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Amongst the official announcements connected with the visit of their Royal Highnesses, the Duke and Duchess of Cornwall and York, His Majesty the King has been pleased to confer upon the Hon. Sir John Boyd, President of the High Court of Justice, the dignity of Knight-Commander of the Most Distinguished Order of St. Michael and St. George. We congratulate Sir John on the dignity conferred on so worthy and distinguished a member of the profession.

As we go to press two judicial appointments are announced. Sir Louis Henry Davies, K.C.M.G., Minister of Marine and Fisheries, takes the seat in the Supreme Court of Canada rendered vacant by the loss of Mr. Justice King, who died on the 28th of April ult. It is to be hoped that this appointment will give strength to the Court of highest resort in the Dominion. That this has been an unsatisfactory tribunal in many ways, and much so of late years, is well known to the profession, and is much to be deplored. The attention of the Government should be directed to making this Court, what it is not, the strongest and best thought of Court in the Dominion. There are of course great difficulties in the way, but we doubt if it can be said that due effort has been made in the direction indicated.

The other appointment is to the Ontario Bench; Mr. B. M. Britton, K.C., of Kingston, taking the place in the King's Bench Division of the High Court of Justice rendered vacant by the retirement of Chief Justice Burton and the changes consequent thereupon. These events took place nearly a year and a half ago. The delay in making this appointment has been most unseemly—unjustifiable so far as public business is concerned and unfair to the other members of the Bench, who have suffered not only from the want of proper judicial strength but also from the illness of some of their colleagues. We congratulate the learned and experienced counsel and Drainage Referee upon his promotion. We are glad to learn that Mr. Justice Meredith has returned to duty, but sorry to hear that his health is not yet as satisfactorily re-established as could be wished.

The September Divisional Court opened with a list of ninety-nine cases of which only nineteen were disposed of during the two weeks' sittings. On one day no case on the peremptory list was ready and no business was done. On another the Court sat for two hours only. The difficulty of getting into harness again so soon after the Long Vacation may perhaps account for the slow rate of progress in the business, and suggests the inquiry whether the first sitting of the Divisional Court after vacation might not in future be more advantageously held in the second instead of the first half of September.

ANARCHY AND ITS VICTIM.

The civilized world stands aghast at the crowning exhibition of the spirit of lawlessness abroad to-day. Though the governments of Europe are now more or less free and responsive to the will of the people, the one that claims the greatest advance in this respect was the one selected by the anarchists for their most recent attack upon law and order. It is noteworthy, moreover, that the last selected victim of the hateful malice of these miscreants was a man who personally could not have been obnoxious to their misguided and distorted views. He was, moreover, the free choice of a free people and moved freely and without fear amongst those who had selected him as the representative head of their nation. On the 6th inst. the dastardly attack upon Wm. McKinley, President of the United States, was made. On Saturday the 14th inst. he passed away. Whilst his loss is mourned by his people as a national calamity and as the loss of a beloved personal friend, the heartfelt sympathy of other nations and notably (and properly so) that of Great Britain and this Dominion has gone out in full measure to his family, his friends and his fellow citizens. In public and in private life he lived without reproach. As a constitutional ruler he will take a high place. A great man in many ways, he had risen from a humble position—schoolmaster, soldier, lawyer—to be the head of a great nation. Deservedly popular and respected and growing daily in the esteem of his people, the last days of his life told of a man even greater than his record. In his words of pleading for his murderer, his brave patient endurance, and his resignation to the Divine will, he breathed the spirit of his Master, whom he loved and sought to serve.

Shocking as the assassination of Mr. McKinley was to the moral sense of all right-minded men, it is the utter senselessness of the crime that makes it especially striking and deplorable, for this cruel murder cannot of course bring the votaries of social disintegration one step nearer their goal, but must necessarily work in the opposite direction. The slaying of men in sovereign place is no rare thing in history, but until the fell era of anarchism came upon the stage of human action, it was possible to find some motive more or less plausible on the part of the assassin. M. Carnot, the Empress Elizabeth, King Humbert and Mr. McKinley were the victims of ignorant and deluded social theorists, who used as their tools weak-minded men tutored into irresponsibility by the suasions of demagogues who were the real murderers. The end to be aimed at therefore in the direction of repression and suppression should be, as far as may be, to strike at the roots of the evil. Of these there are many.

One of them is the right of free speech run riot. There must be a curtailment of the license hitherto allowed to anarchist orators and a pestilent press. It should be made a criminal offence to counsel the employment of force to achieve the ends of any social propagandism, or to attempt to bring the institutions of government into contempt and disfavour or to weaken the hands of the government and the machinery at their disposal, whether civil or military, in the suppression of lawlessness. The country should not be obliged to wait until a bomb has been thrown or a murder committed. The proposal for legislation in the curtailment of what has been called the right of free speech will grate upon the ears of many in the United States, but as that country is now entering on the brotherhood of nations in unexpected ways, and to an extent unthought of by its citizens a few years ago, they will find a necessity to do many things which they never expected to do, and at one time said they never would do. They will doubtless see also the necessity for the Federal authority to pass a law punishing with death any attempt upon the life of the chief magistrate of the nation. The constitution of the United States (Art. III., s. 3) provides that "treason against the United States shall consist only in levying war against them or in adhering to their enemies, giving aid and comfort." It has been supposed by

some that the English common law of treason may have a place in American jurisprudence, but however that may be, many will maintain that the spirit of the common law of England in this direction is a right that remains to a free people. There can be no doubt, however, that it is quite competent for Congress to enact such a criminal law as has been indicated. The necessity for this in the present condition of things across the border is quite evident. It might be wise also not to permit the plea of irresponsibility, except upon the condition that invoking it should entail imprisonment for life in a lunatic asylum. One thing is evident, and that is that in view of the murder of three of its Presidents since the election of Lincoln, the great Republic in spite of its national traditions in the past, be they wise or otherwise, must follow the example of European monarchies in encircling its chief magistrate with safeguards against violence similar to those which the countries of the old world have been compelled to adopt. The welfare of the nation, as well as the dictates of humanity, demand it.

REPRINT OF ENGLISH REPORTS.

Little more than a year since some of the leading publishing houses in Scotland, England, the United States and Canada undertook to reprint verbatim in full, without omitting any cases or parts of cases, all the decisions of the English Courts from the earliest period (1300) up to the year 1865,* containing in all over twelve hundred volumes. The scheme seemed so huge that doubt was expressed in some quarters as to the probable success of the work. All doubt, however, has now disappeared, for vol. II. has just been received, and the success of the venture is assured. Although only called a reprint the work has much in addition, and is of more use than the original reports, inasmuch as each case is annotated by giving full notes as to whether, when and where the case has been overruled, distinguished or otherwise. The work is well printed in a uniform series and in modern type, and is in a much more readable shape than the originals. The original paging has been preserved. The undertaking is a large one, but these publishers thought that a reprint

*The English Reports, 1300 to 1865. Verbatim reprint of all the cases during that period, 1901. Canada Law Book Company, Toronto.

was more desirable than a selection of cases. Without in any way disparaging or criticising the work of those who have undertaken the latter task many venture to doubt the wisdom of that course or the possibility of doing it satisfactorily. The favourable reception this reprint has received at the hands of the profession indicates that there is room for both.

The scheme of the publishers is to group each series of reports and publish them in consecutive order. The House of Lords Cases has been the first series, and is now complete in eleven volumes of over sixteen hundred pages per volume. The great importance of the House of Lords Cases as authority in Canada makes that portion of the "English Reports" now complete an especial boon to the Canadian practitioner by giving the decisions of the highest Appellate Court of the realm to the profession at so moderate a cost. It is intended to publish all of the cases from 1300 down to 1865 in one hundred and fifty volumes. The names of the consultative committee in charge of this new series is a guarantee of its editorial excellence. They consist of the Lord Chancellor of England; the Lord Chief Justice; the Rt. Hon. Lord Justice Henn Collins; the Hon. Mr. Justice Wright; Sir R. B. Finlay, K.C., Attorney-General, with A. Wood Renton, Esq., Barrister-at-law, as General Editor.

It is a pity that the many good things connected with the Bench and Bar of this Province should be lost to posterity. In no country probably could there be a more interesting collection made than from the sayings of and incidents connected with the Judges of old Upper Canada. The following will be remembered by some of the older members of our Bar:

A case was being tried before Chief Justice Draper at an Assize in a county town. Amongst those living in that neighborhood was a well-known character, who had once been a schoolmaster, but who was at this time given to the too free indulgence in strong drink, devoting most of his time to loafing. On this occasion he found himself in Court much the worse for liquor Being somewhat obstreporous the Chief Justice inflicted upon him a small fine. As this, however, had not the desired effect of quieting him, he was brought up a second time, whereupon the Chief, in his well known quiet but severe tone, reprimanded him, telling him

that he had previously inflicted a small fine, but as the offence had been repeated, he would now have to inflict a heavy one. The pedagogue however was equal to the occasion and promptly rejoined, "Stop, Judge, you ca-an't do it ; its agin the law. It's unconshushinal — Nemo bis vexare pro eadem causa. You see, Judge, it's the same old drunk." Even the quick wit of the sarcastic Chief Justice had no answer ready, and turning away he ignored the presence of the delinquent.

The same learned Judge was on another occasion trying a case in the old Prince Edward District. Many of the settlers there were Tunkers, and in giving evidence theoretically preferred to affirm rather than swear. The Court having put to a witness the question usual in that locality, "Do you swear or affirm ?" received the prompt and entirely unexpected reply, "I don't care a d—n which ;" whereupon the Chief Justice leaned over his desk and in his usual suave manner instructed the Clerk of Assize as follows, —"Mr. Campbell, the witness swears."

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

CONTRACT—IMPOSSIBILITY OF PERFORMANCE—IMPLIED CONDITION.

