory, and at prices fixed by the company. It was held that such agreement was in restraint of trade and void, as against public policy.*

Five coal corporations of Pennsylvania entered into an agreement in New York to divide two coal regions, of which they had the control, to appoint a committee to take charge of their interests, which was to decide all questions and appoint a general agent at Watkins, N.Y., the coal mined to be delivered through him, each corporation to deliver its proportion at its own cost in the different markets at such time and to such persons as the committee might direct; the committee to adjust the prices, rates of freight, etc.; enter into agreements with anthracite companies; the five companies might sell their coal themselves only to the extent of their proportion, and at prices adjusted by the committee; the agent to suspend shipments by either beyond their proportion; frequent detailed reports to be made by companies, and settlements monthly by the committee; prices to be averaged and payments made to those in arrear by those in excess; neither to sell coal otherwise than as agreed upon, and the regulations of the committee to be carried out faithfully. A statute of New York makes it a misdemeanor "for persons to conspire to commit any acts injurious to trade or commerce." It was held that their agreement was in contravention of the statute, and also against public policy, and therefore illegal and void. The court said: "The effects produced on the public interests lead to the consideration of another feature of great weight in determining the illegality, to wit: the combination resorted to by these five companies. Singly, each might have suspended deliveries and sales of coal, to suit its own interests, and might have raised the price, even though this might have been detrimental to the public interest. There is a certain freedom which must be allowed to every one in the management of his own affairs. When competition is left free, individual error or folly will generally find a correction in the conduct of others; but here is a combination of all the companies operating in the Bloseburg and Barclay mining regions, and controlling their entire productions. They have combined together to govern the supply and the price of coal in all the markets from the Hudson to the Mississippi rivers, and from Pennsylvania to the lakes. This combination has a power in its confederated form which no individual action can confer. The interest must succumb to it for it has left no competition free to correct its baleful influence. When the supply of coal is suspended, the demand for it becomes importunate, and prices must rise; or, if the supply goes forward, the price fixed by the confederates must accompany it. The domestic hearth, the furnaces of the iron monster, and the fires of the manufacturer all feel the restraint; while many dependent hands are paralyzed, and hungry mouths are stinted. The influence of a lack of supply, or a rise in the price of an article of such prime necessity cannot be estimated. It permeates the entire mass of the community, and it leaves few of its members untouched

* Cent. Ohio Salt Co. v. Guthrie, 35 Ohio St. 666.

by its withering blight. Such a combination is more than a contract; it is an offence. "I take it," said Gibson, J., "a combination is criminal whenever the act to be done has a necessary tendency to prejudice the public or to oppress individuals by unjustly subjecting to the power of the confederates, and giving effect to the purpose of the latter, whether extortion or mischief."* In *Rex* v. *De Berenquetal*, it was held to be a conspiracy to combine to raise the public funds on a particular day by false rumours. "The purpose itself," said Lord Ellenborough, "is mischievous; it strikes at the price of a valuable commodity in the market, and, if it gives a fictitious price, by means of false rumours, it is a fraud levelled against the public, for it is against all such as may possibly have anything to do with the funds on that particular day. Every 'corner,' in the language of the day, whether it be to affect the price of articles of commerce, such as breadstuffs, or the price of vendible stocks, when accomplished by confederation to raise or depress the price, and operate on the markets, is a conspiracy. The ruin often spread abroad by these heartless conspiracies is indescribable, frequently filling the land with starvation, poverty and woe. Every association is criminal whose object is to raise or depress the price of labour beyond what it would bring if it were left without artificial aid or stimulus."†

An agreement was entered into by several commercial firms, by which they bound themselves for a term of three months not to sell any Indian cotton bagging, except with the consent of the majority of them. *Held*, that it was a combination to enhance the price of the artice, which is in restraint of trade, and contrary to public order, and that the agreement could not be enforced in a court of justice.‡

A contract entered into by the grain dealers of a town which, on its face, indicates that they have formed a partnership for the purpose of dealing in grain, but the true object of which is to form a secret combination, which would stifle all competition, and enable the parties, by secret and fraudulent means, to control the price of grain, cost of storage, and expense of shipment at such town, is in restaint of trade, and, consequently, void on the ground of public policy.§ The proprietors of several lines of boats, engaged in the business of transporting persons and freight on the Erie and Oswego canals, entered into an agreement among themselves to run for the remainder of the season of navigation at certain rates for freight and passage then agreed upon, but which were to be changed whenever the parties should deem it expedient, and to divide the net earnings among themselves according to certain provisions fixed in the articles. In an action on the agreement, against a party who had failed to make

* Morris Run Coal Co. *v.* Barclay Coal Co., 68 Penn. 173; Commonwealth *v.* Carlisle, Brightly's Rep. 40.

† 3 M. & S. 67; 1 M. & S. 179; Commonwealth *v.* Hunt, 4 Metcalf, 111; 3 Whart. C. L.; People *v.* Fishbee, 14 Wend. 9.

