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HIGH COURT DIVISION.

KELLY, J. JULY 31ST, 1917.

*RE RUTHERFORD.

Insurance—Life Insurance—Will—Identification of Policy—Beneficiary—Stepmother—Preferred Class—Ontario Insurance Act, R.S.O. 1914 ch. 183, secs. 171 (5), 178.

Motion by the executor of the will of Arthur G. Rutherford, deceased, for an order determining the question whether, having regard to the provisions of the will of the deceased and the form of an insurance policy (No. 977403a) issued by the Metropolitan Life Insurance Company for $1,000 on his life, the proceeds of that policy should be paid according to the terms of the will.

The testator died in action on the 13th September, 1916. The policy referred to was dated the 19th November, 1913, and provided that, in the event of the death of the insured before the 19th November, 1933, the insurance moneys were to be paid to "Ruth E. Rutherford, stepmother of the insured." In the will, the testator referred to other insurance which he called "city insurance," i.e., another insurance for $1,000 in the same company, which had been issued on the testator's life on his enlistment for overseas service, the policy being one of a large number taken out by the Corporation of the City of Toronto on the lives of residents of Toronto who had so enlisted.

The will disposed of $2,000 of insurance, in various sums, among eight persons, $1,000 of which he directed should go to "my mother R. E. Rutherford;" and there was a later direction that, "in case I do not receive city insurance, the above will be void and the Metropolitan Life will go to my mother."

* This case and all others so marked to be reported in the Ontario Law Reports.

The motion was heard in the Weekly Court at Toronto.

A. C. Heighington, for the executor and certain adult beneficiaries.

F. W. Harcourt, K.C., for the infant beneficiaries.

W. H. Wallbridge, for Ruth E. Rutherford.

H. S. White, for the insurance company.

KELLY, J., in a written judgment, after setting out the facts, said that, in his opinion, under sec. 171 (5) of the Ontario Insurance Act, as it now stands in R.S.O. 1914 ch. 183, the insurance was sufficiently identified by the will. The testator made it clear that he intended to deal with and was dealing with his insurance when he gave all his real and personal estate of which he should die possessed, and immediately followed this by a reference to $2,000 insurance (that being the total of his insurance, and part of it being manifestly the $1,000 of city insurance), which he then and there proceeded to apportion. A declaration so made, in the circumstances, sufficiently identified the insurance with the subsisting insurance, and sufficiently supported a change of beneficiary. See Re Bader and Canadian Order of Chosen Friends (1916), 36 O.L.R. 30. This view was supported by the general tenor of the will.

But the stepmother does not come within the preferred class of beneficiaries referred to in sec. 178 of the Act. She is not a relative of the insured by blood, and is not his "mother" in the sense in which that word is used in the Act. Referring to Ruth E. Rutherford as "mother" did not place her in the preferred class. And the Court cannot extend the language of the Act for the benefit of persons not coming within its precise terms: McHugh v. Grand Trunk R.W. Co. (1901), 2 O.L.R. 600, 606.

It was in evidence that Ruth E. Rutherford was in receipt of the benefits from the city insurance; and so the condition of the will on which the disposition made of the $2,000 insurance moneys to Ruth E. Rutherford and the other seven beneficiaries therein named should become void, did not arise.

Order declaring accordingly. Costs of all parties except Ruth E. Rutherford out of the moneys arising from policy No. 977403a; those of the executors between solicitor and client; no costs to Ruth E. Rutherford.

KELLY, J. AUGUST 1ST, 1917.

RE SMITH

Will—Construction—Bequest of Residue to Executor—Whether Beneficially or in Trust—Trustee Act, sec. 51 (1).

Motion by Mary Ann Gallagher, sister of Robert Smith, deceased, for an order declaring that, under the will of the deceased, William G. Woodman, the sole executor named by the testator, took the residue of the estate of the deceased as trustee and not as beneficiary.

By the will, after directing that his just debts and funeral and testamentary expenses be paid "by my executor hereinafter named," the deceased gave, devised, and bequeathed all his real and personal estate which he should die possessed of or interested in as follows: "To my sister Mary Ann . . . $1,000. To my executor W. G. Woodman the remainder of my estate real and personal after all my just debts are paid by him. And I nominate and appoint W. G. Woodman, of the township of Wolf Island, in the county of Frontenac, merchant, to be the executor of my last will and testament."

The motion was heard in the Weekly Court.

U. A. Buchner, for the plaintiff.

George Bell, K.C., for the defendant.

KELLY, J., in a written judgment, said that the solution of the question did not depend upon sec. 51 (1) of the Trustee Act, R.S.O. 1914 ch. 121; the testator's intention as expressed in the will must be determined.

Reference to the English Act 11 Geo. IV. and 1 Wm. IV. ch. 40; Williams v. Arkle (1875), L.R. 7 H.L. 606, 615; Thorpe v. Shillington (1865), 15 Gr. 85; In re Howell, [1915] 1 Ch. 241.

The words "my executor," immediately preceding the name "W. G. Woodman," in the bequest of the residue, are introduced not as meaning that the bequest of the residue was to Woodman as executor virtute officii, but rather as descriptive of the person whom the testator intended to benefit, and whom, in the following clause, he identified by mention of his place of residence and his occupation. The intention of the testator was, that Woodman should take the residue beneficially.

Order declaring accordingly; costs of both parties out of the estate.

KELLY, J. AUGUST 1ST, 1917.

DURANT v. MINNESOTA AND ONTARIO POWER CO.

Negligence—Injury to and Death of Person by Falling of Crust in Gravel-pit—Dangerous Place—Trap—Knowledge of Danger—Direction of Person in Charge—Contributory Negligence—Action under Fatal Accidents Act—Damages—Funeral Expenses—Reasonable Expectation of Pecuniary Benefit—Parents of Deceased—Brothers and Sisters—Workmen's Compensation Act.

Action under the Fatal Accidents Act, R.S.O. 1914 ch. 151, to recover damages for the death of Dewey Durant by reason of the negligence of the defendants, as the plaintiff alleged. The plaintiff (the father of the deceased) sued on his own behalf and on the behalf of the mother and brothers and sisters of the deceased.

The action was tried without a jury at Fort Frances.
C. R. Fitch, for the plaintiff.
A. G. Murray, for the defendants.

KELLY, J., in a written judgment, said that Dewey Durant was employed by Louis Truax in driving a team of horses. On the 19th January, 1917, Truax sent Durant with the team to draw gravel from a pit to the defendants' premises for the defendants, for which the defendants were paying Truax at a rate per cubic yard. Others were drawing gravel from the pit for the defendants, on similar terms. Sometimes it was necessary for the teamsters who loaded their own sleighs to undermine and take the gravel from beneath the frozen upper crust; and at times dynamite was used to break down the crust. On the 19th January, one McKelvie, employed by the defendants, was in charge of the pit; his duty was to keep the pit in condition, including keeping the crust broken off, and to this end he used dynamite. On the evening of the 18th January, he drilled three holes on the upper surface of the frozen crust and one on the under side, put a charge in each of the upper holes, but not in the underneath hole; and, after the discharge, he broke the crust as far back as these holes. Then he ceased work for the night.