In *Nickoll* v. *Ashton* (1901) 2 K.B. 126, the Court of Appeal have affirmed the judgment of Mathew, J. (1900) 2 Q.B. 298 (noted ante vol. 36, p. 586), but not without a difference of opinion, Smith, M.R., and Romer, L.J., being in favour of affirmance, and Williams, L.J., against it. It may be remembered that the action was brought for breach of contract, and the defendants set up that the contract, without any default on their part, had become impossible of performance, and that it was an implied condition that in case the contract could not be performed through no default of the defendants, it should be treated as at an end. Mathew, J., dismissed the action on the ground that the contract was subject to this implied condition, and his decision is affirmed. Williams,

L.J., on the other hand, considered the contract was absolute and not subject to any implied condition, and the fact that it had become impossible of performance was the defendants' misfortune, for which they were nevertheless responsible in damages. He agreed, however, with Mathew, J., as to the measure of damages. He also agreed that there might be a case where, from the nature of the contract, it was manifest that it was made upon the understanding that its fulfilment depended on the existence of some particular thing or state of facts as the foundation of the contract, the non-existence of which would operate as an excuse for its non-performance; but he considered the non-arrival of a particular ship at a particular port was not such a case, as it was an event that might well have been guarded or insured against by the defendants.

LANDLORD AND TENANT — LEASE — COVENANT BY LESSEE TO PAY AND DISCHARGE "IMPOSITIONS" CHARGED OR IMPOSED ON DEMISED PREMISES — ORDER TO ABATE NUISANCE.

Foulger v. *Arding* (1901) 2 K.B. 151, was an action by a landlord against his tenant upon a covenant in the lease, whereby the tenant bound himself during the term "to pay and discharge all taxes, rates, including sewers, main drainage assessments, and impositions whatsoever which now are or at any time hereafter during . . . the term . . . be taxed, rated, assessed, charged, or imposed upon or in respect of the said premises, or any part thereof, or on the landlord, tenant or occupier of the same premises, by authority of Parliament or otherwise howsoever." There was no repairing covenant in the lease. Notice was given by the sanitary authority of the district to the lessor to abate a nuisance occasioned by a privy, and to construct a water-closet in place thereof in accordance with the by-laws of the London County Council. The lessor did the work, and the action was brought to recover the expense so occasioned from the tenant. The County Court Judge who tried the action held that the plaintiff was entitled to recover. The Divisional Court (Lord Alvertsone, C.J., and Lawrance, J.), however, with some hesitation, reversed his judgment, the latter Court being of opinion that the covenant applied only to money charges imposed on the premises, and did not include the obligation to perform work thereon in the nature of the repair of structural defects.

LANDLORD AND TENANT—COLLATERAL AGREEMENT—PAROL WARRANTY OF DRAINS.

In *De Lassalle* v. *Guildford* (1901) 2 K.B. 215, the plaintiff was lessee of the defendant under a lease under seal. Before the counterpart of the lease executed by the plaintiff was delivered he required an assurance that the drains were in good order. The lease contained no reference to the drains. The defendant verbally assured the plaintiff that the drains were all right, and the counterpart was thereupon handed to him. The drains were not in good order, and the action was brought to recover damages for breach of the parol warranty. The action was tried by Bruce, J., who gave judgment for the defendant, dismissing the action, being of opinion that even if there was a warranty it would not be collateral to the lease. The Court of Appeal (Smith, M.R., and Collins, and Romer, L.JJ.), however, reversed his decision on the ground that there was in fact a warranty of the drains, and that it was collateral to the lease, and therefore the plaintiff was entitled to judgment.

PRACTICE—COSTS—ALLOWING COSTS OF UNUSED DEPOSITIONS OR PROCEEDINGS.

In *Bartlett* v. *Higgins* (1901) 2 K.B. 230, the Court of Appeal (Collins and Stirling, L.JJ.) lay it down that there is no hard and fast rule that the costs of unused depositions or proceedings can in no case be allowed on taxation between party and party. In the present case the plaintiff was expecting to receive orders to set out for service as a soldier in South Africa, and in contemplation of his absence at the trial obtained an order for his examination de bene esse. It turned out that the plaintiff was not ordered to South Africa as expected, and was, consequently, able to attend and give evidence at the trial in person. On the taxation of costs between party and party he claimed to be allowed the costs of his examination de bene esse. The taxing officer disallowed the costs, and his view was sustained by Ridley, J. The Court of Appeal, however, took a more liberal stand, and held that the true test, in exercising discretion as to the allowance or disallowance of such costs, is whether they were necessarily or properly incurred for the attainment of justice, and the case was accordingly remitted to the taxing officer.

ADULTERATION—FOOD—BEER—LIABILITY OF INNOCENT VENDOR FOR SELLING BEER CONTAMINATED WITH ARSENIC—CERTIFICATE OF ANALYST—SALE OF FOOD AND DRUGS ACT, 1875 (38 & 39 VICT., C. 63) SS. 3, 6—(R.S.C. C. 107, SS. 14, 23.)

Goulder v. *Rook* (1901) 2 K.B. 290, was one of a series of cases occasioned by the recent wholesale arsenical poisoning of beer drinkers in England. The opinion of the Divisional Court (Lord Alverstone, C.J., and Lawrance and Phillimore, JJ.), was asked upon a case stated by magistrates, from which it appeared that beer, with which a certain quantity of arsenic injurious to health had been mixed in the process of manufacture, accidentally and in ignorance was sold by the defendant, a retailer, without knowledge or reasonable grounds for suspicion of the existence of arsenic in the beer. The Court held that there was evidence that the beer sold was not of the nature, substance, and quality, demanded by the purchaser, and that the retailer could be convicted under s. 6 of the Sale of Food and Drugs Act 1875; (see R.S.C. c. 107, ss. 14, 23). It was also held that the certificates of an analyst stating in one case that the sample of beer "contains arsenic," and in another case that it "contains a serious quantity of arsenic," were insufficient; (see R.S.C. c. 107, s. 11.)

COMPANY—DEBENTURE—UNAUTHORIZED ISSUE—BONA FIDE HOLDER OF DEBENTURE FOR VALUE—EXECUTION CREDITOR.

Duck v. *Tower Galvanizing Co.* (1901) 2 K.B. 314. In this case a Divisional Court (Lord Alverstone, C.J., and Lawrance, J.) held that a bona fide holder for value of a debenture of a limited company, which is in proper form and charges all the property of the company as security for the debenture debt, is entitled to priority over an execution creditor of the company subsequent to the issuing of such debenture, even though the debenture was issued without authority, no directors having been appointed or resolution passed authorizing the issue of the debentures, provided the holder had no notice of any irregularity in the issue of the debenture.

RAILWAY—NEGLIGENCE—PASSENGER—CLOSING OF CARRIAGE DOOR.

Drury v. *North Eastern Ry. Co.* (1901) 2 K.B. 322, was a case in which the plaintiff could hardly have hoped to succeed in face of the decision of the House of Lords in the well known case of Mr.

Jackson's thumb: *Metropolitan Ry. Co.* v. *Jackson* (1877) 3 App. Cas. 193. The plaintiff was sitting in a railway carriage with his hand in the hinge of the door which was open; a porter came along and without any warning shut the door, and crushed the plaintiff's finger, and it was held that this was no evidence of negligence on the part of the railway company.

CHARITY — MORTMAIN — REAL ESTATE — DEVISE TO CHARITY — EXTENSION OF TIME FOR SALE — JURISDICTION — MORTMAIN AND CHARITABLE USES ACT, 1891 (54 & 55 VICT. C. 63) SS. 5, 6—(R.S.O. C. 112, S. 4).

In re Sidebottom, Beeley v. *Sidebottom* (1901) 2 Ch. 1, an application was made in this case to Buckley, J., to extend the time for selling certain lands which had been devised to a charity. The English Mortmain and Charitable Uses Act, 1891, requiring that the lands should be sold within a year from the testator's death (see R.S.O. c. 112, s. 4, which requires a sale within two years), or such extended period as the Court may allow. Buckley, J., was of opinion that an extension of time could only be granted for carrying out a sale made within the year, and he refused to grant an extension, although it was shewn that it would be for the benefit of the charity, which would be seriously prejudiced by a forced sale. He thought the land must be left to vest in the Charity Commissioners, whose duty would be to proceed to a sale of the property without delay. The matter was subsequently brought before the Court of Appeal (Rigby, Williams, and Stirling, L.JJ.) who, having expressed the opinion that there was jurisdiction to make the order, but it being doubtful whether the Court of Appeal could make it, Buckley, J., on being informed of this opinion adopted it, and made the order extending the time for one year.

RAILWAY COMPANY—JUDGMENT CREDITOR — RECEIVER — RAILWAY NOT OPEN FOR TRAFFIC—DISCRETION.

In re Knott End Railway (1901) 2 Ch. 8, an application was made to Farwell, J., by a judgment creditor of a railway not completed or open for traffic, for the appointment of a receiver. Under s. 4 of the English Railway Act, the roadway and plant of a railway cannot, after the railway is open for traffic, be taken in execution, but the execution creditor is entitled to apply for the appointment of a receiver. Two points were raised in opposition to the motion—first, that the railway not having been opened for traffic, there was no jurisdiction to appoint a receiver; and

secondly, if there was jurisdiction, the Court should not, in the exercise of a sound discretion, make the order, as there was nothing to receive. Notwithstanding these objections, Farwell, J., made the order appointing a receiver. On appeal, however, his order was reversed by Rigby, Williams, and Stirling, L.JJ., on the ground that as there was nothing to be received, a receiver should not have been appointed; the Court intimating, though not actually deciding, that until a railway is open for traffic an execution creditor may seize and sell the property of the company under execution. We may observe that the Dominion Railway Act appears to contain no such provision as that in s. 4 of the English Act; see, however, *Peto* v. *The Welland Ry.*, 9 Gr. 455, and *Galt* v. *Erie Ry. Co.*, 14 Gr. 499.

CONTRACT—STATUTORY CONFIRMATION OF CONTRACT—CONTRACT TO GIVE "FIRST REFUSAL" OF LAND—PURCHASER WITH NOTICE—NOTICE.

In *Manchester Ship Canal Co.* v. *Manchester Race Course Co.* (1901) 2 Ch. 37. the Court of Appeal (Rigby, Williams, and Stirling, L.JJ.) have affirmed the judgment of Farwell, J. (1900) 2 Ch. 352 (noted ante vol. 36, p. 668), to the effect that a contract confirmed by statute binding the defendant company to give the plaintiffs "the first refusal" of the right to purchase certain land, was valid, and not void for uncertainty or remoteness, and imported an agreement to give the plaintiffs the right of pre-emption at a price which the defendant company were prepared to accept from other would-be buyers, and that the offer of the defendant company of the land at an extravagant price which the defendant company did not reasonably expect would be given by the plaintiffs or any other would-be buyer, was not giving the plaintiffs a "first refusal" within the meaning of the contract; and although the clause in question did not, as Farwell, J., held, create an interest in land so as to entitle the plaintiffs on that ground to enforce their right of pre-emption as against an intending purchaser, yet that the contract involved a negative contract not to part with the land in question to anyone else without giving the plaintiffs the "first refusal," and on that ground, on the principle laid down in *Lumley* v. *Wagner* (1852) 1 D. M. & G. 604, the plaintiffs could enforce the contract as against the defendant company and a purchaser from them with notice.