‡ India Bagging Association *v.* B. Kock & Co., 14 La. Ann. 164 (1859). See, also, Blackstone's Comm., Book 4, chap. 22, par. 8-9; Chitty on Cont. (ed. 1855), p. 678; 1 Smith's L. C. 367, 381; French Penal Code, art. 419; Pardess. Droit Comm., vol. 1, p. 265; Lang *v.* Weeks, 2 O. (N. S.) 519; Thomas *v.* Files, 3 Ohio, 274.

§ Craft *v.* McConoughy, 79 Ill. 346 (1875).

payment, according to the contract; *Held*, that the agreement was a conspiracy to commit an act injurious to trade, contrary to 2 Rev. Stat. 691, s. 8, and was illegal and void.*

It has always been the policy of the common law to favour competition. Partnerships and corporations may have been infringements upon the old principles of the common law; but, because "trusts" are of the nature of corporations, and similar in many respects to partnerships, it does not necessarily follow that they should be allowed to succeed the former changes that have been made. Corporations, when properly controlled, are blessings to the country. They do not interfere with competition; but "trusts" tend directly to degrade the people whom it is their express object to enslave to the extent of forcing them to buy at prices which are not the natural prices, but are those artificially established and maintained by the trust.

But the extension of such combinations has a still more powerfully evil effect. A trust is a combination of capitalists to control the market.† To achieve its only object, it must, in the nature of things, crush opposition and check production. Unless the capitalists who have combined in a trust achieve these two things they have failed. Hence, we see in the rules of some of the trusts that have been exposed, one which forbids their customers to buy, except from the trust—even to import from abroad, or to buy imported goods is forbidden them—all on penalty of being denied the right to purchase from the trust, which means embarrassment, and often ruin.

Again, it is shown that the trust takes in upon a "watered" basis the factories of which it is formed, and guarantees to each a certain profit, conditioned upon its not producing more than the trust managers permit, and selling to no one except the favoured customers of the trust. When a trust has thus taken possession of the market, its first object is to crush all independent productions; and it is able to do this by underselling and ruining the independent competitor. It does not seek the best methods of production, because it controls the market; hence, the numerous instances in which such combines have bought up valuable patented improvements and locked them up, refusing to use them for the public benefit. But there is still a greater evil in the capitalistic combinations. They not only so cover the field that individual effort is paralyzed, but, in the pursuit of their monopoly, they buy the services of the ablest men—the brains of the country—and, by paying the large salaries and rewards which an established monopoly, and that alone, can afford, they suborn the intellect of the nation for their purposes. Thus, in these times, we see the ablest lawyers, the ablest chemists, the greatest inventors, the most ingenious mechanics, the most competent business managers, in the pay of great corporations, combinations and trusts, doing obediently the unscrupulous will of the aggregated and selfish capital which employs them. Thus we see growing in this country a great, unscrupulous, powerful plutocracy, banded together more and more closely, resisting, by the

* Hooker *v.* Vandewater, 4 Denio, 349.

† Louisinana *v.* American Cotton Oil Trust, 1 Ry. & Corp. L. J. 509.

help of its hired agents, every attempt to reform abuses and to re-establish liberty, crushing out opposition, more and more greedily grasping power, and bribing the best intellect of the country into its service.

A future, full of bad omens, stares us in the face, unless by wise and fearlessly executed legislation some check shall be put to these destroyers of the rights of mankind. This country has always been regarded as the zealous guarder of individual rights. When this splendid characteristic passes into history we shall be on the downward path, followed by so many republics, whose fall can clearly be traced to the dangers ever associated with the vast accumulations of wealth by the few at the expense of the rights of the countless masses of toiling humanity.—*Am. Law Review.*

Reviews and Notices of Books.

A Digest of the Reported Decisions in the Supreme Court of New Brunswick from Hilary Term, 42 *Vict.* 1879, *to Easter Term*, 49 *Vict.* 1886, *with Digest of Cases in the Supreme Court of Canada decided on Appeal from the Supreme Court of New Brunswick, with Rules of Court from* 1881 *to* 1886, *in continuation of Stevens' Digest.* By JAMES G. STEVENS, Q.C., one of the Judges of the County Courts of New Brunswick. Toronto: Carswell & Co.

It would be an improvement to have the cases decided by the Supreme Court classified under their respective heads in the body of the work, instead of being arranged separately in an appendix. In that way a single reference for any point to be investigated would suffice, whereas a double reference is now necessary. The arrangement of the topics seems excellent in other respects, and the head notes and cross references appear ample for enabling one to find the decisions affecting any matter he may wish information upon.

Lindley on Partnership. Vol. 2. *From Blackstone Publishing Co., Philadelphia, U.S.* Has just been received. This book is re-published from the fifth English edition. Also,

Ewart on Costs. Third Edition. Toronto: Carswell & Co., 1888; and

Index to the Consolidated Rules. By W. F. SUMMERHAYS. Toronto: Rowsell & Hutchinson, 1888.

DIARY FOR OCTOBER.

