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EXEMPTIONS FROM EXECUTION.

Exemption from seizure under execution, as separated from the other and varied classes of exemption, forms the subject-matter of this article.

The common law though by no means a stranger to countless other classes of exemption, knew mightily little about exemption from execution. Indeed, the well-known common law doubt, as to the sheriff's right or duty to strip the execution debtor of even his clothing, speaks volumes in itself and stamps that prolific source of learning and common sense (the common law) as tainted with common ignorance or cold indifference on the debtor's need of protection for home and family so far as exemption from execution was concerned.

Hence the statutes are the only beacon, as they are at once the source of exemptions of this character and the expounder of their origin and force.

While making comparisons it is perhaps not improper to emphasize that, England knows and cares less than our eastern provinces, and the eastern provinces infinitely less of this class of debtor's relief than the sturdy and rapidly-developing western districts.

What property is subject to levy and seizure under a writ of execution? Of the judgment debtor's assets what property is exempt and why? If exemption gives by law to a debtor the right to retain a portion of his property without its being liable to execution at the suit of a creditor, whence come such laws? Are they merely a personal privilege and indulgence or are they part of our public policy?

In this generation the courts devote much time to adjudi-

cating conflicting claims involving the execution creditor's right to satisfy his judgment out of his debtor's assets. And, of course, winning a case and entering a judgment are rather barren successes, unless satisfaction can be enforced against the defeated party's property. The judgment creditor sees this and little else: the judgment debtor invokes the exemption law and sees the issue from the other side only. To him such laws are simply humane and just provisions essential to tolerable existence. If in addition to the wearing apparel exemption of the common law, the statute frees himself and family from any home disturbance whatever (making his house his castle), all this is to him merely an inherent right to live, and not dangerous paternalism nor undue indulgence. Further, if his industrial tools, his agricultural implements, his professional library, are not fully exempt, he looks for an amendment curing the oversight. The governing principle, as now firmly fixed in the debtor's mind, is his right in the present generation, as against execution creditors, to a suitable dwelling as well as proper clothing and provisions for himself and his family.

In Canada, then, there is no uniform standard, applicable to the varying conditions (climatic, industrial, social), of the several provinces, fixing the execution debtor's exemption rights.

The western provinces are liberal, the execution creditor thinks too liberal: the older provinces are more exacting and give less offence to the execution creditor. Some of the reasons for the wide difference may be summed up as follows:—

1. The western provinces are more up-to-date in law-making and have the benefit of the experience of the older provinces as well as of England.

2. The western provinces need the honest worker whether he has a bank account or not, and whether he has execution creditors or not.

3. The western provinces could not have "rule by the people" if the execution creditors dominated the execution debtors as the former cannot claim a clear majority.

4. The western provinces are making a clean start with equal rights to debtor and creditor, and while the creditor is not obliged to open an account to anybody he is warned that, if he does so, he can only follow the commodity sold for the purchase price and cannot, by pressing one commodity on to a debtor's home, acquire any lien on the other commodities therein; such other commodities being left for the creditors who supplied them, if purchase price still unpaid; otherwise exempt.

These are a few of the reasons that the western provinces are more acceptable to the honest though debt-encumbered worker than the older settled provinces in the east.

The history of the law of such exemptions in England, in the eastern provinces of Canada, and in the west, is interesting. It would be a keen criticism, on the score of fair play, against the various law districts of the empire to urge that the right to this exemption is based on the same standard in all of those law districts. If it is, one has trouble to reconcile the law of exemptions in a typical western province with that enforced in eastern provinces and still more in England.

In Alberta, for instance, the debtor under the exemption ordinance, N.W.T. 1911, c. 27, s. 2, is freed against seizure and sale under execution to a liberal extent.

This generous list is a normal western one, and is, or course, more satisfactory to the judgment debtor than to the successful litigant with his barren judgment.

This glance at western exemption laws indicates how the rights of the execution creditor and debtor, respectively, are regarded in the new country. The argument, as already intimated, is that many a healthy, honest, but unfortunate, worker with a family may there once again hold up his head and have a home for his wife and children. Those lusty developing provinces, it is said, need the industrial influx; the unfortunate citizen needs whereon to lay his head. The law of exemption is sister to the bankruptcy law, and a thrifty one.

It is scarcely necessary to emphasize further how great the contrast between a western and an eastern province. Thousands of dollars exemption in the west one finds reduced to hundreds in the east, across the Atlantic to a mere bagatelle. While clothing is exempt in Ontario, the exemption of furniture is on a critically exact detailed list, the exemption of food gives the judgment debtor a chance to live 30 days, but his food must be cheap.

The exemption of cattle and domestic fowl suffers similar shrinkage, the exemption of tools and implements likewise, and while there is a slight pampering in the way of bees, there is no provision running up into the thousands for land and buildings in Ontario.

In the last analysis, the judgment debtor takes the position that, since the judgment creditor is not compelled to give credit to anybody, he should be content to take his chances on recovering what he can out of the commodity he himself actually sold without invading the realm of the other creditors who sold the other commodities. This principle, it is reasoned, works out equitably to the other creditors as well as to the execution debtor. The tendency of modern law-making is precisely along these lines, and while killing the reckless branch of the credit system certainly stimulates that greatest of all assets—economy. It is better than "Poor Laws."

It will be seen that there is a general likeness in the liberal exemption laws of the several western provinces, while the strict eastern provinces know little and care less about the policy of developing exemption laws.

EFFECT OF STIPULATION IN BUILDING CONTRACT REQUIRING ALTERATIONS OR EXTRAS TO BE ORDERED IN WRITING.

This is a subject of practical import upon which there is much authority in the United States Courts. The cases are collected by a writer in a recent issue of *Case and Comment.* We give the conclusions of the writer, the citations will be found in the periodical referred to in the number for this month. The article is as follows:—

"Stipulations are frequently inserted in building and construction contracts for the purpose of fixing the entire agreement between the parties in writing and avoiding the uncertainties that arise from oral contracts. These stipulations vary from provisions that no extra work shall be done nor any alteration made except upon a written order, to those which provide that no compensation shall be made for any extra work or alterations unless the same has been done in pursuance of a written order. A number of these provisions, with the cases in which they have been passed upon, are set forth in the note below.

A provision that guards very carefully against oral modification is that found in *James Reilly Repair & Supply Co.* v. *Smith,* 100 C.C.A. 630, 177 Fed. 168. The contract was for the altering and repairing of a yacht, and it was expressly agreed in the contract that the libelant 'should make no claim for extra work and compensation therefor, in addition to the contract price, as hereinafter specified, unless he can show an order for the work, the written approval of the designers, and the price of such work, all in writing; and no verbal agreement and order of any of the parties hereto or their agents shall be set forth by either party hereto to modify this clause, and no waiver of this clause not made in writing and signed by the parties shall be of any force or effect whatever.' Under this provision it was held that the mere fact that the owner of the yacht was frequently present during the period when the repairs were being made, consulted with the libelant's employees, and made suggestions which resulted in changes, was not enough to warrant a finding of even

an implied agreement to waive the express terms of the contract and entitle the libelant to a recovery for extra work based upon a verbal agreement.

All courts treat such stipulations in building and construction contracts as valid. It does not follow, however, that a failure to comply with the requirements of such a stipulation and obtain a writing prevents a recovery in all cases, for, except in the case of sealed contracts, it is held that such stipulations may be waived or superseded by subsequent oral transactions between the parties. To hold that such a stipulation may not be waived or modified by subsequent oral transactions would be equivalent to giving it the effect of a statute of frauds, and this the courts have refused to do. It has been stated that parties to a written contract of the character of a building contract are as free to alter it after it has been made as they were to make it, and all attempts on their part by its terms to tie up their freedom of dealing with each other will be futile. Again, it has been stated that it does not stand with reason that the parties can by contract preclude themselves from subsequently contracting in any particular way.

It may be admitted that such a stipulation may be waived or superseded by subsequent oral transactions between the parties, but it should prevent any changed liabilities where the only thing that is subsequently done is the thing which by the express terms of the written contract the parties had the right to do without effecting any such change. The courts have been entirely too free in considering such stipulations waived or superseded by subsequent oral transactions between the parties.

A distinction should be drawn between the various forms of these contractual provisions in this regard. A contract providing simply that no extra work shall be done except upon a written order might be considered waived, or the contractor entitled to recover upon oral transactions subsequently taking place between the parties, when upon the same transactions there should be no recovery under a contract which provides that the owner may make any desired change without avoiding the contract and requiring the additional cost to be added to the contract price, and that no bill or account for extra work shall be allowed or paid

u' ess authority for contracting the same can be shown by a certificate from the owner.

The view is taken in one case that a provision in a contract that the owner should have the right to make alterations and the contractor should comply with such as were ordered in writing was intended merely to require the contractor to perform such alterations or extras as were ordered in writing, but not to interfere with his recovery of the price therefor, if he chose to perform them other than upon an order in writing.

With reference to orders by architects and engineers it may be doubted whether a provision that no extra work shall be ordered, or that the contractor shall make no claim for extra compensation unless ordered by the architect or engineer in writing, is intended to apply to an order by the owner, notwithstanding the cases have assumed, rather than decided, that this is the case.

As stated above, the Courts sustain the validity of such provisions in a contract, and hold that they must control unless clearly waived or superseded. The theories on which the Courts have held such provisions in a contract to be superseded and a recovery allowed in the absence of a written order may be classified as, (1) independent contract, (2) modification or rescission, and (3) waiver. These theories have not always been kept distinct by the courts, although theoretically there is a distinction between them. One court, in speaking of the distinction between rescission and waiver, states that 'rescission of a contract is one thing, waiving some of its terms is quite another. Rescission required concurrent action by both parties,—a meeting of minds. A waiver is the act of the party for whose benefit the condition exists. The fact that the other party failed to comply with the condition is no evidence that the party to be benefited by it intended to waive it.'