Durant had hauled sand from another place in the same pit at an earlier date. On arriving at the pit on the morning of the 19th January, he inquired of McKelvie and was shewn where the

gravel was; he proceeded to load; while he was engaged in loading, the upper crust gave way, and a heavy chunk fell upon him and so injured him as to cause his death. He was not warned of any danger.

The deceased was not a person employed by the defendants. He was employed by Truax, and was exclusively under his control and entirely beyond the control of the defendants, who neither engaged him, paid him, nor had any power to direct his operations or dismiss him. The case did not come under the Workmen's Compensation Act, 4 Geo. V. ch. 25 (O.)

The defendants, when they employed a man to keep the pit clean for those hauling gravel—that operation including the care and removal of the frozen upper crust, which was an element of danger to those working in the pit—assumed, even if they did not in the beginning have, the control over the very part of the operation of the gravel-pit in which, and owing to the condition of which, Durant met his death. In the course of that operation and from the blasting on the evening of the 18th January, and from the failure to remove all the portion that was loosened by the blasting, there was introduced an element of danger to those working in the pit—a veritable trap, especially to those who, like Durant, knew not of the danger and were not warned. It was McKelvie, the person whom the defendants employed to take charge of the clearing of the pit, who pointed out to Durant where the gravel was to be obtained—the very spot where he was caught by the falling mass. This combination of circumstances constituted negligence on the part of the defendants.

Contributory negligence was alleged, but was not supported by the evidence.

The parents of the deceased had a reasonable expectation of pecuniary benefit from the prolongation of their son's life.

Money paid by the plaintiff for the funeral expenses of the deceased could not be taken into account in estimating the damages either at common law or under the Fatal Accidents Act, Clark v. London General Omnibus Co., [1906] 2 K.B. 648; Toronto R.W. Co. v. Mulvaney (1907), 38 S.C.R. 327.

Brothers and sisters of the deceased are amongst the persons for whose benefit an action may be brought under the Fatal Accidents Act.

The damages should be assessed at $1,400, $700 to the plaintiff and $700 to the mother.

Judgment accordingly with costs.

SUTHERLAND, J., IN CHAMBERS. AUGUST 1ST, 1917.

*REX v. MARTIN.

Ontario Temperance Act—Magistrate's Conviction for Offence against sec. 41—Unlawfully Having Intoxicating Liquor—"Indian"—Evidence—Indian Act, R.S.C. 1906 ch. 81, secs. 2 (f) (i), 137—Affidavit Supplementing Evidence before Magistrate—Inadmissibility—Sentence—Hard Labour"—Interpretation Act, R.S.O. 1914 ch. 1, sec. 25—Distress—Amendment—Criminal Code, sec. 889—Absence of Written Information—Place of Offence.

Motion upon the return of a habeas corpus to discharge the defendant from custody under a conviction by the Police Magistrate for the City of Hamilton for an offence against the provisions of sec. 41 of the Ontario Temperance Act, 6 Geo. V. ch. 50, by unlawfully having intoxicating liquor in his possession, in the city of Hamilton. He was sentenced to pay a fine of $200; in default of payment the fine to be levied by distress; and in default of sufficient distress the defendant to be imprisoned and kept at hard labour for three months. The fine not being paid, the defendant was in prison when the application was made.

D. O. Cameron, for the defendant.
J. R. Cartwright, K.C., for the Crown.

SUTHERLAND, J., in a written judgment, said that it was argued (1) that the defendant was an Indian within the meaning of the Indian Act, R.S.C. 1906 ch. 81, and was therefore under the exclusive jurisdiction of the Dominion Parliament. Section 137 of the Indian Act provides for the punishment of an Indian who has intoxicating liquor in his possession. But the only evidence that the defendant came under the Indian Act was his answer to the question asked him when he testified on his own behalf before the magistrate: "Are you an Indian?" A. "Yes." By the interpretation clause of the Indian Act, sec. 2 (*f*) (i), "Indian" means "any male person of Indian blood reputed to belong to a particular band." The statement of the accused, therefore, did not go far enough; and an affidavit supplementing the statement of the accused could not be admitted: Regina v. Bolton (1841), 1 Q.B. 66; Rex v. Morn Hill Camp Commanding Officer, [1917] 1 K.B. 176; Rex v. Chappus (1917), 12 O.W.N. 121. On this ground of objection, the defendant failed.

(2) There is no provision in the Ontario Temperance Act for the imposition of "hard labour;" but by sec. 25 of the Interpretation Act, R.S.O. 1914 ch. 1, "where power to impose imprisonment is conferred by any Act it shall authorise the imposing of imprisonment with hard labour."

(3) No distress-warrant was issued; but, under sec. 889 of the Criminal Code, the conviction might be amended: Regina v. Murdock (1900), 27 A.R. 443.

(4) There was no written information or complaint; but no objection was taken at the hearing on this score: Regina v. Hughes (1879), 4 Q.B.D. 614.

(5) It was objected that no *place* was mentioned in the conviction; but the conviction read that the defendant "at and in the city of Hamilton did unlawfully have liquor," etc.

Motion dismissed with costs.

SUTHERLAND, J. AUGUST 1ST, 1917.

UNION BANK OF CANADA v. MAKEPEACE.

Guaranty—Account of Customer with Bank—Advances—Overdraft—Outstanding Notes—Interest—Appropriation of Payments—Liability of Guarantor.

Appeal by the defendant from a report of the Master in Ordinary.

The action was brought upon a guaranty (2nd February, 1914), executed by the defendant in favour of the plaintiffs in respect of a customer's account with the bank.

The action was tried by MIDDLETON, J., who gave judgment for the plaintiffs for the amount claimed with interest and costs: (1915) 9 O.W.N. 202. That judgment was varied on appeal: (1916) 10 O.W.N. 28.

The judgment of the appellate Court (1) declared that the guaranty was a valid and subsisting security; (2) directed a reference to the Master: (a) to inquire and state what advances were made by the plaintiff to the customer under the guaranty, between the 2nd February, 1914, and the 23rd April, 1915; (b) to inquire and state what payments, if any, had been made on account of these advances.