1. Mon....C.C. sittings for motions, except in York. Wm. D. Powell, 5th C.J. of Q.B. 1816.
2. Tues ...Co. Court non jury sittings, except in York.
6. Sat.....Co. Court sittings for motions, except York, end.
7. Sun.....*19th Sunday after Trinity.* Henry Alcock, 3rd C.J. of Q.B. 1802.
8. Mon....Co. Court sittings for motions, in York, begin. R. A. Harrison, 11th C.J. of Q.B. 1875.
13. Sat.....Co. Court sittings for motions, in York, end. Battle of Queenston, 1812. Lord Lyndhurst died, 1863, æt. 92.
14. Sun.....*20th Sunday after Trinity.*
15. Mon....English Law introduced into Up. Canada, 1792.
18. Thur....St. Luke.
21. Sun.....*21st Sunday after Trinity.* Battle of Trafalgar, 1805.
23. Tues....Supreme Court of Canada sittings. Lord Lansdowne, G.G. 1883.
28. Sun.....*22nd Sunday after Trinity.* Simon and St. Jude.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

MacMahon, J.] [August 30.

REGINA *v.* COX.

Criminal law—Larceny Act, R. S. C. c. 164 *—Information—Habeas corpus during remand on preliminary investigation—Bail—R. S. C. c.* 174, *s.* 83.

The information charged that the prisoner at a named time and place, "being a trustee of a sum of money . . . the property of the C. B. of C. (a corporate body) for the use of the said C. B. of C., did unlawfully, and with intent to defraud, convert and appropriate the same to his own use contrary to the statute in that behalf."

Held, that the prisoner was, by this information, charged with a criminal offence under the Larceny Act, R. S. C. c. 164.

Held, also, that a writ of *habeas corpus* should not issue where the accused is in custody pending a preliminary investigation before a magistrate during a remand to enable the prosecution to supply evidence in support of the charge.

Held, lastly, that a judge of the High Court has power under s. 83 of the Criminal Procedure Act, R. S. C. c. 174, to admit to bail in cases where the accused has not been finally committed for trial if he "think it right to do so;" but in this case, the charge being a serious one, the magistrate before whom the prisoner appeared having refused to admit him to bail, and no depositions having been taken, an order for bail was refused.

Badgerow, for the Crown.

Murdoch and *A. C. Galt*, for the prisoner.

Common Pleas Division.

Divisional Court.] [June 20.

REGINA *v.* TUCKER.

Canada Temperance Act Conviction—Hard labour—Payment of Inspector's attendance and mileage.

In a conviction under the Canada Temperance Act there is no power to order imprisonment at hard labour.

Quære, whether there is power to order the defendant to pay a sum for two day's attendance of the inspector and his mileage.

A. P. C. Boulton, for defendant.

Aylesworth, contra.

Divisional Court.] [June 20.

LYDEN *v.* MCGEE.

False imprisonment—Reasonable and probable cause—Misdirection—Damages—Liability of corporation for act of agent.

Action of trespass for false imprisonment. The plaintiff was arrested, as was alleged, by direction of the defendant M., the treasurer of the defendant association. On being brought before the police magistrate the defendants did not appear to prosecute, when the police magistrate remanded the plaintiff, and subsequently dismissed the charge and discharged the plaintiff. At the trial the judge charged the jury that it was not necessary to inquire whether or not the plaintiff was guilty of the crime charged against him, for by his acquittal he must be taken to have been not guilty, and the fact that M. believed him guilty was no excuse. If M. had laid an information it would have been different, but not having done so,

the only question was whether he gave the plaintiff into custody.

Held, misdirection; for the defendant M. was justified in ordering the plaintiff's arrest if a felony was committeed, and he had reasonable and probable cause to suspect that the plaintiff committed the felony.

Held, also, that the defendants could only be liable for the damage proceeding from the arrest, and not for the subsequent proceedings.

A corporation may be liable for false imprisonment under an order of its gent acting within the scope of his authority.

Bigelow, for plaintiff.

Lount, Q.C., and *McWilliams*, for defendant.

Divisional Court.] [June 29.

LANGMAID *v.* MEIKLE.

Free grant lands—Pine timber—Right to—Estoppel.

In 1871 S., under the Free Grant and Homestead Act, located certain lands in the Crown Lands Department, but never entered into possession or performed the settlement duties. The lot was loca d through B., the Crown Lands' Agent for the district. In 1883 S. sold the timber on the lot to B. In 1875, B wrote to the department asking if a cancellation and re-location would affect his title to the pine, and that it be relocated subject to his claim. The department replied that if the purchase was a *bona fide* one and in accordance with the order in council, a re-location would not affect his claim. The order in council was that the department would recognize the right of all purchasers or locatees of free grant lands who had purchased or located any lot on or before the 30th September, 1871, and who on that day were in actual occupation of or resident on the lots located, to sell and dispose of all pine trees on the said lots. On the 10th Sept., 1875, S.'s location was cancelled for non-performance of the settlement duties; and on the 3rd July, 1876, the lot was re-located to the plaintiff. The plaintiff was informed by B. of his purchase of the timber, and stated that he had a good title to it, which the plaintiff believed and acted on this belief. On the 9th November, 1876 the patent issued to the plaintiff, and contained no mention of the pine trees. In 1883 B. sold the timber to the defendant, who in October, 1886, cut some, notwithstanding he was notified by the plaintiff to desist. The timber was removed by the defendant after the issue of the patent. In an action by the plaintiff to recover the value of the timber,