PARTNERSHIP—BOOKS OF PARTNERSHIP—PARTNER, RIGHT OF TO INSPECT BOOKS BY AGENT.

In *Bevan* v. *Webb* (1901) 2 Ch. 59, the decision of Joyce, J. (1901) 1 Ch. 724 (noted ante p. 457), has failed to meet with the approval of the Court of Appeal (Collins and Stirling, L.JJ.), that Court holding that both under the partnership articles and the Partnership Act, 1890 (53 & 54 Vict., c. 39) s. 24, sub-s. 9, a partner is entitled to examine the partnership books by an agent, provided no reasonable objection can be taken by the other partners to the agent so appointed, upon the agent undertaking not to make use of the information which he should thus acquire, except for the purpose of confidentially advising his principal.

MARRIED WOMAN—POWER OF APPOINTMENT—RESTRAINT ON ANTICIPATION—RELEASE OF POWER—CONVEYANCING AND LAW OF PROPERTY ACT 1881 (44 & 45 VICT., C. 41) S. 52 (R.S.O. C. 119, S. 19).

In re Chisholm (1901) 2 Ch. 82, an application was made to the Court to determine whether a power of appointment had been validly released. The facts were as follows: A married woman had, under her marriage settlement, executed in 1872 a life interest in personalty, subject to a restraint on anticipation, with a power of appointment amongst her children. By a deed of 21st January, 1899, the married woman had released all the property subject to the settlement from the power of appointment to the intent that the property might go in default of appointment. By the English Conveyancing and Law of Property Act 1881 (44 & 45 Vict., c. 41) s. 52 (R.S.O. c. 119, s. 19), a person to whom a power of appointment, whether coupled with an interest or not, is given, may by deed release, or contract not to exercise the power, whether the power was created by an instrument theretofore or thereafter coming into operation. Stirling, J., held that the release of the power was valid under the Act.

POWER—EXECUTION—DOCUMENT "PURPORTING" TO BE A WILL.

In re Broad, Smith v. *Draeger* (1901) 2 Ch. 86, a married woman had a power of appointment exercisable inter alia by her last will or "any writing in the nature of, or purporting to be, a will or codicil." She left an instrument expressed to be her "last will"

in which she purported to execute the power. The document was insufficiently executed, and probate of it was refused. Kekewich, J., nevertheless held that it was sufficient as an execution of the power.

SALE BY COURT—VENDOR AND PURCHASER—CONDITIONS OF SALE—MISDESCRIPTION—COMPENSATION—DEFECT OF TITLE—RESCISSION AFTER CONVEYANCE.

Debenham v. *Sawbridge* (1901) 2 Ch. 98, is certainly a beautiful illustration of the difficulties which a purchaser of land in England may have to contend with. The property in question consisted of freehold stabling with dwelling rooms over, and was offered for sale under judgment of the Court, and the plaintiff became the purchaser at the price of £3,810. The conditions provided that any error or misstatement in the particulars or conditions should not annul the sale, but be the subject of compensation. The purchaser paid his purchase money into Court and received a conveyance, and with his consent the purchase money was paid out to the parties entitled. A year after completion it was discovered that some of the dwelling rooms over the stabling, and a cellar underneath, belonged to third parties, and in order to get in the adverse title the purchaser had to pay £300 and £75 costs. He then brought the present action against the beneficiaries to whom the purchase money had been paid to recover compensation under the conditions of sale, or to rescind the contract on the ground of common mistake. Byrne, J., however, held that he could not succeed, on the ground that the condition for compensation did not apply to defects of title, but only to misdescription of the subject matter of the sale, and that the error in the present case was not sufficient to warrant a rescission after conveyance. One would have thought that the short answer to the plaintiff's case would have been that, after conveyance, in the absence of fraud, his rights were limited to the covenants contained in his deed.

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

From Armour, C.J.] WILSON *v.* HOTCHKISS. [July 7.

Company—Promoters—Principal and agent—Fraud—Deceit.

While promoters of a company, as such, are not agents for each other, it may be shewn that one or more of them has or have been authorized to act as agent or agents for the others, and the ordinary responsibility of principals then attaches.

Therefore, where promoters who were to receive for their services paid up stock in a company to be formed, authorized two of their number to solicit subscriptions for shares, and these two, by means of false representations induced the plaintiff to subscribe and pay for shares, the money being received and used by the promoters, the plaintiff was held entitled to repayment by the promoters of the amount paid.

Judgment of ARMOUR, C. J., affirmed.

Shepley, K.C., for appellants. *Aylesworth*, K.C., and *J. M McEvoy*, for respondent, the plaintiff. *D. L. McCarthy*, for respondent, the company.

From Divisional Court.] [July 7.

TRUSTS AND GUARANTEE COMPANY *v.* HART.

Gift—Undue influence—Parent and child—Principal and agent.

In the case of a gift attacked on the ground of undue influence something more must be shewn than the mere fact that the donee was the agent of the donor, and in the absence of proof of more the donee is not called upon to shew independent advice.

The fact in this case of the donee being the son of the donor was held not to alter the principle applicable, the son being, as was found on the evidence, the agent and business manager of the father, and the gift in question which was made to the son as trustee for his children in consideration of services rendered by the son, was upheld.

Judgment of a Divisional Court, 31 O.R. 414; 36 C. L. J. 161, reversed.

Aylesworth, K.C., *William Davidson*, and *C. H. Widdifield*, for the various appellants. *Wardrop*, for the Standard Bank of Canada. *Wallace Nesbitt*, K.C., and *E. M. Young*, for respondents.

Moss, J.A.] TRUSTS AND GUARANTEE CO. *v.* HART. [Sept. 5.

Appeal—Printed case—Use on further appeal—Opposite party—Contribution to expense.

Motion by the plaintiffs for an order settling the amount to be paid by them for the use of thirty of the printed appeal books upon their appeal to the Supreme Court of Canada from the judgment of the Court of Appeal, ante, allowing the appeal of the defendants from the judgment of a Divisional Court, 31 O.R. 414, in favour of the plaintiffs. The books were printed and paid for by the defendants.

Moss, J.A.—I have, as arranged, conferred with my brother Osler. I find that in another case he has followed the view he expressed in *Teetzel* v. *Dominion Construction Co.*, 18 P.R. 16, and his order has been acquiesced in. In determining the amount to be paid by the party seeking to use for purposes of an appeal to the Supreme Court the appeal books printed by the opposite party, there seems no good reason for taking into consideration the fact that the party to pay may have paid for the copies of the stenographer's notes used in the Divisional Court. If there were no printed books, he would have to print for the Supreme Court, and in paying for the books already printed he is only paying a different person. The question is how much he should pay in order to get the thirty copies he needs for the Supreme Court. No general scale can be formulated. The thirty books do not represent the whole value of the printer's charge. The books retained by the party printing, or of which he has got the benefit, as well as the bulk of the book and the number actually printed, etc., have to be taken into consideration. In this case I fix $95 as approximately representing the proportion settled in the previous cases. This sum the plaintiffs must now pay to the defendants for the thirty books to be taken for use in the Supreme Court.

D. L. McCarthy, for plaintiffs. *Aylesworth*, K.C., for defendants.

HIGH COURT OF JUSTICE.

Boyd, C., and Ferguson, J.] [June 14.

MACDONALD *v.* MAIL PRINTING CO.

Libel—Word "blackmailing"—Innuendo—Onus of proof—Contradictory evidence—Nonsuit after finding by jury in plaintiff's favour.

The word "blackmailing" is libellous per se, requiring no innuendo, and it does not lie upon the plaintiff to prove the falsity of the charge: for the purposes of the trial it is presumed in his favour, and the onus is on the defendant to prove it to be true, if justification is pleaded.

Semble, per BOYD, C. The better view is that colloquial use has broadened the meaning of the word so that it may not have a criminal connotation.

In an action for two libels where the words used in one were not libellous per se and were not, fairly taken, capable of the meaning alleged in the innuendo,

Held, that the trial judge was right who had, after motions made for a nonsuit, both at the close of the plaintiff's case and after all the evidence was in, on which he reserved judgment, given judgment dismissing the action after a verdict was rendered by the jury in favour of the plaintiff.

But as to the other, where the truth of the charge was not admitted by the plaintiff or proved on uncontroverted evidence, and where the evidence as to the use of the word "blackmailing" was contradictory,

Held, that it was for the jury to pass upon the evidence, and the judgment dismissing the action on the ground that there was no evidence to go to the jury should be set aside and the verdict of the jury in favour of the plaintiff for $50 restored. Judgment of MEREDITH, J., reversed in part.

E. F. B. Johnston, K.C., and *S. H. Bradford*, for plaintiff. *J. B. Clarke*, K.C., for defendants.

Boyd, C.] RE MCMILLAN *v.* FORTIER. [June 29

Prohibition—Foreign judgment—On a promissory note signed by defendan—Effect of—Recovery on—Cause of action—Division Court—Jurisdiction.

A party plaintiff suing in this province on a foreign judgment may sue on the foreign judgment or on the original cause of action or may combine them both in the same action, and such a judgment may be enforced in this jurisdiction as importing a legal obligation to pay the sum recovered by means of an action of debt as on a simple contract.

A judgment debt represents a single contract debt only, and one not ascertained by the signature of the defendant even when recovered on a promissory note signed by the defendant; and prohibition was granted to restrain proceeding with a plaint in a Division Court on a Manitoba judgment for $232.37 recovered on such a note where the plaintiff abandoned $32.37 and sought to recover judgment for $200.

John F. Orde, for the motion. *J. F. Smellie*, contra.

Street, J.] IN RE HARRISON. [July 4.

Devolution of Estates Act—Partial intestacy—R.S.O. 1897, c. 127, s. 12.