At the date of the guaranty, the customer's account was over-

drawn to the extent of $922.26; and the Master charged this against the defendant. Between the date of the guaranty and the 23rd April, 1915, notes given by the customer to the plaintiffs matured and were the subject of discounts or renewals, and the plaintiffs made advances to the amount of $266.56 in connection therewith. This also was charged by the Master against the defendant.

The appeal was heard in the Weekly Court at Toronto.
W. S. MacBrayne, for the defendant.
W. N. Tilley, K.C., and D. C. Ross, for the plaintiffs.

SUTHERLAND, J., in a written judgment, said that the defendant contended that the interest on the outstanding notes was not an advance within the meaning of the guaranty. It was not, however, intended that, as between the bank and the customer, a line was to be drawn across the account at the date of the guaranty. The customer and the bank were to continue their dealings with each other thereafter; and the customer, as payments were made, could direct the application to be made thereof. If he did not do so, and they were carried into the account by the bank, the rule in Clayton's Case (1816), 1 Mer. 572, 585, 608, as stated in Cory Brothers & Co. Limited v. Owners of The "Mecca," [1897] A.C. 286, 290, would be the one to be applied, namely: "Where an account current is kept between parties as a banking account, 'there is no room for any other appropriation than that which arises from the order in which the receipts and payments take place and are carried into the account. Presumably, it is the first sum paid in that is first drawn out. It is the first item on the debit side of the account that is discharged or reduced by the first item on the credit side; the appropriation is made by the very act of setting the two items against each other.'"

Applying this principle, the item of $922.26 was paid by the earlier payments in the account which would be properly applicable to them.

It was said that, as between the bank and the customer, the account was treated in this way, and that enough payments were made by the customer between the dates named to pay the $266.56 as well as the $922.26. The debtor (customer) made no specific application of his payments, and automatically in the account they were applied in payment of the overdraft and the $266.56. The account ran on, and the ultimate overdraft was the amount claimed by the plaintiffs, for which the Master found the defendant liable. The judgment of the appellate Court was not intended

to preclude the debtor from paying, after the date of the guaranty, sums on account of the overdraft and in payment of accrued interest on the notes in connection therewith advanced by the bank subsequent to the date thereof.

The guaranty was "a continuing guaranty intended to cover any number of transactions" and one in which the guarantor was to be held liable to the extent of $2,500 "of the amount" for the ultimate balance remaining after all moneys obtainable from other sources shall have been applied in reduction of the amount which shall be owing from "the customer to the bank."

The Master was right in finding as he did in regard to the item of $266.56 and as to the mode of appropriating the payments in connection with the item of $922.26: Thomson v. Stikeman (1913), 29 O.L.R. 146, 156, 30 O.L.R. 123, 126.

Appeal dismissed with costs.

SUTHERLAND, J. AUGUST 1ST, 1917.

*VELTRE v. LONDON AND LANCASHIRE FIRE INSURANCE CO. LIMITED.

Insurance—Fire Insurance—Notice by Insurer Terminating Insurance—Service by Registered Letter—Tender of Unearned Portion of Premium by Enclosing Money in Letter—Letter not Actually Received by Assured—Insurance Act, R.S.O. 1914 ch. 183, sec. 194, conditions 11, 15.

Action upon a fire insurance policy.

The plaintiff, a married woman, lived with her husband, Samuel Savino, in the town of Thorold. The policy was issued to her in the name of "F. Veltre." Veltre was her maiden name, and it appeared that it is a common custom for Italian married women to retain their maiden names. Both the plaintiff and her husband were Italians. The policy was issued on the 17th June, 1916, covering for one year a stock of goods in a store and the store fixtures and furniture. A fire occurred on the 25th December, 1916, which, the plaintiff alleged, destroyed all the property insured; and she claimed $1,500, the whole amount of the insurance. The defences were, that the insurance had been terminated by notice given on the 15th December, 1916, and that the action was prematurely brought, if the policy was in force at the time of the fire.

The action was tried without a jury at St. Catharines.

A. C. Kingstone, for the plaintiff.

R. S. Robertson, for the defendants.

SUTHERLAND, J., in a written judgment, said, after stating the facts, that the plaintiff had sustained a loss which entitled her to claim $1,500 under the policy.

It was proved that on the 15th December, 1916, the defendants sent a letter addressed to the plaintiff as "F. Veltre, Esq."; at her address at Thorold, enclosing $11.34, the unearned premium for the remainder of the term, and notifying her that the policy was cancelled, and the defendants would not be liable should a fire occur after the 22nd December, 1916. The letter was registered; it was not delivered to or received by the plaintiff or her husband up to the time that the fire occurred. The letter apparently reached Thorold on the 16th December. It was ultimately returned to the defendants at their office in Toronto.

It was admitted that $11.34 was more than the unearned premium for the remainder of the term; but "a tender by the debtor of more money than is due to his creditor is a good tender of the sum really due:" Harris's Law of Tender (1908), p. 76.

By statutory condition 11 (Insurance Act, R.S.O. 1914 ch. 183, sec. 194), the insurance may be terminated by the company by giving seven days' notice to that effect, and, if on the cash plan, by tendering therewith a ratable proportion of the premium paid, for the unexpired term, calculated from the termination of the notice, and the policy shall cease after such notice or notice and tender as the case may be, and the expiration of the seven days; and, by condition 15, any written notice to the assured may be by letter delivered to the assured or by registered letter addressed to him at his last post-office address notified to the company.

The learned Judge was of opinion that condition 15 applied, and that the written notice was effective and the tender made by enclosing the amount in the letter need not be a personal one. The two conditions should be read together, and the tender may accompany the registered letter where the notice is given in that way.

In Laverty on the Insurance Law of Canada (1911), p. 80, it is said that "in determining when cancellation by the insurer shall be effectual, the principal test is whether the unearned portion of the premium has been paid over to and actually received by the insured;" but the facts of the cases cited for that proposition are different from the facts here; and, once the insurance company have posted the registered letter tendering therewith the un-

earned premium, and the seven days have expired, the legal presumption is that the notice and money have been received by the assured, and the contract is at an end.

Action dismissed without costs.

SUTHERLAND, J. AUGUST 1ST, 1917.

*MACKELL v. OTTAWA SEPARATE SCHOOL TRUSTEES.

Evidence—Motion to Commit for Contempt of Court—Witnesses Examined on Motion—Refusal to Answer Questions—Apprehension of Criminal Prosecution—Privilege—Disobedience of Judgment—Separate School Board—Paying Salaries to Unqualified Teachers.

Motion by the plaintiffs for an order requiring Samuel M. Genest and others to attend again for examination as witnesses upon a pending motion and answer questions which they refused to answer upon their former examination, and other proper questions and to produce books, papers, and documents relating to the payment of salaries of teachers in the employment of the defendants the Ottawa Roman Catholic Separate Schools Board, and, in default, for the committal of Genest and the others to gaol.

