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COMPENSATION FOR MISCARRIAGES OF JUSTICE.

The case of the unfortunate Adolph Beck who, though innocent, was compelled to serve a lengthy term of penal servitude is now almost "ancient history" in the rapid rush of events in this busy twentieth century. His case will go down to history as one that has brought great discredit upon the administration of justice in England. It is said that this miscarriage of justice arose from two causes—the incorrect ruling of the judge who tried the case; and the failure of the Home Office, on review, to appreciate, and so to remedy the state of affairs that ensued.

The report of the Committee of Enquiry, consisting of the Master of the Rolls, Sir Spencer Walpole and Sir John Edge, shews that there was such gross injustice to the accused and such a display of red tape-ism and careless indifference in the Home Office as to be almost incredible. This report, which seems to evince a desire to excuse the judge, nevertheless contains the following damning sentence: "He was convicted on evidence from which everything that told or might be thought to tell in his favour was excluded." Such an accusation needs no comment. The subsequent proceedings in the Home Office were equally discreditable and tell their tale of criminal carelessness and incompetence.

We only refer, however, to this matter at present in its connection with the subject of compensation by the State. In England persons who have been wrongfully convicted or imprisoned have no such claim. At the common law neither the person who is unjustly accused or one who is wrongfully convicted or imprisoned is entitled to compensation by the Crown, and there is no legislation on the subject. The report in this case has however had the good effect of inducing the Government to introduce a Bill to amend the Crown Cases Act as to reserving questions of law for appeal, and as to the ordering a re-trial under certain circumstances.

As to the question of compensation the *Law Notes* has gathered information as to what is done in this regard in other countries. The propriety of State compensation has received extensive recognition in Germany, where the idea has been before the Reichstag since 1882. It was enacted by the German Parliament in the year 1889 that a condemned person, who had been acquitted after a re-hearing of his case, could, under certain circumstances, demand compensation from the State. In 1904 the benefit of this principal was extended to innocent accused persons who had been imprisoned during the investigation of the charges against them, certain conditions and limitations being provided. We learn also that the Indian Criminal Procedure Code contains a provision for compensation to an acquitted prisoner, and provides some system of reparation for judicial errors. In some of the European countries, such as Switzerland and Norway and Sweden, there are some enactments of a similar character.

The subject is a very difficult one, and whilst the justice of compensation under the circumstances spoken of cannot be questioned, any provision to that end would have to be very carefully guarded to prevent abuse. It is this difficulty, doubtless, which has prevented any legislation in England, the United States or Canada. It calls for careful consideration on the part of those who are responsible for legislation; and more thought should be given to the gross wrong which is occasionally done to the individual.

The writer of an article on a subject akin to the above, published in "Everybody's Magazine," directs attention to the hardships suffered by persons who have been tried and acquitted. The language is rather strong, but there is much truth in his trenchant remarks: "The plight of an acquitted 'murder prisoner' is without duplicate or parallel in human affairs. The acquitting verdict of a murder jury is a confession by the State that the jury itself had no valid ground for existence; that the judicial machinery had slipped a cog; that officials too careless or too eager had clutched a victim instead of a culprit. And the freed 'suspect'—the acquitted man? Stripped and broken, bruised by foul handling, scarred by suspicion, pallid from death's shadow

and seared as by hell-fire, the acquitted man stands dumbly impotent of moral redress or physical indemnity. And the public, having scourged him as a vicarious sacrifice, expects him to be thankful because it did not kill him. The State bears alone only one result of the false charge and of the bootless trial. It takes over to itself all the chagrin of its prosecuting officials at their vain effort to convict. The victim of acquittal is, however, compelled to share with the State in the money cost of his own trial. Indeed, he is, by grotesque anomaly, a party financially to both sides of the action. A man accused of murder confronts prosecutors who bring to their paid efforts an implacable purpose to build or preserve a personal reputation. So horrid is the charge and so keen is the hunt that the prisoner is driven to his utmost resource. He may no longer rely upon presumptive innocence, for innocence has been and may again be strangled by circumstantial evidence. He enters upon a defence which becomes practically a deadly trial by the accused to prove himself innocent. Along with his name, his pride, and his life, he tosses in his own fortune or pittance, and possibly the possessions of his friends. At the end a jury foreman declares him 'not guilty,' and, financially, he stands stripped. He has exhausted his resources to keep himself from being killed, and he stands alone with his rescued life. Through taxation he has borne part of the expense incurred by the State in assaulting it, and the entire cost of its defense against confessedly wrongful attack."

VOLENTI NON FIT INJURIA.

Among the many civil law maxims which have been adopted and made an integral part of our legal system, none has been subjected to keener analysis, or made the object of more adverse criticism, than the one forming the subject of this article. No doubt great diversity of opinion prevails among the profession as to the scope and applicability of the maxims we have borrowed from the Roman system. While some think them to be the very quintessence of legal wisdom, others denounce them as unmeaning and unfitted to the genius of Anglo-Saxon jurisprudence.

That eminent judge, Lord Esher, in referring to the maxim, volenti non fit injuria, in *Yarmouth* v. *France*, L.R. 19 Q.B.D. (1887) at page 653, said:—"I need hardly repeat that I detest the attempt to fetter the law by maxims. They are almost invariably misleading; they are for the most part so large and general in their language that they always include something which really is not intended to be included in them." As an offset to this sharp stricture, we have the opposite view of that distinguished jurist, Lord Bramwell, in *Smith* v. *Baker*, L.R.A.C. (1891) at page 334, who, when referring to this self-same maxim, asks:—"If this is a maxim, is it any the worse? What are maxims but the expression of that which good sense has made a rule?"

For the last twenty-five years, since the enforcement of the Employers' Liability Act, no legal maxim has been so frequently and ably discussed as the one borrowed from the Digest of Justinian, which, freely translated, means that he who voluntarily incurs a risk suffers no legal wrong if injury to himself thereby results. And yet, notwithstanding the luminous judgments of our greatest jurists, the full extent and limits of its application have not even yet been defined with satisfactory clearness and precision. By reference to earlier cases it will appear it has gradually relaxed its stringency, and, to use the language of Lord Watson—"has lost much of its literal significance."

Before the Employers' Liability Act, 1880, it was held, where a workman entered upon employ which was dangerous, with full knowledge of the danger, he voluntarily incurred the risk of injury, whether the danger was incidental to the work or was occasioned by the imperfect conditions under which it was carried on. The undertaking to enter upon and continue in dangerous employ has, by some, been referred to acceptance of increased remuneration as a consideration for the risk. Willes, J., in *Saxon* v. *Hawkesworth*, 26 L.T.R. 851, says: "If a servant enters into an employment knowing that there is danger, and is satisfied to take the risk, it becomes part of the contract between him and his employer that the servant shall expose himself to such risks as he knows are consistent with his employment."

To the like effect was the judgment of Lord Bramwell, in the case of *Dynen* v. *Leach*, 26 L.J. Ex. 22 (1857): "There is nothing

legally wrong in the use, by an employer of works of machinery, more or less dangerous to his workmen, or less safe than others that might be adopted. It may be inhuman so to carry on his works as to expose his workmen to peril of their lives, but it does not create a right of action for an injury which it may occasion." In the same case, Channell, B., said: "I rest my judgment on the ground that the deceased himself continued in the employ of the defendant, and in the use of the clip with full knowledge of all the circumstances, so that he directly contributed to the accident."

The case of *Woodley* v. *Metropolitan District Ry. Co.*, L.R. 2 Exch. Div. p. 384 (1877), likewise decides that the plaintiff having continued in his employment with full knowledge, could not make the defendants liable for an injury arising from danger to which he voluntarily exposed himself. Chief Justice Cockburn, in his judgment, held that if a workman became aware of danger which had been concealed from him, or which he had not the means of becoming acquainted with before he entered on the employment, or of the want of the necessary means to prevent mischief, his proper course would be to quit the employment. If he continues in it, he is in the same position as though he had accepted it with a full knowledge of its danger in the first instance. In a legal point of view, if a man, for the sake of the employment, takes it or continues in it with a knowledge of its risks, he must trust to himself to keep clear of injury.

By reference to the form of the declaration in a cause under common law liability, as between employer and workman, it will be seen, it was necessary to allege the danger was known to the master, and unknown to the workman. If either allegation was omitted, the declaration was demurrable. The master was held to be liable, if he were cognizant, and the servant not cognizant, of danger. The Employers' Liability Act, although passed in 1880, did not come into force until 1881.

In *Weblin* v. *Ballard*, L.R. 17 Q.B.D. (1886) 122, the first case tried under this Act, the Court held Parliament had taken from the employer the defence of volenti non fit injuria, when sued by a workman under the Act.

In *Thomas* v. *Quartermaine*, L.R. 17 Q.B.D. (1886) p. 414, the Divisional Court likewise held that the Act deprived the employer of the benefit of the maxim. They, however, found for the defendant on the ground there was no evidence of a defect in the condition of the ways, works, machinery, or plant connected with the business of the employer. However, in the Court of Appeal, in this case (L.R. 18 Q.B.D. (1887) page 685), it was held (by Bowen and Fry, L.JJ., Lord Esher, M.R., dissenting) that the defence arising from the maxim, volenti non fit injuria, had not been affected by the Employers' Liability Act, 1880, and applied to this case. Bowen, L.J., in his masterly judgment, at page 698, says: "These two defences, that which rests on the doctrine, volenti non fit injuria, and that which is popularly described as contributory negligence, are quite different, and both, in my opinion, are left open to an employer, if sued under the Employers' Liability Act of 1880."