Where under a will there was a partial intestacy, viz., an intestacy as to the residuary estate,

Held, following *Re Twigg's Estate* (1892) 1 Chy. 579, the Devolution of Estates Act did not apply, and the widow was not entitled to $1,000 under section 12.

J. J. Maclaren, K.C., for the widow. *J. D. Montgomery*, for the next of kin.

Meredith, C. J.] [July 17.

RE GRAND TRUNK RAILWAY AND PETRIE.

Arbitration—Time for statement of case by arbitrators—Remitting back to arbitrators for re-consideration—R.S.O. (1897) c. 62, ss. 11 and 41.

After an award is made it is too late to make an application for an order under s. 41 of the Arbitration Act, R.S.O. (1897) c. 62, directing the arbitrators to state a case for the opinion of the Court as to the admissibility and relevancy of evidence or for the arbitrators to state a case for the opinion of the Court.

The only cases in which the Court will remit matters referred to an arbitrator for re-consideration under s. 11 are: (1) Where the award is bad on the face of it. (2) Where there has been misconduct on the part of the arbitrator. (3) Where there has been an admitted mistake and the arbitrator himself asks that the matter may be remitted; and (4) When additional evidence has been discovered after the making of the award: and where certain arbitrators had received and given effect to certain evidence in their award after the making of the award gave a certificate to that effect and that they were in doubt as to whether they should have received the evidence.

Held, that this case did not come within any of the above four cases and that an order to remit the matter back to the arbitrators should be secured.

W. R. Riddell, K.C., for the application. *Walter Cassels*, K.C., contra.

Meredith, C.J., MacMahon, J., Lount. J.] [July 20.

REX *v.* YOUNG.

Criminal proceedings — Suspended sentence — Estreating recognizance—Criminal Code s. 971—Locus standi.

The defendant was in 1887 convicted for libel and released from custody upon entering into a recognizance with sureties to appear and receive judgment when called upon. The private prosecutor now moved absolute an order nisi calling on him to shew cause why he should not be ordered to appear at the next sittings of the Assizes to receive judgment on the ground that he had failed to be of good behaviour since entering into the said recognizance, by reason of his having published further libels.

Held, that it is only upon motion of the Crown in such cases that the recognizance of the defendant and his bail is estreated, or judgment moved against the offender.

Held, also, that apart from this, under the circumstances, the prosecutor must be left to his remedy by action or indictment against the defendant in regard to the libels complained of.

Aylesworth, K.C., for the motion. *Johnston*, K.C., for defendant.

Meredith, C.J., Lount, J.] [July 20.

FIRST NATCHEZ BANK *v.* COLEMAN.

Stay of proceedings—Action in foreign court—Reasons for.

Where there are substantial reasons for the double litigation, the court will not stay proceedings in an action in Ontario until after the determination of another action for the same cause pending in a foreign court.

The power to stay proceedings under s. 57, cl. 10, of the Judicature Act, R.S.O. 1897, c. 51, is a discretionary one, and the English cases are authorities as to the exercise of the discretion, although there is no similar statutory provision in England.

Where the defendant, resident in Ontario, was sued there upon a promissory note, the court refused to stay the action until after the determination of an attaching proceeding in a foreign court, the effect of which, if successful, would be to make available towards payment of the note certain stock in a company domiciled in the foreign country.

W. E. Middleton, for plaintiffs. *J. H. Moss*, for defendant.

Trial of Actions, Meredith, C.J.] [July 23.

SMITH *v.* HUNT.

Mortgage—Sale under power—Fraud—Pretended sale—Purchasers for value without notice—Knowledge of agent—Interest to conceal—Redemption—Compensation—Costs—Jurisdiction—Foreign defendants.

R., one of the defendants, purchased a mortgage of land from the mortgagee, who, by R.'s direction, assigned it to his nominee, who, by R.'s direction, took proceedings under the power of sale and sold and conveyed to H., another nominee of R., who then induced three other men to join him in a purchase of the land, at a large profit, concealing from them the fact that he was himself the real vendor. These three men paid three-fourths of the price at which the land was sold to them, and the land was conveyed to them and R. by H., and the conveyance registered, they not suspecting that the transaction was otherwise than as represented by R., and as on the face of the documents it appeared to be.

In an action by the owner of the land subject to the mortgage purchased by R., to set aside the conveyances and for redemption, it was conceded that the sale to H. under power was inoperative.

Held, that the three associates of R. to whom H. conveyed were purchasers for value without notice, and, having registered their conveyance, were not affected by the equity of the plaintiffs to set aside the conveyance to H.; they were not affected by the knowledge which R. had of the plaintiff's rights, nor by the knowledge which their solicitor had, the same solicitor having acted for them who acted for R. in the proceedings taken under the power of sole; for R. had been guilty of a fraud upon the

mortgagor, and he was committing a fraud upon his associates in the purchase by representing that a stranger was the vendor and that the price was more than four times as much as he had himself paid; and, therefore, notice to his associates could not be imputed of that which was within the knowledge of R. and the solicitor and which it was their interest to conceal.

Cameron v. *Hutchinson*, 16 Gr. 528, applied.

Held, also, that R.'s associates were entitled to set up the defence that they were bona fide purchasers for value without notice against the plaintiff's claim to set aside the pretended sale and conveyance to H., and they were entitled to costs against R.

Faulds v. *Harper*, 11 S.C.R. 639, followed.

Held, also, that, as an undivided one-fourth of the mortgaged premises remained vested in R., the plaintiffs were, as to him, entitled to redeem; and if on redemption he should not be in a position to re-convey the other undivided three-quarters, he must make compensation to them for the value of it.

Held, lastly, that there was jurisdiction in the court, notwithstanding that R. and his two nominees were foreigners, not domiciled nor resident in Ontario, to award judgment against them, not only for redemption, but also for costs and damages or compensation, the compensation being incidental to the redemption, R. having by appearing attorned to the jurisdiction, and the case moreover falling within clauses (*b*), (*d*), (*e*), and (*f*), of sub-s. 1 of Rule 162.

J. L. Murphy and *J. E. O'Connor*, for plaintiffs. *W. R. Riddell*, K.C., *E. S. Wigle*, and *J. H. Rodd*, for various defendants.

Trial of Actions, Lount, J.] [July 23.

VANLUVEN *v.* ALLISON.

Will—Construction—Devise—Estate in fee—"Leaving no children"—Divesting—Executory devise over—Contrary intention—Vendor and purchaser—Doubtful title—Specific performance.

A testator by his will gave his widow a life estate in land, and then devised it to his son Philip and his lawful heirs and assigns, and then, after devising certain other property to another son, he continued: "I also give, devise, and direct, should any of my sons *die leaving no children*, the property bequeathed to said son shall be equally divided between all my children, sons and daughters [and]grand-daughters aforesaid, share and share alike. . . . Should any of my children be disposed to sell any part or the whole of the party bequeathed to them, I desire and direct that they give the preference or refusal to one of the family. . . . ."

The testator died in 1878, leaving him surviving his widow, who died in 1898, three sons, Philip being one, and four daughters. At the time of he testator's death Philip was married and had two children. In 1891 the

widow and Philip made a conveyance of the land devised to him, under which the plaintiff claimed. At the time of this action Philip and his children were still living.

Held, that the estate in fee in Philip was subject to being divested by his dying "leaving no children," which might still happen, and in which event the executory devise over would take effect.

The fourth rule laid down in *Edwards* v. *Edwards*, 15 Beav. 357, is overruled by *O'Mahoney* v. *Burdette*, L.R. 7 H.L. 388, and the rule now is, that when there is a gift over in the event of death without issue, that direction must be held to mean death without issue at any time, unless a contrary intention appears in the will, and that the introduction of a previous life estate does not alter that principle of construction. *Olivant* v. *Wright*, 1 Ch. D. 346, followed.

Held, also, that the provision in the will as to any of the children of the testator being "disposed to sell" did not shew a "contrary intention."

Held, also, that a "contrary intention" was not indicated by a devise in the same will to another son subject to the same limitation and conditions, but subject also to the payment of legacies of $2,900 at the expiration of two years from the testator's death—which appeared to be inconsistent with anything short of an absolute estate in fee. *Cowan* v. *Allen*, 26 S.C.R. 292, followed.

Held, therefore, that the plaintiff's title was not one that could be forced upon an unwilling purchaser, and a decree for specific performance should be refused.

G. M. Macdonnell, K.C., for plaintiff. *E. H. Smythe*, K.C., and *H. I. Lyon*, for defendant.

Meredith, C.J., MacMahon, J., Lount, J.] [July 23.

LEITCH *v.* LEITCH.

Mortgage—Conveyance of land subject to the mortgage reserving a life estate—Right to assignment under R.S.O. 1897, c. 121, s. 2, sub-ss. 1, 2.

The father being the owner of land mortgaged it and then conveyed it to his son subject to the mortgage, and reserved a life estate to himself.

Held, that the son was not entitled, on payment of the mortgage money to the assignee of the mortgage to an assignment of the mortgage to himself or his nominee under R.S.O. 1897, c. 121, s. 2, sub-ss. 1, 2, the holder of the mortgage having notice of the equitable right of the father to have his life estate relieved of the burden by payment of the mortgage debt by the son. Judgment of FALCONBRIDGE, C.J., affirmed.

W. M. German, K.C., for the appeal. *T. D. Cowper*, contra.

Trial of Actions, Meredith, C.J.] [July 24.

MACLAUGHLIN *v.* LAKE ERIE AND DETROIT RIVER R.W. CO.

Patent for invention—Contract—Grant—License—Revocation—Right to manufacture—Changes in article manufactured—Reformation of contract.

The plaintiff, the inventor and patentee of improvements in automatic air breaks, made an agreement in writing with the defendants, a railway company, by which he granted to them the license and right to use the invention and to equip their rolling stock in whole or in part therewith during the term of the patent, and agreed to supply them with the air brake and all necessary equipment up to 5,000 sets, and to make all repairs to brakes and equipments so supplied, at the actual first cost plus 15 per cent. upon such cost, to be paid by the defendants, and declared that the license should be deemed to extend to and include every renewal, amendment, or substitution for the patent and all improvements thereon thereafter acquired. The defendants were not to pay anything for the right, the main consideration to the plaintiff for the grant being the advertisement which his invention would get.