In some cases no particular theory is referred to, the court under certain circumstances allowing a recovery for work done in the absence of a written order therefor notwithstanding the provisions of the contract. It is apparent that some of these courts at least, if not all, have had in mind some theory of avoid-

ance of such stipulations in the contract, but have not so expressly stated.

The theory of alteration, rescission, or abandonment is based upon the principle that parties may alter their contract at pleasure by oral agreements, unless the contract be one which the law requires to be evidence by writing and signed; that the provision that alteration must be made in writing is not strictly binding upon the parties when both agree to the alteration and change. It is held that a rescission exists whenever the owner has ordered and the contractor agreed to do whatever extra work the parties mutually agree upon. But in one case it is held that where the contractor does not exact a promise of payment as for extra work upon the owner's ordering the change, and does not inform the owner that it will entail extra expense the owner may well infer that no extra charge will be made.

The theory most frequently adopted in avoiding such stipulations in contracts is that of waiver, it being held in a large number of cases that such a provision in a contract may be waived.

The ultimate question in all cases is the effect the subsequent transactions between the parties have upon their rights and liabilities. The answer to this question depends upon the character of the subsequent transactions. It is uniformly held that the mere doing of extra work or the making of alterations will not entitle the contractor to recover therefor in the absence of a written order. This is true where the owner had no knowledge of the alteration, and has likewise been held true where the owner has had knowledge of the alteration. In the latter case the court states that 'there is no foundation in law nor warrant in reason for saying that in a case like the present, where a party stipulates that he will not pay for alterations in the work unless they are agreed upon and reduced to writing beforehand, he shall nevertheless be held responsible upon a *quantum meruit*. It would be to deny him the benefit of written evidence and subject him to the uncertainties of parol proof depending upon the fluctuating opinions of other persons as to the character and the value of the work, and to bind him against his will.

But where the owner has made changes in the plan of the build-

ing and afterwards received the benefit of the work, the contractor may recover compensation although he is unable to secure a writing because the principal contractor has absconded and the superintendent refuses to give the writing. So, where the city building inspectors have ordered a change in the works, and the architect prepared a sketch of the same and handed it to the contractor, who told the subcontractor to make the change and go ahead with the work, and such subcontractor did so, with the knowledge and acquiescence of the owner, the owner is liable therefor.

Where the owner has ordered the work and agreed to pay for it, the contractor who has performed the same may recover therefor notwithstanding such a stipulation in the contract. Other cases allow a recovery where the extra work is agreed to by the owner, nothing being said as to an express promise to pay, and it is not clear that the word 'agree' is used as including such promise.

It is when the extra work or alterations are merely ordered by the owner that the dispute comes as to whether the contractor may recover therefor. A recovery is denied by some courts where the work is merely ordered, while others allow a recovery. Others, while allowing recovery upon the oral order of the owner, require that the nature and expense of the extra work performed in obedience to the verbal order of the owner and the circumstances attending the order and its execution be sufficient to establish that the parties contemplated and expected that such work should be done and paid for.

So, where the owner has orally ordered work, and, upon receiving a statement therefor, makes a partial payment and acknowledges a balance due according to the statement, he is liable for the work ordered done.

Some of the cases which allow a recovery upon the oral order of the owner seem to require a benefit to the owner from the extra work or alterations in order that there may be a recovery, but that a benefit to the owner is not sufficient to entitle the contractor to recover for work orally ordered done by the owner has been held in at least one case where the owner received a benefit from the extra work.

Some of the other cases, also, which allow a recovery for work done upon the oral order of the owner are decided under facts which make a strong case in favor of the contractor, either on account of the extensive character of the work done, or on account of a uniform course of ignoring the provisions of the contract.

The weight of reason is with those cases which deny a recovery for work done upon a building covered by the contract upon the mere oral order of the owner, where there is such a stipulation in the contract, as the owner should have a right to presume that any alterations or minor changes ordered by him would be included within the contract price unless he expressly agreed to pay extra for the same, or from the nature and extent of the work ordered it is apparent that the parties contemplated and expected that such work should be paid for as extra.

One court in summing up the law states that 'it makes no difference if the extra work was ordered by the owner, provided it was on the mill. As we have said the building need not accede to the owner's views; he may refuse, or he may assent, under the protection afforded by this clause. If extra work be done without it, the right to additional compensation is waived. Any other interpretation of such words would make them valueless to the parties. The appellee's view, if adopted, would deny to the owner the privilege of suggesting any—the most trivial—alteration of the work, without incurring the risk of opening the whole contract; then the written agreement would be substituted by a mere *quantum meruit* claim for work and labor, to be afterwards adjusted upon uncertain oral testimony. And in many cases his mere presence on the premises might subject him to extra charges, on the ground of acquiescence in alterations made by the builder, when it might well be supposed that there was to be no additional charge, because not previously attached to the contract.' The view taken in this case is so obviously sound that it is strange that any courts have departed from it."

LEASES OF ROOMS.

In the recent case of *Goldfoot* v. *Welch*, 109 L.T. Rep. 820; (1914) 1 Ch. 213, Mr. Justice Eve was called upon to decide whether a demise of rooms, on two floors of a building, comprised the external walls of the rooms. The decision was, of course, necessarily a decision on the true meaning and construction of the particular document evidencing the demise, but it throws much light on the question of the rights of tenants of rooms, and the way in which leases of rooms and floors are generally to be construed. Having regard to the prevalent habit of flat-dwelling, and to the present practice of converting houses into maisonnettes, upper parts, and so forth, the law touching the rights of tenants of this form of property must necessarily become of increasing importance. As there is a marked paucity of judicial decision defining their rights, any reported case upon the subject will serve a useful purpose.

The Englishman's predilection for the soil, illustrated by the former prevalent form of building in towns—the vertical instead of horizontal form of ownership and occupancy—is, no doubt, the reason for the undeveloped state of the law in this respect. That predilection led to the legal conception embodied in the maxim Cujus est solum ejus est usque ad cœlum. Rights of ownership in land and buildings are almost universally founded on this conception. So much so, that it is an open question to-day what the effect would be were an owner to erect a building and then to purport to convey the different floors to different grantees in fee simple. It is doubtful whether the grantee of a lower floor and his successors would be under a liability to take active steps to maintain the support of the superincumbent structure. It is, at any rate, certain that the law ex nature which governs the rights of owners of subterranean strata, would not be applicable. For by that law the owner of a substratum must not use it so as to deprive the upper strata of the natural support which they derive from his property. In the case of a building, however, passive non-interference would of itself, in time, lead to a depri-

vation of support through natural causes. In short, there has been little or no development of the law along the lines of horizontal ownership. Yet the possible existence of absolute ownership in floors of a building, apart from ownership of the soil on which the building stands, appears to be judicially recognised. Thus Lord Justice Fry, in delivering the judgment of the Court of Appeal in the case of *Duke of Devonshire* v. *Pattinson,* 20 Q.B. Div. 263, at pp. 273, 274, spoke of a grant and conveyance of a set of chambers in our Inns of Court, and of a flat in a house constructed in flats, as if it were very much the same thing as a grant of a seam of coal.

Whatever difficulties there may be with regard to absolute perpetual ownership in floors of buildings apart from the soil, it is an everyday occurrence for rooms and sets of rooms and floors to be demised for terms of years. There is not the same element of permanency in dispositions of this kind, so difficulties of the kind mentioned above do not arise. The rights of the tenant under a lease, under an agreement for a lease, or under a tenancy agreement necessarily depend on the terms of the document, and express provisions are usually inserted defining the respective rights and obligations of the parties. Suppose, however, that the express provisions include only, (*a*) a general definition of the demised premises, as, for instance, as such and such rooms on such a floor in such a building; (*b*) the term for which the premises are demised and the date from which the term is to run; and (*c*) the amount of the rent and the times and manner when and in which the rent is to be paid. What are the general rights of the tenant?

In the first place, such a demise would pass a right of way through the entrance hall and over the staircase. But it does not at all follow that every square foot of the entrance hall and staircase is subject to the right of way. Thus in the case of *Strick and Co. Limited* v. *City Offices Limited* 1906, 22 Times L. Rep. 667, where the lessees of a set of offices in a certain block of buildings claimed the right of preventing their lessors from altering the dimensions of the large entrance hall, on the ground

that they (the lessees) were under the terms of the lease entitled to a right of way over every part of the hall, the court refused to accept this view, and held that the lease being silent as to the right of access over and through the hall, the lessees were only entitled to a reasonable user of the hall for the purposes of passage.

It would appear that if the rooms were let for some special purpose requiring an extraordinary amount of light, the demise might prevent the lessor from doing anything to diminish that light. As an authority for this proposition the dictum of Lord Parker of Waddington, when a judge of first instance, may be cited. In the case of *Browne* v. *Flower*, 103 L.T. Rep. 557; (1911) 1 Ch. 219, at p. 226, his Lordship laid it down that although possibly there might not be known to the law any easement of light for special purposes, still the lease of a building to be used for a special purpose requiring an extraordinary amount of light might well be held to preclude the lessor from diminishing the light passing to the lessee's windows, even in cases where the diminution would not be such as to create a nuisance within the meaning of the recent decisions. The case before the court was one in which the tenant of a flat claimed a mandatory injunction for the removal of an iron staircase erected by another tenant, with the lessor's consent, outside the plaintiff's windows and giving access to a flat above that of the plaintiff. It was alleged that the erection of the staircase both obstructed the light and interfered with the privacy of the plaintiff's flat. The action, however, failed.