Held, that as the patent contained no mention of the pine trees standing or being on the land, and as the land was located prior to 43 Vict. c. 4, the trees "remaining on the land," at the time of the patent, passed to the plaintiff; that prior to the issue of the patent, the locatee under R. S. O. c. 24, s. 10, had no right to cut timber except for building, fencing and fuel, and in the actual clearing of the land for cultivation; nor was there any right under 37 Vict. c. 23, for the locatee was not on or before the 30th September, 1871, "in actual occupation of or resident on the lots located;" and

Semble, that the words "remaining on the land," applied only to the trees not then cut; but it was not necessary to decide this point, for the plaintiff, being in possession with the assent of the Crown, had title to the timber as against the defendant, a wrong-doer.

Held, also that the plaintiff was not estopped from bringing the action.

Mahaffy, for plaintiff.

T. D. Delamere, for defendant.

Divisional Court.] [June 29.

BANK OF COMMERCE *v.* JENKINS.

Banks and banking—Composition and discharge—Execution of deed by local manager—Validity—Agreement to accept part of claim—Authority R. S. O. c. 44, s. 53, ss. 7.

At a meeting of the defendant's creditors, at which the plaintiffs were not represented, an agreement was made to acept 40 cents on the amount of the claims. A deed of composition, with a covenant to accept the 40 cents, was prepared and was executed by C. N., the manager of the plaintiffs' branch at L. The execution was "for Bank of Commerce, C. Nicholson;" opposite to which was an ordinary seal. At the time C. N. executed the deed there were two creditors mentioned in the schedule who had not executed. On the 4th June, 1887, before either of these creditors

had executed, and before the composition notes had been tendered to C. N., he wrote to the defendant's solicitor withdrawing from the arrangement. The composition notes were subsequently tendered to C. N., but he refused to accept them. By the plaintiffs' Act of Incorporation the management of their affairs was to be by directors, who had authority to open branches and appoint the officers. The chief place of business was to be at T., where the corporate seal was kept.

Held, that the deed was not binding on the plaintiffs, not being under the corporate seal, nor under a signature or sign manual whereby they executed documents; and also the execution in question did not purport to be by the plaintiffs, but "for the bank;" apart, however, from the validity of the execution, C. N., on the evidence, had authority to agree to accept less than the whole of the claim, and did so agree, and the debtor performed his part by tendering the notes; and under R. S O. (1887), c. 44, s. 53, ss. 7, the agreement was irrevocable.

Lash, Q.C., for plaintiffs.

Aylesworth, for defendant.

Divisional Court.] [June 29.

WESTERN CANADA LOAN CO. *v.* GARRISON.

Statute of Limitations—Witnessing mortgage covering lands in question—Ignorance of lands included—Effect of—Estoppel.

In 1870 the defendant, under agreement therefor with his father, the owner of a farm, went into possession of a certain portion thereof, which pointed to the ownership in the defendant of the land, but whether by deed or will did not clearly appear, though apparently by the latter; and remained in possession for sixteen years. In 1876 the father executed a mortgage to the L. & C. Loan Co., which was witnessed by the defendant, who made the affidavit of execution on which the mortgage was registered. The defendant swore that he was not aware of the contents of the mortgage, nor that it included the portion of which he was in possession. In 1882 the father made a mortgage to the plaintiffs, also of the whole lot, and on default the plaintiffs brought an action to recover possession of the portion occupied by him.

Held, that the evidence showed that the defendant had been in exclusive possession of the land occupied by him for the statutory period, so as to acquire a title thereto by possession; and that the fact of his being a witness to the mortgage to the L. & C. Co., and its subsequent registration, under the circumstances, did not by virtue of s. 78 of the Registry Act, R. S. O. (1877), c. 111, create an estoppel.

Lefroy, for plaintiffs.

Porter (of Belleville), for defendant.

Divisional Court.] [June 29.

NORTH BRITISH MERCANTILE INSURANCE CO. *v.* KEAN.

Principal and surety—Notice terminating liability—Bond applicable to present and future appointment.

In June, 1884, K. applied to the plaintiffs to be appointed their agent at O., and was informed that he must secure sureties, whereupon he applied to the defendants, who agreed to act for him, and executed a bond, reciting that K. had been appointed agent of the company at O. The bond was sent to the head office at M., but nothing was done until December, 1885, when, on K. writing to the head office he received a certificate appointing him agent. In September, 1884, in consequence of a disagreement between the defendants and K., they stated they wrote notifying the head office that they repudiated their suretyship, and, receiving no answer, assumed that the matter was at an end. In an action against the defendants as sureties for K.'s default,

Held, that the defendants were discharged by the notice given terminating their suretyship, and that the weight of evidence showed that both defendants had given notice and not one of them only, as found by the learned judge at the trial; but this was of no importance, for after the company had received notice from one of the sureties, they should have notified the other surety, more especially as no appointment had then been made.