He further remarked: "For many months the plaintiff, a man of full intelligence, had seen this vat—known all about it—appreciated its danger—elected to continue working near it. It seems to me that legal language has no meaning unless it were held that knowledge such as this amounts to a voluntary encountering of the risk." Fry, L.J., at p. 700, is reported as follows: "The first section provides that when personal injury is caused to a workman by reason of any one of five things enumerated, the workman shall have the same right of compensation and remedies against his employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work. If the workman is to have the same rights as if he were not a workman, whose rights is he to have? Who are we to suppose him to be? I think that we ought to consider him to be a member of the public entering upon the defendant's property by his invitation. Can such a person maintain an action in respect of an injury arising from a defect, of which defect and of the resulting damage he was as well informed as the defendant? I think not. To such a person, it appears to me, that the maxim, volenti non fit injuria, applies."

In the case of *Yarmouth* v. *France*, 19 Q.B.D. 675, the Divisional Court on appeal held that they had no right from the mere

fact that the workman continued in the employment after knowledge of the risk, to draw the conclusion he could be said to be "volens." This was a question of fact to be determined by the evidence in each case.

It was further held that if nothing more is proved than that the workman saw the danger, reported it, but on being told to go on with the work, did so, to avoid dismissal, a jury might properly find that he had not agreed to the risk, and had not acted voluntarily in the sense of having taken the risk upon himself. The jury might properly draw the inference as a matter of fact that fear of dismissal, rather than voluntary action, induced continuance in the work.

In *Thrussell* v. *Handyside,* L.R. 20 Q.B.D. (1888) 359, it was held that the case was rightly left to the jury, that, although the plaintiff was aware of the danger, yet, as he was compelled by the orders of his employer to work where he was working when the accident happened, the maxim "volenti non fit injuria" did not apply, and he was entitled to recover. Hawkins, J., in the course of his judgment in this case, said: "It is true that he knows of the danger, but he does not wilfully incur it. 'Scienti,' as was pointed out in *Thomas* v. *Quartermaine,* and in *Yarmouth* v. *France,* is not equivalent to 'volenti.' It cannot be said where a man is lawfully engaged in work, and is in danger of dismissal if he leaves his work, that he wilfully incurs any risk which he may encounter in the course of such work, and here the plaintiff had asked the defendants' men to take care. If the plaintiff could have gone away from the dangerous place without incurring the risk of losing his means of livelihood, the case might have been different; but he was obliged to be there; his poverty, not his will, consented to incur the danger."

The maxim, after most careful consideration, was finally interpreted and settled beyond further dispute by the House of Lords, in the great case of *Smith* v. *Baker* (1891) A.C. 325. The facts were that the plaintiff was employed by the defendants, who were railway contractors, to drill holes in a rock cutting, near a crane, which was being used for the purpose of raising. The crane was periodically swung round with stones over the plaintiff's head without warning. The plaintiff was aware of

the danger arising from the practice of omitting to give warning, and had so worked for months, when a stone fell and injured him whilst being swung over his head. Several questions had been left by the judge to the jury, who found the machinery for lifting the stone was not reasonably fit for the purpose; that not making provision to supply special means of warning was a defect within the meaning of the Act; that the defendants were guilty of neglect in not remedying that defect; that the plaintiff was not guilty of contributory neglect, and that the plaintiff did not undertake a risky employment with a knowledge of its risks. The jury found for the plaintiff. The House of Lords held that the mere fact that the plaintiff having remained on in the defendants' service with knowledge of the dangerous practice, did not, as a matter of law, preclude him from recovering; and that it was a question for the jury whether he had contracted to take the risk of accidents upon himself.

Lord Halsbury, L.C., in the course of his judgment, after referring to the facts of the case, said: "My Lords, I am of opinion that the application of the maxim 'volenti non fit injuria' is not warranted by these facts. I do not think the plaintiff did consent at all. I am of opinion myself, that in order to defeat a plaintiff's right by the application of the maxim relied on, who would otherwise be entitled to recover, the jury ought to be able to affirm that he consented to the particular thing being done which would involve the risk, and consented to take the risk upon himself." Lord Bramwell, dissenting from the majority of the noble Lords, said he thought the maxim applied where, knowing the risk or danger, the workmen is volens to undertake the work. And he thought the maxim applied in this case. Lord Watson, at page 355, is thus reported: "When, as is commonly the case, his acceptance, or non-acceptance of the risk, is left to implication, the workman cannot reasonably be held to have undertaken it unless he knew of its existence, and appreciated, or had the means of appreciating, its danger. But, assuming that he did so, I am unable to accede to the suggestion that the mere fact of his continuing at his work, with such knowledge and appreciation, will, in every case, necessarily imply his acceptance. Whether it will have that effect or not, depends, in my opinion, to a considerable

extent, upon the nature of the risk, and the workman's connection with it, as well as upon other considerations which must vary according to the circumstances of each case."

Lord Herschell stated his view of the crucial point in question in the following incisive language: "It was a mere question of risk which might not eventuate in disaster. The plaintiff, evidently, did not contemplate injury as inevitable, not even, I should judge, as probable. Where, then, a risk to the employed, which may or may not result in injury, has been created or enhanced by the negligence of the employer, does the mere continuance in service, with knowledge of the risk, preclude the employed, if he suffer from such negligence, from recovering in respect of his employer's breach of duty? I cannot assent to the proposition that the maxim 'volenti non fit injuria' applies to such a case, and that the employer can invoke its aid to protect him from liability for his wrong."

Lord Morris was of the opinion the plaintiff was both "sciens" and "volens" as to all the danger except that arising from unfit machinery; the plaintiff may have voluntarily entered on a risky business; but he did not voluntarily undertake it plus the risk from defective machinery; and that there must be an assent to undertake the risk with the full appreciation of its extent.

In *Williamson* v. *Birmingham Battery and Metal Co.* (1899) 2 Q.B.D. at page 345, L. J. Romer, following *Smith* v. *Baker*, thus briefly summarizes the law: "If the employment is of a dangerous nature, a duty lies on the employer to use all reasonable precautions for the protection of the servant. If, by reason of breach of that duty, a servant suffers injury, the employer is prima facie liable; and it is no sufficient answer to the prima facie liability for the employer to shew merely that the servant was aware of the risk, and of the non-existence of the precautions which should have been taken by the employer, and which, if taken, would, or might, have prevented the injury. Whether the servant has taken that upon himself is a question of fact to be decided on the circumstances of each case. In considering such a question the circumstances that the servant has entered into, or continued in his employment, with knowledge of the risk, and

of the absence of precautions, is important, but not necessarily conclusive against him."

From the decisions referred to, the following rules have been established under the Act:—

1. The defence of "common employment" cannot be set up in the five cases specified in the second section of the Act. It is however, available in all other cases that may arise under it.

2. Contributory negligence may still be relied upon as a defence.

3. The master is still liable for personal negligence, the same as before the Act.

4. He is also liable for injury caused by a negligent system of using machinery, as before the Act.

5. The defence of "volenti non fit injuria" is still available, as modified by the House of Lords in *Smith* v. *Baker*.

6. The employer is not liable for injuries resulting from defects, which were unknown to him or his deputies.

7. The question of "volens" is one of fact to be found by the jury in each case.

8. In an action under the Employers' Liability Act, 1880, it was held, in *Baddeley* v. *Earl Granville* (1887) L.R. 19 Q.B.D. 423, that the defence arising from the maxim, volenti non fit injuria, was not applicable in cases where the injury arose from the breach of a statutory duty on the part of the employer, and that the plaintiff was entitled to recover. Nothing was said in *Smith* v. *Baker* to impugn this judgment.

In order to shew how great a change has taken place in a few years as to the applicability of this legal maxim, it is only necessary to place the judgment of two eminent jurists in juxtaposition.

Lord Chief Justice Cockburn, in 1877, in *Woodley* v. *Metropolitan District Ry. Co.*, L.R. 2 Ex. D. at page 389, said: "It is competent to an employer, at least so far as civil consequences are concerned, to invite persons to work for him under circumstances of danger caused or aggravated by want of due precautions on the part of the employer. If a man chooses to accept the employment, or to continue in it with a knowledge of the danger, he must abide the consequences, so far as any claim to compen-

sation against the employer is concerned. Morally speaking, those who employ men on dangerous work, without doing all in their power to obviate the danger, are highly reprehensible, as I certainly think the company were in the present instance. The workman who depends on his employment for the bread of himself and his family, is thus tempted to incur risks to which, as a matter of humanity, he ought not to be exposed. But, looking at the matter in a legal point of view, if a man, for the sake of the employment, takes it, or continues in it, with a knowledge of its risks, he must trust to himself to keep clear of injury."

Fourteen years after, in 1891, in *Smith* v. *Baker*, the House of Lords held directly the converse. Lord Herschell (p. 365), said: "For the reasons which I have given, I think where a servant has been subjected to risk, owing to a breach of duty on the part of the employer, the mere fact that he continues his work, even though he knows of the risk, and does not remonstrate, does not preclude his recovering in respect of the breach of duty, by reason of the doctrine, volenti non fit injuria, which in my opinion, has no application to such a case."

Who, then, can say law is not a progressive science? The growth of the principle of the employers' responsibility towards the workman evidences the growth of humanity towards a higher ideal of justice. When law ceases to expand in the direction of the betterment of the condition of the industrial classes, then national degeneracy has commenced its work of demolition.

St. John, N.B. SILAS ALWARD.