Another important question for lessees of rooms is the right of affixing a name plate or other sign in the common entrance hall. It appears to be clear that the lessee ought expressly to stipulate for such an accommodation, for, except under special circumstances, he has no right whatever of using the walls of the entrance hall for such a purpose. The right is one which may be demised to him. The right of affixing and maintaining a name plate or signboard on another person's wall is an easement well known to the law. Thus in the case of *Moody* v.

Steggles, 41 L.T. Rep. 25; 12 Ch. Div. 261, the court upheld a claim by a party, whose public-house stood back from the road, to the right of having a signboard fixed on the wall of a neighbour's house adjoining. The signboard had hung on the latter's house for upwards of forty years. It was hung on hooks attached to the wall, and swung and cracked in the wind, a fact which made it obnoxious to the defendant. Again, in the case of *Hoare* v. *Metropolitan Board of Works,* 29 L.T. Rep. 804; L. Rep. 9 Q.B. 296, the court held that an easement to have a signboard on another's property involves the ancillary right of entering on that property to repair the signboard. In that case, however, the signboard stood on a common opposite the claimant's public-house.

As already suggested, under special circumstances a right for a lessee of rooms to have his name up on the door or walls of the common entrance might pass to him under his demise; and this, apparently, even in a case where the document of demise contains nothing more than the provisions (*a*), (*b*), and (*c*) mentioned above. This is a deduction which may be drawn from the decision of the Court of Appeal in the case of *Francis* v. *Hayward,* 48 L.T. Rep. 297; 22 Ch. Div. 177.

In the last-mentioned case the plaintiff was the lessee of a house lying behind two other houses in a street. His house was approached by a passage running under the first floor of the other two houses. One half of this passage was under one house and the other half under the other. The three houses belonged to the same landlord. Over the entrance, where the passage opened into the street, there was a cement fascia some 8 feet long, half of which was on the wall of one of the front houses, and the other half on the wall of the other. The number of the plaintiff's house and the name and business of its occupant for the time being had for many years been painted on the fascia. One of the front houses was demised to the defendant previously to the demise to the plaintiff. The defendant commenced to make certain alterations to his house which would have involved the obliteration of one half of the fascia. The plaintiff com-

menced the action to restrain any interference with the fascia. Mr. Justice Kay ordered the defendant to restore the fascia and the defendant appealed. The Court of Appeal held that his Lordship's decision was right, and treated the matter as a question of parcel or no parcel. In the opinion of the court the fascia was part and parcel of the plaintiff's premises, and half of it was not included in the demise of the front house.

From this case it may be inferred that where a name plate or signboard is obviously adapted for the purposes of the occupancy of a suite of rooms or other similar apartments and is used together with those apartments at the time of the demise, it may pass as parcel of the demised premises.

Another very important question for lessees of rooms is the question of their rights as regards external walls. It is on this point that the recent case mentioned at the commencement of this article is an authority.

In the case of *Carlisle Café Company* v. *Muse Brothers and Co.*, 77 L.T. Rep. 515, the owner in fee simple of a freehold house demised the top floor of the building, and a reception room on the second floor, to a firm of photographers, who took the premises on the faith of their being allowed to use the outer walls for the purpose of advertising their business. The lower portion of the house was subsequently demised by the owner to the plaintiff company, who erected a large sign in such a manner as to cover to the height of some feet the lower portion of the outer wall of the photographers, who forceably removed it and put up a sign of their own. At the trial it was argued that the outer walls were not included in the demise to the photographers, but Mr. Justice Byrne held that the demise included the outer walls of the house so far as those walls were solely appropriated to the rooms let. His Lordship also held that the photographers had a right to use the outer walls in the way they had done.

In the more recent case of *Hope Brothers Limited* v. *Cowan*, 108 L. T. Rep. 945; (1913), 1 Ch. 312, Mr. Justice Joyce laid it down as his opinion that unless there be an exception or a reservation or something in the contract to exclude it, primâ facie

where there is a demise of a floor or a room or an office bounded in part by an outside wall, in that case the premises demised comprise both sides of the wall. "That," said his Lordship, "has been more or less clearly already decided by Mr. Justice Byrne in *Carlisle Café Company* v. *Muse Brothers and Co.*, supra." In the case before Mr. Justice Joyce an office on the first floor of a building was demised to the defendants, who entered into various covenants for the repair of the inside parts of the office. The lessors covenanted to repair the external parts and to allow the lessees to affix trade signs approved by them, the lessors; while the lessees covenanted not to affix any sign or name plate without first obtaining the lessor's consent. The lessees, without obtaining the consent of the lessors, affixed flower-boxes outside the three windows of their office, and the lessors commenced an action to restrain them from doing so. The court, however, held, following *Carlisle Café Company* v. *Muse Brothers and Co.*, supra, that the demise included the outside of the outer wall of the office, and that there was nothing in the lease to prevent the lessees doing what they had done.

In the recent case of *Goldfoot* v. *Welch*, supra, rooms on two floors, with the exclusive use of a side entrance door and staircase, were let to the plaintiff, who agreed, amongst other things, to leave the interior of the demised rooms in a certain state of repair. The lessor subsequently fixed, or allowed to be fixed, certain advertisement boards on the outside of the walls of the demised rooms. The plaintiff took exception to these and requested the lessor to have them removed, but this was refused; and so the plaintiff commenced the action claiming an injunction to restrain the lessor from interfering with his possession of the external walls, and a mandatory injunction ordering the removal of the advertising boards. Mr. Justice Eve decided that the document of demise included the external walls of the first and second floors, and granted the mandatory injunction asked for.

These three authorities establish beyond all doubt that primâ facie the external walls of demised premises pass with the demise.

In the case of *Carlisle Café Company* v. *Muse Brothers and Co.*, supra, Mr. Justice Byrne decided this in the case of a demise of a studio and reception room. In *Hope Brothers Limited* v. *Cowan*, supra, Mr. Justice Joyce did likewise in the case of an office; while in the most recent case Mr. Justice Eve came to the same conclusion in the case of a "room" demised as such.

One further point ought to be mentioned. From the nature of the case, where rooms, floors, suites, apartments, flats, or other portions of a whole building are demised, questions may readily arise with regard to disturbances from noise or other causes. The proximity to other occupants of the building renders this probable. Now, do not let the tenant think that his lessor's covenant for quiet enjoyment will avail him much in such a case. That covenant is a highly technical one which does not mean what a layman might reasonably think it means. It is only a covenant against physical disturbance, not metaphysical disturbance, as Lord Justice Buckley once remarked. "It appears to me," said Lord Parker of Waddington, when a judge of first instance, in the case of *Browne* v. *Flower*, supra, referring to this covenant, "that to constitute a breach of such a covenant there must be some physical interference with the enjoyment of the demised premises, and that a mere interference with the comfort of persons using the demised premises by the creation of a personal annoyance, such as might arise from noise, invasion of privacy, or otherwise, is not enough."

The foregoing observations on the primâ facie rights of lessees of parts of buildings are necessarily of a general nature. The rights are, indeed, only primâ facie rights—that is to say, they are rights variable by circumstances—and they are always subject to the effect of the express provisions in the document of demise. It is almost superfluous to add that an intending lessee of property of this description would be much better advised to rely on express stipulation than on his primâ facie rights as outlined above.—*Law Times.*

REVIEW OF CURRENT ENGLISH CASES.

WILL—BEQUEST TO MAINTAIN RESIDENCE—INDEFINITE PERIOD—REMOTENESS—PERPETUITY.

Kennedy v. *Kennedy* (1914) A.C. 215, is a much litigated case, concerning the will of the late David Kennedy of Toronto. By the will the testator appointed his son and two granddaughters as executors and trustees, and devised his dwelling house and its contents to his son, subject to each of his granddaughters being entitled to live therein as a home until she married. The will, after other devises and bequests, bequeathed the residue to the trustees to be used by them in maintaining the house and premises. The present action was instituted by the plaintiff as heir at law of the testator, alleging that the residuary bequest was void for remoteness. Prior to this action, a former action had been commenced by another son of the testator for an interpretation of the will, in which it was claimed that the residuary bequest was void not for remoteness but for vagueness. That action had been dismissed on the ground that the plaintiff had not at that time any right to maintain it. Teetzel, J., who tried the present action, held that the residuary bequest was void for remoteness; the Appellate Division affirmed his decision; and the Judicial Committee of the Privy Council (Lords Atkinson, Shaw, Moulton and Parker) have also affirmed it, and hold that the judgment in the prior case formed no bar as *res judicata*.

RIPARIAN OWNERS—CONSTRUCTION OF LAND—GRANT TO RIVER BANK ONLY—RIGHT OF GRANTEE AD MEDIUM FILUM.

McLaren v. *The Attorney-General of Quebec* (1914) A.C. 258 may be briefly noted, although it is an appeal in a Quebec case. The appellants were grantees from the Crown of certain lands on opposite sides of the Gatineau river; the descriptions in their patents started at a stone monument on the river bank and after carrying the boundary around to the river again, proceeded "thence along the bank of the river, following its sinuosities as it winds and turns to the place of beginning." The Gatineau is not, as the judge at the trial was held to have correctly found, a navigable or floatable river, but was one down which loose logs only could be floated and not cribs or rafts. In Quebec law, "Roads and public ways maintainable by the State, navigable and floatable rivers and streams and their banks, . . . and gen-

erally all those portions of territory which do not constitute private property, are considered as being dependencies of the Crown domain."—Code Civil art. 400. After the grant to the plaintiffs, the Crown had assumed to grant to the defendant water lots lying between the plaintiffs' lands covering the bed of the river. The action was brought to restrain these grantees from trespassing or interfering with the plaintiffs' rights as riparian proprietors; subsequently, the Attorney-General of the Province intervened to defend the action. The judge of first instance gave judgment for the plaintiff; the King's Bench reversed him, on the ground that the river was navigable and floatable and therefore that it was vested in the Crown. The Supreme Court of Canada was equally divided in opinion, and one-half of the judges expressed the view that by reason of the description in the plaintiffs' patent and in the proclamation creating the townships of Low and Denholm, the plaintiffs had no rights in the bed of the stream; but the Judicial Committee (Lords Haldane, L.C., and Shaw, and Moulton) held that the river not being navigable or floatable, the plaintiffs acquired, notwithstanding the boundaries given in their patents, the usual common law rights of riparian proprietors, and their lots extended *ad medium filum* of the stream, and the appeal was therefore allowed.