Per ROSE, J., also, that no appointment having been made when the bond was executed, the sureties could not be made liable for default made months after, even if they had received notice of the subsequent appoint-

ment; for they contracted in respect of a present appointment, and not a future one at some indefinite time at the will of the company; but even if they could be made liable on notice, no such notice was given.

Peplar, for plaintiffs.

Kean, for defendant.

Divisional Court.] [June 29.

POTTS *v.* BOVINE.

Will—Cujus est solum ejus est usque ad cœlum —Rebuttable presumption—Occupation of adjoining occupant.

The maxim *cujus est solem ejus est usque ad cœlum* is not a presumption of law applicable in all cases and under all circumstances, but the presumption may be rebutted by circumstances existing at the date of the devise showing it was not to apply.

When, therefore, in a devise of land the boundaries, according to the above maxim, would include an edifice built upon a gangway, or right of way, but the circumstances existing at the date of the devise showed that it was not intended so to pass, but was to be part of an adjoining edifice, to which it was attached, and with which it was intended to be used, and was used; it was

Held, to pass under the devise of such adjoining edifice, described, in addition to its metes and bounds, as occupied by its then occupant.

Dickson, Q.C., and *Burdett*, for plaintiff.

Northrup, for defendant.

Divisional Court.] [June 29.

TYSON *v.* ABERCROMBIE

Chattel mortgage—Consideration—Parol evidence to vary.

A chattel mortgage of certain timber was expressed to be given in consideration of the payment of $300 to the mortgagor; all the covenants and provisoes being applicable to a money payment or default therein. The mortgagor's father was indebted to the plaintiff, the mortgagee, for goods, and the father desiring to get more goods, the plaintiff delivered further goods to him, amounting in all to $300, on receiving the mortgage security. The defendant gave parol evidence to show that prior to giving the chattel mortgage the mortgagor's father had sold the plaintiff the timber in question, which was cut off land belonging to the son, the mortgagor; that at the time of the request for the further advance, a portion of the timber had been delivered to the plaintiff; that he declined to make the further advance unless the delivery of the balance of the timber was secured; and that the mortgage was given as security therefor and not to secure repayment of the $300; that such balance had since been delivered; and it was urged that the mortgage was therefore discharged.

Held, that the parol evidence was inadmissible.

Reesor, Q.C., for plaintiff.

Masson, Q.C., for defendant.

Divisional Court.] [June 29.

CLARK *v.* HARVEY.

Mortgage—Short Forms Act—Power of sale without notice—Validity under Act—Entry prior to sale.

The power of sale contained in a mortgage purporting to be under the Short Forms Act, was "Provided that the mortgagee on default for one day, may, without any notice, enter on and lease or sell said lands."

Held, per GALT, C.J., at the trial, that this case was distinguished from *Re Gilchrist and Island*, 11 O. R. 537, as the sale there was by an assignee of the mortgagee, and not, as here, by the mortgagee himself; that under the power entry on the land was not necessary prior to sale.

On appeal to a Divisonal Court,

Held, per ROSE, J., that the power was operative under the Short Forms Act, and therefore the point as to entry was immaterial. *Re Gilchrist and Island* dissented from.

Per STREET, J.—The form was not operative; and the words, therefore, must be confined to their actual meaning apart from the statute; and that under its terms the power did not arise, or, at all events, could not be exercised until entry made on the land.

Osler, Q.C., and *Shepley*, for plaintiff.

Bain, Q.C., for defendant Fisken.

Moss, Q.C., and *A. C. Galt*, for defendant Harvey.

T. P. Galt, for defendant Barwick.

Divisional Court.] [June 29.

ROBINSON *v.* TOWN OF OWEN SOUND.

Building contract—Final certificate of engineer of completion of work—Necessity for—Condition precedent.

The plaintiff entered into a contract with the defendants for the construction of certain main sewers. The contract provided that the work and materials should in all things be performed and provided according to the plans and specifications, by a named date, and to the entire satisfaction of the engineer in charge of the work. The specifications provided that the contractor should on the first day of each month hand in to the engineer his account for work during the preceding month, and be paid on the certificate of the engineer at the rate of 85 per cent. of work done during the previous month, an additional ten per cent. when the work was finished, and the balance of five per cent. at the expiration of three months from the date of the completion of the contract, etc. No final certificate was obtained from the engineer of the completion of the work, nor was the work completed to his satisfaction. In an action to recover the balance alleged to be due under the contract,

Held, that the certificate of the engineer as to the completion of the work, was a condition precedent to the right to recover, and therefore the plaintiff must fail.

McCarthy, Q.C., and *Masson*, Q.C., for plaintiff.

Lash, Q.C., and *Reesor*, Q.C., for defendants.

Divisional Court.] [June 29.

GOWER *v.* LUSSE.

Malicious prosecution—Questions to jury—Judgment on specific findings—Waiver of right to general verdict.

By ss. 263-4 of the C. L. P. Act, R. S. O. (1877), c. 50, except in certain actions, including malicious prosecution, the judge may require the jury to answer questions, and in such case the jury shall answer such questions, and shall not give any verdict; and by s. 252, the parties in person, or by their attorneys or counsel, may waive trial by jury.