We imagine it was the conviction of certain defeat at the next general elections which induced Mr. Balfour to fly in the teeth of constitutional, or rather, parliamentary usage and convention on the occasion of the vote of censure on his administration passed by the House of Commons on the 28th March, by declining to accept the same as a notice to quit. Mr. Balfour attempts to find a justification for his course in the fact that he was in a position to have defeated the motion had he deemed it worth while; but he would have difficulty in finding any precedent to support him in this view. Parliamentary government is still too serious a business to admit of power and leadership being entrusted to one who seems to be content to play the rôle

of the fainéant and cynic, whose reply to counsels of alertness and firmness of action is: "Cui bono?" Quite apart from Mr. Balfour's fatal indecision in the matter of Mr. Chamberlain's fiscal propagandism, his political adversaries say that the Education Act, the Licensing Act, the Sugar Bounties Convention and the Chinese Labour Ordinance are a combination of circumstances quite adverse enough in results to wreck his ministry at the polls. Already the wiseacres are forecasting a Liberal administration, with that astute statesman and extremely able lawyer, Mr. Asquith, K.C., at its head.

Apropos of Mr. Balfour's recent reverse in the House, it is said that Oliver Cromwell, when at any time balked by his Parliament, was wont to bemoan himself that he had not remained by his "woodside to tend a flock of sheep rather than have been thrust on such a government as this!" Possibly Mr. Balfour, in his turn, might find the golf links a more abiding lure and joy than the environment of "Mr. Speaker's right" at Westminster.

The new Chief Justice of the Crown Colony of Hong Kong, Mr. F. T. Piggott, M.A., JJ.M., passed through Canada recently on his way to his new field of labour. Mr. Piggott is known to the profession as an author of repute. Many years ago he published a work on Foreign judgments which passed through two editions, also a treatise on Torts, and another on Service out of Jurisdiction. In 1892 he wrote a book on Ex-territoriality relating to Consular Jurisdiction and to residence in Oriental countries. There will also be found in the library at Osgoode Hall, Mr. Piggott's Collection of Imperial statutes of the Colonies, in two volumes. This is a valuable addition to any complete library, and certainly should be found in all public libraries. There is another work of his in press entitled "Nationality, including Naturalization and English law on the high Seas and beyond the Realm," which will be further noticed hereafter. Mr. Piggott's works resulted indirectly in his being appointed legal adviser to the Government of Japan in which country he resided for three years. Mr. Piggott subsequently was one of the counsel for the British Government on the Behring Sea Arbitration. After that he was for some years Attorney-General at the Mauritius. Incidents of this character tell of the variety of career open to

the Bar of England and how largely their services are made use of in all parts of the world.

In listening to Mr. Rider Haggard's truly great speech before the Canadian Club of Ottawa—the key-note of which was the present supreme necessity for the struggling poor in all great centres of western civilization to "get back to the land"—we were reminded of Pope's lament over Lord Mansfield's desertion of letters for the law—

"How great an Ovid was in Murray lost!"

Mr. Haggard is, or, perhaps, we should say, was, an English barrister who wrote his first important essay in fiction while he was practising before the Court of Probate and Divorce, and so, on his own confession, ruined his legal career and exactly reversed the experience of Lord Mansfield. Mr. Haggard, in the course of a modest apology for his enforced retirement from the studious cloisters of the law, and, incidentally, from the substantial emoluments of practice in the Court of which Lord Campbell said "like Frankenstein, I am afraid of the monster I have created," observed:—

"You know, they won't have a fellow in the Probate and Divorce Court who has written a 'King Solomon's Mines,' and I do not know whether to be sorry or glad. If I had stopped, I have no doubt I should have been better off—it is a nice Court, and very profitable—than I am now." Those who had the privilege of hearing him at Ottawa could only come to one conclusion from the oratorical affluence and the mastery of facts and logical force exhibited by him throughout his address, namely, that he would have proved a great lawyer if he had stuck to the Bar. But if the Bar has lost the especial benefit of his talents they are now given to the larger sphere of the State, for Mr. Haggard is now devoting himself to the practical betterment of the conditions of the poor and landless ones in the mother country, which to use his own words is still "cramped and coiled with the remains of a feudal system which work nothing but ill." His present mission is to enquire into the condition of the Salvation Army immigration colonies in the United States and Canada, being authorized in that behalf by the British Government.

REVIEW OF CURRENT ENGLISH CASES.

MORTGAGE — EQUITABLE MORTGAGEE — RECEIPT OF RENT — REFUNDING RENT.

In *Finck* v. *Tranter* (1905) 1 K.B. 427 the plaintiff was subtenant of certain premises of one Vincent, a lessee. Vincent had deposited his lease with the defendant by way of equitable mortgage. The mortgage being in default, the defendant notified the plaintiff to pay his rent to the defendant, which he did, and the present action was brought to compel the defendant to refund the rent so paid, on the ground that the defendant had no legal title to it. The Common Serjeant who tried the case rested his decision on the ground that the equitable mortgage gave the mortgagee authority to receive the rent as the mortgagor's agent: and the Divisional Court (Lord Alverstone, C.J., and Kennedy, and Ridley, JJ.) though not disputing that view thought that though the defendant had no legal right to demand the rent, yet as it was not paid to him under any mistake of fact, but after notice that he was claiming it as equitable mortgagee, it could not be recovered back.

LANDLORD AND TENANT—DISTRESS FOR RENT—LODGER'S GOODS—DECLARATION BY LODGER—INVENTORY—LODGERS' GOODS PROTECTION ACT, 1871 (34-35 VICT. C. 79) S. 1—(R.S.O. C. 170, S. 39).

In *Godlonton* v. *Fulham & H. P. Co.* (1905) 1 K.B. 431 the plaintiff was a lodger in a house of which the defendants were superior landlords: they had levied a distress for rent and seized the plaintiff's goods, who under the Lodgers' Goods Protection Act, 1871, s. 1 (R.S.O. c. 170, s. 39) had served the defendants with a declaration. The declaration stated that the goods, "a list of which is hereunto annexed," were the property of the plaintiff, and also that "the list of articles hereto annexed is a correct inventory" of the goods referred to in the declaration; and upon another part of the same paper there was an inventory. The declaration was signed by the plaintiff at the foot thereof, but the inventory was not otherwise signed. The defendants contended that this was not a sufficient compliance with the Act to protect the goods, because the plaintiff had not "subscribed" the inventory, and the County Court Judge dismissed the action

on that ground: but the Divisional Court (Lord Alverstone, C.J., and Kennedy and Ridley, JJ.) reversed his decision and held that the inventory being on the same paper as the declaration, was sufficiently "subscribed" within the meaning of the Act.

AMENDMENT—ACTION REMITTED TO COUNTY COURT—CLAIM FOR UNLIQUIDATED DAMAGES—(ONT. JUD. ACT, s. 93 (3)).

Spencer v. *Forster* (1905) 1 K.B. 434 was a High Court action remitted to the County Court for trial. The English County Courts Act, s. 65, like Ont. Jud. Act, s. 93 (3), provides only for the remitting of actions for liquidated demands, and the writ in the present action was specially indorsed with a claim for demurrage at a specified rate in respect of the detention of the plaintiffs' waggons. At the trial, however, the plaintiffs failed to prove an agreement to pay demurrage, and they then applied to amend by claiming unliquidated damages, which the County Court Judge allowed, and from this amendment the defendants appealed, and it was contended on their behalf that as the action would not have been transferable at all to the County Court if the action had been originally for unliquidated damages, therefore there was no power to allow an amendment after the transfer converting it into an action for unliquidated damages, but the Divisional Court (Lord Alverstone, C.J., and Kennedy and Ridley, JJ.) upheld the order, on the ground that when remitted, the action was to be tried as if it had been originally commenced in the County Court, and that involved the right to make all necessary and proper amendments.

WORKMAN'S COMPENSATION ACT—"WORKMAN"—MANAGER OF COAL MINE—(R.S.O. c. 160, s. 2 (3)).

Simpson v. *Ebbow Vale & I. Co.* (1905) 1 K.B. 453 is another case under the Workman's Compensation Act, 1897 (see R.S.O. c. 160, s. 2 (3)), and the simple question was, whether the manager of a coal mine, whose duties required him to go down into the mine, but not to engage in any manual labour, was a "workman" within the meaning of the Act; and this question the Court of Appeal (Collins, M.R., and Mathew, and Cozens-Hardy, L.JJ.), affirming the judge of the County Court who tried the case, have answered in the negative.

WILL—CODICIL—INCONSISTENT CODICILS OF SAME DATE—PROBATE.

Townsend v. *Moore* (1905) P. 66 was a probate action, and the difficulty arose from the fact that the testatrix left two codicils which were executed at the same time, there being no evidence as to which was actually executed the first, and they con-

tained some identical provisions, and in some respects they were inconsistent with each other. Barnes, J., refused to admit either to probate, because he thought they were contingent on the testatrix surviving her husband and also because of their inconsistencies. The Court of Appeal (Williams, Romer, and Cozens-Hardy, L.JJ.) differed from him on both points, and held that both documents should be admitted to probate, leaving it to a court of construction to determine their effect. The passage (Williams' Executors, 7th ed., vol. 1, p. 162, 9th ed., vol. 1, p. 138) which had already received judicial approval, was again held to be a correct statement of the law, as to the effect of inconsistent testamentary papers.

PROBATE—LUNACY OF EXECUTOR AFTER PROVING WILL—REVOCATION OF PROBATE—FRESH GRANT TO REMAINING EXECUTOR.

In re George Shaw (1905) P. 92. One of four executors after proving the will, became insane, and an application was made to revoke the grant of probate to the four and make a fresh grant of probate to the remaining three. This was done by Barnes, J., the fresh grant being limited to such time as the lunatic executor should recover his sanity.