MONEY LENDER—SECURITY TAKEN BY MONEY LENDER—REGISTERED NAME—MONEY LENDERS ACT, 1900 (63-64 VICT. c. 51), s. 2(1) *c*—(R.S.O. c. 175, s. 11(*c*).)

Shaffer v. *Sheffield* (1914) 2 K.B. 1. This was an action in which the construction of the Money Lenders Act, 1900 (63-64 Vict. c. 51), s. 2(1)*c*. (see R.S.O. c. 175, s. 11*c*) was in question. That section prohibits a money lender to take any security for money lent in the course of his business otherwise than in his registered name; and it was held by Channell, J., that that provision does not prohibit a money lender from taking a security on which his name does not appear at all, as for example, a bill of exchange indorsed to him in blank.

MALICIOUS PROSECUTION—DAMAGE NECESSARY TO SUPPORT ACTION FOR MALICIOUS PROSECUTION—PROCEEDINGS TO COMPEL ABATEMENT OF ALLEGED NUISANCE—DAMAGE TO REPUTATION.

Wiffen v. *Bailey* (1914) 2 K.B. 5. This was an action for malicious prosecution, and the prosecution complained of was the institution by the defendants of proceedings against the plaintiff

under the Public Health Act for the abatement of an alleged nuisance on the plaintiff's premises, which turned out to be unfounded. The question was whether such proceedings constituted a sufficient ground of damage to support the action. Horridge, J., who tried the action, held that such a prosecution was injurious to the plaintiff's reputation and constituted a good cause of action for malicious prosecution; following *Royson* v. *London South Tramways Co.* (1893), 2 Q.B. 304. See *ante* vol. 29, p. 708.

WORKMEN'S COMPENSATION FOR INJURIES ACT—FATAL ACCIDENTS ACT—RECOVERY UNDER WORKMEN'S COMPENSATION ACT A BAR TO SUBSEQUENT ACTION UNDER FATAL ACCIDENTS ACT.

Codling v. *Moulem* (1914) 2 K.B. 61. In this case it was held by Atkin, J., that where there has been a recovery against an employer under the Workmen's Compensation Act of 1906, that such recovery constitutes a bar to an action against the employer in respect of the same accident under the Fatal Accidents Act.

JUDGMENT DEBTOR—"COMPLETION OF EXECUTION"—PAYMENT DIRECT TO JUDGMENT CREDITOR—WITHDRAWAL OF SHERIFF—BANKRUPTCY OF DEBTOR.

In re Godding (1914) 2 K.B. 70. This, though a bankruptcy case, is deserving of attention as being a judicial decision as to what is meant by "the completion of execution." The facts were, that an execution had been placed in the Sheriff's hands and the debtor's goods were seized, but to avoid a sale the full amount directed to be levied and the Sheriff's charges were paid by the debtor to the judgment creditor's solicitors, whereupon the sheriff was directed to withdraw. Within eight days thereafter the debtor presented a petition in bankruptcy and submitted to a receiving order; and the question was whether there had been a completion of execution before the receiving order. Horridge, J., held that what had been done did not amount to "a completion of execution" within the meaning of the Bankruptcy Act and therefore that the creditor was liable to refund to the trustee the money received. See R.S.O., c. 134, s. 14.

CRIMINAL LAW — PLEADING — INDICTMENT — DUPLICITY — OBJECTION TO INDICTMENT AFTER PLEA OR VERDICT—CRIMINAL APPEAL ACT, 1907 (7 EDW. VII., c. 23), s. 4(1) 6—(R.S.C. c. 146, s. 1019).

The King v. *Thompson* (1914) 2 K.B. 99. The defendant in this case was indicted for incest. The indictment charged in one

count that offences were committed "on divers days between the month of January, 1909, and October 4, 1910," and in another count that offences were committed "on divers days between October 4, 1910, and the end of February, 1913." At the trial after the defendant had pleaded not guilty and the jury had been sworn, objection was taken that the indictment was bad for duplicity. The objection was overruled, the trial proceeded and the defendant was convicted. On appeal to the Court of Criminal Appeal (Isaacs, C.J., and Darling, Bray, Lush and Atkin, JJ.) it was held that although the indictment was bad in charging more than one offence in each count, yet as the accused had not in fact been embarrassed or prejudiced in his defence by the form of the indictment there had been "no substantial miscarriage of justice," and the appeal must be dismissed: see the Criminal Appeal Act, 1907, s. 4(1): (R.S.C. c. 146, s. 1019.) The court was of opinion that in strictness the objection to any defect appearing on the face of an indictment should be taken before plea. At the same time the court refused to decide that an objection of that kind might not be taken after plea or verdict.

CRIMINAL LAW—ATTEMPTED SUICIDE—"ATTEMPT TO COMMIT FELONY."

In *The King* v. *Mann* (1914) 2 K.B. 107, the Court of Criminal Appeal (Lord Reading, C.J., and Bankes and Avory, JJ.) held that an attempt to commit suicide is in law an attempt to commit a felony, and punishable as such.

LANDLORD AND TENANT—COVENANT TO REPAIR—NOTICE OF BREACH—SPECIFICATION OF BREACH OF COVENANT—ADDITION OF GENERAL CLAUSE—SUFFICIENCY OF NOTICE—CONVEYANCING AND LAW OF PROPERTY ACT, 1881 (44-45 VICT. c. 41), s. 14 (1)—(LANDLORD AND TENANTS ACT (R.S.O. c. 155), s. 20(2)).

Jolly v. *Brown* (1914) 2 K.B. 109. In this case the plaintiff was lessor of certain premises of which the defendant was the lessee. Certain breaches of covenant had been committed by the lessee, of which the plaintiff had given notice to the defendant under the Conveyancing and Law of Property Act, 1881, s. 14(1), (see The Landlord and Tenants Act (R.S.O. c. 155), s. 20(2)), and the question was whether this notice was a sufficient specification of the breaches complained of within the Act. The demised premises consisted of six small houses and the notice stated that the breach complained of was committing or allowing the dilapi-

dations mentioned in a schedule annexed to the notice. The schedule indicated under general headings, repairs which were required to be done to all of the houses, and in a few instances specified repairs required to be made to particular houses. In some instances it required the lessee to examine and repair specified parts of the houses, and the schedule concluded, "and note that the completion of the items mentioned in this schedule does not excuse the execution of other repairs if found necessary." The Divisional Court (Avory and Lush, JJ.) considered the notice was sufficient because it gave the lessee the information necessary to enable him to ascertain the breaches of covenant of which the lessor complained and that the fact that the notice required the lessee to do repairs which he might not be liable to do under his covenants; and the general clause at the end of the schedule did not invalidate the notice, inasmuch as the lessee was only to comply with the repairing covenants and not necessarily with the terms of the notice and the claim at the end, not specifying any breaches, was of no effect. The Court of Appeal (Buckley and Kennedy, L.JJ., Williams, L.J., dissenting) held that the notice was a sufficient compliance with the Act, s. 14(1)—(see R.S.O. c. 155, s. 20(2)) and dismissed the appeal, but Williams, L.J., thought the notice was not sufficiently specific, and was not a specification of "the particular breach" complained of, as required by the Act.

DISTRESS—EXEMPTIONS—GOODS OF STRANGER—GOODS COMPRISED IN HIRE PURCHASE AGREEMENT—LAW OF DISTRESS AMENDMENT ACT, 1908 (8 EDW. VII., c. 53), s. 4—(THE LANDLORD AND TENANTS ACT (R.S.O. c. 155), s. 31.)

Jay's v. *Brand* (1914) 2 K.B. 132. This was an action for an illegal distress, the facts being, that the plaintiffs had let to one Bray, the tenant of a flat, a quantity of furniture under a hire-purchase agreement, which provided: "If the hirer does not duly perform and observe this agreement the same shall ipso facto be determined, and the hirer shall forthwith return the goods to the owners, and the owners shall be entitled to retake possession of the same, as being goods wrongfully detained by the hirer, and for that purpose to enter on any premises where the goods may be." Bray, becoming in default for rent of the goods, the plaintiffs served on him a written notice terminating the hire-purchase agreement and demanding a return of the goods, and they endeavoured unsuccessfully to retake possession. The next day the landlord of the flat distrained for the rent thereof and took the goods in distress. The plaintiffs claimed that, as before

the distress was made they had terminated the hire-purchase agreement, the goods were therefore not at the time they were distrained comprised in a hire-purchase agreement and were therefore exempt from seizure as being the goods of a third party, but the Divisional Court (Ridley and Bankes, JJ.) agreed with the judge of the County Court, who tried the action, that the goods at the time of seizure were comprised in the hire-purchase agreement, which they considered notwithstanding the notice must be still subsisting, because under it the plaintiffs were empowered to retake the goods.

CONTRACT—RESCISSION—FRAUD—CONCEALED FRAUD—LIMITATION ACT (21 JAC. 1, C. 16), S. 3—(STATUTE OF LIMITATIONS (R.S.O. C. 75), S. 49).