The motion was heard in the Weekly Court at Toronto.
W. N. Tilley, K.C., for the plaintiffs.
A. C. McMaster, for Genest et al.

SUTHERLAND, J., in a written judgment, said that the motion upon which the respondents were examined as witnesses was one to commit Genest for contempt of Court in disobedience to the judgment of Lennox, J., of the 17th December, 1914 (32 O.L.R. 245, 261), restraining the defendant Board from continuing in its employment or paying salaries to teachers who do not possess the proper legal qualifications or who are not authorised to teach pursuant to the provisions of the Separate Schools Act or the regulations of the Department of Education of Ontario.

A motion by Genest to quash the motion to commit him for contempt was dismissed by Kelly, J.: Mackell v. Ottawa Separate School Trustees (1917), ante 265.

The plaintiffs sought to shew by the evidence of Genest that as chairman of the defendant Board he had to do with the pay-

ment of unqualified teachers, and was a party to their being paid out of school moneys. The present motion was resisted by Genest on the ground that if he answered such questions, he might expose himself to the risk of criminal prosecution, or, if not himself, then the Board.

The learned Judge said that, having given the matter the best consideration he could, he was entirely unable to see that there could be any reasonable apprehension on the part of Genest or the other witnesses that by answering the questions which they refused to answer they would make themselves or the Board liable to a criminal prosecution. So far as the witnesses were themselves personally concerned, they were fully protected by the Evidence Act, R.S.O. 1914 ch. 76, sec. 7. See Re Ginsberg (1917), ante 284. And the defendant Board could not be proceeded against criminally, nor could any answers given by the witnesses be used against it, nor could the statement of one member of the Board made upon an examination in a civil action be used against another in a criminal action.

Three members of a teaching order in the Roman Catholic Church were examined as witnesses and admitted that they had been teaching in the Ottawa Separate schools without any legal certificate or authorisation. They declined to say whether they had been paid salaries by the Board; they said that they had made perpetual vows to devote themselves to the welfare of the children and that it might not serve the interests of the children if they answered the questions put to them.

The learned Judge said that these gentlemen had given no valid or legal reason for declining to answer.

Order made as asked by the plaintiffs with costs to them in any event.

ROSE, J. AUGUST 4TH, 1917.

*BALDWIN v. O'BRIEN.

Appeal—Supreme Court of Canada—Stay of Operation of Injunction pending Appeal—Powers of Judge of High Court Division—Judgment Directed to be Entered by Order of Appellate Division.

Motion by the defendants O'Brien, McLean, and Verrall, for an order staying the operation of the injunction contained in the judgment directed to be entered by the Second Divisional Court of the Appellate Division on the 8th June, 1917 (see ante 256),

pending an appeal by these defendants to the Supreme Court of Canada from that judgment.

By the injunction these defendants were restrained from entering upon, traversing, or in any way trespassing upon or doing damage to the lane in question in the action.

These defendants had launched their appeal to the Supreme Court of Canada and had given security for the costs of it.

The parties agreed that, pending the disposition of the appeal, the judgment so far as it awarded the payment of damages and costs should not be enforced, but they had not been able to reach a similar agreement as to the enforcement of the injunction; and the defendants enjoined now sought to stay the operation of it.

The motion was heard in the Weekly Court at Toronto.

Strachan Johnston, K. C., for the defendants O'Brien, McLean, and Verrall.

John T. Small, K.C., for the plaintiffs.

ROSE, J., in a written judgment, said that by the Supreme Court Act, R.S.C. 1906 ch. 139, sec. 76, the perfecting of the security for costs effected a stay of execution in the original cause, except in certain cases which need not here be considered; but, while the execution of the judgment is stayed, the injunction seems to remain in force (McLaren v. Caldwell (1882), 29 Gr. 438); and the defendants feared that, if they continued to pass through the lane as they had been doing, they were in danger of a motion to commit.

Bland v. Brown (1916), 37 O.L.R. 534, was a different case from this; and it might be that the danger apprehended by the defendants was a real one.

The learned Judge, after referring to the circumstances of the case, said that, if he had the power to stay the operation of the injunction, he ought to exercise it.

As to the power, what was said was, that, although the injunction was contained in a judgment which a Divisional Court of the Appellate Division directed to be entered, the judgment was the judgment of the High Court Division, and that a Judge of that Division, exercising the power of the Court pursuant to sec. 43 of the Judicature Act, had power to stay the operation of it; and the cases seemed to support the argument: Mitchell v. Fidelity and Casualty Co. of New York (1917), 38 O.L.R. 543; Sharpe v. White (1910), 20 O.L.R. 575; Hargrave v. Royal Templars of Temperance (1901), 2 O.L.R. 126; Judicature Act, sec. 16 (*f*); Holmested's Judicature Act, 4th ed., pp. 158, 168.

Order made staying, pending the determination of the appeal, the operation of so much of the injunction as restrained the defendants O'Brien, McLean, and Verrall, their tenants, etc., from entering upon the lands.

Costs of the motion to the party successful upon the appeal to the Supreme Court of Canada.

MASTEN, J. AUGUST 4TH, 1917.

COOK v. HINDS.

Company—Directors—Remuneration for Services as Managers—By-law—Approval by Shareholders—Attempt to Shew Fraud on Rights of Minority—Payment of Large Sum out of Funds of Company—Costs of Former Litigation—Costs Personally Payable by Directors Paid out of Funds of Company—Restoration.

Action by A. B. Cook against Thomas R. Hinds, George S. Deeks, George M. Deeks, and the Toronto Construction Company Limited, for a declaration that the sum of $70,461.43 paid out of the funds of the defendant company to the defendant George S. Deeks and a like sum paid to the defendant Hinds for the services of each in managing and conducting the business and work of the company, being at the rate for each of $25,000 per annum for the period from the 1st May, 1909, till the 23rd February, 1912, were improperly paid and for repayment thereof to the company; and also for a declaration that certain costs taxed by the plaintiff or incurred by the defendants in a former action, Cook v. Deeks, 33 O.L.R. 209, [1916] A.C. 554, were improperly paid out of the funds of the company, and for repayment thereof to the company.

The action was tried without a jury at Toronto.

Wallace Nesbitt, K.C., and A. M. Stewart, for the plaintiff.