Held, that this agreement did not operate as a license revocable at the will of the plaintiff, but as a grant of a right in respect of the invention, containing reciprocal obligations on the part of the grantor and grantees, viz., that of the grantor to supply the 5,000 brakes at the price named and that of the grantees to pay for them. *Guyot* v. *Thomson*, 11 R.P.C. 541, followed.

Semble (even essuming that there was a revocable license), that an assignment of the patent by the plaintiff, after an action had been begun by him to restrain the defendants from infringing the patent, did not revoke such license.

Held, also, that the agreement conferred upon the railway company the right to manufacture the patent brakes which they were entitled under the agreement to use upon their railway. *Steam Stone Cutter Co.* v. *Shortsleeves*, 4 Ban. & Ard. 364, and *Illingworth* v. *Spaulding*, 43 Fed. Rep. 827, approved. But the agreement did not justify the making by the defendants of certain important changes in the mode of construction of the brake and in using the brake so altered, especially if they were using and claiming to use it as the plaintiff's invention, and so describing it.

Held, also, that the plaintiff could not, upon the evidence, succeed in having the agreement reformed so as not to give the defendants the right to manufacture the brakes.

J. H. Rodd, for plaintiff. *A. W. Anglin*, for defendants.

Trial of Actions. Lount, J.] [August 10.

NELSON COKE AND GAS CO. *v.* PELLATT.

Company—Subscription for stock—Calls—Necessity for allotment.

The defendant subscribed on September 1st, 1899, for some of the capital stock in the plaintiff company, covenanting with the company and the directors to accept such stock when allotted and pay for the same as calls might be made. The company was incorporated under the British Columbia Companies Act 1899, which so far as affected this case is identical with the English Companies Act 1862.

The first action taken by the company as to stock or allotment of the same was on December 14, 1899, when it was resolved by the directors that the amount of stock subscribed should be paid up in full on or before January 18, 1900, and between that date and November 22nd, 1900, many interviews took place between the president and the secretary-treasurer of the company and the defendant, at which the defendant's liability for the stock subscribed for by him was discussed and demand for payment made, and also several letters were written by them to the defendant demanding payment to which the defendant made no reply. On November 15th, 1900, the defendant wrote to the secretary-treasurer formally withdrawing "the offer which I made in the subscription book, to take certain shares of the capital stock in your company." In reply the treasurer again notified the defendant for immediate payment. On November 29th, 1900, the directors passed by-laws for the issue of shares and for the allotment to the defendant of the number of shares subscribed by him, and also that the whole amount of shares issued and allotted should be at once called up and made payable to the company.

Held, that the defendant was not liable on his shares inasmuch as he had withdrawn his subscription before there had been any issue or allotment, and the notices given and sent to the defendant orally or in writing could not be treated as an issue and allotment of shares to him.

G. H. Watson, K.C., and *Smoke*, for plaintiffs. *H. J. Scott*, K.C., and *H. H. McRae*, for defendants.

Falconbridge, C.J., Street, J.] [August 12.

PRESTON *v.* THOMPSON.

Defamation—Privilege—Judge's charge—Evidence—Cross-examination to credit—Contradiction.

The plaintiff and defendant were members of the same cheese making association. The plaintiff sued the defendant for slander for saying to the cheesemaker of the association that the plaintiff sent skimmed milk to the cheese factory. The defendant pleaded privilege. The judge charged the jury that the occasion was privileged, and that the defendant was entitled to a verdict unless they came to the conclusion that he was

actuated by malice; that they might take into consideration all the circumstances and all the evidence in coming to a conclusion as to whether the defendant acted from ill will or not in reporting the matter to the cheesemaker.

Held, that this charge was entirely free from objection.

The defendant, after himself stating in the witness box that one Hayes had informed him that the plaintiff was keeping the strippings and making butter from them, called Hayes as a witness, and proved that Hayes had told the defendant what he had stated. The plaintiff's counsel then in cross-examination asked Hayes his grounds for making the statement, and Hays said that he had seen the plaintiff's wife taking the strippings, and that she had not mixed them with the milk sent to the factory; that she told him that she always took the strippings from the cows and used them in the house. The plaintiff proposed to call, in reply, a witness to contradict Hayes.

Held, that this evidence, if sufficiently tendered, was properly rejected, there being no plea of justification, and the defendant not seeking to go into the truth of the charge. It was not competent for the plaintiff to make it relevant by himself asking Hayes, in effect, whether it were true or not, and then seeking to contradict him. The cross-examination of Hayes upon this point was proper, but only as a matter of credit, and the plaintiff could not call evidence to rebut evidence brought out by himself upon a matter going only to credit.

G. M. Macdonnell, K.C., for plaintiff. *Whiting*, K.C., for defendant.

Falconbridge, C. J.] CLARK *v.* SINCLAIR. [August 20.

Wills Act—Lapse—Gifts to issue—Gifts to a class.

Held, that s. 36 of the Wills Act, R.S.O. c. 128, which provides that gifts to issue who leave issue on the testator's death, shall not lapse, applies only to cases of strict lapse and not to the case of a gift to a class. *Re Totten*, 20 O.R., 506, not followed.

W. A. Baird, for plaintiff. *W. M. Douglas*, K.C., for adult children of testator. *Wilson*, for executor. *Harcourt*, for the infat. defendants. *Edgar Davidson* and *Denton*, for other parties interested.

Armour, C.J.O., Falconbridge, C.J.] [August 27.

ARMSTRONG *v.* CANADA ATLANTIC R.W. CO.

Master and servant—Workmen's Compensation Act—Notice of injury—Excuse for want of—Evidence—Statement of deceased—Negligence—Cause of injury—Jury.

The knowledge of the defendants of the injury and the cause of it, at the time it occurs, is (in case of death) a reasonable excuse for the want of

the notice of injury required by s. 9 of the Workmen's Compensation for Injuries Act, R.S.O. 1897, c. 160, where there is no evidence that they were in any way prejudiced in their defence by the want of it.

Where the deceased received the injuries from which he died by being run over by a train of cars, a statement made by him immediately after he was run over, in answer to a question as to how it happened, "I slipped and it hit me," was held admissible in evidence.

Thompson v. *Trevanion*, Skin. 402, *Aveson* v. *Kinnaird*, 6 East 188, 193, and *Rex* v. *Foster*, 6 C. & P. 325, followed.

Upon that evidence and evidence of the slippery condition, by reason of snow and ice, of the place where the deceased slipped, a question should have been submitted to the jury whether he slipped by reason of such condition and whether such condition was due to the negligence of the defendants.

A. E. Fripp, for plaintiffs. *C. J. R. Bethune*, for defendants.

Master in Chambers.] [September 5.

TORONTO GENERAL TRUSTS CORPORATION *v.* CRAIG.

Practice—Master's report—Confirmation—Notice of filing—Non-appearance.

Rules 694 and 769, requiring notice of filing a Master's report as a condition of its becoming absolute, are governed by Rule 573; and, therefore, notice of filing a Master's report need not be served upon a defendant who has not entered an appearance in the action; and where there is no defendant upon whom notice of filing need be served, the report becomes absolute upon the expiration of fourteen days from the filing.

Armour Miller, for the plaintiffs.

Falconbridge, C.J.] COYNE v. RYAN. [September 16.

Domicil—Origin—Change—Intention—Proof of—Residence—Permanency of.

The domicil of origin adheres until a new domicil is acquired, and the onus of proving a change of domicil is on the party who alleges it; the change must be animo et facto, and the animus to abandon must be clearly and unequivocally proved; although residence may be decisive as to the factum, it is equivocal as regards the animus; the question is one of fact, to be determined by the particular circumstances of each case. *Bell* v. *Kennedy*, L.R. 1 Sc. App. 307; *Morehouse* v. *Lord*, 10 H.L.C. 272; *Aikman* v. *Aikman*, 3 Macq. H.L. 877; *Jopp* v. *Wood*, 4 DeG. J. & S. 621, *Davis* v. *Adair* (1895), Ir. R. 379, and Dicey on Domicil, p. 104, rule 7, referred to.

Where a deceased person (in respect of whose estate a question of his domicil at the time of his death arose in an action by his widow to obtain a share of it), had his domicil of origin in Ontario, but went to live in the Province of Quebec upon a farm owned by his father,

Held, upon the evidence, that he had not so adopted the farm as his home as to effect a change of domicil.

Laidlaw, K.C., and *J. Bicknell*, for plaintiff. *E. F. B. Johnston*, K.C., for defendants.

Falconbridge, C.J., Street, J.] [September 20.

BONBRIGHT *v.* BONBRIGHT

Domicil—Origin—Choice—Abandonment—Husband and wife—Alimony Writ of summons—Service out of jurisdiction—Rule 162 (c).

Held, affirming the decision of FERGUSON J., 1 O.L.R. 629, ante p. 400, that the defendant had acquired a domicil of choice in Ontario, and had not abandoned that domicil; and, therefore, the writ of summons in an action for alimony could properly be served upon him out of Ontario, the case coming within Rule 162 (c).

W. R. Riddell, K.C., for defendant. *E. C. S. Huycke*, for plaintiff.

Street, J.] EAST v. O'CONNOR. [September 20.

Liquor License Act—Transfer of license—Premises to be made suitable—Powers of license commissioners—Ratepayers' petition—Illegal conduct—Injunction—Costs.

License commissioners appointed under the Ontario Liquor License Act have no power to say to an applicant for a transfer of a license that, if he will put certain premises into a suitable state for compliance with the law in the future, they will transfer a license to such premises; they are entitled to act under the statute only with regard to the existing state of facts, not to make promises as to the future in such cases. The intention of the statute is, that all parties concerned, license commissioners, inspector, and ratepayers, looking at the premises proposed to be licensed and the person who is to receive the license, and who must be the true owner of the business at the time, shall arrive at a conclusion upon existing facts, whether the application should be granted. To act with a view to what may be the state of things in the future, and to receive and act on a petition in advance of the time when they could properly transfer the license, is to open the door to breaches of the Act.