Oeelkers v. *Ellis* (1914) 2 K.B. 139. This was an action to set aside certain transactions on the ground of fraud. The plaintiff employed the defendant as his broker to buy shares for him in certain companies, on the representation that the defendant would give him expert and honest advice in the matter, and the defendant, instead of buying the shares on the market, sold to the plaintiff the defendant's own shares. The transactions took place in November, 1905, and in August, 1906, and in March and November, 1907. The writ was issued November 7, 1912. The plaintiff claimed that he first became aware of the fraud in July, 1912. The defendant set up the Statute of Limitations (21 Jac. 1, c. 16), s. 3 (see R.S.O. c. 75, s. 49) as a bar; but Horridge, J., held that the statute was no defence, the fraud in question having been concealed from the plaintiff and there having been no undue delay in bringing the action after it came to his knowledge, and he was guilty of no laches in failing to discover the fraud earlier. It may be observed that the action was tried by a jury who found the fraud alleged as a fact.

NEGLIGENCE—RAILWAY COMPANY—DUTY OF OWNER OF PREMISES TO INVITEES—STATION YARD—OPEN CULVERT—HORSE AND CART UNATTENDED—CONTRIBUTORY NEGLIGENCE.

Norman v. *The Great Western Ry.* (1914) 2 K.B. 153. This was an action to recover damages arising from an injury to the plaintiff's horse and cart, owing to a defect in the defendant's station yard. The facts were that the plaintiff was in the habit of going himself or sending his servant with a horse and cart to the station yard to receive or deliver goods. The yard was bounded on one side by a sloping bank at the bottom of which was an open

culvert; both the plaintiff and his servant knew the place well. On the occasion in question the plaintiff's servant drove the horse and cart up to the weighing office, the sloping bank being 40 feet behind the cart. The servant went into the weighing office, leaving the horse unattended: during the few minutes he was in the office the horse backed the cart over the bank and was dragged backwards into the culvert and was injured. The judge of the County Court, who tried the action, held that the defendants were liable. The Divisional Court (Lush and Bray, JJ.) were divided in opinion. Both agreed that the duty of a railway company to persons resorting to their premises in the ordinary course of business is higher than the occupier of private premises, towards persons resorting thereto in like manner; and that railway companies are bound to take reasonable care to have their premises reasonably safe for persons resorting to them and using ordinary care; but Bray, J., thought that there was evidence of a breach of this duty, by the defendants in this case, and that the question of contributory negligence was for the jury. Lush, J., on the other hand, considered that there was no evidence of any breach of duty causing the accident; that the effective cause of the accident was leaving the horse unattended, and that this amounted to contributory negligence, and that the court ought to hold that it constituted contributory negligence, notwithstanding the contrary finding of the jury on that point. In the result the appeal failed.

BANKER—SECURITIES LEFT IN HANDS OF BROKER BY CUSTOMER SO AS TO BE TRANSFERABLE BY HIM—DEPOSIT OF CUSTOMER'S SECURITIES BY BROKER—AUTHORITY OF BROKER TO PLEDGE —ESTOPPEL—PURCHASE FOR VALUE IN GOOD FAITH.

Fuller v. *Glyn* (1914) 2 K.B. 168. In this case the plaintiff sought to recover from the defendants, a firm of bankers, certain shares which got into the hands of the defendants in the following circumstances. The plaintiff employed Inchbald & Son, a firm of stock brokers, to buy for him 100 shares of Canadian Pacific Ry. stock, which they accordingly did, and received from the seller the certificates of the shares indorsed in blank. The plaintiff allowed the certificates to remain in the hands of Inchbald & Son in this condition. Inchbald & Son then proposed that the shares should be registered in names of persons other than the plaintiff, to which he assented. In September, 1908, Inchbald & Son deposited the share certificates with the defendants as security for fortnightly loans made by the defendants and at the same time

they requested the defendants to have the shares registered in the names of two nominees of the defendants which was done. They remained in the hands of the defendants. Inchbald & Son were convicted of fraud and forgery. The defendants claimed to retain the certificates as bona fide purchasers for value without notice, and they claimed that the plaintiff was estopped from setting up his title as against the defendants. Pickford, J., who tried the action, held that the plaintiff, having left the certificates in Inchbald & Son's hands in such a condition as to convey a representation to any person who took them from Inchbald & Son, that they had authority to deal with them, was thereby stopped from setting up his title as against a bona fide transferee thereof for value without notice.

PRACTICE—EQUITABLE EXECUTION—RECEIVER.

Morgan v. *Hart* (1914) 2 K.B. 183. In this case the Court of Appeal (Buckley and Phillimore, L.JJ.) decide (overruling Scrutton, J.) that under the Judicature Act the Court has no jurisdiction to appoint a receiver by way of equitable execution, except in cases in which execution cannot be levied in the ordinary way, by reason of the nature of the property sought to be made available and in which the Court of Chancery, before the Judicature Act, would have had jurisdiction to make such an order.

CRIMINAL LAW—OBTAINING MONEY BY FORGED INSTRUMENT—FRAUDULENT LETTER ASKING FOR MONEY TO BE PAID TO BEARER—FORGERY ACT, 1913 (3-4 GEO V, c. 27), s. 7 (R.S.C. c. 146, s. 467).

The King v. *Cade* (1914) 2 K.B. 209. The defendant was indicted for obtaining money by means of "a certain forged instrument, to wit a forged request for the payment of one pound." The document in question was a letter purporting to come from, and to be signed by, a man employed by the prosecutor to whom it was addressed. The letter requested the prosecutor to hand to the bearer the sum of £1 which the letter stated was required for the purpose of hiring a machine to clear out a drain on the prosecutor's premises. It was held by the Court of Criminal Appeal (Lord Reading, C.J., and Ridley and Rowlatt, JJ.) that the letter was an "instrument" within the meaning of s. 7 of the Forgery Act, 1913 (3-4 Geo. V, c. 27). See R.S.C. c. 146, s. 467.

LANDLORD AND TENANT—CLAIM BY TENANT AGAINST LESSOR FOR BREACH OF CONTRACT—MORTGAGE OF REVERSION—NOTICE TO MORTGAGEE OF LEASE OF TENANT'S CLAIM—ACTION BY MORTGAGEE FOR RENT—RIGHT OF TENANT TO SET OFF DAMAGES CLAIMED FROM LESSOR.

Reeves v. *Pope* (1914) 2 K.B. 284. In this case the Court of Appeal (Lord Reading, C.J., and Buckley and Phillimore, L.JJ.) affirm the judgment of Bankes, J. (1913), 1 K.B. 637 (noted ante vol. 49, p. 330). The facts being, that the defendant had entered into an agreement to take a sub-lease of certain property from a company on which within a specified time the company agreed to erect a hotel. The company made default in erecting the hotel and the defendant suffered damage in consequence, but on its subsequent completion he accepted a lease for the stipulated time without prejudice to his claim for compensation for the delay in completing the hotel. The company were themselves lessees of the premises under a 99 years' term, which they subsequently mortgaged to the plaintiffs who had actual notice of the defendant's claim against the company for damages. The mortgagees having taken possession, sued the defendant for arrears of rent, against which the defendant claimed to set off his claim against the company for damages. Bankes, J., held that this could not be done, because the plaintiffs were claiming as assignees of the reversion and not as assignees of a chose in action, and that as the plaintiffs could have distrained for the rent without its being subject to any set off; so also in an action for its recovery, it was not subject to any such set off; and therefore the cases as to assignments of choses in action had no application.

COMPANY—PROMOTER—UNDERWRITING CONTRACT—DEATH BEFORE COMPLETION OF CONTRACT—LIABILITY OF PERSONAL REPRESENTATIVE—PERSONAL CONTRACT.

In re Worthington (1914) 2 K.B. 299. In this case the Court of Appeal (Cozens-Hardy, M.R., Evans, P.P.D., and Eve, J.) affirmed the judgment of Horridge, J., holding that an underwriting contract whereby a person agrees to place the share capital of a limited company, is not a personal contract which terminates with the life of the contractor, but is one on which his personal representative is liable in the event of his death before performance, and damages for breach of such a contract may be recovered from his estate.

NEGLIGENCE—OWNER OF PREMISES—DANGEROUS PREMISES—HOUSE LET OUT IN FLATS—FLIGHT OF STEPS IN POSSESSION OF LANDLORD—STEPS INSUFFICIENTLY FENCED—LIABILITY OF LANDLORD TO WIFE OF TENANT—KNOWLEDGE OF WIFE OF TENANT OF DANGEROUS CONDITION OF STEPS.

Lucy v. *Bawden* (1914) 2 K.B. 318. In this case the husband of the plaintiff was lessee from the defendant of a flat in a house which was entered by a front door approached from the street by a flight of six steps protected on either side by a coping about eight inches high; on either side of the steps was an area. The steps remained in the defendant's possession and control. The plaintiff slipped on the steps and fell over into the area and for the injuries so caused the action was brought. The jury found that the steps were in defective repair for want of a railing and that this defect was due to the negligence of the defendant and that both the plaintiff and defendant knew of the defect before the accident. On these findings Atkin, J., who tried the action, gave judgment for the defendant on the ground that the danger was patent and known to the plaintiff and she must be presumed to have voluntarily taken upon herself to bear the risk.

LANDLORD AND TENANT—LEASE—COVENANT TO PAY TAXES CHARGED ON PREMISES—LANDLORD ASSESSED BY MISTAKE—PAYMENT BY LANDLORD—IMPLIED REQUEST.

Eastwood v. *McNab* (1914) 2 K.B. 361. This was an action by a landlord against a tenant on a covenant in a lease whereby the tenant covenanted to pay all assessments charged on the premises. By mistake the landlord was assessed for and paid taxes properly chargeable against the occupier of the premises and which were sought to be recovered in this action. The County Court judge dismissed the action but the Divisional Court (Ridley and Bankes, JJ.) held that the defendant was liable on the ground that the taxes were in fact charged upon the premises and there was an implied request on the part of the defendant to pay, and an implied promise by the defendant to refund the money.