R. McKay, K.C., for the defendants.

MASTEN, J., in a written judgment, said that the defendant company was a joint stock company incorporated under the Ontario Companies Act, and carried on operations as a contractor for the construction of public works. The plaintiff and the three individual defendants were the shareholders and directors of the company. The defendant George S. Deeks was president; the

defendant Hinds, secretary; and the plaintiff, general manager. Throughout the period to which this action related, George S. Deeks and Hinds superintended and managed all the business and work of the company, and devoted practically their whole time to its affairs. The payment of $70,461.43 each to these defendants was authorised by a resolution passed by the directors on the 25th March, 1916, and subsequently confirmed by the shareholders. The plaintiff and the individual defendants each held or controlled one-fourth of the shares. At a meeting of the directors held on the 10th January, 1910, it was resolved that the officers actively engaged in the management of the company should receive a salary to be settled on hereafter, this salary to date from the 1st May, 1909. The remuneration referred to in that resolution was, the learned Judge said, remuneration to Deeks and Hinds not as directors of the company but for services in an executive capacity in managing the company's affairs as employees.

The judgment of the Privy Council in Cook v. Deeks, [1916] A.C. 554, was pronounced on the 29th February, 1916. On the 25th March, 1916, a by-law was passed by the directors authorising the payment to George S. Deeks and Thomas R. Hinds of the salaries mentioned above. The plaintiff objected to the passing of this resolution. It was confirmed at a shareholders' meeting held on the 10th April, 1916, all the shareholders except the plaintiff being present.

In the learned Judge's view, the breach of duty of the defendants Hinds and George S. Deeks in taking the Lake Shore contract in their own names, as found by the Privy Council, did not disentitle them to receive the remuneration which had been awarded to them by the company, and which they earned in the subsidiary sphere of employees superintending and managing its works on the ground. The remuneration was not paid to them for winding-up the company's affairs. The plaintiff's action in regard to the remuneration or salary failed.

In regard to the question of the payment out of the company's funds of the costs of the former litigation, the learned Judge was of opinion that these costs were awarded personally against the defendants George S. Deeks, George M. Deeks, and Hinds, for breach of duty committed by them individually, not in the performance of their duty to the company as directors, but adversely to that duty, and that it was therefore improper and unwarrantable that these costs should be paid out of the coffers of the company. It should be declared that the three individual defendants should personally pay three-fifths of these costs.

The defendants should have the costs of this action, except those of the issue in regard to the question of costs, and the plaintiff should have the costs of that issue, to be set off against the general costs of the action.

RAINY LAKE MINING AND DEVELOPMENT CO. v. LOCKHART—KELLY, J.—JULY 31.

Trespass to Land—Cutting Timber—Evidence—Damages—Costs—Reference—Status of Extra-provincial Company as Plaintiff—Title to Land.]—Action by the Rainy Lake Mining and Development Company and one Ericson against Richard Lockhart, Allan Grant Seaman, and another company, for trespass to the plaintiffs' lands and cutting and removing timber therefrom. The action was tried without a jury at Fort Frances. KELLY, J., in a written judgment, said that the defendants had raised the question of the plaintiffs' right to sue, alleging that the plaintiff company was an extra-provincial corporation, and so not entitled to do business in Ontario, and that it had no title to the lands in respect of which the action was brought. It had been established, however, that the plaintiff company acquired the lands long before the happenings for which the action was brought; and that the title thereto, by arrangement between the company and its co-plaintiff, was taken and had continued in his name, he holding for the company. In the circumstances disclosed by the evidence, the defendants' objection was not sustained. The action was maintainable by the plaintiffs: Euclid Avenue Trusts Co. v. Hohs (1911), 24 O.L.R. 447. The evidence to support the plaintiffs' claim was in essential points indefinite, and, except in matters of comparatively small moment, was displaced by that of the defendants. On their own evidence, the defendants used the roads over the plaintiffs' lands as a means of reaching the water with their timber, but not till after the end of 1911; in clearing the roads they also cut some timber. Any acts really committed by the defendants were the acts of the defendant company, and not of the defendants Lockhart and Seaman personally. Judgment for the plaintiff for $250 damages against the defendant company with costs on the County Court scale. If either the plaintiffs or the defendants are dissatisfied with the amount of the damages allowed, they may have a reference, at their own risk as to costs, to the Local Master at Fort Frances; and the costs of the reference will be reserved until after report. The action as against the defendants Lockhart and Seaman is dismissed without costs. Frank Denton, K.C., and A. G. Murray, for the plaintiffs. C. R. Fitch, for the defendants.

HALL v. McDONALD—KELLY, J.—JULY 31.

Negligence—Pedestrian Injured by Motor Car on Highway—Excessive Rate of Speed—Evidence—Contributory Negligence—Ultimate Negligence—Motor Vehicles Act, R.S.O. 1914 ch. 207, sec. 23—Onus—Damages.]—Action for damages for injuries sustained by the plaintiff from being struck by the defendant's motor car, driven by the defendant, in Wellington street, in the city of Toronto, about 10 o'clock in the evening, on the 5th August, 1915, by reason of the defendant's negligence, as the plaintiff alleged. The action was tried without a jury at Toronto. KELLY, J., in a written judgment, said that there could be no question on the evidence that the defendant was driving negligently at and immediately before the time that the plaintiff was struck. The plaintiff was on foot, attempting to cross Wellington street from south to north. The defendant was driving westerly on the north side of the street. The defendant, at the time, was driving at an excessive and dangerous rate of speed; and, if he did not see the plaintiff until he was just upon him, could, had he been exercising ordinary care, have seen him at a time when he could have checked the speed and avoided the accident. The plaintiff was not himself negligent; he could not, by the exercise of reasonable care, have seen the car approaching and avoided it. But, even assuming that the plaintiff was negligent in proceeding across the street when and where he did so, the defendant could not be exonerated. Not only had he not satisfied the onus imposed upon him by sec. 23 of the Motor Vehicles Act, R.S.O. 1914 ch. 207, but there was abundance of affirmative evidence of excessive speed and want of that degree of care which it was his duty to exercise, and which, had he exercised it, even if the plaintiff had been negligent, would have resulted in avoiding the accident. There were no obstructions to the defendant's view of the street, and the street was sufficiently lighted to have enabled him to see the plaintiff crossing the street, had he been as observant as he should have been. The plaintiff, when about to cross, at a point about 390 feet west from the west side of Yonge street, looked easterly and saw the lights of a motor car at Yonge street—that was the defendant's car. The plaintiff did not look easterly again until just as he was about to be struck. Seeing the lights of the car as far away as Yonge street, he assumed that he would have ample time to reach the north kerb before the car could possibly reach him if it continued at a reasonable rate of speed. Had that reasonable rate of speed been maintained, he would not have been injured. Reference to Grand Trunk R.W. Co. v McAlpine, [1913] A.C. 838, 845, 846;

Long v. Toronto R.W. Co. (1914), 50 S.C.R. 224. The amount claimed by the plaintiff for damages ($3,000) was not immoderate. Judgment for the plaintiff for $3,000 with costs. H. H. Dewart, K.C., and R. T. Harding, for the plaintiff. M. K. Cowan, K.C., and Callahan, for the defendant.