In this case, which was malicious prosecution, the learned judge, without objection left certain questions to the jury, which they answered; but at the foot thereof wrote that their verdict was for the plaintiff. The learned judge disregarded the general verdict, and entered judgment on the answers to the questions for the defendant.

Held, that the learned judge acted properly; for the parties must be assumed to have waived their right to a general verdict, and assented to the learned judge entering judgment on the specific findings of fact; for if they can waive trial by jury altogether, there is no reason why they could not agree to the waiver as in this case.

The jury, therefore, in finding a general verdict, were doing what it was agreed they should not do, and what the parties had dispensed with their doing.

G. Lynch Staunton, for plaintiff.

J. W. Nesbitt, contra.

Divisional Court.] [June 29.

STILLMAN *v.* AGRICULTURAL INS. CO.

Insurance—Fire—Title—Fraud and false statement—1st and 15th statutory conditions—Threshing machine covered while in any outbuilding—Outbuildings insured in another company—Liability.

In an action on a fire insurance policy, application was made at the trial to set up the 1st statutory condition as a defence, in that a threshing machine insured as the plaintiff's own property was partnership property; and also to set up the 15th condition in that there was fraud and false statement, for the like reason in the proofs of loss.

Held, that the application must be refused; the 1st condition having no reference to title, and as to the 15th, the statement was not proved to be wilfully false and fradulent, and the fact that the threshing machine was partnership property was not material, no question as to title having been asked. Persons in possession of goods may insure them to their full value though not the actual owners.

The plaintiff had two barns, Nos. 1 and 2. The threshing machine was insured as "in No. 1 barn." The machine was in No. 2 barn, though the horse-power was outside. The plaintiff applied to the company, and an indorsement was made in the policy stating that

the machine should be covered "while in any one of the out-buildings insured." Barn No. 2 was insured, though not by the defendant company.

Held, that the machine was covered by the policy, and that the plaintiff was entitled to recover in respect of it.

An objection was also made that a reaper destroyed by the fire was not covered by the policy.

Held, on the evidence, that the objection was untenable.

Clute, for plaintiff.

Britton, Q.C., for defendant.

Divisional Court.] [June 29.

SWEENEY *v.* SWEENEY.

Maintenance, sum payable in lieu of—Payable at end of year—Consent judgment.

The plaintiff conveyed his farm to his son, subject to the payment of an annuity of $60 a year, and the plaintiff's "maintenance in board, washing and keep out of the farm," or to "receive in cash an amount sufficient to pay for the same yearly." There was also a bond of even date whereby the defendant covenanted to furnish such maintenance or pay such sum. The defendant sold the farm, and went to reside on a farm elsewhere. The plaintiff went and lived with him on the new farm for some years, receiving his maintenance, etc., but, becoming dissatisfied, left.

Held, that the plaintiff was not bound to reside with the defendant wherever he might choose to go; and under the circumstances was entitled to be paid a reasonable sum for his maintenance, payable at the end of each year.

At the trial the defendant's counsel raised the objection that the amount, if any, was only payable at the end of the year. The learned judge overruled the objection, and decided that the plaintiff was entitled to receive $2 a week, payable weekly. The defendant's counsel then asked to have the amount payable monthly, to which the learned judge acceded, and gave judgment accordingly.

Held, that the judgment could not be deemed to be by consent, so as to preclude the defendant from afterwards moving against it.

Leonard, for the plaintiff.

C. J. Holman, for defendant.

Chancery Division.

Robertson, J.] [July 15.

GLASS *v.* GRANT, *et al.*

Fraudulent mortgage by insolvent—Defence of foreclosure proceedings after assignment by insolvent—Action by assignee to set aside the mortgage—Demurrer—Res judicata—Assignee of insolvent—Trustee for creditors.

Plaintiff, as assignee for the benefit of creditors of one C., brought an action to set aside a mortgage made by C. to the defendants while insolvent, as fraudulent. The defendants set up *inter alia* as a defence certain foreclosure proceedings which had been taken, to which G. was a party defendant as assignee, and in which a judgment of foreclosure had been obtained on a demurrer to this part of the statement of defence. It was

Held, that the plaintiff acted in a dual capacity, and that the foreclosure proceedings were taken against him as assignee of C. and not as trustee for the creditors, and that the plaintiff could not set up the fraud of his assignor, and that he was not bound to set up by way of counter-claim in the foreclosure action his cause of action in this suit, and that the foreclosure judgment was not a bar to this action.

The Duchess of Kingston's case, 2 Sm. L. C. (7 ed.), 792, commented upon.

Hellmuth, for the demurrer.

James Maclennan, Q.C., contra.

Robertson, J.] [July 24.

HORTON *v.* PROVINCIAL PROVIDENT INS.

Insurance—Certificate of membership—Default—Forfeiture—Waiver.

H., the husband of the plaintiff, was, in his life-time, the holder of two certificates in the defendant's company in his wife's favour, the condition of which required that the semi-annual dues should be paid on May 15th and November 15th in each year, and that thirty day's default should suspend membership and void the certificates; and that the suspended member should be reinstated only on furnishing a fresh medical examiner's report to the satisfaction of the defendants within ninety days from the date of suspension, and on paying all arrearages. The deceased died on

Held, that any liquor in respect to which a permit has been granted was exempt from seizure, and that no penalty attached to any one in whose possession it might be found, though such party was not the one in whose name the permit issued.