MONEY LENDER—HARSH AND UNCONSCIONABLE TRANSACTION—EXCESSIVE INTEREST—QUESTION OF LAW OR FACT—MONEY LENDERS ACT, 1900 (63-64 VICT. C. 51), S. 1—(R.S.O. C. 175, S. 4).

Abrahams v. *Dimmock* (1914) 2 K.B. 372. This was an action by a registered money lender to recover on a promissory note in which the defendant claimed the benefit of the Money Lenders

Act, 1900, s. 1 (see R.S.O. c. 175, s. 4). The action was tried in a county court and the judge left it to the jury to say whether the interest was excessive and whether the transaction was harsh and unconscionable. The Divisional Court (Ridley and Bankes, JJ.) held that he erred in this and that the question whether under the Act, the interest is excessive and the transaction harsh and unreasonable, is for the court and not for the jury, and a new trial was therefore granted.

CRIMINAL LAW—LIVING ON EARNINGS OF PROSTITUTION—EVIDENCE—CHARGE IN RESPECT OF ONE SPECIFIED DAY ONLY—THE VAGRANCY ACT, 1898 (61-62 VICT. c. 39), s. 1—(R.S.C. c. 146, s. 238*l*.)

The King v. *Hill* (1914) 2 K.B. 386. In this case the indictment charged the defendant with having on one specified day only lived on the wages of prostitution contrary to the Vagrancy Act, 1898 (61-62 Vict. c. 39), s.1—(see R.S.C. c. 146, s. 238*l*), and on appeal to the Court of Criminal Appeal (Lord Reading, C.J., and Bankes and Avory, JJ.), the indictment was sustained. It was also contended that under the indictment evidence was not admissible of anything done on any day other than that specified, but this objection was also overruled.

MARRIED WOMAN—BEQUEST TO MARRIED WOMAN WITHOUT POWER OF ANTICIPATION—RIGHT OF MARRIED WOMAN TO DISCLAIM BEQUEST—CONSIDERATION FOR DISCLAIMER—MARRIED WOMAN'S PROPERTY ACT, 1882 (45-46 VICT. c. 75), s. 1—(R.S.O. c. 149, s. 4.)

In re Wimperis, Wicken, Wilson (1914) 1 Ch. 502. In this case the question was whether a married woman could make a bargain whereby in consideration of a certain payment to her she disclaimed a bequest of personal estate made to her by will subject to a restraint against anticipation. Warrington, J., held that she could validly do so. The bequest in this case was in the shape of an annuity which it was found could not be provided except by a sale of a part of the testatrix's estate which other beneficiaries under the will desired should be retained. The latter then offered to give the married woman a lump sum in consideration of her disclaiming the bequest, which it was held could be validly done. As Warrington, J., puts it, "If the married woman has declined the gift she never had an estate for her separate use and has never been subject to the restraint against anticipation," conse-

quently it seems to follow that the money received for the disclaimer is not subject to such restraint.

LANDLORD AND TENANT—LEASE FOR FIVE YEARS—OPTION TO DETERMINE LEASE AFTER THREE YEARS—CONSTRUCTION NOTICE—VALIDITY.

In re Lancashire, Davis v. *Lancashire* (1914) 1 Ch. 522. This was a summary application to determine a point of law, arising upon the construction of a lease dated February 21, 1911, for the term of five years from the date thereof, at a rent payable on the usual quarter days; and wherein it was directed that "after the expiration of the first three years of the term hereby granted if the lessees shall desire to determine this lease and shall give to the lessors six calendar months' previous notice in writing of such desire, such notice to determine on any quarter day . . . then and immediately on the expiration of such notice this present demise shall cease and be void." On November 14, 1913, the plaintiffs gave notice in writing to determine the lease on Jan. 24, 1914, and the question was whether the notice was good. Eve, J., held that it was not, because it was not competent for the lessees to give the notice earlier than the day on which the first three years expired, and that therefore the earliest period at which the lease could be terminated under the option was the 29th September, 1914.

COMPANY—CONTRACT TO GIVE VENDOR FULLY PAID SHARES ON EACH INCREASE IN CAPITAL.

Hong Kong & China Gas Co. v. *Glen* (1914) 1 Ch. 527. In this the plaintiff, a limited company, agreed with one Glen from whom the company purchased property for the purposes of the company, as part of the consideration for the purchase that it would on every subsequent increase of the capital, allot to the defendant a certain proportion of fully paid up shares thereof. The company in fulfilment of this bargain did issue to Glen the proportion of shares agreed on each further issue of capital. Glen having since died, this action was brought by the company to determine whether the company was bound to allot to his executors one-fifth of each future increase of capital and also on what terms. Sargant, J., held that the agreement so far as it related to the allotment of the fifth of all new capital was valid, but that the agreement in so far as it purported to relieve the allottee from liability to pay up all or any part of the nominal amount of the shares so allotted was void. The judgment does not appear to be

very conclusive in its reasoning and it would not be surprising if an appellate court were to take a different view.

COMPANY—PROSPECTUS—EXPERT'S REPORT—ADOPTION OF STATEMENTS IN REPORT BY PROSPECTUS—CONTRACT TO TAKE SHARES—BASIS OF CONTRACT—MATERIAL INACCURACY IN REPORT—RESCISSION.

In re Pacaya Rubber Co. (1914) 1 Ch. 542. This was an application by a shareholder of a limited company to rescind a contract to take shares, on the ground of material misrepresentation in the prospectus of the company. The prospectus in question in good faith set forth the statements made by an expert of the result of his examination of the company's property. The report, though not fraudulently made, contained several material misrepresentations and Astbury, J., therefore held that the applicant was entitled to the relief claimed; as in the circumstances he considered the representations in the report set forth in the prospectus constituted the basis of the contract to take the shares; and in such a case he held that calculations of future profits based on the false data of the report might and did amount to a material misrepresentation of fact. In the opinion of the learned judge a company cannot escape responsibility for the statements made in a report quoted in its prospectus, except by expressly disclaiming in a clear and unambiguous way any intention to vouch for the accuracy of the report, or any statement based thereon.

GOOD WILL—SALE OF BUSINESS BY ASSIGNEE FOR CREDITORS—SOLICITATION OF OLD CUSTOMERS BY ASSIGNOR.

Green v. *Morris* (1914) 1 Ch. 562. This was an action to restrain the defendant from soliciting the custom of his former customers; he had made an assignment for the benefit of his creditors and the trustee had sold the business formerly carried on by the defendant to the plaintiffs including the good will, and they claimed an injunction against the defendant. Warrington, J., who tried the case, held that although, if the defendant had himself been the vendor of the good will the plaintiffs would have been entitled to the relief claimed against him, yet as the sale was involuntary the exception established by *Walker* v. *Mottram* (1881), 19 Ch., D. 355, applied, and the defendant could not be restrained from soliciting the customers of his old business.

REPORTS AND NOTES OF CASES.

Province of Ontario

SUPREME COURT—APPELLATE DIVISION.

Meredith, C.J.O., Maclaren, and Magee, JJ.A., and Lennox, J.] [16 D.L.R. 119.

BROOKS *v.* MUNDY.

1. *Mechanics' liens—Sub-contractor—Claim on statutory percentage —Time.*

The obligation of the owner to retain a statutory percentage of the value of the work and materials is limited to the period of thirty days after the completion or abandonment of the contract by the contractor with whom the owner had contracted, and where such contractor had abandoned the work uncompleted and the owner had to pay more than the balance of the contract price to finish it, a sub-contractor filing his claim more than thirty days after the principal contractor's abandonment although within thirty days of his own last work on the building has no lien, if nothing then remained due the principal contractor.

2. *Mechanics' liens—Sub-contractor—Owner advancing statutory percentage to contractor.*

The fact that the owner did not retain from his contract any of the percentage of the value of the work as required by the Mechanics' Lien Act (Ont.) for the protection of sub-contractors and wage-earners, does not make him liable for sub-contractors' claims as to which no lien was filed or notice of claim given the owner until after the expiry of thirty days following the abandonment of the work by the principal contractor, the statutory obligation to retain the percentage being limited to thirty days after completion or abandonment of the contract with the owner.

J. G. Donoghue, for appellant.
J. R. Code, for plaintiff, respondent.

ANNOTATION ON ABOVE CASE FROM D.L.R.

It is provided by the Ontario Mechanics' Lien Act, 10 Edw. VII. ch. 69 R.S.O. 1914, ch. 140, that in all cases the person primarily liable upon any contract or by virtue of which a lien may arise shall, as the work is done or materials are furnished under the contract, deduct from any pay-

ments to be made by him in respect of the contract, and retain for a period of thirty days after the completion or abandonment of the contract twenty per cent. of the value of the work or service and materials actually done, placed or furnished as mentioned in section 6, and such value shall be calculated on the basis of the contract price, or if there is no specific contract price then on the basis of the actual value of the work, service or materials: sec. 12 (1).

Where the contract price or actual value exceeds $15,000, the amount to be retained shall be fifteen per cent. instead of twenty per cent.: Sec. 12 (2).

The lien shall be a charge upon the amount directed to be retained by this section in favour of sub-contractors whose liens are derived under persons to whom such moneys so required to be retained are respectively payable: Sec. 12 (3).

All payments up to eighty per cent., or eighty-five per cent. where the contract price or actual value exceeds $15,000, of such price or value made in good faith by an owner to a contractor, or by a contractor to a sub-contractor, or by one sub-contractor to another sub-contractor before notice in writing of such lien given by the person claiming the lien to him, shall operate as a discharge *pro tanto* of the lien: sec. 12 (4).