O'Connor, having no interest in the premises proposed to be licensed, and having no valid license at all, presented a petition to the commissioners for the transfer to these premises of a license standing in his name for other

premises in which he had no longer any real interest. He supported this by the statutory ratepayers' petition, which stated that the new premises were suitable for a tavern, whereas they admittedly did not possess the required accommodation, and that he was a proper person to become licensee of them. The commissioners heard petitions and counter-petitions upon the matter, and decided that they would allow the transfer of O'Connor's license to the new premises when they should be made suitable; but before that time arrived, O'Connor, whose fitness for the transfer was one of the subjects of the petition, had ceased to have any interest in the matter, and was allowed to make over his right to King, who in this way escaped the necessity of obtaining the certificate of the ratepayers as to his fitness.

Held, that this was illegal, and if the plaintiff had asked promptly for an injunction to prevent O'Connor, when he had no valid license and no interest in the new premises, from obtaining rights by asserting that he had, he might have obtained some relief; but at the trial it was too late to interfere, for King had obtained rights which could not be interfered with in his absence, and the license commissioners whose conduct was in question had ceased to hold office.

Held, also, that an offer made by the defendants to submit the question of the costs of the action to be disposed of in Chambers should have been accepted by the plaintiff, and, as it was not, the plaintiff was not entitled to costs against O'Connor; and, as the unauthorized action of the license commissioners had caused the trouble, they should not have costs against the plaintiff.

J. A. Worrell, K.C., for plaintiff. *L. V. McBrady*, for defendant O'Connor. *J. R. Roaf*, for commissioners.

COUNTY COURT, PERTH.

Barron, Co. J.] [July 15.

Assessment—Valuation of waterworks plant—Wards—1 Ed. VII., c. 29, s. 2, sub-ss. 18 (a), 18 (b)—Not retroactive.

Appeal by the Stratford Water Works Company from their assessment as being excessive.

Held, the above statute is not retroactive, and does not effect the assessment in question, which was made and confirmed by the Court of Revision before the Act came into force.

Quære, whether even if the Act be retroactive, it in any way affects or changes the principle of assessment governing such corporations. All that it is enacted is that the property shall be valued as a whole, or as an integral part of a whole, instead, as formerly, by wards separately. Thus

it leaves untouched the law as decided by *In re Bell Telephone Co.* (1898) 25 A.R. 351; *In re London Street Railway Co.* (1900) 27 A.R. 83; *In re Queenston Heights Bridge Assessment* (1901) 1 O.L.R. 114, that as real property the value shall be estimated at its actual cash value, as it would be appraised in payment of a just debt from a solvent debtor, without regard to cost, revenue, its franchise, or as a going concern. This standard, by the Act of last session, is now applied to the property in its larger area as extended by the statute in question, but the standard remains the same.

Held, also, that when there enters into such value the possibility of being able at some future time to get a franchise in each ward distinct from other wards, the evidence of witnesses fixing value by wards is too remote to prevent the application of the law as now settled; as also is the chance at some future time of getting a franchise to connect the wards one with another.

Appeal allowed, and the assessment reduced to $19,250.

E. Sydney Smith, K.C., for appellants. *John Idington*, K.C., for respondents.

COUNTY COURT, MIDDLESEX.

Elliott, Sen. Co. J.] McGAW *v.* TREBILCOCK. [Aug. 1.

Landlord and tenant—Exemptions.

In this case the tenancy was a monthly one at $12 per month rent. There were months' rent in arrears. The landlord seized all the goods on the premises including goods exempt under R.S.O. c. 170, s. 30. The tenant claimed the goods being exempt under the said section and an injunction was obtained, and on motion to continue the same, the matter was disposed of summarily. The question was as to what extent if any, is a monthly tenant in arrears for more than two months' rent, entitled to exemption from distress under sub-s. 2 of above statute.

ELLIOTT, Co. J.—It seems to me that the plain import of the words of the above section "In case of a monthly tenancy, the said exemptions shall only apply to two months' arrears of rent" is to give the protection to this monthly tenant as to two months' rent, viz. $24. This amount can be paid to the tenant at the outset, or it may be so paid at the conclusion of the sale of the goods. I understand the whole value of the goods under seizure for rent exceeds the above sum. As to costs, considering the different views that have been expressed as to the above section, I think each party should pay his own costs.

George C. Gunn, for plaintiff. *R. K. Cowan*, for defendant.

NOTE.—The above case differs from the holdings in *Harris* v. *Canada Permanent Co.*, 34 C.L.J. 39, and *Shannon* v. *O'Brien*, Ib. 421, and in our view more correctly interprets the law. See also 34 C.L.J. 440.—EDS. C.L.J.

Province of New Brunswick.

SUPREME COURT.

Barker, J.] THORNE *v.* PERRY. [August 20.

Practice—Execution against body—Decree for payment of a sum of money—Disobedience—Principles under which execution will be granted or refused—53 Vict., c. 4, s. 114; 58 Vict., c. 18, s. 2.

Where defendant made default in paying to the plaintiff under the decree of the court a sum of money received by the defendant as a donatio mortis causa in favour of the plaintiff, an order was granted for an execution against his body.

An order for an execution against the body of a party making default to a decree of the court for payment of a sum of money will not be granted where the court is satisfied that the party in default has no means, and has not made a fraudulent disposition of his property and his arrest is sought for a vindictive purpose, or to bring pressure upon his friends to come to his assistance.

G. H. V. Belyea, for the application.

In Equity, Barker, J.] IN RE WOODMAN. [August 20.

Dower—Petition—Title—53 Vict., c. 4, s. 237.

While a widow may file a bill for the admeasurement of her dower, she must not where she proceeds by petition entitle the petition as in a suit.

Carvell, for petitioner. *A. J. Gregory*, contra.

Barker, J.] EX PARTE ABELL. [August 27.

Arbitrator—Bias.

An alderman of the city of St. John is disqualified from acting on behalf of the city as one of a board of arbitrators to determine the value of land expropriated by the city under Act 61 Vict., c. 52.

W. B. Wallace, K.C., for claimant. *C. N. Skinner*, K.C., for city.

In Equity, Barker, J.] IN RE VAN WAIT. [August 27.

Trustee—Passing accounts—Commission.

The Court of Equity will not pass the accounts of a trustee under a deed of trust upon his own application.

A. B. Connell, K.C., for trustee.

In Equity, Barker, J.] DEBURY *v.* DEBURY. [August 27.

Married Women's Property Act—Woman married before the commencement of Act—Rents and profits—Title of husband—Tenancy by the curtesy.

A married woman married before the commencement of the Married Women's Property Act, 58 Vict., c. 24, is entitled under s. 4 of the Act to the income of her real estate during her life, but she may not by deed not joined in by her husband dispose of her real estate to the exclusion of the husband's tenancy by the curtesy.

A. A. Stockton, K.C., and *D. Mullin*, K.C., for plaintiff. *A. O. Earle*, K.C., and *C. J. Coster*, for defendants.

In Equity, Barker, J.] IN RE TURNER. [August 27.

Referee's report—Formalities—Evidence—Notice of hearing before referee.

A motion to confirm the report of a referee on an application for the appointment of a guardian to an infant was refused where the order of reference was not attached to the report, and the evidence before the referee was in lead pencil, and illegibly written, and not entitled in the matter, and it appeared that notice of the hearing before the referee had not been given to the relatives of the infant.

Harris for motion.

In Equity, Barker, J.] [August 27.

SAUNDERS *v.* RICHARDS, LIMITED.

Court of Equity—Jurisdiction—Assessment of damages—Sufficiency of evidence—Carrying away of dam—Riparian owners—Diversion of stream—Proof of damages—Mandatory injunction.

Wher the liability for damages to land caused by the carrying away of a dam by a freshet was denied, and the evidence as to the extent of the injury sustained was unprecise, the court considering the questions involved more proper for determination in an action at law, and doubting its power to assess the damages, refused to grant relief.

The boundary between properties situated upon opposite banks of a natural stream is prima facie the medium filum aquæ.

The Court of Equity will not interfere with respect to an obstruction in the alveus of a natural stream in the absence of evidence of actual injury to a riparian proprietor.

A diversion of a stream from its natural channel over or in front of the land of a riparian proprietor, is in itself injuria without proof of actual or probable damage. If an interference with a stream does not divert it from its natural channel nor from a course through which the plaintiff has acquired a right to have the water flow, actual and sensible damage to a

complaining riparian proprietor must be shewn before the Court of Equity will grant relief to him.

A mandatory injunction will not be granted except where extreme or very serious damage will ensue if the remedy is withheld.

A. B. Connell, K.C., and *Slipp*, for plaintiff. *Allen*, K.C., for defendants.

ST. JOHN PROBATE COURT.

Trueman, J.] RE WILL OF JOHN SWEENEY. [July 16.

Will — Construction — Appointment of executor — Corporate or private capacity.

By his will the testator demised his real and personal estate to the Roman Catholic Bishop of St. John, and appointed "the Roman Catholic Bishop of St. John and Rev. Thomas Connally, executors."

Held, that the Roman Catholic Bishop of St. John took as executor under the will in his personal and not in his corporate capacity, and that letters of the will should be granted to him.

J. L. Carleton, K.C., for executors. *Pugsley*, K.C.. A.G., for next of kin.

ST. JOHN COUNTY COURT.

Forbes, Co. J.] NORTHRUP *v.* PERKINS. [August 13.

Review—Affidavit—Before whom sworn.

An affidavit on review from a justice's court may be sworn before a commissioner who acted as attorney for the appellant in the court below.

E. P. Raymond, for defendant. *R. L. B. Tweedie*, for plaintiff.

Province of Manitoba.

KING'S BENCH.

Full Court.] NEWTON *v.* BERGMAN. [June 24.

Attachment of goods — Affidavit to obtain order—Disclosure of relevant facts—Application to set aside order—Additional evidence to support order—King's Bench Act—Rule 811.

Application to RICHARDS, J., to set aside an order for attachment of defendant's personal property granted by him ex parte under Rule 811 of the King's Bench Act.

The affidavit on which the order had been obtained shewed as the grounds of the plaintiff's belief in the fraudulent intent of defendant to delay, defeat or defraud her creditors only, (1) that the defendant had sold her real estate, and that the plaintiff was informed of such sale by a person who was present at the sale, and (2) that the plaintiff had good reason to believe, and verily believed, that defendant was about to assign, transfer and dispose of her personal property, effects and credits, with intent to delay, defeat or defraud her creditors, and that he was so informed by an auctioneer to whom the defendant applied to purchase the said goods and to pay her the proceeds over and above a certain chattel mortgage, and to whom the defendant had stated that it was her intention to leave the Province as soon as the said goods should be disposed of.