The court, therefore, quashed the conviction without deciding the first point raised, as it was not necessary to decide it.

Miscellaneous.

RULE OF COURT.

Wednesday, 17th Novemer, 1886.

Present:—The Hons. Adam Wilson, P.H. C.J.: J. A. Boyd, Chancellor; M. C. Cameron, C.J.C.P.D.; J. D. Armour, J., T. Ferguson, J.; J. E. Rose, J.

WHEREAS, by the Act passed in the 49th year of Her Majesty's reign, chaptered 49, and intituled, "An Act to make further provision respecting summary proceedings before Justices and other Magistrates."

It is enacted as follows:—

SEC. 8.—The second section of the Imperial Act, passed in the 5th year of the reign of His Majesty King George II., and chaptered 19, shall no longer apply to any conviction, order, or other proceeding by or before a justice of the peace in Canada, but the sixth section of this Act shall be substituted therefor, and the like proceedings may be had for enforcing the condition of a recognizance taken under this Act, as might be had for enforcing the condition of a recognizance taken under the said Imperial Act.

It is therefore ordered, under the authority of the said section, and in pursuance of the terms of the sixth section of the said Act, that no motion shall be entertained by this court, or by any division of the same, or by any judge of a division sitting for the court, or in Chambers, to quash a conviction, order, or other proceeding which has been made by or before a justice of the peace [as defined by the said Act] and brought before the court by *certiorari*, unless the defendant is shown to have entered into a recognizance with one or more sufficient sureties in the sum of $100 before a justice or justices of the county, or place, within which such conviction or order has been made, or before a judge of the County Court of the said county, or before a judge of the Superior Court, and which recognizance with an affidavit of the due execution thereof, shall be filed with the Registrar of the court in which such motion is made or is pending, or unless the defendant is shown to have made a deposit of the like sum of $100 with the Registrar of the court in which such motion is made, with or upon the condition that he will prosecute such *certiorari* at his own costs and charges and without any wilful or affected delay, and that he will pay the person in whose favour the conviction, order, or other proceeding is affirmed, his full costs and charges to be taxed according to the course of the court in case such conviction, order, or proceeding is affirmed.

Certified,

M. B. JACKSON, *Acting Clerk.*

Appointments to Office.

POLICE MAGISTRATE.

Bruce.

John Bruce, of Walkerton, Police Magistrate in and for the town of Walkerton, without salary, *vice* Richard Vanstone, resigned.

DIVISION COURT CLERKS.

Lanark.

George McKinnon, of Smith's Falls, Clerk of the Fourth Division Court, *vice* W. M. Keith, resigned.

Stormont, Dundas, and Glengarry.

John A. McDougall, of Lochiel, Clerk of the Second Division Court, *vice* C. D. Chisholm, removed from office.

Middlesex.

C. G. Anderson, of Delaware, Clerk of the Fourth Division Court, *vice* C. J. Fox, resigned.

Prescott and Russell.

Telephore Rochon, of Clarence, Clerk of the Tenth Division Court, *vice* P. D. MacDonald, resigned.

DIVISION COURT BAILIFF.

Stormont, Dundas and Glengarry.

C. McLaurin, of Lochiel, Bailiff of the Second and Twelfth Division Courts, *vice* Samuel R. McLeod, removed from office.

Remarks upon former practice at Law and Equity as to allocaturs and certificates of taxation.

Hoyles, for the plaintiff.

C. J. Holman, for the defendant.

Falconbridge, J.] [August 28.

MACKENZIE *v.* CARTER.

Affidavits—Date of filing—Statement in notice of motion.

Upon a motion to commit the defendants, the court refused to allow the plaintiffs to read affidavits filed upon a previous application, the date of their filing not having been stated in the notice of motion; and also refused to allow the plaintiffs to read an affidavit filed after the service of the notice.

Masten, for the plaintiff.

Hoyles, for the defendant.

Osler, J. A.] [Sept. 13.

O'SULLIVAN *v.* LAKE.

Parties—Appeal—Relief over.

The plaintiff served notice of appeal from the judgment of the Common Pleas Division, 15 O. R. 544, upon both defendants, and furnished both with security for costs of appeal, but disclaimed any relief against the defendant B., and brought him before the court only that the defendant L. might obtain any relief over against B. that he might consider himself entitled to. L. claimed no relief against B. in his pleadings or reasons of appeal.

Held, that B. was not a person who would, or might be, affected by a reversal of the decision complained of, and there was no reason for retaining him before the court.

F. A. Anglin, for the plaintiff.

Aylesworth, for the defendant Balfour.

Court of Appeal.] [Sept. 14.

ROGERS *v.* WILSON.

Mortgagor and mortgagee—Assignment of mortgage to third person—40 Vict. c. 20, s. 7 (O.).

The judgment of ROSE, J., 12 P. R. 322, affirmed.