COMPANY—DEBENTURES—RE-ISSUE OF DEBENTURES AFTER TRANSFER TO COMPANY—TRANSFER TO COMPANY IN BLANK—SUBSEQUENT TRANSFER BY FILLING UP BLANK IN FAVOUR OF A PURCHASER.

In re Tasker, Hoare v. *Tasker* (1905) 1 Ch. 283 Kekewich, J., was called on to decide the legal effect of a re-issue of the debentures of a company after they had been transferred in blank to the company. The debentures in question were part of an issue which were to be a first charge on the property of the company, who were not to be at liberty to create any mortgage or charge in priority to or pari passu with them. The debentures in question were issued as security for a loan to the company, and upon the loan being paid off, the holders delivered up the debentures to the company with a transfer, duly executed, but leaving the names of the transferees blank. The company for value received re-issued the debentures to persons who applied for debentures, filling up the blank in the transfer with the names of such persons, and the question was whether the transferees of these debentures were entitled to rank pari passu with the holders of the other debentures of the series. Kekewich, J., held that they were not, and that the holders could not be regarded as transferees of original debentures, but that the re-issue amounted to a creation of new debentures, and that they were not entitled to rank pari passu with the original debentures.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

N.S.] [Jan. 31.

LISCOMBE FALLS GOLD MINING CO. *v.* BISHOP.

Mining lease—Prospector's license—Testing machinery—Annexation to freehold—Trade fixtures—Fi. fa. de bonis—Sale under execution.

The licensees of a mining area in Nova Scotia erected a stamp mill on wild lands of the Crown, for the purpose of testing ores. All the various parts of the mill were placed temporarily in position, either resting by their own weight on the soil or steadied by bolts, and the whole installation could be removed without injury to the freehold.

Held, that the mill was a chattel or at any rate a trade fixture removable by the licensees during the tenure of their lease or license, and, consequently, it was subject to seizure and sale under an execution against goods.

Judgment appealed from (36 N.S. Rep. 395) affirmed, but for different reasons. Appeal dismissed with costs.

Ross, K.C., and *Lovett*, for appellants. *W. A. Henry*, for respondent Bishop. *Mellish*, K.C., for respondent Albion Lumber Co.

Ref. from G.-G. in Council.] [Feb. 27.

IN RE LEGISLATION RESPECTING ABSTENTION FROM LABOUR ON SUNDAY.

Constitutional law—Sunday observance—Reference to Supreme Court—R.S.C. c. 135, s. 37—54-55 Vict. c. 25, s. 4—Legislative jurisdiction.

54-55 Vict. c. 25, s. 4 does not empower the Governor-General in Council to refer to the Supreme Court for hearing and consideration supposed or hypothetical legislation which the legislature of a Province might enact in the future. SEDGEWICK, J., dissenting.

The said section provides that the Governor in Council may refer important questions of law or fact touching specified sub-

jects "or touching any other matter with reference to which he sees fit to exercise this power."

Held, SEDGEWICK, J., contra, that such "other matter" must be ejusdem generis with the subjects specified.

Legislation to prohibit on Sunday the performance of work and labour, transaction of business, engaging in sport for gain or keeping open places of entertainment is within the jurisdiction of the Parliament of Canada: *Attorney-General for Ontario* v. *Hamilton Street Ry. Co.* (1905) A.C. 524 followed.

Newcombe, K.C., for Dominion. *Patterson,* K.C., for Ontario. *Cannon,* K.C., for Quebec. *Macpherson,* for Lord's Day Alliance. *March,* K.C., for Grand Trunk and Mich. Central Ry. Cos. *Rose,* for Wabash Ry. Co. *D'Arcy Tate,* for Toronto, Hamilton & Buffalo Ry. Co. *Blackstock,* K.C., and *H. Cyler,* K.C., for Canada Copper Co.

Ex. C. Adm.] [March 6.

LOVITT *v.* THE SHIP "CALVIN AUSTIN."

Maritime law—Collision—Inland waters—Narrow channel—Boston harbour.

Rule 25 of the United States "inland rules to prevent collision of vessels" provides that "in narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such vessel."

Held, affirming the judgment appealed against (9 Ex. C.D.), that the inner harbour of Boston, Mass., is not a narrow channel within the meaning of said rule. Appeal dismissed with costs.

Stockton, K.C., for appellants. *H. H. McLean,* K.C., and *E. S. Dodge* (Massachusetts Bar), for respondent.

N.B.] HARRIS *v.* JAMESON. [March 9.

Negligence—Master and servant—Findings of jury—New trial.

In constructing the bins for an elevator a staging had to be raised as the work progressed by ropes held by men standing on the top, until it could be secured with dogs placed underneath. When secured workmen stood on the staging and nailed planks to the sides of the bin. The planks were run along a tramway at

the side of the bins by rollers and thrown off to the side of the bin farthest from the tramway. While two men on the top of a bin were holding up the staging until it could be secured, a plank fall from a pile on the tramway and hit the men on top of the bin whereby they were precipitated to the bottom and one of them killed. In an action by his widow against the contractor for building the elevator twenty-five questions were submitted to the jury, and on their answers a verdict was entered for the plaintiff.

Held, IDINGTON, J., dissenting, that while the falling of the plank caused the accident there was no finding that the same was due to negligence of the defendant, nor any that the death of deceased was due to negligence, for which, under the evidence, defendant was responsible. Therefore, and because many of the questions submitted were irrelevant to the issue and may have confused the jury, there should be a new trial. Appeal allowed with costs and new trial ordered.

Pugsley, K.C., and *A. G. Blair, Jr.*, for appellant. *Mullin*, K.C., for respondent.

Province of Ontario.

COURT OF APPEAL.

From County Judge's Crim. Court, Essex.] [Jan. 23.

REX *v.* BEAVER.

Criminal law—Circulating obscene paper—"Knowingly"—Evidence of knowledge—Crim. Code s. 179.

The prisoner, a member of the sect known as the "Flying Rollers" who distributed and circulated a printed paper containing statements set out in a case reserved, was indicted in a County Judge's Criminal Court under s. 179(*a*) of the Code for unlawfully, knowingly, and without lawful justification or excuse distributing and circulating certain obscene printed matter tending to corrupt morals contained in said paper bearing the title "To the Public"—"The evil exposed"—"The plot against Prince Michael revealed."

The County Judge found the offence proved as charged, but reserved the following points for the opinion of the Court of

Appeal: (1) Is the printed matter complained of within the meaning of Crim. Code s. 179 (a). (2) Did the prisoner without lawful justification or excuse distribute or circulate such obscene printed matter.

Held, 1. The word "obscene" is used in s. 179(a) in the sense of conduct involving sexual immorality and indecency—offensive to modesty or decency—expressing or suggesting unchaste or lustful ideas, and that there were certain references and allusions in the paper which warranted the County Judge in concluding that it was a document of obscenity within the meaning of the section.

2. The use of the word "knowingly" in the section made it incumbent on the prosecution to give some evidence of knowledge, and that there was sufficient evidence to justify the County Judge's finding that the accused was aware of the contents of the paper.

Judgment of the County Judge affirmed.

Cartwright, K.C., for Crown. *Hannah*, for prisoner.

HIGH COURT OF JUSTICE.

Boyd, C., Street and Idington, JJ.] [Feb. 2.

CHAMPAIGNE *v.* GRAND TRUNK RY. CO.

Negligence — Crossing railway — Looking out — Whistling and ringing bell—Jury—Non-suit—New trial.

It is the duty of a traveller to exercise ordinary vigilance in approaching or crossing a railway.

The plaintiff was driving on a road which crossed a railway. There was evidence that the night was very dark; that the landmarks were undistinguishable; that he was watching to keep on the highway and avoid other rigs and going faster than he thought, and not knowing he was near it, came on the railway crossing before he expected and was struck by a train which had not blown a whistle or rung a bell as it approached the crossing and his buggy was smashed and he himself hurt. There was also evidence that had he looked he might have seen the headlight of the advancing train as the country was flat and only one obstacle, an orchard and some trees, near the crossing.

Held, that the case should not have been withdrawn from the jury and a non-suit was set aside and a new trial granted. Judgment of TEETZEL, J., reversed.

Clute, K.C., for the appeal. *Riddell*, K.C., contra.

COUNTY COURT, COUNTY OF SIMCOE.

REX EX REL. PAYNE *v.* CHEW.

Quo warranto—Exemption from taxation—Disqualification—Contract with corporation—Marshalling where incumbrance was upon other property as well and that property was considered by the creditor as ample security—Status of relator—Statement by him that he had voted for this candidate.

Held: 1. A contract for exemption made with the company whose business the candidate had bought out was not one made with the candidate although he in a manner received the benefit of the exemption. But even if it was made directly with the candidate himself yet this was a contract made with respect to such exemption and so by reason of the amendments to the Municipal Act 3 Edw. VII. ch. 18, sec. 17, it did not affect the status of the candidate.

2. The land itself being exempt from taxation by a special Act of the Legislature, and the respondent and his partner having been assessed for $2,000, as freeholders, it must be assumed that they were assessed for the buildings and machinery upon the land, which by the Act are defined to be "real estate."

3. Although the property in question was with other property pledged for a large amount to the bank yet as the manager of the bank stated that he considered the other property to be amply sufficient security for the debt the doctrine of marshalling might be invoked and the assessed property be considered as unincumbered.

Quaere, Whether a statement made by the relator after the election that he had voted for this candidate was sufficient to take away his status, where he subsequently denied on oath that he had voted.