RE PRIOR—SUTHERLAND, J.—AUG. 1.

Will—Construction—"Annuity"—Equity of Redemption in Lands—Life Estate—Remainder—Life Insurance—Beneficiary—Change—Residuary Estate.]—Application, upon originating notice, by Henry Membery, executor, and Mary Prior, widow and executrix, of Arthur Henry Prior, deceased, for an order declaring the true construction of the will of the deceased, the material portion of which was: "I give devise and bequeath all my real and personal estate of which I may die possessed in the manner following . . . to my wife Mary Prior an annuity in house and lot . . . in the city of Toronto . . . also all insurance and furniture and personal effects for her own and absolute use and benefit. After the decease of my said wife I bequest the real estate insurance and all personal property or other effects to be equally divided between my children" (three named children). "All the residue of my estate not hereinbefore disposed of I give devise and bequeath unto my wife Mary Prior." The motion was heard in the Weekly Court at Toronto. SUTHERLAND, J., in a written judgment, said that what the testator intended by "annuity" was the equity which he had in the house and lot in the city of Toronto. The widow as to the real estate took an estate for life with remainder to the infant children in equal shares thereafter. The insurance consisted of a beneficiary certificate in a benefit society, dated the 28th April, 1906, for $1,000, payable to Susannah Prior, mother of the deceased. The will was dated the 22nd September, 1915. On the 15th November, 1915, the deceased signed an endorsement on the certificate in these words: "I . . . do hereby revoke my former directions as to the payment of the within mentioned amount upon my death, and now authorise and direct such payment to be made to Mary Prior bearing relationship to myself of wife." The insurance moneys are the property of Mary Prior; and the residue of the estate belongs to her also. Order declaring accordingly; costs of all parties out of the estate. R. G. Smyth, for the applicants. F. W. Harcourt, K.C., for the infants.

SMALL v. CADOW—SUTHERLAND, J.—AUG. 1.

Receiver—Equitable Execution—Rents of Land—Interest of Life-tenant—Payments for Taxes and Repairs.]—Upon the application of John Turnbull Small, surviving partner of the firm of Henderson & Small, an order was made by SUTHERLAND, J., on the 12th July, 1917, reviving the action of Henderson & Small v. Cadow in the name of the applicant as plaintiff, and appointing him receiver to collect, get in, and receive the rents, issues, and profits of lands in which the defendant had an interest as life-tenant. There was a tenant under the defendant in possession of the property. An application was now made on behalf of the life-tenant and his tenant in possession for an order varying the previous order by providing that the receiver should pay the taxes and for necessary repairs to the premises, out of the rents, before applying any portion upon the judgment-debt. The application was heard in the Weekly Court at Toronto. SUTHERLAND, J., in a short written judgment, said that, having regard to the duty of life-tenants to pay, among other things, taxes imposed upon the land, the order should not be amended as asked. Application refused with costs, if demanded. V. J. Callen, for the applicants. E. D. Armour, K.C., for the receiver.

CANADIAN WOOD PRODUCTS LIMITED v. BRYCE—SUTHERLAND, J. —AUG. 1.

Fraudulent Conveyances—Husband and Wife—Voluntary Conveyances of Land—Hazardous Business—Intent to Defraud Creditors—Findings of Trial Judge.]—The plaintiffs, having on the 13th July, 1913, recovered a judgment against the defendant Arthur Bryce for nearly $3,000, began this action on the 15th October, 1915, to set aside two conveyances of land by the defendant Arthur Bryce to his wife, the defendant Vera K. Bryce. These conveyances were made respectively in June, 1909, and March, 1913. The plaintiffs alleged that the conveyances were voluntary and made with intent to defeat and delay creditors etc. The action was tried without a jury at Toronto. SUTHERLAND, J., in a written judgment, after setting out the facts, said that the evidence of the defendants was confused, contradictory, and unsatisfactory; and he had come to the conclusion that both defendants were aware that the business in which the husband was engaged was a precarious, uncertain, and speculative one, and of a hazardous character; that the conveyances were voluntary and

given and executed by the husband to the wife with a common knowledge and intent to secure and protect them against possible claims of creditors of the husband in the future in case the business should prove unsuccessful; and that the conveyances were intended to hinder, defeat, delay, and defraud creditors. Reference to Ottawa Wine Vaults Co. v. McGuire (1912), 27 O.L.R. 319, affirmed by the Supreme Court of Canada, McGuire v. Ottawa Wine Vaults Co. (1913), 48 S.C.R. 44; Mackay v. Douglas (1872), L.R. 14 Eq. 106; Ex p. Russell (1882), 19 Ch. D. 588. Judgment declaring that, except as to incumbrances existing before registration of a certificate of lis pendens upon the commencement of this action, the lands comprised in the two conveyances attacked are available to satisfy the claim of the plaintiffs under their execution. Costs to be paid by the defendants. R. McKay, K.C., for the plaintiffs. M. H. Ludwig, K.C., for the defendants.

YOST v. INTERNATIONAL SECURITIES CO. LIMITED and MACPHERSON—DANNACKER v. INTERNATIONAL SECURITIES CO. LIMITED AND MACPHERSON—SUTHERLAND, J.—AUG. 2.

Fraud and Misrepresentation—Agreements to Purchase Land—Evidence—Rescission of Agreements—Return of Money Paid—Damages—Costs.]—The plaintiffs, alleging that they and each of them were induced to purchase certain lots of land in the town of Canora, Saskatchewan, through the fraud and misrepresentation of the defendant MacPherson and one Sweet, an agent of the defendant company, brought these actions to rescind the agreements of sale and purchase and for damages. The actions were commenced on the 11th January, 1915. The defendant company did not appear, though duly served with the writ of summons and afterwards with a notice of assessment of damages. The actions first came on for trial in May, 1915, before the late Chancellor, who assessed the damages against the defendant company in both actions, and gave judgment in each case against the company for the sums assessed, with costs. The Chancellor postponed the trial of the actions as against the defendant MacPherson; and the trial took place before SUTHERLAND, J., without a jury, at Stratford. SUTHERLAND, J., in a written judgment, after setting out the facts and reviewing the evidence, said that it was clear that the defendant MacPherson was a party to representations being made to the plaintiffs that they were dealing with the defendant company as vendor and owner at the prices named in their res-

pective agreements, when he (MacPherson) knew that he and Spicer Graham & Co. had arranged that he should purchase the lots and was to be treated as having purchased them at the prices mentioned in his application to purchase, and that payments to the defendant company were to be made by or through him or in his name to the company. In this respect misrepresentation and deception were practised upon the plaintiffs. Representations were also made to the plaintiffs that the lots were worth more than they were paying for them and would rapidly increase in price owing to the thriving character of the town of Canora. Such representations were not justified by the facts; MacPherson was a party to their being made, and either knew that they were untrue or was reckless as to whether they were or were not. The plaintiffs were entitled to have the contracts rescinded and to recover from the defendant MacPherson the amounts paid by them under their respective agreements as damages resulting from such misrepresentations. Judgment for the plaintiffs as against the defendant MacPherson for payment of the sums referred to, without interest, and with costs of the actions. R. S. Robertson, for the plaintiffs. R. T. Harding, for the defendant MacPherson.