(5) Payment of the percentage required to be retained under sub-sections 1 and 2 of sec. 12 may be validly made so as to discharge all liens or charges in respect thereof after the expiration of the period of thirty days mentioned in sub-section 1 unless in the meantime proceedings have been commenced to enforce any lien or charge against such percentage as provided by sections 23 and 24.

Section 12 is for the protection of sub-contractors. It creates a fund out of which persons claiming a lien under a contract not made directly with the owner may have their lien satisfied.

Before the year 1882 the percentage to be retained under the Ontario Mechanics' Lien Act was upon "the price to be paid to the contractor." Under the former section it was held that the owner was not required to retain a percentage upon all payments made to the contractor. It was sufficient if such payments did not in the aggregate exceed the specified percentage of the whole contract price, and if the contractor failed to complete the contract, or if for any other reason the contract price never became due, there was no fund available to satisfy the liens of sub-contractors: *Goddard* v. *Coulson* (1884), 10 A.R. 1; *Harrington* v. *Saunders* (1887), 23 C.L.J. 48, 7 C.L.T. 88; *Truax* v. *Dixon* (1889), 17 O.R. 366; *Reggin* v. *Manes* (1892), 22 O.R. 443; *Re Sear and Woods* (1892), 23 O.R. 474; Wallace on Mechanics' Liens, 2nd ed., 361.

In *Re Cornish* (1884), 6 O.R. 259, it was held that where a contractor failed to complete his contract and his surety undertook to finish the work there were two contracts, and that the percentage was to be paid on the amount earned under each. It was also held that a mechanics' lien was postponed to the owner's claim for damages for non-completion; the prior-

ity of a wage-earner's lien was not decided: See *Harrington* v. *Saunders, supra; McBean* v. *Kinnear* (1892), 23 O.R. 313.

It was afterwards held in *Russell* v. *French* (1896), 28 O.R. 215, that if any owner, contractor or sub-contractor under whom a lien may arise pays more than the specified percentage of the value of the work and materials done or finished, he does so at his peril, and a lien may be successfully asserted against him, to the extent of the percentage which he should have retained, by any lien-holder who is prejudiced by the excessive payment.

Section 22 of the Ontario Mechanics' Lien Act, limits the time within which a lien may be registered to within thirty days after the completion of the work or the supplying of the materials for which the lien is claimed. By retaining the percentage for the same period the owner, contractor or sub-contractor is in a position to know whether any lien will be asserted, the same limit of time being adopted in both instances.

An interlocutory application to stay proceedings in an action under the Mechanics' Lien Act (Ont.), brought by workmen against both their employer and the property owner, should not be granted to enable the owner to complete the work on the contractor's default and so ascertain the balance, if any, owing by the owner under the contract; such a question should not be determined in Chambers but should be determined at the trial, or, if the pleadings properly raise the question of law, it can be determined upon a motion in Court: *Saltsman* v. *Berlin Robe and Clothing Co.*, 6 D.L.R. 350, 4 O.W.N. 88, 23 O.W.R. 61.

Payments to the extent of the percentage mentioned will not be protected if before payment is made, notice in writing has been given by a person claiming a lien. The necessity for this provision is obvious as otherwise the owner before making any payment would always be obliged to make a search to ascertain if any lien had been registered: Wallace on Mechanics' Liens, 2nd ed., 363.

Lien claimants for materials wrote to the owner a letter asking him, when making a payment to the contractor "on the Lisgar street buildings" to "see that a cheque for at least $400 is made payable to us on account of brick delivered, as our account is considerably over $700, and we shall be obliged to register a lien if a payment is not made to-day:" *Held*, Meredith, J., dissenting, a sufficient "notice in writing" of their lien: *Craig* v. *Cromwell* (1900), 32 O.R. 27, affirmed, 27 A.R. 585. On the appeal in this case, at page 587, Osler, J.A., thus refers to the notice required by sub-sec. 2, of the former section: "The object of the notice is to warn the owner that he cannot safely make payments on account of the contract price even within the 80 per cent. margin, because of the existence of liens of which he was not otherwise bound to inform himself or to look for. The notice does not compel him to pay the lien. It does not prove the existence of the lien. Its sole purpose is to stay the hand of the paymaster until he shall be satisfied—either by the direction of the debtor or of the Court in case proceedings are taken to realize the lien—that there is a

lien, and that some amount is really due and owing to the lien-holder. . . . The notice under sec. 11, sub-sec. 1 is purely informal, and was manifestly intended to be so, no form or special particulars of detail being prescribed in regard that it might have to be given promptly or by illiterate persons who might, as it were, read and understand the sections as they ran."

The payment of the percentage retained cannot validly be made to any person within the thirty days mentioned in sub-sec. 1. After the expiration of the thirty days payments may be validly made to lien-holders unless proceedings have been taken under secs. 23 and 24 to enforce a lien or charge against the percentage retained. Proceedings by one lien-holder would be sufficient as such proceedings would be available for other lien-holders claiming against the amount retained: Wallace on Mechanics' Liens, 2nd ed., 364.

In *Torrance* v. *Cratchley* (1900), 31 O.R. 546, Street, J., in referring to the 11th and following sections, says (at p. 549): "The only object of the provision requiring the owner to retain the twenty per cent. for thirty days appears to be that indicated by sub-sec. 3 of sec. 11, viz., to give persons entitled to liens an opportunity of enforcing them against the fund directed to be retained."

In a later case it was said that this section recognizes that the charge is a charge upon money to become payable to the contractor; and when, by reason of the contractor's default, the money never becomes payable, those claiming under him and having this statutory charge upon this fund, if and when payable, have no greater right than he himself had and their lien fails: *Farrell* v. *Gallagher* (1911), 23 O.L.R. 130.

It was also held in 1911 that there is no sum "justly owing" or "payable" by the owner to the contractor where the building was never completed by the contractor and where the building contract provided that time was of the essence of the contract and stated a specific time for completion and fixed a specific sum for every day beyond a stated period that the owner is denied the full possession of the premises, and that a materialman therefore could not enforce liens against the land and had no relief under the Act, where the unpaid balance of the contract price would be absorbed by the "per diem" penalty clause, held under the circumstances to be really liquidated damages: *McManus* v. *Rothschild* (1911), 25 O.L.R. 138.

In *Farrell* v. *Gallagher*, 23 O.L.R. 130, 2 O.W.N. 635, the Divisional Court considered *Russell* v. *French*, 28 O.R. 215, to be in point, but was constrained, under the authority of *Mercier* v. *Campbell*, 14 O.L.R. 639, to give its own opinion independently of the decision in *Russell* v. *French*, which latter, in the opinion delivered by Middleton, J., was said not to be of "conclusive authority." The Divisional Court proceeded to a consideration of other sections of the Act (secs. 4, 10 and 11), and declined to interpret sec. 12 as constituting one of the exceptions to the general effect of sec. 11, which enacts that "same as herein otherwise provided" where the lien is claimed by any person other than the contractor, the amount which

may be claimed in respect thereof, shall be limited to "the amount *owing* to the contractor or sub-contractor or other person for whom the work or service has been done or the materials placed or furnished." The Divisional Court expressed its disagreement with the decision in *Russell* v. *French* as regards the assumption in the latter case that the change made in the basis upon which the 20 per cent. is to be computed shews an intention on the part of the legislature that an owner is to be liable for the 20 per cent. where, on the contractor's default upon an unremunerative contract, the owner may have to pay more than the 20 per cent in addition to the unearned portion of the contract price to get the work completed. In its opinion, sec. 12 as amended still recognizes that the charge is a charge upon money to become "payable" to the contractor (see sec. 10); and "when, by reason of the contractor's default, the money never becomes payable, those claiming under him and having their statutory charge upon the fund if and when payable, have no greater rights than he himself had and their lien fails." This is the doctrine which for a time displaced the authority of *Russell* v. *French*, 28 O.R. 215, which doctrine has been declared fallacious by the case of *Rice Lewis* v. *Harvey*, 9 D.L.R. 114, 27 O.L.R. 630, re-affirming the *Russell* case as having been properly decided.

In *Rice Lewis* v. *Harvey*, 9 D.L.R. 114, it was held that the twenty per cent. which the Act requires an owner to retain constitutes a fund of which the owner is a trustee, and that where a contractor abandons his work the materialmen and other lien-holders can resort to this fund. Where, therefore, under a contract it was provided that eighty per cent. of the value of the work done was to be paid, on progress certificates, by the owner to the contractor, the owner was held liable to other lienholders to the extent of twenty per cent. on such payments, and, if any additional sum became payable by the owner to the contractor, twenty per cent. of such sum would be available to lienholders. *Russell* v. *French*, 28 O.R. 215, is in accord with this decision, and *Farrell* v. *Gallagher*, 23 O.L.R. 130, and *McManus* v. *Rothschild*, 25 O.L.R. 138, are to be considered as overruled in so far as they are inconsistent with the decisions in *Russell* v. *French*, 28 O.R. 215, and *Rice Lewis* v. *Harvey*, 9 D.L.R. 114, also reported *sub nom.* *Rice Lewis* v. *Rathbone*, 4 O.W.N. 602, 27 O.L.R. 630.

A writer in the *Canada Law Journal*, 49 C.L.J. 260, in discussing the case of *Rice Lewis* v. *Harvey* (or *Rice Lewis* v. *Rathbone*, as it has been incorrectly called in some reports because of the inclusion of another lienholder of the latter name in the proceedings), says that the view of the Court of Appeal is somewhat similar to the case of a first mortgagee making further advances, after he has notice of a subsequent mortgage. Such advances cannot be tacked to his first mortgage to the prejudice of the subsequent mortgagor; and it is not unreasonable, nor unjust, that subsequently accruing equities of an owner shall not prejudice or affect the rights of lienholders whose liens have attached before such equities have arisen.