[BARRIE, Feb. 25.—Ardagh, Co. J.

The respondent was elected as a member of the Town Council of the Corporation of Midland.

It was claimed by the relator that the respondent was (1) disqualified by reason of his having an interest in a contract with the Corporation of Midland; and (2) was not qualified, by reason of his not being assessed sufficiently under Con. Mun. Act, 3 Edw. VII. c. 196, s. 76.

In his affidavits to obtain a fiat the relator objected that the respondent did not reside in the Town of Midland, and he also claimed the seat on behalf of one Wilson. At the hearing it was admitted that the respondent resided within the two miles allowed by s. 76 of the Act and any claim to the seat for Wilson was formally abandoned. At the election for Municipal Councillors for the Town of Midland, held in January last the respondent was declared duly elected, as having the second highest number of votes.

Finlayson, for the relator. *Frank Hodgins*, K.C., and *Storey*, for the respondent.

ARDAGH, Co. J.:—At the hearing before me, the respondent was examined on behalf of the relator. From this it appeared that he was a member of the firm of Chew Bros., which consisted of his father, George Chew, one Edwin Leatherby and himself. Up to about three years ago the firm consisted of George Chew and his brother Thomas Chew. In 1902 or 1903 respondent and Leatherby purchased the business, and in 1904 (about midsummer) George Chew became and still continues to be a member of the firm, but no writing passed, only by "word of mouth." The property assessed consists of some 12 or 13 acres leased by the G.T.R. to George Chew and Thomas Chew (Chew Bros.) in Sept., 1895, for a term ending on the 31st December, 1905. The G.T.R. are the owners of considerable property (of which the above 12 acres form a part) and they are assessed for and pay taxes on the same upon an assessment of $75,000 by an agreement with the town confirmed by 61 Vict. c. 47, upon the entire property of the company. Upon the 12 acres so leased, buildings of various sorts to the value of $30,000 at least (the respondent stated) have been erected and are owned by the firm of Crew Bros., the G.T.R. having no interest therein. Under an agreement made by Chew Bros. with the corporation in 1894, the assessment of the former was fixed at $2,000, but their agreement had to be confirmed by an Act of the Provincial Legislature (3 Edw. VII. c. 65), which enacted that "the assessment of the said property of the said Chew Brothers, being the mill yard and buildings connected with and used by the said Chew Brothers in their business, is fixed for all purposes, including school rates, at the sum of $2,000 for the years 1903, 190 4and 1905."

The following is an extract from the assessment roll of Midland, 1904::—

"200 Chew Bros. Con. 1 Tay, Pt. of 108. G.T.R. lease
201 Leatherby, Edwin M.F.F.
202 Chew, Manley M.F.F. $2,000.00.

From this it would appear that they are not styled tenants, but freeholders—that being the word for which the letter F (after M.F.) stands. It is under this assessment that the respondent qualified.

3 Edw. VII. c. 19, Ont., by s. 76, enacts that no person shall be qualified to be elected a Councillor of any local Municipality unless he has, at the time of the election, as owner or tenant a legal or equitable freehold or leasehold, or an estate partly freehold and partly leasehold or partly legal and partly equitable, which is assessed in his own name on the last revised assessment roll to at least the value following over and above all charges, liens and incumbrances affecting the same in towns, freehold to $600 or leasehold to $1,200.

Before I consider these two points I may say that an objection was taken by Mr. Hodgins, acting for the respondent that the relator had no status as such, having voted for the respondent at the election in question.

Evidence was given before me by three several witnesses that the relator had stated to them that he had so voted and these statements were made both before and after these proceedings were begun. To this Mr. Finlayson, for the relator, put in his cross-examination upon the affidavit he made to obtain the fiat for these proceedings in which he says: "I did not vote for Chew (the respondent) this year, but I told Mr. Chew I did vote for him as I did not want to create any hard feelings. It was after these proceedings were taken that I told Chew I had voted for him at the 1905 election. I did not mind telling a little falsehood, but I was not then under oath as I am now. I also told Mr. Craig that I voted for Mr. Chew. Didn't tell any one else that I can remember . . . . . if I told anybody immediately after the election that I voted for Chew it has escaped my recollection." Mr. Finlayson contends that this denial on oath by the relator that he voted for Chew outweighs his admissions to the contrary, not made on oath, and which should therefore be rejected. It is, of course, well established that if the relator did actually vote for the respondent he has no status here. Some difficulty occurs to me here as to how it is ever brought out that a relator had voted for a respondent. It is quite clear that under c. 200 of the Act he could not "be required to state for whom he has voted," and it appears from the judgment of the late Chief Justice Moss in *Lincoln Election*, 4 Ont. App. 206, that evidence of statements voluntarily made by a voter as tohowhe voted cannot be received. (s. 115, of the then Election Act referred to in the judgment corresponds with s. 200 of our present Act.)

It seems to me, however, that that case and the present are not quite analogous. There the statement was relied upon to shew how the witness voted so as to ascertain whether he voted for the respondent or not. And the fact as to how he voted was an issue upon which the election depended, either in part or it might be in whole if the vote of this witness would decide the election. How this relator voted is not in issue here except so far as it is a side issue raised on the argument. If the voluntary statements of relator, both before and after these proceedings were commenced, that he had voted for respondent be received to shew that he has now no status here, I cannot accept his statement on cross-examination that he did not so vote, as a sufficient rebuttal.

The admission that he had voted for the respondent was evidently made before he became aware of the effect of such an admission, and I have no doubt that after he became aware of it he tried to repair the mischief he had done. I am not trying in this case the question as to whom the relator voted for, or I might perhaps have to consider whether it would be right to refuse to allow the relator's oath to outweigh his oral statements to the contrary. All I can say at present is that I consider the denial on oath is not evidence. The question was put in contravention of s. 200 and so I am bound to reject the answer whether on oath or not.

If I am not to accept as evidence the statements of the relator previous to the matter coming up for adjudication, I am at some loss (as I stated above) as to how the knowledge how a relator voted was obtained in those cases where the fact that he so voted was held sufficient to take away his status. If I were now driven to decide upon it, I should say the relator is disqualified. I will, however, leave this point in medio, as I prefer to decide the question on its merits.

The next point to be considered is as to the qualification of the respondent; and, first, is the respondent assessed as a freeholder or a leaseholder? In the roll the letter "F" appears opposite his name, shewing that he is a freeholder—see the Assessment Act, 4 Edw. VII., c. 23, s. 22 (3). The assessor has also placed the assessment of $2,000 in the column headed "Total value of real property."

It becomes necessary therefore to consider whether, as the G.T.R. are assessed for "the entire property of the company" at the $75,000 and pay taxes thereon, the portion leased to Chew Bros. could be rightly taxed over again.

The assessment roll I must consider as conclusive and it shews the respondent and his partner assessed at $2,000 for certain

"real property." Under the Assessment Act (s. 2) "real property" and "real estate" include "all buildings or other things erected upon or affixed to the land and all machinery or other things so fixed to any building as to form, in law, part of the realty." The assessor appears, therefore, by his action to have intended the assessment to be upon the buildings, etc., for, though he has placed opposite the respondent's name "G.T.R. lease" this must have been only to distinguish what portion of "Con. 1 Tay, part lot 108" (which he had just before entered on the roll) "he intended to assess."

Evidence was tendered to shew that besides the respondent and Leatherby, George Chew was a partner in the business, though "only by word of mouth" as respondent stated. Even if I should hold that was sufficient to deprive the respondent of any claim to more than one-third of the property, there was still enough to permit three persons to qualify—the assessment being $2,000 and the required qualification only $600—that is, by considering the property assessed as "real property." The case of *Reg. ex rel., McGregor* v. *Kerr*, 7 U.C.L.J. 67, shews that this $2,000 may be equally divided to qualify candidates, as well as to qualify electors.

Another objection was taken by Mr. Finlayson, viz., that this property was affected by a large encumbrance. The evidence the respondent gave on this point was this: "the property is subject to $2,000 and upwards of liens, charges and encumbrances," and to Mr. Hodgins he stated "we gave the bank security to the extent of $10,000 for money borrowed . . . timber limits are part of the security to the bank—value $60,000 to $80,000." The manager of the bank being called, said that the timber limits were sufficient to satisfy the bank. This, then, would appear to me to be a case of marshalling—and it must not be forgotten that, taking an equitable view of the case, the firm of Chew Bros. have, in a manner, contributed their quota to the taxes of the Municipality by carrying out their agreement to do certain things (for the evident benefit of the Municipality) which entitled them to exemption from taxation, except as to the $2,000 agreed on.

The statute evidently intended that no one should have the right to be a member of the governing body unless, first, he owned a certain amount of property and, secondly, that he was assessed therefor, so as to be liable to be called upon to pay his share of the amount to be made up for municipal purposes.

Well, the respondent appears to own a much larger amount of property than is required to qualify, and if he does not appear on the assessment roll as liable for taxes on it, he, as I have said, does indirectly do so. The respondent appears to stand second

on the roll and the ratepayers have thus expressed their confidence in him, so that I would be loathe to set aside their choice, unless I was clearly driven to do so.

I come now to the last question to be considered, and that is the alleged disqualification of the respondent. Section 80 of the Act, enacts that "no person having by himself or his partner an interest in any contract with or on behalf of a corporation . . . shall be qualified to be a member of the Council of any Municipal Corporation." It is charged that by reason of the agreement above set out, whereby Chew Bros. are exempt from any taxation beyond $2,000, the respondent is disqualified.