RE GRIFFITH—SUTHERLAND, J., IN CHAMBERS—AUG. 2.

Money in Court—Payment out—Affidavits—Costs.]—Motion by A I. Griffith for payment out of Court of moneys paid in under an order of the Master in Chambers of the 21st May, 1917, in the matter of the estate of James Griffith, deceased. SUTHERLAND, J., in a written judgment, said that, in view of the facts set out in the affidavit of Jane Griffith, widow and administratrix of the estate of the deceased, and in the affidavit of the applicant, an order should be made for payment out to him of the moneys in Court. Costs of the application to be paid out of the fund. Charles Henderson, for the applicant.

CLERGUE v. LAKE SUPERIOR DRY DOCK AND CONSTRUCTION CO. —HODGE v. CLERGUE—FALCONBRIDGE, C.J.K.B.—AUG. 3.

Injunction—Ex Parte Orders—Misstatements and Suppression of Material Facts—Dissolution of Injunctions—Costs.]—In the first action a motion was made by the plaintiff to continue till the trial two injunctions granted ex parte by BRITTON, J., and MASTEN, J.,

respectively; and in the second action a motion was made by the plaintiff to continue till the trial an injunction granted by another Judge. The three motions were heard in the Weekly Court at Toronto. FALCONBRIDGE, C.J.K.B., in a written judgment, said that the injunctions granted by BRITTON and MASTEN, JJ., must be dissolved, on the short ground that these were granted under a misconception of the case owing to misstatements of facts and suppression of material facts as to matters which were or ought to have been within the knowledge of deponents on the part of the plaintiff. Injunctions dissolved—costs to the defendants in any event. In the second action, the learned Chief Justice said, the facts were practically identical with those in the first. The injunction in the second action should be continued until the trial. Costs to be costs in the cause unless the trial Judge should otherwise order. J. A. McPhail, for the plaintiff in the first action and the defendants in the second action. R. C. H. Cassels, for the defendants in the first action and the plaintiff in the second action.

WALMSLEY v. HYATT—ROBERTSON v. HYATT—KELLY, J.—AUG. 3.

Principal and Agent—Sale of Goods—Action for Damages for Non-delivery—Contract—Authority of Agents—Ratification.]—Actions for damages for non-delivery of tomatoes, tried without a jury at Belleville. KELLY, J., in a written judgment, said that the question at the foundation of the actions was, whether Forbes and Maclean were the defendants' agents with authority to make the agreements for the breach of which the plaintiffs sued. To constitute such agency there must have been an appointment by express or implied agreement, or a ratification by the defendants of the acts of the supposed agents. It had been made clear by affirmative evidence that—whatever may have been Forbes and Maclean's understanding of their position—the defendants never appointed or had it in their minds to appoint them; and Forbes, acting for his firm, was, at the time he signed the sale-notes, without authority to bind the defendants in any way. There was at no time a ratification by the defendants of Forbes and Maclean's acts. Forbes and the defendants did not agree upon what took place on the occasion when, as Forbes said, the defendants placed the tomatoes in his hands for sale. The learned Judge felt bound to accept the defendants' version of what did happen—the effect of which was that the negotiations were with Forbes as a prospective purchaser and not leading up to or constituting him or his firm

agent or agents to sell. This view was confirmed by circumstances that arose at the time and by what took place later on. Both actions should be dismissed with costs, and the claims of the defendants against Forbes and Maclean as third parties should also be dismissed, but without costs. E. G. Porter, K.C., for the plaintiffs and the third parties. R. Wherry, for the defendants.

EAST v. HARTY—KELLY, J.—AUG. 3.

Principal and Agent—Husband and Wife—Erection of Building on Wife's Land—Contract Made with Husband—Agency of Husband for Wife—Evidence—Election—Ratification.]—Action against James Harty and Margaret Harty, husband and wife, for a balance due to the plaintiffs in respect of the erection of a warehouse on property belonging to the defendant Margaret Harty, in the town of Fort Frances. The plaintiffs alleged that James was Margaret's agent in contracting with the plaintiffs, and that she was liable to them. The action was tried without a jury at Fort Frances. It was agreed that the learned Judge should determine the rights between the parties—as to whether both defendants were, or only one was, and if so which was, liable, if there was any liability at all. The written contract was dated the 16th June, 1914, and purported to be made between the plaintiffs as contractors and the defendant James Harty as owner, the contract-price being $4,692. The learned Judge, in a written judgment, said that the first question which arose was, whether James, when he made the contract, or incurred the debt now sued for or any part of it, was the agent of his wife. No such agency existed or was contemplated either by Margaret Harty or her husband. The plaintiffs, when the contract was made, and when the obligation was incurred, had in mind dealing with James as principal, although they knew from the beginning that the land belonged not to him but to his wife. It was admitted by the plaintiffs that they had no communication in any way with Margaret until after the whole debt had been incurred. There was no agency at the time of the contract or at any time before the whole debt was incurred. After the whole debt had been incurred, and when a considerable portion of its remained unpaid, the plaintiffs, who were indebted to the Corona Lumber Company, gave to that Company an order upon James Harty—not upon his wife—for payment of $5,500. Promissory notes aggregating this sum were then given by James to the lumber company; and there appeared

on the registry what purported to be a mortgage for $4,500 to that company, made about that time by Margaret Harty. She denied all knowledge of this mortgage or that she signed it. In May, 1916, after failure in the meantime by James to make payment of his notes, the lumber company obtained from Margaret a mortgage for $7,783, which apparently included the $5,500 and payment of a first mortgage. In the circumstances, this act of Margaret Harty was not a ratification of any acts of her husband, nor did it amount to anything which could be taken to have constituted agency, nor was it an approval of her husband's doings. Under pressure, she was induced to come to the rescue to the extent of giving the mortgage; but no agency was established by agreement, ratification, or otherwise. It is essential to an agency by ratification that the agent shall not be acting for himself, but shall intend to bind a named or ascertainable principal—one who is actually in existence at the time when the act is done. The question of election or no election is one of fact. The plaintiffs never knew (for it was not the fact) that James was agent for his wife in this transaction or assumed to be agent. The plaintiffs were therefore entitled, not against the defendant Margaret Harty, but against the defendant James Harty, to recover the balance of the account, $2,114.69, with interest from the 30th November, 1914, subject to an allowance of $61.01 and interest thereon from the same date, being part of an account submitted at the trial, with costs against James Harty. As against Margaret Harty, action dismissed with costs. C. R. Fitch, for the plaintiffs. A. G. Murray, for the defendants.