Held, that these statements in themselves did not shew sufficient grounds from which to infer fraudulent intent on defendant's part.

On the application to set aside the order plaintiff filed a new affidavit setting forth a number of additional facts, which, together with what had been shewn before, would have been sufficient, in the opinion of the judge, to found an order for an attachment, but at the same time disclosing that he held security from defendant for part of his claim, and that defendant, prior to the issue of the attachment, had offered to pay that part of the debt for which the security was held.

Held, 1. The new evidence given by plaintiff could not be considered with the view of strengthening his case.

2. Following the practice in motions for injunctions, the non-disclosure by plaintiff of material facts in defendant's favour suppressed or omitted either intentionally or by mistake is good cause for setting aside an order for attachment, even though the plaintiff would have been entitled to the order on a full statement of the facts.

Order setting aside the order for attachment without costs owing to defendant's delay in moving.

Subsequently in Trinity Term the Full Court dismissed with costs an appeal by plaintiff from the above decision.

Mathers, for plaintiff. *Bradshaw*, for defendant.

Killam, C.J.] HUDDERSTONE *v.* LOVE. [July 5.

Way of necessity — Right of way — Parol grant of right of way — Easement by prescription.

The plaintiff's claim was for damages for trespass and an injunction to prevent defendant from exercising an alleged right to cross the plaintiff's land in going from his farm to the travelled road. The two parcels of land were separated by at least half a mile, but evidence was given to show that in the year 1875 the plaintiff's predecessor in title had, as part of an agreement for an exchange of the two parcels with the defendant, promised

verbally to allow the latter the right to cross the parcel in question, and that the defendant had exercised this right for four or five years. His user of the way, however, ceased after that for six or seven years until, about 1886 or 1887, he commenced to use the trail over the plaintiff's land at times for heavy loads; but, in 1892, the defendant himself built a fence without any gate right across the very trail which he claimed the right to use and between the plaintiff's land and a parcel on the east of it which the defendant had in the meantime acquired.

There was no evidence to shew that the plaintiff, when he acquired the land, had any notice of the alleged agreement for a right of way.

Held, 1 That the intermittent use by the defendant of a convenient old trail was not sufficient to affect the plaintiff with constructive notice of the alleged agreement.

2. That defendant was not entitled to use the trail as a way of necessity, notwithstanding that there were natural obstacles to his reaching the travelled highway by any other road.

3. That there was no such continuous enjoyment of the way as is necessary to establish an easement by prescription under 2 & 3 Wm. 4, c. 71, s. 2: *Carr* v. *Foster*, 3 Q.B. 581: *Hollins* v. *Verney*, 13 Q.B.D. 308.

4. That the evidence was not sufficient to establish a definite agreement for a perpetual right of way or to warrant the interferance of a court of equity by way of specific performance, as the agreement was made when the country was sparsely settled and the road allowances were not expected to be speedily made passable, and the passage across the intervening land not owned by either party, might have been shut off at any time.

Anderson and *Ormond*, for plaintiff. *Cooper*, K.C., and *Taylor*, for defendant.

Killam, C.J.] [July 5.

IMPERIAL BANK *v.* FARMERS' TRADING CO.

Corporation—Promissory notes—Liability of trading company on indorsement of promissory notes

The promissory notes sued on in this action had been given to one Crighton by the managing director of the defendant company for the company in payment for a quantity of tea ordered from Crighton, which, however, he never delivered. Crighton had endorsed the notes to the plaintiffs.

The company was incorporated by letters patent under The Manitoba Joint Stock Companies Act, R.S.M. c. 25. Its chief business was dealing in agricultural implements, vehicles, binder twine and tea. Its place of business was at the town of Portage la Prairie. There were four directors, three of whom were farmers living at some distance from the town. The fourth, a Mr. Marshall, personally conducted and managed the business. He had been appointed secretary and managing director of the company.

The notes sued on were signed as follows: "For the Farmers' Trading Company, Limited, G.A.J.A. Marshall, managing director." There was no by-law, resolution or other act expressly defining the powers or duties of the managing director. A by-law provided that cheques were to be signed by the president or vice-president, and countersigned by the managing director or secretary. Another by-law authorized the directors to borrow money from a bank, and empowered the president and the managing director or secretary to sign promissory notes therefor on behalf of the company. There was no other by-law in relation to the making, acceptance or indorsement of notes, bills or cheques.

Marshall had been accustomed to buy goods for the company's business, not only from Crighton, but also from other parties, and to give notes in the same form for the prices, and many of such notes had been paid by the company's cheques. A rubber stamp kept in the company's office was used for impressing the words "For the Farmers' Trading Company, Ltd.," and "Managing Director," when notes were signed, bills accepted, or cheques indorsed.

The cheques were usually signed by the president in blank and left for Marshall to fill up and sign, and the stubs showed what they were given for. A record of bills payable was kept in the company's office, and auditors were from time to time appointed by the directors. The auditors, or any other persons examining the books, would have seen that Marshall was in the habit of giving notes for the company, but there was no direct evidence of knowledge on the part of the shareholders or directors, other than Marshall, of his course in these matters. His evidence was that he never told them of the course of business, and that they had left everything to him, but that he could not say whether they had such knowledge or not.

Sec. 62 of the Act under which the defendant company was incorporated, provides that a promissory note made by an agent or officer of a company "in general accordance with his powers as such officer under the by-laws of the company, or otherwise," shall be binding on the company.

Held, following Lindley on Partnership, 6th ed., p. 135; *In re Cunningham & Co.*, 37 Ch.D. 532, and *Bryant, etc., Limited* v. *Quebec Bank*, [1893] A.C. 179, that the proper inference from the facts proved was that Marshall had authority to sign the notes in question, and that the defendants were liable upon them.

Anderson and *Ormond*, for plaintiffs. *Cooper*, K.C. and *Taylor*, for defendants

Killam, C.J., Dubuc, J.] [July 20.

IN RE LISGAR ELECTION.

Election petition—Evidence to disqualify—Proof that candidate took all reasonable means to prevent the commission of corrupt practices—Offences of a trivial, unimportant and limited character—Burden of proof—Statement of election expenses—Payments by candidate otherwise than through his election agent—Payment for expenses on services of agent—Dominion Election Act, 1900, ss. 123, 127, 146—Costs—Witness fees—54-55 Vict., c. 20, s. 15—Giving railway tickets to voters.

Trial of petition to set aside the election of the respondent for the Dominion constituency of Lisgar and for the disqualification of the respondent for personal complicity in corrupt practices. The trial judges found on the evidence that corrupt practices had been committed by several agents of the respondent; but it was urged on his behalf that, under s. 127 of The Dominion Elections Act, 1900, the election should not be declared void.

Held, 1. That, as regards at least two of the agents, the respondent had given no orders or cautions against the commission of corrupt practices, and that the circumstances were such as to throw upon him the suspicion of having sanctioned or connived at the corrupt practices committed by a third agent, although he denied on oath having been guilty of any such conduct.

2. That the offences could not be deemed to have been of a trivial unimportant and limited character.

3. That the onus was on the respondent to prove affirmatively, for the purpose of saving the election under section 127 of The Dominion Elections Act, 1900, that the particular offences proved had been committed contrary to his orders and without his sanction, and that he had taken all reasonable precautions for preventing the commission of corrupt practices, and that he had failed to satisfy the Court in that regard.

4. That, as to disqualifications of the candidate, the onus was on the petitioner to prove beyond a reasonable doubt the guilt of the respondent and that there was not sufficient evidence to warrant an affirmative finding that he had personally been guilty of corrupt practices. *Centre Wellington Case*, Hodgins 579; *Russell Case*, Ib. 199; *Welland Case*, Ib. 187, followed.

5. That the giving of railway tickets, which were not shewn to have been paid for, to voters upon which to travel to and from the polls, could not be said to be a corrupt practice under the Act.

6. That the omission from the election accounts, furnished under section 146 of the Act, of certain payments made by the respondent, and his personal payment of the sums directly instead of through his election

agent, although forbidden by the Act, are not by it expressly constituted as corrupt practices avoiding the election. *The Litchfield Case*, 5 O'M. & H. 34, and the *Lancaster Case*, Ib. 39, distinguished, on the ground that the Imperial statute under which they were decided, expressly makes these things illegal practices and declares that an election shall be avoided for such practices.

7. That the payment by a candidate of an agent's legitimate expenses while engaged in promoting his election is not a corrupt practice; and quære, whether payment for the services of such an agent would be so when not colourably made to secure the agent's vote.

Election declared void and costs awarded according to the findings of fact upon the several issues raised.

In view of the wording of sub-s. 4 of s. 15 of 54 & 55 Vict., c. 20, the Court subsequently made a special order allowing to the respective parties the witness fees and other actual, necessary and proper disbursements incurred in respect of the issues on which the findings had been in their favour respectively.

Howell, K.C., and *Corwin*, for the petitioners. *Ewart*, K.C., for the respondent.

Province of British Columbia.

SUPREME COURT.

[illegible] Court.] VICTORIA *v.* BUTLER. [March 9.

Yukon law—Mining regulations—Representation work—Rights of different Crown grantees to same ground.

Appeal to the Full Court from the judgment of DUGAS, J., in the Territorial Court of the Yukon Territory. In July, 1898, plaintiff located and obtained a Crown grant for placer mining in respect of a claim, and on 25th January, 1898, one Mensing located a claim, and recorded it the next day, and on the succeeding 27th October, a few minutes after midnight of the 26th, the defendant re-located it as ground abandoned and open to occupation on the ground of non-representation. The two claims overlapped. On 10th November, 1898, the defendant obtained her Crown grant for placer mining covering the ground in dispute and being a re-location of Mensing's old claim. The Gold Commissioner had made a rule that three months' continuous work in the year was sufficient, and by the regulations a claim was deemed abandoned after it had remained unworked on working days for the space of seventy-two hours.

Held, by the Full Court, dismissing the appeal (MARTIN, J., dissenting), that the defendant's Crown grant must prevail over that of the plaintiff.

Peters, K.C., and *A. G. Smith* (of the Yukon bar) for appellant. *Davis*, K.C., for respondent.

Walkem, J.] IN RE FONG YUK. [April 15.