In the first place no contract is shewn to exist between the respondent and the corporation. A contract for this exemption exists between the firm of Chew Bros., consisting of George Chew and Thomas Chew, and they gave good consideration for the exemption. When they transferred the business to the new partners, the respondent (Manley Chew) and Leatherby, they, doubtless, had to pay for the benefit attached to the property by reason of the exemption and that exemption cannot be said to benefit them so as to bring them within the spirit of the Act. I think it immaterial, however, to consider that point.

I am referred to the case of *Reg. ex rel., Harding* v. *Bennett,* 27 O.R. 314, in support of the objection. Without, however, going into an examination of that case I would point out that the Municipal Act of that day has been materially amended since on that point.

The amendment I referred to is that contained in the Municipal Amendment Act 1903, 3 Edw. VII. c. 18, s. 17, and this amendment has been carried into the following Act, c. 19, s. 80, 2(*b*), that which governs throughout in this case. There we find it enacted that no person shall be held disqualified "by reason of any such exemption being founded on any contract or agreement made between him and the Council . . . with respect to such exemption." It is further enacted that though he is not disqualified under such a contract, yet "no such person shall vote on any question affecting the property so exempt from taxation." This, then, is all the penalty attached to being a party to such a contract. The contract in question is one made with respect to the exemption created by it and it does not therefore in my opinion disqualify the respondent.

The motion must be dismissed and, following *Harding* v. *Bennett,* supra, with costs, including the costs of examinations and cross-examinations.

The following were some of the other cases referred to on the argument:—

Reg. ex rel., McLeod v. *Bathurst*, 5 O.L.R. 573.
Reg. ex rel., Ivison v. *Irwin*, 4 O.L.R. 192.
Reg. ex rel., Burnham v. *Hagerman*, 31 O.R. 636.
Reg. ex rel., Ferris v. *Speck*, 28 O.R. 486.
Reg. ex rel., Joanisse v. *Mason*, 28 O.R. 495.
Toronto Gen. Trust Corp. v. *White*, 3 O.L.R. 519 and 5 O.L.R. 21.
Davis v. *Taff Vale* (1895), A.C. 542.
Smith v. *Richmond* (1899), A.C. 448.

Province of Nova Scotia.

SUPREME COURT.

GRAHAM *v.* WARWICK GOLD MINING CO.

Special indorsement—Summary judgment.

Held, per Russell, J., (Graham and Fraser, JJ., concurring), following *Stephenson* v. *Weir*, 4 Ir. L.R., C.L. 372, as opposed to *Connolly* v. *Teeling*, 12 Ir. C.L.R., App. 29, and reversing decision of Townshend, J., that indorsements on writ of summons are within provisions of Order 3, Rule 5, notwithstanding that such indorsements (some of which were for goods sold and delivered, and some for work and labour), did not shew that defendant had agreed or contracted for the labour or the goods at the prices specified in the said indorsements. Judgment granted, under Order XIV.

[HALIFAX.—Russell, J.

The facts and arguments sufficiently appear in the judgment.

RUSSELL, J.:—The question raised by the appeals in these cases has been discussed by Mr. Cavanagh in his work on Summary Judgments and by Mr. Alexander MacGregor, one of the Masters of the High Court of Ontario, whose article appears in 39 C.L.J., page 570.

The learned judge before whom the application for judgment was made, under Order XIV., decided in accordance with the views of these writers that the writs had not been specially indorsed because in some of the cases the claim was for goods sold

and delivered and in the others for work and labour, and the indorsements did not, in either class of cases, shew that the defendant had agreed or contracted for the labour or the goods at the prices specified in the indorsement. In the cases for goods sold the indorsements complied with the form given in the appendix of special indorsements. No form of special indorsement is given for work and labour, but it is clear that both cases must stand upon the same footing. The claim for work and labour, in the absence of an express contract, is in the nature of quantum meruit, and that for goods sold, in the like absence of a price agreed upon, is in the nature of quantum valebat.

The defendant's counsel concedes that in the cases of the latter class the form of the indorsement is in compliance with that given in the rules, and that if this form is sufficient in the case of goods sold and delivered it must be equally good for work and labour. But he contends that the forms in the appendix do not establish the law, and that neither a claim on a quantum meruit for labour nor on a quantum valebat for goods can be the subject of a specially indorsed writ.

In the case (in which the affidavits are printed) it was shewn that there actually had been an agreement as to the wages to be paid, but defendant contends that the affidavits cannot be used for the purpose of removing the objection to the indorsement. It will not be necessary to consider this point if the authorities establish that a claim for work and labour, even in the absence of an express contract as to the rate of remuneration, comes within the designation of a "debt or liquidated demand in money."

These words were used in the Common Law Procedure Act to describe the kind of cases in which the plaintiff could indorse the particulars of his claim upon his writ of summons in lieu of a declaration, and obtain final judgment on default. The words will be found in the Revised Statutes (4th series) c. 94, s. 59, corresponding to s. 25 of the Common Law Procedure Act of 1852; Day's C.P.A. p. 62. "The plaintiff shall annex or indorse on his writ and copy thereof the particulars of his claim . . . in all cases where the claim is for a debt or liquidated demand in money with or without interest arising upon a contract express or implied."

I think it was never questioned in this Province that a claim for goods sold and delivered, or for work and labour, whether the price was agreed upon or not, could be indorsed upon the writ under this section and that default could be marked and final judgment entered for the amount claimed if the defendant did not appear. It is reasonably contended that when the judges of this Court, acting under the authority conferred upon them by

the Legislature, adopted Rule 5 of Order III. with this uniform practice in view, they would be taken to have used the words in question in the sense established by the practice from 1854 down to the passing of the Judicature Act.

But the plaintiff's case does not depend upon this contention. It has been taken for granted in more than one case in England since the passing of the Judicature Rules, and decided in three Irish cases under precisely similar provisions, that a claim for reasonable remuneration, not expressly fixed by contract, for work done, is within the expression "debt or liquidated demand": Annual Practice, 1905, p. 13.

In *Smith* v. *Wilson*, 4 C.P.D. 392, the special indorsement on the writ of summons claimed £49 and stated the particulars with dates and amounts to be "To goods." There were other particulars in addition to these on which the defendant based his objection to the indorsement, but this would have been enough to prevent it from being a special indorsement according to the argument for the defendant in this case. It does not seem to have occurred to counsel to contend that the indorsement should have shewn that a price had been agreed upon. He merely argued that the indorsement was not sufficient to enable the defendant "to satisfy his mind whether he ought to pay or resist."

Pollock, B., in the Common Pleas Division said (p. 393): "If this indorsement had been headed 'for goods sold and delivered' it must be conceded that it would have been sufficient." And Jessel, M.R., in the Court of Appeal said: "I must say that this is a frivolous appeal": 5 C.P.D. 25.

If a claim for goods sold and delivered (with particulars) is sufficient in a special indorsement, without any reference to an agreement as to price, it is quite impossible to hold a claim for work and labour insufficient because it is silent as to any agreement as to wages.

The learned compilers of "The Annual Practice," after referring to the English cases in which it has been assumed, and the Irish cases in which it has been decided, that a claim on a quantum meruit is a "debt or liquidated demand," proceed to say that this result is at variance with several ably reasoned judgments on the corresponding words in the Irish C.L.P.A. 1855. The only case they cite in this connection is *Connolly* v. *Teeling*, 12 Ir. C.L.R. App. 29. The reasoning is based largely on a definition of the term "liquidated demand," which Lefroy, C.J., confines to cases where "the ingredients are given from which a liquidation may be achieved by mere calculation," and "when the officer can arrive by numerical calculation at the proper sum."

This judgment was pronounced in 1861. But in 1879, in *Stephenson* v. *Weir*, 4 Ir. Law Rep. C.L. 372, Palles, C.B., referring to *Connolly* v. *Teeling* and a later case, said: "Were it not for the two cases to which I have referred I should have thought that the case might be disposed of without saying more than that demands for work and labour on a quantum meruit, or for goods sold, although the price was not fixed by contract, are clearly 'liquidated demands,' that when the value of the work or the goods, as the case may be, is ascertained, that value determines, and therefore liquidates the claim."

In consequence, however, of those decisions the learned Chief Baron felt that it was right to examine the matter a little more closely and the examination that follows is so convincing that it effectually closes discussion. "In actions of debt, with certain exceptions, such as debt for foreign money and debt for tithes, under the statute of Edward VI. the judgment was final. In actions of assumpsit the claim being not for a debt, but for damages for the non-performance of the implied agreement to pay, the judgment was interlocutory only. But for many claims an action either of debt or assumpsit could be brought at the plaintiff's option. For instance, debt would lie for any demand for which indebitatus assumpsit could be brought. In the case then of a judgment by default, before the act, the officer, to ascertain the proper form of judgment, should look not to the particulars of the demand for which the action was brought, but to the form of the declaration. But as this Act (15 & 16 Vict. c. 76) abolished the matter of form, it was necessary that it should provide some other criterion to determine whether any particular judgment should be final in the first instance or interlocutory only, and the criterion so provided was the nature of the demand. The words 'debt or liquidated demand in money' were the words theretofore used for the purpose of describing a claim for which an action of debt would lie; and it seems to me clear that the effect of the 93rd section was to enable final judgment to be marked without a writ of enquiry in any case in which before the statute an action of debt might be maintained. This in fact determines the question. There can be no doubt that an action for debt could have been maintained for work and labour upon a quantum meruit. In fact in many books of pleading forms of declarations in debt will be found only applicable to cases of quantum meruit. When it is said that an action of debt would lie only for a sum certain, it was sufficient that the sum should be capable of being ascertained by a jury by positive data, and not merely measured by opinion or conjecture. In the present case, for instance, when the value of the work was ascertained

the sum to be recovered became definite, and the case would not be like one of assault in which there were not any certain data to fix the amount of damages."