SEAMES v. CITY OF BELLEVILLE—KELLY, J.—AUG. 3.

Highway—Nonrepair—Snow and Ice on Public Walk in City—Dangerous Condition—Injury to Pedestrian—Gross Negligence—Municipal Act, sec. 460 (3)—Evidence—Findings of Trial Judge—Damages.]—Action by Annie Seames, a married woman, to recover damages for injury sustained by her by a fall upon a cement walk forming part of a public highway in the city of Belleville, by reason, as the plaintiff alleged, of the gross negligence of the defendants (the city corporation) in permitting snow and ice to accumulate on the walk in such a way as to create a dangerous condition. The action was tried without a jury at Belleville. KELLY, J., in a written judgment, said that the plaintiff's fall was

on the 27th December, 1916, on a public way constructed and maintained by the defendants. On the 22nd December, there was a heavy snowfall. Earlier in the winter, snow had fallen, some of which remained on the walk. On the 24th December, some snow fell; on the 25th and 26th, the temperature was low; and on the 27th, the streets generally were slippery. Upon the whole evidence, the learned Judge found that there was a heavy daily traffic over this walk; that, following a snowfall, the constant heavy traffic packed the snow on the walk; that the defendants' men whose duty it was to shovel the snow and ice contented themselves with removing a part only; that the uneven surface thus left formed into a ridge of such size and shape as to become dangerous, especially following rain or sleet; that this continuing condition of things was known or should have been known to the defendants; and that this condition continued—indeed was knowingly permitted—for such a time as to make the defendants' failure to apply a remedy gross negligence within the meaning of sec. 460 (3) of the Municipal Act, R.S.O. 1914 ch. 192. The defendants were, on these findings, liable. The plaintiff's damages were assessed at $750. Judgment for the plaintiff for that sum and her costs of the action. F. E. O'Flynn, for the plaintiff. Stewart Masson, K.C., for the defendants.

CORRECTION.

In REX v. OBERNESSER, ante 385, on p. 386, 21st line from top, the comma after "each" should be deleted.

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25. Validity of Bequests—Charitable Bequests—Mortmain and Charitable Uses Act, R.S.O. 1914 ch. 103, sec. 2 (2)—Advancement of Religion—Christian Science Church—Public Policy—Perpetuities—Benefit to Community—Distribution of Fund among Churches of Town—"Uplift of Needy"—Next of Kin—Ascertainment—Uncertain Bequests—Invalidity—"Deserving People"—Residuary Estate—"For God only"—Evidence of Capability of Corporate Bodies to Receive Gifts—Leave to Adduce—Costs. *Re Orr*, 12 O.W.N. 220.—SUTHERLAND, J.

See Contract, 1, 3—Executors and Administrators—Insurance, 6, 8 —Revenue, 2—Vendor and Purchaser, 7.

WINDING-UP.

See Appeal, 11—Banks and Banking, 4—Company, 7-10.

WITNESSES.

See Appeal, 3, 13—Arbitration and Award—Criminal Law, 4—Evidence, 1, 2.

WORDS.

"Absolutely in his own Right"—See COMPANY, 3.
"Action"—See COSTS, 8.
"All my other Insurance"—See WILL, 6.
"All my other Property"—See WILL, 6.
"Annuity"—See WILL, 1.
"Bicycle"—See TRADE MARK.
"Business Assessment"—See ASSESSMENT AND TAXES, 1.
"Business Established elsewhere in Ontario"—See MUNICIPAL CORPORATIONS, 1.
"Business of a Distiller"—See ASSESSMENT AND TAXES, 1.
"Clean and Clear of Foul Seed"—See EVIDENCE, 5.
"County Bridge"—See MUNICIPAL CORPORATIONS, 6.
"Damages"—See HIGHWAY, 4.

WORDS—(*Continued*).

"Decision"—See MINES AND MINING.
"Default"—See HIGHWAY, 4.
"Deserving People"—See WILL, 25.
"Directory"—See ONTARIO TEMPERANCE ACT, 3.
"Divided among her Heirs as she may Direct"—See WILL, 8.
"Drainage Work"—See MUNICIPAL CORPORATIONS, 3.
"Dwelling-house"—See ONTARIO TEMPERANCE ACT, 5, 6.
"Event"—See PRACTICE, 1.
"Fair Comment"—See LIBEL, 2.
"Fictitious Name"—See ONTARIO TEMPERANCE ACT, 2.
"Final and Binding"—See CONTRACT, 8.
"For God only"—See WILL, 25.
"Forthwith after Taxation"—See COSTS, 4.
"Full Dower Rights in all my Property"—See WILL, 4.
"Gross Negligence"—See HIGHWAY, 3, 6, 7.
"Hard Labour"—See ONTARIO TEMPERANCE ACT, 4.
"If Possible"—See CONTRACT, 25.
"Imperative"—See ONTARIO TEMPERANCE ACT, 3.
"Imperial"—See ASSESSMENT AND TAXES, 3.
"In his own Right"—See COMPANY, 3.
"Indian"—See ONTARIO TEMPERANCE ACT, 4.
"Insurance Contract"—See INSURANCE, 2.
"Judges"—See APPEAL, 2.
"Lent"—See MASTER AND SERVANT, 1.
"Licensee"—See ONTARIO TEMPERANCE ACT, 1.
"Maintaining"—See MUNICIPAL CORPORATIONS, 6.
"Mineral"—See ASSESSMENT AND TAXES, 2.
"Mineral Land"—See ASSESSMENT AND TAXES, 2.
"Minerals"—See RAILWAY, 3.
"Month's Notice to Resign"—See SCHOOLS, 1.
"Municipality"—See MUNICIPAL CORPORATIONS, 4.
"Order to the Contrary"—See COSTS, 4.
"Other Good Cause Shewn"—See MINES AND MINING.
"Passing-off"—See SALE OF GOODS, 4—TRADE MARK.
"Pecuniary Loss"—See MISTAKE.
"Person Interested in Land"—See PARTITION, 3.
"Personal Actions"—See DIVISION COURTS, 1, 2.
"Persons Beneficially Interested"—See EXECUTORS AND ADMINISTRATORS, 1.
"Prevented"—See MINES AND MINING.
"Private Dwelling-house"—See ONTARIO TEMPERANCE ACT, 5, 6.
"Resident"—See MUNICIPAL CORPORATIONS, 4.