Chinese Immigration Act—Prostitute—General reputation.

The Chinese Immigration Act (1900) s. 12, provides that no person shall bring into Canada any person of Chinese origin who is a prostitute or living on the prostitution of others.

An order nisi was issued calling on the Collector of Customs to shew cause why a writ of habeas corpus should not issue to decide whether one Fong Yuk, a Chinese woman who had recently come from China, should be released from custody or detained to be deported to China pursuant to the Act. The woman admitted that before leaving British Columbia for China some months previously she had been leading the life of a prostitute, and there was some general evidence that the house in which she lived had the reputation of being one of ill-fame.

Held, that the evidence was sufficient to warrant the detention of the woman for the purpose of deporting her to China. See *Clarke* v. *Priam* (1742) 2 Atk. 339; *Reg.* v. *McNamara* (1891) 20 Ont. R. 499; Am. and Eng. Enc. of Law, vol. 9, par. 531, 2.

In this case an affidavit drawn in a language not understood by the deponent was allowed to be read, as it appeared from the jurat that it was first read over and interpreted to the deponent; the Court in this respect not following the decision of Chief Justice Begbie in *In re Ah Gway*, 2 B.C. Rep. 343.

Bernard, in support of order nisi. *Alexis Martin*, for the Collector of Customs, contra.

McColl, C.J.] CAMPBELL *v.* UNITED CANNERIES. [June 25.

Revenue tax—Canners—Tackle furnished fishermen—Whether canners liable for revenue tax—R.S.B.C. 1897, c. 167, and B.C. Stat. 1899, c. 66.

Appeal by defendants to the County Court from an order made by R. A. Anderson, Stipendiary Magistrate, under the Revenue Tax Act, whereby the defendants were ordered to pay Colin S. Campbell, a Provincial Constable, the sum of $1,800 and $3.50 costs.

Held, allowing the appeal, that where canners furnish fishermen with fishing apparatus, but there is no agreement binding the fishermen to sell their catch to the canners, the latter are not liable for the revenue tax in respect of such fishermen.

Martin, K.C., for appellants. *Bowser*, K.C., for Crown.

Correspondence.

LABOR OMNIA VINCIT.

To the Editor, CANADA LAW JOURNAL.

SIR,—The "Servant Girl Union," or Association of Working Women of America, is likely to play a strenuous part in the juridical as well as the domestic life of this country in the near future. There are several clauses in the manifesto recently issued by this latest product of social hysteria which, if seriously asserted by the "ladies below stairs," will imperil the stability of our laws affecting the liberty of the subject. For instance, we find it stated that: "Gentlemen (sic) friends cannot be barred from the kitchen or back-porch; and that the conversation shall not be interrupted by members of the family during such visits." Really, now, the literary folks will have to widen their definition of the term "gentleman." If our memory does not play us false Carlyle somewhere posits the ownership of a gig as an indicium of title to this very delightful appellation. But if Labor, with a capital L, is to be heard in the premises (and who shall not listen to its voice when issuing from the female throat?) he is a "gentleman" who "keeps company" with our kitchenmaid, and has the coincident privilege of informing us when we may lock our back-doors at night.

Again, we are called upon to know that: "Two hours each afternoon, and twice a week the entire evening," shall be the "indefeasible right" of the servant. Happy servant! Happy the mortal of any rank or station who is endowed with the power of making the fleeting moments of civilized life in this age the subject of an "indefeasible right!"

But, to be serious, one wonders how the average Anglo-Saxon householder in Canada will receive the announcement that the operations of his domestic establishment are to be ordered by a labour union, or that dubious guests are to be billeted on him without right of remonstrance. Are we dreaming when we recall in this connection a fine old principle of the common law pithily expressed by Sir Edward Coke, viz.: "A man's house is his castle"?

The only remedy for the present distressing relations between mistress and maid lies in a formal system of contract between

them whereby skilled, faithful and regular service is secured on the one hand and a fair wage and proper board and lodging on the other.

Ottawa. CHARLES MORSE.

Book Reviews.

The Principles of the Law of Costs, Digest of Cases applicable thereto, Precedents of Bills of Costs with Tariffs of Fees, and Appendix of Forms. By J. A. C. CAMERON, B.A., LL.B., of Osgoode Hall, Barrister-at-Law, one of the Examiners of the Ontario Law School. Toronto, 1901: The Canada Law Book Co., 500 pp, $5.00.

It is a matter of surprise that a Canadian work on this important subject has not appeared earlier, as there can be no question of its necessity and utility. We can readily understand that the Canadian practitioner has often felt the want of just such a work as this, and has wasted much valuable time in wading through the reports in search of some desired authority on the question of costs. The author has shewn much industry in the collection of English and Canadian cases in the digest which forms Part I. of the work. The digest is alphabetically arranged for the sake of convenience. The classification is admirable. Such important matters as appeals as to costs, briefs, counsel fees, severing defences, discretion as to costs, examinations for discovery, interlocutory costs, lien for costs, scale of costs, security for costs, solicitor and client costs, taxation, revision of taxation, and many others are exhaustively treated. Part II. contains a large number of precedents of bills of costs which will no doubt be found very useful to solicitors in preparing their bills. Part III. appears to be a very full collection of miscellaneous tariffs of fees and disbursements. In Parts IV., V., VI. and VII. the tariffs of fees and disbursements for solicitors and for officers of the courts of the Provinces of Ontario, British Columbia, Manitoba, and Nova Scotia, respectively, are given verbatim. Part VIII. is a collection of forms which should be a useful addition to this class of work. The index is very complete and shews much care in preparation. Much care has been exercised by the author, and every credit is due him for so thorough a work. The publishers have well and carefully done their part towards the success of the book.

The Practice in Criminal Cases in Certiorari, Habeas Corpus, Appeals, and Proceedings before Magistrates and Justices of the Peace with forms, etc., by CHARLES SEAGER of Osgoode Hall, Barrister-at-Law and Police Magistrate, Toronto; Canada Law Book Company, Toronto, 1901, 500 pp. $5.50.

This is not only a book of practice but a very practical one and one of the best put together law books of its kind that has been given to the pro-

fession in this country. The auther from his position and daily experience kno· , whereof he speaks. He does not pretend to theorize, but gives the law as it stands in a clear and terse manner, wasting no space in padding or "frills." He does not even write a preface or a table of contents; though in this we do not praise him. He seems to say to the profession, if you desire to know anything about the subjects treated of, look at the index and you will probably find what you want.

He commences with the law on the subject of certiorari and motions to quash convictions. This is followed by a chapter on habeas corpus, mandamus, appeals, and cases stated, followed by a summary of the rules of evidence applicable to criminal procedure. He then takes up the subject of justices, their appointment, qualifications, general authority and jurisdiction. This of course includes a number of matters too numerous to refer to at length. Another subject is procedure before Justices, which necessarily occupies a considerable portion of the work, and includes the law as to preliminary enquiries, summary convictions, summary trials, etc. No book dealing with criminal matters in these days of philanthropic effort would be com e without full reference to the law as it affects juvenile offenders and neglected and dependent children; and this the author deals with at some length.

A very valuable portion of the work, which in itself would form a useful volume, is the chapter devoted to a Synopsis of Offences, with appropriate forms. The volume concludes with a full and well-arr ed index. We are not surprised to know that Mr. Seager's book has already received very favourable notice both from Bench and Bar.

The Law Quarterly Review: Stevens & Son, 119, 120 Chancery Lane, London.

The July number contains the usual interesting and exceedingly well-written collection of notes of cases. Among the articles are, The Early History of the Law Merchant in England; The Constitutional Position of the Scottish Monarch Prior to the Union; The French Fishery Rights in Newfoundland; Citizenship and Allegiance, etc. The one of special interest to us in this Dominion is the discussion of the French Fishery rights in Newfoundland, the points in dispute being, as some of our readers are aware (though we venture to say not all), (1) Are the French rights exclusive or concurrent? (2) Do they include the right to trap and can lobsters? The conclusion arrived at by the writer is that the French possess an exclusive right to fish for cod and herring along the Treaty coast, whilst they have no rights at all to take or can lobsters.

Flotsam and Local Items.

The Living Age, Boston, U.S.A. The last numbers received are of much interest, and introduces us to many men and things which without this aid it would be difficult to know without searching among many magazines and reviews. The articles are taken from such magazines as the *Edinburgh Review*, *The Spectator*, *The Cornhill Magazine*, *Blackwood*, *Macmillan*, *Monthly Review*, *Speaker*, *National Review*, etc. We heartily recommend this publication to our readers.

THREE KINDS OF LAWLESSNESS.—The lawlessness of Carrie Nation in smashing Kansas saloons is bred by the lawlessness of the saloon keepers and that of the local officials. Saloon men, for the sake of illegitimate profit, defy the law. The local officials give a tacit consent to the violation of laws which they have solemnly sworn to enforce. No apology ought to be made for any form of lawlessness. But, if comparisons are to be made between these different classes, Mrs. Nation may not suffer by it. It is true that she resorts to violence, as these other lawless people do not. But no one doubts that, if she violates the law, she does so, not for her own profit, but at a sacrifice of herself for what she deems to be the public good. Her lawlessness is condemned by people who think clearly. But it throws into glaring light the contrasted lawlessness of those who break the laws for their own illicit gain, and the still more shameless lawlessness of those officials who wink at the lawbreaking in disregard of their solemn oaths.—*U.S. Ex.*

The Inter-Mountain, of Butte, Montana, is responsible for the following and vouches for its truth: There is a Justice of the Peace not a thousand miles from Butte who introduces considerable spirit into the conduct of his Court at times. While trying a disturbance case the other day he interrupted the proceedings to eagerly inquire of the witness on the stand: "Did the defendant say he could lick the Court?" He could not get a conclusive answer to this. But as the hearing advanced and the tale of the scrap unfolded the eagerness of his interest in the martial spirit of the matter increased and finally he brought the proceedings to a sudden close with the statement: "The case is continued for a week while the Court boxes three rounds with Mike Shaughnessy who has just come in the door."

UNITED STATES DECISION.

KNOWLEDGE by a purchaser of land of the existence of a nuisance thereon created under an alleged easement is held, in *Van Fossen* v. *Clark* (Iowa) 52 L. R. A. 279, not to estop him from afterwards maintaining an action to abate the nuisance.