The appeal in these cases will be allowed and the plaintiff's applications for summary judgment granted under Order XIV.

GRAHAM, E.J., and FRASER, J., concurred.

Province of Manitoba.

KING'S BENCH.

Full Court.] [March 4.

VICTORIA, MONTREAL, FIRE INS. CO. *v.* STROME.

Garnishment—Corporation—Powers of company incorporated under Manitoba Joint Stock Companies Act, R.S.M. 1902, c. 30—Liability of purchaser of shares to indemnify original subscriber against liability for payment of calls on stock—Objection not raised at trial—King's Bench Act, Rules 759, 761.

Appeal from decision of Richards, J., in an interpleader issue to try the question whether there was any debt, obligation or liability owing, payable or accruing due from the defendant to the Strome & Whyte Company, Limited, at the time of the service of a garnishee order on the defendant. The plaintiffs had recovered a judgment for $490 against the Strome & Whyte Company in respect of unpaid calls on certain shares in the stock of the plaintiff company held by the judgment debtor on which the latter had paid the sum of $125. Prior to the recovery of such judgment and prior to the making of the calls the defendant had purchased and taken over all the assets of the Strome & Whyte Company, including the shares in question. There had been no written transfer of the shares to defendant and nothing appeared to have been said as to his assuming any liability for the then uncalled portion of the shares. He simply took possession of the assets and continued the business. The Strome & Whyte Company had been organized under The Manitoba Joint Stock Companies Act, R.S.M. 1902, c. 30, s. 68, of which provides that no company shall use any of its funds in the purchase of stock in any other corporation, unless expressly authorized by a by-law confirmed at a general meeting. At the trial of the issue the

plaintiffs put in the minute books shewing the proceedings at the various meetings of the directors and of the shareholders of the Strome & Whyte Company, in which there was no mention of any by-law referring to the purchase of the shares in question, but no objection based on s. 68 of the Act was raised at the trial. Such objection was, however, for the first time urged on the hearing of the appeal.

Held, PERDUE, J., dissenting, 1. The defendant was under an obligation to indemnify the Strome & Whyte Company from its liability for payment of said calls, and that such obligation was one which arose out of contract, and could be attached under Rules 759 and 761 of the King's Bench Act, R.S.M. 1902, c. 40, and that the interpleader issue must be decided in favour of the plaintiffs.

2. The defendant should not be allowed to raise at the hearing of the appeal the objection as to the want of power to take shares, as it had not been raised at the trial. *Proctor* v. *Parker*, 12 M.R. 528, and *Hughes* v. *Chambers*, 14 M.R. 163, followed.

Per PERDUE, J., dissenting, 1. The plaintiffs were bound to shew that the provisions of s. 68 of the Joint Stock Companies Act had been complied with by the Strome & Whyte Company, when suing that company for calls upon the shares in question, and the recovery of their judgment did not estop the defendant from disputing the liability of the company to the plaintiffs which it was alleged he had by implication assumed: Everest and Strode on Estoppel, p. 55. If the defendant was liable to the Strome & Whyte Company at all, it was only an obligation to indemnify it against its liability to the plaintiffs; and, if in law the latter liability did not exist, then the defendant was under no obligation which could be attached under a garnishing order, and the interpleader issue should be decided in his favour.

2. The defendant should be permitted to raise the objection on the appeal. The reason why the objections raised in *Proctor* v. *Parker* and *Hughes* v. *Chambers*, supra, were not allowed on the appeals was that they were such that, if raised at the trial, evidence might have been given to disprove them, but here the plaintiffs went to trial fully aware that the onus lay upon them of proving that there existed a legal debt, obligation or liability from the defendant to the judgment debtor capable of being garnisheed, and it was for them to make the proof full and sufficient. There was no suggestion that, if the point had been raised at the trial, any further evidence in regard to the existence of a by-law or the confirmation of same by the company could have

been supplied. On the contrary, the minute books of the company which should have contained such a by-law and resolution, if they existed, were called for by the plaintiffs and put in as evidence by them, and their production not only failed to prove, but went far to disprove, the existence of any such by-law.

Wilson and *Kilgour*, for plaintiffs. *Howell*, K.C., and *Coldwell*, K.C., for defendant.

Full Court.] KING *v.* KAPIJ. [March 4.

Criminal law—Criminal Code, ss. 171, 611—Obstructing clergyman at divine service—No offence unless clergyman rightfully officiating and lawfully appointed—Property in church building erected by congregation of one religious body when majority afterwards decides to join another religious body—Indictment, sufficiency of.

Case reserved for opinion of Full Court.

The accused had been convicted under s. 171 of the Criminal Code, 1892, of having unlawfully obstructed and prevented Dmetro Jarema, a priest of the Greek Independent Church, from celebrating divine service in St. Michael's Church, whilst officiating as priest therein. It appeared from the evidence, as set forth in the reserved case, that St. Michael's Church had been built originally by members of the Greek Catholic Church in communion with the Roman Catholic Church, and recognizing the Pope of Rome as its head, and so continued for several years. About seven weeks before the occurrence in question, at a meeting of the congregation, whether regularly called or not did not appear, Jarema, a priest of the Greek Independent Church, which does not recognize the Pope of Rome, was chosen and appointed minister or priest of the church, and he continued to act as priest and to hold services in the church until April 7, 1904, without interruption or objection, except that the accused, Kapij, protested against his appointment and wrote him a letter, purporting to be on behalf of himself and a large number of the members of the congregation, forbidding Jarema to hold service in the church, and those of the trustees who were opposed to Jarema had put a new lock on the church for the purpose of keeping him out. On April 7, 1904, the accused entered the church whilst divine service was proceeding and obstructed and prevented Jarema from continuing it, and ejected him by force from the building. The learned Chief Justice instructed the jury that, under the above facts, Jarema was not lawfully officiating as a clergyman in said

church, and had not been rightfully appointed as priest in charge and that, for this reason, the accused had committed no criminal offence in what they had done, and he directed them to acquit the accused, but the jury found them guilty, and, having been sent back to reconsider their verdict, returned with the same answer. The questions for the opinion of the Court were: (1) Whether the charge to the jury was correct or not, and (2) Whether it was necessary to allege in the indictment, as well as to prove, that the clergyman or minister obstructed was, at the time of the offence, in lawful charge of the church, chapel, etc., in which he was celebrating divine service.

Held, 1. Under s. 611 of the Code, the indictment was sufficient without such an allegation, as it followed the wording of s. 171, and laid a charge in conformity with its provisions.

2. Jarema and his followers, by joining the Greek Independent Church, had abandoned and lost all property rights in the church in question, and Jarema had no right to officiate as a priest in it, and that his acts in holding service in the church from time to time formed simply a succession of trespasses, which gave him no shadow of a right to possession of the church or to continue to officiate in it. *Attorney-General* v. *Christie*, 13 Gr. 495; *Attorney-General* v. *Murdock*, 7 Ha. 444, and *Free Church of Scotland* v. *Overtoun* (1904) A.C. 515 followed.

3. To support a prosecution under s. 171 of the Code, the clergyman or minister obstructed must be shewn to have been, at the time of the offence, either the lawful incumbent of the church, or to have been holding service with the permission of the lawful authorities of the church, otherwise the acts of obstruction are not unlawful, and that the charge of the Chief Justice at the trial was correct, and that the accused should be discharged.

Potts, for Crown. *Heap*, for accused.

Full Court.] CURLE *v.* BRANDON. [March 4.

Municipal corporation—Non-repair of bridge—Use of bridge by heavy traction engine—Notice of action—Meaning of "happening of the alleged negligence"—Expectation of pecuniary benefit from continuance of life.

Appeal from decision of RICHARDS, J., noted vol. 40, p. 714, dismissed with costs.

Wilson and *Kilgour*, for plaintiff. *Howell*, K.C., and *I. Campbell*, K.C., for defendants.

Full Court.] [March 4.

FERRIS *v.* CANADIAN NORTHERN RY. CO.

Railway company—Loss of wheat shipped by railway—Railway Act, 1888, s. 246, s.-s. 3—Weights and Measures Act, R.S.C. c. 104, s. 21—Manitoba Grain Act, 63 & 64 Vict. (D.), c. 39, s. 9—Indorsement of bill of lading.

Plaintiff's claim was for loss of wheat shipped by him in a freight car of defendants' from Oakland Station to Port Arthur. He proved to the satisfaction of the trial judge that he had loaded 1,270 bushels on the car; but the defendants only accounted to him for 800 bushels and 10 pounds. After arrival of the car at Port Arthur the weighmaster there had given his certificate, under s. 9 of the Manitoba Grain Act, 1900, shewing the amount of wheat to be only 800 bushels and 10 pounds. After shipment plaintiff indorsed the bill of lading to a bank for collection. The number of bushels put into the car had been ascertained by bag measurement.

Held, 1. The loss of wheat was caused either by the negligence or omission of the defendants or their servants, and the defendants were precluded by s.-s. 3 of s. 246 of the Railway Act, 1888, from relying on the 4th condition indorsed on the bill of lading exempting them from liability for any deficiency in weight or measurement: *McMullen* v. *Grand Trunk Ry. Co.*, 16 S.C.R. 543, and many other cases.

2. The certificate of the weighmaster at Port Arthur was only prima facie evidence of the weight and had been fully rebutted by the evidence.