C. C. Robinson, for the appellant.

A. M. Taylor, for the respondent.

Boyd, C.] [Sept. 17.

In re MCKEEN AND TOWNSHIP OF SOUTH GOWER.

Costs—Increased counsel fees—Arbitration—Powers of taxing officer.

Item 153 of Tariff A, Con. Rules of Practice, should be read as part of item 164; and the taxing officers at Toronto have authority to consider the question of increased counsel fees in the case of an arbitration, where there is no cause in court and a reference to a local officer to tax costs has been made under R. S. O. (1887), c. 53, s. 24.

Middleton, for McKeen.

SUPREME COURT OF THE NORTH-WEST TERRITORIES.

(Reported for the CANADA LAW JOURNAL.)

Rouleau, J.]

REGINA *v.* WHITEBECK.

North-West Territories Act, R. S. C., c. 50, s. 90—Possessing intoxicating liquors without permission—Penalty—Permit to other person than defendant may cover liquor in possession of the latter.

The defendant was convicted for having intoxicating liquor in his possession without the written permission of the Lieutenant-Governor, under sec. 95 of the North-West Territories Act.

On appeal, the appellant contended, 1st, that no penalty attached under this section for the offence stated in the conviction; and 2nd, that on its being shown that the liquor seized in the defendant's possession was covered by a permit, although such permit was in the name of a party other than the appellant, sec. 95, did not make such a possession an offence.

Sec. 95 reads as follows: "Every person who manufactures, makes, compounds, imports, sells, exchanges, trades or barters any intoxicating liquors or intoxicant, except by permission as aforesaid (that of the Lieutenant-Governor), or in whose possession or on whose premises *such* intoxicating liquor or intoxicant of any kind is or has been, shall incur a penalty," etc.

Held, that any liquor in respect to which a permit has been granted was exempt from seizure, and that no penalty attached to any one in whose possession it might be found, though such party was not the one in whose name the permit issued.

The court, therefore, quashed the conviction without deciding the first point raised, as it was not necessary to decide it.

Miscellaneous.

RULE OF COURT.

Wednesday, 17th November, 1886.

Present: The Hons. Adam Wilson, P.H. C.J.; J. A. Boyd, Chancellor; M. C. Cameron, C.J.C.P.D.; J. D. Armour, J., T. Ferguson, J.; J. E. Rose, J.

WHEREAS, by the Act passed in the 49th year of Her Majesty's reign, chaptered 49, and intituled, "An Act to make further provision respecting summary proceedings before Justices and other Magistrates."

It is enacted as follows:

SEC. 8. The second section of the Imperial Act, passed in the 5th year of the reign of His Majesty King George II., and chaptered 19, shall no longer apply to any conviction, order, or other proceeding by or before a justice of the peace in Canada, but the sixth section of this Act shall be substituted therefor, and the like proceedings may be had for enforcing the condition of a recognizance taken under this Act, as might be had for enforcing the condition of a recognizance taken under the said Imperial Act.

It is therefore ordered, under the authority of the said section, and in pursuance of the terms of the sixth section of the said Act, that no motion shall be entertained by this court, or by any division of the same, or by any judge of a division sitting for the court, or in Chambers, to quash a conviction, order, or other proceeding which has been made by or before a justice of the peace [as defined by the said Act] and brought before the court by *certiorari*, unless the defendant is shown to have entered into a recognizance with one or more sufficient sureties in the sum of $100 before a justice or justices of the county, or place, within which such conviction or order has been made, or before a judge of the County Court of the said county, or before a judge of the Superior Court, and which recognizance with an affidavit of the due execution thereof, shall be filed with the Registrar of the court in which such motion is made or is pending, or unless the defendant is shown to have made a deposit of the like sum of $100 with the Registrar of the court in which such motion is made, with or upon the condition that he will prosecute such *certiorari* at his own costs and charges and without any wilful or affected delay, and that he will pay the person in whose favour the conviction, order, or other proceeding is affirmed, his full costs and charges to be taxed according to the course of the court in case such conviction, order, or proceeding is affirmed.

Certified,

M. B. JACKSON, *Acting Clerk*

Appointments to Office.

POLICE MAGISTRATE.

Bruce.

John Bruce, of Walkerton, Police Magistrate in and for the town of Walkerton, without salary, *vice* Richard Vanstone, resigned.

DIVISION COURT CLERKS.

Lanark.

George McKinnon, of Smith's Falls, Clerk of the Fourth Division Court, *vice* W. M. Keith, resigned.

Stormont, Dundas, and Glengarry.

John A. McDougall, of Lochiel, Clerk of the Second Division Court, *vice* C. D. Chisholm removed from office.

Middlesex.

C. G. Anderson, of Delaware, Clerk of the Fourth Division Court, *vice* C. J. Fox, resigned.

Prescott and Russell.

Telephore Rochon, of Clarence, Clerk of the Tenth Division Court, *vice* P. D. MacDonald, resigned.

DIVISION COURT BAILIFF.

Stormont, Dundas and Glengarry.

C. McLaurin, of Lochiel, Bailiff of the Second and Twelfth Division Courts, *vice* Samuel R. McLeod, removed from office.