The argument founded on sec. 15 (4), which expressly provides that as

against liens for *wages*, the owner is to be precluded from applying the percentage to the completion of the contract or for any other purpose, or to the payment of damages for non-completion of the contract by the contractor or sub-contractor, or in payment or satisfaction of any claim against the contractor as sub-contractor, was duly considered by the Court of Appeal, and, notwithstanding the contention that, there being this express provision in favour of wage-earners and no such provision in favour of other sub-contractors, such other sub-contractors are not entitled to the same protection in regard to the percentage as wage-earners, the Court held that they were.

The Court of Appeal regarded this provision as not affecting the other provisions of the Act which they held were sufficient to protect the liens of other sub-contractors from being intercepted by counterclaims of the owner against the contractor, though not expressly provided for in the Act.

The provision in favour of wage-earners, the Court of Appeal regarded as directed to cases where there are no progress certificates in which there may be nothing payable to the contractor, except the ultimate balance, says the *Canada Law Journal*. The article concludes as follows:—

"This last suggestion as to the supposed meaning of sec. 15 (4) does not appear to us to have any good foundation. The percentage fund in no way depends on the existence or non-existence of progress certificates; it arises automatically as the work and materials are actually done and furnished altogether irrespective of progress certificates or payments to the contractor thereunder, and for every dollar's worth of work and materials done and furnished the owner has to lay aside twenty cents of the price for the benefit of sub-contractors, if any. The true reason for the Court's decision therefore, would seem to be not that sec. 15 (4) is intended to apply to some special state of facts in which wage-earners are intended to be specially benefited, but that such provision is in fact redundant and that the Act without it would have to be construed as if it contained it."

On the general question as to what persons have the right of lien under the various mechanics' lien laws of the provinces, reference should be made to the Annotation in 9 D.L.R. 105, and to *Farr* v. *Groat*, 12 D.L.R. 575, 24 W.L.R. 860; *Fitzgerald* v. *Williamson*, 12 D.L.R. 691, 18 B.C.R. 322; *Brown* v. *Allen*, 13 D.L.R. 350; *Peters* v. *Maclean*, 13 D.L.R. 519, 25 W.L.R. 358.

Province of British Columbia.

COURT OF APPEAL.

Macdonald, C.J.A., Irving, Martin, Galliher, and McPhillips, JJ.A.] [16 D.L.R. 126.

REX *v.* ANGELO.

1. *Evidence—Criminal trial—Former testimony—Absent witness for prosecution—Deposition at preliminary enquiry.*

A court of criminal appeal will not interfere with a preliminary finding by the trial judge under Cr. Code, sec. 999 (amendment of 1913), on admitting in evidence the prior deposition of an absent witness for the Crown taken on the preliminary enquiry, that such witness was absent from Canada, where such finding was based on proof that the absent witness was a police officer who had obtained a short leave of absence and having thereafter failed to report for duty had been heard from in the United States under circumstances tending to shew that he had gone there to avoid giving evidence at the trial in question; it is not a prerequisite to the admission of the prior deposition that there should be absolute proof of absence from Canada, but only that such facts should be proved from which such absence "can be reasonably inferred" (Cr. Code 999, as amended 1913).

2. *Appeal—Leave to appeal—Criminal case—Stated case not to be dispensed with.*

On giving leave to appeal under Cr. Code (1906), sec. 1015, following the refusal of the trial judge to reserve a case, the court of criminal appeal should not, even by consent, hear and deal with the matter as though a case had been stated on the question on which the leave is given; sec. 1016 of the Criminal Code is mandatory in directing that a case "shall be stated."

R. v. *Armstrong*, 12 Can. Cr. Cas. 544, 15 O.L.R. 47, dissented from.

3. *Appeal—Contradictions in record on appeal case—Judge's certificate of evidence not shewn on stenographer's notes.*

In a conflict between what the trial judge certifies in a case stated under Cr. Code 1906 sec. 1016, to have been specifically sworn to by a witness in answer to his own question, and what is shewn on the stenographer's notes of evidence sent up with the

stated case under Cr. Code, sec. 1017, a court of criminal appeal is bound to accept the statement of the trial judge, particularly where he certifies that the stenographer's notes are defective by reason of the omission of such question and answer.

4. *Appeal—Amending or perfecting—Criminal appeal—Stated case —Proof of proceedings at trial.*

The power of a court of criminal appeal on hearing a case stated by the trial judge under Cr. Code (1906), sec. 1015, to refer to such other evidence of what took place at the trial as it thinks fit is limited by Cr. Code sec. 1017 to cases in which "only the judge's notes are sent and it considered such notes defective"; there is no such power where, in addition to the judge's notes, the notes of the official stenographer accompany the stated case. (*Per* Martin, J.A.)

J. W. deB. Farris (*Leighton* with him), for prisoner.
A. D. Taylor, K.C., for Crown.

Macdonald, C.J.A., Irving, Martin, Galliher, and McPhillips, JJ.A.] [16 D.L.R. 149.

REX *v.* DAVIS.

Appeal—Joint trial for murder—Cautioning jury that admission of one defendant inadmissible against the other—Substantial wrong—Cr. Code (1906), *sec.* 1019.

The failure of the trial judge to caution the jury on the trial together of two persons charged with murder, that any admission or confession made by one of the accused not in the presence of the other is only evidence against the one making such confession or admission, will not be a ground for a new trial where the statement was brought out on the Crown's cross-examination of the latter as a witness on his own behalf and the co-defendant, now objecting had, by his counsel, dealt with it in cross-examination of such witness, if it be manifest to the appellate court from the evidence (including the objecting defendant's own testimony) that there had been no substantial wrong or miscarriage on the trial by reason of such warning not being given.

See as to admissions of one defendant on trial of joint indictment, *R.* v. *Martin*, 9 Can. Cr. Cas. 371; *R.* v. *Connors*, 5 Can. Cr. Cas. 70, 3 Que. Q.B. 100; *R.* v. *Blais*, 10 Can. Cr. Cas. 354, 358.

R. L. Maitland, for prisoner.
A. D. Taylor, K.C., for Crown.

Book Reviews.

Law as a Means to an End. By RUDOLPH VON IHERING, late Professor of Law in the University of Gottingen. Translated from the German by ISAAC HUSIK, Lecturer on Philosophy in the University of Pennsylvania, with an editorial preface by Joseph H. Drake, Professor of Law in the University of Michigan, and with introductions by Henry Lamm, Justice of the Supreme Court of Missouri and W. M. Geldart, Vinerian Professor of English Law in the University of Oxford. Boston: The Boston Book Company. 1913.

This is Volume V of the Modern Legal Philosophy Series. Professor Ihering is known to English and American lawyers as the German Bentham. Neither of these men was a practical lawyer, but have made names for themselves not soon to be forgotten. The end and aim of Bentham's life work was codification and the present condition of the law in that respect is largely due to his writings. Professor Ihering is more of a critic, but is doing good work for Anglo-American jurisprudence. In these days of rush and struggle many may not be found who are interested in this learned treatise, but it has its place, and a very important one in the making and improvement of the law.

Philosophy of Law. By JOSEPH KOHLER, Professor of Law, University of Berlin, translated from the German with an editorial preface and introductions. Boston: The Boston Book Company. 1914.

This is Volume XII of the Modern Legal Philosophy Series, another very learned book by a learned writer. The introduction commences by a saying of Socrates that "Until either philosophers become kings or kings philosophers States will never succeed in remedying their short-coming." Which means that the law will never become perfect. The writer, however, seeks to do what he can in that direction by an effort to present as a system philosophical ideas which have come to him after a long and careful study of the subject, and an investigation of the laws of various peoples.

The Law Relating to Real Estate Agents' Rights to Commission. By CHARLES G. OGDEN, of the Montreal Bar. Toronto: Canada Law Book Company, 32-34 Toronto Street. 1914.

As the preface very correctly says, "For the past few years real estate agents have been prominently before the public through-

out this country, and very many disputes have arisen between them and their clients." It cannot be said that the agents have covered themselves with glory in these contests; but the law with reference to commissions on sales and the relation between real estate agents is becoming settled, and this is a timely book. It will be found very useful to practitioners, to whom we recommend it as a careful and handy digest of the authorities.

Forty Years in Old Bailey, with a summary of the leading cases and points of law and practice. By FREDERICK LAMB. London: Stevens and Sons, Limited, 119 and 120 Chancery Lane. Toronto: Canada Law Book Co., Ltd. Philadelphia: Cromarty Law Book Company.

Forty years' practice and observation in the Central Criminal Court at Old Bailey, while recording the proceedings has enabled the compiler to give a most interesting collection of cases, most of which have not seen the light until resurrected by his industry and research.

His introduction gives an interesting sketch of various courts past and present where criminals were and are dealt with in the City of London. Many quaint sayings of judges and counsel are to be found in this volume, and it is an interesting historical record of matters to be found nowhere else.

The Mechanics of Law Making. By COURTNEY ILBERT, G.C.B., Clerk of the House of Commons. New York: Columbia University Press. 1914.

This volume contains the Carpentier lectures delivered by the author last October, subject to some prunings and with additional matter. It is good reading for professional men, especially for those who may happen to have drifted into Parliament. A careful perusal of its pages by those whose duty it is to draft and revise bills will be very helpful. There is so much careless and clumsy legislation that any assistance in accuracy and completeness is most desirable. We commend it to our readers and to all others concerned in legislation.

A Hand Book of Stock Exchange Laws, affecting Members, their Customers, Brokers and Investors. By SAMUEL P. GOLDMAN, of the New York Bar. Garden City, New York: Doubleday Page & Co. 1914.

This is principally devoted to an examination of the New York Exchange and its constitution. More useful to brokers than to lawyers.