3. Notwithstanding his indorsement of the bill of lading passing the property in the wheat to the consignee, the plaintiff still such an interest in it as to entitle him to bring an action for the loss: Leggett on Bills of Lading, 626; *Brill* v. *Grand Trunk Ry. Co.*, 20 U.C.C.P. 440; *Great Western Ry. Co.* v. *Bagge*, 15 Q.B.D. 625.

4. As the contract between plaintiff and defendants was for carrying the wheat by the carload, and not by the bushel, s. 21 of the Weights and Measures Act, R.S.C. c. 104, did not apply to prevent plaintiff from recovering from the loss.

Verdict for plaintiff affirmed with costs.

Anderson, for plaintiff. *Munson*, K.C., and *Laird*, for defendants.

Courts and Practice.

Rules of Court—Ontario.

For the convenience of our readers we publish the Rules of the Supreme Court of Judicature for Ontario subsequent to and in continuation of those published ante, vol. 40, p. 446.

Rules 1262 to 1267 took effect Sept. 1, 1904, and Rules 1268 to 1274 after the end of Christmas vacation, January, 1905.

1262. 635 (4). Every judgment and order by which a judgment is affirmed, reversed, set aside, varied, or in any way modified, shall also be entered in the office where the proceedings were commenced; and the fee for entry shall be payable only in the office where the proceedings were commenced.

1263. 750(*a*). Where moneys are by any judgment, order or report directed to be paid for the purpose of redemption or any like purpose, the same may be directed to be paid into Court. (*b*) Moneys so paid into Court shall be paid out, together with any interest accrued thereon, to the party for whom the same was by the judgment, order or report directed to be paid into Court, without order, upon production to the accountant of the consent of the party by whom the money was paid into Court, duly verified, or of his solicitor, but otherwise, as the Court or a judge may order.

1264. Rule 770 is hereby repealed and the following is enacted as Rule 768(*a*):

768(*a*) The words "report or certificate" in Rules 769 and 771 shall include every order made by the Master in Ordinary, a Local Master or an Official Referee, except an order made under the authority of Rule 767.

1265. Rules 802 and 803 are repealed and the following substituted therefor:

802. (1) Unless otherwise ordered by the Court of Appeal or a judge thereof as hereafter provided, the appeal books need not be printed in the following cases:

(*a*) Appeals under sub-clauses (*a*), (*b*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), (*k*), (*n*), and (*o*), of section 50 (2) of the Judicature Act, as amended by the Act 4 Edw. VII., c. 11, entitled "An Act to amend the Judicature Act.'

(*b*) Appeals under sub-clauses (*e*) and (*f*) of section 76 (1) of the Judicature Act as amended by the aforesaid Act.

802. (2) In cases of appeal under sub-clause (*c*) of the aforesaid section 50 (2) only so much of the evidence and exhibits shall be printed as pertain to the questions involved in the appeal; and in the event of difference between the parties as to what the book should contain the same shall be settled by the trial judges, or one of them, on application, of which 2 clear days' notice shall be given to the opposite party.

803. The Court of Appeal or a judge thereof may order the appeal book in any of the cases specified in Rule 802 (1) or any of the documents, proceedings or other papers therein to be printed; and may under special circumstances dispense with printing in a case in which printing would otherwise be necessary.

1266. 940 (*a*). The judge may also exercise the powers conferred upon the Court by Rules 200 and 201.

1267. Rule 1136 (1) is hereby repealed and the following substituted therefor:

1136. (1). The costs of every interlocutory viva voce examination and cross-examination shall be borne by the party who examines unless, as to the whole or part thereof, it be otherwise directed, in actions in the High Court by the Senior Taxing Officer on his appointment served, and in actions in a County Court by a judge thereof. In actions in the High Court, if more than $25.00 is claimed, besides the disbursements, in procuring the attendance of the person examined, the sum to be allowed for the examination or cross-examination shall be fixed by the Senior Taxing Officer on such appointment.

Any increase of costs occasioned by proceeding, without good reason, otherwise than as provided by Rule 447 (1) shall not be allowed.

1268. Ordered that Rule 881 as enacted by Rule 1252, be repealed and the following substituted therefor:

1268. (881). Before the sale of lands under a writ of fieri facias, the Sheriff shall publish once, not less than three months and not more than four months preceding the sale, an advertisement of sale, in *The Ontario Gazette*, specifying:

(*a*) The particular property to be sold;

(*b*) The name of the plaintiff and defendant;

(*c*) The time and place of the intended sale;

(*d*) The names of the debtor whose interest is to be sold; and he shall, upon one day at least in each week for four successive weeks next preceding the sale, also publish such advertisement in a public newspaper of the County or District in which the lands lie; and he shall also for three months preceding the sale, put up and continue a notice of such sale in the office of the Clerk of the Peace, and on the door of the Court House or place in which the General Sessions of the Peace of the County or District is usually holden; but nothing herein contained shall be taken to prevent an adjournment of the sale to a future day.

1269. Rule 938 is repealed and the following substituted therefor:

(938) The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, or any person claiming to be interested in the relief sought as creditor, devisee, legatee, next-of-kin or heir-at-law of a deceased person, or as cestui que trust under the trusts of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may serve a notice of motion returnable in cases under clauses (*a*), (*b*), (*e*), and (*h*) hereof before a judge of the High Court sitting in weekly Court, and in other cases before a judge of the High Court in Chambers for such relief of the nature or kind following, as may be specified in the notice, and as the circumstances of the case may require, that is to say, the determination without an administration of the estate or trust of any of he following question or matters:

(*a*) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next-of-kin or heir-at-law, or cestui que trust.

(*b*) The ascertainment of any class of creditors, legatees, devisees, next-of-kin, or others.

(*c*) The furnishing of any particular accounts by the executors or administrators or trustees and the vouching (where necessary) of such accounts.

(*d*) The payment into Court of any money in the hands of the executors or administrators or trustees.

(*e*) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees.

(*f*) The approval of any sale, purchase, compromise or other transaction.

(*g*) The opinion, advice or direction of a judge pursuant to section 37 of The Act respecting Trustees and Executors and the Administration of Estate.

(*h*) The determination of any question arising in the administration of the estate or trust.

1270. Rule 1143 is repealed and the following substituted therefor:

(1143) In cases not otherwise provided for, the Taxing Officer may allow a reasonable sum for the expense of a shorthand writer, on the certificate of the judge before whom the examination of any witness or witnesses in any such cause, matter or other proceeding takes place; and also on the certificate of the Local Master in references before him when the parties agree to the employment of a shorthand writer.

1271. Rule 791 is repealed and the following substituted therefor:

(791) On any motion for a new trial or by way of appeal from a judgment or order of the Court or a judge of the High Court or to enter a different judgment, the applicant or appellant shall deliver to the proper Registrar a copy of the written opinion (if any) unless it has been reported, of the judge appealed from and of the judgment or order in question on the motion of appeal as the same has been settled or entered, before the motion or appeal is set down for argument; and in default, unless otherwise ordered, the motion or appeal shall be deemed to have been abandoned, and the opposite party shall be entitled to the costs thereof.

1272. Clause 2 of Rule 55 is hereby repealed.

1273. Rule 77 is hereby amended by striking out all the words after the word "matter" in the fourth line thereof.

1274. Rule 407 is hereby repealed and the following substituted therefor:

(407) The person applying for the direction or cheque shall leave a præcipe therefor according to form No. 42 or form No. 43, and the judgment or order under which the money is payable, together with a copy thereof and of the report where necessary, which is to be on good paper of foolscap size, folded lengthwise and is to be verified by an officer in the accountant's office, and to be retained by the accountant.

In case the direction is obtained elsewhere than in Toronto, these papers with the necessary postage for their retransmission are to be sent to the accountant.

(2) The copy so verified shall be marked with a number corresponding with that of the account, and shall be bound and kept for reference in a book to be called the "Order Book."

UNITED STATES DECISIONS.

CONTRACT—CONSIDERATION:—A release executed by a railroad company as a condition of permitting an injured employee to return to work, without any undertaking on its part to continue the employment any longer than may be satisfactory to it, is held, in Missouri, *K. & T. R. Co.* v. *Smith* (Tex.) 66 L.R.A. 741, to be without consideration, and not binding on the employee.

NEGLIGENCE:—If the motorman in charge of an electric car going at a high rate of speed sees a runaway team approaching a crossing under such circumstances as must suggest to any mind that a collision is probable, and makes no effort to control or stop his car, it is held, in *Wilson* v. *Chippewa Valley Electric R. Co.* (Wis.) 66 L.R.A. 912, that he is guilty of that wanton and reckless disregard of human life which amounts in law to intentional wrong.

A street car company is held, in *Duchemin* v. *Boston Elev. R. Co.* (Mass.) 66 L.R.A. 980, not to owe to a person upon a street, where its car has stopped to receive him as a passenger, the same high degree of care with respect to defects in the car while he is approaching to enter it that it owes to passengers actually on board.

INITIATION ECCENTRICITIES:—The supreme lodge of a mutual benefit society which has authorized its agent, a local lodge, to initiate members into the order, is held, in *Mitchell* v. *Leech* (S.C.), 66 L.R.A. 723, to be liable for injuries inflicted upon a candidate by the use of a mechanical goat(!)in the initiation ceremony, although it has not authorized the use of such contrivance.

CONTEMPT OF COURT:—Criticism of the manner in which trials are conducted in Court is held, in *Ex parte Green* (Tex. Crim. App.) 66 L.R.A. 727, not to be punishable as a contempt of the Court, unless it refers to some particular case pending before the Court.